

Ethical issues encountered in the workplace
Discriminatory practices, job security questions, strikes, and lockouts.

Karissa Barbarevech

EE 454 Robotics and Professional Practice

Dr. Spalletta

17 April 2017

There are a series of ethical issues, which may be encountered in the workplace. Among these, discriminatory practices, job security questions, strikes, and lockouts are included. These issues are extremely relevant and for this reason, are monitored closely and legislatively controlled by the U.S. Equal Employment Opportunity Commission, the Department of Labor, and the National Labor Relations Board.

The U.S. Equal Employment Opportunity Commission regulates and legislates discriminatory practices. They have passed laws, which make it illegal to against both applicants and employees based on gender identity, sexual orientation, pregnancy, race, color, religion, nation of origin, age, disability, or genetics. Included in these laws are legislation, which make it illegal for an employer to take these classifications into account in decision making of job referrals. Laws have also been passed, which prevent retaliation due to a complaint, a charge filed, or participation in an investigation about discrimination. These laws put in place prevent employers from putting in place neutral employment policies, which would negatively impact an applicant's performance based on any of the classifications found above. Apprenticeship programs are also not allowed by law to discriminate against people of any classification. The one exception to this is that in some cases there may be age requirements on apprenticeship programs. Once they are employed, it is illegal to train employees in apprenticeship programs to discriminate people by any certain classification. ("Prohibited Employment Policies/Practices")

The U.S. Equal Employment Opportunity Commission has also made it illegal to advertise for a job, implying a preference for a certain type of person, which would discourage a person of a different classification from applying. Furthermore, employers cannot recruit employees based on a specific classification or set of classifications. This includes recruiting by word of mouth solely by people of one certain classification, which could cause only people of

that classification to hear about the position. Furthermore, while employers are legally allowed to inquire the sex, race, religion, nation of origin, or age of an applicant, these inquiries can be used as evidence indicating an employer has discriminated against applicants of certain applications. It is disallowed by law for an employer to inquire about disabilities of applicants prior to making an offer. ("Prohibited Employment Policies/Practices")

The legislation passed by the U.S. Equal Employment Opportunity Commission makes each case of discrimination extremely clear to prevent loopholes and misunderstandings. For this reason they have outlined each possible case of discrimination and developed legislation preventing it. Among these specific cases, employers are not legally allowed to consider gender identity, sexual orientation, pregnancy, race, color, religion, nation of origin, age, disability, or genetics when considering an employee for a job assignment or promotion. Employers are also prevented from considering these applications when deciding and employees' benefits and wages. The only exception to this law is that older employees' benefits may be lowered only if they are decreased to match the benefits of the younger employees. When disciplining and discharging employees, employers may not take into account any of the classifications above. This includes not only discharging employees, but also creating a hostile work environment, so unbearable that it forces the employee to quit. For this reason, although older employees may not be able to work as long, it is not legal for that to be the sole reason of discharging them during layoffs. In the same vein, during recall after layoffs, classifications cannot be considered. These laws also disallow the inclusion of such discrimination in any contract or agreement. ("Prohibited Employment Policies/Practices")

Reasonable accommodations must be provided for people with disabilities by the employer due to legislation passed by the U.S. Equal Employment Opportunity Commission.

These accommodations are required as long as it does not put an overwhelming strain on the employer and the employee is able to perform the duties of the job with the accommodations in place. These accommodations must be put in place both for the applicant to apply and for the employee to be allowed the benefits and privileges of all other employees. Similar to these laws, employers must make reasonable accommodations for the religious beliefs of their employees. This would include things such as allowing employees to switch shifts in order to attend religious services or observe religious holidays. It is legal for a dress code to be put in place, as long as it doesn't disallow certain ethnic dresses, while accepting casual attire, which conflicts with ethnic beliefs or practices. If an employee requests accommodation, however, they must be allowed an exception as long as it does not put an overwhelming strain on the employer. In the same way, if someone with a disability were to request a dress code accommodation, it would be required provided that it did not put undue hardship on the employer. ("Prohibited Employment Policies/Practices")

Any form of harassment has based on gender identity, sexual orientation, pregnancy, race, color, religion, nation of origin, age, disability, or genetics has been made illegal by the U.S. Equal Employment Opportunity Commission. These forms of harassment include offensive and derogatory comments, verbal and physical conduct, slurs, and graffiti. Also included in these laws are sexual harassment, which includes sexual favor requests and sexual advances as well as any other sexual misconduct. While teasing and offensive comments are not prohibited by law, if they are so common as to create a hostile work environment, they do become illegal. Reporters of discrimination are also protected by law from harassment. ("Prohibited Employment Policies/Practices")

Some job security questions, specifically those regarding discrimination, can be answered by legislation put in place by the U.S. Equal Employment Opportunity Commission. They state that a person may not be fired based on gender identity, sexual orientation, pregnancy, race, color, religion, nation of origin, age, disability, or genetics. Their job security may also not be at risk in retaliation for reporting any type of discrimination. Aside from discriminatory purposes, job security questions can be answered looking at legislation put in place by the Department of Labor. These laws include not only the circumstances regarding whether or not an employee remains employed, but also the conditions of the job they work at. ("Summary of the Major Laws of the Department of Labor", 2016)

According to the Fair Labor Standards Act put into place by the Wage and Hour Division of the Department of Labor, there is a standard federal minimum for the payment an employ must receive and overtime must be one-and-a-half times that payment. Garnishment of these wages is regulated by the Consumer Credit Protection Act. It also restricts the hours children under the age of 16 may work for nonagricultural jobs and prohibits the employment of children under the age of 18 for jobs deemed too dangerous. In regards to agricultural jobs, children under the age of 16 are prohibited from working during school hours and in jobs deemed too dangerous. It also prevents most employers from using polygraphs on their employees except in extremely limited circumstances. This Division also put forth the Family and Medical Leave Act, which requires that if an employer has more than 50 employees, they must allow up to 12 weeks of unpaid job-protected leave for birth or adoption of a child or the serious illness of the employee, their spouse, child, or parent. The Occupational Safety and Health Act administered by the Occupational Safety and Health Administration legislates the conditions under which these hours are worked and wages are earned. They also protect whistleblowers from retaliation.

According to the Veterans' Employment and Training Service certain previous members of the armed services are entitled to be rehired by the employer they were originally with when entering the service, including reserves and National Guard. They are also provided preferential hiring and protection from reduction in government jobs. ("Summary of the Major Laws of the Department of Labor", 2016)

In regards to agricultural workers, there are three acts put into place by the Wage and Hour Division to protect them. The first is the Fair Labor Standards Act, which exempts them from overtime premium pay, but requires minimum wages to be payed to employees on farms employing more than seven full-time workers. The second is the Immigration and Nationality Act, which requires employer of temporary foreign workers on visas to get labor certificates from the Employment and Training Administration saying there are no U.S. workers to do the available work. Finally, the Migrant and Seasonal Agricultural Worker Protection Act regulates their hiring and employment activities, including wage protection, housing and transportation safety standards, disclosure requirements, and farm labor contractor registration requirements. In regards to mass transit, the employees are protected under the Federal Transit Law when funds are used to acquire, improve or operate a transit system. Employee protection arrangements must be approved by the Department of Labor before the Department of Transportation can give these funds to the grantees. ("Summary of the Major Laws of the Department of Labor", 2016)

There are several acts administered to legislate in regards to workers compensation. The Longshore and Harbor Workers' Compensation Act requires compensation for the medical care of any employee working with ships. This includes longshore workers, harbor workers, ship repairers and builders, and shipbreakers. It also requires the medical care of their dependent survivors if they are deceased or disabled due to injury sustained navigating U.S. waters or in

areas used for loading, unloading, repairing, or building vessels. This legislation is administered by the Office of Workers Compensation Programs. The Energy Employees Occupational Illness Compensation Program Act provides compensation to employees of the Department of Energy and its contractors or subcontractors, or their survivors for the cancer due to radiation exposure or illness due to beryllium or silica exposure. This compensation takes the form of a lump sum of \$150,000 as well as the covering of medical bills. It can also include a lump sum of \$50,000 as well as health benefits deemed eligible by the Department of Justice for compensation as uranium workers in the Radiation Exposure Compensation Act. Federal employees are entitled to compensation for disability or death resulting from workplace injury by the Federal Employees Compensation Act. This includes lost wages due to disabilities and rewards for loss or loss of use of body parts and any related medical costs. Coal mining frequently caused miners to become totally disabled to pneumoconiosis, also known as black lung. According to the Black Lung Benefits Act, they are entitled to monthly cash payments and medical benefits. If the miner's death was caused by black lung, their survivors are also entitled to these monthly benefits. The Federal Mine Safety and Health Act administered by the Mine Safety and Health Administration covers people who currently work on mine property. Operators are made responsible for the safety and health of miners. Mandatory health standards as well as safety standards and training requirements are put into place by the act. There are also penalties for violations and inspectors have the right to close dangerous mines. ("Summary of the Major Laws of the Department of Labor", 2016)

For employers that offer pensions and welfare benefits, the Employee Retirement Income Security Act provides regulating legislation administered by the Employee Benefits Security Administration. These laws state that certain employers must provide certain retirement benefits.

The premiums for these benefits should be paid to the Pension Benefit Guaranty Corporation of the federal government. According to the Comprehensive Omnibus Budget Reconciliation Act, healthcare must continue to be provided after retirement. ("Summary of the Major Laws of the Department of Labor", 2016)

Union members are also protected by the legislation of the Department of Labor. Labor organizations are required to file annual financial reports, union officials, employers and labor consultants must file reports regarding labor relations practices, and standards on elections of union officers have been established. These requirements and establishments protect union funds and encourages democracy in unions. This is required by the Labor-Management Reporting and Disclosure Act administered by the Office of Labor-Management Standards. ("Summary of the Major Laws of the Department of Labor", 2016)

Government Contracts, grants, and financial aid recipients are required to adhere to wage, hour, benefits, and safety and health standards by three acts administered by the Wage and Hour Division of the Department of Labor. The first, the Davis-Bacon Act, requires payment of prevailing wages and benefits to employees by contractors for federal construction projects. The second is the Walsh-Healy Public Contracts Act, which requires the payment of minimum wages as well as other labor standards by contractors, who provide materials and supplies to the federal government. Finally, the McNamara-O'Hara Service Contract Act sets wage rates and labor standards for employees of contractors providing services to the federal government. The Office of Federal Contract Compliance Programs requires most federal contractors and subcontractors, as well as federally assisted construction contractors, to provide equal employment opportunity. There are also several assistance based civil rights laws requiring this administered by the Office of the Assistant Secretary for Administration and Management's Civil Rights Center. The

Copeland Act prevents federal contractors from inducing an employee to sacrifice any part of the compensation of this equal employment. ("Summary of the Major Laws of the Department of Labor", 2016)

During plant closing or layoffs, the Worker Adjustment and Retraining Notification Act must be considered. It states that employees should be offered early warning of such occurrences. Employees can get these warning from the Employment and Training Administration. This act is enforced by the federal courts. The Department of Labor requires these notices be posted in the workplace or directly provided to the employees and they provide free and electronic copies of the postings. There is an elaws Poster Advisor, which can be used to determine which postings are legally required. ("Summary of the Major Laws of the Department of Labor", 2016)

According to the National Labor Relations Act, employees have the right to strike as a form of bargaining. This act does, however, lay out the cases in which striking is unlawful. In order for a strike to be legal, a lawful object must be struck over. These matters are not easily decided, and are frequently ruled by the National Labor Relations Board. Lawful objects can be either economic purposes or unfair labor practices. ("The Right to Strike")

Economic strikers argue for better hours, higher wages, or better conditions. It is not permitted for employers to discharge economic strikers. They can, however, be replaced with little rights. If they are unable to find equal employment elsewhere, they are entitled to be rehired if a job opening occurs. Unfair labor practice strikers protest unfair labor practices committed by their employers. They have significantly more rights than economic strikers. Like the economic strikers, they cannot be discharged. Unlike the economic strikers, however, they also cannot be permanently replaced. Once the strike is over, as long as the striker has not committed any form

of misconduct, the company is required to reinstate them to their previous position, even if it requires discharging a temporary employee. If the employer unlawfully refuses the reinstatement the National Labor Relations Board may require them to give the employee backpay to the time they should have been reinstated. (“The Right to Strike”)

There are several ways in which a strike can be unlawful. If the object of the strike is unlawful, such as compelling an employer to discharge an employee for not paying union fees, the strike is unlawful. There are some objects that are unlawful to be achieved by strikes, but lawful by other means. An example of this would be compelling an employer to not work with another company. Unless working conditions are unsafe, it is not legal for workers to strike during a no-strike provision of a contract. If a strike attempt is made, strikers are not protected by the National Labor Relations Act and can be discharged or otherwise disciplined by their employers. A strike for the purpose of changing or ending a contract is unlawful and will result in the discharge of the involved employees. This case does not include striking for unfair labor practices. There is a code of conduct, which strikers must adhere to, in order to make their strike lawful. Strikers may not physically block entry, exit, or use of the plant they are striking, threaten violence against employees who choose not to strike, or attack management representatives. Violation of this code of conduct by both economic and unfair labor practice strikers results in a removal of the strikers’ rights provided by the National Labor Relations Act. Finally, a strike is unlawful if the strikers are employees of any health care institution and have not given at least ten days’ notice of the strike to the institution and the Federal Mediation and Conciliation Service in writing. As long as these guidelines are followed, employees are allowed to strike and are protected by the National Labor Relations Act. (“The Right to Strike”)

The National Labor Relations Act outlines the laws regarding lockouts. If an employer is bargaining in good faith with a union, they have the right to lock out their employees to further its position in the bargaining, even before negotiations are reached. There are cases where these lockouts could be unlawful. Employers are not permitted to lockout their employees if they are refusing to bargain or are bargaining in bad faith. They also may not use lockouts as a way of discouraging their employees from partaking in unions. This includes not only lockouts to discourage union activity and organization, but also lockouts which only include union members. If an anticipated strike could cause unusual losses or safety hazards, an employer is permitted to have a lockout. Any employer in a multiemployer bargain is allowed to lawfully stage a lockout. (“Basic Guide to the National Labor Relations Act”, 1997)

There are many laws put in place in order to protect the rights of employees in the United States. The U.S. Equal Employment Opportunity Commission protects employees from discrimination based on gender identity, sexual orientation, pregnancy, race, color, religion, nation of origin, age, disability, and genetics including retaliation for reporting discrimination. The Department of Labor outlines laws regarding job security questions. Finally, the National Labor Relations Act provides laws and regulations on strikes and lockouts. These laws ensure protection for safe and fair employment in the United States.

Bibliography

“Basic Guide to the National Labor Relations Act.” Washington, DC: U.S. Government Printing Office, 1997. *National Labor Relations Board*. Web. 17 Apr. 17.

"Prohibited Employment Policies/Practices." *Equal Employment Opportunities Commission*. Web. 17 Apr. 2017.

"Summary of the Major Laws of the Department of Labor." *United States Department of Labor*. 23 Nov. 2016. Web. 17 Apr. 2017.

“The Right to Strike.” Washington, DC: U.S. Government Printing Office. *National Labor Relations Board*. Web. 17 Apr. 17.