Abstract

Although antidiscrimination law has helped address explicit prejudice in the workplace, significant disparities remain, particularly for workers with disabilities and women with caregiving responsibilities. Much of this inequality results from subtler causes, including the ways that employers organize the “when, where, and how” of work performance. This Article analyzes the role that employment discrimination law could play in transforming the traditional organization of work. In particular, this Article challenges the "full-time face-time norm," around which most top-level jobs are designed. This norm refers to the bundle of default preferences that employers have for full-time positions, unlimited hours or rigid work schedules, an uninterrupted worklife, and for performing work at a central location. These default organizational structures often exclude both disabled workers and mothers from the most desirable jobs.

The Article begins by analyzing the origins of the full-time face-time norm and the reasons for its resilience. In taking this step, the Article applies an essentialism critique to the workplace itself, in order to reveal our shared assumptions about the work environment. The Article then demonstrates how "workplace essentialism" has captured judges’ interpretation of both the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964, resulting in a further entrenchment of the workplace status quo. The Article therefore proposes a new method for applying antidiscrimination law to restructure the conventional workplace design.