

# The Global Context for Diversity Management

PART I

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# 2

## Diversity Legislation in a Global Perspective Equality and Fairness in Employment

The first decades of the 21st century witnessed an unprecedented global trend in anti-discrimination and equal opportunity legislation that began in the second half of the 20th century. A growing number of countries around the world have instituted legislation providing their citizens with wider protections against discrimination and workplace harassment. This movement commenced with the United Nations 1948 Universal Declaration of Human Rights, continued with the push for equal opportunity in the United States and Western Europe in the 1960s, blossomed in the 1980s and 1990s with constitutional revisions, and was bolstered through laws protecting the rights of individuals of diverse backgrounds around the world in the first decades of the 21st century.

To ensure adherence to employment laws and regulations, to avoid penalties, and to reap the rewards of compliance with local rules in these different national and cultural contexts, managers must understand the legislative and business-related social policy practices of countries in which they are doing business. Moreover, to practice in today's global economy, managers need a framework for understanding human rights that transcends individual national contexts. This chapter begins with a discussion of an international and overarching framework for managing workforce diversity that has its roots in the UN Universal Declaration of Human Rights. Next, it presents different anti-discrimination legislation in several regions of the world and some discrepancies between laws and common practices. Finally, we present some practical implications for international business practices.

### The International Bill of Human Rights and Employment Rights

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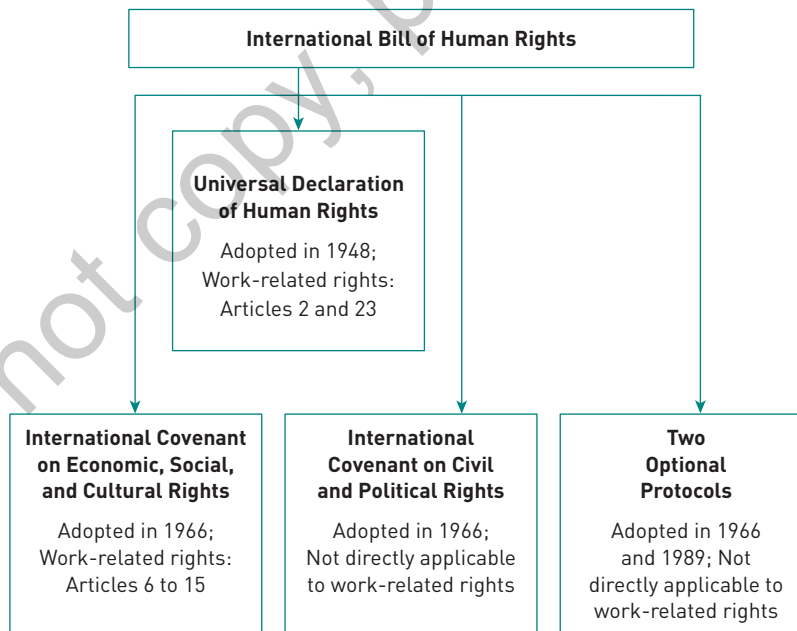
In democratic countries, legislation and social policy stem from a value system that is shared by a people and thus represents their collective wish to enforce these values.

To examine diversity legislation from a global perspective, one must look for an authoritative representative body that can speak to the value system of many people on the face of the earth. The United Nations, with all its shortcomings, is the organization that comes closest to representing all people around the world. In an ideal world, this body would be composed of democratically elected governments of all world countries and thus be truly representative of all people. Most of the governments that participate and vote in the UN General Assembly and its numerous committees are not democratically elected. This being so, a good place to start examining global values with respect to workforce diversity is still the UN International Bill of Human Rights<sup>1</sup> and its statements with respect to employment rights and equality in the workplace. Given the diversity of geopolitical interests represented at the United Nations, one could argue that where there is consensus on issues of human rights, these pronouncements represent minimum standards to which civilized countries should adhere.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; and the two optional protocols. The chart depicted in Figure 2.1 provides a graphic representation of the International Bill of Human Rights and indicates the articles that are relevant to employment.

The Universal Declaration of Human Rights, the first component of the International Bill of Human Rights, was adopted by the UN General Assembly in its

**FIGURE 2.1 • United Nations: The International Bill of Human Rights**



Source: Universal Declaration of Human Rights (1948).

Resolution 217 A (III) of December 10, 1948. The declaration consists of a preamble and 30 articles, setting forth the human rights and fundamental freedoms without any form of discrimination to which all people, everywhere in the world, are entitled. (For the complete declaration, see Supplement 2.1.)

Article 1 of the declaration (cited at the beginning of this chapter) lays down the philosophy on which the declaration is based: First, the right to liberty and equality is the birthright of every human being, and it cannot be alienated; and second, human beings, as distinguished from other creatures, are rational and moral. For this reason, human beings are entitled to certain rights and freedoms that other creatures do not enjoy. Article 2, which sets out the basic principle of equality and non-discrimination with respect to human rights and fundamental freedoms, forbids “distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.”

The declaration assures every person, as a member of human society, specific economic, social, and cultural rights (stated in Articles 22 through 27).<sup>2</sup> These rights are characterized as indispensable for human dignity, and the declaration indicates that they are to be realized “through national effort and international cooperation.” The rights most relevant to employment include the following:

- The right to social security
- The right to work
- The right to equal pay for equal work
- The right to rest and leisure
- The right to a standard of living adequate for health and well-being

It is important to note that although the different articles under the declaration were designed to fit together harmoniously, there is potential tension between the articles that assure freedom of cultural and religious expression and those that guarantee equality, particularly as they apply to the workplace. For example, it is not uncommon in many cultures and religions around the world to have defined gender roles that specify behavioral expectations for people, not only within the family environment but also with respect to appropriate occupations and behaviors in the public arena. When these gender expectations create limitations on behaviors and communication patterns between men and women, they may challenge the principles of equality and fairness in the workplace. The debate over the ban on wearing religious attire in schools and in the workplace (the so-called “headscarf ban”) demonstrates the potential tension between multiculturalism and human rights (Abdelgadir & Fouka 2020; McGoldrick, 2006; O’Niell et al., 2015; Vakulenko, 2007; Uğur, 2020) (see Box 2.1).

There has been a great deal of debate on the issues surrounding freedom of religious expression, female equality, secular traditions, and ethnic and religious minorities’ assimilation and rights (“The Islamic Veil,” 2011; Leane, 2011; “Macron Warning,” 2019). A French Muslim mother who wore a headscarf during a school trip with her son to the regional parliament in Bourgogne-Franche-Comté in eastern

**BOX 2.1****THE DEBATE OVER THE BAN ON THE WEARING OF RELIGIOUS ATTIRE AND RELIGIOUS SYMBOLS IN THE WORKPLACE**

Historically, women in Turkey were prohibited by the Constitutional Court from participating in education and doing paid or unpaid work in public places while wearing a *hijab*, or the traditional religious head covering (Guveli, 2011; Uğur, 2020). An example of how this impacted women was the case of Aysegul Yilmaz. Aysegul wanted to become a teacher after finishing college, but the 21-year-old student was not able to do so while still practicing all elements of her religion. In Turkey, where Aysegul lives, it was illegal for Muslims to wear hijabs ("The Islamic Veil," 2011; Nelson, 2003). Predominantly Muslim, Turkey historically banned hijabs in schools, workplaces, and other public locations because of the principle of state secularism promoted by the founder of modern Turkey, Mustafa Kemal Atatürk, in the beginning of the 20th century (McGoldrick, 2006). For example, a female defendant was ordered to leave a Turkish court while her case proceeded because she refused to remove her hijab (Nelson, 2003). At Turkey's Ankara University, theology faculty failed 150 students who were not permitted to attend class because of their hijabs ("Theological Students," 2002). In a landmark case (*Leyla Sahin v. Turkey*, 2005), the top European court of human rights set a precedent, determining that the ban on headscarves did not violate human rights. Leyla Sahin was a student at Istanbul University when she was refused access to written examinations and was not allowed to enroll in courses because she was wearing the hijab. The Strasbourg-based Grand Chamber European Court of Human Rights has upheld the ruling of the lower court that the headscarf ban in Turkey did not violate the rights to freedom of thought, conscience, or religion guaranteed by an international human rights treaty. On February 9, 2008, the Turkish

parliament passed an amendment to the constitution allowing women to wear the hijabs in universities, only to have this amendment annulled by Turkey's Constitutional Court ruling on June 5, 2008, that removing the ban would run counter to official secularism (Birch, 2008; Immigration and Refugee Board of Canada, 2008). In 2010, after winning a referendum in September, the ruling AK Party supported students wearing the headscarf on university campuses. For the first time in Turkey's modern history, almost all universities across Turkey have permitted students to wear the headscarf on campus. In 2013, Turkey amended its rules to allow women to wear headscarves in state institutions, apart from the judiciary, military, and police force. The AK Party continues the process of lifting the ban in public institutions, but debate remains strong between individuals and political interests (Kasapoglu, 2019).

Research examining the impact of lifting the ban on headscarves in higher education in Turkey found no evidence that the ban on headscarves at tertiary educational institutions, in effect from 1997 to 2013, reduced the tertiary educational attainment of headscarved women, which was already low (Uğur, 2020). The researcher notes that this result may reflect deeper educational disadvantage for headscarved women that begin after primary school. She notes that although lifting the headscarf ban was a good first step, eliminating the barriers to women's education will require a much broader perspective. Complementing these findings are the results of a study that examined the impact of the French headscarf ban on women's education. The French ban prohibiting Muslim girls from wearing headscarves in public schools has been shown to have had

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a detrimental effect on both the girls' ability to complete their secondary education and their trajectories in the labor market (Abdelgadir & Fouka, 2020).

*Sources:* Abdelgadir & Fouka. (2020). (2020). Political Secularism and Muslim Integration in the West: Assessing the Effects of the French Headscarf Ban. *American Political Science Review*, 114(3), 707–723. doi:10.1017/S0003055420000106; Agence France-Presse in Istanbul. (22 February 2017); Arsu, S., & Bilefsky, D. (2013, October 8). Turkey lifts longtime ban on head scarves in state offices. *New York Times*; Pamuk, H. (2013, October 8). Turkey lifts generations-old ban on Islamic head scarf. *Reuters*; BBC News. (2014, July 1). The Islamic veil across Europe. Turkey lifts military ban on Islamic headscarf. *The Guardian*; Ugur. (2020). Unveiled: The Effect of the Headscarf Ban on Women's Tertiary Education in Turkey. *Feminist Economics*, 26(2), 187–217, DOI: 10.1080/13545701.2019.1685119

Turkey is not the only country where hijabs, burkas, and other religious attire were or are prohibited. Several other countries have also generated controversy in bans on wearing head coverings in public places (Abdelgadir & Fouka, 2020; O'Niell et al., 2015). Furthermore, it is noted that national and international human rights organizations have criticized the ban as a human rights violation (Guveli, 2011; Reuters, 2018). Similar bans are found in countries, states, and provinces such as Belgium, Italy, Russia, Tunisia (which is also predominantly Muslim), in Quebec, and in Germany, where hijabs are banned in schools in half of its 16 states ("The Islamic Veil," 2011, 2014; Browne, 2004; "German Courts," 2008; McGoldrick, 2006; "Turkey Lifts Military Ban," 2017; Winet, 2012). In 2004, the French senate and parliament both overwhelmingly approved a law banning hijabs, yarmulkes (the Jewish skullcap), large crosses, the Sikh head cover, and similar conspicuous religious apparel (O'Niell et al., 2015; Richburg, 2004). France was the first country in Europe to ban women from wearing full-face Islamic veils in all public places, taking effect on April 11, 2011. Under the ban, any woman, French or foreigner, wearing a veil in public may be subject to a fine, and any person found forcing a woman to cover her face risks an even heavier fine (Abdelgadir & Fouka, 2020; Leane, 2011; "The Islamic Veil," 2011). There are also different restrictions and various court rulings related to the ban on wearing the burkas and hijabs in other countries and regions such as Italy, the Netherlands, Belgium, Great Britain, and Quebec (Head, 2010; Leane, 2011; O'Niell et al., 2015; "Turkey Lifts Military Ban," 2017; Vakulenko, 2007).

In England, for example, a woman surgeon at Sheffield's Royal Hallamshire Hospital was

confronted by another doctor for wanting to keep her headscarf on during surgery. The doctor claimed her headscarf contained blood from previous operations and would become a health and safety hazard. The woman refused to remove the headscarf and ended up walking out, requiring the hospital to find another person to do the surgery. The surgeon eventually left the hospital after an investigation backed the other physician's observations, and the hospital enforced its strict dress code that religious headscarves are "excluded in areas such as theatre, where they could present a health and cross infection hazard" (*The Sun*, 2016).

Although opponents of these laws criticize them as limiting freedom of religion and religious expression, proponents claim that they promote a secular society and ensure freedom from religion in schools and in the workplace and therefore guarantee equality in the public arena. Some research indicates that banning the headscarf has hindered the opportunities for women to pursue advanced education, as many women choose (or are sometimes forced by their families) to forgo higher education because of these laws (Abdelgadir & Fouka, 2020). This, in turn, could negatively affect the social and economic skills of women, as well as their social and psychological well-being. In addition, these laws might create barriers to women's full participation in the labor force and in society and make them rely on family members to support them (Abdelgadir & Fouka, 2020; Guveli, 2011).

Opponents of these laws point to the restrictions on access to education and employment created by such bans, and the International Helsinki Federation for Human Rights, based in Austria, said it opposed the French bill because

it believed it violated human rights (“Chirac on Secular Society,” 2003; “The Islamic Veil,” 2011; Reuters, 2018). For example, approximately 2,000 women in Bosnia (a country with a more than 40% Muslim population) protested the headscarf ban in front of courthouses and other public institutions. The protest was in response to the court deciding to ban “religious signs” in all judicial institutions. The headscarf ban in Bosnia continues to be condemned by religious leaders and Muslim politicians (“Bosnia Women Protest,” 2016). Leane (2011) notes that these bans raise important questions regarding constitutional politics and legitimate social expectations of majority cultures and that they would likely come to be seen in retrospect as incremental steps in breaching of minority religious and cultural freedoms.

Research provides a more nuanced perspective on the headscarf ban, indicating that the French ban strengthened both national and religious identities for young Muslim women who were most affected by it (Abdelgadir & Fouka, 2020). These findings could be seen to contradict the intended goal of the ban, which was to reduce the visibility of religion in the public sphere in accordance with French values. “I think we have, from different contexts, quite a bit of evidence that these types of prescriptive policies are likely to

backfire,” said Vasiliki Fouka one of the authors of the study. The scholars write that one way of interpreting their findings is that native-born children of immigrants are looking for ways to independently define their own identities and what it means to be a citizen of a Western country. They note that these new generations might be expecting their countries to broaden the notion of what it means to be a citizen of their countries and to make room for different expressions of cultural and religious identities (Feder, 2020).

Defending the law, French president Jacques Chirac declared in his December 17, 2003, address to the nation: “Secularism guarantees freedom of conscience. It protects the freedom to believe or not to believe.” He further stated,

It is the neutrality of the public sphere which enables the harmonious existence side by side of different religions. Like all freedoms, the freedom to express one’s faith can only have limits in the freedom of others, and in the compliance with rules of life in society. Religious freedom, which our country respects and protects, must not be abused, it must not call general rules into question, it must not infringe the freedom of belief of others. (“Chirac on Secular Society,” 2003)

*Source:* The Washington Post, 2009. Transcript: President Obama’s Cairo Address to the Muslim World

France received verbal abuse from the chamber. A video of the incident and an image of the woman embracing her son was widely shared after footage of the incident was posted on social media. Following this and similar incidents, French President Emmanuel Macron warned against “stigmatizing” Muslims or linking the Islamic religion with the fight against terrorism. Macron declared during a press conference, “We have to stand together with all our fellow citizens,” (“Macron Warning,” 2019).

In his highly publicized address to the Muslim world at the University of Cairo on June 4, 2009, U.S. President Barack Obama alluded to this controversy by stating,

Moreover, freedom in America is indivisible from the freedom to practice one’s religion. That is why there is a mosque in every state of our union and over 1,200 mosques within our borders. That is why the U.S. government has gone to court to protect the right of women and girls to wear the *hijab* and to punish those who would deny it. (“Transcript: President Obama’s Cairo address,” 2009)

In 2016, President Obama gave a speech at the Islamic Society of Baltimore in Maryland. He talked about the current state of the Muslim community in the United States:

[T]his is a time of concern and, frankly, a time of some fear. Like all Americans, you're worried about the threat of terrorism . . . you may also have another concern—and that is your entire community so often is targeted or blamed for the violent acts of the very few. (The White House, 2016)

President Obama shared his values in protecting the right of women to wear hijabs and went on to talk about the importance of remembering America's core values, including the freedom of religion for all faiths (The White House, 2016).

During the coronavirus pandemic, the U.S. Supreme Court was called upon to decide between public health restrictions aimed at limiting the spread of the pandemic and the right to free exercise of religion. Responding to a lawsuit brought by Catholic and Orthodox Jewish congregations in New York, the court struck down pandemic safety measures that New York Governor Andrew Cuomo applied to houses of worship, such as limiting the number of congregates allowed to attend services. By the time the Supreme Court has rendered its verdict, Cuomo had already removed those restrictions, so the court's ruling was more declarative than practical. According to the Supreme Court's ruling in *Roman Catholic Diocese of Brooklyn v. Cuomo*, (decided by the majority conservative justices and opposed by the liberal justices), Americans have the right to practice their religion even if it puts them in danger of contracting coronavirus (Tribe & Dorf, 2020).

These declarations demonstrate different approaches to resolving the inherent conflict between Article 2—the basic principle of equality that forbids distinction of any kind such as race, color, sex, and so on—and Article 18—the basic principle of freedom of thought, conscience, and religion that ensures individuals' rights to manifest their religion and beliefs. The principles of secularism in the public arena (as in Turkey) and of freedom *from* religion (as in France) are used to justify a ban on prominent religious attire in schools and in the workplace, while the principle of freedom *of* religion (as in the United States) is used to justify the support for allowing prominent religious attire in schools and in the workplace. Different countries find their own balance among religion, education, and the workplace, and clearly, political considerations often influence these approaches (Haynes, 2020; O'Niell et al., 2015; Smith, 2007).

## Importance and Influence of the Declaration of Human Rights

The Universal Declaration of Human Rights is particularly relevant to the study of employment rights from a global perspective because no one country can serve as a model for other countries. The declaration is truly universal in scope, as it preserves its validity for every member of the human family, everywhere, regardless of whether governments have formally accepted its principles or ratified the covenants.



The International Covenant on Economic, Social, and Cultural Rights, which includes the employment-related non-discrimination articles, entered into force on January 3, 1976. As of December 2020, the covenant had been ratified or acceded to by the following states (United Nations, Treaty Collections, 1966/2020):

Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, San Marino, São Tomé and Príncipe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, St. Vincent and the Grenadines, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, and Zimbabwe

Despite this impressive number of states endorsing the covenant, quite a few either did not sign it or did not reinforce these principles in their national constitutions. For example, Saudi Arabia's constitution, adopted by the royal decree of King Fahd in March 1992, includes no statement of equality related to gender, race, or ethnicity. Article 26 of Saudi Arabia's constitution declares, "The state protects human rights in accordance with the Islamic Sharia" (whose principles are different from those of the UN Declaration of Human Rights; Constitution of the Kingdom Saudi Arabia, n.d.). It is important to note that the covenants were originally conceived as multilateral conventions, which means that they are legally binding on only those states that have accepted them by ratification or accession. However, the precedent set by *Filártiga v. Peña-Irala* (1980)<sup>3</sup> indicates that they are currently recognized as *law of nations*, a term that indicates an acceptance of international standards for judging human rights abuses, even in those states that have not accepted the covenants by ratification or accession.

Additional conventions relevant to workforce diversity include the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965; the Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990.

## Implementation

Having anti-discrimination legislation is an important first step, but to make a real difference in people's lives the laws must be implemented and enforced. Many countries around the world do not have adequate legislation; others have appropriate legislation but limited enforcement. In Australia, for example, current legislation has, to some degree, changed employers' views regarding discrimination in the workplace, but the legislation's impact on their actual practices is not incredibly significant. Australian employers either do not fully understand the scope of the legislation or find ways to avoid its implementation (Bennington & Wein, 2000).

Often the obstacles for implementation are traditions and long-existing cultural practices that are discriminatory (for an example, see Box 2.2). One has only to examine the numerous reports of the UN Committee on Elimination of Racial Discrimination or those of the Committee on Elimination of Discrimination Against Women to realize that inadequate legislation and noncompliance are widespread. The following are a few informative examples:<sup>4</sup>

- The Committee on Elimination of Discrimination Against Women expressed concern over Russia's list of 456 occupations and 38 branches of industry that are banned for women because Russian authorities consider them "too arduous, dangerous or harmful to women's health, above all their reproductive health." The committee called on Russia to amend its labor code to include women in these occupations and industries but also to promote and encourage the entry of women into these jobs by improving working conditions if they are said to be unsafe for women (The Committee on Elimination of Discrimination Against Women, 2016).
- The Committee on Elimination of Discrimination Against Women (2016) published findings and recommendations following an extensive examination of Japan, Iceland, Sweden, Mongolia, the Czech Republic, Vanuatu, and Tanzania. For example, one of the recommendations for the Czech Republic party was to strengthen efforts to address gender stereotypes that perpetuate discrimination against women. This includes adopting legislation to ensure prompt and effective action in response to violation of any gender-discriminatory rules and to raise awareness and provide education initiatives to both men and women, including employers.
- The Committee on Elimination of Racial Discrimination echoed the world's concern over the use of racial profiling and surveillance technologies by law enforcement (UN Human Rights, November 2020). They recognized that "specific groups, such as: Indigenous Peoples, people of African descent,

national and ethnic minorities, including Roma; and migrants, refugees and asylum seekers are the most vulnerable to racial profiling.”

- The Committee on the Rights of Persons with Disabilities, Committee on the Elimination of Discrimination against Women, and UN-Women released a joint statement (UN Human Rights, October 2020) on how vulnerable women and girls with disabilities are to sexual harassment. The three committees committed to working closely to combat this discrimination and amend laws to protect against it.

## BOX 2.2

### EQUAL EMPLOYMENT LEGISLATION AND *DE FACTO* DISCRIMINATION

#### Case Example: Belgium

People of foreign background and their descendants, the “new Belgians,” make up about 25% of Belgium’s total population. Many of them (or their ancestors) were immigrants who came to Belgium immediately after World War II when workers were needed to fill labor shortages in the coal, iron, and steel industries. Workers were recruited from Italy, Spain, Greece, Morocco, and Turkey. The current population groups are the original workers, their descendants, and family members who were reunited with them (Smeesters et al., 2000). More recently, immigrants are coming from neighboring countries (e.g., Germany, France, and the Netherlands) but also countries in the Middle East, such as Iran and Morocco (Migration Policy Institute, 2012). There has been a rise of asylum seekers in Belgium over the last three decades, with the instability of countries like Iran and the former Yugoslavia causing people to migrate to countries like Belgium, which are considered relatively more stable and secure (despite terrorist threats and attacks like the March 22nd, 2016, simultaneous deadly bombings at the Brussels airport and metro station). Although Belgium has adequate legislation with respect to racial and ethnic discrimination, the UN Committee on the Elimination of Racial Discrimination (CERD) in its March 2002 meeting expressed concern about

the increasing influence of racist and xenophobic political parties and “the difficult access of ethnic minorities to housing and employment.”<sup>5</sup> To address some of the UN CERD’s recommendations, Belgian authorities considered awareness raising training and initiatives as the best way to tackle discrimination. For example, specialized, compulsory training has been given to future juvenile court judges since 2007 and has proved to be the most effective way of raising their awareness of the various aspects of discrimination. Yet, concern over Belgium’s (and other European nation’s) rise of the far-right and the xenophobic and Islamophobic trends persist, particularly following waves of terrorist attacks (European Council, 2020) and the movements of refugees into many European cities.

An elaborate, classically designed study undertaken by the International Labour Organization (ILO) in the 1990s (Zegers de Beijl, 1999) provided some case examples that documented discrimination in employment in Belgium. The researchers carefully selected testers who posed as job applicants. The testers were university students who were matched on major job related characteristics with one difference: One of the testers was of Belgian origin and the other of Moroccan origin. It is important to note that 40% of the total immigrant populations come from neighboring countries such as Italy, France, and the Netherlands, while Moroccan nationals make up 8% of all foreigners

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in Belgium. The Moroccan population is one of the largest groups of non-European Union (EU) immigrants in Belgium. The researchers report that the number of discriminatory cases amounted to 212 of 637 tests, constituting a discrimination rate of 33%. That is, in one third of the tests, the applicant of Belgian origin had a better chance of getting the job. The following example demonstrates the types of covert discrimination experienced by the testers.

### Vacancy for a Sales Assistant in a Fried-Food Outlet

#### *Applicant of Belgian Origin (Telephone)*

The prospective employer inquired about the applicant's work experience and motivation, and then came the question of languages:

*Employer:* Do you speak German?

*Applicant:* Well, just a little—numbers

*Employer:* But you really don't speak it? I'm sure you'll learn quickly. Come and see me tomorrow.

#### *Applicant of Moroccan Origin (Telephone)*

The prospective employer started off by asking the applicant if he spoke German:

*Applicant:* I can count.

*Employer:* That's not enough, you know. You are not suitable. (Smeesters et al., 2000, p. 46)

A similar field experiment was conducted in the United States, Germany, and the Netherlands to examine the effects of perceived race and ethnicity

on the decision of employers to call job applicants for interviews (Bertrand & Mullainathan, 2004; Blommaert et al., 2014; Kaas & Manger, 2012; Thijssen et al., 2021). The researchers of the U.S. study titled "Are Emily and Greg More Employable than Lakisha and Jamal?" sent fictitious résumés to help-wanted ads in Boston and Chicago newspapers. To manipulate the applicant's perceived race, résumés were randomly assigned Black- or white-sounding names. The résumés with the white-sounding names received 50% more callbacks for interviews, and the racial gap was uniform across occupation, industry, and employer size (Bertrand & Mullainathan, 2004). The German-based researchers found that a German-sounding name on a job application raised the average probability of a callback by about 14% compared to a Turkish-sounding name in a sample of 528 advertisements for student internships. The odds are even higher—24% increase in callbacks for a German-sounding name—for applications sent to smaller firms (Kaas & Manger, 2012). A large-scale field experiment used data on 31 ethnic groups in five European countries (Germany, the Netherlands, Norway, Spain, and the United Kingdom) to test the hypothesis that providing additional information about a person's productivity can reduce employers' and colleagues' tendency to discriminate against them (Thijssen et al., 2021). The researchers found that providing information about individual productivity (such as grade, performance, and social skills) does not improve ethnic minorities' ability to shield themselves from discriminatory actions by employers or colleagues. The authors concluded that their results contradicted the assumption of statistical discrimination theory<sup>4</sup> that ethnic discrimination is largely due to lack of information about individual productivity.

## Diversity-Related Employment Legislation

Most democratic and many nondemocratic countries today ban job discrimination that is related to gender, race, and ethnicity. Some go further to forbid discrimination based on other characteristics like age, caste, social class, sexual orientation, and disability. In fact, this trend is so widespread that a growing number of insurance

carriers have been offering employment practices liability insurance specific to foreign countries' labor laws (Employment Practice Liability, 2017; Maatman, G. L., 2000, pp. 34–35; Talesh, 2015; Zweifel & Eisen, 2012).

A few countries were assessed primarily using the ILO's database<sup>7</sup> to determine the extent to which countries worldwide offered anti-discrimination or equal rights legislation that is applicable to employment and work (see Appendix 2.2: Global Anti-discrimination and Equal Rights Legislation Checklist of Protections Offered by a Select Number of Countries). The most popular forms<sup>8</sup> of anti-discrimination and equal rights legislation included protections based on gender or sex, equal remuneration, race, ethnicity, or country of origin, religious beliefs, physical disability, and sexual orientation, respectively. More than 88% of the countries reviewed provided at least one of these protections. Other categories of protections offered in some countries included the following:

- HIV status (Philippines, South Africa, and Zimbabwe) or health status (Cyprus)
- Marital status (Australia, Canada, Guyana, Ireland, Malawi, the Netherlands, Trinidad and Tobago, Saudi Arabia, United Kingdom, and Zambia)
- Pregnancy (Australia, Iceland, Israel, South Africa, and United States)
- Aboriginal status (Canada)
- Political affiliation (Australia, Denmark, Malawi, the Netherlands, Northern Ireland, Zambia, and Zimbabwe)
- Family status (Canada, Malawi, and South Africa)

The following are some examples of legislation on specific issues around the world.

## Broad-Based Anti-discrimination Legislation

In the United States, civil rights legislation, from the 1960s and later, outlawed job discrimination on the basis of sex, race, color, religion, pregnancy, national origin, age, and disability (Equal Pay Act of 1963, the Civil Rights Act of 1964, the Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, Pregnancy Discrimination Act of 1978, Age Discrimination in Employment Act of 1967 [ADEA] and its amendments of 1978, Americans With Disabilities Act of 1990 [ADA], the Civil Rights Act of 1991, and the Lilly Ledbetter Fair Pay Act of 2009). Canada's labor legislation is like that of the United States in the areas of employment discrimination and employment equity (Block, 2007; Block & Roberts, 2000; Kucera & Sari, 2019). Although the United States and Canada provide similar anti-discrimination protections, several differences exist. For example, Canadian laws extend to protect employees based on political beliefs and membership in organizations. The United States does not provide such protections for its employees except for membership in a union. Another difference is that the United States offers more extensive provisions to accommodate people with disabilities in employment, which is not as pervasive throughout Canadian jurisdictions (Block & Roberts, 2000).

## BOX 2.3

### AFFIRMATIVE ACTION IN HIGHER EDUCATION: U.S. JUSTICE SCALIA'S CONTROVERSIAL COMMENTS AND BRAZIL'S UNIVERSITIES' QUOTAS

Abigail Fisher, a white woman from Texas, sued the University of Texas, arguing she was denied admission based on her race. Her case reached the U.S. Supreme Court because it touched on fundamental principles of affirmative action policies. In December 2015, during oral arguments in *Fisher v. University of Texas*, U.S. Supreme Court justice Antonin Scalia made some controversial remarks about African American students in elite colleges. According to the transcript, Justice Scalia said:

There are those who contend that it does not benefit African Americans to get them into the University of Texas where they do not do well, as opposed to having them go to a less advanced school, a less—a slower track school where they do well. One of the briefs pointed out that most of the Black scientists in this country don't come from schools like the University of Texas.

The Justice went on:

Most of the Black scientists in this country don't come from schools like the University of Texas. They come from lesser schools where they do not feel that they're being pushed ahead in classes that are too fast for them. (CNN, 2015)

These comments, which seemed to suggest that African Americans should attend universities that are “less advanced” or “slower track,” caused an uproar among lawmakers as well as minority groups and organizations.

Some believe that Scalia was referring to the “mismatch” theory popular among some critics of affirmative action. This theory challenges affirmative action in higher education by suggesting that minority students are harmed by policies, like affirmative action, that allow them to attend

an elite school for which they may lack adequate academic preparation (Sander & Taylor, 2012). Yet, critics of the theory contend that there is little to no evidence proving that mismatch has any effect on the educational outcomes of minority and non-minority populations and that research provides mixed outcomes at best (Arcidiacono et al., 2013; Chingos, 2013; Kidder & Lempert, 2015).

M. E. Maatman (2015) referred to Justice Scalia's comments in the context of racial segregation and the civil rights movement of the early 1960s, claiming that forms of racism and segregation still exist today. During the early years, it was suggested that African Americans would do better if they went to “less advanced” or “lower quality” schools. For example, in *Stell v. Savannah-Chatham County Board of Education* (1963), lawyers working on the case opined there was scientific evidence demonstrating “differences in specific capabilities, learning progress rates, mental maturity, and capacity for education in general between Whites and African Americans,” known today as “scientific racism.”

While this is an example of the ongoing affirmative action debate at universities in the United States (see, American Constitution Society, 2019), similar challenges are going on in other parts of the world. In Brazil, there has been an ongoing debate about affirmative action policies, including university quotas aimed at recruiting Brazil's Black population. In 2003, the public University of the State of Rio de Janeiro (UERJ) reserved 40% of its admissions for people who declared themselves as “negro” or “pardo” (Kent & Wade, 2015). The measure triggered strong opposition, including pushback from the university community. It was reported that students were encouraged to apply for a racial quota (regardless of their race, hair, or skin color), taking into consideration that as Brazilians, they were likely to have ancestors that were Black. In some cases, these slots were filled by white students who self-identified as having

a grandparent or other family member of Black descent. During the admission selection process, university staff would at times request a picture or conduct an in-person interview with the applicant, leading some applicants to have their applications rejected based on their appearance (Kent & Wade, 2015). When applying for government jobs, candidates need to prove that they are Black and pass a visual inspection. Many are not sure how to define themselves or if they are Black enough for the inspection. For example, in an interview with National Public Radio (2019), Pamela, a candidate for a government job noted, “I don’t know what they judge. I mean, my nose is not that big. So does that mean I’m not Black?” Another job candidate, Attila,

who was unsure if he would pass the inspection said, “I have a Black guy’s nose, a Black guy’s lips but white guy’s hair” (NPR, 2019). The reason for their confusion goes back to Brazil’s history post-slavery. Although Brazil imported about ten times more African slaves than did the United States, it did not impose segregation laws, nor barred interracial marriages after slavery ended. As a result, interracial marriage in Brazil has become more common than almost anywhere in the world. As a result, many Brazilians identify as a mixed race (NPR, 2019). Brazilian President Jair Bolsonaro’s efforts to abolish affirmative action laws have been rejected by the courts, and more universities have implemented affirmative action programs.

Legislation banning discrimination against women, immigrants, and minorities in the labor force exists in most European countries, though often in weaker forms than the U.S. laws. All EU member states, except one, have constitutional provisions outlawing various forms of discrimination. The United Kingdom does not have a written constitution, but its general body of laws prohibits discrimination. As far as ordinary legislation is concerned, all EU member states’ legal systems have regulations governing equal treatment and non-discrimination in many facets of the employment relationship. Examples include access to employment, remuneration, and fair working conditions during employment (European Union Agency for Fundamental Rights & the European Court of Human Rights, 2011, 2014). In addition to the two directives—Racial Equality Directive and Employment Framework Directive—the European Commission published a report by a network of experts in gender equality and non-discrimination focused on enforcement of family leave protections (European Commission, 2020b). The EU’s fight against discrimination is based on taking actions to (a) improve knowledge of discrimination by raising awareness among populations regarding their rights and obligations; (b) support intermediary actors such as non-governmental organizations (NGOs), social partners, and equality bodies to combat discrimination; (c) support development of equality policies at the national level and encourage exchange of good practices among EU countries; (d) achieve real change in the area of anti-discrimination through anti-discrimination training activities; and (e) push for business-oriented diversity management as part of a strategic response to a more diversified society (European Commission, 2016, 2020a). In her call for stepping up antiracist agenda, the president of the European Parliament von der Leyen said,

We need to talk about racism. And we need to act. It is always possible to change direction if there is a will to do so. I am glad to live in a society that condemns racism. But we should not stop there. The motto of our European Union is: “United in diversity.” Our task is to live up to these words, and to fulfill their meaning. (European Commission, 2020a).

The EU Council of Ministers' adoption of the directives on equal treatment of people regardless of their race and ethnic background in the labor force has signaled a trend of strengthening national legislation against racial and ethnic discrimination in employment. Some of the most advanced employment discrimination legislation in the European Union is that of the United Kingdom. It prohibits race, gender, and disability discrimination (Sex Discrimination Act of 1975, Race Relations Act of 1976, Disability Discrimination Act of 2006, Equality Act [Sexual Orientation] of 2007). It is important to note that there are no statutory limits on compensation awards for employment discrimination in the United Kingdom.<sup>9</sup>

A similarly extensive list of diversity characteristics is included in Fiji's legislation. Fiji, in its 1997 Amendment Act, denies unfair discrimination based on "actual or supposed personal characteristics or circumstances, including race, ethnic origin, color, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability, or opinions or beliefs" (Fiji Islands Constitution Amendment Act of 1997, n.d.). Parts 2 and 9 of the Employment Relations Promulgations expanded this list to include religion, political opinion, marital status, pregnancy, family responsibilities, state of health including real or perceived HIV status, trade union membership or activity, or disability in respect of recruitment, training, promotion, terms and conditions of employment, and termination of employment (Fijian Government, 2011).

### Race—South Africa

South Africa's anti-discrimination legislation, Promotion of Equality and Prevention of Unfair Discrimination Act 2000, is relatively new and broad (NATLEX, n.d.; Sheppard, 2012; Twyman, 2002). After a long rule by a tiny minority (white Afrikaners constitute only 13% of the population), the repressive apartheid regime was abolished in 1994, and most of the population (76% Black, 8.5% "Colored," and 2.6% Asians) were finally able to share the power in a democratic process. The new constitution, adopted in 1996, declares that the country belongs to all who live in it "united in our diversity." Chapter 2, section 9, states, "(3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth."

There are two interesting elements of note about this declaration. First, the diversity list is far more inclusive than those of many other nations. Second, only "unfair discrimination" is banned, implying that it is possible to "fairly discriminate" and paving the way for affirmative action (discussed in the next chapter) (Constitution of the Republic of South Africa, 1996).

### Gender—Japan

In Japan's traditional society, discrimination against women was widespread and, until 1999, its laws were not as restrictive as those of other developed countries. Given the gender-based allocation of work and family responsibilities, it is not surprising that the country has scored low on gender equality measures (Takenoshita, 2020). The first law in the country's history, introduced on July 1, 1972, to address gender discrimination in the workplace, was the "law respecting the improvement of the



welfare of women workers, including the guarantee of equal opportunity and treatment between men and women in employment” (Law No. 113). Other ordinances regarding the implementation of the law were enacted in 1986, and the law was amended through Law No. 107 in June 1995.

Though it was hailed as breakthrough legislation, it was so vague that employers were able to continue their discriminatory practices. Without legal repercussions, the law only required employers to “do their best” to rectify and curtail any gender-based discrimination. Job advertisements in newspapers continued to post “male only” jobs, and women college graduates continued to encounter difficulties obtaining jobs with salaries and benefits commensurate with or equal to those of their male counterparts. Additionally, the law included “protective” articles, such as restricting women labor at night. The following case illustrates the issue:

In 1995, a student from India received a scholarship to study dental technology in Tokyo. Upon graduating from the program 3 years later, she looked for jobs in her field. Although she encountered no discrimination from employers because of her foreign origin, she was barred, as a woman, from applying for positions that required nighttime work.<sup>10</sup>

A 1996 landmark ruling on gender discrimination was a part of the impetus to change Japan’s gender-related legislation. The case involved a group of women employees of the Shiba Shinyo Kinko Bank who sued over unequal wages and denials of promotions. The courts awarded the 13 plaintiffs 340 million yen (approximately \$3 million). On April 1, 1999, a new piece of legislation, the Basic Law for a Gender-Equal Society, was introduced that rectifies the limitations of the previous law. Whereas the previous law required employers only to “do their best,” the new law gave specific guidelines, such as (a) prohibiting discriminatory advertisements in the hiring process, (b) forbidding asking certain types of interview questions only to members of one gender (such as asking a woman if she plans to leave her job once she marries or has children), and (c) making it easier to start a mediation process (it can be initiated unilaterally, rather than bilaterally). The law also repealed some of the “protective” provisions that were included in the previous law, such as restricting nighttime labor for women.<sup>11</sup> In 2005, a new government post, the Minister of State for Gender Equality and Social Affairs, was created to advance issues of women’s equality (Tompkins, 2011). Additionally, the 1986 Equal Employment Opportunity Law was revised in 2006 to encourage companies to eliminate existing gender gaps and discrimination in their workforce. In 2008, the headquarters for the Promotion of Gender Equality formulated the Program for the Acceleration of Women’s Social Participation, which helps women achieve work–life balance, capacity building, and awareness raising to boost their participation in all fields. To spur fair treatment of nonregular women workers, the Act on Improvement of Employment Management for Part-Time Workers was revised and has been in effect since 2008 (United Nations General Assembly, 2009). However, despite the prolific equality legislation in Japan over the past couple of decades, progress in gender equality remains extremely slow compared to other industrialized countries. Between 1985 and 2008, the proportion of female full-time employees fell from 68.1% to 46.5%, which suggests that 53.5% of

women in the workforce are part-time or contract workers, compared to only 19.1% of men (Blair, 2010). According to a *No Ceilings* report (2015), the benefits of expanding women's economic opportunities in today's workforce are noticeably clear. By expanding opportunities for women, the economy—including the gross domestic product (GDP)—grows, while poverty decreases. It is estimated that closing the gender gap in today's workforce will lead to average GDP gains of 12% by 2030 in many countries around the world (and as much as 20% in Japan). A four-country comparison identifies a greater gender gap compared to other Asian countries—Singapore, South Korea, and Taiwan. The study also links several factors related to gender inequality to Japan's low birth rates. These factors include the gender-wage gap, difficulty for mothers to obtain and keep employment, and the increasing inability of fathers to sustain a family on a stable wage (Takenoshita, 2020).

### Equal Remuneration—United States

Equal remuneration legislation requiring work organizations to pay women (and men in some countries like Norway) equally for their work was by far the most generic form of anti-discrimination or equal rights legislation throughout the world. Taking equal remuneration legislation into account, in addition to antisexual harassment and equal rights legislation, more than 75% of the countries reviewed offer some form of protection based on gender. Paying women less than their male counterpart for the same (or better) work is a widespread phenomenon in most fields, including sports (Dakin, 2020). The United States Women's National Soccer Team shed light on this issue when they filed a lawsuit in March 2016, bringing national attention to this nationwide (and worldwide) problem of gender inequality and income (University of Cincinnati Law Review, 2020).

The very first major legislation signed by President Obama, the Lilly Ledbetter Fair Pay Act, was aimed at closing a loophole in the U.S. legislation related to equal pay for equal work, making it easier to sue for wage discrimination. Lilly Ledbetter worked for 19 years at a Goodyear plant in Alabama and sued after she found that she was paid less than her male counterparts. The battle reached the Supreme Court, which ruled against her in a 5–4 decision. The high court's decision was based on the principle that a person must file a claim of discrimination within 180 days of a company's initial decision to pay a worker less than it pays another worker doing the same job. Ledbetter, who discovered this discrimination only after 19 years of working for the company, could not have possibly sued within this time frame. Under the new bill, every new discriminatory paycheck would extend the statute of limitations. President Obama said the bill “is by no means a women's issue, it is a family issue” (Davis, 2009; S. 181: Lilly Ledbetter Fair Pay Act of 2009).

In most countries, a woman cannot claim she has been discriminated against if she cannot fulfill reasonable physical requirements associated with performing a job, and this can often affect her level of compensation. For example, in the United States, a woman applied for a job as a prison guard and was turned down because she did not meet the minimum height and weight requirements. She brought a class action lawsuit under Title VII of the Civil Rights Act of 1964 alleging that she had been denied employment because of her sex, which is in violation of federal law. The U.S. Supreme Court

affirmed a lower court's decision that the minimum weight and height requirement was reasonable and therefore not discriminatory (*Dothard v. Rawlinson*, 1977).<sup>12</sup> However, the Civil Rights Act of 1991 now provides that a practice that is seemingly neutral (such as setting height and weight limits) but has discriminatory impact (in this case, excluding women) violates the law. For example, setting a high school education as the employment requirement for custodial work is neutral on its face but can have a discriminatory impact on individuals who had limited access to education, and therefore would be unlawful under the Civil Rights Act of 1991.<sup>13</sup> The technology firm Microsoft was hit with a class action lawsuit regarding gender discrimination. A female employee was passed over multiple times for promotions, while her male counterparts, who were less qualified, were promoted. It was also found that there was a lack of diversity in Microsoft's employees, who were about 76% male. More significant, the executive leadership of Microsoft was 88% male (*Moussouris v. Microsoft Corporation*, 2015). Google, the giant high-tech company, was the focus of a class action lawsuit claiming gender discriminatory practices. The lawsuit notes that women with equal education and experience levels were placed in lower pay grades compared to men. Kelly Ellis, a plaintiff in the case, claimed she experienced this when she was first hired at Google. She felt she had enough experience to be placed at a higher responsibility level and didn't initially understand how the classification system worked at the company. She soon came to understand that male colleagues with similar education had been assigned more responsibilities and higher pay from the beginning. "Throughout my time at Google, I always felt like I was behind where I should have been and trying to catch up," she said ("Women at Google," 2020).

It is important to note that although in most cases of gender discrimination women constitute the group that needs protection, the laws in most countries can be applied for men as well because they prohibit discrimination regardless of gender. For example, a 1982 U.S. ruling determined that a state university for women (Mississippi University for Women) could not constitutionally prohibit male students from enrolling for credit in its nursing school (*Mississippi University for Women v. Hogan*, 1982). Another example is the 2009 class action lawsuit on sex discrimination at Lawry's Restaurants, Inc. The company was required to pay over \$1 million in fines for discriminating against males by only hiring women for server positions (EEOC, 2009).

### Sexual Orientation—International

Much less common in international legislation is protection based on sexual orientation. A cross-referenced search of the UN ILO's database, NATLEX, and research conducted by the International Gay and Lesbian Human Rights Commission (IGLHRC)<sup>14</sup> shows that multiple countries, such as Australia, Canada, Denmark, Germany, Ireland, Israel, the Netherlands, South Africa, Sweden, and the United States, offer such protections. In addition, the ILGA World Report (2021) states that 45 UN Member States (not including the United States.) have laws on "prohibition of incitement to hatred, violence or discrimination based on sexual orientation." The map illustrates the countries worldwide that provide anti-discrimination legislation based on sexual orientation (see Figure 2.2 for the map and Table 2.1 for a listing of sexual orientation legislation by country).

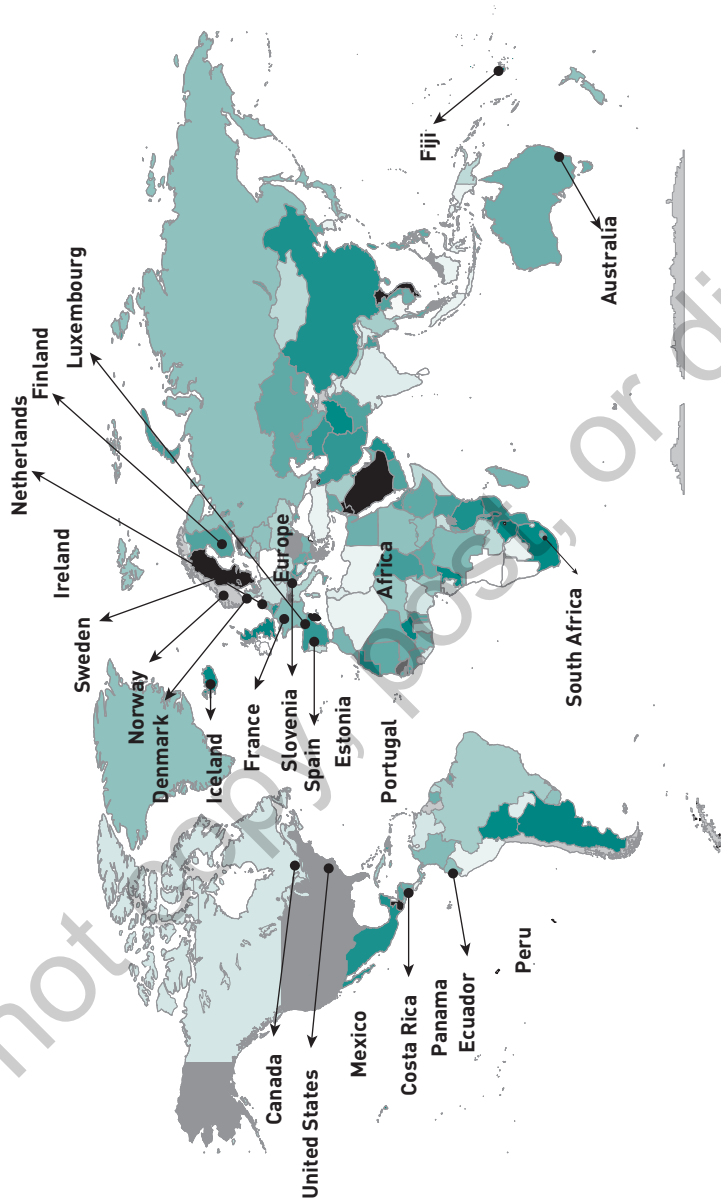
## Gender Identity—United States and International

In the United States, there is a growing public debate about protecting the rights of transgender people in different contexts. On the one hand, there is more legislation making it illegal to discriminate against people because of their gender identity in public places, with 17 states, including Washington, DC, having such laws on the books. In *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. June 15, 2020)[1], the Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII's prohibition on discrimination because of sex. As the Court explained, "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second." For example, if an employer fires an employee because she is a woman who is married to a woman but would not do the same to a man married to a woman, the employer is taking an action because of the employee's sex because the action would not have taken place but for the employee being a woman. Similarly, if an employer fires an employee because that person was identified as male at birth but uses, she/her/hers and identifies as a female, the employer is acting against the individual because of sex since the action would not have been taken but for the fact the employee was originally identified as male (U.S. Equal Opportunity Commission, 2021).

On the other hand, several states have legislation banning the use of bathrooms that correspond to the individual's gender identity. The use of public bathrooms often presents a challenge for the transgender population because they are more likely to face harassment and abuse from others when trying to use the gender specific bathrooms that correspond to their own identity (Pelleschi, 2016). The *Bostock* decision did not address related issues such as dress codes, bathroom access, or locker room access, which were raised by Justice Alito's dissent (U.S. Equal Opportunity Commission, 2021). In Virginia, a law would require school boards to create policies that would allow students in public schools to use only the bathrooms that align with their gender at birth. Students who violate this policy could face a fine (House Bill No. 663, 2016). In North Carolina, a bill was passed blocking local governments from providing anti-discrimination laws that grant protection to the gay and transgender community within the state. Opponents to anti-discrimination laws argue that such anti-discrimination laws would make bathrooms unsafe for women and children (NPR, 2016).

IBM, a global innovation and technology company, was one of the first institutions to provide diversity and inclusion policies for its lesbian, gay, bisexual, and transgender (LGBT) employees. Its initiatives are focused not only on providing a sense of value but also empowering LGBT employees to engage with their clients and contribute to their full potential in the workplace. IBM is also one of the founding partners of Pride in Diversity, Australia's first and only not-for-profit workplace program designed to provide inclusion support to the LGBTQ employees in Australia's workplace (IBM, 2016, 2021). The United States has transitioned from an administration that was hostile to transgender people under President Trump, banning them from service in the military (NBC News, 2019), to the agenda of Joe Biden, who communicated his inclusive values by appointing the first openly transgender woman, Dr. Rachel Levine, to a high government position of assistant health secretary (Washington Post, 2021).

FIGURE 2.2 • Worldwide Legislation Against Sexual Orientation Discrimination: Map of Countries



Sources: IGLHRC (1999); NATLEX; International Labour Organization (n.d.).

**TABLE 2.1 • Worldwide Legislation Against Sexual Orientation Discrimination: Listing by Country**

Country	Name of Legislation
Angola	<ul style="list-style-type: none"> <li>Article 212 of the Penal Code (Law No. 38) (to take effect in 2021)</li> </ul>
Argentina	<ul style="list-style-type: none"> <li>Gender Identity and Health Comprehensive Care for Trans People Act (2012)</li> <li>The Right to Gender Identity of People Act (2012)</li> </ul>
Australia	<ul style="list-style-type: none"> <li>Capital Territory–Discrimination Act (1991)</li> <li>Equal Opportunity Act (Gender Identity and Sexual Orientation) (2000), No. 52</li> <li>Equal Superannuation Entitlements for Same-Sex Couples (2003), No. 13</li> <li>New South Wales–Anti-Discrimination Act (1977, 1998)</li> <li>Northern Territory–Anti-Discrimination Act (1996)</li> <li>State of Queensland–Anti-Discrimination Act (1991)</li> <li>State of South Australia–Equal Opportunity Act (1984)</li> <li>State of Tasmania–Anti-Discrimination Act (1998)</li> <li>State of Victoria–Equal Opportunity Act (1995)</li> </ul>
Austria	<ul style="list-style-type: none"> <li>Federal Act to Amend the Equal Treatment Act on Equal Treatment Commission and the Ombudsman (2008)</li> </ul>
Brazil	<ul style="list-style-type: none"> <li>State of Mato–Constitution Article 10.3 (1989)</li> <li>State of Sergipe–Constitution Article 3.2 (1989)</li> </ul>
Canada	<ul style="list-style-type: none"> <li>The Canada Human Rights Act (1996)</li> <li>Canada (British Columbia) Human Rights Act (1984)</li> <li>Canadian Charter of Rights and Freedoms, Section 15(1) (1982)</li> <li>New Brunswick Human Rights Code [Human Rights Code. 1971, c.8, s.1; 1985, c.30, s.3]<sup>a</sup> 3(1)</li> </ul>
Costa Rica	<ul style="list-style-type: none"> <li>Law No 7771, Article 48 (1998)</li> </ul>
Cuba	<ul style="list-style-type: none"> <li>Article 42 of the Constitution of Cuba (2019)</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>Act No. 459 on Prohibition Against Discrimination in Respect of Employment (1996)</li> <li>The Penal Code (1987), Act 626, Article 266</li> </ul>
Ecuador	<ul style="list-style-type: none"> <li>Constitution (1998), Article 23</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>Equality of Opportunity and Treatment Act (2008)</li> </ul>
Fiji	<ul style="list-style-type: none"> <li>Constitution, Section 38(2) of the Bill of Rights (1998)</li> </ul>

Country	Name of Legislation
Finland	<ul style="list-style-type: none"> <li>• Act on Equality Between Women and Men (2005)</li> <li>• Non-Discrimination Act (2004)</li> <li>• Constitution (1998), Section 5</li> <li>• The Penal Code (1995), Section 9</li> <li>• Penal Code (1995), Chapter 47, Section 3</li> </ul>
France	<ul style="list-style-type: none"> <li>• The French Penal Code (1985)</li> <li>• The Code of Labor Law (1986, 1990)</li> </ul>
Honduras	<ul style="list-style-type: none"> <li>• The Penal Code, Articles 211 and 212 (2019)</li> </ul>
Iceland	<ul style="list-style-type: none"> <li>• The Icelandic Penal Code (1996)</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>• Equal Status Act (2000)</li> <li>• Prohibition of Incitement to Hatred Act (1989)</li> <li>• The Health Insurance Act (1994)</li> <li>• The Unfair Dismissals (Amendment) Act (1993)</li> <li>• Employment Equality Act (1998)</li> </ul>
Japan	<ul style="list-style-type: none"> <li>• Bill on Promotion of Elimination of Discrimination on the Grounds of Sexual Orientation or Gender Identity (2018, still under examination)</li> <li>• Bylaw of the Tokyo Metropolitan Government (2018)</li> <li>• Bylaw of the Ibaraki Prefecture (2019)</li> </ul>
Kosovo	<ul style="list-style-type: none"> <li>• Penal Code (2019)</li> </ul>
Israel	<ul style="list-style-type: none"> <li>• Equal Opportunities in Employment (1992)</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>• Penal Code, Articles 454–457 (1997)</li> </ul>
Mexico	<ul style="list-style-type: none"> <li>• Article 1 of the Political Constitution of the United Mexican States [federal constitution] (2011)</li> <li>• Article 4(C)(2) of the Constitution of Mexico City (2018)</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• The General Equal Treatment Act (1994)</li> <li>• Penal Code (1992), Articles 137c, d, e, and f; Article 429 quarter</li> <li>• 1992 Constitution, Article 1 DC (1983)</li> </ul>
New Zealand	<ul style="list-style-type: none"> <li>• Human Rights Act, Section 21 (1993)</li> <li>• Human Rights Amendment Act (2001)</li> </ul>
North Macedonia	<ul style="list-style-type: none"> <li>• Article 5 of the Law on Prevention and Protection against Discrimination (2019)</li> <li>• Struck down and reinstated (2020)</li> </ul>

[Continued]

TABLE 2.1 • (Continued)

Country	Name of Legislation
Norway	<ul style="list-style-type: none"> <li>• Discrimination and Accessibility Act (2009)</li> <li>• Anti-Discrimination Act (2005), Section 17</li> <li>• Act No. 15 of (2001) (to amend Act No. 4 of 1977)</li> <li>• Work Environment Law (clause added in 1998)</li> <li>• Penal Code, Paragraph 135a (1981)</li> <li>• Gender Equality Act (1978)</li> </ul>
San Marino	<ul style="list-style-type: none"> <li>• Article 4 of the Declaration of Citizen Rights of (1974) (amended in 2019)</li> </ul>
São Tomé and Príncipe	<ul style="list-style-type: none"> <li>• Article 16(1), (2), and 17(1) of the Labour Code (2019)</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>• Act 27 on Equality of Educational Opportunities (2007)</li> <li>• Penal Code (1996), Article 141</li> <li>• Law About Work Relations, Article 6 (1998)</li> </ul>
South Africa	<ul style="list-style-type: none"> <li>• Employment Equity Act 5 (1998)</li> <li>• Constitution of the Republic of South Africa (Act No. 108 of 1996)</li> <li>• Constitution (1996), Bill of Rights and Equality Clause (Section 9)</li> </ul>
Spain	<ul style="list-style-type: none"> <li>• Penal Code (1995), Article 22</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>• Ordinance No. 635 of 2008 (to amend ordinance [2007:1036] respecting the instructions of the Ombudsman Against Discrimination on the grounds of sexual orientation)</li> <li>• Ordinance No. 1036 of 2007 with instructions for the Office of the Ombudsman Against Discrimination on the grounds of sexual orientation</li> <li>• Anti-Discrimination Act (2009)</li> <li>• Discrimination Act (2008)</li> <li>• The Prohibition of Discrimination Act (No. 307 of 2003)</li> <li>• Act No. 453 of 2005 (to amend Act No. 307 of 2003 to prohibit discrimination)</li> <li>• Act No. 480 of 2005 (to amend Act No. 307 of 2003 to prohibit discrimination)</li> <li>• Act No. 1089 of 2004 (to amend Act No. 307 of 2003 to prohibit discrimination)</li> <li>• Act No. 479 of 2005 (to amend the Prohibition of Discrimination in Working Life because of Sexual Orientation Act No. 133 of 1999)</li> <li>• Ordinance No. 146 (2006) (to amend Ordinance No. 170 of 1999)</li> <li>• Ordinance No. 1408 (2006) (to amend Ordinance No. 170 of 1999)</li> <li>• Ordinance No. 319 (2003) (to amend Ordinance No. 170 of 1999)</li> <li>• Act No. 310 of 2003 (to amend the Prohibition of Discrimination in Working Life Because of Sexual Orientation Act No. 133 of 1999)</li> <li>• Prohibition of Discrimination in Working Life Because of Sexual Orientation Act No. 133 of 1999</li> <li>• Penal Code (1987), Chapter 16, Paragraph 9</li> </ul>



Country	Name of Legislation
Taiwan	<ul style="list-style-type: none"> <li>• Act of Gender Equality in Employment (2002), Chapter 2</li> <li>• Employment Services Act (1992)</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• The Equality Act (Sexual Orientation) Regulations 2007 No. 1263</li> <li>• The Equality Act of 2006</li> </ul>
United States	<ul style="list-style-type: none"> <li>• Don't Ask, Don't Tell Repeal Act of 2010<sup>b</sup></li> <li>• Equal Employment Opportunity in the Federal Government (1998) [Executive Order 11478]</li> <li>• Executive Order 13087 (1998) [to amend Executive Order 1147]</li> <li>• States' civil rights laws [20 states plus the District of Columbia offer such protections: California; Colorado; Connecticut; Delaware; Hawaii; Illinois; Iowa; Maine; Maryland; Massachusetts; Minnesota; Nevada; New Hampshire; New Jersey; New Mexico; New York; Oregon; Rhode Island; Vermont; Washington, DC; and Wisconsin]<sup>c</sup></li> <li>• Title VII, Civil Rights Act (1964) as amended and upheld (2020) by <i>Bostock v. Clayton County Georgia</i></li> </ul>

**Notes:**

<sup>a</sup>The New Brunswick Human Rights Code can be found on the New Brunswick Department of Justice website ([www.gnb.ca/acts/acts/h-11.htm](http://www.gnb.ca/acts/acts/h-11.htm)). This legislation was retrieved August 11, 2002.

<sup>b</sup>Geidner (2010).

<sup>c</sup>National Gay and Lesbian Task Force (2012).

**Sources:** Council of Labor Affairs. Executive Yuan Taiwan R.O.C. (2012); IGLHRC (2012); NATLEX, International Labour Organization (n.d.). [Retrieved February 17, 2016, from <http://www.ilo.org/global/statistics-and-databases/lang-en/index.htm>]; State-Sponsored Homophobia 2020: Global Legislation Overview Update, ILGA World (2020).

**Note:** This table is illustrative and does not include all the countries

## Antisexual Harassment Legislation—International

The *Me Too* (#MeToo) social movement that empowered women survivors of sexual abuse and harassment to find strength and empathy in sharing similar experiences, brought renewed attention to the problem of sexual harassment and sexual abuse in the workplace and the wider society around the world (<https://metoomvmt.org/2021>, retrieved January 19). The movement has inspired the adoption of a groundbreaking global treaty on June 21, 2019, by the International Labour Organization (ILO) that will improve protections for workers facing violence and harassment. “The women who bravely spoke up about their #MeToo abuses at work have made themselves heard at this negotiation, and their voices are reflected in these important new protections,” said Rothna Begum senior women’s rights researcher at Human Rights Watch who also noted that the treaty will set standards to end the deluge of sexual harassment and violence in the world of work (Human Rights Watch, 2019; ILO, 2021).

Sexual harassment is a widespread and underreported form of gender-based discrimination and deserves special attention. It is aimed primarily at women, although men suffer from it too. Sexual harassment often goes unreported for two reasons:

First, many women are afraid of losing their jobs and hence their livelihood. This is particularly true when they are in an economically or immigration-related vulnerable situation; for example, they are single mothers, sole breadwinners, and immigrants who are not familiar with the host country's language and legislation, or they are undocumented immigrants who are afraid of being deported. Second, in many cultures, reporting sexual harassment victimizes the woman a second time. She is seen as having brought shame on herself and her family, as she is blamed for being promiscuous or sexually provocative. As a result of high-profile lawsuits and pressure from grassroots women's organizations, there is a growing awareness of women's rights, and additional efforts toward creating work environments that are free of sexual pressure are being made. Around the world, more and more countries are banning sexual harassment in the workplace.

The legal definitions of sexual harassment and the protections provided under the law vary greatly from one country to the next. Those definitions are important because when they are broad and vague, they leave more room for interpretation by the courts, and as a result, it is often more difficult to prosecute perpetrators under such laws. Examples of broad definitions include Nepal's civil code on sexual harassment, which applies to women only and states that sexual harassment is "any male touching the body parts of a woman (other than his wife) with a sexual intention." Under Malaysia's Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, sexual harassment means any unwanted conduct of sexual nature having the effect of verbal, nonverbal, visual, psychological, or physical harassment that (a) might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her or his employment, or (b) might, on reasonable grounds, be perceived by the recipient as an offense or humiliation, or a threat to her or his well-being, even with no direct link to her or his employment. Hong Kong's Sexual Discrimination Ordinance defines sexual harassment as any unwanted or uninvited sexual behavior that a reasonable person regards as offensive, humiliating, or intimidating, including unwelcome sexual advances or unwelcome requests for sexual favors.

South Korea's laws provide a more detailed definition. According to the Sexual Equality Employment Act and the Gender Discrimination Prevention and Relief Act, sexual harassment at work includes actions taken by a business owner, supervisor, or coworker that cause sexual humiliation to another worker through words or actions or creates an uncomfortable work environment. These actions may be in conjunction with job requirements or using the perpetrator's position in a way that creates the impression that if the victim does not yield to the sexual demands, the behavior will result in loss of a job or a disadvantage at work. These definitions relate only to direct actions by a supervisor or a coworker. They do not include situations in which the work environment itself constitutes sexual harassment, such as the use of profane language by supervisors and coworkers and posting sexually explicit posters in the workplace. Other definitions are more specific and include both direct and indirect sexual harassment. The latter refers to an oppressive work environment. The Equal Employment Opportunity Commission (EEOC) in the United States defines sexual harassment as unwanted sexual advances in the workplace that

include requests for sexual favors and other verbal or physical contact of a sexual nature when these advances are made either explicitly or implicitly a condition for getting a job, keeping a job, or getting a promotion. An important evolution of the law now requires that the judge or jury see harassment not through the eyes of a reasonable person but through the eyes of a reasonable *victim*. For example, what a man may not consider harassment may be considered so by a woman. Furthermore, a work environment that is offensive, intimidating, or hostile also constitutes sexual harassment (*Mississippi University for Women v. Hogan*). India's Supreme Court guidelines are more specific and include such unwelcome sexually determined behavior (whether directly or by implication) as (a) physical contact and advances; (b) a demand or request for sexual favors; (c) sexually colored remarks; (d) showing pornography; and (e) any other unwelcome physical, verbal, or nonverbal conduct of a sexual nature.

Similarly, the scope of protections against sexual harassment varies greatly among countries. Some countries, such as the United States, the United Kingdom, and Hong Kong, provide a relatively wide scope of protections against sexual harassment in the workplace, whereas others provide limited (e.g., Malaysia) or no protections at all (e.g., Pakistan). The European community has moved toward providing a strong protection against sexual harassment in recent years. The directive on the equal treatment of persons in the labor market, adopted by the EU Council of Ministers on June 7, 2000, amended October 5, 2002, calls for all EU members to adopt antiharassment programs, to set up national bodies and civil remedies to ensure their enforcement, and to encourage employers to take measures to combat all forms of sexual discrimination and sexual harassment in the workplace.

A similar trend has taken place in Japan and Venezuela. In 1997, the Japanese Ministry of Labor issued recommendations that are modeled after the guidelines of the U.S. EEOC prohibiting sexual harassment. At about the same time, Japan's Equal Employment Opportunity Act was amended, requiring Japanese employers to establish company policies and internal complaint procedures on sexual harassment. Venezuela enacted its sexual harassment law (January 1, 1999) as part of the Law on Violence Against Women and Family. The law establishes sexual harassment as a crime that is punishable by a prison term of 3 to 12 months, and the offender must pay the victim double the number of economic damages caused by the harassment, such as lack of access to jobs or promotions (G. L. Maatman, 2000).<sup>15</sup>

A survey conducted by the CAW (Committee on Asian Women) examined the legal provision for protection and prevention of sexual harassment at the workplace among a select number of Asian countries.<sup>16</sup> The findings indicate that the legislative situation in Southeast Asia is mixed. Although there are clear legal provisions laid down for the protection and prevention of sexual harassment in places like Hong Kong and South Korea, such provisions are nonexistent in countries like Pakistan. Somewhere between are countries like Malaysia, which has a code of practice rather than legal provisions for employers to establish in-house mechanisms to combat sexual harassment. For a comparison of sexual harassment laws among 13 countries, see Table 2.2.

**TABLE 2.2 • Comparison of the Legal Provision for Protection Against Sexual Harassment at the Workplace Among Selected Countries**

Country/Name of Legislation	Questions Addressed Regarding Sexual Harassment in the Workplace						
	1	2	3	4	5	6	7
		(1) Do legal protections against sexual harassment in the workplace exist? (2) Is there separate legislation or some section/clause of other labor laws? (3) How are victims protected? Are there specific rights defined in the law? (4) Are there any sections in the law on prevention of sexual harassment at the workplace? (5) Do administrative structures exist to facilitate the implementation of the law? (6) Is sexual harassment considered a criminal offense? (7) What is the minimum and maximum punishment permissible by law?					
<b>BAHRAIN</b> —Amendment to the Bahrain Labour Law (2018)	Yes	Some clause or section of other laws.	Sexual harassment at work is defined as “by reference, speech, act or by any other means.”	Yes	No	Yes	The penalty for abusing or harassing a fellow worker is imprisonment for up to one year or the payment of a fine of up to BHD 100. If the employer or its representative commits the harassment, the penalty is imprisonment for at least six months or payment of a fine of between BHD 500 and BHD 1,000.
<b>HONG KONG</b> —Sex Discrimination Ordinance (Amendment) Bill of 2014	Yes	Separate legislation	They may lodge a complaint in writing to the commission. The commission will then investigate the complaint and encourage conciliation between the parties in the dispute. If the complaint cannot be resolved, the commission may also aid in court proceedings should the victim decide to take their case to court.	Yes	Yes**	Yes***	To be determined by the court

Country/Name of Legislation	Questions Addressed Regarding Sexual Harassment in the Workplace						
<b>INDIA</b> —Sexual Harassment of Women in the Workplace (Prevention Prohibition, and Redressal Act of 2013) (drafted based on multiple national and international standards and legislation)	Yes	Some clause or section of other laws	Superior guidelines refer only to the responsibility of the employers	Yes, the law specifies guidelines to ensure protection from sexual harassment	No	Yes***	Subjected to a penalty of up to 50,000 rupees
<b>INDONESIA</b> —Guidelines on the Prevention of Sexual Harassment (Better Work Indonesia)	Yes	Some clause or section of other laws	Guidelines refer to the responsibility of the employer	Yes, a specified list of guidelines	No	Yes***	Depends on the offense and the employer's discretion (from a written warning to termination)
<b>ISRAEL</b> —Prevention of Sexual Harassment Law, 5758-1998	Yes	A section of the Sexual Harassment Law refers to sexual harassment in the workplace	Victim's protection specified (e.g., concealing the victim's identity, no disclosure of past sexual experiences, etc.).	Yes, the law specifies steps employers must take to prevent sexual harassment and address complaints efficiently	Yes	Yes	Subjected to a penalty of up to 50,000 Israeli new shekels (INS), but the courts can award higher sums with proof of damages
<b>JAPAN</b> —Equal Employment Opportunity Law of 1997	Yes	Some clause or section of other laws	The law refers only to the responsibility of the employers	No	No	No	Not stipulated

(Continued)

**TABLE 2.2 (Continued)**

Country/Name of Legislation	Questions Addressed Regarding Sexual Harassment in the Workplace					
	Yes	Some clause or section of other laws	Whoever intended to insult the modesty of any women, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or such gesture or object shall be seen by such woman, shall be punished	Yes	Yes	Yes
<b>MALAYSIA</b> —The Penal Code, Section 509						Violators will be punished with imprisonment for five years or with a fine or with both
<b>NEPAL</b> —The Sexual Harassment Prevention Act (2015)	Yes	Separate legislation	An incident can be reported internally to the “manager” (e.g., HR) and/or externally to the Chief District Officer	Yes	Yes	Yes
<b>REPUBLIC OF KOREA</b> —Equal Employment and Support for Work–Family Reconciliation Act	Yes	Some clause or section of other laws	When the sexual harassment occurs within the workplace, the employer should punish the sexual harasser right away or address the issue accordingly. And the employer cannot fire or give disadvantages to the person who is sexually harassed or who says that they are sexually harassed.	Yes	Yes*	No
<b>SRILANKA</b> —Article 12 (1) and (2) of the constitution and criminal law	Yes	Some clause or section of other laws	No response	No	No	Yes Minimum: Three years Maximum: 10 years

Country/Name of Legislation		Questions Addressed Regarding Sexual Harassment in the Workplace					
<b>TAIWAN</b> —Sexual Harassment Prevention Law	Yes	Separate legislation	Government agencies, companies, and schools are required to set up committees and rules on sexual harassment and channels for reporting violations	Yes	Yes	Yes	(a) The fine imposed on violators is from minimum NTD 10,000 to maximum NTD 100,000; (b) the maximum punishment for the harasser is two years in jail or a fine of NTD 100,000
<b>THAILAND</b> —The Labour Protection Law	Yes	Some clause or section of other laws.	The law is silent as to what activity would constitute sexual harassment.	No	No	No	Violator may result in a fine not exceeding Baht 20,000 (approximately U.S. \$500).
<b>UNITED ARAB EMIRATES</b> —Amendment to the Penal Code (2019)	Yes	Some clause or section of other laws.	Sexual harassment is defined as others repeating acts, sayings, or signals that would prejudice another's modesty to get them to respond to the offender's sexual desires or those of others.	Yes	No	Yes	The penalty shall be imprisonment for a period of not less than two years and a fine of not less than 50 thousand dirhams or one of these penalties if the perpetrators are multiple or the perpetrator carries a weapon or the perpetrator has a functional, family, or study authority over the victim.

**Notes:**

\*The Presidential Commission on Women Affairs, Employment Equality Committee in Labour Ministry.

\*\*The Equal Opportunities Commission (EOC).

\*\*\*Depending on the nature of the offense committed.

**Sources:** Based on Committee for Asian Women (2000) cross-referenced with ILO's NATLEX database; Council of Labor Affairs. Executive Yuan Taiwan R.O.C. (2012); Hong Kong Legal Information Institute (n.d.); Ministry of Labor in Korea (n.d.); Malaysian Labour Law: Regulation of Employment (n.d.); Patel (2005); Regev (2007); "Sri Lanka , no " (2007); "Vishaka Guidelines Against Sexual Harassment in the Workplace" (2009); Government of India (2015); Better Work-Indonesia (2013); The World Bank's Women, Business and the Law database (Retrieved December 19 from [https://wbi.worldbank.org/en/reforms/topic/wb\\_ls\\_j](https://wbi.worldbank.org/en/reforms/topic/wb_ls_j)); Anderson (2018); Salama (2019); Maturi & Gage (2019).

**Note:** The table is illustrative (not exhaustive).

## Practical Implications

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The moral principles of just treatment of members of diverse groups—outlined in the UN Universal Declaration of Human Rights and in the various state constitutions and legislation—have some practical implications for individual workers, for groups of workers, for work organizations, and for societies. Employees who are treated unfairly are less productive, less satisfied, and less loyal to their organizations. These issues will be dealt with in the next several chapters. Relevant to this chapter is the fact that these workers are more likely to initiate lawsuits against the offending work organization. The lawsuits can carry hefty financial repercussions for the organizations. As the noted sociologist Émile Durkheim predicted more than a century ago, a society that loses its organic solidarity—an internal compass for what is right and wrong—must turn to the courts for relief (Durkheim, 1893, 2014). The following examples illustrate the financial implications of discriminatory behavior in the workplace.

In one of Japan's largest sexual harassment lawsuits, the governor of the Osaka region was ordered to pay the equivalent of \$107,000 to a 21-year-old university student who worked on his election campaign. The governor, Knock Yokoyama, was found guilty by Osaka's district court judge Keisuke Hayashi, who determined that in addition to sexually harassing the campaign worker (he was accused of groping her for half an hour aboard a campaign bus), the governor also tried to silence and intimidate her by offering her a gift, making false statements about her to prosecutors, and defaming her publicly (Tolbert, 1999).

In a landmark case against Japan's government, a transgender trade bureaucrat launched a ¥18 million discrimination lawsuit claiming discrimination in the workplace. After joining the Ministry of Economy, Trade, and Industry (METY) as a man fresh out of college, the official began receiving hormone injections in 1998. She formally began working as a woman in 2010 and changed her name in the family register in 2011. The law in Japan stipulated that a person must undergo what is known as gender reassignment surgery to physically change gender and thus their legal sex. But the surgery is extremely expensive, and some, including the plaintiff, cannot do it for health reasons. METI suggested the plaintiff use the bathroom reserved for handicapped people—a proposal she has slammed as “unacceptable” because it amounted to segregation. The plaintiff also claimed receiving abusive remarks from her bosses that showed they had a serious lack of understanding toward diversity, including the following from one of her bosses, “If you don't plan to have a surgery anytime soon, why don't you get back to a man?” (Osaki, 2015).

Similar examples from the U.S. context pertain to racial discrimination.

A manager at Smashburger (an international hamburger restaurant chain Icon Burger Acquisition, LLC) in Long Island, NY, subjected a Black employee to a racially hostile work environment, frequently referring to him by racial slurs,



according to an EEOC lawsuit. She also harassed him for being in an interracial relationship, referring to him by racial slurs when speaking to his fiancée. Instead of addressing the employee's complaints, his district manager had him involuntarily transferred to a location much farther from his home. Icon Burger Acquisition, LLC, has agreed to pay \$70,000 and implement substantial nonmonetary measures to settle a race harassment lawsuit filed by the U.S. EEOC (EEOC, 2020).

A federal appeals court in San Francisco upheld a \$1 million punitive damage verdict awarded to a Black man subjected to repeated harassment on the job, including numerous racial slurs by coworkers. Although management tried to characterize the racial slurs as "jokes," the court did not accept their contention. Judge Margaret McKeown wrote for a unanimous panel of three judges of the U.S. 9th Circuit Court of Appeals, "This case should serve as a reminder to employers of their obligation to keep their workplaces free of discriminatory harassment." This award is one of the largest ever in a racial harassment case based solely on offensive language ("Award Over Racism Upheld," 2001).

In 2013, Wet Seal, a popular teen clothing store, paid \$75 million to settle a racial discrimination case that accused the company of denying equal pay and promotions to Black employees. In some cases, the company was charged with discriminating against Black employees by removing them from their leadership positions and hiring whites to fill their place (Hsu, 2013). It was alleged that top executives of the company directed senior managers to get rid of Black store managers for the sake of its "brand image." In total, over 20 charges were filed by current and former employees of Wet Seal, including a regional Wet Seal manager who was fired for hiring a Black woman to manage one of its branch locations (NAACP, 2012).

In March 2015, Patterson-UTI, an oil and gas drilling company in Texas, was in a lawsuit pertaining to alleged discrimination, harassment, and retaliation against racial minorities across the country. According to the complaint filed by the EEOC, Patterson-UTI had engaged in similar patterns or practices that include "hostile work environment harassment, disparate treatment discrimination and retaliation against Hispanic, Latino, Black, American Indian, Asian, Pacific Islander and other minority workers in its facilities in Colorado and other states." Patterson-UTI agreed to settle for \$12.26 million (*EEOC v. Patterson-UTI Drilling Co.*, 2015).

These examples demonstrate the costly consequences of noncompliance with legislation pertaining to diversity discrimination in the workplace. There is an additional dimension to international legislation that pertains to multinational corporations. These corporations often operate in host countries whose cultural framework and legislation are quite different from those of the country where the company is headquartered. When a company sends its employees overseas, this question is often asked: Do the laws of the country of origin apply or those of the host country? This question is

relevant to occupational safety laws, environmental pollution laws, as well as to discrimination and equal opportunities. In the past, the courts have stated that the relevant law was that of the host country.<sup>17</sup> The following case illustrates the implications for employment discrimination:

In 1979, Arabian American Oil Company (Aramco), a Delaware corporation, hired Mr. Boureslan, a naturalized U.S. citizen born in Lebanon, as a cost engineer in Houston. A year later he was transferred, at his request, to work for Aramco in Saudi Arabia. Boureslan remained with Aramco in Saudi Arabia until he was discharged in 1984. After filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), he instituted a suit in the United States District Court for the Southern District of Texas against Aramco and Arabian American Oil Company. He sought relief under Title VII of the Civil Rights Act of 1964 on the ground that he was harassed and ultimately discharged by the respondents on account of his race, religion, and national origin. In dismissing this claim, the court ruled that it lacked jurisdiction because Title VII's protections do not extend to U.S. citizens employed abroad by American employers. The Court of Appeals affirmed this decision. (*Equal Employment Opportunity Commission v. Arabian American Oil Co. et al.*, 1991)

Since then, however, new developments included in the U.S. EEOC manual prohibit discrimination by an American employer even when the employer is operating abroad. Furthermore, the EEOC manual also prohibits discrimination by a foreign employer that is controlled by an American employer (i.e., financial control, common ownership, common management).

## Summary and Conclusion

This chapter examines global legislation related to equity and fairness in employment. In democratic countries, the laws represent a value system shared by the people. To identify such a shared value system globally, one must search for a global representative body that can specify a similarly shared value system for all human beings. The United Nations, with all its faults (most governments represented are not democratic), is the closest to such a representative body. The Universal Declaration of Human Rights, adopted in 1948 by the UN General Assembly, stands on two philosophical principles: (a) the right to liberty and equality is the birthright of every human being and cannot be alienated; (b) human beings, as distinguished from other creatures, are rational and moral and therefore entitled to certain rights and freedoms. The International Bill of Human Rights provides the universal moral basis for non-discrimination in employment because it forbids “distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Some countries, such as the United States, Canada, and many members of the European Union, have broad-based anti-discrimination legislation that outlaws discrimination based on a wide array of characteristics such as gender, race, ethnicity or country

of origin, religious beliefs, physical disability, and sexual orientation. South Africa's relatively recent legislation (the apartheid regime was abolished in 1994) provides a broad protection from discrimination, listing a wide array of characteristics including "race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

Noncompliance with these laws may have severe consequences. Employees who are treated justly by their employers are more likely to be more productive and more loyal. Anti-discrimination diversity legislation has the potential to deter discriminatory employment practices because of its potential costly consequences. It is important to note that, depending on each country's cultural climate and court system, the success of such lawsuits, or even the likelihood that a victim of such action will press charges, greatly varies. Therefore, to avoid penalties and lawsuits and to reap the rewards of compliance, managers today must understand the legislative- and business-related social policies of the countries where they are doing business.

## Supplement 2.1. Universal Declaration of Human Rights

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### Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act, the assembly called on all member countries to publicize the text of the declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

#### Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of humanity, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of people and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a mutual understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made based on the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 3

Everyone has the right to life, liberty, and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

### Article 6

Everyone has the right to recognition everywhere as a person before the law.

### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**

No one shall be subjected to arbitrary arrest, detention, or exile.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

- (1) Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
- (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

### Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### Article 16

- (1) People of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### Article 17

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

### Article 18

Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

### Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

### Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

### Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to exceptional care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be

compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit.

- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

### Article 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

### Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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*Source:* © The Office of the United Nations High Commissioner for Human Rights. <http://www.unhchr.ch/udhr/index.htm>



## Supplement 2.2. Global Anti-discrimination and Equal Rights Legislation Checklist of Protections Offered by a Select Number of Countries

	Race/ Ethnic Origin/ Country of Origin	Religion/ Religious Beliefs	Gender/ Sex	Equal Remuneration (pay)	Sexual Harassment	Physical Disability	Mental Disability	Age	Sexual Orientation	Other	Total Number of Protections Offered per Country
AUSTRALIA	✓	✓	✓	✓	✓	✓	✓	✓	✓	A, B, C, D, F	14
AUSTRIA	✓	✓	✓	✓	✓	✓	✓	✓	✓	B, C, J	12
BELARUS - RUSSIAN FEDERATION		✓			✓	✓				J, G, L	6
BELIZE	✓				✓	✓	✓			C, J	6
CANADA	✓	✓	✓	✓	✓	✓	✓	✓	✓	B, E, G, H, I, J	15
CHINA			✓	✓	✓	✓	✓			A, B, C, J	7
HONG KONG	✓		✓	✓	✓	✓	✓			B, C, G, J,	10
DR CONGO				✓						A, K	4
CYPRUS	✓	✓	✓	✓	x			✓	✓	F, J, L, N	10
CZECH REPUBLIC	✓	✓	✓	✓	x	x	x	x	x	C, F, G, J, M, N	14
DENMARK	✓	✓	✓	✓	✓	✓	✓	✓	✓	C, F, J, L, M	14
EGYPT	✓	✓	✓		x	✓	✓	✓	✓	L	8
FIJI	✓	✓	✓		✓				✓	A	6
FINLAND	✓	✓	✓	✓	✓	✓	✓	✓	✓	D, G, J, L, M, N	15
GERMANY	✓	✓	✓		✓	✓	✓	✓	✓	C, J, L	10

(Continued)

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	Race/ Ethnic Country of Origin	Religion/ Religious Beliefs	Gender/ Sex	Equal Remuneration (pay)	Sexual Harassment	Physical Disability	Mental Disability	Age	Sexual Orientation	Other	Total Number of Protections Offered per Country
GUYANA	✓	✓	✓	✓	✓	✓	✓	✓		B, C, F, J	12
HUNGARY	✓	✓	✓			✓		✓		D, F, G, J	9
ICELAND	✓	✓	✓	✓	✓	✓	✓		✓	C, J	10
INDIA			✓	✓					****	C, G	4
INDONESIA	✓			✓		✓				A, C, K	6
IRAQ	x	x		✓	x					L	5
IRELAND	✓	✓	✓	✓	✓	✓	✓	✓		B, J	11
ISRAEL	✓	✓	✓	✓	✓	✓		✓		B, C, J	11
JAMAICA	✓	✓	✓	✓						A, F	6
JAPAN		✓	✓		✓	✓	✓	✓	*****	C, G, J	9
S KOREA	x	✓	✓	✓	✓	✓	✓	✓		B, D, J, K	12
LITHUANIA	✓	✓	✓	✓	✓	✓	✓	✓		C	10
MALAWI	✓	✓	✓		✓	✓		✓		J, L	9
MALTA	✓	✓	✓	✓	✓	✓		✓		B, F, J, N	11
NAMIBIA	✓		✓		✓	✓				B, D, G	7
THE NETHERLANDS	✓	✓	✓	✓	✓	✓	✓	✓		B, C, D, F, J	14
NEW ZEALAND	✓	x	✓	✓	✓	✓	✓	✓		A, J, K, L	13
NIGERIA	✓	✓	✓							K	4
NORWAY	✓	x	✓	✓	✓	✓	✓	✓		C, J	10
PHILIPPINES			✓		✓	✓	✓			A, J	6
POLAND	x	x	✓		✓	✓	✓	✓		J	7
REPUBLIC OF SOUTH AFRICA	✓	✓	✓		✓	✓	✓	✓		A, B, C, D, F, J	14

	Race/ Ethnic Origin/ Country of Origin	Religion/ Religious Beliefs	Gender/ Sex	Equal Remuneration (pay)	Sexual Harassment	Physical Disability	Mental Disability	Age	Sexual Orientation	Other	Total Number of Protections Offered per Country
RUSSIAN FEDERATION	✓	✓	x			✓	✓			A, C, F, J, K, M	11
SAINT LUCIA	x	x	x	✓	✓					C, M	7
SAINT VINCENT AND GRENADINES	✓	x	x	✓	✓		✓	✓			6
SAUDI ARABIA	✓				✓		✓				3
SWEDEN	✓	x	✓	✓	✓	✓	✓	✓	✓	C, J, M	12
THAILAND				✓		✓	✓	✓	*****		4
TRINIDAD AND TOBAGO	✓	x	✓	✓			✓		*****	B	6
TUNISIA	✓	x	x	✓		✓					5
UKRAINE	✓	x	✓	✓	✓		✓			A, J	7
UNITED KINGDOM	✓	✓	✓	✓	✓	✓	✓	✓		B, C, J	12
FALKLAND ISLANDS (MALVINAS) (U.K.)	✓			✓					✓		2
ANGUILLA (U.K.)				✓							2
GIBRALTAR (U.K.)				✓	✓						2
ST. HELENA (U.K.)				✓					✓		2
BERMUDA (U.K.)											0
NORTHERN IRELAND (U.K.)	✓	✓	✓		✓	✓		✓	✓	B, C, D, F	11
UNITED STATES OF AMERICA	✓	✓	✓	✓	✓	✓	✓	✓	✓ <sup>b</sup>	C, D	11
VANUATU			✓			✓					2

(Continued)

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	Race/ Ethnic Country of Origin	Religion/ Religious Beliefs	Gender/ Sex	Equal Remuneration (pay)	Sexual Harassment	Physical Disability	Mental Disability	Age	Sexual Orientation	Other	Total Number of Protections Offered per Country
ZAMBIA	✓	✓	✓			✓				B, F	6
ZIMBABWE	✓		✓		✓	✓				A, F	6
TOTALS											

\*\*\*\*There are still no protections for sexual orientation, but the Supreme Court ruled in 2018 that it was unconstitutional to use Section 377 of the Indian penal code to criminalize same-sex relations.

\*\*\*\* Prompted by the Olympics, there are regional protections in place for sexual orientation in Tokyo and the Ibaraki prefecture. National legislation is still under consideration.

\*\*\*\*\*Thailand is culturally tolerant of sexual orientation, though there is a gap between treatment of tourists/expatriates and Thai nationals.

\*\*\*\*\*While there are no protections, sections of the Sexual Offenses Act criminalizing same-sex relations were ruled unconstitutional

✓protection offered

Notes: Other categories defined:

A = HIV status

B = marital status

C = pregnancy

D = affirmative action legislation

E = aboriginal

F = political affiliation

G = visible minorities

H = ancestry

I = source of income

J = family status

K = non-discrimination—not elsewhere specified

L = general equal rights statement—not elsewhere specified

M = health status

N = language

<sup>a</sup>The specific legislation offering protections based on sexual orientation is from the ILO's database NATLEX and the IGLHRC.

<sup>b</sup>Twenty states plus the District of Columbia offer such protections. The states include California; Colorado; Connecticut; Delaware; Hawaii; Illinois; Iowa; Maine; Maryland; Massachusetts; Minnesota; Nevada; New Hampshire; New Jersey; New Mexico; New York; Oregon; Rhode Island; Vermont; Washington, DC; and Wisconsin.

Sources: Bureau of Democracy, Human Rights and Labor (n.d.); NATLEX, International Labour Organization (n.d.); ILGA (2020)

## Notes

1. The International Bill of Human Rights can be obtained directly from the United Nations and can also be accessed from the UN official website ([www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html)). This section is based, in part, on UN Fact Sheet No. 2 (Rev 1): The International Bill of Human Rights. It can also be found at the UN official website (<http://unhchr.ch/html>).
2. Although the UN Universal Declaration of Human Rights was initially drafted as a *secondary authority* (a legal term indicating that it is an ideal notion rather than enforceable law), it has become customary international law because of its long existence and acquiescence by many countries. A case in point is a lawsuit brought in a U.S. court by a Mexican family against a Mexican official for acts of torture committed in Mexico against their son. The judge accepted their claims based on the UN Declaration of Human Rights. See *Filártiga v. Peña-Irala*, 630F.2d 876 (U.S. Court of Appeals, Second Circuit, 1980).
3. Please refer to the previous note.
4. These examples are taken from the committee's protocols. They can also be found on the official website of the Office of United Nations High Commissioner for Human Rights (<http://www2.ohchr.org/english/bodies/cerd/>).
5. See the complete protocol of the UN Committee on the Elimination of Racial Discrimination, March 2002 (an electronic copy is available at <http://www2.ohchr.org/english/bodies/cerd/>).
6. Broadly, statistical discrimination theory is a social economic theory postulating that inequality between racial, ethnic and gender groups results when people have imperfect or incomplete information about individuals they interact with (such as colleagues or employees).
7. The UN ILO has created a database, called NATLEX, that references over 55,000 national laws related to employment, social security, and related human rights. NATLEX is available to researchers and to the public (in English, French, or Spanish) through its publications and through its website ([www.ilo.org/dyn/natlex/natlex\\_browse.home](http://www.ilo.org/dyn/natlex/natlex_browse.home)).
8. Over 20% of the countries reviewed had to have legislation in the appropriate category to be considered a most popular form of anti-discrimination legislation.
9. The United States is the only country that allows punitive damages awards. Punitive damages entail a sum of money designed to punish the defendants and to deter others from repeating the offense. Typically, punitive damages against large corporations range in millions of dollars.
10. This is based on personal interview—July 2002. Per the interviewee's request, her name is kept confidential.
11. In the United States, the laws allow for "fair discrimination" in gender-related employment, when the discrimination is based on gender differences in physical abilities (e.g., *Dothard v. Rawlinson*, 433 U.S. 321 [1977]).
12. It is interesting to note that while the suit was pending, the Alabama Board of Corrections adopted a regulation that created male only and female-only

positions in the prison system. The effect was to exclude women from 75% of the jobs in the system. The plaintiff amended her suit to include a claim that the regulation violated federal law. The three-judge panel held that both the statute and regulation violated Title VII. The court held that the applicant had shown the statute had a discriminatory effect, and the director had failed to show the challenged requirements were job related. The court held, however, that the regulation fell within the narrow exception for bona fide occupational qualifications because most of the jobs in Alabama's atypical, unclassified system were just too dangerous for women. The Supreme Court affirmed the district court's decision with respect to the statute setting minimum height and weight requirements but reversed the district court's decision with respect to the regulation, which created male- and female-only positions.

13. The *Griggs v. Duke Power Company* (1971) case (which preceded *Dothard v. Rawlinson*, 1977) determined that the Duke Power Company's intradepartmental transfer policy requiring a high school education and the achievement of minimum scores on two separate aptitude tests violated Title VII of the Civil Rights Act of 1964. Specifically, the U.S. Supreme Court concluded that neither the high school graduation requirement nor the two aptitude tests were directed or intended to measure an employee's ability to learn or perform a particular job or category of jobs within the company. The Court concluded that the subtle, illegal purpose of these requirements was to safeguard Duke's long-standing policy of giving job preferences to its white employees and was discriminatory against its Black employees. In fact, the Court determined that not only overt
- discrimination is illegal but also that practices that are fair in form but discriminatory in practice are against the law. This theory of the law, the "disparate-impact" theory, was chipped away in the *Dothard v. Rawlinson* (1977) decision and was almost eliminated in *Wards Cove Packing Co., Inc. v. Antonio* (1989). The latter decision was so extreme that it motivated Congress to amend Title VII of the Civil Rights Act of 1964. In essence, the theory of discriminatory impact is now the law of the land.
14. The IGLHRC is a nonprofit, nongovernmental organization (NGO) based in the United States. IGLHRC's commitment is to individual and community human rights as well as eliminating discrimination or abuse based on sexual orientation, gender identity, or HIV status. For more information on IGLHRC, visit its website ([www.iglhrc.org/](http://www.iglhrc.org/)).
15. Interestingly, this seems to be based on a logic that is like the punitive damages' awards granted in the United States (see note 9).
16. Established in 1992, CAW is a grassroots organization with 28 chapters in 13 Asian countries working actively to raise awareness of women workers rights in Asian countries. A more detailed description of the survey was published in the *Asian Women Workers Newsletter*. An electronic copy is available on at <http://cawinfo.net/>
17. The U.S. Congress, in some cases, has specifically indicated that legislation is extraterritorial. That is, Congress has the authority to enforce its laws beyond the territorial boundaries of the United States. cf. *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 284–285 (1949); *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U.S. 138, 147 (1957).