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Analysis of National Origin Discrimination Suits Filed with the Equal Employment Opportunity Commission

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Abstract

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MS, Saint Leo University, 2017

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Dissertation Submitted in Partial Fulfillment

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Abstract

Workplace discrimination has been a focus of scholars for several decades. Previous research has uncovered the practice of implicit bias in the form of pre-employment discrimination against minority groups based on factors not reflective of their work ethic or qualifications. The purpose of this study was to analyze national origin discrimination suits filed with the Equal Employment Opportunity Commission to understand why pre-employment discrimination continues to be a recurring issue in the workforce. The analysis focused on 46 randomly selected national origin discrimination lawsuits—two suits for each year between 1997 and 2020—of public record, which included the type of organization sued and the outcome. With an action research design and advocacy collation as the conceptual framework, this qualitative study examined the lawsuits for the issues that caused the claimant to file their suit. Results found that defendants (employers) avoid hostile work environment complaints and retaliate against claimants who file discrimination suits by terminating their employment. One potential implication for positive social change is the knowledge that a defendant may disguise policy violations that can occur during the hiring process. Therefore, they may change the sequence of events in their favor which cannot be verified. As a result, this knowledge can influence future studies, further addressing discrimination in the hiring process.

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Dedication

I dedicate this dissertation to the hundreds of thousands of people who wake up one day and decide to change their lives for the better, especially those who emigrate from other parts of the world to a foreign country. Having an immigrant parent made me realize the struggle one must face, from living in a different society and culture, being far away from family and comfort, and learning a foreign language and way of life while also struggling to get jobs to survive. Everyone has the ideology of living the American dream and coming to the states to achieve it, but they eventually realize that it's not as simple. It's probably even more challenging than what they imagined. Learning about immigration adversities motivated me to focus on the disparity that they encounter in the United States and use my platform to advocate for equal opportunities for everyone. I hope my study contributes to the decline of national origin discrimination over time as we all have something to contribute to the workforce.

Acknowledgments

To Dr. Marisa Bryant, Dr. Sean Grier, and Dr. Joseph Pascarella, thank you for selecting my prospectus to work on and signing up to become my official doctoral committee. I appreciate your time and guidance for this project because I would not have achieved the finished product without you. You all have pushed me past a limit I did not know was possible to overcome with thought-provoking questions and in-depth modifications, but I did it – we did it! As the saying goes, "Teamwork makes the dream work!"

I will be eternally grateful to my family and friends for the endless words of encouragement expressed and the support demonstrated during this adventure. Let's not forget patience and understanding when I had to miss a gathering or event because I had a deadline to meet. There were some challenging times throughout this journey, but you kept me motivated to move forward and reach this point in my academic career.

Last but not least, I thank God for allowing me to see this moment in my life, a moment that I have envisioned for the past 27 years since I began my academic journey at the age of 4. With my experienced academic team, supportive family and friends, and You, I reached a goal that contributes to positive social change while achieving a personal goal. I contributed to the 2% of academic scholars worldwide who pursue and complete a Ph.D., making me the first member in my family to earn the highest honor and be officially regarded as Dr. Arantxa N. Almodovar. Mom, I MADE IT!

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Chapter 1: Introduction to the Study

Research in public policy and administration has found that the past and the present general problem of minorities in the workforce is discrimination on the premise of their ethnicity and unique names. It is a factor that prevents some minorities from pursuing a chosen career (Bertrand & Mullainathan, 2004; King et al., 2006; Lee & Li, 2011; Watson, Appiah, & Thornton, 2011; Nittle, 2015, as cited in Whitaker, 2019). Other factors that deprive minorities of an opportunity in the workforce include, but are not limited to, their appearance, accent, or language spoken. This in turn creates a multitude of issues within their personal life as they perceive their failures as reality when their national origin has nothing to do with how they perform on the job. Chapter 1 will summarize the background related to the scope of the study topic and provide a problem statement, purpose of the study, and the research question; identify the conceptual framework and provide a rationale for the nature of the study; define the concept and describe the scope and delimitations; and describe the limitation and identify the significance of the study to advance knowledge in the discipline.

Background

Beattie and Johnson (2011) mentioned that ethnic minorities in the United Kingdom struggle to obtain jobs, and if they do, earn low wages compared to their White, non-Hispanic counterparts. Another study found that second-generation Swedes who meet the job qualifications are less likely to be interviewed if they do not have a traditionally Swedish-sounding name. Bertrand & Mullainathan (2004) also found a statistically significant difference in callback rates between White non-Hispanic

individuals and minorities by 50% when names were randomly assigned. For instance, they found that candidates with "White-American" sounding names sent on average ten resumes to receive a callback, whereas a name with African American connotations needed to send about 15 resumes before receiving a callback. Therefore, the gap is attributed to bias attached to names.

Blancero et al. (2018) and King et al. (2006) reflect that Hispanics are disproportionally underrepresented in highly compensated leadership and professional positions. The cause of this problem is the continuous practice of discrimination, such as microaggressions. De Freitas et al. (2018) found that discrimination is generalizable to different countries and cultures, and it does correlate with psychiatric symptoms, such as depression and stress. Lee and Li (2011) review three factors that contribute to the challenges the youths face: Macro-level, which focuses on education and employment; meso-level that influences their ambition and relationships; and micro-level that narrows down to issues with self-identity when surrounded by contradictory cultural practices and values.

Ndobo et al. (2018) found that native-born candidates were more likely to obtain a prestigious job than immigrants who had to settle for low-skill positions. Orupabo (2018) developed the "professional self-socialization" concept, which describes how individuals adapt or redefine to conform to the societal norms within their profession. However, it can create more segregated labor markets. Simon (2017) requested administrators to abolish the sense of color blindness and white privilege, which are issues interfering with providing quality education to students. Weible & Sabatier (2018) overview the

definition and purpose of the advocacy coalition framework. Whitaker (2019) discusses how discrimination causes several effects on ethnic minority candidates, such as delaying their ability to become employed, limited with obtaining a career, and undermining the stability of employment experience. Zshirnt and Ruedin (2016) found that discrimination against ethnic and racial minority do exist as they are not provided the opportunity for the interview almost half of the time, losing it to their majority competitors (Watson et al., 2011).

Problem Statement

Immigration has become a controversial topic, and local, state and federal government officials enact policies, such as the "Convention against Torture," to prevent inhumane treatments deemed unconstitutional (Mendoza, 2016, p. 423). With migration comes stereotypical labels, such as living on welfare, stealing Americans' jobs, and increasing crime rates. The exclusion of stereotyped candidates portraying those factors is referred to as pre-employment or pre-interview discrimination (Ford et al., 2004, as cited in Whitaker, 2019). It has caused minority candidates to cope with long-term psychological distress, such as anxiety and depression, resulting in feelings of failure (Goosby et al., 2017, as cited in de Freitas et al., 2018). Although studies have found psychological effects from experiencing implicit bias of any sort, whether in discrimination or prejudice, on minority candidates (Ndobo et al., 2018), the problem persists.

Purpose of the Study

The purpose of this qualitative study was to analyze national origin discrimination suits filed with the EEOC within the past 20 years to understand why it continues to be a recurring issue in the workforce over time. The need for increased understanding of the phenomenon to be studied is based on the persistent problem of national origin discrimination suits filed each year, which affects the reputation of the defendant and the livelihood of the claimants. It is imperative to examine the commonality of various suits filed by EEOC on behalf of the claimants to provide feedback on how companies, employers, organizations, etc., can prevent themselves from facing a future discrimination suit and decrease the statistics of the issue overtime.

Research Question

The research question was: What challenges within the employment process are claimants experiencing before deciding to file a discrimination suit with EEOC?

Conceptual Framework

Previous research has examined and documented the historical phenomenon of implicit bias in pre-employment discrimination existing during the hiring process and in the workplace (Brown-Iannuzzi et al., 2013; Zschirnt & Ruedin, 2016; Browne & Misra, 2003, as cited in Orupabo, 2018). One motivating factor for employers to violate the equal employment opportunities of candidates and their employees is office politics, which influences and dictates who deserves a raise and other favors or opportunities (Turnbull, 2015, as cited in Whitaker, 2019). However, becoming a witness of the unwritten rules of workplace monopoly (also known as preferential treatment) allows

hundreds of qualified candidates with the opportunity to apply, and a chosen few are selected for an interview. Still, only one "ideal" candidate completes the recruitment/selection process and is awarded the position.

Nature of the Study

National origin discrimination suits filed with the EEOC were to understand why pre-employment discrimination continues to be a recurring issue in the workforce. Examining a combination of the claims updated the extensive, documented history of ethnic-racial segmentation during recruitment. Additionally, the analysis provided insight into the cause and effect of the selected cases: what caused the plaintiff to file against the defendant and identify the outcome or resolution of the suit. I used secondary data by accessing public records instead of other qualitative approaches to compiling data such as interviews and observations. In contrast, interviews and observations would have limited the amount or type of information I sought.

Definition

The United States Census Bureau (n.d.) categorizes its citizens by race (i.e., White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander) rather than defining them. Whites will have origins in Europe, the Middle East, or North Africa. Blacks or African Americans have origins in any Black racial groups of Africa. American Indians or Alaska Natives have origins in North, South, and Central America who maintain tribal affiliation. Asians have origins in the Far East, Southeast Asia, or the Indian subcontinent. Native Hawaiians or Other Pacific Islanders have origins in Guam, Hawaii, Samoa, or other Pacific Islands. This

data is required for federal programs and is imperative when making policy decisions, specifically for civil rights, as the data is used to promote equal employment opportunities. In addition to color, race includes national origin, nationality, and ethnic origins ("Law at Work," 2020).

For this study regarding national origin discrimination, it is essential to break down the broad term of race before taking a deep dive into the phenomenon. Nationality is the relationship between the individual and the state where they were born or were naturalized during the immigration process ("Law at Work," 2020). Ethnic origin, on the other hand, categorizes individuals belonging to an ethnic group. These ethnic groups should be considered separate from others because of their characteristics. Two essential elements exist to identify ethnic groups: long shared history and cultural tradition (i.e., language, religion, etc.). National origin identifies individuals based on their ancestry, birthplace, culture, or linguistic characteristics common to specific ethnic groups ("U.S. Department of Labor," n.d.). Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination based on their national origin. The law applies to private employers with 15 or more employees, whereas it applies to an endless number of employees at state and local governmental levels.

Scope and Delimitations

The scope of this study was to analyze national origin discrimination suits filed with the EEOC to understand why pre-employment discrimination continues to be a recurring issue in the workforce. The research question addressed what issues the claimants were experiencing before deciding to file a discrimination suit with EEOC.

There is concern about the phenomenon since its existence has an extended history. Employees have been protected by the Civil Rights Act of 1964, but their employers and superiors failed them when complaints were made regarding discrimination in the workplace.

This study was delimited to the suits filed for national origin discrimination. Human participants, such as EEOC investigators and hiring managers, were not included in this study as participants since they cannot and will not admit or disclose discrimination to an applicant due to privacy laws. The results of qualitative studies are not generalizable, but analysis and data gathered may become used by researchers and scholars who seek to expand on the topic.

Limitations

One of the most significant strengths of this study is promoting social change and diversity in the workplace (Beattie & Johnson, 2011). The motivating factor to achieve that goal is based on past research that has found evidence of implicit bias or pre-employment discrimination present during the hiring process or employment (Purkiss et al., 2006, as cited in Beattie & Johnson, 2011). Based on the decisions made against them, employers violated the candidates' or employees' equal rights opportunities and limited them from pursuing positions that lead to better-paying jobs (Whitaker, 2019). In turn, these individuals may become a statistic, living in low socioeconomic communities influenced by crime and trying to make ends meet. Another strength of this study is the data collection method and analysis to clarify the stereotype that minorities increase crime rates, which can influence them from being rejected by employers. The reported

statistics may not be representative of the actions made by minorities. Instead, it represents the effects of the decisions made against them. In other words, the stigma and the statistics may change if qualified minorities work in prominent positions.

The limitations of this study included issues with reliability and validity. For instance, there was a lack of representation of the general population, which is expected with qualitative studies since the population of focus is small. The focus was on various companies and organizations where positions may have different requirements. Additionally, a defendant (employer) may have altered their response to disguising any policy violations that can be occurring during the hiring process for fear of retaliation against their position or reputation in the department. Therefore, they may have changed the sequence of events in their favor which cannot be verified. Lastly, there was limited information provided as a public record due to the issue's sensitivity.

Significance

The interest and development of this issue stemmed from personal experiences as a female Hispanic applying to positions with a majority population consisting of individuals who were White and non-Hispanic Submitting applications to the workforce can be unpredictable when competing with other equally qualified candidates. However, studies found several indicators that cause minority candidates to question their value and worth, such as the existence of pre-employment discrimination; the feeling of isolation and uncomfortableness (Simon, 2017); the persistence of rejection, and the exclusion to equal opportunities (Ford et al., 2004, as cited in Whitaker, 2019; Goosby et al., 2017, as cited in de Freitas et al., 2018). Despite these findings, agencies are reluctant to address

their prejudice because they claim to go with the candidates who are better suited for the position. Hiring entities are mandated to abide by the Equality Law Act of 2010, which states that no one shall be discriminated against based on their age, disability, ethnicity, gender, race, and sexual orientation (Beattie & Johnson, 2011).

Summary

The potential contribution of this study to advance knowledge in the discipline of public policy and administration is raising awareness on an issue that does not seem to resolve after time. As such, it is imperative to analyze national origin discrimination suits filed with the Equal Employment Opportunity Commission (EEOC) to understand why pre-employment discrimination continues to be a recurring issue in the workforce. One potential implication for positive social change is the defendant's (employer) alteration of details to protect themselves from the accusation of discrimination brought against them. The study focused on 46 suits brought against an array of companies/organizations that denied any allegation of prejudice that may alter the decision-making of the judge and/or jury. Therefore, it is recommended that researchers follow up with the results of this study and update future statistics to observe whether the issue is increasing, decreasing, or constant. Chapter 2 will introduce and explain racial marginalization theories, recruitment tests, laws and supreme court cases, and the use of technology for recruitment.

Chapter 2: Literature Review

Research in public policy and administration has found that the past and the present general problem of minorities in the workforce is discrimination on the premise of their ethnicity and unique names, which may prevent some individuals from pursuing a chosen career (Bertrand & Mullainathan, 2004; King et al., 2006; Lee & Li, 2011; Watson et al., 2011; Nittle, 2015, as cited in Whitaker, 2019). The purpose of this qualitative study was to analyze national origin discrimination suits filed with the EEOC within the past 20 years to understand why it continues to be a recurring issue in the workforce over time. This chapter will focus on various areas that address and deter national origin discrimination, such as racial marginalization theories, recruitment tests, laws and supreme court cases, and technology for recruitment.

Literature Search Strategy

This chapter will present literature and research on the following topics: (a) racial marginalization theories, (b) recruitment tests, (c) laws and supreme court cases, and (d) use of technology for recruitment. The primary resources I used in conducting the literature review were Walden University Online Library Education Research Complete Database, Google, and Google Scholar. Key search terms included: *bias, Civil Rights Act of 1964, EEOC, employment, ethnicity, hostile work environment, human resources, immigration, implicit bias, labor laws, lawsuits, national origin discrimination, minorities, race, stereotypes, and supreme court cases*. These key search terms were combined within the database and other sites using "and/or" to obtain an in-depth results list. Literature and research were obtained using the following journals: Advances in

Developing Human Resources, Applied HRM Research, Berkley Journal of Employment and Labor Law, Business and Management Database, Cornell HR Review, Criminal Justice Database, Fair Employment Practices Guidelines, Journal of Human Resources, Labor Law Journal, Public Employee Relations Report Journal, and The ABA Journal of Labor & Employment Law. Apart from a few older articles that were referenced for context (i.e., Terpstra's 1980 article discussing applicant race, Bertrand and Mullainathan's analysis about black vs. white names, and King et al.'s 2006 article reviewing occupational stereotypes), the literature sought were dated no earlier than 2011 to keep research current within ten years.

Economic integration and trade development have caused a mass of immigrations in Western economies, which have driven society to handle a large mixed population (Krings & Olivares, 2007; Hémet & Malgouyres, 2018). There is a negative opinion among some citizens of countries against immigrants who are viewed as threatening job security and wages, but empirical research does not support that theory. A study regarding the topic conducted by Ottaviano and Peri (2012, as cited in Hémet & Malgouyres, 2018) found that immigration into the United States between 1990 and 2004 increased wages. Immigration is a pertinent facet to the labor markets in the United States as its contribution influences local prices, migration incentives, school environments, wage offers, and native-born populations to get jobs (Milkman, 2011; McHenry, 2015). At the macro-level, diversity has a positive impact on the workforce because workers come from a variety of backgrounds, cultures, and education, which evokes differing ideas to a similar problem and increases productivity and facilitate innovation (Ottaviano

& Peri, 2012, as cited in Hémet & Malgouyres, 2018). The correlation that immigration has to the labor market is essential for public policy because government policies, such as visas, directly influence the number of immigrants who enter the country (McHenry, 2015). Empirical studies conducted in diverse countries noted that a popular job search method relies on friends and family, half of which on average found through social networks (Corcoran et al., 1980; Granovetter, 1995; Holzer, 1988; Wahba & Zenou, 2005, as cited in Hémet & Malgouyres, 2018). However, information about job opportunities and related topics will not become known among individuals who live in areas where the language is a barrier or do not share conventional social norms.

Social marginalization is a status imposed by a society that creates the perception that certain groups and their members have a less conforming status than others (King, 1958; Adams & Bell, 2016, as cited in Byrd, 2018). Although seeking legal recourse is an option, the laws cannot change the oppressors' minds. Socially marginalized groups often find themselves targets of implicit bias and other stereotypical behaviors during their workplace interactions, characterized as degrading, demeaning, and humiliating (Deitch et al., 2003, as cited in Byrd, 2018; Midbøen & Rogstad, 2012). On the other hand, stereotypes are biased opinions and fixed images formed to categorize individuals based on their race or sex and apply those characteristics to everyone else who falls under the same category (Snyder, 1981, as cited in Byrd, 2018; Park, 2018). Formed judgments are due to the association of a social group, which can lead to skewed perceptions about an individual's characteristics (Tomaskovic-Devey & Stainback, 2007).

There are two ways to express stereotypes: explicitly or implicitly (Gaertner & Dovidio, 2005, as cited in Byrd, 2018). The difference is that explicit stereotype occurs with a conscious mindset. In contrast, the implicit stereotype occurs unconsciously or unintentionally, and negative feelings are expressed indirectly, reflecting a racist personality (Huffcutt, 2010). Socially marginalized groups are affected more by the actions of biased behaviors and stereotypes than their White, non-Hispanic counterparts (Bonilla-Silva & Forman, 2000, as cited in Byrd, 2018). For instance, African Americans may be stereotyped as criminal-minded, lazy, and undependable. Secondly, Hispanics are stereotyped as Mexican descent, violent, and unreliable. Lastly, Whites who are non-Hispanic are stereotyped as elite and noble, or conversely, as rednecks (Embrick & Hendricks, 2013, as cited in Byrd, 2018).

Organizations utilize diversity branding to market themselves as diverse (Gilbert & Ivancevich, 2000, as cited in Byrd, 2018; Hawkins, 2018). However, the branding can minimize the effects of unfair treatment when the focus shifts away from biased behaviors against marginalized groups who are protected classes under Title VII of the 1964 Civil Rights Act (Terpstra & Larsen, 1980; Byrd, 2018). After the assassination of President John F. Kennedy, President Lyndon B. Johnson urged Congress to pass Title VII to eliminate discrimination and oppression based on color, national origin, race, religion, or sex in the employment setting, including the recruitment process (Tomaskovic-Devey & Stainback, 2007; 42 USCA § 2000e-2(a)(1), as cited in Baez III, 2013; Bentley, 2013; Bodie, 2013; Albiston & Green, 2018; Ontiveros, 2018; Park, 2015; Rich, 2018). However, the issue persists more than half a century later as

antidiscrimination laws are still in progress. Labor and employment laws have been rapidly changing, and employers may struggle to keep up. Organizations that hold power in American society will attempt to end discriminatory practices only if there is an underlying benefit known as interest convergence (Freeman, 1977, as cited in Rocco et al., 2014). The U.S. EEOC demonstrated litigation data representing discrimination charges that protected classes of people have filed (EEOC, n.d., as cited in Byrd, 2018). Occupational stereotyping is a preconceived attitude that influences the selection of individuals who meet the perceptions for a profession or job while dismissing those who do not (Watson et al., 2011; Lipton et al., 1991; Moloto et al., 2014, as cited in Byrd, 2018). Huffcutt (2010) reviewed principles for conducting interviews and noted how recruiters tend to form general impressions of the candidates based on those who graduated from a nationally recognized program. During interviews, recruiters tend to shift from fact-finding and objective to impression-conforming questions. Several studies have found that interviewers dismiss using initial and follow-up questions with candidates when they have a favorable impression (Dougherty et al., 1994; Phillips & Dipboye, 1989, as cited in Huffcutt, 2010). The perception created and judgments made with racial and occupational stereotyping have adverse physical and psychological consequences to its targets, including job performance, self-esteem, and overall sense of self-worth.

Racial Marginalization Theories

A theory related to the marginalization of specific ethnic groups is critical race theory (CRT) to distinguish among competing opponents (Kim, 2004, as cited in Rocco

et al., 2014). CRT assists with the understanding of sociocultural issues, specifically how stakeholders dominate and oppress individuals about the groups that impact how they function in society (Alfred & Chlup, 2010; Byrd, 2009; Jean-Marie et al., 2009; Petitt, 2009, as cited in Rocco et al., 2014). Despite the benefits, scholars rarely use the theory. When journals focus on race, they typically refer to diversity training (Hite & McDonald, 2010, as cited in Rocco et al., 2014). Other theories about in-group bias fit into two categories: efficiency-based and taste-based (Becker, 1972, as cited in Giuliano et al., 2011). The efficiency-based theory found that workplace segregation exists due to own-race biases, and taste-based theory found that people prefer to associate with those in similar race groups and are willing to pay the price to do so (Ziegert & Hanges, 2005). It predicts that workplaces tend to be racially segregated, thus making discrimination costly. Applying in-group theories occurs during the hiring process when employers may consider same-race candidates due to racially correlated preferences to reduce the cost of communication and mentoring (Lang, 1986; Avery et al., 2000, as cited in Giuliano et al., 2011; Hipps, 2016). However, the theories pose a question of whether it applies to post-hire outcomes. Biased managers must encounter legal and social pressure to hire candidates reflective of the application pool's racial composition. However, they may experience a lack of communication and no support to other-race employees (Charles, 2000; MacLeod, 2003, as cited in Giuliano et al., 2011; Watson et al., 2011).

Another theory relating to creating boundaries based on stereotypes to exclude or restrict the privilege of one group from using another group’s resources is known as social closure, proposed by sociologist Max Weber (Albiston & Green, 2018). Social

closure is a form of discrimination when various methods, such as nepotism, tap-on-the-shoulder, and word-of-mouth, are utilized to obtain promotions and jobs (Tomaskovic-Devey & Stainback, 2007). Despite its prominence in social science about equality spanning several decades, social closure has not focused significantly on the legal discourse concerning discrimination. Evidence in social science research has found that social closure promotes marginalization with in-group bias or social preferences for individuals like oneself. It is a characteristic also known as homosocial reproduction, which plays a role during the hiring process (Tomaskovic-Devey & Stainback, *supra* note 16, at 55-56; Greenwald & Pettigrew, 2014; DiTomaso, 2015, as cited in Albiston & Green, 2018). Since the law prohibits the exclusion of individuals based on their ethnicity, gender, or race, organizations perform social closure by conducting form job requirements, such as tests to match what they are seeking, yet exclude those who do not (*Id*.). However, sociologist Lauren Rivera found in her study that recruiters for high-wage jobs in investment banks, law firms, and management consulting firms focused on socioeconomically advantaged and White, non-Hispanic men (Terpstra & Larsen, 1980; King et al., 2006; Rivera, *supra note* 45; *Id*. at 211-51). For instance, African American men were rejected for being too casual or stiff (*Id*. at 224-25). However, White, non-Hispanic men who demonstrated similar traits required coaching and passed on to the next recruitment process. Considerable research has found that favorable race groups benefit from the doubt, are rewarded based on promise rather than performance, and are not held accountable for their errors (DiTomaso, *supra note* 17, at 62). Due to the

practice of social closure, several well-known court cases cited the consequences of in-group bias where plaintiffs filed claims of discrimination under Title VII.

Recruitment Tests

Audit and correspondence studies, also known as field experiments, are utilized to examine discrimination in the labor markets (Neumark, 2012). The former focuses on coaching applicants, with identical qualities listed in their resumes, to act alike (Bertrand & Mullainathan, 2004; Midbøen & Rogstad, 2012). The latter creates fictional characters with equal qualifications when applying for jobs but vary in ethnicity, race, and sex. The outcome of demographic group differences in these experiments typically reflects discrimination when African Americans are obtaining fewer job offers than their counterparts, hence why it is viewed widely as providing the most convincing evidence in the topic (Pager, 2007; Riach & Rich, 2002, as cited in Neumark, 2012). Despite the use of the audit studies to test for discrimination in the labor markets, the generated findings lead to criticism because the strategy fails to concentrate on the differences between groups (i.e., African American and White, non-Hispanic job applicants) to their employers. Correspondence studies may be familiar with countering the arguments by focusing on fictitious applicants on paper rather than in person. However, Heckman and Sieglman (1993, as cited in Neumark, 2012) demonstrated that this type of study could invalidate empirical tests, which lead to misleading evidence of discrimination or absence thereof. Future studies should implement audit and correspondence methods, but there must be some variation in applicants' characteristics or resumes to influence successful employment. This strategy is different from what researchers typically do, designing a

study of equally qualified application pools. Therefore, researchers can intentionally create a variance in the applicants or resumes, identifying those factors as an assumption to create a testable implication of detecting discrimination.

Human resources practices have changed within the past century, transforming from bureaucratic and clerical to managerial and strategic (Rosenberg Daneri, 2010). The scope of their work is more diverse than just advertising a position, selection, and staffing. Depending on the company, human resources oversee recruitment, staffing, training, labor relations, benefits, compensation, career and talent management, employee recognition, performance evaluation, etc. (Bodie, 2013; Hipps, 2016; Moore, Susskind, & Livingston, 2016). These positions require competent skills that do not overlap to manage unionized employees effectively. It has been suggested that practitioners ignore academic articles because they focus more on results than theory, and the research is difficult to understand (Grossman, 2009, as cited in Rosenberg Daneri, 2010). Research has considered hiring guidelines for recruiters ineffective and continue counterproductive practices in their organizations.

Employers use psychology to conduct personality tests that provide specific data to identify who can excel beyond their knowledge and skills to become successful in their positions (Mantell, 2011, as cited in Baez III, 2013). The first personality test developed for the workforce was the Hogan Personality Inventory (HPI), which focused more on average rather than abnormal personality. A meta-analysis review of 43 studies conducted in 2003 found that H.P.I. was an effective predictor of job performance for several careers, such as bus drivers, customer service representatives, department

managers, hospital administrators, and police officers (Hogan & Holland, 2003, as cited in Baez III, 2013). Despite the findings, personality tests for the use of employee selection have been controversial because many believe it includes alterations and, therefore, are not valid (Scroggins, Thomas, & Morris, 2008, as cited in Baez III, 2013). One study noted no generalizable evidence that personality tests can help recommend a decision during the recruitment process.

The results of the personality tests can assist in some situations for a specific purpose and for a particular personality measure (Guion & Gottier, 1965, as cited in Baez III, 2013). A review of academic literature in 2010 found correlations between personality and job performance, such as approximately 5% of personality tests account for a candidate's job success. In contrast, the remaining 95% of the performance remains unaccounted by personality–statistics which have remained the same for half a century (Morgeson et al., 2007, as cited in Baez III, 2013). One explanation for the low correlation could be due to incorrect interpretation. A 2011 study found that high personality scores correlate with ultimate job success when a curvilinear relationship between personality traits and job performance is linear, as assumed in earlier studies (Le et al., 2011, as cited, as in Baez III, 2013). There are legal ramifications for using personality and emotional intelligence tests, such as Title VII discrimination and discrimination under the Americans with Disabilities Act (ADA). Intentional discrimination occurs, but companies who use valid and reliable tools in good faith risk inadvertent discrimination. Title VII assists employers with professionally developed

ability tests if it does not intend to discriminate based on color, national origin, race, or sex (42 USCA §2000e-2(h), as cited in Baez III, 2013).

Laws and Supreme Court Cases

The first Supreme Court case that examined intentional discrimination was that of *Griggs v. Duke Power Co*. in 1971, where the court accepted the findings from the lower court that the business did not intentionally discriminate against the plaintiffs' based on race (42 USCA §2000e-2(h), as cited in Baez III, 2013). However, the court focused on the employer's use of two ability tests, which are still utilized, and held that the non-discriminatory tests violated Title VII because they had a disparate impact on the African American plaintiffs (Albiston & Green, 2018; Ontiveros, 2018; Park, 2018). Also, the employer did not prove that the tests were related to the plaintiffs' job performance (*Griggs v. Duke Power Co.*, (1971), as cited in Baez III, 2013). Another prevalent Supreme Court case regarding public employers was *Ricci v. DeStefano* (Kramer, 2010). The court addressed and decided on test results and the disparate impact on minorities despite employers' efforts to make it non-discriminatory (as cited in Bodie, 2013, as cited in Rich, 2018). Questions raised during this case were whether the employer could discard the test and retry if doing so violated Title VII and if it violated the "Act" if the employer did not (Albiston & Green, 2018).

The defendant, the city of New Haven in Connecticut, found themselves being held liable for violating the act because they believed it would not occur despite not certifying the tests. The city conducted promotional tests for lieutenant and captains while complying with civil service guidelines of it being non-discriminatory, setting forth

three promotions, and meeting the requirements that sixty percent of the results for the exam should be written, and the remaining forty percent is an oral exam (*Id*. at 2665, as cited in Kramer, 2010). The city hired an experienced third-party consulting firm, Industrial/Organizational Solutions (IOS), to ensure the guidelines were met to create and proctor the tests (*Id*.). Their duties entailed conducting questionnaires, interviewing employees, and performing job analyses to staff nine three-member assessor panels; each comprised high-ranking African American, White, non-Hispanic, and Hispanic fire officers from similar and out-of-state departments (*Id*. at 2666). Minority firefighters were over-sampled in this test to ensure that White, non-Hispanic applicants were not unintentionally favored in the results (*Id*.).

The written exams included city-approved training manuals, and applicants were provided with questions and time to review (*Id*. at 2665-66). Job analyses focused on oral exams, which included hypothetical firefighter scenarios. Unfortunately, the results demonstrated that the testing process had a disparate impact on minorities despite the city's efforts. For instance, forty-three White, non-Hispanics, nineteen African Americans, and fifteen Hispanics completed the exam, but twenty-five White, non-Hispanics, sixteen African Americans, and thirteen Hispanics passed. A similar outcome was observed with the captain's exam. Based on the civil service requirement to offer a promotion to the top three candidates, eight lieutenant positions would be employed by White, non-Hispanics. In contrast, two Hispanics and no African American would operate the seven captain vacancies (129 S. Ct. at 2666). The Civil Service Board (CSB)

held five meetings over the issue and found that the results were not certified (*Id*. at 2667-2670; *Id*. at 2664).

Various stakeholders during these hearings would include city officials and firefighters, representatives of the local union, and the International Association of Black Firefighters, who presented evidence and provided additional information (*Id*.). The suit, brought by seventeen White, non-Hispanic firefighters and one Hispanic, was ruled by the district court on summary judgment for the city, deciding that the purpose of preventing promotions based on tests with a racially disparate impact does not constitute as discriminatory under Title VII because all applicants took the same test and results were the same for them (554 F. Supp.2d 142, 160; 530 F.3d 87; 530 F.3d 88; 129 S. Ct. 2658; *Id*. at 161). However, the Supreme Court reversed the district court's ruling in a 5-4 decision that the city did indeed violate Title VII by failing to certify the test results (129 S. Ct at 2664-2681; *Id*. at 2681-2683; *Id*. at 2681). Issues disparate impact continue in cases since *Ricci*, such as *United States v. City of New York*, where written firefighter examinations violated the act (637 F. Supp.2d 77).

In 1973, the Supreme Court decided *Espinoza v. Farah* related to legal action filed under Title VII (Ontiveros, 2018). Since its decision, discrimination based on citizenship or immigration status remains unprotected under Title VII. However, immigrant workers may seek protection from discrimination under national origin, a protected category under Title VII (as cited in Saucedo, 2017). Cecilia Espinoza was a legal permanent resident married to a US citizen and was becoming one herself. She applied for a position at Farah Manufacturing, one of the largest employers in El Paso,

Texas. However, due to their strict citizen-only policy, Espinoza was denied employment because she was not a US citizen (*Espinoza v. Farah Mfg. Co.*, 1971; 462 F.2d 1331 (5th Cir. 1972); 414 U.S. 86 (1973), as cited in Ontiveros, 2018). During that time, the workforce, consisting of cutters, sewists, shippers, and supervisors, was 98% Latino, mainly of Mexican descent, and 80% female (343 F. Supp. 1205, 1206). Workers experienced exploitative conditions, such as receiving pay less than 30% compared to other plants and being forced out by giving demanding jobs and oppressive hours that they could not handle to prevent them from receiving retirement benefits (Ontiveros, *supra note* 7, at 483-85; Waldron, 1973; *Id*. at 484). Workers were also exposed to health and safety hazards in the workplace, but the company did not provide medical treatment that was adequate or competent, and the predominantly female workforce was subject to sexual harassment (*Id*. at 484-85; *Id*. at 486).

Espinoza filed a claim under Title VII in federal district court, which ruled for the plaintiff, noting that the defendant intentionally refused to hire the plaintiff based on her legal status, which is an unlawful employment practice (343 F. Supp. at 1208, as cited in Ontiveros, 2018). The Fifth Circuit reversed the decision, stating that Espinoza was not denied employment because of her Spanish name, Mexican heritage, or birthplace, as she shares that in common with most Farah's employees. However, she was refused employment because she did not acquire US citizenship during her application submission. The court acknowledged the disparate impact claim of discrimination based on national origin with the guidelines set forth by the EEOC and the disparate impact theory established in the case of *Griggs v. Duke Power* the previous year (*Id*. at 1334).

Although the EEOC recognizes Espinoza's disparate claim as illegal, the Court of Appeals only recognizes disparate impact when used for an ill motive, so the plaintiff appealed to the US Supreme Court. The Supreme Court considered this case a disparate impact case of intentional discrimination as the defendant's decision had an adverse impact on a protected group under *Griggs v. Duke Power* (401 US 424 (1971)). The majority framed Farah's citizenship policy as being discriminatory against non-citizens rather than immigrants not born in the United States. The majority focused on discriminating people from specific origins, such as Mexico, in this case, rather than those born in other countries. They found that Farah could not be discriminating based on national origin since the workforce was overwhelming of Mexican descent (*Id*. at 93). Although workers and civil rights activists understood that discrimination based on citizenship or immigration status was a form of discrimination, the Supreme Court was unwilling to translate it into the doctrine of Title VII.

As a result, there have been cases from half a century where immigrants have not proved their discrimination claims based on workplace treatment. Within the same year, the Supreme Court also decided *McDonnell Douglas v. Green*, which established the requirements for a prima facie case under Title VII and has been cited in over 40,000 cases (Bodie, 2013, as cited in Sperino, 2013). The court developed a three-part burden-shifting framework, now known as the *McDonnell Douglas* test, used when a plaintiff files a disparate treatment claim with circumstantial evidence (Park, 2018; Rich, 2018). The plaintiff must show that he belongs to a racial minority to establish a prima facie case. For instance, an employer sought applicants for a qualified position but rejected

them despite qualifications. As a result, the position remained available while the employer sought other applicants despite his rejection (411 US at 802).

Use of Technology for Recruitment

Employers are taking the initiative of seeking applicants' social media pages as adoption of artificial intelligence (AI) to learn more about them regarding their personalities and suitability, which aids beyond what is written on resumes (Bentley, 2013; Moore, Susskind, & Livingston, 2016; Upadhyay & Khandelwal, 2018). They are refrained from asking illegal interview questions, such as whether the applicant is married, pregnant, or a specific church. However, social media activities assist employers in uncovering those answers regardless, which may increase organizations' probability of litigation in disputes of employment discrimination, negligent hiring, and unfair labor practices. Social media searches may be electronically stored so that employers would be challenged about their hiring practices during a deposition. They can answer questions about why no Hispanic applicants were hired despite several profiles being viewed, which possibly demonstrates discriminatory intent. Employers should not know an applicant's protected status, especially if the information is not requested on the application or resume. Applicants will not voluntarily share any mental health issues and treatments sought during the application process. However, it is considered a disability under the ADA. A discrimination lawsuit will follow if employers use social media as a gateway to gain protected information. Metadata can further reveal how long employers view an applicant's social media page, which becomes a challenge during deposition. Employers may be questioned why profiles of White, non-Hispanic applicants were

viewed approximately five to seven minutes longer than those of African Americans, which was only a few seconds, and a White, non-Hispanic applicant was hired eventually.

In 2012, the EEOC issued guidance that advised employers about policies that automatically disqualify applicants with criminal convictions (*Id*. at 18, as cited in Bentley, 2013). African Americans and Hispanics have a higher arrest rate and conviction rate than their counterparts, so refusal to hire based on the criminal background would have a disparate impact based on race (*Id*. at 9; *Green v. Mo. Pac. RR Co.*, 1975). To avoid a claim, the EEOC recommends employers assess the criminal offense relating to the position, so an individual with a conviction of driving while intoxicated (DWI) should not be disqualified for a position that does not require driving. In contrast, an individual with a theft conviction would be disqualified from working as a cashier. Employers have the exception of denying applicants a job based on certain types of speech that are not protected under the First Amendment, such as defamation, obscenity, speech as a public employee, threats, and violating the law. To avoid legal liability, employers should perform social media screenings on all applicants fairly and in a compliant manner with the law.

For several years, employers have used algorithms to select employees by using a computerized resume-tracking system to scan through resumes finding keywords pertinent for the position (Adams, 2014; Pinola, *supra note* 12; Skillings, *supra note* 12; Weber, *supra note* 12, as cited in Savage & Bales, 2017; Posthumus, Santora, & Bozer, 2017). The system sorts keywords into specific categories, such as education, experience,

skills, and work (*Id*.). Then, the resumes are scored on a relevancy scale, which represents the applicant's value to the employer. Some companies use tactical methods to assess qualities, such as cognitive abilities, motivation, problem-solving skills, and work ethic, which cannot be found on a resume by having applicants take quizzes or playing games (Casti, *supra note* 12; Rampell, *supra note* 12). Although algorithms are objective to evaluating applicants, critics argue that this method may lead to disparate treatment and discrimination, violating Title VII and Age Discrimination in Employment Act (ADEA) (Barocas & Selbst, 2016; King & Mrkonich, 2016). One reason is the use of video games to screen applicants; it may become complicated for older applicants if they do not perform as well as millennials, and it does not avoid unconscious bias during the recruitment process (*Int' l Bhd. of Teamsters v. United States*, 1977; *Id*. at 336, n.15; 42 USC § 2000e-2; 29 USC §§ 623-634). Search engines have vastly increased the percentage of candidates applying for a single job posting (Smith, *supra note* 37).

In 2011, Starbucks received over 7 million job applications for 65,000 corporate and retail positions. Fortunately for companies experiencing the exponential task, they use algorithm-based tools to narrow down applicants for the manager's review. Unfortunately, resume-tracking systems decrease an applicant's opportunity of obtaining a job interview by 75% if they do not include specific keywords that employers are searching for despite meeting or exceeding qualifications, so those who are highly qualified and omit keywords on their resumes run the risk of being eliminated (Levinson, 2012). Legal scholars are concerned that algorithms as a method for the hiring process may cause discrimination, an ideology that stemmed from a 2014 White House report

that advised the use of algorithms would cause companies to discriminate against certain groups, such as minorities and low-income individuals (Volz, *supra note* 21). However, those who support algorithms are aware that the formulas risk implicit bias, attempting to eliminate potentially discriminatory factors. Evolv, a start-up company located in San Francisco, decided to omit the distance between the applicants' residence and the employer's location despite data showing that long work commutes increase employee turnover rates. If algorithms are used appropriately, it may be more beneficial to avoid implicit bias and be cost-effective than human assessment during an interview.

Occupational studies have also been focusing on the hypothesis that what is beautiful is good decades after an experiment conducted by Karen Dion, Ellen Berscheid, and Elaine Walster (Toledano, 2013). The focus of their study was to determine whether people held stereotypical notions based on personality traits from a variety of appearances (Dion et al., 1972, as cited in Toledano, 2013). Participants were provided with photographs of subjects, and results found that those who are attractive would be happier based on having a more socially desirable personality and a prestigious occupation. Due to the competitive nature of the workforce, researchers have asked whether more attractive candidates are more likely to be hired, and often, that is the case regardless of capability or intellectual competence (Desrumaux et al., 2003, as cited in Toledano, 2013).

Attraction classifies specific physical features that are appealing, such as the physique, whether it is genetic or manipulated, and the type of clothing style that indicates the status (Hall et al., 1987, as cited in Toledano, 2013). Attractive candidates

also seem to be more likable and considered capable of becoming successful in life, regardless of gender, education, or career (Hosada, *supra note* 4, at 451, 453, as cited in Toledano, 2013). They also reap literal benefits for their appearance when it comes to performance evaluation managerial training and promotions to administrative positions (as cited in Terpstra & Larsen, 1980; Drogosz & Levy, 1996; Rinolo et al., 2006; Cash & Kilcullen, 1985, as cited in Toledano, 2013). Earning gaps of over $2,000 annually also exist between attractive and unattractive employees (Frieze et al., 1991, as cited in Toledano, 2013). According to psychologist Alan Feingold, attractive people are not more capable than their less attractive peers (Feingold, 1992, as cited in Toledano, 2013). There is a wide gap between expectations and reality in the research based on attractiveness over the past decades.

The general topic of implicit bias during the recruitment process may allow employers or colleagues to continue the practice for current employees, thus making them workplace bullies (Bailey, 2014). Workplace bullying is defined as the aggressor's repetitive behavior of psychological violence to inflict mental harm and prevent successful job performance to the receiver. Examples of these behaviors include but are not limited to humiliation, intimidation, sabotage, and threat. According to surveys regarding workplace bullying, 72 percent of bullies are someone of a higher authority, such as a manager or supervisor, and the remainder of which are those who could be at the same level as the subordinate victim (Namie, 2007, as cited in Bailey, 2014). Targets of workplace bullying are honest and punctual, rule-abiding overachievers yet have low self-esteem and social competency. Some targets are the complete opposite as far as

accomplishments, capability, and professionalism. Still, envy could play a role in experiencing psychological abuse (Caponechia & Wyat, *supra note* 9, at 52-53, as cited in Bailey, 2014).

Social psychologists have termed an erroneously biased opinion as a fundamental attribution error, which occurs when people place the blame on the victim who was just terminated rather than focusing on the problems within the organization (Dufy & Spery, *supra note* 10, at 14-15, as cited in Bailey, 2014). Temporary employees are seldom subjects of bullying because they pose no long-term competition or threat to other workers and are not worth the time and trouble (Namie & Namie, *supra note* 8, at 27, as cited in Bailey, 2014). The frequency of workplace bullying was measured by Lutgen-Sandvik, Tracy, and Alberts and concluded that 35-50 percent of workers experience at least one detrimental act of bullying weekly in a 6-12-month period (2007, as cited in Bailey, 2014). Approximately 30 percent experience more than one detrimental act of bullying frequently.

The Workplace Bullying Institute/Zogby International US Workplace Bullying survey, the most recognized tool, found that 35 percent of workers experienced workplace abuse sometime during their career ("Workplace Bullying Institute," 2010, as cited in Bailey, 2014). Not only does workplace bullying harm the victim's mental state, but its cause reduces morale and productivity and increases employee turnover rates and costs of insurance due to sick leave and workers compensation claims (Duffy & Sperry, *supra note* 10, at 112; Id. at 112, as cited in Bailey, 2014). The departure of experienced and skilled workers can become detrimental to the organization's finances (Caponechia

& Wyat, *supra note* 9 at 39, as cited in Bailey, 2014). Organizations may encounter further financial strain during employee investigations when hiring legal advisors, gathering evidence, and preparing reports (Id. at 40, as cited in Bailey, 2014).

Workplace bullying occurs in both the public and private sectors, but the former has limited analysis (LaVan, Katz, & Jedel, 2010; Poole, Mansfield, & Gould-Williams, 2006, as cited in Bailey, 2014). However, the latter allows bullies with more opportunities to complete their vengeance without repercussions, limiting the victim's possibility of seeking help with confronting the bullies and eliminating the damage from continuing any further. Public sectors also have a long-standing reputation of nepotism, a practice grounded on the existence of political party patronage hiring ideals (Kaiser, 2013, as cited in Bailey, 2014). In short, candidates are chosen based on their loyalty to their superiors rather than their ability and competence (Tomaskovic-Devey & Stainback, 2007).

Employment laws prohibit employers from discriminating against their employees based on age, gender, national origin, race, and sexual orientation. However, it does not focus on banning workplace bully's hostile conduct. As a result, several organizations, such as the International Association on Workplace Bullying and Harassment and Workplace Bullying Institute, to name a few, were formed to analyze and address issues caused by workplace bullies. The problem may not disappear entirely, but employers suffer the consequences for tolerating such conduct from continuing, especially when one bully causes a domino effect among other workers where the work environment will become uncivilized, unavoidable, and unbearable. Employers must address the issue as

soon as it is recognized to maximize productivity from their employees to have a successful business.

Byrd (2018) suggested that human resource development (HRD) professionals are situated in various roles within their agencies to address implicit bias against marginalized groups by participating in diversity and encouraging social change. Rocco, Bernier, & Bowman (2014) noted that scholars focusing on the CRT assert that the lack of action against racism, which can implement policies, creates an unfair treatment of marginalized groups that occurs not only in the workplace but also in society as well. That is why researchers argued that CRT could assist HRD as well as scholars to comprehend the reoccurring issues in the workplace, understand the process of recruitment and selection, and guarantee equal opportunity and fairness to candidates using helpful tools, such as coaching, job rotation, and mentoring (Bernier & Rocco, 2003, as cited in Rocco, Bernier, & Bowman, 2014; Moore, Susskind, & Livingston, 2016). Several studies have demonstrated how useful the tools can be to uncover the organizational policies that allow discriminatory and oppressive behavior towards minorities. One, in particular, examined African American women's perspectives who have leadership roles in higher education (Lloyd-Jones, 2009, as cited in Rocco, Bernier, & Bowman, 2014). The findings indicated that African American women still had the probability of encountering discrimination despite their advanced levels of education.

The interview process can be challenging for both the candidates and the recruiters, mainly when candidates spend their life forming attributes, such as abilities, knowledge, and skills. However, recruiters only have a limited time to assess and

evaluate them (Huffcutt, 2010). Despite the challenges, interviewers are reluctant to revise the accuracy of their judgments, disregarding the limitations found in research because they feel it does not apply to them (Birnbaum, 2004; Koehler, 1996, as cited in Huffcutt, 2010).

Two risks occur during the recruitment process and are referred to as "false positives" and "false negatives" (Landy & Conte, 2007, as cited in Huffcutt, 2010). The former makes the recruiter solely focus on the positive attribute, such as viewing how good a candidate looks on paper but not their performance on the job. The latter makes the recruiter concentrate more on the negative attribute, such as not looking as good on paper (i.e., lower grades) despite performing great on the job. Recruiters should focus on asking questions that focus on the capability or potential of the candidates to perform the job for which they are being interviewed. However, recruiters ask questions that defeat the purpose. Typical questions asked, such as "What are your strengths and weaknesses?" can be viewed as a double-edged sword because candidates who answer honestly may have their strengths and/or weaknesses viewed as a flaw compared to those who disguise their responses.

Summary

Human resource development has links to human relations, but it does not seem like there is a foundation to recognize implicit stereotypes and biased attitudes for purposes of social change (Byrd, 2018). Huffcutt (2010) described how several journals, such as Applied HRM Research, International Journal of Selection and Assessment, Journal of Applied Psychology, and Personal Psychology, routinely publish studies that

focus on interviews and their aspects, such as methodology and outcome. Other areas, such as cognitive psychology and social psychology, include principles and findings to recruitment interviews. However, most of the studies do not move on into practice. Additionally, limited research indicates that recruiters typically have high confidence in selecting candidates with past interviewing experience, but outcome-based research indicates that it is unfounded. Chapter 3 will describe the research design and rationale, the role of the researcher, methodology regarding participant selection logic, instrumentation, procedure for data collection, and data analysis plan. The chapter will further discuss issues of trustworthiness and ethical procedures.

Chapter 3: Research Method

The purpose of this qualitative study was to analyze national origin discrimination suits filed with the EEOC to understand why it continues to be a recurring issue in the workforce. The need for increased understanding of the phenomenon to be studied is based on the persistent problem of national origin discrimination suits filed each year, which affects the reputation of the defendant and the livelihood of the claimants. It is imperative to examine the commonality of various suits filed by EEOC on behalf of the claimants to provide feedback on how companies, employers, organizations, etc., can prevent themselves from facing a future discrimination suit and decrease the statistics of the issue overtime.

The EEOC received a request to randomly select at least two case studies alleging national origin discrimination for each year going back as far as on record. The data retrieved was two court complaints per fiscal year from 1997 to the most recent of 2020. The documents are public record and are not subject to any use agreement. Since the data release agreement was not needed because it is a public record, the website or process accessible to the public to access the dataset of documents filed in federal court is PACER (Public Access to Court Electronic Records; https://pacer.uscourts.gov/). Obtaining access requires establishing an account and paying fees.

Research Design and Rationale

The research question for this study was: What issues are claimants experiencing before deciding to file a discrimination suit with EEOC?

The concept of the study was to analyze national origin discrimination suits filed with the EEOC to understand why discrimination continues to be a recurring issue in the workforce. The analysis was based on previous research like the phenomenon, which has found a link between implicit bias against minority candidates, thus limiting them from obtaining equal opportunities as their counterparts.

The approach of this study was qualitative research with an action research design consistent with the ACF to examine recurring issues of possible stereotyping between employers and minority groups. The focus was on secondary data published by EEOC regarding national origin discrimination suits filed on behalf of plaintiffs as units of analysis to examine the phenomenon, determine the prominence of cognitive biases, and promote policy formulation (Weible & Sabatier, 2018). With this qualitative analysis, I sought to reveal recruitment issues among key variables based on agency, company, or organization and used a visual table framework that demonstrated the general relationship between recruitment and minority applicants. The goal of the findings in this study was to promote policy changes that assist with the enhancement of equal opportunities during job recruitment in the future.

Role of the Researcher

The interest and development of this phenomenon stemmed from personal experiences as a young Hispanic woman applying to positions with a majority population pool consisting of older White people who were non-Hispanic. Submitting applications to the workforce can be unpredictable when competing with other candidates who are equally, if not more qualified, than oneself. However, studies have found the existence

and practice of pre-employment discrimination, the feeling of isolation and uncomfortableness (Simon, 2017), the persistence of rejection, and the exclusion to equal opportunities that have led qualified minority candidates to question their value and worth (Ford et al., 2004, as cited in Whitaker, 2016; Goosby et al., 2017, as cited in de Freitas et al., 2018). Despite the evident findings, organizations may be reluctant to address their prejudice since they claim to go with the candidates who are better suited for the position; they claim to abide by the Equality Law Act of 2010, which states that no one shall be discriminated against based on their age, disability, ethnicity, gender, race, and sexual orientation (Beattie & Johnson, 2011).

The role of the researcher was to act as an analyst. I gathered information from several suits of national origin discrimination filed by the EEOC on behalf of the plaintiffs to examine the causes of why the phenomenon persist. There were no personal or professional relationships between the commission and me. Researcher biases or power relationships were managed by focusing on suits settled in EEOC or the defendant's favor. Other ethical issues of implicit bias against minority groups during recruitment may be a conflict of interest for the researcher as part of that group and having experienced it. A plan to address this issue was to clarify that such a study aims to reveal recurring issues to the cause and deter the problem over time.

Methodology

Participant Selection Logic

Although agencies and their current personnel may not admit to discrimination towards an individual, EEOC investigators work on cases brought to them by said

individuals who felt that their civil rights had been violated and subjected explicitly to discrimination. Complainants are required to provide corroborating evidence that will allow them to carry the case forward with their EEOC investigator(s) for mediation or agree on a settlement for their claim. Therefore, the best source to find and analyze discrimination suits is either published by EEOC or a law library (EEOC's website has a newsroom that provides a list of cases that have been settled). For this study, I attained approval from Walden University's Institutional Review Board (IRB) to request EEOC to select 46 national origin discrimination suits to analyze randomly. The IRB approval number is 05-25-21-0893074.

Instrumentation

The data collection instrument was e-mail to contact EEOC requesting a randomized selection of archived case studies of national origin discrimination ranging between 1997 and 2020. The structural or key points to focus on were the charging party's (employee's) claim of discrimination, the series of events that resulted in a suit being filed, and the defendant's (employer) response to it.

Issues of Trustworthiness

The research conducted on the phenomenon covered the credibility factor, primarily when more than one study supports the prevalent claims in my analysis. Data collected, dependent on previous studies, was transferred to my research for scholars to interpret, review, and expand.

Ethical Procedures

Due to completing the request to obtain secondary data archived by the EEOC, this study practiced the ethical procedure of anonymity and confidentiality compared to a study involving human subjects with more requirements. Approval was obtained from Walden University's IRB to request EEOC to select 46 national origin discrimination suits to analyze randomly. Walden University's approval number for this study is 05-25-21-0893074.

Despite obtaining secondary data archived by the EEOC, any identifying information that became public record was exempt from the data to maintain the anonymity and confidentiality of the parties involved. Upon receiving the randomized selection of case studies, the involved individuals who pursued filing the suit were identified as claimants while their employers were identified as defendants.

Summary

The potential contributions of the study to advance knowledge in the discipline of public policy and administration are continuing to raise awareness on a topic that does not seem to resolve after time. It is imperative to discover how recruiters make their decisions during the hiring process to eliminate implicit bias, if any, with future job opportunities. It would be significant to address whether the lack of employment causes minorities to increase crime rates, thus complementing the stereotype made against them. One potential implication for positive social change was the focus of the population size. Chapter 4 will review the analysis of each case study and describe the data collection, explain the data analysis, and review the results.

Chapter 4: Results

This study aimed to analyze secondary data of national origin discrimination suits filed by the EEOC. Reviewing cases that detailed the experiences leading to the filing of discrimination and retaliation may increase awareness of the problem with employers' policies and mishandling of such claims. I used a qualitative action research approach to analyze case suits and address the following research question: What challenges within the employment process are claimants experiencing before deciding to file a discrimination suit with EEOC? This chapter contains an analysis of each case study and describe the data collection, explain the data analysis, and review the results.

Case Study 1

Two charging parties were discharged from their positions as funeral telemarketers, positions they held and performed in the Spanish language because of their national origin. They requested a permanent injunction against the defendant from engaging in unlawful employment discrimination. The defendant was ordered to carry out policies, practices, and programs to provide equal employment opportunities for Spanish-speaking employees. Charging parties also requested backpay and compensation.

Case Study 2

Five charging parties and seven other similarly situation Hispanic employees were subjected to a speak-English-only policy and segregated into work groups based on their national origin. Defendant retaliated by disciplining and discharging Hispanic employees for opposing the policy and/or filing charges of discrimination. Employees were hired for the ability to speak Spanish. Still, the defendants imposed a policy of English being the

"official language" of the workplace, prohibiting employees from speaking any other language while "on the premises" except for talking to customers who could not speak English.

Case Study 3

Hispanic and Asian Americans were adversely affected by the defendant's test use. The effect of the practice deprived Hispanic and Asian American applicants, and employees of equal employment opportunity and adversely affected their status as applicants and employees because of their national origin and race.

Case Study 4

A Mexican American was subjected to an ethnically hostile work environment. The charging party was employed three months before being transferred to another area where hostility began. Complaints were made to the defendants three times with no action. Months later, a physical fight between the Mexican American and a non-Hispanic employee ensued. They were terminated 15 days later because of violating the company's work rule of fighting on the premises. Two months later, the non-Hispanic co-worker was reinstated to employment.

Case Study 5

One charging party and other similarly situated individuals were subjected to a hostile work environment based on their national origin as Hispanics. The claimant was also discharged in retaliation for complaining about the harassment.

Case Study 6

Discrimination against African American employees, based on their race, and discriminating against another individual, a Hispanic, based on race, national origin, and sex, and defendant retaliated against employees who opposed unlawful discrimination. The charging parties brought the racially hostile work environment to the defendant, who failed to take appropriate action to stop it.

Case Study 7

One charging party and other similarly situated individuals were forced to endure the hostile environment, such as verbal abuse and blatant display of a hanging noose by the defendant's then technical manager, because of their race (Black) while employed at the defendant's business. The defendant was made aware of the severe harassment but failed to exercise reasonable care in preventing or correcting the racially harassing behavior.

Case Study 8

The charging party endured a hostile work environment, was harassed due to religion (Jewish) and retaliated against at the defendant's place of business. The claimant was terminated after he complained to human resources and management about the harassment.

Case Study 9

Defendant(s) failed to hire two charging parties because of their national origin, Hispanic.

Case Study 10

One charging party and a class of other females was subjected to harassment because of their sex, female, and national origin, Mexican. They were discharged because they resisted the sexual advances of their supervisor.

Case Study 11

The female charging party was sexually harassed and retaliated against for opposing the practices. The male charging party was harassed based on race and national origin. The business provides contract school bus service.

Case Study 12

One charging party was reassigned to a position resulting in fewer hours scheduled and less pay due to her notable accent from her national origin of Puerto Rico despite being fluent in English. The claimant was terminated in retaliation for her filing the charge of discrimination.

Case Study 13

One charging party and other similarly situated African American and Hispanic employees were discriminated against because of their race and national origin. They were getting a lower wage rate than equally situated warehouse employees, not within the protected class (White, non-Hispanics). Defendant failed or refused to hire qualified African American prospective employees for positions. Plaintiff attempted to eliminate unlawful employment practices alleged before the lawsuit for the defendant to comply with Title VII through informal methods of conference, conciliation, and persuasion.

Case Study 14

One charging party was harassed because of national origin, Middle Eastern and Iranian. Defendant retaliated against the claimant by terminating his employment of three years for complaining to management about national origin harassment. The claimant was accused of being connected to a terrorist organization when using an item to perform job duties. The defendant failed to take appropriate action to prevent unlawful conduct.

Case Study 15

The defendant discriminated against Non-Navajo Native Americans based on their national origin by failing to hire qualified non-Navajo Native Americans. Supermarket chain owned by Navajo Nation employed approximately 10,500 employees. The Commission attempted to eliminate the unlawful employment practices alleged and effect voluntary compliance with Title VII through informal conciliation, conference, and persuasion. The charging parties are not members of the Navajo Nation but the Hopi Tribe.

Case Study 16

One charging party was exposed to an abusive and hostile work environment because of religion (Islam) and national origin (Indian, and/or not European American) and being discharged as a result.

Case Study 17

The defendant discriminated against the charging party based on her national origin (Cambodian) by terminating temporary assignment and withdrawing its offer of permanent employment based on the inability to read, write, and understand English.

However, the defendant employs those of other national origins who cannot read, write, and understand English.

Case Study 18

One charging party was discriminated against based on national origin (Russian) when the defendant employer unlawfully denied a raise after promotion because of an accent. After three years of employment, the claimant was promoted and granted a $1 per hour raise. Five months later, the claimant was promoted to a higher position requiring additional responsibilities but never received a pay increase as promised. Other non-Russian employees were promoted to the same position before receiving a pay increase. After a year, the claimant enquired about raise but was informed that the district manager did not approve a pay increase because of accent.

Case Study 19

The defendant has engaged in unlawful employment practices, discriminating against claimants by denying them employment applicants and failing to hire them because of their race and/or national origin.

Case Study 20

One charging party, class of 81 additional charging parties, and a class of similarly situated individuals were unlawfully discriminated against and terminated the employment of charging parties because of their national origin (Filipino and Thai). The defendants further unlawfully discriminated against the charging parties by segregating them by their national origin and providing fewer overtime hours than Chinese employees.

Case Study 21

Because of his national origin, one charging party was exposed to an abusive, harassing, hostile, intimidating, and offensive work environment. The defendant also retaliated against the claimant for complaining of discrimination.

Case Study 22

One charging party was discharged because of race, African American, and against another claimant because of race, African American, and national origin, non-Hispanic. The defendant also discriminated against a class of similarly situated employees by discharging them as housekeepers because of their race, African American, and their national origin, non-Hispanic despite performing their jobs at a level that met the defendant's legitimate expectations. The defendant hired several similarly or less qualified non-African American and Hispanic housekeepers.

Case Study 23

One charging party was discriminated against because of age and national origin, Asian Filipino. The claimant faced demeaning humiliation and treatment that other non-Asians had to endure and complained to human resources officials, but nothing was done. The claimant was forced to quit after filing a charge of discriminatory treatment and suffering from depression and threats to his life. Management officials claimed they could not understand the claimant due to the language barrier, and foreigners could not work in specific positions. The claimant was replaced with a much younger employee as that was preferred.

Case Study 24

One charging party was exposed to harassment, including offensive comments and slurs, and targeted with graffiti based on his national origin, Egyptian. The defendants were aware of discriminatory conduct but failed to take adequate steps to prevent it from continuing, resulting in a hostile work environment. The defendants retaliated against the claimant for filing union grievances, a charge of discrimination, and participating in the defendants' internal complaint procedure. The Commission attempted to eliminate the unlawful employment practice to effect voluntary compliance with Title VII through informal conciliation, conference, and persuasion. The claimant repeatedly complained of harassment, but the defendant failed to take adequate measures and instead retaliated against him, including disciplinary write-ups and suspension.

Case Study 25

One charging party was terminated because of race, black, and national origin, Tanzanian. After four months of employment required to travel 60 miles away from home regarding a work emergency. The claimant reported to work as scheduled but left 30 minutes early to beat morning rush hour traffic. A supervisor contacted the claimant and ordered them not to report to work. The following morning, the supervisor terminated the subject and stated insubordination and job abandonment due to leaving work early. The supervisor also told other witnesses that the claimant was discharged because the green card was expiring. A month before the claimant's termination, a white employee in the same position left work two hours early on two separate occasions during a week when there was an emergency. The cited reason for leaving early was

tiredness, but this employee was not terminated. Instead, the supervisor gave the employee a written discipline.

Case Study 26

One charging party was terminated based on race, Black national origin, Zimbabwe, color, and retaliation for complaining about racial discrimination.

Case Study 27

Three charging parties and a class of employees who are either White, non-Hispanic or are non-Hispanic were unlawfully discharged by defendants because of their race and national origin. The defendants also violated the recordkeeping requirements of Title VII, Section 709 by failing to archive and preserve employee records for a period of, at minimum, one year after once collected. The Commission invited defendants to join in informal methods of conciliation to eliminate the alleged unlawful employment practice. The Commission and defendants were unable to agree on relief through conciliation. The newly hired general manager was instructed to hire more Hispanics for a specific position because they worked harder. A White, non-Hispanic employee was discharged and cited that it was due to the owners of the hotel's preference of hiring non-American, non-Hispanic employees. All three subjects were eventually discharged and replaced by Hispanic employees. Some of the employees were hired without completing a written job application.

Case Study 28

The defendant discriminated against a class of applicants and temporary workers based on their national origin, non-Hispanic. For eight years, the defendant failed to place or assign non-Hispanic applicants and temporary workers to its group of "regular" temporary workers based on their national origin, non-Hispanic. The defendant also provided fewer work hours to temporary workers because of their national origin, non-Hispanic. The defendant allowed Hispanic temporary workers who were equally or less qualified to work.

Case Study 29

Two charging parties experienced unlawful race-based harassment and racial slurs soon after being employed for being the only two African Americans in their position when another claimant encountered constructive discharge. Another claimant experienced race and national origin-based harassment and was terminated for complaining about the discriminatory harassment. The claimants reported incidents to administrative personnel, but the defendant took no further action.

Case Study 30

One charging party was subjected to discrimination, harassment, and retaliation by supervisors and co-workers because of Jordanian Arab national origin and Muslim religion. The claimant had adverse work assignments, was assigned to more demanding jobs, and was exposed to excessive scrutiny.

Case Study 31

Fifteen charging parties were affected by unlawful employment practices based on race, national origin, and retaliation. These individuals are Native American, Black, Puerto Rican, and/or Hispanic. The defendants failed to correct unlawful harassment and hostile work environment through repeated offensive and racial slurs, unfavorable job assignments, demotions, and discharge for opposing such practices. The main perpetrator of the offensive racial slur was the defendant's employer's supervisor. A manager, along with others, made offensive racial comments as well. One charging party filed a discrimination suit against the defendant and was discharged less than three weeks later after receiving notice of charge for discrimination. Similar discharge or demotions happened with the other charging parties when they filed a discrimination suit.

Case Study 32

Four charging parties and a class of individuals experienced unlawful employment practices of being referred to temporary positions based on race as non-Hispanic and national origin as African Americans. Defendants gave preference to Hispanic applicants during the hiring process by not requiring criminal background checks and three months of verifiable employment of Hispanic applicants. In contrast, it was a requirement from non-Hispanic and African American applicants.

Case Study 33

Three charging parties and classes of Black and non-Hispanic applicants were adversely affected by unlawful employment practices based on race and national origin. One of the defendant's hiring officials rejected Black applicants in favor of Hispanics

who spoke Spanish and advertised that preference in local newspapers. Also, the defendant relied on recruiting vacant positions based on word of mouth. The defendants have falsely informed Black and non-Hispanic applicants that they are not hiring. On the contrary, defendants hired Hispanic applicants who were less qualified than many Black and non-Hispanic applicants. Over 200 Black and other non-Hispanic applicants were not hired.

Case Study 34

Eleven charging parties and other similarly situated Hmong and Hispanic employees were fired based on their national origin (Hmong or Hispanic) because they lacked fluent English language skills that were unnecessary to do their jobs. They were subjected to a sham performance improvement plan based on a single 10-minute observation pointing to their lack of English-language skills necessary to do their jobs. EEOC issued a "Determination" letter inviting the defendant for informal methods of conciliation to eliminate discriminatory practices, which were unsuccessful.

Case Study 35

Four charging parties and any other yet unidentified African employees who were, or continue to be, adversely affected by the defendant's company-wide unlawful employment practices based on national origin, African, and unlawful employment exam. The exam disparagingly impacts the equal employment opportunities of African exam-takers and/or intentionally manipulates defendants to terminate African test-takers from current employment unlawfully. Additionally, a white non-African supervisor was terminated for refusing to engage in discriminatory practices against the African

employees. The defendant was employed with over 500 employees. EEOC issued a letter of determination to defendants for an invitation to join in an informal method of conference, conciliation, and persuasion to eliminate and remedy the alleged unlawful employment practices, which was unsuccessful. The charging parties worked for the defendant for several years (nearly a decade or more) and received raises during annual evaluation. The year before the lawsuit, the defendant's new director spoke privately to the supervisor about getting rid of "these" people, referring to the African employees, because they cannot speak English. The supervisor refused to comply with the director's demands and was fired after fourteen years of employment.

Case Study 36

The defendant sought impermissible information about an applicant's disability; maintained a policy to force the disclosure of the disability before receiving a final offer of employment; used qualified standards or other selected criteria to screen out individuals with disabilities; and failed to hire a class of individuals based on their disability.

Case Study 37

The defendant subjected two charging parties and other Black employees to racial harassment, both in racial slurs made by White supervisors and co-workers and in the form of racist graffiti being displayed. Defendant ultimately terminated a charging party because of his race (Black) and in retaliation for his complaints about the harassment. The defendant also subjected the other charging party to national origin harassment, discipline, and terminating the employee in retaliation for filing a charge of

discrimination. The defendant was aware of yet failed to prevent or promptly correct the harassing behavior. They did not have an anti-harassment policy or any employee procedure to complain about harassment or discrimination.

Case Study 38

One charging party and other Chinese employees were not compensated similarly as similarly situated non-Chinese employees for substantially similar work because of their national origin.

Case Study 39

The defendant failed to hire or recruit non-Hispanic applicants because of their race and national origin and maintaining policies to engage in employment practices that have a disparate impact on non-Hispanic applicants. The claimant was adversely affected by such practices being Black, non-Hispanic. The plaintiff provided the defendant the opportunity to remedy the discriminatory practices without success. The defendant has used word of mouth to recruit exclusively Hispanic laborers and preferred Spanish speakers. The defendant was aware that its policies and practices had an adverse impact on non-Hispanic job seekers but continued engaging in these practices.

Case Study 40

Fourteen charging parties and a class of other Black Haitian were wrongfully terminated based on their race, national origin, and color. Defendants did not have a written language policy but reprimanded employees for speaking creole, even if the conversation was one-on-one. However, Hispanic workers were allowed to speak Spanish while at work and in the presence of non-Spanish-speaking employees. The plaintiff

attempted to correct unlawful employment practices through informal conciliation, conference, and persuasion to remedy the discriminatory practices and provide appropriate relief but was unsuccessful. The employees' job performance was not a reason for their termination. The defendants replaced terminated workers with almost entirely white and/or Hispanics.

Case Study 41

Twenty-six charging parties and other Hispanic employees were exposed to a hostile work environment, verbal harassment, and the imposition of an English-only language policy that discriminated against them based on their national origin, Hispanic. The plaintiff invited the defendants to join in informal methods of conciliation to eliminate the unlawful employment practices and provide appropriate relief, which was unsuccessful. The defendants' unwritten English-only policy prohibited employees from speaking any other language other than English while at work. Employees were frequently scolded or threatened with termination for speaking Spanish, even when there were no non-Spanish speaking individuals present. However, other national origin groups who spoke languages other than English and Spanish in front of guests were not met with repercussions.

Case Study 42

Three charging parties were discriminated against and terminated based on their national origin (two Moroccan and one Ethiopian). There was a conflict of schedule and lay-off. Before the charging party was terminated, the defendant's employee commented about the "broken English" and made fun of the accent.

Case Study 43

One charging party was discriminated against by subjecting racial, sexual, and national origin-based harassment and termination. The claimant's national origin is south Asian with a dark complexion. The defendant's general manager would direct racial slurs at the charging party and create a hostile work environment by taunting the charging party and throwing items in their direction, even other employees and customers. The taunting continued, and the charging party was eventually sexually assaulted. The claimant complained in an e-mail about the incident days before the defendant's human resources director. The human resources director's findings cited the incident as workplace horseplay, and the allegations were unsubstantiated. The plaintiff invited the defendant to join in informal methods of conciliation to eliminate the discriminatory practices and provide appropriate relief without success.

Case Study 44

Six charging parties and other individuals were discriminated against based on race and/or national origin (African American, biracial, Hispanic, Mexican, Native American, and white), sex (male), and/or retaliation. The defendant's lead supervisor was subjected to severe or pervasive harassment, including unwelcome verbal harassment and physical touching, which created a hostile work environment. The defendants also retaliated against the charging parties in terms of conditions or privileges, including threats of termination for complaining or opposing unlawful harassment. The plaintiff invited the defendant to join in informal methods of conciliation to eliminate the unlawful employment practices and provide appropriate relief, which was unsuccessful. The

defendants received multiple complaints about the harassment of the employees made by the lead supervisor but failed to take timely preventive or remedial action to correct the harassment and prevent future harassment.

Case Study 45

One charging party and a class of non-Hispanic, White, Black, and Asian applicants were discriminated against, received disparate treatment, and ultimately discharged for not speaking Spanish. The defendant failed to hire our discouraged from applying qualified Black, White, and Asian applicants based on national origin and race due to preference for hiring Hispanics. Applicants would be asked if they spoke Spanish and not consider their applicants if they said they did not speak Spanish, despite the necessary skill to perform jobs. The plaintiff invited the defendant to join in informal methods of conciliation to eliminate discriminatory practices and provide appropriate relief, which was unsuccessful. In 20 years, Hispanics comprised 97% as defendant's employees. The defendant hired approximately 475 employees for four years, with only one being Asian and twelve being White.

Case Study 46

Two charging parties were subjected to a hostile work environment based on national origin, Mexican American, and retaliated against for protesting and opposing the national origin harassment they suffered and filing charges of discrimination. The defendant had an equal employment opportunity policy that stated they would not discriminate against employees on any legally recognized basis, including national origin. The plaintiff invited the defendant to join in informal methods of conciliation to eliminate

discriminatory practices and provide appropriate relief, which was unsuccessful. The defendant's managers harassed the charging parties using derogatory terms and made fun of their accents. The claimants have complained about the situation several times, first going to superiors, then to a Human Resources representative, and then to the company's president. Despite their efforts, the defendant failed to take prompt or effective action to correct it. The defendant's vice president of operations told one of the claimants that EEOC would not help them. The harassment got worse once the defendant's employees were informed about the suit, which resulted in the claimants being terminated soon after.

Data Collection

The data was collected via e-mail as a response from a representative of the EEOC, completing the request of obtaining secondary data archived by the EEOC. Since thousands of case studies are available each year, the data request included at least two case studies per year for analysis. Any identifying information that became a public record was exempt from the data to maintain anonymity and confidentiality. The type of data sought consisted of the class of discrimination suit filed (national origin), the type of company or organization, any recollection of events provided by the charging party regarding the claim, and any counterargument made by the defendant. The data was recorded with the note-taking method.

Data Analysis

Upon reflecting on the choice of case study research as the data collection method for addressing my study, I determined that case studies would provide the most anonymity instead of the other qualitative data collection techniques, such as interviews,

focus groups and, observational data collection. Human participants, such as EEOC investigators and hiring managers, cannot and will not admit or disclose discrimination to an applicant due to privacy laws. As the name implies, case study research is utilized to delve into the information and infer the data. The data was analyzed, and each case study provided a synopsis of the suit, introduced the recollection of events provided by the charging party and any counterarguments made by the defendant, and the relief sought for resolution of the case.

Results

The following three pages include tables that depict the findings of this study and statistics of national origin discrimination suits filed between 1997 and 2020. Table 1 breaks down each case study into four sections: the type of protected discrimination class (i.e., national origin, race, sex, and religion); the number of claimants who filed; and the cause for filing the suit. Table 2 and Table 3 depict statistics of the national origin suits filed each year along with various categories, such as the total amount of cases received and settled for a specific year and the total amount of monetary benefits after settlement.

Table 1

Breakdown of the 46 Case Studies

	Protected Discrimination Class	Number of Claimants	Disability/Nationality/Religion/Sex	Cause
Case Study 1	National Origin	2	Hispanic	Performed in the Spanish language
Case Study 2	National Origin	5	Hispanic	Speak-English-only policy and segregated into workgroups; retaliated against by disciplining and discharging after the complaint
Case Study 3	National Origin and Race	2	Hispanic and Asian American	Use of test for employment
Case Study 4	National Origin	1	Mexican American	Subjected to a hostile work environment, complained three times; physical fight; Hispanic terminated, non-Hispanic re-instated
Case Study 5	National Origin	1	Hispanic	Subjected to a hostile work environment; retaliated against by discharging after the complaint
Case Study 6	National Origin, Race, and Sex	Several	African American and Hispanic	Subjected to a hostile work environment, reported; retaliated against who opposed unlawful discrimination
Case Study 7	Race	1	Black	Verbal abuse, severe harassment (hanging of noose displayed); defendant was made aware and did nothing
Case Study 8	Religion	1	Jewish	Subjected to a hostile work environment, harassed, retaliated against by discharging after the complaint
Case Study 9	National Origin	2	Hispanic	Were not considered for employment
Case Study 10	National Origin and Sex	1	Mexican Women	Discharged for resisting sexual advances
Case Study 11	National Origin, Race, and Sex	2	Male and Female	Retaliated against for opposing sexual advances (female); harassed (male)
Case Study 12	National Origin	1	Puerto Rican	Reassigned to position with fewer hours due to accent, speaks fluent English; retaliated against by discharging after the complaint
Case Study 13	National Origin and Race	1	African American and Hispanic	Lower wage than White, non-Hispanic
Case Study 14	National Origin	1	Middle Eastern and Iranian	Accused of terrorist connection; retaliated against by discharging after the complaint
Case Study 15	National Origin	>1	Non-Navajo Native American	Failed to hire qualified non-Navajo Native Americans
Case Study 16	National Origin and Religion	1	Indian, and/or not European American/Islam	Subjected to an abusive and hostile work environment

	Protected Discrimination Class	Number of Claimants	Disability/Nationality/Religion/Sex	Cause
Case Study 17	National Origin	1	Cambodian	Terminated temporary assignment and withdrawing an offer of permanent employment based on inability to read, write, and understand English; defendant employed other national origins with similar limitations
Case Study 18	National Origin	1	Russian	Denied raise after promotion because of accent
Case Study 19	National Origin and/or Race	Several	Not Specified	Denied employment and failed to be hired
Case Study 20	National Origin	82	Filipino and Thai	Segregated by national origin and provided fewer overtime hours than Chinese employees
Case Study 21	National Origin	1	Not Specified	Abusive, intimidating, offensive, hostile work environment; retaliated against by discharging after the complaint
Case Study 22	National Origin and Race	1	African American, non-Hispanic	Discharged despite performing their jobs; defendant hired similarly or less qualified non-African Americans and Hispanics
Case Study 23	National Origin and Age	1	Asian Filipino	Demeaning humiliation and treatment; complained; retaliated against by discharging after complaint; was replaced with much younger employees as that was preferred
Case Study 24	National Origin	1	Egyptian	Subjected to harassment including offensive comments and slurs; complained; complaint created a hostile work environment
Case Study 25	National Origin and Race	1	Tanzanian, Black	Terminated based on insubordination and job abandonment due to leaving work early; supervisor told other witnesses, claimant was being discharged because of expiring green card; another employee had left work two hours early on two separate occasions during work-related emergency without reprimand
Case Study 26	National Origin and Race	1	Zimbabwe, Black	Terminated, retaliated against by discharging after the complaint
Case Study 27	National Origin and Race	3	White, non-Hispanic or non-Hispanic	Defendant preferred to hire more Hispanics for a specific position due to the opinion that they work harder; new hires were not required to complete a written job application
Case Study 28	National Origin	Several	Non-Hispanic	Defendant provided fewer work hours while allowing Hispanics, who were equally or less qualified, to work
Case Study 29	Race	2	African American	Subjected to race-based harassment and racial slurs, complained; retaliated against by discharging after the complaint
Case Study 30	National Origin and Religion	1	Jordanian Arab, Muslim	Had adverse work assignments, was assigned to more demanding jobs, and was exposed to excessive scrutiny

	Protected Discrimination Class	Number of Claimants	Disability/Nationality/Religion/Sex	Cause
Case Study 31	National Origin and Race	15	Native American, Black, Puerto Rican, and/or Hispanic	Subjected to a hostile work environment with repeated offensive and racial slurs, unfavorable job assignments, demotions, and discharge for opposing such practices
Case Study 32	National Origin and Race	4	African Americans, Non-Hispanic	Referred to temporary positions; Hispanics were not required to complete criminal background checks and three months of verifiable employment, whereas it was a requirement for non-Hispanic and African American applicants
Case Study 33	National Origin and Race	3	Non-Hispanics, Black	Rejected in favor of Spanish-speaking Hispanics who were advertised as preference
Case Study 34	National Origin	11	Hmong and Hispanic	Lacked fluent English language skills that were unnecessary to do their jobs, were subjected to a sham performance improvement plan pointing out the limitation
Case Study 35	National Origin	4	African	Unlawful employment exam; White non-African supervisor was terminated as retaliation for refusing to engage in discriminatory practices against African employees
Case Study 36	Disability	1	Not Specified	Forced disclosure of disability, screened out individuals with disabilities
Case Study 37	National Origin, Race	2	Black	Subjected to racial harassment in the form of racial slurs and racist graffiti; retaliated against by discharging after complaint; did not have an anti-harassment policy or procedure
Case Study 38	National Origin	1	Chinese	Not compensated at the same rate as similarly situated non-Chinese employees for similar work
Case Study 39	National Origin and Race	1	Black, non-Hispanic	Failed to hire or recruit non-Hispanic applicants because of their race and national origin and maintaining policies to engage in employment practices that have a disparate impact on non-Hispanic applicants
Case Study 40	National Origin and Race	14	Black Haitian	Reprimanded for speaking creole, but Hispanics were allowed to speak Spanish; job performance was not a reason for termination; terminated workers were replaced with almost entirely white and/or Hispanics
Case Study 41	National Origin	26	Hispanic	Subjected to a hostile work environment, verbal harassment, and imposed of an English-only language policy
Case Study 42	National Origin	3	Moroccans and Ethiopian	Conflict of schedule and lay-off; defendant's employee commented about the "Broken English" and made fun of the accent

	Protected Discrimination Class	Number of Claimants	Disability/Nationality/Religion/Sex	Cause
Case Study 43	National Origin	1	South Asian with a dark complexion	Subjected to a hostile work environment with racial, sexual, and national-origin-based harassment and termination
Case Study 44	National Origin, Race, and Sex	6	African American, biracial, Hispanic, Mexican, Native American, and White males	Subjected to a hostile work environment with severe or persuasive harassment, which included unwelcome verbal harassment and physical touching, complained; retaliated against by threats of termination for complaints or opposing the unlawful harassment
Case Study 45	National Origin and Race	1	Non-Hispanic, White, Black, and Asian	Received disparate treatment and was ultimately discharged for not speaking Spanish
Case Study 46	National Origin	2	Mexican American	Subjected to a hostile work environment with derogatory terms used and made fun of their accents, complained; retaliated against for protesting and opposing harassment and filing charges of discrimination

Table 2

National Origin Discrimination Suits Statistics: 1997-2008

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Receipts	6,712	6,778	7,108	7,792	8,025	9,046	8,450	8,361	8,035	8,327	9,396	10,601
Resolutions	8,795	8,482	8,750	8,691	8,899	9,952	9,172	8,943	8,319	8,181	7,773	8,498
Settlements	291 3.3%	307 3.6%	458 5.2%	630 7.2%	668 7.5%	817 8.2%	839 9.1%	815 9.1%	803 9.7%	778 9.5%	848 10.9%	891 10.5%
Withdrawals w/Benefits	222 2.5%	262 3.1%	280 3.2%	276 3.2%	341 3.8%	350 3.5%	333 3.6%	362 4.0%	423 5.1%	376 4.6%	354 4.6%	452 5.3%
Administrative Closures	2,258 25.7%	2,211 26.1%	2,087 23.9%	1,538 17.7%	1,448 16.3%	1,561 15.7%	1,353 14.8%	1,365 15.3%	1,240 14.9%	1,157 14.1%	1,227 15.8%	1,351 15.9%
No Reasonable Cause	5,710 64.9%	5,439 64.1%	5,486 62.7%	5,502 63.3%	5,461 61.4%	6,290 63.2%	6,117 66.7%	5,951 66.5%	5,316 63.9%	5,358 65.5%	4,939 63.5%	5,414 63.7%
Reasonable Cause	314 3.6%	263 3.1%	439 5.0%	745 8.6%	981 11.0%	934 9.4%	530 5.8%	450 5.0%	537 6.5%	512 6.3%	405 5.2%	390 4.6%
Successful Conciliations	79 0.9%	60 0.7%	98 1.1%	159 1.8%	229 2.6%	168 1.7%	112 1.2%	145 1.6%	122 1.5%	106 1.3%	126 1.6%	132 1.6%
Unsuccessful Conciliations	235 2.7%	203 2.4%	341 3.9%	586 6.7%	752 8.5%	766 7.7%	418 4.6%	305 3.4%	415 5.0%	406 5.0%	279 3.6%	258 3.0%
Merit Resolutions	827 9.4%	832 9.8%	1,177 13.5%	1,651 19.0%	1,990 22.4%	2,101 21.1%	1,702 18.6%	1,627 18.2%	1,763 21.2%	1,666 20.4%	1,607 20.7%	1,733 20.4%
Monetary Benefits (Millions)*	$9.1	$11.2	$19.7	$15.7	$48.1	$21.0	$21.3	$22.3	$19.4	$21.2	$22.8	$25.4

Note. From “National Origin-Based Charges (Charges filed with EEOC) FY 1997 - FY 2020,” *U.S. Equal Employment Opportunity Commission*. The EEOC’s first year of total receipts was the lowest of 6,712 before that amount increased exponentially over time.

Table 3

National Origin Discrimination Suits Statistics: 2009-2020

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Receipts	11,134	11,304	11,833	10,883	10,642	9,579	9,438	9,840	8,299	7,106	7,009	6,377
Resolutions	9,644	12,494	13,749	12,364	11,307	9,768	10,033	10,835	10,083	9,093	7,655	6,927
Settlements	875 9.1%	917 7.3%	1,113 8.1%	984 8.0%	865 7.7%	753 7.7%	742 7.4%	623 5.7%	547 5.4%	427 4.7%	419 5.5%	428 6.2%
Withdrawals w/Benefits	475 4.9%	535 4.3%	527 3.8%	516 4.2%	600 5.3%	495 5.1%	481 4.8%	568 5.2%	541 5.4%	484 5.3%	397 5.2%	404 5.8%
Administrative Closures	1,732 18.0%	2,008 16.1%	2,302 16.7%	1,653 13.4%	1,801 15.9%	1,614 16.5%	1,614 16.1%	1,557 14.4%	1,396 13.8%	1,192 13.1%	1,157 15.1%	1,058 15.3%
No Reasonable Cause	6,152 63.8%	7,910 63.3%	9,031 65.7%	8,676 70.2%	7,629 67.5%	6,620 67.8%	6,896 68.7%	7,766 71.7%	7,275 72.2%	6,524 71.7%	5,474 71.5%	4,844 69.9%
Reasonable Cause	410 4.3%	1,124 9.0%	776 5.6%	535 4.3%	412 3.6%	286 2.9%	300 3.0%	321 3.0%	324 3.2%	466 5.1%	208 2.7%	193 2.8%
Successful Conciliations	122 1.3%	177 1.4%	118 0.9%	207 1.7%	141 1.2%	86 0.9%	118 1.2%	126 1.2%	146 1.4%	270 3.0%	53 0.7%	86 1.2%
Unsuccessful Conciliations	288 3.0%	947 7.6%	658 4.8%	328 2.7%	271 2.4%	200 2.0%	182 1.8%	195 1.8%	178 1.8%	196 2.2%	155 2.0%	107 1.5%
Merit Resolutions	1,760 18.2%	2,576 20.6%	2,416 17.6%	2,035 16.5%	1,877 16.6%	1,534 15.7%	1,523 15.2%	1,512 14.0%	1,412 14.0%	1,377 15.1%	1,024 13.4%	1,025 14.8%
Monetary Benefits (Millions)*	$25.7	$29.6	$34.1	$37.0	$35.3	$31.4	$37.9	$34.7	$29.6	$37.5	$32.3	$26.3

Note. From “National Origin-Based Charges (Charges filed with EEOC) FY 1997 - FY 2020,” *U.S. Equal Employment Opportunity Commission*. The EEOC reached its highest peak of receipts of 11,833 in 2011. However, there has been a downward trend of suits filed for the past 23 years, particularly as recent as 2020, with the lowest total receipts ever of 6,377.

Summary

Of the 46 national-origin discrimination suits randomly selected, one suit was filed only for religion discrimination (Case Study 8), and one suit was filed only for disability discrimination (Case Study 36). Claimants in each national discrimination suit filed a motion by sharing the hostile work environment they have endured from their employers, such as being targets of physical and/or verbal altercation, retaliation, and termination. Chapter 5 will interpret the findings, review the study's limitations, and provide recommendations while also addressing the implications. This chapter will conclude by discussing the prevalence of the phenomenon for future studies.

Chapter 5: Discussion, Conclusions, and Recommendations

The purpose of this qualitative study was to analyze secondary data of national origin discrimination suits filed with the EEOC within the past 20 years to understand why it continues to be a recurring issue in the workforce over time. A total of 46 civil suits requesting jury trials were received and analyzed. Each case study reflected the defendants' actions that conflicted with Title VII of the Civil Rights Act of 1964 as amended and Title I of the Civil Rights Act of 1991. The parties' statement of claims in each claim reflected their experiences of a hostile work environment because of their disability, race/color, sex, and religion as motives.

The need for increased understanding of the phenomenon studied is based on the persistent issue of national origin discrimination suits filed each year, which affects the defendant's reputation and the livelihood of the claimants. It was imperative to examine the commonality of various suits filed by EEOC on behalf of the claimants to provide feedback on how companies, employers, organizations, etc., can prevent themselves from facing a future discrimination suit and decrease the statistics of the issue over time.

Interpretation of the Findings

Key findings from this study revealed that discrimination suits had decreased exponentially over time, but the issue persists today. Additionally, EEOC's attempts to discuss the issues raised with defendants/employers ultimately have failed. Furthermore, White non-Hispanic individuals have also encountered disparity when working jobs destined for Hispanics. National origin discrimination is not limited to targeting Hispanics as commonly believed as it impacts anybody. Other significant findings from

this study were that employers would administer tests to a specific set of individuals but not others they favor for the job.

Limitations of the Study

The limitations of this study included issues with reliability and validity. For instance, there was a lack of representation of the general population, which is expected with qualitative studies since the population of focus is small. Various companies and organizations were the focus of the discrimination suits. The defendant (employer) may have altered their response to distinguish any policy violations that can be occurring during the hiring process for fear of retaliation against their position or reputation in the department. Therefore, the sequence of events may have been changed in their favor, which cannot be verified. Lastly, there may have been a limitation of information provided as a public record due to the issue's sensitivity.

Recommendations

The contribution of advancing knowledge in the discipline of public policy and administration is continuously raising awareness on a phenomenon that continues to be prevalent after several decades. It was imperative to analyze national origin discrimination suits filed with the EEOC to understand why it continues to be a recurring issue in the workforce. Based on the limitations of this study, a recommendation for scholars is to review, interpret, and expand the data previously collected regarding the phenomena. Research should focus specifically on data with outcomes of the case studies if available upon request to observe whether the issue increases, decreases, or remains constant.

Implications

One potential implication for positive social change to note is the defendant's (employer) alteration of details to protect themselves from the accusation of discrimination brought against them. The study focused on reviewing several suits brought against an array of companies/organizations that vehemently deny prejudice allegations.

Conclusion

The contribution of advancing knowledge in the discipline of public policy and administration is continuously raising awareness on a phenomenon that continues to be prevalent after several decades. It is imperative to analyze national origin discrimination suits filed with the EEOC to understand why it continues to be a recurring issue in the workforce. One of the most significant strengths of this study is to promote social change and diversity in the workforce. The motivating factor to achieve that goal is based on past research that has found evidence of implicit bias and/or pre-employment discrimination during the hiring process and after employment. The cause and effect of these actions violate the candidates' or employees' equal rights opportunities and limit them from pursuing positions that lead to better-paying jobs. The limitations of these opportunities may cause those individuals to become a statistic, living in low socioeconomic communities influenced by crime and trying to make ends meet. Another strength of this study is the data collection method and analysis to clarify the stereotype that minorities increase crime rates, which can influence them from being rejected by employers. The reported statistics may not be representative of the actions made by minorities. Instead, it

represents the effects of the decisions made against them. In other words, if qualified minorities were employed for prominent positions, the stigma and the statistics against them may change.

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