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Introduction

The Hispanic population grew by nearly 14 percent in the five-year period from 1973 to 1978. Some demographers are predicting that Hispanics will surpass blacks as the nation's largest minority by 1985. This fact has tremendous implications for equal employment and affirmative action compliance. The reason is that there are barriers to equal employment that are distinctively related to national origin discrimination in general and to Hispanics in particular.

First, insufficient command of English has been used successfully by employers as a defense against charges of refusal to hire. Second, physical requirements, such as minimum height and weight, are cited by employers as bona fide occupational qualifications (BFOQs). Physical requirements affect Hispanics (and Asians and women) to a greater extent in that they tend to be shorter and lighter than white and black males. Third, there are important group differences between Cubans, Mexican-Americans, and Puerto Ricans in terms of work/educational background, experience, and income, so that generalizing about Hispanic employment discrimination problems may be inappropriate. Fourth,

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recent empirical analysis of the skills and earnings of various ethnic groups has led to the conclusion that differences in income are not due entirely to differences in skill levels. Although some caution is necessary in interpreting this finding, one inference that can be drawn is that discrimination in employment is accountable for at least some of the earnings differences.

There are three factors that are emerging to further confirm the perspective that national origin discrimination, especially against Hispanics, will be a more important issue in the future than it is at present. Probably the most important of these are the EEOC Guidelines on Discrimination Because of National Origin, issued in December 1980. The definition of national origin discrimination has been expanded to include ethnic slurs, intimidating, hostile, or offensive work environments, and any conduct that unreasonably hinders an individual's work performance. The employer is liable, regardless of who committed the acts and whether or not the employer had knowledge of them. National origin harassment is now considered a violation of Title VII.

The second concern is the issue of a disproportionate impact on protected individuals, including Hispanics, of a facially neutral law. At present, not only does there have to be proof of disproportionate impact, but discriminatory intent has to be shown as well. Since the burden of proof is on the individual being discriminated against, insufficient knowledge may make discriminatory intent difficult to prove. But as more cases are litigated, the requirements necessary to show intent may evolve. This will enable litigation of additional cases in which the individual will be able to establish such proof.

The third issue is the federal government's abolition of the PACE exam for entrance into government service at GS levels 5 and 7. This was a result of a consent decree signed in 1981, replacing the exam with other methods of assessment that assure that Hispanics (and blacks) will be hired in proportion to the numbers who apply. If the federal government is issuing more rigorous guidelines (without delineating what affirmative action practices are required), it is confirming in federal courts that a facially neutral system may be discriminatory in its effect. Since it has abolished its own entrance exam, it can be anticipated that more rigorous enforcement will be forthcoming in the private sector.

The advice to human resource administrators in the literature thus far has been limited: it includes providing education about

the new rules in both hiring and recruitment, having ethnic minorities as supervisors and managers, and establishing a committee to review written materials and practices. Keeping records of compliance efforts is also suggested.

What is needed, however, is a more in-depth analysis of litigated national origin discrimination disputes against Hispanics so that human resource administrators will be able to ascertain whether any of the precedents set in them have implications for their corporate human resource policies. This article presents the results of a survey of litigated national origin employment discrimination cases in which the plaintiff was of Hispanic origin. Regional differences, group differences, employee level differences, and findings are analyzed. In addition, implications for human resource management and for research are presented.

Methodology

All litigated cases involving ethnic group discrimination, with the litigant identified either as Hispanic or specifically as Puerto Rican, Mexican, Filipino, Cuban, or of other Central or South American national origin, were analyzed. The source of the cases were volumes 21–31 of Fair Employment Practices Cases (Washington, D.C.: Bureau of National Affairs), covering years 1978–83. May 1983 is the publication date of the most recent case analyzed.

Simple Frequencies of Litigated Hispanic Employment Discrimination Cases

As portrayed in Table 1, the following case characteristics are of interest: the base majority of the cases were filed under Title VII of the 1964 Civil Rights Act (89.5 percent). Of interest to midwesterners is that only 6.6 percent of the Hispanic national origin cases were litigated in Chicago, which has quite a large Hispanic population.

Forty percent of the litigants were Mexican. Initial hiring was the most frequently litigated issue (32.9 percent). Promotion and discharge were also highly likely reasons for litigation (32.9 percent and 28.9 percent). A distinctive issue, that of language barriers, was litigated in only 14.5 percent of the cases.

Surprisingly, almost half of the cases (47.4 percent) were in the public sector, followed closely by manufacturing (31.6 percent).

Table 1

Frequency of Case Characteristics and Outcomes

	All cases '78–'83 N = 76 %	'82–'83 cases N = 16 %
Year of court hearing		
1978	6.6	
1979	14.5	
1980	25.0	
1981	32.9	
1982	18.4	
1983	2.6	
Law		
1964 Civil Rights Act	89.5	93.8
1866 or 1871 Civil Rights Act	30.3	18.8
Other	7.8	0
Region		
Chicago	6.6	6.3
Southwest	22.4	12.5
California	14.5	12.5
Texas	13.2	25.0
Other	43.4	43.8
Group		
Puerto Rican	9.2	6.3
Mexican	40.8	37.5
Filipino	6.6	6.3
Cuban	1.3	0
Other Hispanic	5.3	25.0
Hispanic (unspecified)	36.8	25.0
Issue*		
Hiring	32.9	18.8
Discipline	6.6	0
Discharge	28.9	25.0
Appearance	3.9	0
Language	14.5	25.0
Harassment	2.6	0
Wages	7.9	12.5
Transfer	5.3	0
Promotion	32.9	37.5
Testing	13.2	12.5
Industry		
Manufacturing	31.6	31.3
Service	19.7	25.0
Public	47.4	43.8
EEOC involvement	34.2	31.3
Employee level		
Unskilled, semiskilled	44.7	56.3
Professional, managerial	48.7	43.8
Undetermined	6.6	0
Ethnic discrimination (not combined with race or sex)	77.6	62.5
System challenged as discriminatory	39.5	37.5
Implementation of system discriminatory	60.5	62.5
Cases procedural only	21.1	18.8

- The proportion of cases in which the individual was Mexican was 70 percent in Texas, compared to about 40 percent each in Chicago, the Southwest, and California.
- Discharge was more of an issue in Chicago and the Southwest (60 percent and 41 percent respectively). Initial hiring was the most important issue in California (36.4 percent of the cases), and promotion was the most important issue in Texas cases (60 percent).
- Proportionately more professional or managerial employees filed a Hispanic discrimination suit in Chicago (80 percent), the Southwest (47.1 percent), and Texas (60 percent) than in California, where only 9.1 percent of all suits involved professional or managerial employees.
- Business necessity was more often raised as a defense in California (72.2 percent).
- The finding was for the company 100 percent of the time in Chicago, 80 percent of the time in Texas, and 47.5 percent in the Southwest. Sixty-three percent of the time it was for the individual in California.
- Most of the cases were in the public sector in California and Texas (approximately 70 percent), while most in Chicago were in manufacturing (60 percent).

Group Differences

- Mexican plaintiffs were more likely than Hispanics in general to litigate in Texas (22.6 percent vs. 0 percent); in the other southwestern states, the ratio of Mexican plaintiffs to Hispanic plaintiffs was 19.4 percent to 35.7 percent.
- The issues in cases with Mexican plaintiffs were much more likely to be language (12.9 percent) and much less likely to be testing (9.7 percent) when compared with Hispanic plaintiffs (language: 7.1 percent; testing 21.4 percent).
- The company won more times when the plaintiff was Mexican (61.3 percent) than when the subgroup was Hispanic (46.4 percent).
- Hiring was less of an issue (14.3 percent) and language was more of an issue (28.6 percent) in Puerto Rican cases compared with Hispanic cases (hiring: 32.1 percent; language: 7.1 percent).
- Both Puerto Rican and Mexican plaintiffs were twice as likely as Hispanics in general to file under the 1866 or 1871 Civil Rights

Acts, which provide for punitive damages (approximately 40 percent to 21.9 percent).
- Puerto Rican plaintiffs were much less likely to charge that the whole system is discriminatory. Rather, they tended to charge that its implementation was discriminatory (71.4 percent) when compared to both Mexican plaintiffs and Hispanic plaintiffs (51.1 percent).

Employee Level Differences

- Language was more of an issue for unskilled and semiskilled workers (17.6 percent) than for professional and managerial workers (10.8 percent). Promotion was much more of an issue for managerial and professional employees (40.5 percent) than for the unskilled and semiskilled (26.5 percent). Testing was more likely to be an issue for unskilled and semiskilled (23.5 percent) than for professional and managerial employees (5.4 percent).
- Within the public sector, there were substantially more unskilled and semiskilled cases (64.7 percent) than managerial and professional cases (32.4 percent).
- The EEOC was twice as likely to be involved in managerial and professional cases (43.2 percent) than in cases involving skilled and semiskilled workers (23.5 percent).
- The system itself was viewed as discriminatory in 39.4 percent of all cases. Of these cases, 60 percent involved unskilled or semiskilled individuals, whereas these individuals comprised only 44.7 percent of the sample. Managerial or professional employees, who comprised 48.7 percent of the sample, considered the system discriminatory in only 26.7 percent of the cases. Hence, unskilled and semiskilled individuals viewed the discrimination as more systematic, and managerial and professional individuals viewed the discrimination as less systematic. Conversely, isolated instances of discrimination were more likely to be brought to litigation by managerial and professional individuals (63 percent) than by unskilled or semiskilled individuals (34.8 percent).

Differences in Court Findings

- The finding was almost equally likely to be for the individual in the Southwest (40 percent) and in Chicago (33 percent). The company was most likely to win in a geographic region classified as "other" (primarily New York) (67 percent).

- Fifty percent of all individuals who won cases were classified as Hispanic, but Hispanics comprised only 36.8 percent of the sample. The decision was likely to be for the company (44.2 percent) or split (46.2 percent) if the individual was identified as Mexican-American. Since Mexican-Americans comprised 40.8 percent of the sample, and since the individual win and split ratios for the whole sample were 26.3 percent and 17.1 percent respectively, Mexican-American individuals tended to win and split more cases than could be expected.
- Seventy-seven percent of all discharge cases were won by the company. Of all the decisions for individuals, 40 percent involved hiring and 45 percent involved promotion. Of all split decisions, 46.2 percent involved hiring and 23 percent involved promotion. The issue of testing occurred in 38.5 percent of the split decisions. (Note that percentages could add to more than 100 percent, since multiple issues were involved in some cases).
- The company was likely to win when discrimination was an isolated situation (74.4 percent) rather than when the whole system was charged as being discriminatory.

Implications for Human Resource Administration

These findings have implications for human resource management. To begin with, more concern should be directed toward an organization's promotion practices, since 37.5 percent of the recent cases involved this issue. This concern should be in the form of systematic analysis to assure that the criteria for higher positions are really BFOQs. Supervisors should also be trained to appraise their subordinates in a manner that does not discriminate against Hispanics. Three related findings enhance this implication. First, language ability as a criterion, either for hiring or promotion, has increasingly become an issue. Second, there has been an increase in the proportion of cases in the service sector, where performance criteria may be more difficult to delineate. Furthermore, individuals were likely to win cases in which promotion was the issue.

The system itself, or at least the part being challenged in litigation, is not going to be as much of a problem in the future as it is at present if the trend toward a decrease in the proportion of semiskilled and unskilled plaintiffs continues. These plaintiffs have been the ones to charge that the system, rather than administration of the system, is discriminatory. Consequently,

human resource administrators will have to be concerned that administration of these systems is not discriminatory.

Public-sector human resource managers should note that a high proportion of the cases are in this sector. This could mean that current civil service practices, and in some cases labor-management practices, are not accomplishing what they were intended to with respect to nondiscrimination and may need revision. This is especially true regarding police, fire, and university procedures.

Some of the findings of this study, while of interest to human resource administrators, do not have any action implications. For example, little can be done to change regional location or ethnic subgroup composition, except to note that there are regional and group differences in the litigated cases.

As a final reassurance to the human resource administrator, the individual wins only 25 percent of the cases, although in another 25 percent the decision is split. Even when the individual wins, there is not always a financial settlement. And when there is, it is not of the magnitude of financial settlements in sex discrimination cases, nor do the settlements contain punitive damages.

Implications for Future Research

Future research in this area should be directed toward more in-depth analyses of cases involving two issues: promotion and language as a BFOQ. This is especially important since language is at issue when semiskilled and unskilled individuals are plaintiffs, and these cases are increasing.

In addition, analysis should be undertaken to ascertain the conditions under which the EEOC is involved in litigation of these disputes, and the extent of this involvement. Also to be analyzed is whether its involvement affects the outcome of the cases. Similarly, union involvement should be analyzed, especially since in some cases the union may be the defendant.

Finally, future research efforts should be directed toward examining when and how business necessity is used as a defense by employers.

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