Job Discrimination And The Black Woman

By SONIA PRESSMAN

CIVIL rights is one of the principal issues facing the country today—if not *the* principal issue. But when most people talk about civil rights, they mean the rights of black people. And when they talk about the rights of black people, they generally mean the rights of black males.

They know all about the black matriarchy. They say that the black woman historically has been able to find employment, albeit in domestic service, while the black male has been chronically unemployed and underemployed. It is the black female, they say, who has been the breadwinner and who is responsible, along with Mr. Charlie, for the emasculation of the black male. So, they say, let's concentrate on improving the status of the black male—why add to an already bad scene by worrying about employment discrimination against the black female?

The trouble with the above analysis is that, in the first place, it just ain't so, and in the second place, it's irrelevant. The prevailing assumptions about the black female, like so many assumptions based on race or sex, don't match the reality. And furthermore, whatever the statistical facts about black women as a class, the individual black woman, like all individuals, should be treated in accordance with her own particular intelligence, education, experience and ability.

But first, let's set the record straight. What are the facts about the black woman?

The facts are that black women are at the very bottom of the economic totem pole. In 1967, the median wage or salary income of year-round full-time workers (14 years of age and older) by sex and race was:

White men	$7,518
Black men	4,837
White women	4,380
Black women	3,268

A large proportion of black working women are service workers. In June 1969, 44 per cent of working nonwhite women (93 per cent of whom are black) were private-household workers or service workers outside the home. In 1967, the median wage of female year-round full-time private-household workers, about 47 per cent of whom were non-white, was $1,298.

MISS PRESSMAN, an expert in the law of race and sex discrimination in employment, is Senior Attorney in the Office of the General Counsel of the Equal Employment Opportunity Commission. The views here expressed are solely hers and do not necessarily represent official EEOC policy or opinion. The author reserves all rights to this article.

Unemployment is more severe among black women than among black men, or white women. Among teenagers, where unemployment is more widespread than among adults, non-white girls have the highest rate of unemployment.

The black woman is not generally the head of the household. The overwhelming majority of black homes, about 72 per cent of them in fact, are headed by the male.

But the burden on the black woman—and of the children dependent upon her—becomes evident when we compare their lot with that of the white woman and her children. About 28 per cent of black families are headed by a woman, and about half of those families live in poverty. Only 11 per cent of the families in the country as a whole are headed by a woman, and only 34 per cent of those families live in poverty.

Other comparisons between black and white women reveal that a higher percentage of non-white women are in the labor force, are working wives, and working mothers, and their earnings account for a larger percentage of the family income.

So there you have the real picture of the black woman: she has a significant amount of family responsibility and economic need, and a lower income than the black male or the white female.

As stated by Elizabeth Wickenden, consultant on social policy to the National Board of the YWCA, in an article on "the Moynihan Report," entitled *The Negro Family: Society's Victim or Scapegoat?:*

> Nor do the facts bear out any contention that Negro women have prospered at the expense of their male counterparts. . . . For if the plight of the under-educated, under-employed, underpaid, and under-valued Negro male is deserving of every social remedy we can bring to bear, the plight of the loyal but despised Negro mother is equally if not more so. . . . With her miserable earnings and niggardly assistance payments she fends off as best she can both starvation and the harshest impact of community rejection for her children.

MANY of the myths and stereotypes about women as a class are similar to those about black people as a class and are equally invalid. Thus, it is now said about women—as it has traditionally been said about black persons—that they are frivolous, passive, content with their lot, lack ambition, and can't compete with the white male. As Kanowitz noted in his 1969 book, *Women and the Law, the Unfinished Revolution:*

> The similarities [between the legal and social situation of American women and American blacks] are indeed stirking: Both groups are easily identifiable; both are objects of a discrimination largely influenced by sexual factors; both have been victims of an extraordinary economic exploitation; both have at times been denied fundamental political rights (e.g., jury service and the vote); and both have responded to social and legal injustice with widespread protest movements and civil disobedience leading, with varying degrees of success, to modifications of legal norms and a consequent restructuring of social attitudes.

In the employment sector, the forms of discrimination against women are similar to the forms of discrimination against blacks: confinement to low-skilled, low-pay jobs; wage differentials for similar work; separate lines of seniority and progression; exclusion from managerial and supervisory jobs; etc. Other methods of maintaining each group in its proper place may differ. Thus, it has been noted by Dr. Pauli Murray, a black woman attorney, writer, and teacher, that while violence has been "the ultimate weapon of resistance to racial desegregation, its psychic counterpart, ridicule, has been used to resist sex equality."

Many blacks and whites refuse to see the analogy between discrimination based on race and that based on sex. Perhaps they fear that if they did, they would have to be as morally committed to the elimination of the latter as they are to the former. The aura of moral opprobrium which today surrounds racial discrimination has not yet attached itself to discrimination based on sex. This is tragic because the economic and human waste is identical whether the cause is discrimination based on race, sex, or any other irrelevant factor. Furthermore, in the treatment of the black woman, the two forms of discrimination are frequently combined. It will not be possible to eliminate discrimination against the black woman without eliminating discrimination based on both race and sex.

There is now a Federal statute which prohibits both forms of discrimination in the employment sector. It is incumbent upon the black woman to utilize this statute to achieve her rightful place in our society. Title VII of the Civil Rights Act of 1964, which became effective July 2, 1965, prohibits discrimination in employment based on race, color, religion, sex, and national origin. It covers discrimination by employers, unions and employment agencies. Title VII's prohibitions cover the entire range of the occupational structure, from the janitorial force through the executive suite. The Act prohibits discrimination in the entire range of the employer-union-employment agency-employee

relationship: classified advertising; union membership; referral for employment; recruiting and testing; hire, transfer, promotion, layoff, discharge, and recall; job classification; seniority lines; wages and salaries; apprenticeship, on-the-job, management, and other training programs; retirement age; insurance and pension benefits; physical facilities; and the like.

Title VII is administered by the Equal Employment Opportunity Commission, which is headquartered at 1800 G Street, N.W., in Washington, D.C., and has field offices in major cities throughout the country. Individuals who believe that they are the victims of employment discrimination can file charges with the EEOC by writing to the headquarters office or to the appropriate field office.

The Equal Employment Opportunity Commission receives about 12,000 charges of discrimination a year, about 25 per cent of which involve sex discrimination. Most of these charges do not allege a discriminatory refusal to hire, but deal with discrimination practiced against women who have been hired. They involve terms, conditions, and privileges of employment, such as wages and fringe benefits, opportunities for advancement, and so on. Relatively few of the charges filed allege a discriminatory exclusion from the "executive suite," although the exclusion of blacks and women from managerial and professional positions is well-known. There are, however, a number of pending Title VII lawsuits which involve allegations of discrimination against women in professional and administrative positions.

SOME of the highlights of EEOC rulings are as follows. As a general rule, employers may not maintain separate jobs, wage and pay scales, and seniority lines for men and women. The Act does, however, permit the hiring of members of one sex only "in those instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operations" of a particular business or enterprise.

In interpreting this exception, the EEOC has found that an employer may discriminate on the basis of sex for reasons of genuineness or authenticity (actor, actress); community standards of morality and propriety (restroom attendant, seller of ladies' intimate apparel); and for jobs for which *sex appeal* is an essential qualification, such as those in the entertainment industry. Beyond such examples, however, the EEOC has found that those jobs for which sex may be a qualification are rare indeed. The EEOC has, for example, stated that individuals may not be refused employment because of assumptions or stereotypes about members of their sex as a class, or because of the preferences of the employer, co-workers, clients, or customers. Thus an employer may not refuse to employ qualified women for a job on the ground that the job has traditionally been held by men; requires personal characteristics not exclusive to either sex, such as attractiveness, graciousness, aggressiveness, etc.; involves work with or supervision over men; involves late night hours or work in isolated locations; or involves the lifting or carrying of heavy weights, or other strenuous activity.

In the area of discriminatory conditions of employment, publicity focused on charges of discrimination in the employment of flight cabin attendants, more commonly referred to as stewards and stewardesses. The EEOC found that airlines violated the Act when they refused to employ males as flight cabin attendants because the basic duties of the job could be performed satisfactorily by both men and women. The EEOC further found that those airlines which required the termination or transfer to ground work of stewardesses upon marriage or reaching their early thirties also violated the Act because such restrictions were unrelated to satisfactory performance of the job, had never been applied to male flight personnel, and were based on the fact that women were involved.

The EEOC has long ruled that an advertiser may not indicate a preference or limitation based on sex in the content of his classified advertising unless sex is a bona fide qualification for the job involved. On January 24, 1969, an additional EEOC guideline, dealing with the headings of classified advertising columns, became effective. By virtue of that guideline, an advertiser who places classified advertising in sex-segregated columns, such as those headed "Help Wanted—Male" and "Help Wanted —Female" thereby violates Title VII unless sex is a genuine qualification for the job involved.

The EEOC has said that, as a general rule, equal terms, conditions, and privileges of employment must be made available for men and women. Thus, an employer may not refuse to hire, nor may he discharge, women because they marry or have children, legitimate or illegitimate, unless he has a similar rule for men. The EEOC has also held that a company policy which requires the termination of unmarried pregnant employees violates Title VII where the company does not have a similar policy with regard to male employees who father illegiti-

mate children. Moreover, the EEOC has held, in particular cases, that an employer's refusal to hire women with illegitimate children constituted unlawful race discrimination because the restriction was unrelated to satisfactory performance of the job involved and, as administered, tended to exclude more black than white employees.

An employer may not discriminate on the basis of sex with regard to medical, hospital, accident, and life insurance coverage. As a general rule, pregnant employees are entitled to a maternity leave of absence with the right of reinstatement to the job vacated, at no loss of seniority or any of the other benefits and privileges of employment. The EEOC has also stated that men and women are entitled to equality with regard to optional and compulsory retirement age privileges and that it will decide questions of difference based on sex in pension benefits, such as benefits for survivors, on a case-by-case basis.

One of the difficult questions which faced the EEOC at its inception involved the relationship between Title VII and state legislation dealing specifically with the employment of women. This legislation falls into two principal categories: (1) laws which prohibit the employment of women in certain occupations (e.g., mining, bartending), or which restrict their employment with respect to hours, nightwork, or weightlifting; and (2) laws which require benefits for women workers, such as minimum wages, premium pay for overtime, and rest periods.

The EEOC has issued a number of guidelines with respect to its handling of cases raising the conflict between Title VII and state legislation in the first category. In its guideline published on August 19, 1969, the EEOC concluded that such laws conflict with Title VII and, accordingly, do not justify discrimination against women. Similarly, recent court decisions have held that state laws restricting the hours women may work and the weight they may lift are invalid because such laws conflict with Title VII.

The EEOC's guideline contains no discussion of the Commission's position with regard to state legislation which requires benefits for women workers. The Commission has indicated that it will process cases involving such laws on a case-by-case basis.

BEGINNING in 1966 for employers, and 1967 for labor unions, the EEOC has required annual reports on the composition of employer units, labor unions, and on apprenticeship programs on the basis of race, national origin, and sex. The employer reports, for example, require information as to the composition of the employer's work force in categories such as officials and managers, professional employees, technicians, sales workers, office and clerical personnel, craftsmen, laborers, service workers, etc.

On March 2, 1969, the EEOC announced the release of the first nationwide employment statistics on minority group members and women. These statistics are contained in a 3-volume survey covering employment patterns for 123 cities, 50 states, and 60 major industries. The study revealed that while women account for more than 40 per cent of all white collar workers, only 1 out of every 10 management positions and 1 out of every 7 professional jobs are filled by women.

Among the significant findings of the study with particular relevance to black women are the following: black women are heavily concentrated in the low-paying laborer and service-worker categories; black women are clustered in the low-paying industries, and they are under-represented in the highest-paying industries. For black women, discrimination is especially apparent in office work: while 57 per cent of women workers for the population as a whole hold white collar jobs, only 28 per cent of black women hold such jobs.

In furtherance of its responsibilities under Title VII, the EEOC has sponsored research and held hearings on specific areas of employment discrimination. In this connection, there were several instances of particular interest to black women.

An Ohio rubber industry study, sponsored by the Ohio Civil Rights Commission and financed by the EEOC, was based on 1965 employment data filed by 70 rubber manufacturing plants in Ohio. The study focused on Akron, where reporting companies employing two-thirds of Ohio's rubber workers were located. In 1965, black women made up more than 15 per cent of the Akron city labor force. However, the study revealed that they constituted only 2.2 per cent of all females employed by Akron's four largest rubber companies (which accounted for 93 per cent of the city's rubber workers). Restrictions against black women appeared to be much tighter than those against black men. As a general rule, whatever the percent of black males among the male employees of a rubber manufacturer, the percent of black females among the same plant's female employees was smaller.

The study noted that the public transportation

system in Akron and in other Ohio cities did not facilitate travel between black residential areas and outlying employers. Not every black family has two cars to get both husband and wife to separate jobs; some families do not have one car. The study pointed out that as long as black residential concentration persisted, public transportation was the key to the wide dispersion of black employment (most especially of female black employment) throughout a labor market area.

The Commission held a public forum, on January 12-13, 1967, on employment patterns in the textile industry in North and South Carolina, where 43 per cent of all U.S. textile mill production was centered in 1963. It published a summary of the transcript of that forum which revealed that black women were substantially under-represented in the work force of the 406 establishments studied in the sample; that the utilization of black workers of both sexes in the skilled craftsmen and white collar categories was minimal; and that the heavy concentration of blacks in the laborer and service occupations continued. While women made up about two-fifths of the sample studied, there were 27 white female workers employed in the establishments studied for each black female worker, and 5 black males employed for each black female. The study also revealed that recently there has been a trend toward hiring more black persons of both sexes in the Carolina mills.

In January, 1968, the Commission conducted a hearing on discrimination in white collar employment for minorities and women in New York City. In March, 1969, it conducted a hearing on such discrimination in Los Angeles, focusing on white collar employment in two industries: aerospace and communications, particularly motion picture production and radio and television. Discriminatory exclusion of women and blacks from managerial and professional positions was revealed in both hearings.

ONE of the problems in enforcing the rights of women under Title VII is the EEOC's lack of enforcement powers. When a charge of discrimination is filed, the EEOC only has authority to investigate the charge and, if it finds reasonable cause to believe the charge is true, to attempt to conciliate the matter. If a conciliation is not obtained, the aggrieved person has the burden of securing enforcement through the filing of a suit in the appropriate district court.

Thus, private attorneys have a crucial role to play in securing the enforcement of Title VII rights. Black attorneys and organizations which handle litigation for blacks, such as the NAACP and the NAACP Legal Defense and Educational Fund, Inc., have a special responsibility to ensure that women whose Title VII rights are violated receive adequate representation in the courts.

Under Title VII, the court, upon application of the complainant may appoint an attorney for the complaining party and authorize the commencement of the action without the payment of fees, costs or security. The court may also allow the prevailing party reasonable attorney's fees as part of the cost. In view of the fact that class actions are maintainable under Title VII, such attorney's fees may be considerable.

In addition to the remedies available under the Civil Rights Act of 1964, there are other relevant Federal and state statutes and municipal ordinances which may be utilized by the black woman who is the victim of discrimination in employment.

On the Federal level, there are:

1. The Equal Pay Act, passed in 1963, which became generally effective in 1964. It requires equal wages and salaries for men and women in equal work, and is administered by the Department of Labor.

2. Executive Order 11375, issued by President Johnson in October, 1967, which became effective a year later. The Order, administered by the Office of Federal Contract Compliance (OFCC) in the Department of Labor, applies to government contractors. It added a prohibition against discrimination based on sex to Executive Order 11246, which previously had prohibited only discrimination based on race, color, religion, and national origin. The Order requires government contractors to develop and implement written affirmative action programs to eliminate sex discrimination or face the cancellation and future loss of government contracts.

3. Executive Order 11478, issued by President Nixon, which became effective in August, 1969, and is administered by the Civil Service Commission. This Order prohibits discrimination based on race, color, religion, sex, and national origin in covered positions in the Federal Government, including certain positions in the District of Columbia government.

4. The Age Discrimination in Employment Act of 1967, which became effective on June 12, 1968. This statute, administered by the Department of Labor, prohibits discrimination based on age between the ages of 40-65. While it does not prohibit

sex discrimination, it can play a significant role in enlarging employment opportunities for women over 40 who wish to return to the labor market or change jobs.

5. The National Labor Relations Act, as amended, which is administered by the National Labor Relations Board. This Act is primarily concerned with union representation elections and unfair employment practices involving union representation. However, discrimination based on race, religion, sex, and national origin by employers and unions would also appear to come within the coverage of the Act.

On the state and local levels, there are:

1. State and municipal fair employment practices commissions which prohibit discrimination based on race, color, religion, sex and national origin. There are 34 state commissions, including the one for the District of Columbia, to which the EEOC defers on charges of discrimination based on race, color, religion, and national origin. Only 19 of these commissions also have jurisdiction over discrimination based on sex.

2. State equal pay legislation, which requires equal pay for equal work regardless of sex. Thirty-five states currently have such legislation.

OVER and above statutes and executive orders, a potent force for change in the area of women's rights has been the activities of organizations, both old and new, committed to securing equality of employment rights for women.

Among the older active organizations for women's rights, both of which are headquartered in Washington, D.C., are the National Woman's Party, which has fought for women's rights since its beginning in 1913 to secure women's suffrage; and the National Federation of Business and Professional Women's Clubs, Inc. (BPW), founded in 1919, with approximately 180,000 current members. In June, 1969, Mrs. Mercedes B. Botts, an inventory management specialist in the Defense Supply Agency, was installed as president of the District of Columbia's Cosmopolitan BPW Club—thus becoming the first black woman to head a BPW Club in the District.

Title VII provided the impetus for the formation of a number of new organizations dedicated to securing equality for women in the job market. Among these new organizations are the National Organization for Women (NOW), the Women's Equity Action League (WEAL), and Federally Employed Women (FEW). NOW, founded in 1966, is headed by Mrs. Betty Friedan, author of *The Feminine Mystique,* and is headquartered in New York City. Among its black officials are Mrs. Aileen C. Hernandez, one of its vice presidents, and a former EEOC Commissioner; Congresswoman Shirley Chisholm, member of the Board of Directors; Mrs. Ollie Butler-Moore, member of the Board of Directors, and Dean of Southern University, Baton Rouge; Mrs. Louise Watley, member of the Board of Directors and president of the Atlanta Chapter; and Mrs. Marion Metelits, president of the Philadelphia Chapter.

WEAL, founded in 1968 in Cleveland, has on its Board of Trustees and National Advisory Board a black woman, Mrs. Dorothy Hamlet, assistant law director for the City of Cleveland. FEW, with headquarters in Washington, D.C., was founded in 1968 to improve the status of women in the Federal service throughout the country. Its first president was a black woman, Mrs. Allie Latimer Weeden, who is employed by the General Services Administration as chief counsel, Automatic Data Processing Area, in the Office of the General Counsel, and as chairman of the Coordinating Committee of the Federal Women's Program. Among its current five officers, two are black women: its treasurer, Mrs. Susie T. Foshee, technical assistance officer with the EEOC, and its corresponding secretary, Mrs. Marionette Newman, reports assistant at the Atomic Energy Commission.

There are a great many new forces moving in the direction of securing equality of employment opportunity for the black woman. It is now up to the black woman to use the available means to secure her rights, and up to the rest of the country to cooperate and assist her in her struggle for equality. Hopefully, working and striving together, we will be able to achieve that democratic society which has so long been the American dream: where equal opportunity is available for all without regard to race, color, religion, sex, or national origin.