

Repealing Political Discrimination

Most skilled American workers are now at least somewhat afraid to criticize fashionable left-wing views. They feel quite fearful to do so on the job, and fairly fearful to do so on social media. One tempting way to quell this high anxiety is to pass new laws against political discrimination. Washington, DC already has such a law:

[T]he District of Columbia Human Rights Act prohibits all employers in the District from refusing to hire, terminating, or otherwise discriminating against any individual with respect to his or her “compensation, terms, conditions, or privileges of employment” on the basis of the individual’s political affiliation. D.C. Code § 2-1402.11.

Before passing a new law, however, one should always ask, “Can we accomplish the same end by repealing – or liberalizing – an existing law?” And in this case, the answer is clearly yes.

But first, let’s back up. Why are high-skilled employers almost uniformly eager to enforce left-wing fashions, such as adopting an official “anti-racist” philosophy? Sincere commitment is part of the reason, but far from the whole story. *Political philosophy is too variable to explain such uniform workplace policies.* A better story, in my view, is that almost all employers – left, right, and in-between – fear race and gender discrimination lawsuits. And since their inception, such lawsuits have been sliding down a slippery slope.

The slippery slope looks something like this:

1. The law initially bans conscious decisions by employers to base hiring, promotion, or compensation on race or gender.
2. Discrimination gradually gets reinterpreted to include “unconscious” behavior with similar effects.
3. The next step is to blame employers for *saying* “the wrong thing,” even if there’s no discernable effect on workers’ objective career outcomes.
4. Then you blame employers for failing to deter their employees from saying “the wrong thing” to *each other*. This is when workers go from looking over their shoulder before they say something negative about a specific person, to looking over their shoulder before they

say anything that would upset their most hypersensitive colleague.

5. Finally, you blame employers for failing to induce employees to say “the *right* thing” loudly and often. In other words, for failing to build a “culture of inclusion.”

Why has the slope been so slippery? Because if you’re doing less to “fight discrimination” than other firms, you worry that you might be perceived as “soft on discrimination” and get sued. (And if you do *more* to “fight discrimination” than other firms, even better). You definitely don’t want to loudly announce, “We’ve gone far enough.” Such words are financially dangerous. As I’ve said before:

Imagine what would happen if a firm’s top brass loudly declared that, “Discrimination simply isn’t a problem here” – and routinely fired complainers for contradicting the party line. Picture a firm blanketed in propaganda telling workers to “Be color-blind,” “Laugh it off,” and “No one likes a tattletale.” A small business in a conservative area might get away with this for a few years, but a Fortune 500 company that stuck to its right-wing guns would go down in flames.

You could argue that employers still overreact to the risk of lawsuits. I’m sympathetic; contrary to what you’ve heard, even hiring by IQ is fairly safe. But there’s no need to resolve this debate here, because what I’m going to propose is similarly good at defusing both justified and unjustified fear.

My proposal:

1. Amend discrimination law to explicitly state: “Political speech by employers or employees, on or off the job, shall never be considered a form or indicator of ‘discrimination.’ ‘Political speech’ includes the expression of any allegedly racist or sexist views.”

2. For further teeth, add: “Any employee who lodges any formal complaint – internal or external – about a co-worker or employer’s political speech forfeits any right to sue that employer for discrimination for any reason whatsoever.” This preserves firms’ right to handle offensive speech internally; they can still fire you for singing Hitler’s praises on the job. But it also gives firms a free hand to handle these internal complaints as it sees fit, without fear of legal blowback or second-guessing. In fact, it gives firms an incentive to urge employees to voice their complaints internally to ensure that the firm *won’t* have to deal with such complaints in court.

Most people, I suspect, will object that these legal changes go too far. Since I think discrimination laws do little to reduce genuine discrimination, I obviously disagree. But I'm unlikely to persuade such people here.

On the other hand, many who share my concerns about freedom of expression will object that my proposed legal changes don't go far enough. Under my system, stridently left-wing employers can continue to impose a rigid orthodoxy. Toning down the fear of lawsuits only changes the behavior of employers who were motivated by fear in the first place.

Fair enough, but I maintain that my proposal strikes a reasonable balance.

Reducing the threat of lawsuits will restore variety by reviving competition. Strident left-wing workplaces aren't a big deal as long as we unbelievers can take our labor and go elsewhere at reasonable cost. And yes, strident left-wing employers have rights, too. If they want to spend every Friday doing struggle sessions, they should be free to do so.

Other employers, however, shouldn't lose sleep over lawsuits if they offer their workers a more hospitable experience. While I'm not sure, I predict that my proposed revisions of existing discrimination law would lead to robust competition between employers to create workplaces where no one walks on eggshells. Since worker preferences vary, we will witness a wide range of options. But since only a few fanatics savor stifling left-wing dogma, we'll no longer witness much of that.

I for one have already seen enough stifling left-wing dogma to last a lifetime.