

Equality
Winter Term 2005
Ms. Jolls and Mr. Sunstein

Background note on materials:

About half of the readings for this course come from Michael J. Zimmer, Charles A. Sullivan and Rebecca Hanner White, *Cases and Materials on Employment Discrimination* (6th edition 2003). The remainder, primarily involving constitutional issues, come from supplementary materials. Because this is not a course in employment discrimination law, we will be using the employment cases not to understand the details of employment discrimination law, but as the basis for a more general inquiry into the question of equality.

Syllabus (SM=Supplemental Materials; CB=Casebook):

I. Disability Discrimination

A. Disability Discrimination Under the Constitution

Cleburne v. Cleburne Living Center, Inc. (SM)

B. Disability Discrimination Under the Americans with Disabilities Act

1. Introduction

CB 675-78

2. The meaning of “disability”

CB 679-713 (through note on deference to the EEOC)
CB 714-21

3. Essential functions and features

CB 722-28
PGA Tour, Inc. v. Casey Martin (SM)

4. The duty of reasonable accommodation

CB 730-32
CB 735-45 (beginning with *Vande Zande*)
CB 755-58

5. Discriminatory qualification standards

CB 758-68 (through note 10)
CB 776-77

C. Perspectives on Disability Discrimination

David Strauss, *Discrimination Against the Disabled* (SM)

Elizabeth Emens, *The Sympathetic Discriminator: Mental Illness and the ADA* (SM)

II. Age Discrimination

A. Age Discrimination Under the Constitution

Murgia v. Massachusetts Board of Retirement (SM)

B. Age Discrimination Under the Age Discrimination in Employment Act

1. The statute's purpose

General Dynamics Land Systems, Inc. v. Cline (SM)

2. Disparate treatment discrimination

CB 87-96 (through note 19)

Sperling v. Hoffman-La Roche, Inc. (SM)

3. Age as a "Bona Fide Occupational Qualification"

Western Air Lines, Inc. v. Criswell (SM)

4. Reductions in force and downsizing

Note: Reduction-in-Force or Downsizing Cases (SM)

5. Disparate impact discrimination

Smith v. City of Jackson (SM)

6. Employee benefits plans and early retirement incentive plans

CB 659-71

C. Perspectives on Age Discrimination

Dissent of Judge Easterbrook in *Metz v. Transit Mix, Inc.* (SM)

Mary Lee Hummert et al., *Using the Implicit Association Test to Measure Age Differences in Implicit Social Cognitions*

III. Sex Discrimination

A. Sex Discrimination Under the Constitution

Geduldig v. Aiello (SM)
Craig v. Boren (SM)
Califano v. Webster (SM)
CB 251-52
Michael M. v. Superior Court (SM)
Rostker v. Goldberg (SM)
United States v. Virginia (SM)

B. Sex Discrimination Under Title VII of the Civil Rights Act of 1964

1. Disparate treatment discrimination

CB 200-06
CB 438-52

2. The “lack of interest” defense

CB 253-64 (beginning with *Sears, Roebuck*)

3. Sex as a “Bona Fide Occupational Qualification”

CB 265-82

4. Disparate impact discrimination

CB 374-93
CB 475-86 (through note on the FMLA)

5. Harassment

CB 507-09
CB 537-40

6. Grooming rules

CB 541-49
Jespersion v. Harrah’s Operating Co. (SM)

C. Perspectives on Sex Discrimination

Vicki Schultz, *Telling Stories about Women and Work* (SM)
Catherine A. MacKinnon, *Difference and Dominance* (SM)

IV. Sexual Orientation Discrimination

A. Sexual Orientation Discrimination Under the Constitution

Romer v. Evans (SM)

Lawrence v. Texas (SM)

B. Sexual Orientation Discrimination Under Other Sources of Law

1. State constitutions

Goodridge v. Department of Public Health (SM)

2. Sex discrimination and sexual orientation discrimination

CB 550-57

Nichols v. Azteca Restaurant Enterprises, Inc. (SM)

3. Other sources of protection

Notes and Questions on Alternative Sources of Protection Against Sexual Orientation Discrimination (SM)

C. Perspectives on Sexual Orientation Discrimination

Andrew Koppelman, Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination (SM)

V. Race Discrimination

A. Race Discrimination Under the Constitution

Historical Materials (SM)

Plessy v. Ferguson (SM)

Korematsu v. United States (SM)

Brown v. Board of Education (SM)

Loving v. Virginia (SM)

Washington v. Davis (SM)

McCleskey v. Kemp (SM)

Washington v. Seattle School District (SM)

Crawford v. Board of Education (SM)

B. Race Discrimination Under Title VII of the Civil Rights Act of 1964

1. Disparate treatment discrimination

CB 111-14

2. Disparate impact discrimination

CB 322-42
CB 394-400

C. Perspectives on Race Discrimination

CB 33-45

Marianne Bertrand and Sendhil Mullainathan, Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination (SM)

Brian A. Nosek, Mahzarin R. Banaji and Anthony G. Greenwald, Harvesting Implicit Group Attitudes and Beliefs From a Demonstration Web Site

CB 45-59

David Strauss, Discriminatory Intent and the Taming of Brown (SM)

Christine Jolls, Antidiscrimination and Accommodation (SM)

VI. Affirmative Action

A. Affirmative Action Under the Constitution

Regents of University of California v. Bakke (SM)

Fullilove v. Klutznick (SM)

Richmond v. J.A. Croson Co. (SM)

CB 303-19 (through note 19)

Gratz v. Bollinger (SM)

Grutter v. Bollinger (SM)

B. Affirmative Action Under Title VII of the Civil Rights Act of 1964

CB 282-303

C. Perspectives on Affirmative Action

John Hart Ely, The Constitutionality of Reverse Racial Discrimination (SM)

Ronald Dworkin, A Matter of Principle (excerpts) (SM)

VII. Poverty and the Constitution

A. Roosevelt's Second Bill of Rights

Cass R. Sunstein, The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need It More Than Ever (excerpts) (SM)

B. Welfare Rights in the Supreme Court

San Antonio Independent School District v. Rodriguez (SM)

C. The View from South Africa

Republic of South Africa v. Grootboom (SM)

D. Perspectives on Poverty and the Constitution

Frank Michelman, Welfare Rights in a Constitutional Democracy (SM)

Robert Bork, The Impossibility of Finding Welfare Rights in the Constitution (SM)

Cass R. Sunstein, The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need It More Than Ever (excerpts) (SM)