Global Diversity and the American Workforce

By Jeffrey W. Larroca

The impact of global diversity is felt in many ways in the American legal system. Some influences, such as the proper role and weight of another nation's laws on our own, can become quite contentious. Witness the vociferous criticism of the Supreme Court when it recently relied upon international law in deeming the death sentence of a minor cruel and unusual punishment in violation of the Eighth Amendment. The debate over illegal immigration and its impact on the United States labor market highlights another impact of global diversity that currently reverberates in American politics, whether through regular calls for immigration reform or the voicing of concerns over the "outsourcing" of American jobs. Other hallmarks of global diversity, however, such as the desirability of a diverse workforce in an increasingly internationalized economy, are long-standing and uncontroversial. Moreover, these considerations are expressed and represented in United States law and practiced in various ways.

In our employment laws, as early as the passage of the Civil Rights Act of 1964, a global diversity concern was codified in American anti-discrimination law via Title VII of the Civil Right Act of 1964, which prohibited employment discrimination against individuals on the basis of their gender, race, color and religion. The law, however, also protected individuals based upon their national origin, and after its passage, entire swaths of individuals from other countries, or whose forebears were from other countries, were also protected from job discrimination. Added to the protections afforded those of diverse religions, races and colors, it was clear that the concepts of global diversity expressed a strong voice. According to the Equal Employment Opportunity Commission, in fiscal year 2009, nearly 12% of all charges of discrimination were based on national origin.

The global emphasis is further demonstrated by the fact that the federal government tracks the ethnicity and background of much of the American workforce via the EEO-1 form. The EEO-1 form must be filed annually by all United States employers with 100 or more employees or all federal government contractors and first-tier subcontractors with 50 or more employees and contracts amounting to $50,000 or more. In an earlier version, the form included limited categories: Hispanic, White (not of Hispanic origin), Black (not of Hispanic origin), Asian or Pacific Islander, and American Indian or Alaskan Native. The EEO-1 was revised in 2005 and points out the impact of global diversity in the American workplace with the following expanded categories:

Hispanic or Latino – includes all employees who answer "Yes" to the question, are you Hispanic or Latino?
White (not Hispanic or Latino)
Black or African American (not Hispanic or Latino)
Native Hawaiian or Other Pacific Islander (not Hispanic or Latino)
Asian (not Hispanic or Latino)
American Indian or Alaska Native (not Hispanic or Latino)
Two or More Races (not Hispanic or Latino)

Global diversity also plays a role in our immigration laws. As most American employers know, or should know, a staple of the hiring process is the I-9 form, which was mandated by the Immigration Reform and Control Act of 1986. The form is required to be filled out by American job applicants and allows any number of documents to be provided to an employer to demonstrate an individual's legal right to work in the United States. Concern over use of the form as a justification or basis for discrimination, however, led to the inclusion of anti-discrimination provisions which state: "It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination." These protections echo the anti-discrimination language of Title VII with regard to national origin, but they go even further by prohibiting discrimination against non-citizens who are otherwise authorized to work in the United States, further demonstrating the impact of global diversity on the American workforce. In October 2010, the Department of Justice oversaw the payment of a $275,000 civil penalty by a San Francisco-based health care system for requiring non-U.S. citizen and naturalized U.S. citizen new employees to provide more work authorization documents than required by the I-9, while allowing native-born U.S. citizens to undergo a less rigorous documentation process. The fine was the largest civil penalty ever paid to resolve such allegations, and as part of the settlement the health system has pledged to review its I-9 practices at its 41 facilities nationwide and to review and revise its hiring policies.

American law presupposes the existence of workers from around the world and codifies protections for those employees. As observed by the Supreme Court in 2003, "major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints." The need identified by the Supreme Court has been a critical component of the legal protections afforded, and it now underlies modern employment practices, ranging from training on cross-cultural understanding and global cultural awareness programs. Indeed, the hottest trend in the American workplace is the change in emphasis from "Diversity Officer" to "Global Diversity Officer" and honors for global diversity are becoming more common. As global influences become more manifest in the American labor market, the emphasis will continue to shift. ●

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