

Saint Louis University Journal of Health Law & Policy

Volume 14

Issue 1 *Health Inequities and Employment: The
New Civil Rights Struggle for Justice*

Article 3

2020

Introduction

Ruqaiijah Yearby

Saint Louis University School of Law, ruqaiijah.yearby@slu.edu

Follow this and additional works at: <https://scholarship.law.slu.edu/jhlp>



Part of the [Health Law and Policy Commons](#)

Recommended Citation

Ruqaiijah Yearby, *Introduction*, 14 St. Louis U. J. Health L. & Pol'y (2020).

Available at: <https://scholarship.law.slu.edu/jhlp/vol14/iss1/3>

This Introduction is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Journal of Health Law & Policy by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

INTRODUCTION

RUQAIJAH YEARBY*

INTRODUCTION

On June 10, 1963, President John F. Kennedy signed the Equal Pay Act, which prohibited sex-based wage discrimination for women and men performing the same job in the same workplace.¹ A little over a year later, President Lyndon B. Johnson signed the Civil Rights Act of 1964, which prohibited employment discrimination based on race, religion, national origin, or sex.² Almost sixty years later, women continue to be paid less than men for doing the same or more work, a phenomenon which has been associated with poor health outcomes for women.³ This symposium not only highlights the continuation of employment discrimination that negatively impacts women's health, but also discusses how this problem has become even more dire during the COVID-19 pandemic.

During the pandemic, many of the essential workers that have been left vulnerable to the workplace spread of COVID-19 are women.⁴ In fact, a recent New York Times analysis of census data crossed with the federal government's essential workers guidelines found that "one in three jobs held by women has been designated as essential during this pandemic ... [and] nonwhite women are more likely to be doing essential jobs than anyone else."⁵ Twenty-one percent

* Ruqaijah Yearby, Professor of Law and Member of the Center for Health Law Studies, Saint Louis University, School of Law; Co-Founder and Executive Director, Institute for Healing Justice, Saint Louis University; B.S. (Honors Biology), University of Michigan; J.D., Georgetown University Law Center; M.P.H. in Health Policy and Management, Johns Hopkins School of Public Health.

1. 29 U.S.C. § 206. The Equal Pay Act of 1963 amended the Fair Labor Standards Act of 1938. *Id.*

2. *See* 42 U.S.C. § 2000e-5.

3. Ruqaijah Yearby, *Internalized Oppression: The Impact of Gender and Racial Bias in Employment on the Health Status of Women of Color*, 49 SETON HALL L. REV. 1037, 1046 (2019).

4. *See* Jade Connor et al., *Health Risks and Outcomes That Disproportionately Affect Women During the Covid-19 Pandemic: A Review*, SOC. SCI. & MED. 2020, at 1, 5.

5. Campbell Robertson & Robert Gebeloff, *How Millions of Women Became the Most Essential Workers in America*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/us/coronavirus-women-essential-workers.html>.

of all essential workers are employed in the food and agriculture industry.⁶ Of the frontline meat and poultry processing workers, 51.5% are foreign born and 42% are women.⁷ Essential workers, particularly women of color, have increased workplace exposure to COVID-19 because of employment discrimination.⁸

For example, in the Article, *Meat Processing Workers and the Covid-19 Pandemic: The Subrogation of People, Public Health, and Ethics to Profits and a Path Forward*, Professor Kelly Dineen discusses discrimination against meat and poultry processing workers during the COVID-19 pandemic, which has left them vulnerable to COVID-19 infections and deaths. The impact of the outbreaks is illustrated by the problems faced by workers in Nebraska. As Professor Dineen notes, Nebraska has the highest number of cases tied to meat processing plants in the United States,⁹ “with one in five cases tied to a meat processing plant at one point.”¹⁰ Additionally, “out of a total 93 counties in Nebraska, those with a large meat processing presence occupy eight out of the top twelve counties with the highest number of cases per 100,000 residents.”¹¹ Because a majority of the workers are women and racial and ethnic minorities, these outbreaks disproportionately impact women and people of color. Professor Dineen suggests rectifying the poor treatment of workers due to discrimination by providing safe physical conditions in the plants, improving industry practices and policies, and revising government policy implementation. In addition to these proposed changes, the workers, and other essential workers must be provided with equal access to employment benefits.

6. Celine McNicholas & Margaret Poydock, *Who Are Essential Workers? A Comprehensive Look at Their Wages, Demographics, and Unionization Rates*, ECON. POL’Y INST.: WORKING ECON. BLOG (May 19, 2020, 11:25 AM), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates>.

7. Hye Jin Rho et al., *A Basic Demographic Profile of Workers in Frontline Industries*, CTR. FOR ECON. & POL’Y RSCH. (Apr. 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/>.

8. See generally Ruqaiyah Yearby & Seema Mohapatra, *Law, Racism and the COVID-19 Pandemic*, 7 OXFORD J.L. & BIOSCIENCES 1 (2020).

9. Sky Chadde, *Tracking Covid-19’s Impact on Meatpacking Workers and Industry*, MIDWEST CTR. FOR INVESTIGATIVE REPORTING (Apr. 16, 2020), <https://investigatemitwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>.

10. See Jessica Lussenhop, *Tony Vargas in Nebraska: The Human Cost of Political Inaction on Covid*, BBC NEWS (October 2, 2020), <https://www.bbc.com/news/world-us-canada-54183191>.

11. When sorted by the number of cases per 100,000 residents, the top twelve counties are Dakota (Tyson Foods and across the river from Seaboard Triump Foods in Souix City, IA), Colfax (Cargill), Saline (Smithfied), Dawson (Tyson), Thurston, Platte, Dodge (Lincoln Processing and Wholestone), Hall (JBS), Rock, Kearney, Douglas (across river from Tyson Plant), and Madison (Tyson). See, *Nebraska Covid Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/nebraska-coronavirus-cases.html#county> (last visited Apr. 26, 2021). See also Sky Chadde, *supra* note 9.

Many of these workers, especially women of color workers, have been denied equal access to employment benefits because of discrimination.¹² Specifically, many laws that expanded collective bargaining rights either explicitly excluded racial and ethnic minorities, including women of color, or allowed unions to discriminate against them.¹³ Workers attained paid sick leave through the use of these collective bargaining rights. Thus, without access to these rights or unions, many racial and ethnic minorities, including women of color, were left without access to paid sick leave. This issue persists today.¹⁴ During the COVID-19 pandemic, many meat and poultry plant workers, who are women and racial and ethnic minorities, lack paid sick leave. Hence, they must go to work even when they are sick, while most white workers have paid sick leave and can stay at home when sick. Consequently, these workers are more likely than white workers to be exposed to COVID-19 in the workplace, resulting in racial inequities in COVID-19 infections and deaths.¹⁵

Moreover, many workers have been left without employment protections because they have been misclassified as independent contractors, which has been associated with health inequities. Attorney David Rodwin discusses how the misclassification of home health care workers is an example of employment discrimination that has predominately harmed women of color in his Article entitled *Independent Contractor Misclassification is Making Everything Worse: The Experience of Home Care Workers in Maryland*. Using Maryland as a case study, Attorney Rodwin's Article aims to (i) explain home care worker misclassification and some of its harms, (ii) provide examples of how home care worker misclassification makes it harder to effectively manage the pandemic, (iii) articulate some of the barriers standing in the way of correcting the problem, and (iv) propose some solutions. Misclassification is very prevalent in the home health care industry, where a majority of the workers are women of color.

As independent contractors, home health care workers are not covered by the Fair Labor Standards Act of 1938,¹⁶ that limits the work week to forty hours and requires the payment of minimum wage and overtime, the Occupational Safety and Health Act,¹⁷ that provides health and safety protections, or most state worker compensation statutes, which provide pay and health insurance for workplace injuries.¹⁸ Therefore, when these low-wage home health care workers

12. See generally Ruqaiyah Yearby, *Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause*, 48 J.L. MED. & ETHICS 518 (2020).

13. DANYELLE SOLOMON ET AL., CTR. FOR AM. PROGRESS, SYSTEMATIC INEQUALITY AND ECONOMIC OPPORTUNITY 4 (2019).

14. Yearby & Mohapatra, *supra* note 8, at 4–6.

15. *Id.*

16. 29 U.S.C. §§ 201–219.

17. 29 U.S.C. §§ 651–678.

18. Yearby, *supra* note 12, at 523.

get hurt doing their jobs, they do not receive workers' compensation to replace their wages or pay for health care to treat the injury. Attorney Rodwin provides several suggestions for addressing the misclassification of home health workers, including training workers, implementing strong independent provider programs with union representation, and increasing Medicaid reimbursement rates with wage-pass through to workers.

Even when women are correctly classified as employees, they still experience discrimination that negatively impacts their health and well-being. In her Article entitled *Accommodating Pregnancy Five Years After Young v. UPS: Where We Are & Where We Should Go*, Professor Nicole Porter examines the continued gaps in employment law protections for pregnant women, including employers' refusal to "provide accommodations for pregnancy, leaving pregnant employees performing tasks that are detrimental to the health and well-being of their pregnancies,¹⁹ or being forced to take leave (often unpaid) when they could be working with minor adjustments to their jobs." The failure to provide these accommodations is an example of employment discrimination, which has been associated with poor mental health for all women.²⁰ For example, research shows that experiencing discrimination at work is associated with higher psychological stress for women of color,²¹ as well as self-reported poor mental health.²²

Employment law protections for pregnant women also fail to support working mothers that are breastfeeding. The Article by Professors Candance Thomas, Lauren Murphy, and Drake Van Egdom entitled *Supporting Employee Lactation: Do U.S. Workplace Lactation Benefit Mandates Align with Evidence-Based Practice?* provides a thorough review of workplace lactation laws and policies across the fifty states and the District of Columbia.²³ The Article not

19. See, for example, *Thomas v. Fla. Pars. Juv. Just. Comm'n*, No. 18-2921, 2019 WL 118011, at *2 (E.D. La. Jan. 7, 2019), where the plaintiff was refused a waiver from completing a 1.5-mile run test while she was pregnant. Attempting the run led to her experiencing severe pain and having to be transported to the emergency room. *Id.* at *2-3. See also Thelma L. Harmon, *Young v. United Parcel Service, Inc.: The Equal Treatment Fallacy*, 20 J. GENDER RACE & JUST. 97, 106 (2017).

20. See Catherine E. Harnois & João L. Bastos, *Discrimination, Harassment, and Gendered Health Inequalities: Do Perceptions of Workplace Mistreatment Contribute to the Gender Gap in Self-Reported Health?*, 59 J. HEALTH & SOC. BEHAV. 283, 290-91, 295 (2018); Nicole T. Buchanan & Louise F. Fitzgerald, *Effects of Racial and Sexual Harassment on Work and the Psychological Well-Being of African American Women*, 13 J. OCCUPATIONAL HEALTH PSYCH. 137, 137 (2008); Brandon L. Velez et al., *Discrimination, Work Outcomes, and Mental Health Among Women of Color: The Protective Role of Womanist Attitudes*, 65 J. COUNSELING PSYCH. 178, 183, 185, 187-90 (2018).

21. Velez et al., *supra* note 20.

22. Harnois & Bastos, *supra* note 20.

23. For more on this topic, see ANDREA FREEMAN, *SKIMMED: BREASTFEEDING, RACE, AND INJUSTICE* 59-85 (2020).

only highlights the current differences among the states, but also provides a list of best practices for supporting working mothers as they continue to breastfeed. The failure to provide protections for breastfeeding has health impacts. Breastfeeding has been shown to lead to healthier mothers and infants. In fact, “one study found that for every 1000 infants not breastfed there were 2033 extra doctor visits, 212 hospitalization days and 609 prescriptions, costing an additional \$331–475 per infant during the first year of life.”²⁴ Research has also shown that a breastfeeding mother recovers faster from childbirth and reports lower stress levels compared to mothers that do not breastfeed.²⁵ Thus, the failure to provide legal protection for breastfeeding negatively impacts the health of mothers as well as their infants.

Finally, the Article by Professors Heather McLaughlin and Christine Thomas entitled *Costs vs. Compensation: Legal and Policy Recommendations for Addressing Workplace Sexual Harassment* examines the costs of workplace sexual harassment and proposes three legal and policy suggestions to address this urgent workplace issue. They suggest expanding legal protection against sexual harassment to all workers, increasing award damages, and updating internal sexual harassment policies and procedures to reflect best practices. Research shows that perceptions of sexual harassment at the workplace are associated with poor physical health for women.²⁶

The impact of gender and racial discrimination in health care, education, and housing on health inequities has been well documented,²⁷ yet scholars are just beginning to study the influence of experiencing gender and racial discrimination in employment on health status. The 2020 Symposium Articles begin to fill the gap by exploring the new civil rights struggle for employment equity and women’s health.

24. See generally Thomas M. Ball & Anne L. Wright, *Health Care Costs of Formula Feeding in the First Year of Life*, 103 PEDIATRICS 870 (1999).

25. See generally STANLEY IP ET AL., U.S. DEP’T OF HEALTH & HUM. SERVS., AHRQ PUB. NO. 07-E007, BREASTFEEDING AND MATERNAL AND INFANT HEALTH OUTCOMES IN DEVELOPED COUNTRIES (2007).

26. Harnois & Bastos, *supra* note 20, at 295.

27. See generally Ruqaiijah Yearby, *Racial Disparities in Health Status and Access to Healthcare: The Continuation of Inequality in the United States Due to Structural Racism*, 77 AM. J. ECON. & SOCIO. 1113 (2018). See also Ruqaiijah Yearby, *When Is a Change Going to Come?: Separate and Unequal Treatment in Healthcare Fifty Years After Title VI of the Civil Right Act of 1964*, 67 SMU L. REV. 287, 289 (2014); Ruqaiijah Yearby, *Breaking the Cycle of “Unequal Treatment” with Healthcare Reform: Acknowledging and Addressing the Continuation of Racial Bias*, 44 CONN. L. REV. 1281, 1288 (2012).

