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Erika C. Collins

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Global Diversity Initiatives

ERIKA C. COLLINS*

Abstract

Over the last thirty years, many countries have passed some form of regulation to promote diversity in the workplace. The evolution of these legal and regulatory developments reveals a landscape filled with varied and multidimensional approaches to a common imperative. This article will survey a broad spectrum of regional approaches to global workplace diversity initiatives, focusing on the cultural and legal definitions of protected categories, advances in positive discrimination legislation, and the possible tensions between the promise and the reality of diversity regulation. In the past several years, different regions of the world have experienced unique successes and challenges in achieving workplace diversity. While the United States has embraced diversity initiatives as a whole, the European Union has pioneered efforts to achieve gender parity in corporate management, and countries in Asia have set progressive quotas to increase the representation of persons with disabilities in the workplace. From recruitment and retention to promotion and wage setting, multinational organizations, no matter where they are headquartered, must meet the legal challenges posed by both domestic and international antidiscrimination legislation. This article will address the collision of international privacy regulation and the demands of equal opportunity laws, particularly in the development of strategies to collect and report employee diversity statistics. This comprehensive survey will conclude with a discussion of recent trends in global diversity awareness, such as an increased focus on pay equity legislation and the impact of the global recession on cross-border diversity initiatives.

Introduction

Over the last thirty years, many countries have passed some form of regulation to promote diversity in the workplace. Although diversity management is a common imperative for multinational corporations, the evolution of legal and regulatory developments reveals a landscape filled with varied and multidimensional approaches. In the past several years, different regions of the world have experienced unique successes and challenges in achieving workplace diversity. While the United States has embraced diversity initiatives as a

* Erika Collins is a partner in the Employment Law Department of Paul Hastings, LLP, and also chairs the firm's International Employment practice. Erika Collins was assisted in the writing of this article by Paul Hastings, LLP summer associate Sara Tomezscko, a student at Cornell Law School.

whole, the European Union has pioneered efforts to achieve gender parity in corporate management, and countries in Asia have set progressive quotas to increase the representation of disabled employees. This article addresses some of these recent initiatives to promote corporate diversity in the multinational workplace. Part I will detail the importance of global diversity initiatives and the theories behind implementation. Part II will examine affirmative action plans and initiatives, including gender quotas for corporate board composition and quotas for increased representation of disabled workers. Part II will also discuss other forms of regulatory change designed to achieve equal opportunity in the workplace, including pay equity legislation and changes to sexual and moral harassment laws and policies. Part III will discuss the particular challenges that corporations with a global presence may encounter in the administration of both internal and legally mandated diversity initiatives. These challenges include barriers to the collection and retention of employee diversity statistics imposed by international privacy regulation, the difficulties in adapting an integrated diversity initiative to regional demands, and the ever-present gaps between legislation and enforcement.

I. Global Diversity Management: The Business Case Versus the Moral Imperative

Global diversity management is “the planning, coordination and implementation of management strategies, policies, initiatives and development activities with the aim of accommodating diverse sets of working in organizations with international work forces.”¹ In a world populated by an increasing number of multinational corporations, diversity management has not only become an issue of strategic importance, but also a driver of economic and competitive success.² Not only does an increasingly diverse workforce mean better access to resources and customers, greater legitimacy in heterogeneous societies, and opportunities for learning and innovation, but corporations also perceive added value in distinguishing themselves from their homogenous competitors.³ As of 2004, 42 percent of firm mission statements cited increased corporate diversity as a means of “increasing performance,” while 29 percent stated that a more heterogeneous workforce leads to better relationships with stockholders.⁴

Other studies approach the need for increased corporate diversity from a moral imperative perspective. These approaches focus on the necessity of equal opportunity and the desire to eradicate prejudices and stereotypes that historically have limited the representation of disadvantaged groups.⁵ This approach seeks to minimize the negative effects of

1. M. ÖZBILGIN & A. TATLI, GLOBAL DIVERSITY MANAGEMENT: AN EVIDENCE-BASED APPROACH 8 (2008).

2. See Karsten Jonsen et al., *Diversity – A Strategic Issue?*, in DIVERSITY IN THE WORKPLACE: MULTIDISCIPLINARY & INTERNATIONAL PERSPECTIVES 29, 29 (Stefan Gröschl ed., 2011).

3. See Susan C. Schneider, *Globalization: On Being Different*, in DIVERSITY IN THE WORKPLACE, *supra* note 2, at 89, 94.

4. See Inéz Labucay, *Diversity Management Between ‘Myth and Ceremony’ and Strategic Economic Rationale – Theoretical Perspectives & Empirical Evidence from Germany*, in DIVERSITY IN THE WORKPLACE, *supra* note 2, at 146, 146.

5. See *id.* at 152 (citing A. SCHULZ, STRATEGISCHES DIVERSITÄTSMANAGEMENT: UNTERNEHMENSFÜHRUNG IM ZEITALTER DER KULTURELLEN VIELFALT [STRATEGIC DIVERSITY MANAGEMENT: CORPORATE MANAGEMENT IN THE AGE OF CULTURAL DIVERSITY] 86 (2009)).

exclusion and promote positive social integration through inclusive policies.⁶ Equal employment opportunities and affirmative action initiatives tend to be associated with this theory of diversity management.⁷ While business incentives to increase corporate diversity are often developed internally, equal employment opportunity initiatives and affirmative action are usually imposed from the outside.⁸ In the United States, legislation and court-ordered mandates are prime examples of external forces that compel a corporation to diversify.⁹

Though a business case for diversity is perhaps an effective driver, too great an emphasis on the bottom line can obscure the moral imperative for diversification that perhaps sparked the need for change in the first instance.¹⁰ These two approaches to diversity management should not exist as a dichotomy, but rather as complementary forces incorporated into a single framework. A Danish multinational corporation adopted such an approach with the implementation of their robust diversity management program in 2008.¹¹ The global initiative aimed at creating “a workplace that reflects the nature and diversity of society” and achieving “higher potential in terms of creativity and performance.”¹² Thus, a global corporation need not choose between the two approaches, but can adapt a diversity strategy that best fits its individual needs.

II. Surveying the Landscape: A Review of Recent Global Diversity Initiatives

A. POSITIVE DISCRIMINATION

Positive discrimination “refers to a system of practices, such as hiring quotas, designed to directly increase the proportion of people from minorities in the workplace.”¹³ Positive discrimination is widely practiced throughout Europe, North America, Africa, and India.¹⁴ In the United Kingdom, employers are legally required to implement “positive action” in their recruitment processes under the Equality Act of 2010.¹⁵ This legislative measure goes further than prohibiting discrimination against members of protected classes. The Act allows employers to favor an applicant if the employer believes that the applicant experiences a “disadvantage connected to the [protected] characteristic,” and that positive discrimination will “enable[e] or encourag[e] persons who share the protected characteris-

6. See Karsten Jonsen et al., *Special Review Article: Diversity and It's Not So Diverse Literature: An International Perspective*, 11 INT'L J. CROSS CULTURAL MGMT. 35, 39 (2011).

7. See *id.*

8. See *id.*

9. See *id.*

10. See Jakob Lauring, *International Diversity Management: Global Ideals & Local Responses*, BRIT J. MGMT. (forthcoming 2012) (manuscript at 3); A. Tatli, *A Multi-Layered Exploration of the Diversity Management Field: Diversity Discourses, Practices and Practitioners in the UK*, 22 BRIT J. MGMT. 238, 238-53 (2011).

11. See Lauring, *supra* note 10, at 4.

12. *Id.*

13. Jonsen, *supra* note 6, at 39.

14. See Colm O'Cinneide, *Comparative Study on Positive Action in Law and Practice*, in TAKING EMPLOYMENT DISCRIMINATION SERIOUSLY: CHINESE AND EUROPEAN PERSPECTIVES 279, 279 (Yuwen Li & Jenny Goldschmidt eds., 2009).

15. The Equality Act, 2010, c. 15, §§ 158-59 (Eng.), available at <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

tic to overcome or minimize that disadvantage.”¹⁶ A similar regulation was signed into law in 2007 in South Africa.¹⁷ The Codes of Good Practice serve as an amendment to the 2003 Broad-Based Black Economic Empowerment Act and specify targets for employment equity and how to measure representational data.¹⁸ Positive action that classifies South African citizens into protected categories is not considered an unfair form of discrimination; rather, systematically advantaging one group of workers is fair “where it is directed towards removing group disadvantage and is objectively justified.”¹⁹ Finally, international bodies have also passed regulations that allow for participating member states to take positive action to promote workplace equality.²⁰ Under relevant EU antidiscrimination directives, a number of member states have introduced positive discrimination regulations including: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Croatia, and the Former Yugoslav Republic of Macedonia.²¹

In the United States, positive discrimination (more commonly known as affirmative action) is most closely associated with initiatives to diversify institutions of higher education to reverse the historical disadvantages placed upon minority groups.²² Outside of this narrow context, the Supreme Court of the United States has systematically invalidated every single racial-classification scheme designed to benefit a minority group.²³ This is because the main source of anti-discrimination law in the United States is statutory and codified in legislative measures like Title VII of the Civil Rights Act.²⁴ These laws govern the terms of an employment relationship, but they mostly provide for prohibitions on discriminatory practices.²⁵ The United States is not the only nation to strike down affirmative action measures as unconstitutional. Several European countries consider “reverse discrimination” that privileges one social group over another to violate constitutional principles of equality. Germany is one such country where legislators have proposed implementing a quota system to achieve greater diversity in the workplace, but have experienced challenges on constitutional principles.²⁶ The *Grundgesetz* contains a provision

16. *Id.*

17. Broad-Based Black Economic Empowerment Act 53 of 2003 (S. Afr.).

18. *Id.*

19. O’Cinneide, *supra* note 14, at 295.

20. See, e.g., Council Directive 2000/43, 2000 O.J. (L 180) 22 (EC); Council Directive 2007/78, 2007 O.J. (L 303) 16 (EC).

21. Directorate-General for Justice, European Commission, Developing Anti-Discrimination Law in Europe, The 27 EU Member States Compared, at 54 (2010) (by Isabelle Chopin & Thien Uyen Do).

22. See, e.g., *Gutter v. Bollinger*, 539 U.S. 306 (2003).

23. See Michelle Adams, *Is Integration A Discriminatory Purpose?*, 96 IOWA L. REV. 837, 847 (2011).

24. 42 U.S.C. § 2000e-2(a) (2006) (“It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual’s race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in a way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”).

25. Patrick Shea & Mitch Mosvick, *United States*, in THE EMPLOYMENT LAW REVIEW 720, 720 (Erika C. Collins ed., 3rd ed., 2011).

26. See Fritz Kleweta, *Germany*, in BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM 14 (2011).

guaranteeing equality for all citizens,²⁷ and it is unclear whether quotas to increase the representation of women or ethnic minorities in the workforce would violate the German Constitution.²⁸ Similarly, the Italian Constitutional Court ruled in 1995 that affirmative action measures to increase the representation of women in Italian elections would cause gender discrimination against men and violate the equality principles enshrined in the Italian Constitution.²⁹ But the *Grundgesetz* also empowers the German legislature to promulgate laws to promote gender equality,³⁰ and extensive debate over Constitutional authority continues in Germany today. In nations that have successfully implemented aggressive positive discrimination quotas, anti-discrimination legislation may contain explicit provisions addressing problems of constitutional interpretation. In Norway, the Gender Equality Act³¹ expressly provides that affirmative action plans are harmonized with constitutional principles of equality because they serve as a means to achieve constitutional ends.³²

1. Gender Quotas for Corporate Board Diversity

Legally mandated gender quotas are one apparently effective form of positive discrimination that has taken hold in Europe. These metrics serve as a regimented means of removing inequities in the corporate boardroom and promoting women's economic interests. Before the first gender quota came into effect in 2003, the problem of female underrepresentation was strikingly apparent. In an overwhelming number of nations, the proportion of women in the workforce continually increased,³³ yet this growth did not translate into increased representation on corporate boards.³⁴ European countries have set the pace for increased percentages of women directors at 11.9 percent.³⁵ The Americas follow with 9.9 percent female corporate directors.³⁶ Numbers are as low as 6.5 percent in the Asia-Pacific region and 3.2 percent in the Middle East and North Africa.³⁷ Still, there have been noted improvements in the number of women represented on corporate boards in several countries, especially those with legally mandated gender quotas for board composition.

27. Grundgesetz Fur Die Bundesrepublik Deutschland [Basic Law for the Republic of Germany], May 8, 1949, Art. 3(2) (Ger.) [hereinafter Basic Law of Germany].

28. See Kleweta, *supra* note 26, at 14.

29. See Corte cost., 6 set. 1995, n. 422, Racc. Uff. Corte cost., 117 (It.).

30. Basic Law of Germany, *supra* note 27.

31. Likestillingsloven [The Act Relating to Gender Equality] 2005:38 (Nor.), available at <http://www.regjeringen.no/en/doc/Laws/Acts/The-Act-relating-to-Gender-Equality-the-.html?id=454568>.

32. See Kleweta, *supra* note 26, at 20.

33. Marilyn J. Davidson & Ronald J. Burke, *Women in Management Worldwide: Progress and Prospects – An Overview*, in *WOMEN IN MANAGEMENT WORLDWIDE: PROGRESS AND PROSPECTS* 1, 6 (Marilyn J. Davidson & Ronald J. Burke eds., 2nd ed. 2011). As of 2011, only China and Turkey showed no increased in the number of women in the paid workforce. *Id.*

34. Rohini Pande & Deanna Ford, *Gender Quotas and Female Leadership: A Review*, Background Paper for the World Development Report on Gender, at 2 (Apr. 7, 2011), available at http://web.hks.harvard.edu/publications/faculty_name.aspx?PersonId=212.

35. *Id.*

36. *Id.*

37. *Id.*

Norway was the first nation to enact a legally mandated gender quota in 2003,³⁸ and the only country whose deadline for compliance has passed.³⁹ Before the quota, women represented a meager 6.8 percent of board directors in Norway.⁴⁰ In response, the Norwegian Parliament approved a rule requiring corporate boards to consist of 40 percent women by 2008.⁴¹ The quota applies to all publicly owned corporations and public limited liability companies in the private sector.⁴² Norway has yet to regulate the number of women on the boards of privately owned limited liability companies.⁴³ Effected corporations had until January 1, 2006 to voluntarily comply with the quota rule, after which time compliance became mandatory.⁴⁴ The result was full compliance with the mandate by 2009,⁴⁵ and in 2010, the percentage of female directors had increased to 40.3 percent.⁴⁶ The gender quota law has had an undeniably positive impact, and in 2011, the country ranked second in the world for gender equality according to the World Economic Forum's Global Gender Gap Report.⁴⁷

Over nine years after Norway enacted its groundbreaking gender quota, many other countries have followed suit.⁴⁸ In 2011, the Belgian Parliament passed a law that revised the Belgian Company Code to improve the representation of women on the corporate boards of listed companies.⁴⁹ All state-owned companies, the postal service, and publicly traded companies listed on the stock exchange must have at least 33 percent women on

38. Anna Reimann, *Norway's Gender Quota: A Laboratory for the Advancement of Women*, SPIEGEL ONLINE (May 29, 2012), <http://www.spiegel.de/international/europe/how-norway-led-the-way-in-gender-quota-success-a-835738.html>.

39. *The Quota Legislative Strategy: A Global Overview*, GLOBEWOMEN, <http://www.globewomen.org/cwdi/CWDI-TEST-QUOTAS-test2.htm> (last visited Dec. 22, 2012) [hereinafter *QLS*]; Pande & Ford, *supra* note 34, at 15.

40. *QLS*, *supra* note 39.

41. Public Limited Companies Act (Act No. 45/1997), as amended by The Act of December 19, 2003 (Act No. 120/2003). Section 6-11 details the requirement that women comprise 40 percent of the board's composition. *Id.*

42. AAGOTH STORVIK & MARI TEIGEN, WOMEN ON BOARD: THE NORWEGIAN EXPERIENCE 4 (June 2010), available at <http://library.fes.de/pdf-files/id/ipa/07309.pdf>.

43. Kleweta, *supra* note 26, at 22.

44. Press Release, Ministry of Children, Equal. & Soc. Inclusion, Rules Regarding Gender Balance within Boards of Public Limited Companies (Aug. 12, 2005), <http://www.regjeringen.no/en/dep/bld/Press-Center/Press-releases/2005/rules-regarding-gender-balance-within-bo.html?id=429993>.

45. STORVIK & TEIGEN, *supra* note 42, at 8.

46. *QLS*, *supra* note 39.

47. RICARDO HAUSMANN ET AL., WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 8 tbl.3a (2011), available at <http://reports.weforum.org/global-gender-gap-2011/#>.

48. Reimann, *supra* note 38.

49. Loi modifiant la loi du 21 mars 1991 portant reforme de certaines entreprises publiques économiques, le Code des sociétés et la loi du 19 avril 2002 relative à la rationalization du fonctionnement et de la gestion de la Loterie Nationale afin de garantir la presence des femmes dans le conseil d'administration des entreprises publiques autonomes, des sociétés cotées et de la Loterie Nationale [Law Modifying the Law of March 21, 1991 Reforming Certain Public Economic Enterprises, the Belgian Company Code and the Act of April 19, 2002 on the Rationalization of the Function and Management of a National Lottery to Ensure the Presence of Women on the Board of Autonomous Public Enterprises, Listed Companies, and the National Lottery] of June 28, 2011, MONITEUR BELGE [M.B.] [Official Gazette of Belgium], Sept. 14, 2011, 59,600. See also Alain De Jonge & Leo Peeters, *Belgium: Gender Diversity in the Boards of Listed and Public Companies*, MONDAQ (May 7, 2012), <http://www.mondaq.com/x/175338/Directors+Officers+Executives+Shareholders/Gender+Diversity+In+The+Boards+Of+Listed+And+Public>.

their corporate board by 2017.⁵⁰ When a seat on the board becomes vacant, corporations must replace the vacancy with a female director until they become compliant.⁵¹ In addition, Belgian companies not yet in compliance with the quota must publish a governance declaration on their efforts to become compliant.⁵² Noncompliance by 2017 will result in sanctions, including the suspension of financial benefits and removal of male board members elected in the interim.⁵³ In France, the meager number of women directors prompted the French Parliament to enact a gender quota rule in 2011.⁵⁴ The law requires corporations in France to increase the proportion of women on their boards to 20 percent by 2014 and 40 percent by 2017.⁵⁵ Affected entities include public limited companies listed on the French exchange, large firms with over 500 employees, and firms with a turnover of €50 million.⁵⁶ While there are no monetary sanctions for noncompliance, the law provides that board appointments in violation of the quota will be declared null and void.⁵⁷ The quota has already had a positive effect on the number of women on French corporate boards. In 2007, the percentage of women increased to 6.4 percent, and in 2011, the number grew to 16.5 percent.⁵⁸ Finally, in June 2011, the Italian Parliament passed a mandatory gender quota law by a supermajority vote.⁵⁹ The Gender Parity Law went into effect in August of that year. The law requires corporations to achieve 33 percent female directors on their boards within three years.⁶⁰ Regulation and enforcement is the purview of the *Commissione Nazionale per la Società e la Borsa (Consob)*, which is expected to promulgate a second level of regulation.⁶¹ The law only applies to public limited liability companies, and no laws yet exist to regulate the composition of boards of private companies.⁶²

50. CODE DE COMPANIES [C.COMP.] art. 518 (Belg.); Guy Van Gyes, *Law Sets 30% Quota for Women on Management Boards*, EUR. INDUS. REL. OBSERVATORY ON-LINE (Aug. 16, 2011), <http://www.eurofound.europa.eu/eiro/2011/06/articles/bel106021i.htm>. The law is technically gender-neutral—it provides that corporate boards must be comprised of one-third directors of a different gender than the majority of directors. See CODE DE COMPANIES [C.COMP.] art. 518 (Belg.).

51. Gyes, *supra* note 50.

52. Kleweta, *supra* note 26, at 10.

53. De Jonge & Peeters, *supra* note 49 (noting initial drafts of the law proposed that noncompliance would also result in nullification of all board directives in the interim period, but the final law does not include this sanction).

54. Loi 2011-103 du 17 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle [Law 2011-103 of January 27, 2011 on the Balanced Representation of Men and Women on Boards of Directors and Supervisory and Professional Equality], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Jan. 28, 2011, p. 1680.

55. QLS, *supra* note 39. The original proposals for the law suggested quotas of 20 percent by 2012, 40 percent by 2013, and 50 percent by 2015. See Lizzy Davies, *French Plan to Force Gender Equality on Boardrooms*, THE GUARDIAN (Dec. 2, 2009, 4:51 PM), <http://www.guardian.co.uk/world/2009/dec/02/french-government-gender-equality-plan>.

56. Jacqueline Laufer, *Women in Management in France*, in WOMEN IN MANAGEMENT WORLDWIDE, *supra* note 33, at 21, 32.

57. QLS, *supra* note 39.

58. *Id.*

59. Legge 12 luglio 2011, n. 120 (It.), available at http://www.lavoro.gov.it/NR/rdonlyres/E1BB7203-C043-439A-A3F2-39616D1547A2/0/20110712_L_120.pdf. See also Kleweta, *supra* note 26, at 15.

60. QLS, *supra* note 39.

61. Kleweta, *supra* note 26, at 15.

62. *Id.* at 15, 22.

As early as October 2012, the European Commission plans to introduce a law to require listed companies in the European Union to include 40 percent women on their corporate boards by 2020.⁶³ Since March 2012, EU Justice Commissioner Viviane Reding has called on companies to voluntarily increase the number of women directors.⁶⁴ In preparation for an EU-wide mandate, the Commission is currently evaluating the impact such a regulation would have on the European economy.⁶⁵ Legally mandated gender quotas are also starting to appear outside of Europe as well. In 2011, Malaysia's Ministry of Women, Family, and Community Development succeeded in passing an amendment to the 2004 regulation requiring 30 percent female directors on boards in the public sector.⁶⁶ The law requires all publicly listed companies to also achieve the 30 percent mark by 2016.⁶⁷ In the Philippines, the Senate approved a bill in 2012 that would penalize employers for giving preferential treatment to male applicants and executives.⁶⁸

Several nations have signed gender quota rules into law, but the lack of specific sanctions or penalties effectively makes the rules function more like recommendations than mandates. The Icelandic legislation enacted in March 2010 requires that corporate boards of more than three individuals must consist of at least 40 percent of each gender by September 2013.⁶⁹ The law applies to both public and private limited liability companies with over fifty employees, but there are no penalties for noncompliance with the law.⁷⁰ In Spain, a legislated recommendation aims for 40 percent women on corporate boards of public limited liability companies with over 250 employees.⁷¹ The law specifies that corporations have until 2015 to comply with the quota, but it lacks a full implementation plan or punitive measures for noncompliance.⁷² The Netherlands enacted a similar recommendation in 2011.⁷³ Amendments to the Dutch Corporate Code recommend a 30 percent female target quota for both boards of directors and senior management in all public and limited liability corporations with over 250 employees.⁷⁴ The provisions are non-binding, and noncompliant companies are only required to explain why they have not met the quota in annual reports.⁷⁵ The legislation expires in 2016.⁷⁶

63. Michelle Martin, *EU Plans to Enshrine Female Director Quota in Law – Paper*, REUTERS (June 14, 2012, 8:43 AM), <http://uk.reuters.com/article/2012/06/14/uk-eu-women-quota-idUKBRE85D0C020120614?feedType=RSS&feedName=domesticNews>.

64. *Id.*

65. *Id.*

66. Clara Chooi, *Compulsory 30pc Women Stake in Top-Level Posts by 2016*, MALAYSIAN INSIDER (June 27, 2011, 3:21 PM), <http://www.themalaysianinsider.com/malaysia/article/compulsory-30pc-women-stake-in-top-level-posts-by-2016/>.

67. *QLS*, *supra* note 39.

68. *Philippine Senate Approves Bill Seeking to End Women Discrimination*, XINHUANET (Mar. 13, 2012, 9:31 PM), http://news.xinhuanet.com/english/world/2012-03/13/c_131465245.htm.

69. See Jennie Westlund, *Iceland Introduces Gender Quotas on Corporate Boards*, NIKK NORDIC GENDER INST. (Mar. 10, 2010), <http://www.nikk.no/?module=Articles;action=Article.publicShow;ID=1055>.

70. See *QLS*, *supra* note 39.

71. The Equality Act tit. VIII, art. 78 (B.O.E. 2007, 6115) (Spain), *available at* <http://www.boe.es/boe/dias/2007/03/23/pdfs/A12611-12645.pdf>.

72. See *QLS*, *supra* note 39.

73. Stb. 2011, p. 275 (Neth.), *available at* www.eerstekamer.nl/9370000/1/j9vhwbtbnzpbzcc/viqsczp6bnu/f=y.pdf.

74. See *QLS*, *supra* note 39.

75. See Kleweta, *supra* note 26, at 18.

76. *Id.*

Unlike many countries that have promulgated employment quotas, the United States does not legally mandate a percentage of underrepresented individuals in the workplace.⁷⁷ Rather, industry-specific regulatory bodies will often recommend that corporations based in the United States aim to achieve an unspecified level of diversity. For instance, the Securities and Exchange Commission approved rules addressing issues of corporate diversity in 2010.⁷⁸ These regulations require publicly held corporations to disclose to shareholders information regarding the level of consideration diversity initiatives play in the nomination of board directors.⁷⁹ Despite these indirect recommendations, however, women continue to comprise less than 20 percent of the board members of large corporations, and only 2 percent of the leaders of Fortune 500 companies.⁸⁰ For practical purposes, many of the anti-discrimination initiatives implemented by U.S. corporations must be internally motivated. Recently, however, well-known companies have made efforts to diversify their boards. Chief Operating Officer Sheryl Sandberg made headlines as the first female appointed to the board of Facebook, a publicly traded billion-dollar social media enterprise.⁸¹ With the addition of Sandberg, Facebook is making strides toward its goal of achieving a more inclusive board that represents the interests of the company's large and diverse user base.⁸²

Other countries have taken a similar approach to the United States. In Greece, for example, gender equality is an integral component of the National Strategic Development Plan (2007-2013).⁸³ In 2010, the United Kingdom revised its Corporate Governance Code to include a new principle recommending heightened awareness of gender parity in board appointments.⁸⁴ Australia implemented the Workplace Gender Equality Act in 2011.⁸⁵ The law requires all organizations with over 100 employees to disclose "the gender composition of their boards and a set of gender equality indicators" in annual reports.⁸⁶ Further, the Australian Stock Exchange has developed the most progressive implementation strategy for corporate gender diversity in the world.⁸⁷ The Australian Stock Exchange requires corporations to report on the percentage of women directors, senior managers, and employees, as well as develop timetables and targets to improve representation.⁸⁸ Since the enactment of these initiatives, the Australian Institute of Corporate Directors has noted a 15 percent increase in the number of female directors on

77. See Shea & Mosvick, *supra* note 25, at 720.

78. See Kleweta, *supra* note 26, at 34.

79. SEC Corporate Governance, 17 C.F.R. § 229.407(c)(2)(vi) (2010).

80. See *Women in the Workforce: Female Power*, THE ECONOMIST, Jan. 2, 2010, at 49, available at <http://www.economist.com/node/15174418>.

81. See Brian Womack, *Facebook Adds COO Sandberg to Board as First Female Director*, BLOOMBERG BUSINESSWEEK (June 26, 2012), <http://www.businessweek.com/news/2012-06-25/facebook-appoints-sandberg-to-board-adding-first-woman-director>.

82. See *id.*

83. See Athena Petraki Kottis & Zoe Ventoura Neokosmidi, *Women in Management in Greece*, in WOMEN IN MANAGEMENT WORLDWIDE, *supra* note 33, at 39, 49.

84. UK Corporate Governance Code, 2010, § B.2, available at frc.org.uk/Our-Work/Publications/Corporate-Governance/The-UK-Corporate-Governance-Code.aspx.

85. *Workplace Gender Equality Act 2012* (Austl.).

86. See Kleweta, *supra* note 26, at 38.

87. See *Australia: Creating Change Without Mandates—Private Sector Efforts*, GLOBE WOMEN, <http://www.globewomen.org/CWDI/CWDI-TEST-AUSTRALIA.htm> (last visited Dec. 24, 2012).

88. See *id.*

boards of companies that are on the Australian Stock Exchange 50.⁸⁹ Pakistan also has promoted diversification of corporate boards through its Code of Corporate Governance.⁹⁰ The Code encourages both executive and non-executive directors to represent “minority interests” and promote diversity interests.⁹¹ But because these recommendations lack an enforcement mechanism, corporate board composition in Pakistan reveals that 78 percent of companies listed on the KSE 100 Index are all male.⁹² Of the companies that do nominate women directors, a significant portion are private, family owned corporations, suggesting that gender diversity may be motivated by a desire to maintain control of the corporation within the family.⁹³

Finally, countries that lack a gender quota, whether mandatory or voluntary, are still focused on the issue of gender parity. In Germany, gender quotas have the support of the conservative Labor party, while Christian Democrats insist that voluntary initiatives are a more efficient means of increasing diversity on corporate boards.⁹⁴ It remains unclear whether Germany will adopt its own gender quotas, though the *Justizministerkonferenz* has submitted a draft bill to the *Bundesrat* Federal Council that proposes an increase in the percentage of women directors on the boards of publicly traded corporations to 30 percent by 2017 and 40 percent by 2022.⁹⁵ In 2010, a Canadian female senator introduced a bill to amend various laws requiring corporations to increase the number of women serving on their boards.⁹⁶ One year later, however, the Canadian legislators recommended against further consideration of the bill, stating that it impermissibly imposed federal requirements on the composition of foreign-incorporated public corporations in Canada.⁹⁷

2. Disability Quotas

While Europe seems to lead the way in positive action legislation for gender equity, Asian nations are progressive in their affirmative action initiatives for disabled persons. Japan has instituted quotas for the employment of disabled workers since 1960⁹⁸ and recently amended its legislation in 2005.⁹⁹ The law requires employers in Japan in both the private and public sectors to have approximately 2 percent of their workforce comprise

89. Media Release, Austl. Inst. of Co. Dirs., Numbers of Women on Australia's Leading Boards Continue to Grow (Mar. 8, 2012), available at <http://www.companydirectors.com.au/General/Header/Media/Media-Releases/2012/Numbers-of-women-on-Australias-leading-boards-continue-to-grow>.

90. See Composition of the Board, PAK. CODE CORP. GOVERNANCE (2012), § i available at http://www.ecgi.org/codes/documents/cg_code_pakistan_apr2012_en.pdf.

91. *Id.*

92. See ACCA PAK., GENDER DIVERSITY ON BOARDS IN PAKISTAN 7 (2010), available at http://www2.accaglobal.com/pubs/pakistan/general/technical/IFC/gender_diversity.pdf.

93. See *id.*

94. See Reimann, *supra* note 38, *passim*.

95. See Kleweta, *supra* note 26, at 14.

96. Board of Directors Gender Parity Act, 2010-11, S. Public Bill 206 (Can.).

97. See *Proceedings of the Standing Senate Committee on Banking, Trade and Commerce*, PARLIAMENT CAN. (Feb. 3, 2011), http://www.parl.gc.ca/Content/SEN/Committee/403/bank/16evb-e.htm?Language=E&Parl=40&Ses=3&comm_id=3.

98. Shougaisha Koyou Sokushinhou (障害者雇用促進法) [Employment Promotion Act for Persons with Disabilities], Law No. 123 of 1960, § 14(2) (Japan), translated at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/27786/64847/E60JPN01.htm#C01>.

99. Tamako Hasegawa, *Japan's Employment Measures for Persons with Disabilities: Centered on Quota System of "Act of Employment Promotion for Persons with Disabilities"*, 7 JAPAN LAB. R. 26, 32-34 (2010).

persons with disabilities.¹⁰⁰ If a corporation in Japan has over 300 employees and fails to hire enough persons with disabilities, it must pay a monthly levy of 50,000 yen for each person below the quota.¹⁰¹ Beginning April 2015, the levy sanction will apply to corporations with over 100 employees.¹⁰² Notably, however, approximately half of the corporations in Japan choose to pay this levy over implement the positive action, and the employment rate of persons with disabilities in the private sector was as low as 1.63 percent in 2009.¹⁰³ Unlike the United States, which obligates an employer to provide reasonable accommodations to a disabled employee through the Americans with Disabilities Act,¹⁰⁴ Japan does not impose a duty of accommodation on its employers.¹⁰⁵ The two legal paradigms are also different in that the American legal structure is based on a social model of disability, which is focused on eliminating systemic barriers and negative attitudes regarding disability,¹⁰⁶ whereas the Japanese legislation is founded upon the protection model and the medical model, which treats disability as a “condition” intrinsic to the individual.¹⁰⁷ This difference is evident in the fact that the quota system in Japan only benefits those legally certified as disabled under the Services and Supports for Persons with Disabilities Act.¹⁰⁸ In China, the Regulation of Employment for People with Disabilities establishes a framework for promoting the rights of disabled workers.¹⁰⁹ The regulation requires all public and private employers to reserve 1.5 percent of job opportunities for people with disabilities.¹¹⁰ Employers who fail to comply with this quota must pay a monetary fine to the Disabled Persons’ Employment Fund, which supports vocational training and placement services for disabled persons.¹¹¹

Legislative bodies outside of Asia have promulgated disability quotas as well. Such quotas are in place in Austria, Belgium (mostly public sector only), Bulgaria, Cyprus (only in the public sector), the Czech Republic, France, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Croatia, and Turkey.¹¹² Like the Asian models, these laws offer the option to pay a levy in lieu of compliance, an alternative that many employers utilize.¹¹³ Argentina has had an employment quota for persons with

100. Jun Nakagawa & Peter Blanck, *Future of Disability Law in Japan: Employment & Accommodation*, 33 LOY. L.A. INT’L & COMP. L. REV. 173, 180 (2010).

101. *Id.*

102. See JAPAN ORG. FOR EMP. OF THE ELDERLY, PERS. WITH DISABILITIES AND JOB SEEKERS, EMPLOYMENT GUIDE FOR EMPLOYERS AND PERSONS WITH DISABILITIES: SUPPORTING THE EMPLOYMENT OF PERSONS WITH DISABILITIES (JEED) 15 (2011), available at <http://www.jeed.or.jp/english/supporting.html>.

103. Nakagawa & Blanck, *supra* note 100, at 181.

104. 42 U.S.C. § 12112(b)(5)(A) (2006).

105. See Nakagawa & Blanck, *supra* note 100, at 196.

106. Kelly Cahill Timmons, *Accommodating Misconduct Under the Americans with Disabilities Act*, 57 FLA. L. REV. 187, 248-49 (2005).

107. Nakagawa & Blanck, *supra* note 100, at 176 n.16.

108. Shōgai sha jiritsu shien hō [Services and Supports for Persons with Disabilities Act], Law No. 123 of 2005, art. 4(1) (Japan).

109. Can Ji Ren Jiu Ye Tiao Li (残疾人就业条例) [Regulation of Employment for People with Disabilities] (promulgated by the Standing Comm. Nat’l People’s Cong., Feb. 14, 2007, effective May 1, 2007) 2007 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 112 (China).

110. *Id.* art. 8.

111. Jiefeng Lu, *Employment Discrimination in China: The Current Situation & Principle Challenges*, 32 HAMLINE L. REV. 133, 160 n.146 (2009).

112. Developing Anti-Discrimination Law in Europe, *supra* note 21, at 61.

113. See *id.*

disabilities in place since 1981.¹¹⁴ The law requires that 4 percent of job opportunities in the public sector be filled with persons with disabilities.¹¹⁵ In practice, however, employers often violate this legal mandate with impunity.¹¹⁶ International bodies, such as the European Union, also have passed antidiscrimination directives aimed at improving the participation of persons with disabilities in the regional workforce.¹¹⁷ The Directive places a duty upon employers to provide reasonable accommodations for those with disabilities, but the directive is unevenly implemented among the member states.¹¹⁸

B. IMPROVING EQUAL OPPORTUNITY: SUPPLEMENTARY LEGISLATION

1. *Pay Equity Regulation*

Equal pay for men and women has become a hotly contested topic around the globe. In the area of pay disparity, gender creates the widest gaps of any protected characteristic.¹¹⁹ In the United States, the issue has become a lynch pin of Congressional debate in the last few years. In January 2009,¹²⁰ President Obama signed into law the Lilly Ledbetter Fair Pay Act to supplement existing pay equity legislation.¹²¹ Under the Act, the statute of limitations in which to bring an equal pay discrimination claim resets after each discriminatory paycheck.¹²² In 2011, the House introduced two bills, the Paycheck Fairness Act¹²³ and the Fair Pay Act.¹²⁴ The Paycheck Fairness Act would provide for potentially unlimited compensatory and punitive damages in gender-based wage discrimination cases under the Fair Labor Standards Act (FLSA).¹²⁵ In 2012, however, the bill failed to garner the sixty votes needed to pass the Senate.¹²⁶ The Fair Pay Act would amend the FLSA to provide equal pay for *comparable*, rather than equal, work.¹²⁷ Under the Act, employers must maintain and report job categories and pay scales for review by the Equal Employment Opportunity Commission.¹²⁸ These new laws are meant to enable women and other victims of pay discrimination to challenge unequal pay more effectively.¹²⁹

114. Law No. 22431, Mar. 16, 1981, [498/83] B.O. 6 (Arg.), available at <http://www.fameargentina.com.ar/Leyes/Ley22431.pdf>.

115. *Id.*

116. Law No. 22431, Mar. 16, 1981, [498/83] B.O. 6 (Arg.), available at <http://www.fameargentina.com.ar/Leyes/Ley22431.pdf>.

117. Council Directive, 2000/78, art.1, 2000 O.J. (L 303) 16 (EC).

118. Developing Anti-Discrimination Law in Europe, *supra* note 21, at 26.

119. Telephone Interview with Jon. A Geier, Partner, Paul Hastings, L.L.P. (June 12, 2012).

120. Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 125 Stat. 5 (2009).

121. Kenneth W. Gage & Jon A. Geier, *Managing Pay Equity Risks During the Downturn*, STAY CURRENT (Paul Hastings, Chicago, IL), Feb. 2009, http://www.paulhastings.com/assets/publications/1222.pdf?wt.mc_ID=1222.pdf. The Act amended Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, and the Americans with Disabilities Act of 1990. *Id.*

122. *See id.*

123. H.R. 1519, 112th Cong. (2011); S. 797, 112th Cong. (2011).

124. H.R. 1493, 112th Cong. (2011); S. 788, 112th Cong. (2011).

125. Gage & Geier, *supra* note 121, at 1.

126. Robert Schroeder, *Paycheck Fairness Act Fails in Senate Vote*, MARKETWATCH (June 5, 2012, 4:28 PM), <http://www.marketwatch.com/story/paycheck-fairness-act-fails-in-senate-vote-2012-06-05>.

127. Gage & Geier, *supra* note 121, at 1.

128. *Id.*

129. Kimberly Mathe et al., *Women in Management in the USA*, in WOMEN IN MANAGEMENT WORLDWIDE, *supra* note 33, at 205, 215.

Other countries also are confronted with pay disparity issues. In the EU, foundational treaties guarantee equal pay for work of equal value for all citizens.¹³⁰ Despite these aspirations, the gap between men and women's hourly gross earnings throughout the entire EU remains at 17.8 percent.¹³¹ Several member states have adopted remedial measures in recent years. The French Parliament introduced legislation in 2006 that required firms to develop a framework to eliminate pay disparity by 2010.¹³² In the United Kingdom, the 2010 Equality Act obligates a corporation with over 250 employees to disclose pay information with the intent to expose gender discrepancies.¹³³ In many other countries, the principle of equal pay for equal work is enshrined in the respective constitutions. The issue of pay equity has garnered attention outside of the European context as well. In the Philippines, the Senate approved a bill in 2012 that would protect women from discriminatory compensation policies in all areas, including wages, salary, and employment benefits.¹³⁴

2. *Sexual and Moral Harassment Policies*

The EU Directives define harassment as "unwanted conduct related to [racial or ethnic origin, religion or belief, disability, age, or sexual orientation that] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment."¹³⁵ Some member states recently have addressed the problem of workplace harassment by placing an affirmative duty upon employers to prevent and redress this behavior. In Germany, the General Act of Equal Treatment, enacted in 2006, places a duty upon employers to protect employees from not only discrimination from superiors and co-workers, but from third parties as well.¹³⁶ The Croatian Labour Act demands that employers protect their workers from the harmful, unwanted conduct of superiors, colleagues, and third parties.¹³⁷ Ireland has had a similar statute in force for years that also protects against harassment from clients, customers, and other business contacts of the employer.¹³⁸ Finally, sexual harassment appeared as prohibited conduct in Turkish legislation for the first time in 2003, both for full-time and part-time employees.¹³⁹

130. See *Commission Strategy for Equality Between Men and Women*, at 6, COM (2010) 491 final (Sept. 21, 2010).

131. *Id.* at 12.

132. Loi 2006-340 du 23 mars 2006 relative à l'égalité salariale entre les femmes et les hommes [Law 2006-340 of March 23, 2006 on Equal Pay for Women and Men], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 24, 2006, p. 4440, arts. I, III, V.

133. Equal Pay Act, 2010, c. 3, § 78, sch. 1 (Eng.).

134. See *Philippine Senate Approves Bill Seeking to End Women Discrimination*, XINHUANET (Mar. 13, 2012, 9:31 PM) (China), http://news.xinhuanet.com/english/world/2012-03/13/c_131465245.htm.

135. Council Directive 2000/78, art. 2(3), Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. (L 303) 16 (EC).

136. Allgemeines Gleichbehandlungsgesetz [AGG] [General Act on Equal Treatment], Aug. 14, 2006, BGBl. I at 1897, § 12.4, as amended by art. 15, Feb. 5, 2009, BGBl. I at 160 (Ger.).

137. Hrvatski Sabor [Labor Act], Dec. 4, 2009, NARODNE NOVINE No. 3635, art. 5(5) (Croat.).

138. Equality Act 2004 (Act No. 24/2004) § 14A (Ir.).

139. Hayat Kabasakal et al., *Women in Management in Turkey*, in *WOMEN IN MANAGEMENT WORLDWIDE*, *supra* note 33, at 317, 332.

China recently passed progressive legislation that gives victims of sexual harassment a cause of action under Chinese law. In 2005, China's national legislature amended the Women's Protection Law to explicitly prohibit workplace harassment.¹⁴⁰ Before the amendment, the law did not impose obligations on employers to prevent harassment in the workplace.¹⁴¹ But, in 2012, the Special Provisions on Occupational Protection for Female Employees¹⁴² took effect and gave victims of harassment a mechanism to redress their claims under Chinese tort law.¹⁴³ Unless an employer establishes a corporate anti-harassment policy, it may be liable for negligently or intentionally failing to stop harassment it knew or should have known could occur.¹⁴⁴ A victim may sue the employer directly or jointly with the harasser.¹⁴⁵

Anti-discrimination initiatives also have advanced equality for lesbian, gay, bisexual, and transsexual (LGBT) employees in the global workplace. Although the United States has implemented comprehensive antidiscrimination policies in other areas, it has failed to promote LGBT equality through legislation. This regulatory gap allows employers to set their own agendas, and some corporations have actually established anti-LGBT policies.¹⁴⁶ For example, the Chief Operating Officer (COO) of the American-based corporation Chick-fil-A recently made public statements about the corporation's support of the traditional heterosexual marriage.¹⁴⁷ The COO stated that the corporation operates "on biblical principles," and will continue to "do anything [it] can to strengthen families."¹⁴⁸ In contrast, the Equality Act in the United Kingdom makes it direct discrimination to treat LGBT employees unfavorably on the grounds of their sexual orientation.¹⁴⁹ The anti-discrimination provision applies to all areas of employment, including terms of contracts, pay, promotions, transfers, training, and dismissal.¹⁵⁰ In Europe, the EU Charter of Fundamental Rights was the first international instrument to explicitly include the term "sexual orientation,"¹⁵¹ and Article 13 of the European Commission Treaty prohibits dis-

140. Diǎn Shàng Jī Xiù De Fù Rén Quán (妇女权益保护法) [Law on Protection of Women's Rights and Interests] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 3, 1992, effective Dec. 1, 2005) STANDING COMM. NAT'L PEOPLE'S CONG., art. 40 (China), available at <http://www.wcwonline.org/pdf/lawcompilation/TheRevisedLawProtection.pdf>.

141. Gordon Feng & Kay Cai, *New Rules on Protection for Female Employees in the People's Republic of China*, INT'L EMP. L., § V(A) (June 20, 2012), <http://www.intemploy.blogspot.com/2012/06/china-new-rules-on-protection-for.html>.

142. See Zhǐgōng Láodòng Baohù dí Tèbié Guīdìng (女职工劳动保护特别规定) [The Female Employee Protection Special Provisions] (promulgated by the St. Council of the People's Republic of China, Apr. 28, 2012, effective Apr. 28, 2012) (China), available at http://www.gov.cn/zwggk/2012-05/07/content_2131567.htm.

143. Feng & Cai, *supra* note 141, § V(B).

144. *Id.*

145. *Id.*

146. See, e.g., Michelle Garcia, *It's Official: Chick-fil-A COO Dan Cathy Comes Out as Antigay*, ADVOCATE.COM (July 17, 2012, 1:57 PM), <http://www.advocate.com/business/2012/07/17/chick-fil-coo-dan-cathy-officially-comes-out-antigay>.

147. See K. Allan Blume, 'Guilt as Charged,' *Cathy Says of Chick-fil-A's Stand on Biblical & Family Values*, BAPTIST PRESS (July 16, 2012), <http://www.bpnews.net/BPnews.asp?ID=38271>.

148. *Id.*

149. *The Equality Act 2010 - Employment*, STONEWALL, http://www.stonewall.org.uk/at_work/workplace_discrimination/4744.asp (last visited Dec. 24, 2012).

150. *Id.*

151. Charter of Fundamental Rights of the European Union, art. 40, Dec. 18, 2000, 2000 O.J. (C 364) 18.

crimination based on sexual orientation.¹⁵² Member states vary in their application of this antidiscrimination law. In Germany, for example, the 2006 General Law on Equal Treatment defines sexual orientation to encompass discrimination against transsexual as well as LGBT employees.¹⁵³ Other states, however, lack specific anti-discrimination legislation protecting LGBT individuals, and some countries do not prevent openly hostile treatment.¹⁵⁴ Nevertheless, the EU Employment Equality Directive, which permits differential treatment on the basis of religion or belief, cannot be used to justify discrimination against LGBT individuals in the employment context.¹⁵⁵ These policies stand in stark contrast to the laws of several countries where homosexuality and homosexual acts are legally prohibited. Countries like Libya,¹⁵⁶ Singapore,¹⁵⁷ and Algeria¹⁵⁸ allow employers to discriminate based on sexual orientation with impunity and to punish homosexual acts with protracted periods of imprisonment.

III. Challenges Facing Multinational Corporations

It is clear that with such varied legislation across the globe, multinational employers must keep abreast of a panoply of regulations, laws, and international policies. On top of this challenge, global corporations may also face a unique set of difficulties implementing and administering internal diversity initiatives. These challenges include adapting an integrated diversity policy to a specific locale, gathering statistical data to measure the success of diversity programs, and understanding the complexities of source of law and enforcement in each region.

A. GLOBAL INTEGRATION VERSUS LOCAL RESPONSIVENESS: THE CHALLENGE OF EXPORTING DOMESTIC DIVERSITY INITIATIVES

In order for a global diversity policy to be successful, it must be tweaked to accommodate the culture and social context of each region and be continually monitored and adjusted.¹⁵⁹ Studies have shown that policies created in one country and exported to another often lack the cultural legitimacy to be effective in other management situations.¹⁶⁰ Differing attitudes towards corporate diversity and distribution of power among groups are common examples of the cultural differences that make wholesale exportation of a diver-

152. Consolidated Version of the Treaty Establishing the European Community, art. 13, Dec. 24, 2002, 2002 O.J. (C 325) 45.

153. Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court] Dec. 6, 2005, ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHT [BVERFGE] 1 BvL 3/30, ¶¶ 48, 53-54 (Ger.).

154. Developing Anti-Discrimination Law in Europe, *supra* note 21, at 50.

155. *Id.* at 39.

156. *Libyan Arab Jamahiriya Law*, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, <http://ilga.org/ilga/en/countries/LIBYAN%20ARAB%20JAMAHIRIYA/Law> (last visited Dec. 24, 2012).

157. *Singaporean Law*, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, <http://ilga.org/ilga/en/countries/SINGAPORE/Law> (last visited Dec. 24, 2012).

158. *Algerian Law*, INT'L LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASS'N, <http://ilga.org/ilga/en/countries/ALGERIA/Law> (last visited Dec. 24, 2012).

159. See Eva Boxenbaum et al., *Diversity Management in Denmark: Evolutions from 2002 to 2009*, in DIVERSITY IN THE WORKPLACE, *supra* note 2.

160. Luring, *supra* note 10, at 2.

sity management program difficult.¹⁶¹ A recent study focused on a Danish multinational corporation's implementation of a diversity policy in a subsidiary office in Saudi Arabia demonstrates the problem. The Danish diversity program was based on a principle of "motivating and empowering different employees to do their best despite their gender, age, or ethnicity."¹⁶² The Danish corporation sought to export its robust diversity initiative to the Saudi subsidiary location without making adjustments to accommodate the Saudi social and cultural climate. Despite the fact that Saudi laws provide employers with incentives for hiring Saudi nationals, ethnic diversity is markedly high in the domestic labor market because foreign workers are paid significantly less than their Saudi counterparts.¹⁶³ When the Saudi office was presented with the Danish diversity management plan, much was lost in translation. The Saudi office was already ethnically diverse due to the influx of foreign workers and the availability of inexpensive labor.¹⁶⁴ It was not principles of equality and empowerment that were motivating diversity in Saudi Arabia, but rather free-market economic forces, and therefore the Saudi office was unable to perceive the moral and legal imperative behind the Danish diversity initiative.

Therefore, while it was necessary for the success of the corporation to achieve global integration of its diversity policy,¹⁶⁵ the result was "patronizing rather than empowering and thus far from the ideals expressed by the headquarters and the 'Danish way.'"¹⁶⁶

This example presented an "extreme case" to draw into sharp focus the complicated implementation of cross-cultural corporate policy. But cultural attitudes and historical perceptions do influence anti-discrimination policy in other contexts as well. For example, an overt emphasis on employee heterogeneity is uncommon in France, where it is illegal to register employees as members of an ethnic group.¹⁶⁷ In China, gender stereotypes from thousands of years of feudal despotism still linger in a modernized, industrial society.¹⁶⁸ As a result, lax diversity policies often result in tokenism rather than substantive change.¹⁶⁹ Finally, differences in protected categories may cause difficulties in translating antidiscrimination policies aimed at remedying historical disadvantages. In Hong Kong, for instance, local ordinances prohibit discrimination on the grounds of "gender, pregnancy, marital status, disability, race and family status," but do not offer protection on the bases of religion or sexual orientation.¹⁷⁰ Moreover, in India, caste is a protected category.¹⁷¹ International corporations should be aware of these differences throughout the implementation of an integrated diversity strategy.

161. *Id.* at 3.

162. *Id.* at 7.

163. *Id.* at 4.

164. *Id.* at 10.

165. *Id.*

166. *Id.* at 7.

167. Boxenbaum et al., *supra* note 159, at 103.

168. Wang Xinyu, *A Study of Current Employment Discrimination Against Women*, in *TAKING EMPLOYMENT DISCRIMINATION SERIOUSLY*, *supra* note 14, at 113, 125.

169. *See id.*

170. Michael J. Downey, *Hong Kong*, in *THE EMPLOYMENT LAW REVIEW*, *supra* note 25, at 282, 287-88.

171. Scott Grinsell, Note, *Caste and the Problem of Social Reform in Indian Equality Law*, 35 *YALE J. INT'L L.* 199, 201 (2010).

B. COLLISION OF LAWS: REPORTING PROGRESS AND DATA PRIVACY LAWS

In order to gauge the success of corporate diversity policies, employers must be able to gather statistics on employees and measure progress. But the collection of sensitive data is difficult given the number of regulations passed that aim to protect data privacy. In 2000, the United States and the European Commission agreed to the Safe Harbor Principles,¹⁷² which require employees collecting self-identification information to disclose the purpose of these statistics before storing and transferring the data.¹⁷³ Employers must obtain agreement from employees when seeking to use the information for purposes other than those communicated or transferring the information to a third-party for a different purpose.¹⁷⁴ Within the EU, individual member states may have their own data privacy laws that further complicate data collection and reporting. One such example is the French Data Protection Act,¹⁷⁵ which prohibits employers from collecting "sensitive data," including information relating to "racial and ethnic origins, political, philosophic[al], religious opinions, trade union affiliation, health or sexual identity."¹⁷⁶ In addition, the Act limits the length of time for which employers may store employees' personal data.¹⁷⁷ These regulations make it virtually impossible for employers to track the progress of their diversity programs.

Statutes similar to the EU model have recently come into effect in India, Korea, Malaysia, and Mexico, among others. In India, the 2011 Amendments to the Information Technology Act provide that corporations must obtain consent in writing before gathering personal data or sensitive information.¹⁷⁸ The South Korean Personal Information Protection Act similarly restricts collection and dissemination of personal information without the employee's informed consent.¹⁷⁹ In Malaysia, the Personal Data Protection Act imposes strict limitations on the transfer of personal data outside the country, with limited exceptions similar to those embedded within the Safe Harbor Principles.¹⁸⁰ The Federal Law of the Protection of Personal Data in the Possession of Private Parties and the related

172. Directive 95/46, of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) 31-50, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>.

173. Shea & Mosvick, *supra* note 25, at 730-31.

174. *Id.* at 731.

175. Loi 2004-801 du 6 août 2004 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel et modifiant la loi 78-17 du janvier 1978 relative à l'informatique, aux fichiers et aux libertés [Law 2004-801 of Aug. 6, 2004 on the protection of individuals with regard to the processing of personal data and amending Act 78-17 of Jan. 6, 1978 relating to computers, files and freedoms], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 6, 2004, p. 14063.

176. Deborah Sankowicz & Jérémie Gicquel, *France*, in THE EMPLOYMENT LAW REVIEW, *supra* note 25, at 217, 229-30; see generally David B. Oppenheimer, *Why France Needs to Collect Data on Racial Identity . . . In a French Way*, 31 HASTINGS INT'L & COMP. L. REV. 735 (2008).

177. Sankowicz & Gicquel, *supra* note 176, at 229.

178. Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, Gazette of India, section III(i), 9 (Apr. 11, 2011).

179. Personal Information Protection Act, Mar. 29, 2011 (S. Kor.), translated in <http://koreanlii.or.kr/w/images/0/0e/KoreanDPAct2011.pdf>.

180. Personal Data Protection Bill 2009, Apr. 5, 2010 (Malay.), translated in <http://www.parlimen.gov.my/files/billindex/pdf/2009/DR352009E.pdf>.

Data Privacy Regulations enacted in Mexico are somewhat more lax in that they allow cross-border transfer of data within a corporation so long as Mexican employees are given rights of access and objection and the corporation meets certain security requirements.¹⁸¹ As a greater number of countries enact detailed data privacy laws, multinational corporations must continue to be sensitive to regional legislation and maintain strict compliance with local laws.

C. THE GAP BETWEEN THEORY AND PRACTICE: A STUDY OF CHINESE ANTIDISCRIMINATION LAW AND ENFORCEMENT

Finally, multinational corporations should be aware of the pragmatics of legal enforcement in each region where it attempts to implement an anti-discrimination initiative. China is a particularly illustrative example of the complex nature of anti-discrimination law enforcement. Employment discrimination legislation in China is “patchy” and “passive” due to the nation’s fairly recent and dramatic market-oriented transition, and regulations are often inconsistent.¹⁸² Employment discrimination in China is both overt and covert. Job advertisements may openly discourage applicants without desirable household registration (*hukou*) or require photographs of applicants in the “screening” process.¹⁸³ The unimpeded practice of employment discrimination should be surprising considering that principles of equality are enshrined in the Constitution.¹⁸⁴ But citizens cannot challenge discriminatory practices on constitutional grounds, and courts are not entrusted with constitutional interpretation.¹⁸⁵ Rather, Chinese courts often must rely on outdated precedent and a poorly maintained court register to apply the piecemeal anti-discrimination legislation promulgated by the Standing Commission National People’s Congress (SCNPC).¹⁸⁶ This gap between protection and enforcement continued to be a problem even after the SCNPC enacted the Labor Law in 1994.¹⁸⁷ The law did not define “discrimination” even as it proscribed it, and protections did not extend to job applicants in the hiring process.¹⁸⁸ The legislation lacked enforcement mechanisms, and employers continued to discriminate with impunity.¹⁸⁹

181. Ley Federal de Protección de Datos Personales en Posesión de los Particulares [LFPDP] [The Federal Law of the Protection of Personal Data in the Possession of Private Parties], Diario Oficial de la Federación [D.O.], 5 de Julio de 2010 (Mex.).

182. Xun Zeng, *Enforcing Equal Employment Opportunities in China*, 9 U. PA. J. LAB. & EMP. L. 991, 1007 (2007).

183. Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 VAND. J. TRANS-NAT’L L. 643, 647 (2011).

184. XIANFA arts. 33, 48 (1982) (China) (declaring all citizens “equal before the law” and stating women “enjoy equal rights with men”).

185. Yuwen Li, *An Analysis of Employment Discrimination in China’s Economic and Social Transition*, in TAKING EMPLOYMENT DISCRIMINATION SERIOUSLY, *supra* note 14, at 19, 40.

186. *Id.* at 41.

187. Laodong Fa (市勞動法) [Labor Law] (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995) (China), available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm>.

188. Yuwen Li & Jenny Goldschmidt, *Introduction to the Book: Anti-Discrimination in Employment Necessitates Law and Action*, in TAKING EMPLOYMENT DISCRIMINATION SERIOUSLY, *supra* note 14, at 1, 4.

189. Webster, *supra* note 184, at 663.

Progressive legislation enacted in 2007, however, suggests that a comprehensive antidiscrimination scheme in a nation as expansive and diverse as China is indeed possible. The Law on Promotion of Employment entered into force on January 1, 2008.¹⁹⁰ The law contains anti-discrimination principles designed to accomplish the following: eliminate employment discrimination and assist the hard-to-employ;¹⁹¹ provide workers with equal employment opportunities;¹⁹² promote the recruitment of women in the workplace, equalize hiring criteria, and prohibit conditioning women's employment on agreements not to marry or have children;¹⁹³ prohibit discrimination on the grounds of ethnicity or disability;¹⁹⁴ prohibit discrimination against carriers of Hepatitis B;¹⁹⁵ and extend labor protections to rural citizens in parity with urban applicants.¹⁹⁶ Since the enactment of this law, the number of cases in Chinese courts for discrimination against carriers of Hepatitis B has risen dramatically, and victims of this form of discrimination are beginning to experience some form of relief.¹⁹⁷ But there are still difficulties in bringing discrimination claims before Chinese courts. Unlike the American legal system that allows a plaintiff to shift the burden of proof in discrimination cases to an employer, plaintiffs in China must produce all necessary evidence themselves.¹⁹⁸ For Hepatitis B carriers, this is relatively easy due to extensive medical paperwork, but for other victimized groups like women, this can be an insurmountable barrier to justice.¹⁹⁹ This difficulty may explain why there is a conspicuous absence of gender discrimination in hiring suits in Chinese courts.²⁰⁰ Nevertheless, the comprehensive antidiscrimination scheme laid out in the Law on Promotion of Employment is likely to mark an increase in the number of discrimination cases before the courts in the coming years.²⁰¹

IV. Conclusion

Highly successful multinational corporations truly are focused on promoting diversity in the workplace and implementing robust diversity management programs. These corporations are grappling with a complex set of legal issues that are relatively new in many regions of the world and remain untested in the global marketplace. As developments continue to unfold in the legal landscape, corporations will have to monitor and adjust their diversity programs to remain compliant. Corporations in the United States can serve as a model for many business entities that are just beginning to promote diversity. Due to a highly diverse population and a history of racial, ethnic and gender inequality, the United States has been very proactive in restoring workplace equality. Europe is

190. Zhong Hua Ren Min Gong He Guo Jiu Ye Cu Jin Fa (中华人民共和国就业促进法) [PRC Employment Promotion Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Jan. 1, 2008) (China), available at http://www.gov.cn/flfg/2007-08/31/content_732597.htm.

191. *Id.* art. 25.

192. *Id.* art. 26.

193. *Id.* art. 27.

194. *Id.* arts. 28-29.

195. *Id.* art. 30.

196. *Id.* art. 31.

197. Li, *supra* note 186, at 43.

198. Webster, *supra* note 184, at 699.

199. *Id.* at 699-700.

200. *Id.* at 700.

201. Li, *supra* note 186, at 43.

catching up with legislation to address the increasingly diverse population resulting from the free movement of workers throughout the European Union. As corporations become more diverse on all levels, these global initiatives will become more important to success in the marketplace. Compliance will be more imperative than ever, and corporations that wish to stay competitive would do well to join in the initiative to promote diversity.