

# PROFESIONAL PRACTICE INVESTIGATION PAPER

ETHICAL ISSUES ENCOUNTERED IN THE  
WORKPLACE: DISCRIMINATORY PRACTICES,  
JOB SEQURITY QUESTIONS, STRIKES AND  
LOCKOUTS.

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Every day, millions of people go to work and have to face different problems and ethical dilemmas. These ethical issues can involve both employers and employees, and can be a different variety of situations, from employers paying small wages to their employees, to workers stealing in their workplace.

It's difficult to decide between what is right and what is wrong, and a lot of ethical situations are very difficult to handle. The issues that are covered in this paper are: discriminatory practices that employers may have to their employees of people looking for a job in their company, job security questions that employees have to face, and responses to unfair actions and disputes between employers and employees that are strikes and lockouts.

Employment discrimination is a very common practice in nowadays workplaces. We understand as discrimination in the workplace as the unfair treatment of employees based on prejudices. There are a great variety of forms of discrimination, but the principals are: discrimination upon equal pay compensation, sexual orientation, national origin/language, sex, pregnancy, religion, disability, age and race.

Equal pay compensation discrimination is when different candidates for a job aren't offered the same paid even though they have the same experience.

Sexual orientation discrimination is when someone is treated wrongly just because of their sexual preference, whether it be homosexual, bisexual or heterosexual.

National Origin/Language discrimination occurs when someone is not hired due their country of origin or the language that they speak.

Racial discrimination is discrimination towards other race.

Sex discrimination is treating an individual poorly because of the person's sex. Sexual harassment is also considered a type of sex discrimination. It doesn't have to be of a sexual nature, can include offensive remarks about a person's sex, like making offensive comments about women in general, it's considered sexual harassment.

Religious discrimination is when a person is harassed or treated harshly due to their religious beliefs.

Pregnancy discrimination involves treating a woman unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Disability discrimination occurs when a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability.

Age discrimination involves treating someone (an applicant or employee) less favorably because of his or her age.

Discriminatory practices aren't only concern about hiring or compensation, they also involves promotion, use of company facilities, harassment, denying employment opportunities or firing.

Some famous historic examples of discrimination are the discrimination against woman working that happened till 20<sup>th</sup> century, which is an example of sexual discrimination, and also the anti-Semitic practices of Nazi-Germany, the Apartheid in South Africa, or the discrimination of black people in the United States till the 1960s, examples of race discrimination in the workplace, beside other areas.

Discriminatory practices in workplace have been an important ethical issue in all the history and in the past years governments have applied laws to face the situation.

The United States constitution does not directly address employment discrimination, but its prohibition on discriminatory by the federal government have been held to protect federal government employees.

However, the Title VII of The Civil Rights Act of 1964 says that *“no person employed or seeking employment by a business with more than 15 employees may be discriminated against due to his or her race, color, religion, sex, or national origin”*. And there are federal laws concerning discrimination that have being developed over the years. Also, state laws provide extensive protection from employment discrimination.

Some examples of federal laws are:

The Equal Pay Act amended the Fair Labor Standards Act in 1963. The Equal Pay Act prohibits employers and unions from paying different wages based on sex, but it does not prohibit other discriminatory practices in hiring.

The Age Discrimination in Employment Act (ADEA), enacted in 1968 and amended in 1978 and 1986, prohibits employers from discriminating on the basis of age.

The Immigration Reform and Control Act of 1986 prohibits employers with more than three employees from discriminating against anyone on the basis of national origin or citizenship status, except an unauthorized immigrant.

The Americans with Disabilities Act of 1990 (ADA) was enacted to eliminate discriminatory barriers against qualified individuals with disabilities, individuals with a record of a disability, or individuals who are regarded as having a disability. It prohibits discrimination based on real or perceived physical or mental disabilities. It also requires employers to provide reasonable accommodations to employees who need them because of a disability to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment.

The proposed US Equality Act of 2015 would ban discrimination on the basis of sexual orientation or gender identity.

In the European Union employment discrimination comprises two directives that were agreed by all the members in 2000, and therefore they were obliged to incorporate these new laws into their national legislations. These laws are:

The Employment Equality Framework Directive establishes a general framework for equal treatment in employment and occupation, that aims to protects everyone in the EU from discrimination based on age, disability, sexual orientation and religion or

belief in the workplace and The Racial Equality Directive, which prohibits discrimination on the grounds of racial or ethnic origin in the workplace as well as in other areas of life such as education, social security, healthcare and access to goods and services.

All these laws and government intervention have helped to decrease the problem of these discriminatory practices, however, there's still a lot of work to do. Employers can still make discriminatory decisions at the time of hiring employees or making other decisions in their companies, like at the time of imposing wages or promoting people. Harassment in workplace, no matter if sexual, racist, religious or other type is difficult to control, and laws that help to prevent this situations can't really make it disappear. So, the best way to end with discriminatory practices is to ensure that workers take legal actions when they see some kind of discrimination in workplace.

Job security is an important issue to nowadays employees, and people seeking for a job. Job security is the probability that an individual will keep his or her job; a job with a high level of job security is such that a person with the job would have a small chance of becoming unemployed. Job security usually arises from the terms of the contract of employment, collective bargaining agreement, or labor legislation that prevents arbitrary termination, layoffs, and lockouts. It may also be affected by general economic conditions: during periods of economic expansion businesses experience increasing demand and grow, so job confidence and security typically increase. During recessions, businesses experience reduced demand, what typically makes them to reduce the number of employees, so the job confidence decreases.

The official unemployment rate and employee confidence indexes are good indicators of job security in particular fields.

As job security is a sign of good economic situation on a country, governments will try to achieve the higher possible levels of it, passing laws which make it illegal to fire employees for certain reasons.

For individuals, they can make their own job security higher by increasing their skills through education and experience, and also by moving to a more favorable location.

As we have pointed, in all economies job security is very influenced by the economic situation and market forces, but the United States is a country particularly susceptible to these forces due to a long history of fiscal conservatism and minimal government intervention, so there weren't laws that regulate dismissals in business and companies.

In the United States, job security is higher for men and women, with workers between the ages of 30-64 experiencing more insecurity when compared with other groups. Divorced or separated workers, and workers with less than a high school diploma also report higher job insecurity. Overall, workers in the construction industry have the highest rate of job insecurity at 55%.

In Europe, the main difference with the United States is the system of indefinite contracts. In most European countries many employees have indefinite contracts which don't guarantee a job for life, but make it very difficult for the employer to terminate the contract. Employees who have legally acquired these rights can only be dismissed for disciplinary reasons or in a company.

An example of this legislation would be in Spain. Employees that have been working continuously two or more years in the same company are entitled to 45 days redundancy pay per year worked. The high cost to the companies of this redundancy payments gives employees job security.

But the proportion of the workforce on indefinite contracts has fallen across Europe in response to increased competition and globalization. Companies may dismiss an employee just before they reach the two-year mark and then re-hire them as a new employee.

However, not all the countries in Europe have this kind of contracts. In less regulated European countries, such as the United Kingdom, it is much cheaper to sack permanent employees. In Britain, employees are only entitled to a legal minimum of one week's redundancy pay per year worked (one and a half weeks for workers over 40 years old).

As job security is very influenced with the economic conditions and the laws that defend the rights of employees of not being fired from a company, is an important component in measuring quality of life and the well-being of the citizens of a country.

According to a list made in 2012, where the countries of the OCDE were listed for their workers' chance of losing their job, the country with the higher job security would be Switzerland, with a 2.8% chance of losing job, followed by Japan and Norway, with a 2.9% of chance. Other countries with high job security rates would be Germany, South Korea, Austria and Netherlands, with rates lower than a 4%. In the other side, in the list of the 36 countries members of the OCDE, Spain would be the one with the higher rate possibility of losing a job, with 17.7%. The next country would be Greece, with a rate of the 12%. The United States is listed as the 24<sup>th</sup> country with least probability of losing a job.

This list reflects the current economic situation and the employment legislation: in European countries with legislation that help employees to preserve their jobs, and with low levels on unemployment, like Germany, have the highest values of job security. But also, some of the European countries, like Spain, that use the system of indefinite contracts, the job security that this implies isn't reflected on the list. When economic crisis and recessions occur, employers tend to avoid temporary contracts, and fire their employees before they reach the two-year mark, or just make temporary contracts, so firing its employees has less cost and don't need to pay them a compensation. That's why European countries like Spain, Portugal or Greece that have high levels of unemployment and suffer big crisis in their economies have low job security.

In the actual economic situation, people ask job security questions, worried about their probabilities of having a stable job. Typical questions are if the job is part of an industry with high job security or if the company will function well enough to maintain their employee's job. Answering this kind of questions can be tricky, and can also be touchy topic to directly address in an interview. A good way to try to answer this questions would be by doing research about the company, the industry, try to avoid start-up companies, and try to find a job with an important position in the company.

To ensure your job and that your company needs you, trying to be noticeable, developing skills and with good teamwork, keep learning from your experiences, taking responsibilities or developing relationships inside your company are good ways that can help people with the security of their job.

Strikes and lockouts are ways employees and employers, respectively, react against ethical issues in workplace. When there's different opinions between what the ethical situation of work must be, like salaries, work conditions, etc. it can lead to a strike or a lockout if there's no agreement between both parts.

A strike is a work stoppage caused by the mass refusal of employees to work, it usually takes place in response to employee grievances. They became popular during the Industrial Revolution, when mass labor became important in factories and mines. Strikes are sometimes used to pressure governments to change policies.

The first historically certain account of strike action was in ancient Egypt, the artisans of the Royal Necropolis walked off their jobs because they had not been paid. As a response, the Egyptian authorities raised the wages.

The strike action only became a feature of the political landscape with the Industrial Revolution. For the first time in history, large numbers of people were members of the industrial working class. In 1842 the demands for fairer wages and conditions across many different industries finally exploded into the first modern general strike. After the second Chartist Petition was presented to Parliament in April 1842 and rejected, the strike began in the coal mines of Staffordshire, England, and soon spread through Britain affecting factories, mills in Lancashire and coal mines from Dundee to South Wales and Cornwall. Instead of being a spontaneous uprising of the mutinous masses, the strike was politically motivated and was driven by an agenda to win concessions.

As the 19th century progressed, strikes became a fixture of industrial relations across the industrialized world, as workers organized themselves to collectively bargain for better wages and standards with their employees. Karl Marx has condemned the theory of Proudhon criminalizing strike action in his work *The Poverty of Philosophy*.

In 1937 there were 4,740 strikes in the United States. This was the greatest strike wave in American labor history. The number of major strikes and lockouts in the U.S. fell by 97% from 381 in 1970 to 187 in 1980 to only 11 in 2010. Companies countered the threat of a strike by threatening to close or move a plant.

Now, strikes are organized by labor unions, organizations intended to represent the collective interest of workers in negotiations with employers or wages, hours and working conditions. They are often industry-specific and tend to be more common in manufacturing, mining, construction, transportation and the public sector. As the strikes, they have their origins during the Industrial Revolution in Europe, due to the big amount of new workers in the workplace that needed representation, because of the work conditions they had. In the US the history of labor unions began in the nineteenth century.

Labor unions organize strikes during collective bargains as a last resort. A collective bargain is a process of negotiation between employees and employers to come to an agreement over wages, benefits and working conditions. These strikes consists in workers refusing to attend work or picketing outside the workplace to dissuade people from working in their place.

Less frequently workers may occupy the workplace, but refuse to do their jobs or leave. This is known as a sit-down strike.

Another unconventional tactic is work-to-rule, in which workers perform their tasks exactly as they are required to but not better.

Sometimes strikes involves workers for a broad range of occupations and industries, or every worker within a city or country, and are known as general strikes. These strikes have often started with economic demands, but they tend to move quickly to issues of procedure, rights, and justice, and may take place in order to put pressure on the State or other authorities. A general strike has usually included enough participants to shut down most production, transportation, and even government functions.

General strikes are usually set during periods of economic difficulty: employers push wage cuts onto one group of workers, and with intentions to generalize them to other groups. Workers start challenging their work organization, imposing new wage levels, work rules, job descriptions, even new organization of work.

When employers have found workers mobilizing resistance, they have turned to the government for assistance – the enforcement of laws which restrict picketing, an increased police presence to protect strikebreakers, the criminalization of protest, and the outright repression of labor organizations. In these situations, workers talk more and more in terms of their “rights” and they raise questions about “democracy” and “justice.” Such circumstances have given birth to general strikes.

There are some other types of strikes: a sympathy strike is when a group of workers refuses to cross a picket line established by other workers that refuse to work, supporting those striking workers.

A student strike is the one where students don't attend schools, sometimes even supported by faculty. These types of strikes are intended to draw media attention to the institution so that the grievances that are causing the student to strike can be aired to the public. This usually damages the institution's public image.

A hunger strike is a deliberate refusal to eat. Are often used in prisons as a form of political protest, and, as student strikes, aims to worsen the public image of the target.

In the other hand, lockouts are industrial actions during which an employer withholds work, and denies employees access to the place of work during a labor dispute. In effect, it is a strike by the management to compel a settlement to a labor dispute on terms favorable to the employer. It is usually implemented by simply refusing to admit employees onto company premises, and may include actions such as changing locks and hiring security guards for the premises.

Lockouts are generally used to enforce terms of employment upon a group of employees during a dispute. A lockout can act to force workers to accept changed conditions such as lower wages. If the workers are asking for higher wages, better benefits or to maintain their benefits, an employer may use the threat of a lockout or an actual lockout to convince the union to back down.

Legislation concerning strikes and lockouts is very different from one country to another.

In the United States law guarantees the right of employees to strike, and places limitations and qualifications to the exercise of that right. Section 7 of the National Labor Relations Act states it in part *"Employees shall have the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."*, and in Section 13: *"Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right"*.

However, not all the strikes are considered lawful, it depends on the purpose of the strike, on its timing, or on the conduct of the strikers. The lawfulness of the object of a strike it's not always easy to determine, and often have to be decided by the National Labor Relations Board.

Strikers for a lawful object are defined as: economic strikers, if the object of the strike is to obtain some economic concession, such as higher wages, shorter hours, or better working conditions from the employers, and unfair labor practice strikers, if the protest is against unfair labor practices committed by the employer.

Also, strikes can be defined as unlawful for different reasons: because its purpose is unlawful, because of timing, for example, if is made at the end of contract period, or because the misconduct of strikers by using violence or picketing other workers that aren't part of the strike.



In most European countries labor legislation also defends the right to strike, but it may vary the level of protection. In some countries the right to strike is recognized as a fundamental constitutional law, France, Italy, Spain and Portugal contemplate articles in their constitutions that recognize this right, ensuring very advance protection. Countries such as Germany and Poland, although not being contemplated in their constitutions, have a legislative framework that protects the right to strike which empowers labor courts to exercise a strong proportionality analysis to verify the lawfulness of the collective action, while in others social partners have no role in the regulation of the right to strike. Finally the UK is the country with the most restrictive legislation, which refuses to recognize strike actions as right.

In contrast with strikes, lockouts are usually not contemplated as a right, and generally there are not specific regulations concerning lockouts.

In almost all of the European countries lockouts are forbidden, but in some extreme situations this practice could be accepted, like if there's no possibility of guarantee the work continuity in a company. Unlike Europe, in most South American countries lockout actions are legal, and sometimes even is a right contemplated in the constitution, like in Chile.

In the United States, under federal labor law, an employer may hire only temporary replacements and employ the lockout technique to counteract the effect of a strike against them. But also, during a strike an employer may legally hire permanent replacements, and in most US states, employees who are locked out are legible to receive unemployment benefits, but are not during a strike. For those reasons, American employers have been redundant to impose lockouts, instead attempting to provoke a strike.

Notable lockout incidents have been reported in professional sports: Major League Baseball in the 1990 offseason, the National Basketball Association in the 1995 offseason, the 1996 offseason, and the 1998–99 and 2011–12 seasons, the National Hockey League in the 1994–95, 2004–05 and 2012–13 seasons, and the National Football League in the 2011 offseason. In 2005, the NHL became the first major professional sports league in North America to cancel an entire season due to a lockout.

In conclusion, labor strikes is a more common practice to react against injustices, historically and nowadays, in workplace than lockouts, due to the fact that in almost every country in the world strikes are contemplated as a right, and lockout aren't. Members of labor unions use this technique to complain and make demands to the employers, and opening debate to many ethical issues in workplace.

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