

Is the paper chase a rat race?

Associates in law firms work too many hours, concludes an economic study published last year in the *American Economic Review*.¹ The authors used data collected from associates and partners at two large law firms in the Northeast to show that the long hours typical of such firms contradicted textbook economic theories of wage equilibrium. Professional employees at these establishments adversely selected longer-than-optimal hours because of how they perceived the role of hours worked in hiring and promotion decisions.

Long hours and economic theory. According to textbook economic theory, market competition forces firms to link work hours to the preferences of individual employees. Firms that closely match the preferences of their workers for certain hours can attract desirable employees at a lower wage. It follows that most individuals will be working the number of hours that maximizes utility, conditional on their wages.

But the traditional microeconomic model ceases to have predictive value when firms use willingness to work long hours as an indicator of some valuable, yet hard-to-observe, characteristic that helps determine whether an employee is hired or promoted. Because revenue in a law firm is shared among the partners, each individual partner's income depends on the willingness of the other partners to work hard. Direct observation of the moneymaking activities of other partners is so difficult, the researchers noted, that strong incentives arise to allow only those associates with a propensity to work very hard to become partners.

The study describes a *separating equilibrium*² in which the law firms screen out associates inclined toward short hours by instituting a strict norm that requires inefficiently long work hours. Because employees desiring short hours have an incentive to disguise themselves as long-hour workers by agreeing to work more hours than they otherwise would at their present wage, firms are forced to set hours long enough to discourage a short-hour employee from making the pretense.

Implications of the research results. Although law firms rely on billable hours as an indicator in making promotion decisions, the model used in the study is valid for other indicators. For an indicator to generate overwork, it need only be a characteristic that is an increasing function of work hours. "A rat-race equilibrium can occur among associates in [consulting firms,] even though clients are billed by the project rather than the hour," the researchers observed.³

They also singled out university departments (where tenured faculty benefit from the research efforts of other members of their department) and high-level managerial positions in hierarchical firms (where small differences in effort can have large effects on the organization) as situations where rat-race equilibria can occur. A rat race, they concluded, can be expected in any work group under three conditions: some of the members benefit from the productive activity of other members; the output of the group as a whole can be significantly affected by the work efforts of the individuals it comprises; and members are able to establish work norms.

A distributional issue. The researchers pointed out that partnerships in the large law firms they studied are elite positions in the legal profession, offering high earnings and opportunities for leadership in the profession at large. Thus, an effect of the rat-race equilibrium is to reduce access to powerful positions for those unwilling to work excess hours

early in their careers. "This selection process," the authors declared, "may have the effect, although not the intent, of keeping a disproportionate number of qualified women out of leadership positions in business and professional organizations."⁴ Indeed, the male and female professionals who emerge from the rat race as winners may be personally ill equipped to address the consequences that shifting demographics have for professional and managerial employment relationships. Currently, about 40 percent of graduates from law schools are women, up from 5 percent in 1975.⁵ Adapting to this shift in the legal labor force poses an enormous challenge for law firms.

English-only in the workplace

A unanimous Supreme Court has held that a lawsuit challenging Arizona's English-only requirement for State government employees became moot when the plaintiff left her State job to work in the private sector.⁶ In its recent decision, the High Court avoided ruling on the constitutionality of a 1988 amendment to the Arizona Constitution designating English as the State's official language. The Court recommended instead that novel questions of State law first be addressed to the State courts. Some 21 States have similar English-only requirements, and the case had been closely watched because it raised issues of multiculturalism and multilingualism reaching beyond the workplace.

The plaintiff, Maria-Kelley Yniguez, was an insurance claims manager in the Risk Management Division of Arizona's Department of Administration when she filed suit. Yniguez maintained that the State constitutional amendment infringed upon her right of free speech by preventing her from speaking Spanish with Spanish-speaking claimants. In October 1995, the U.S. Court of Appeals for the Ninth Circuit struck down the English-only amendment as unconstitutional. The court ruled that the article

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raised equal-protection concerns because of the close nexus between language and national origin. The ruling was appealed to the Supreme Court.

Speaking for the Court, Justice Ruth Bader Ginsburg declared that Federal courts are not competent to rule definitively on the meaning of State legislation. Furthermore, they should not adjudicate challenges to State laws without evidence of an actual impact on the challenger, wrote Justice Ginsburg. "The Ninth Circuit, in the case at hand, lost sight of these limitations," she said.

In holding the case moot, the High Court has sidestepped the constitutionality of the English-only law and referred this determination back to the Arizona State Supreme Court. As Justice Ginsburg noted, once the State's highest court has ruled on the meaning of the article, the remaining Federal constitutional question may be simplified. An earlier opinion by the Arizona Attorney General held that "official acts" must be expressed in English, but State employees were free to use other languages, when necessary, to deliver services to the public.

Discrimination

Do former employees have the same right as current employees to sue on grounds that they suffered retaliation for exercising rights protected by Title VII of the Civil Rights Act of 1964?⁷ The answer to this question is yes, according to the Supreme Court's recent ruling in *Robinson v. Shell Oil Co.*⁸ The Court's decision supports the position taken by the Equal Employment Opportunity Commission (EEOC) and used by a majority of Federal appeals courts.

The case arose in 1991, when Shell Oil Company fired Charles Robinson, Sr., who then filed a charge with the EEOC alleging that his discharge was racially motivated. While that charge was pending, Robinson applied for a job with another company. That company contacted Shell for an employment reference, which

Robinson claimed was a negative one in retaliation for his having filed the earlier discrimination charge.

He then sued under section 704(a) of Title VII, alleging retaliatory discrimination. The District Court dismissed Robinson's suit, holding that section 704(a) does not apply to former employees. The full Court of Appeals for the Fourth Circuit affirmed the lower court's ruling, but the Supreme Court reversed that decision.

Justice Clarence Thomas delivered the Court's unanimous opinion that companies can be sued under Title VII by former employees. The High Court concluded that the plain language of Title VII's antiretaliation provision is not clear as to whether the term "employees" excludes former employees. Given that ambiguity of language, said Justice Thomas, the court based its decision on the broader intent of the statute: to protect employees from discrimination in the workplace. Cutting former employees off from Title VII protection, he declared, would provide an incentive for employers to fire workers who might bring Title VII claims.

Canine controversy

The Colorado Court of Appeals has ruled that pets must be allowed in the workplace unless leases include a specific prohibition against them (*Hanson Natural Resources Co. v. Automated Communications, Inc.*).⁹ The court noted that today's workplaces encourage a variety of practices thought to benefit worker morale and productivity. Bringing a pet dog to work can be viewed in this light.

Automated Communications, Inc., which provides long-distance telecommunications services, had occupied office space in the Denver metropolitan area for a number of years. The company's president typically brought one or more of her pet dogs to work with her. When Automated subleased new office space from Hanson Natural Re-

sources Company, the president continued her practice of bringing a pet dog to work. Although the new lease contained no specific provisions against having pets on the premises, several months after Automated's occupancy, Hanson established a rule to that effect. The president of Automated continued bringing her dog to work, and Hanson instituted a forcible-entry-and-detainer action, seeking to recover possession of the premises.

The trial court held that Automated's lease restricted the company's use of the premises to "general office use," and the housing of dogs was not permitted. But the Appeals Court disagreed and reversed the lower court's holding.

"Allowing an office worker to bring a pet to the office, whether it be goldfish, a bird, a cat, a dog, or some other common household pet, is a use of the premises that is reasonably incidental to the permitted 'general office' use," insisted the Court. Just as a large employer may properly establish a nursery for employees' children on premises leased for general office use, allowing employees to bring domesticated pets to the workplace does not imply that the premises are no longer devoted to general office use. If a lessor wants to exclude pets, he or she should put such a provision in the lease, the court declared. □

Footnotes

¹ Renee M. Landers, J. Rebitzer, and L. Taylor, "Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms," *American Economic Review*, vol. 86, no. 3, 1996, pp. 329-48.

² *Ibid.*, p. 334.

³ *Ibid.*, p. 347.

⁴ *Ibid.*

⁵ *Ibid.*, p. 330.

⁶ *Arizonans for Official English v. Arizona*, US Sup. Ct., No. 95-974, Mar. 3, 1997.

⁷ 42 U.S.C. § 2000(e).

⁸ 117 S.Ct. 843.

⁹ 926 P.2d 176.