

# LEGAL REGULATION AND HR PRACTICE

LINDA DICKENS

INDUSTRIAL RELATIONS RESEARCH UNIT

Warwick Business School

[Linda.Dickens@wbs.ac.uk](mailto:Linda.Dickens@wbs.ac.uk)

Presentation to Symposium on  
Equality and Diversity Issues in the Workplace  
organised by Oxford Brookes University.

Worcester College, Oxford, 17<sup>th</sup> June 2010

# Legislation matters

- Argument of paper\_

Legal regulation not an irrelevance or diversion - but can expect too much

Nature of legislation and of its enforcement matter, as does context within which it falls to be implemented

- Presentation draws on broader research into legal regulation of employment relations to consider

1. the way legislation affects practice

2. factors which influence impact at workplace

making reference to the equality duties in UK equality legislation

# Problems identifying impact of law on employment practice

- Isolating law from other factors (rarely single factor explanation for change) and weighing its importance.
- Deciding causality
- Assessing indirect impacts as well as direct impact – symbolic; ‘shadow of law’; levers; attitudinal change
- Some impacts easier to spot – procedural development; institution building

# Procedures... and Practice

- Clear legislative influence on existence, spread and formalisation of procedures e.g. reported existence of equal opportunity policies – 73% of workplaces in 2004; 64% in 1998 (WERS data)
- Scope of EoPs reflects legislative development. Sex, race (covered by 88% of EoPs stating grounds). Disability (85%) Religion (82%) sexual orientation (71%), age (69%)
- Agenda setting function of law demonstrated
- but need to MIND THE GAP – between espoused policy and workplace practice
- Developments reflect limitations of legislation as well as its positive influence

# Factors affecting impact (1)

Acceptance/legitimacy of legislation

Source/origin; stakeholder involvement; policy context

Nature of legislation and its enforcement

What legislation requires of employers

- passive/active
- individualised/structural

Generally in UK - passive and individualised

‘victim complains’ rather than requiring employer action or agency enforcement; remedies relate to individual

# Problems with 'individual complains' approach

## 1. Certain preconditions

- Awareness of rights; knowledge of rights and how to enforce them,
- Preparedness to act ; ability to claim right (support, rep. etc.).

Evidence of increasing awareness of rights but not evenly distributed.

## 2. Limited ability of this approach to affect social change

Individual remedies fail to impact on employer behaviour - even those employers taken to ET. No provision for class action.

## 3. Indirect impact (demonstration effect of cases) constrained by low risk of challenge and nature of outcomes. Risk of ET: 2.2 per 1000 employees; 8% of employers. Outcomes - 12% of all ET claims succeeded; £4,000 median compensation

Discrimination jurisdictions median total awards : sex £9,109; race £6,325; disability £8,000 (more than one-third of awards less than £5,000)

Use of action recommendation rare (15 cases) and constrained - but potential improvement in Equality Act 2010

# Factors affecting impact (2)

- negative duties or positive requirements
  - Equality Duties (relating to race, disability, gender) –  
important shift to positive requirement to promote equality rather than not discriminate
  - Weaknesses in current duties
    - extent to which action is required;
    - focus on process rather than outcomes;
    - complexity;
    - limited application (public bodies)
- conceptualisation of equality as equal treatment



# Factors affecting impact (3)

Incentives/levers to compliance

- how compliance is supported
- how legislation is enforced - are there effective sanctions and incentives to encourage pro-activity
- enforcement approaches
- Extent of transparency and accessible information – harnessing stakeholder support; facilitating self-regulation
- Whether compliance is mainstreamed – e.g. importance of equality within other inspections; performance reviews etc.

Regulation interacts with environment in which it falls to be implemented –mediating factors

# Mediating influences at workplace

- Market context; desired or existing competitive strategies
- HR strategies/management style (relevance and fit); organisation structures and capabilities
- Trade union presence
- Specialist HR
- Role and nature of line mgt – skills, attitudes (example of right to request flexible working)

# References: speaker's relevant published research

Linda Dickens and Mark Hall 'Legal Regulation and the changing workplace' in W.Brown, A.Bryson, J.Forth and K. Whitfield, (eds) *Evolution of the Modern Workplace*, Cambridge University Press 2009 This books draws on 25 years of WERS surveys\* (see also chapter by S.Dex and J.Forth, 'Equality and Diversity at Work').

Linda Dickens 'The Road is Long. Thirty years of equality legislation in Britain', *British Journal of Industrial Relations*, 45, 2007,

Linda Dickens, M.Hall and S.Wood *Review of research into the impact of employment relations legislation* Employment Relations Research Series no 45, HMSO, 2005

Linda Dickens 'Equality and Work-Life Balance: what's happening at the workplace?', *Industrial Law Journal*, 35, OUP, 2006, 445-449,

Linda Dickens and M. Hall 'Fairness - up to a point. Assessing the impact of New Labour's employment legislation', *Human Resource Management Journal*, 16, 2006, 338-356

Note: \* WERS = the Workplace Employment Relations Survey.

The latest (2004) findings are presented in B. Kersley et.al (2006) *Inside the Workplace* London:Routledge.