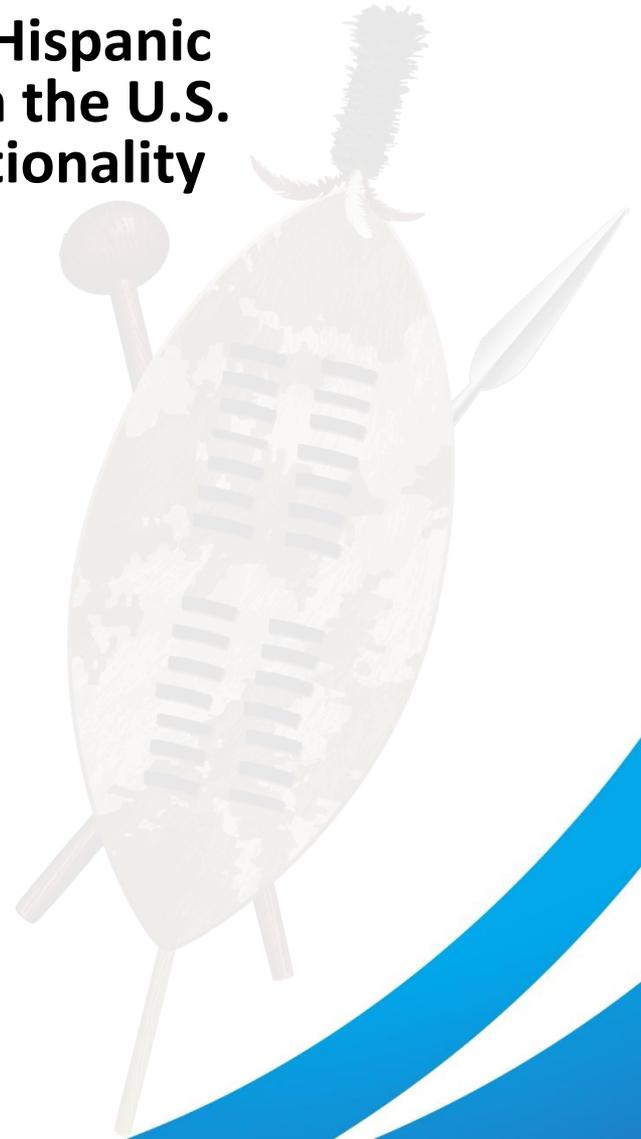


Enhancing Understanding of Hispanic Employment Discrimination in the U.S. Through the Lens of Intersectionality

Helen LaVan, PhD
Professor of Management
DePaul University
Chicago, IL 60604
hlavan@depaul.edu

Marsha Katz, PhD
Professor Emerita
Governors State University
University Park, IL 60484
marshakatz@ameritech.net



Discrimination
Prejudice resulting in de
unfair treatment regard
promotion, or transfer
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Background

- Hispanics will account for three-quarters of the growth in the U.S. labor force from 2010 to 2020, according to new projections from the Bureau of Labor Statistics (BLS).
- Birth and migration account for the Hispanic population grows.
- Additionally, the non-Hispanic white population is aging, thus reducing their numbers in the labor force.

Background

- Also Hispanics have a higher labor force participation rate than other groups.
- It can be expected that individuals of Hispanic origins will pursue their rights when they have been discriminated against by their employers.

Applicable Laws

Compounding this is that individuals of Hispanic origin are more likely to be the object of discrimination on multiple legal bases:

- Title VII of 1964 Civil Rights Act.
- Age Discrimination in Employment Act ADEA.
- Immigration Reform and Control Act.
- State Discrimination Laws.
- Fair Labor Standards Act.
- Americans With Disabilities Act ADA.

Intersectionality

The idea that social identities such as race, class, and gender interact to form qualitatively different meanings in experiences.

Could Intersectionality Analysis be used to explain employment discrimination and to alleviate it?

Components of Intersectionality

Dimensions

- Given that an individual might have protection under more than one demographic basis and under more than one law, an analysis with promise might be distinguishing between demographic intersectionality and claim intersectionality.
- It can be noted that demographic intersectionality can be defined by ascribed or achieved characteristics.

Components of Intersectionality

Dimensions

- Ascribed intersectionality –the social status a person is assigned at birth or assumed involuntarily later in life. It is a position that is neither earned nor chosen but assigned.
- Achieved intersectionality– the concept developed by the anthropologist Ralph Linton denoting a social position that a person can acquire based on merit; it is a position that is earned or chosen.
- Legal intersectionality– the protections that can be from state discrimination laws, federal discrimination laws or laws not explicitly formulated to protect against employment discrimination.

Methodology



Empirical Legal Scholarship

- Use of litigated case as the unit of analysis.
- Used with increasing frequency since the 1990s (Eisenberg, 2004).
- Not every case contains identical information.

Eisenberg, T. (2004). Why Do Empirical Legal Scholarship. San Diego Law Review., 41, 1741-1746

Empirical Legal Scholarship

- Rationale for their use as the unit of analysis in the study is as follows:
 - Problems with access and informed consent are eliminated.
 - Permits transparency in the collection and coding of the data.
 - Behavior in a variety of different settings can be included .
 - Interviewer bias is reduced.
 - Eliminates the problems of experimental design.
 - Well accepted by grounded theorists.

Hypothesis

- Hypothesis 1: There is no relationship between certain case characteristics such as multiple plaintiffs, professional employees, and retaliation in case outcomes in favor of the individual.
- Hypothesis 2: There is no relationship between intersectionality ascribed and/or achieved factors and case outcomes in favor of the individual.
- Hypothesis 3: There is no relationship between various Federal U.S. employment laws, and case outcomes in favor of the individual.

Ascribed and Achieved Intersectionalities

DEMOGRAPHICS—ASCRIBED CHARACTERISTICS

- Race
- Color
- National origin
- Sex of person of Hispanic origin

DEMOGRAPHICS—ACHIEVED CHARACTERISTICS

- Professional employee
- Language or accent
- Residency requirements
- Immigration status
- Drugs or alcohol involved
- Health status involved
- Housing—residency requirement involved
- Education as an issue

Sample

- The current study uses litigated employment discrimination cases as the unit of analysis.
- The data were acquired by randomizing cases retrieved from the years 2011 to 2014 from Fastcase database.
- The search terms were (Hispanic or Latino or Latina) AND (Employment AND discrimination).
- The total number of cases in the sample is 120.
- A power analysis indicated that the sample size was appropriate for the number of independent variables.

Results

- Of particular note are the following differences: Hispanic plaintiffs only had union involvement **25.8%** of the time, while non-Hispanic plaintiffs had union involvement **36.2%** of the time.
- Similarly, there was other third-party involvement in Hispanic plaintiff cases **11.7%** of the time in comparison to non-Hispanic plaintiffs' cases, where the third party was involved **19%** of the time.
- Race was involved more heavily in the non-Hispanic plaintiff cases. Professional employees were involved in between **45%** and **56%** of the cases, whether or not the plaintiff was Hispanic.
- Age was slightly more of an issue in the Hispanic plaintiff cases – **28.3%** versus **20.7%**.
- Sexual harassment was three times more prevalent in Hispanic plaintiff cases than in non-Hispanic plaintiff cases: **15%** versus **5.2%**.

Multivariate Results

Table 3 contains cross tabs, chi-squares, and phi coefficients for selected variables. With respect to multiple plaintiffs, 32 of the cases involved multiple plaintiffs and the employee won or split decisions in 22 of them. Sixty-two of the cases involved professional employees, and the employee won or split in 34 of them. Eighty of the cases involved retaliation. The employee won or split in 34 of them and the employer won in 46.

Table 3 Crosstabs, Chi Square And Phi Coefficients For Variables

		Case Outcome		Total
		Employee and split	Employer	
<u>Multiple Plaintiffs</u>	No	34	54	88
	Yes	22	10	32
	Total	56	64	120
		<u>Pearson Chi-Square</u>	<u>df</u>	<u>Phi</u>
		8.55**	1	-0.267
		Case Outcome		Total
		Employee and split	Employer	
<u>Professional Employee</u>	No	22	36	58
	Yes	34	28	62
	Total	56	64	120
		<u>Pearson Chi-Square</u>	<u>df</u>	<u>Phi</u>
		3.442*	1	-0.181
		Case outcome		Total
		Employee and split	Employer	
<u>Retaliation</u>	No	22	18	40
	Yes	34	46	80
	Total	56	64	120
		<u>Pearson Chi-Square</u>	<u>df</u>	<u>Phi</u>
		1.674	1	0.118
		*.05 to .1		
		**.01		

Intersectionalities Results

- When there is ascribed intersectionality, on only one basis, the employer wins 13 out of 24 cases (54.1%). When there are two ascribed intersectional ties, the employer wins 13 out of 30 cases (43%), and three or more the employer wins 12 out of 17 cases (70.5%).
- When there is only one achieved intersectionality, the employer wins 29 out of 55 cases (52.7%), when two the employer wins five out of 13 cases (38.4%) and when there are three achieved intersectionalities, the employer wins one out of three cases (33%).
- With respect to the legal intersectionality, the respective numbers are 21 out of 42 (50%), 25 out of 42 (59.5%), and 13 out of 29 (44.8%) cases.

Table 4 Crosstabs, Chi Square And Phi Coefficients For Intersectionality Variables

		Case Outcome			Total
		Employee and split	Employer		
<u>Intersection 1 Ascribed</u>	1	11	13	24	
	2	17	13	30	
	3 or More	5	12	17	
	Total	33	38	71	
<u>Pearson Chi-Square</u>		<u>df</u>	<u>Phi</u>		
3.24634		2	0.21		
<u>Intersection 2 Achieved</u>		Case Outcome			Total
		Employee and split	Employer		
		1	26	29	55
		2	8	5	13
3 or More	2	1	3		
Total	36	35	71		
<u>Pearson Chi-Square</u>		<u>df</u>	<u>Phi</u>		
1.175		2	0.129		
<u>Intersection 3 Legal</u>		Case outcome			Total
		Employee and split	Employer		
		1	20	21	41
		2	17	25	42
3 or More	16	13	29		
Total	53	59	112		
<u>Pearson Chi-Square</u>		<u>df</u>	<u>Phi</u>		
1.542		2	0.117		

Conclusions

- The conclusion that can be drawn from the data is that there is minimal intersectionality that is empirically provable. The following reasoning might help explain this.
- It is possible that the employer, recognizing the strength of the Hispanic employee's case settled at lower levels.

Conclusions

- Either this could have occurred in the state courts, which are not included in this study, or it could have occurred even before litigation.
- Alternatively, because of their illegal immigration status in some instances, Hispanic employees might be reluctant to pursue their rights.
- Or there are performance related reasons for how the individual was treated, that are beyond the scope of the present study. This means that perhaps there were discipline-related reasons for the actions the employer took.

Directions for Future Research

- In future research, an important variable that is missing from the study needs to be added: whether the victim of discrimination was of Hispanic origin. In the present study, the variable was the plaintiff Hispanic.
- It has also been suggested that summary judgment cases and cases involving other procedural matters be eliminated or at least analyze separately.
- While the present researchers approached the coding of the variables in the same manner as Best and her colleagues (2011) did, that is additive, it is possible that the variables are multiplicative or need to be weighted in some manner.

Directions for Future Research

- First, Hispanic and non-Hispanic plaintiffs are being treated in a consistent manner in the courts, in that there are not significant differences between their cases.
- Second, this methodology in this study helps support the notion that empirical legal scholarship can be used to overcome some of the previous problems in studying employment discrimination, namely that there are not many instances in one organization, which is the typical unit of analysis for employment discrimination research.