

# ***PERSONALLY SPEAKING***

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## **DISCRIMINATION, FALSE STEREOTYPING, AND AFFIRMATIVE ACTION**

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Affirmative-action practices which for years have divided Americans on the issue of their fundamental fairness are problems in distributive justice. The principle of distributive justice requires the person with superior workplace responsibilities to distribute the benefits and burdens of the group under his/her supervision among its members in some roughly equal fashion.

This does not mean strictly equal because there likely are significant differences among subordinates and it is entirely appropriate to take those differences into account. For example, handicapped employees appropriately may require different parking and restroom accommodations than able-bodied employees. Single parents in general shoulder heavier child care responsibilities than married parents. Persons of different faiths may observe different holy days. Distributive justice demands that the superior differentiate among subordinates only when the differences among them are real and substantial and require different arrangements. A superior may allow a single parent to rush home to tend to a sick child while the same permission might be denied to a married worker with a spouse who stays at home to look after the children. An orthodox Jew may not be required to work on Saturday whereas persons of other faiths might have to work on that day.

Discrimination occurs when the superior differentiates among subordinates for reasons that are insubstantial. In this regard, false stereotyping may be the device used to rationalize the difference in treatment among subordinates. For example, older workers may be treated differently because they simply have "less upside potential" than younger workers. Women may be treated differently because for them work is of secondary importance in their lives. Immigrant workers may be treated differently because they dress differently or speak with heavy accents. Favoritism is simply the other side of the coin of discrimination: treating some better than others for reasons that are superficial or based on the false stereotyping of others.

The Civil Rights Act of 1964 accorded special legal protection against discriminatory practices to women, African Americans, Native Americans, Jews and persons of other faiths, and persons born in other countries. In 1968 persons 40 years of age or older were included in the "protected class"; 22 years later persons with disabilities were included. Even so, false stereotyping is the means by which discrimination persists and flourishes today in the United States. By assigning negative characteristics to a person based on what is taken to be common characteristics of the minority group to which that person belongs, false stereotyping essentially blames the victim for certain character defects and thereby rationalizes treating that person differently. Thus a specific minority person is branded as

shiftless, boisterous, drunken, or is labeled as practicing odd religious rituals, having too many babies, speaking a foreign language, enjoying strange foods, emitting a body odor or foul breath, wearing bizarre clothing, and the like. For those reasons and others, it becomes much easier to treat that minority person differently than others. Our language itself conveys and reinforces such false stereotypes: the “n” word, the “b” word, “redneck,” “hick.” False stereotyping is especially insidious because until it is exposed false stereotyping attributes the discrimination to the victim rather than the perpetrator, justifying the discrimination on the basis of an alleged defect in the character of the victim.

Discrimination and the government intervention required to address it are evidence that the law of nature -- every economic agent in the pursuit of his/her own self interest also serves the common good through the invisible hand -- is not always sufficient to resolve important conflicts in economic affairs.

“Equal pay for equal work” is a requirement under distributive justice. It means that persons doing the same work, with the same on-the-job-performance of their assigned duties, are to be paid the same wages. “Equal opportunity” too is a requirement under distributive justice. It means that persons of equal experience and qualifications are to be afforded the same chance to be hired and promoted.

“Affirmative action” is controversial because some argue that it is necessary to right past injustices while others assert that it is reverse discrimination. The ethical principle of the double effect is instructive regarding affirmative action because affirmative action -- the hiring and promoting of persons in the protected classes over others -- has two effects, one positive and one negative. The positive effect is the good that is done for the person(s) hired or promoted. The negative effect is the bad that is experienced by those who are passed over in the hiring or promotion process. The principle of the double effect says that: (1) the good effect must be greater than the bad effect, otherwise the superior/decision-maker is doing more harm than good; (2) the bad effect must not be intended. That is, the superior/decision-maker must not intend to bring harm to the person(s) being passed over, but recognizes that there is no way to hire or promote one or two from an applicant pool without passing over everyone else.

Because affirmative action practices typically involve these two effects, and the scope of those effects very likely differ from one situation to another, the basic fairness of affirmative action practices must be addressed on a case-by-case basis. In some cases affirmative action may pass the test of fairness constructed on the principle of the double effect and in others it could fail that test. Though it would be much simpler if the fairness of affirmative action could be settled once and for all, there is no other way to proceed.

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