University of Richmond Law Review

Volume 9 | Issue 1 Article 7

1974

Sex Discrimination in Employment: What Has Title VII Accomplished for the Female?

SEX DISCRIMINATION IN EMPLOYMENT: WHAT HAS TITLE VII ACCOMPLISHED FOR THE FEMALE?

I. INTRODUCTION

The legislative intent of Title VII[1] of the 1964 Civil Rights Act[2] was to eradicate all forms of discriminatory employment practices based upon race, religion, national origin or sex.[3] While the initial success of accomplishing this goal fell short of what was expected,[4] important strides in recent years have reversed earlier disappointments.[5]

Title VII's impact was least perceptible in the elimination of sex-based discrimination.[6] This was largely due to obstacles, both humanly created[7] and inherent,[8] in our society. Title VII's relative ineffectiveness in this area, however, appears to be ending due to a greater social awareness on the part of the courts[9] and some state legislatures.[10] Many courts have rendered decisions which indicate a realization that there is, in fact, a place for women in a heretofore male oriented society.[11] Some state legislatures have ratified the Equal Rights Amendment to the United States Constitution[12] and some have repealed their discriminatory "protective" laws.[13]

Virginia appears to be somewhere in the middle of the road on the issue

1. 42 U.S.C. § 2000e-15 (1964), *as amended*, 42 U.S.C.A. § 2000e-15 (Supp. 1972).

2. 42 U.S.C. § 2000a *et seq.* (1964), *as amended*, 42 U.S.C.A. § 2000a *et seq.* (Supp. 1972).

3. *See* Note, *Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 HARV. L. REV. 1109, 1113-19 (1971) [hereinafter cited as 84 HARV. L. REV. 1109].

4. *See generally* Draper, *A Historical Sketch of the Major Labor Law Developments That Have Occurred as a Result of the Civil Rights Act of 1964 and the Activities of the Equal Employment Opportunity Commission*, 18 How. L.J. 29 (1973) [hereinafter cited as 18 How. L.J. 29]. *See also* 84 HARV. L. REV. 1109, 1200-02.

5. *See* Comment, 48 TUL. L. REV. 125, 133-34 (1973).

6. *See* LAB. REL. REP., FEP, 421:601 (1973); 84 HARV. L. REV. 1109, 1199-1202.

7. This refers to state protective legislation enacted in the early 1900's to protect women from hazardous positions. These laws today present a major obstacle to women in their attempts to achieve employment equality.

The other humanly-created obstacle is the Bona Fide Occupational Qualification exception to Title VII's proscription on sex discrimination. Both obstacles will be discussed *infra*.

8. The inherent obstacle is pregnancy which will be discussed *infra*.

9. *See, e.g.*, Rosenfeld v. Southern Pac. Co., 444 F.2d 1219 (9th Cir. 1971); Diaz v. Pan American World Airways, Inc., 442 F.2d 385 (5th Cir.) *cert. denied*, 404 U.S. 950 (1971); Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969); Leblanc v. Southern Bell Tel. & Tel. Co., 333 F. Supp. 602 (E.D. La. 1971), *aff'd* 460 F.2d 1228 (5th Cir. 1972).

10. While most states continue to maintain their state protective laws, other states such as Arizona, Colorado, Georgia, Ohio, Pennsylvania and Virginia have either already repealed theirs or are in the process of doing so.

11. Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969).

12. H.R. JOUR. 208, 92d Cong., 2d Sess. (1972). Currently, 32 states have ratified the Equal Rights Amendment; 38 states are required for constitutional ratification.

13. *See* note 10 *supra*.

of sex discrimination. The General Assembly has refused to ratify the Equal Rights Amendment,[14] but has amended one of Virginia's "protective", discriminatory laws.[15] The Virginia courts have generally supported Victorian concepts concerning womens' role in society;[16] however, one recent decision[17] indicates that such support might be diminishing.

This comment will explore various aspects of sex discrimination in employment with particular focus upon Title VII and its effects upon the pregnant employee.

II. The Equal Employment Opportunity Commission (EEOC)

Incorporated into Title VII is a provision[18] establishing the EEOC, an agency whose primary function is administration and enforcement. However, when originally enacted, this provision proved debilitating since it gave the EEOC virtually no support or enforcement power. The Commission was permitted only "informal methods of conference, conciliation, and persuasion."[19] These methods had a limited effect in curtailing employer discrimination since they essentially were a "soft words" suggestive approach rather than a "big stick" injunctive approach.[20] The result was adamant employer resistance, making enforcement of Title VII by the Commission virtually impossible.[21]

In an attempt to counterbalance its own ineffectiveness, the Commission, pursuant to its authority to administer Title VII,[22] issued guidelines asserting its position on job discrimination based upon religion, national origin, and sex. The Guidelines on Sex Discrimination are designed to

14. On Feb. 27, 1974, by a majority vote in the House Resolution Committee, it was decided that the ERA resolution not be presented to the full House for ratification. It therefore died in Committee.

15. Va. Code Ann. § 45.1-32 (Cum. Supp. 1973) was amended to delete any reference to women in its prohibition of working in mines and quarries. While this is a step in the right direction, similar measures must also be taken to reform other protective sections, i.e., Va. Code Ann. §§ 40.1-34, -35 (Repl. Vol. 1970).

16. *See, e.g.*, Cohen v. Chesterfield County School Bd., 474 F.2d 395 (4th Cir. 1973), *rev'd sub nom.*, Board of Educ. v. LaFleur, 94 S. Ct. 791 (1974). While this was a circuit court decision, the case and its facts arose in Virginia and developed through the Virginia courts.

17. Gilbert v. General Electric Co., Lab. Rel. Rep., 7 FEP Cases 796 (E.D. Va. April 13, 1974).

18. 42 U.S.C. § 2000e (4) (1964).

19. 42 U.S.C. § 2000e-5(a) (1964), *as amended*, 42 U.S.C.A. § 2000e-5(a) (Supp. 1972).

20. *See, e.g.*, Dent v. St. Louis—San Fran. Ry., 406 F.2d 399 (5th Cir. 1969); Sciaraffa v. Oxford Paper Co., 310 F. Supp. 891 (D. Me. S.D. 1970).

21. *See* 84 Harv. L. Rev. 1109, 1200-02.

22. 42 U.S.C. §§ 2000e-4, 12 (1964), *as amended*, 42 U.S.C.A. §§ 2000e-4, 12 (Supp. 1972). § 2000e-12 states:

prohibit the disparate treatment of females in the employment field.[23] It was not until 1972, however, that Congress, in an amendment to Title VII,[24] provided the Commission with effective and forceful remedies. This amendment granted the Commission power to use the federal courts to compel employers to comply with any voluntary agreement reached by them and their employees concerning discriminatory practices.[25] These measures taken by the Commission and by the Congress have helped to restructure the EEOC into a functioning body that can now adequately cope with discriminatory sex practices in employment.

III. Sex Discrimination: Obstacles to Equality

A. State Protective Laws

As originally contemplated, Title VII was to be promulgated absent the word "sex."[26] Such an omission would have severely hampered women's fight for equality in employment. But, as a result of last minute politicking, "sex" was brought within its protective sphere.[27] Inclusion of sex discrimination was intended to provide women with the means of achieving job equality in employment. However, attempts at achieving this equality have been impeded by employers[28] who do not want to hire females to do what they feel to be male oriented work, and by state legislators[29] who believe that the female must be protected from the hazards of industrial work. Fortunately these prejudicial and over-protective attitudes do not prevail in all jurisdictions.[30]

(a) The Commissions shall have the authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. . . .

23. 29 C.F.R. § 1604 *et seq.* (1973). The Guidelines on Discrimination Because of Sex set forth the Commission's viewpoint on various employment practices regarding sex discrimination. Examples of discriminatory policies are given and the premise that all employees are to be treated as individuals, not classified by sex, is clearly stated.

These guidelines are accorded "great deference" by the Supreme Court. Griggs v. Duke Power Co., 401 U.S. 424, 434 (1971).

24. Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e (1)-(17) (Supp. 1972).

25. *Id.*; *See also* 18 How. L.J. 29, 31.

26. *See* Lab. Rel. Rep., FEP, 421:601 (1973); Kanowitz, *Sex-Based Discrimination in American Law III: Title VII of the 1964 Civil Rights Act and the Equal Pay Act of 1963*, 20 Hast. L.J. 305, 310-13 (1968) [hereinafter cited as 20 Hast. L.J. 305].

27. *See, e.g.*, Oldham, *Sex Discrimination and State Protective Laws*, 44 Den. L.J. 344, 346 n.8 (1967).

28. *See generally* 48 Tul. L. Rev. 125 (1973).

29. *See* Landau and Dunahoo, *Sex Discrimination in Employment: A Survey of State and Federal Remedies*, 20 Drake L. Rev. 417, 446-50 (1971) [hereinafter cited as 20 Drake L. Rev. 417].

30. *See, e.g.*, Sprogis v. United Air Lines, Inc., 444 F.2d 1194 (7th Cir. 1971); Rosenfeld v. Southern Pac. Co., 444 F.2d 1219 (9th Cir. 1971); Kober v. Westinghouse Elec. Corp., 325 F. Supp. 467 (W.D. Pa. 1971).

Discriminatory practices based on sex were derived from the stereotype that women were physically incapable of performing a job with the same efficiency and success as men.[31] Such practices were frequently defended by employers on the more specific grounds that they were conforming to an applicable state "protective" law.[32] These protective laws were enacted by individual states in the early 1900's in a gallant effort to insulate women from many hazards created by industrial employment.[33] Virginia was one of the many states[34] which passed laws barring employment of women in extremely hazardous occupations,[35] placing limitations upon the amount of hours they could work[36] and ceilings upon the amount of money they could earn.[37] The motive behind passage of these laws was benevolent, but, society has advanced technically to the point where such protection is an unnecessary and stultifying obstacle to the achievement of job equality for women. Virginia, apparently realizing this fact, has repealed all but one of its protective laws.[38]

The EEOC's Guidelines on Sex Discrimination provide that state protective laws do not take into account capacities, preferences, and the abilities of individual women, and are therefore in conflict with and superceded by Title VII.[39] Adherence to these guidelines by the courts coupled with reform conscious state legislatures may permit Title VII to effectively eliminate one of the many obstacles to women's equality in employment.

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31. Rosenfeld v. Southern Pac. Co., 444 F.2d 1219 (9th Cir. 1971); 48 TUL. L. REV. 125, 126-27 (1973).

32. *See, e.g.*, Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir. 1969); Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969); Caterpillar Tractor Co. v. Grabiec, 317 F. Supp. 1304 (S.D. Ill. 1970).

33. *See* 20 DRAKE L. REV. 417, 446-47.

34. As of 1969, forty-one states had laws restricting the number of hours a woman could work per day or per week; ten states had official restrictions on the amount of weight a woman could lift; eighteen states prohibited or regulated night work in certain occupations; and twenty-four states prohibited the employment of women in specific industries or occupations. Some state laws have been repealed or superceded since 1969. *See* n. 10 *supra*. *See also* 48 TUL. L. REV. 125, 126-27 n. 11 (1973).

35. Among these occupations are quarrying, mining, coremaking, serving liquor, the cleaning of moving machinery, and occupations requiring constant standing.

Until 1972, Virginia forbade women from working in mines and quarries, but this law was repealed in 1972. VA. CODE ANN. § 45.1-32 (Repl. Vol. 1972), *as amended*, VA. CODE ANN. § 45.1-32 (Cum. Supp. 1974).

36. These particular laws generally forbid a woman from working in excess of eight or ten hours per day and forty-eight hours per week. This prohibition is covered in Virginia by VA. CODE ANN. § 40.1-35 (Repl. Vol. 1970).

37. These laws set the minimum amount of money that a woman can earn, and establish ceilings for her overtime pay. Such laws are not found in Virginia, however.

38. *See* note 15 *supra*.

39. 29 C.F.R. § 1604.2 (1), (2) (1973).

B. The Bona Fide Occupational Qualification

The drafters of Title VII attached a qualification to its proscription against discriminatory sex practices.[40] This qualification, referred to as the Bona Fide Occupational Qualification (BFOQ),[41] applies if an employer is able to demonstrate that the position in question requires a particular sex for its successful performance. If the BFOQ exception is deemed applicable, the employer will not have violated Title VII, even though he hires male employees exclusively.[42]

The problem with the BFOQ exception is its potential for abuse as a euphemistic loophole within Title VII allowing people to be evaluated solely upon their class status (female), rather than upon their individual abilities and capacities. While such evaluation may be valid in a few situations involving highly specialized occupations,[43] the provision, if broadly interpreted, could emasculate the effectiveness of Title VII in this area. Employers have urged the broadest interpretation possible, but courts have refused to oblige,[44] knowing well that this would virtually halt Title VII's inroads against sex discrimination.

The leading decisions concerning the interpretation of the BFOQ exception have been in accord with the apparent intent of its drafters and the EEOC's Guidelines, i.e., narrow interpretation of the BFOQ.[45] Ironically, one such decision[46] dealt with a prospective male employee who sought the position of flight cabin attendant with an airline. The airline refused to hire him because he wasn't female, thus disregarding any qualifications that he may have possessed. Defending a charge of reverse sex discrimination, the defendant airline contended that this position fell within the BFOQ exception. In rejecting this contention, the court stated that the exception applies only when discrimination based on sex goes to the essence of the business operation, and such operation would be undermined by not hiring members of one sex exclusively; it should not, how-

40. H.R. 7152, 88th Cong., 2d Sess. 110 CONG. REC. 2718 (1964).

41. 42 U.S.C. § 2000e- 2(e) (1964), *as amended*, 42 U.S.C.A. § 2000e- 2(e) (Supp. 1972).

42. *See generally* 49 NOTRE DAME 568, 569 (1973).

43. H.R. 7152, 88th Cong., 2d Sess. 110 CONG. REC. 2718, 2720, 7212-13 (1964) (examples given were a female nurse in a nursing home, an all-male baseball team and a masseur).

44. Naturally a broad interpretation is favored by the employer since this would allow him to discriminate because of sex with less legislative and governmental supervision in a variety of situations.

45. *See, e.g.*, Diaz v. Pan American World Airways, Inc., 442 F.2d 385 (5th Cir.) *cert. denied*, 404 U.S. 950 (1971) (where the court followed the EEOC guidelines in interpreting the BFOQ exception narrowly).

46. *See* 442 F.2d 385 (5th Cir. 1971); *See also* Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969).

ever, apply if it is merely a convenience to the business operation.[47] The court emphatically decreed that the only feasible interpretation was a narrow one,[48] as is advocated by the EEOC Guidelines. As the result of such decisions,[49] the courts have thus far prevented the BFOQ exception from eroding Title VII's proscription against sex based discrimination in employment.

C. *Pregnancy*

The employment practice most recently subjected to Title VII litigation is sex discrimination against pregnant employees.[50] Such practices are manifested most frequently in policies either requiring the pregnant employee to take a leave of absence at a prescribed stage of the pregnancy,[51] or in refusal by employers to allow sick leave and disability benefits.[52] Either practice is discriminatory;[53] the employer is in effect either telling the pregnant employee that her condition has diminished her job efficiency; or, by choosing to become pregnant, she is not entitled to receive the same benefits given for other disabling conditions.

Forced maternity leave disputes often involve teachers, who, because of the non-strenuous physical activities inherent in their position believe that they are physically able to continue teaching beyond the forced leave date. Those who attempt to stay on are faced with the difficult task of proving that the forced leave policy constitutes discrimination based upon sex.

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47. 442 F.2d 385, 389 (5th Cir. 1971).

48. *Id.* at 387.

49. Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir. 1969); Kober v. Westinghouse Elec. Corp., 325 F. Supp. 467 (W.D. Pa. 1971); Ridinger v. General Motors Corp., 325 F. Supp. 1089 (S.D. Ohio 1971); Utility Workers Local 246 v. Southern Calif. Edison Co., 320 F. Supp. 1262 (C.D. Cal. 1970).

50. *See, e.g.*, Geduldig v. Aiello, 42 U.S.L.W. 4905 (U.S. June 17, 1974); Board of Educ. v. LaFleur, 94 S. Ct. 791 (1974); Buckley v. Coyle Public School System, 476 F.2d 92 (10th Cir. 1973); Bravo v. Board of Educ., 345 F. Supp. 155 (N.D. Ill. 1972); Gilbert v. General Electric Co., LAB. REL. REP., 7 FEP Cases 796 (E.D. Va. April 13, 1974); Vick v. Texas Empl. Comm'n., 6 EPD ¶ 8933 (S.D. Tex. 1973); Hanson v. Hutt, 83 Wash.2d 195, 517 P.2d 599 (1974).

51. *See* Board of Educ. v. LaFleur, 94 S. Ct. 791 (1974); Buckley v. Doyle Public School Sys., 476 F.2d 92 (10th Cir. 1973); Green v. Board of Educ., 473 F.2d 629 (2d Cir. 1973); Schattman v. Texas Empl. Comm'n., 459 F.2d 32 (5th Cir. 1972); Heath v. Board of Educ., 345 F. Supp. 501 (S.D. Ohio 1972).

52. *See* Geduldig v. Aiello, 42 U.S.L.W. 4905 (U.S. June 17, 1974); Gilbert v. General Electric Co., LAB. REL. REP., 7 FEP Cases 796 (E.D. Va. April 13, 1974); Goodyear Tire and Rubber Co. v. Rubber Workers Local 200, 7 EPD 9073 (Ct. of Common Pleas, Ohio Dec. 11, 1973); Dessenberg v. American Metal Forming Co., 6 EPD ¶ 8813 (N.D. Ohio Oct. 3, 1973).

53. One court has found however, that pregnancy is neither a sickness nor a disability; therefore no benefits should be given for such a non-disability. Newmon v. Delta Air Lines, Inc., LAB. REL. REP., 7 FEP Cases 26 (N.D. Ga. 1973).

Ordinarily, such a practice would be discriminatory and in violation of Title VII following the EEOC Guidelines on Sex Discrimination.[54] However, until 1972 teachers as a class were excluded from Title VII's protection.[55] The aggrieved teacher was thus forced to by-pass any effective Title VII remedies and file charges of discriminatory practices in a federal district court. This avenue of relief required the teacher to premise allegations upon violations of her Constitutional rights, i.e., a denial of due process or a violation of equal protection under the fourteenth amendment.[56] There has been little success in contesting discrimination on these grounds because of the rigorous standard of judicial review which the Supreme Court applies in such cases.[57] This standard, referred to as the "rational basis" standard,[58] places the burden upon the discriminatee to prove that the alleged practices were arbitrary and capricious and not based upon a reason which has a fair and substantial relation to a legitimate object of the employer.[59] The burden is quite heavy, and often requires more evidence than the discriminatee is capable of providing. Fortunately, the Equal Employment Opportunity Act of 1972[60] afforded a way to circumvent this uphill route by amending Title VII to include teachers within its protection. Now the task of proving that a forced maternity leave is sex discrimination under Title VII is less arduous for the employee because the burden of proof is placed on the employer.[61]

Refusal to grant sick leave and disability benefits to the pregnant employee was the issue before the Eastern District Court of Virginia in *Gilbert*

54. 29 C.F.R. § 1604.10 *et seq.* (1973), which proscribes any written or unwritten policy which discriminates against employees because of pregnancy.

55. 42 U.S.C. § 2000e-1 (1964).

56. *See* 49 NOTRE DAME 568, 574 (1973).

57. *See Id.* 574-77; 48 TUL. L. REV. 125, 128-30 (1973).

While never applied by a majority of the Supreme Court, some courts have applied the more active or strict scrutiny standard, which places the burden upon the employer or government to show that classifications based on sex are inherently suspect and therefore there is a compelling state interest to maintain such classifications, thus sustaining the constitutionality of the policy or regulation in question. *See, e.g.*, Buckley v. Coyle Public School Sys., 476 F.2d 92 (10th Cir. 1973); Aiello v. Hansen, 359 F. Supp. 792 (N.D. Calif. 1973).

58. This standard has also been referred to as the "traditional standard" or the "permissive review."

59. Reed v. Reed, 404 U.S. 71, 76 (1971), where the majority enunciated the "rational basis" standard for sex based discrimination.

60. 42 U.S.C.A. §§ 2000e (b), 2000e-1 (1972), *amending* 42 U.S.C. §§ 2000e (b), 2000e-1 (1964).

61. *See, e.g.*, Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir. 1969); Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969).

v. General Electric Co.[63] The court found that pregnant employees of General Electric were forced to bear economic hardship simply because they chose to exercise their innate right to bear a child.[64] On the other hand, male employees under General Electric's health plan were able to subject themselves to as selective an operation as a vasectomy or cosmetic surgery and still receive appropriate sickness and disability benefits.[65]

In defense of its policy to isolate the pregnant employee, General Electric raised two principal arguments; first, that inclusion of pregnancy related disabilities within the overall health plan would make the cost so high that the plan would be infeasible. Second, because pregnancy is a voluntary disability, it should not be protected. The court rejected General Electric's first argument by stating that the pregnant employee could be precluded from the plan only if it was an essential business necessity.[66] Such a business necessity was absent here since General Electric could have reduced the cost of the plan in a number of possible ways.[67] In rejecting the second argument, the court determined that it lacked consistency in light of General Electric's policy of providing benefits for all disabilities including those arising from attempted suicides.[68]

In rendering this decision, the court accorded great deference to both the earlier EEOC decision on this case and the EEOC's 1972 Guidelines which denounce any pregnancy related discrimination[69] and place pregnancy within the same ambit as all other temporary disabilities covered by health plans.[70] In short, the court found that because the plan was purportedly designed to relieve the economic burden of physical incapacity, pregnancy,

63. Gilbert v. General Electric Co., LAB. REL. REP., 7 FEP Cases 796 (E.D. Va. April 13, 1974).

64. *Id.*

65. *Id.*

66. *Id.*; Robinson v. Lorillard Corp., 444 F.2d 791, 796 (4th Cir. 1971), wherein the court agreed with a prior fourth circuit decision and stated that the test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. *See also* Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (10th Cir. 1970).

67. Gilbert v. General Electric Co., LAB. REL. REP., 7 FEP Cases 796, 810 (E.D. Va. April 13, 1974).

68. *Id.*

69. The case was decided by the EEOC. Gilbert v. General Electric, No. 3-093 (May 18, 1973); wherein the Commission, following its investigation, concluded that the health plan was violative of Title VII.

The EEOC Guidelines referred to were issued on March 3, 1972, and provide:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. 29 C.F.R. § 1604.10 (b) (1972).

70. 29 C.F.R. § 1604.10 (b) (1972).

obviously a sex-linked disability, should not be isolated for less favorable treatment;[71] to do so would clearly constitute discrimination based on sex in violation of Title VII.

The *Gilbert* decision illustrates that the Title VII alternative to elimination of sex discrimination can be more successful than the constitutional approach.[72] The Title VII approach in simplified terms consists of filing charges with the EEOC stating that alleged unlawful practices were committed by the employer. The EEOC then conducts a thorough investigation of the charges. Upon a finding of a violation based upon the presented facts, the EEOC issues a compliance order to the employer. If the employer fails to comply within the prescribed period of time, the EEOC files an action in the appropriate district court on behalf of the employee.[73] When the case is brought to this level the burden of proof shifts and the employer must justify his actions. If he fails to adequately do so, he is found guilty of a Title VII violation.[74] Utilization of this procedure by female employees will insure that they will not be penalized for suffering disabilities to which they alone are inherently susceptible.

IV. CONCLUSION

Title VII is steadily developing into the most effective device in the struggle to eradicate all forms of sex based discrimination in employment. Its procedural accessibility and great potential for success makes it a most desirable tool with which females may combat sex discrimination.[75] Under

71. Gilbert v. General Electric Co., LAB. REL. REP., 7 FEP Cases 796, 809 (E.D. Va. April 13, 1974).

72. The same result was reached in Wetzel v. Liberty Mut. Ins. Co., 372 F. Supp. 1146 (W.D. Pa. 1974); Goodyear Tire and Rubber Co. v. Rubber Workers Local 200, LAB. REL. REP., 8 FEP Cases 128 (Ohio Ct. App., Dec. 11, 1973); Dessenberg v. American Metal Forming Co. LAB. REL. REP., 8 FEP Cases 290 (N.D. Ohio, Oct. 3, 1973). *Contra*, Newmon v. Delta Airlines, LAB. REL. REP., 7 FEP Cases 26 (N.D. Ga. 1973).

73. *See* 42 U.S.C.A. § 2000e-5 *et seq.* (1972), *amending*, 42 U.S.C. § 2000e-5 *et seq.* (1964).

74. *See* note 63 *supra*.

75. The ease of accessibility results because the discriminatee only has to file a charge of discrimination against the employer with the Commission. The discriminatee need only present the facts as they occurred. From this point in time, it is the Commission that initiates all further actions. The Commission makes the necessary investigation, determines the guilt of the employer and then issues the compliance order. If the employer refuses to comply, the Commission then files suit in the appropriate federal district court on behalf of the discriminatee. Once in federal court, the burden rests with the employer to justify his actions. Failure to do so results in a violation of Title VII.

Obviously this approach is less expensive for the discriminatee since there is no need to hire an attorney on her behalf nor does she bear the necessary costs for initiating court action. Because the employer bears the burden of proof when the Commission brings the action, success for the discriminatee is often a foregone conclusion.

Title VII, no longer must the discriminatee travel the more burdensome route of combating sex discrimination on constitutional grounds.[76]

If Title VII continues to succeed, it may conceivably surpass the results envisioned by the supporters of the proposed Equal Rights Amendment.[77] This is because the ERA, while seemingly broad,[78] fails to proscribe sex discrimination where it most frequently occurs, in the private sector.[79] Title VII should, therefore, remain the single most effective means to attack sex discrimination in employment, regardless of ratification of the ERA.

H.L.K.

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76. *See* text at note 8 *supra*.
77. These results are, obviously, the complete eradication of sex discrimination.
78. The proposed Amendment provides:
Section 1. Equality of Rights under the law shall not be denied or abridged by the United States or by any State on account of sex. H.R.J. Res. 208, 92d Cong., 1st Sess. (1971); S.J. Res. 8, 92d Cong., 1st Sess. (1971).
79. *See* Comment, 59 CORNELL L. REV. 133, n.77 at 150 (1973).