

What We Know about Equal Employment Opportunity Law after Fifty Years of Trying

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A common complaint about equal opportunity (EEO) law is that it has failed to transform society for women and people of color. Glass ceilings and maternal walls continue to exist as do significant gaps in pay. Another less hospitable complaint is that EEO law has disadvantaged white men. This chapter, by reviewing how EEO law after half a century is functioning in American society, will demonstrate the fallacy of claims that the law has provided advantages to women and people of color that damage the interests of white men. If anything, the transformative potential of EEO law has over time been disabled. Five books published in 2016 – 2017 are the basis for this argument. The five books considered in this chapter are:

- (1) *Rights on Trial* by Ellen Berrey, Robert Nelson, and Laura Beth Nielsen.¹
- (2) *Lifetime Disadvantage and the Gendered Workforce* by Susan Bisom-Rapp and Malcolm Sargeant.²
- (3) *Working Law* by Lauren Edelman.³
- (4) *Discrimination Laundering* by Tristin Green.⁴
- (5) *Unequal* by Sandra Sperino and Suja Thomas.⁵

Rather than discuss each one in turn, as one might in a typical book review, this chapter teases out three key insights gleaned from them in three separate sections. Section §9.02 covers the first insight, which is a considerable drawback to using EEO law to vindicate one's rights: the adversarial process imposes significant emotional and financial costs on those employees who engage with it and leaves many uncompensated injuries clearly linked to discrimination. Section §9.03 details the way in which courts narrow the reach of employment discrimination law by preserving managerial prerogatives. Section §9.04 notes that the law frequently misses discrimination that accrues over time and describes the cumulative disadvantage that results. Following these three sections, a brief conclusion offers thoughts on legal and policy reform for diverse societies that wish to promote an antidiscrimination agenda along with fairness and decent work.

This chapter should be cited as: Susan Bisom-Rapp, *What We Know about Equal Employment Opportunity Law after Fifty Years of Trying*, 100 BULL.COMP. LAB. RELS. 139 (Frank Hendrickx & Valerio De Stefano, eds., forthcoming 2018).

1. Ellen Berrey, Robert L. Nelson, & Laura Beth Nielsen, *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality* (University of Chicago Press 2017).
2. Susan Bisom-Rapp & Malcolm Sargeant, *Lifetime Disadvantage, Discrimination and the Gendered Workforce* (Cambridge University Press 2016).
3. Lauren B. Edelman, *Working Law: Courts, Corporations, and Symbolic Civil Rights* (University of Chicago Press 2017).
4. Tristin K. Green, *Discrimination Laundering: The Rise of Organizational Innocence and the Crisis of Equal Opportunity Law* (Cambridge University Press 2017).
5. Sandra F. Sperino & Suja A. Thomas, *Unequal: How America's Courts Undermine Discrimination Law* (Oxford University Press 2017).