Disposable Workers: Race, Gender, and Firing Discrimination

Dissertation

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Abstract

The nature of employment relations has undergone a dramatic shift. Fueled by globalization pressures to cut costs, expansions of the employment-at-will doctrine, and employer based attitudinal biases, firing discrimination now accounts for one half of all discrimination complaints in the American workplace (Hirsh 2008). Yet surprisingly little sociological research has investigated this phenomenon (Petersen and Saporta 2004). Using a unique data set of over 300 discrimination complaints made to the Ohio Civil Rights Commission between 1986 and 2003, I employ a multi-method approach to highlight the patterns and processes of firing discrimination.

Drawing from statistical discrimination and especially social closure theories, I test the assumptions that race based terminations will be distinct from those that are based on sex. For example, prior work speculates that African Americans will be differentially treated and fired based on stereotypical perceptions of deficient skills, whereas women are more likely to be differentially treated and fired surrounding the issue of pregnancy/motherhood. In addition, I draw from labor market theories to explore whether relevant processes are shaped and mediated through the formalization of work.

Results reveal eight distinct processes of discriminatory firing that range from
subtle to overt. As predicted, firing discrimination unfolds for African Americans and Caucasian women in distinct ways. On one hand, African American women and men have two to three times higher odds of experiencing and reporting differential performance expectations and treatment in firing compared to Caucasian women. Caucasian women, in contrast, have five times higher odds of reporting pregnancy based firing discrimination compared to African American women. These patterns hold even in the face of individual level factors (e.g., seniority, occupational prestige, age) and levels of workplace formalization (e.g., organizational size, industrial category, establishment composition).

Immersion into the rich qualitative narratives of these cases reveals that firing sometimes takes the form of arbitrary dismissals (i.e., Black men), quid pro quo sexual harassment (i.e., White women), and retaliatory dismissal for filing a prior claim of discrimination (i.e., all groups). These data also show that overarching stereotypes, cost containment objectives, and the maintenance of status hierarchies are strong motivations for managers to bypass formalized procedures and legitimize discrimination. Acknowledging these complexities, it is clear that “one size fits all” firing protections will not be an effective solution to this problem. I conclude by discussing what these results mean for employment inequality research as well as law and employment policy.
Dedication

Dedicated to Steve, Dad, and Yvonne
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CHAPTER 1
ACKNOWLEDGING RACE AND GENDER
IN EMPLOYMENT TERMINATIONS

Jerome Miller, an African American waiter at a restaurant, was fired and filed a charge of race discrimination with the Ohio Civil Rights Commission. Jerome’s employer justified the termination alleging that Jerome was often tardy, received a “final” warning, and was told that his next violation would result in termination. When Jerome received an unsatisfactory rating on a shopper’s report (a score of 20 out of 35), he was fired. Yet evidence from a case investigation substantiated that Sean Baxter, a Caucasian waiter at the restaurant, had the same number of disciplinary records for being late on his file and received a lower score (14 out of 35) on the shopper’s report. Sean, however, merely received another “final” warning after the shopper’s report. In fact, Sean continued to receive “final” warnings for his ongoing violations until he was eventually discharged for illegally using his credit card, an offense that stands alone as grounds for discharge.

In another case, Laura Stuckey, a Caucasian assistant manager at a bar, filed a sex discrimination charge alleging that she too was differentially treated and unfairly terminated. Laura’s manager claimed that she had her canteen privileges suspended and was ultimately fired because of her continuous disregard for talking “Post business” with
others at the bar. But witness testimony confirmed that males discussed Post business at
the bar all the time and they were only sent letters of warning. Another witness even
doubted whether the company had any rules against discussing Post business between
members and staff because, “what else would they have in common”?

These two cases illustrate that race and gender may represent an important source
of bias in firing episodes. And given the centrality of stable employment to the well-
being of African Americans and women, discriminatory terminations are indeed pressing
social problems. Terminations not only affect one’s immediate quality of life (e.g.,
housing and healthcare options), but can also lead to long lasting spells of unemployment
as the stigma of being dismissed and the stigma of complaining about discriminatory
dismissals each contaminate new job opportunities (Canziani and Petrongolo 2001;
Coleman, Darity, and Sharpe 2008; Maxwell and D’Amico 1986). Moreover, a growing
body of research highlights some significant non-economic repercussions of perceived
employment discrimination including depression, problem drinking, and impaired
physical health (Martin, Tuch, and Roman 2003; Pavalko, Mossakowski, and Hamilton
2003).

Despite mounting evidence which clearly points to negative and consequential
implications, few systematic analyses are devoted to discriminatory terminations
(Petersen and Saporta 2004; Zwerling and Silver 1992). The literature on employment
inequality instead tends to focus largely on discrimination in hiring and pay. This work
certainly contributes to our understanding of the motivations behind employment
stratification, but the general omission of studies on firing discrimination essentially
mutes the voices of people like Jerome and Laura who are hired and paid fairly but face differential treatment in their exits from work.

It was not until the early 1990s that sociologists began paying attention to inequality in employment exits. This body of work highlights a persistent racial gap in dismissals – a gap in which African Americans (who have similar levels of education and experience) are much more likely than Caucasians to be pushed out of employment (e.g., Park and Sandefur 2003; Reid 2002; Reid and Padavic 2005; Wilson 2005; Wilson and McBrier 2005; Zwerling and Silver 1992). The main weakness of this work, however, is its inability to pinpoint the mechanisms that (re)produce these gaps (Reskin 2003; Vallas 2003). Some insist that employment discrimination is central to the production of firing inequality (e.g., Reid 2002; Reid and Padavic 2005; Zwerling and Silver 1992). Yet others are troubled by the scarcity of direct empirical evidence of discrimination and raise two crucial questions (Borjas 1983; Heckman 1998; Marini 1989). First, is contemporary discrimination even a factor behind observed employment differentials? And, to the extent that discrimination is important, what is the process of discrimination?

The main purpose of this dissertation is to address these questions by not only providing empirical evidence of race and gender bias in terminations, but also offering specific information about how discriminatory terminations transpire. The “how” of discriminatory treatment is traditionally discussed from two broad but distinct camps – one denotes the relevance of the structure of work itself and the other points to the importance of individual level ideology and behavior. I build on this knowledge by showing how the structural organization of workplaces and the ideology of employers operate simultaneously in the process of firing discrimination. Specifically, this project
borrows from and extends theories of workplace formalization, statistical discrimination, and social closure to explore how these factors mitigate or exacerbate discriminatory outcomes.

I employ a multi-method analysis to investigate a unique longitudinal quantitative and qualitative dataset of discrimination complaints made to the Ohio Civil Rights Commission from 1986 until 2003. Quantitatively, these data allow for estimations of the incidence of a subset of legally recognized firing discrimination. I also produce logistic regression models to capture how various structural and individual level factors impact firing discrimination. But because the larger goal of this project is to explore the process of discriminatory terminations, I rely heavily on the qualitative data. Immersion into a set of rich qualitative case files enables me to describe how discrimination in firing unfolds for people in specific social locations (e.g., Black men, Black women, and White women). These vivid narratives also contain the perspectives of employers and witnesses – perspectives that are essential to acknowledging the complexity of discrimination and that reveal cultural discourses surrounding discrimination. By grounding my findings within these perspectives, I can also reflect on why involuntary exits from employment continue to represent a significant threat to employees.

*Why Study Discrimination in Workplace Exits?*

There are many compelling reasons to pay attention to discrimination in workplace exits. For example, Reid and Padavic (2005) advise that race differentials in rates of leaving may be more important to the overall race gaps in employment than differences in rates of entrance. As a result, analyses limited to what happens at the “front
door” of employment miss a key dimension of workplace inequality (see also Rosenberg, Perlstadt, and Phillips 1993).

The urgency to study inequality in employment exits is further bolstered by the rise in reports of involuntary job displacements (Boisjoly, Duncan, and Smeeding 1998) and firing discrimination (Donohue and Siegelman 1991) since the 1970s. In fact, the single issue of firing now clearly overshadows all other forms of discrimination complaints - accounting for nearly one half of all discrimination charges (see Figure 1; see also Hirsh 2008; Roscigno 2007). In contrast, hiring and wage discrimination - outcomes that have received much of our scholarly focus - only account for 5% and 1% (respectively) of formal discrimination complaints.

Figure 1: Distribution of Discrimination Types for Race and Gender Cases

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1 Disaggregated race and gender charges (not shown) reveal identical trends.
Scholars attribute these trends to prevailing labor market conditions that were advanced by the ‘new employment relationship’ of the 1970s (Kalleberg 2009; Stone 2007). This new employment relationship signified the end of the implicit psychological contract of lifetime employment in favor of flexible (and unstable) jobs which better equip employers to deal with the demands of a globally competitive marketplace (Kalleberg 2009; Scott 2004; Stone 2007). Such a radical paradigm shift was facilitated by the longstanding employment-at-will doctrine which has, for over a century, allowed most private sector employers to dismiss their employees without notice and for any reason (Eger 2004; Grenig 1991). The subsequent encroachment of employment-at-will into facets of the public sector (Bowman et al. 2003; Coggburn 2006; West 2002), reductions in union membership to less than 10% of the private sector (Riccucci 2007), and escalating globalization pressures to outsource and downsize (Scott 2004; Stone 2007) only serve to exacerbate the insecurity of American jobs and potential for discriminatory job loss.

By shifting the scholarly focus to discrimination in job terminations, this dissertation illuminates a new obstacle in the struggle for equality in employment and will have significant policy implications. Policies geared towards granting fair access into jobs (e.g., a goal of affirmative action) need to be revisited and broadened to address potential biases found at the end of employment. Moreover, a renewed focus on the process of discrimination (see Reskin 2003) can lead to specific policy suggestions that contribute to the goal of eradicating discriminatory exits. Relying on narratives like those of Jerome and Laura, which show how employers use race and gender to stratify and terminate workers, this project also advances the academic literature by tackling the
broad issues of differential treatment, racism, and sexism in employment. And, it does so in ways that prior work has rarely been able to do.

Involuntary Dismissals and the Limitations of Prior Work

Though race and gender differences in rates of voluntary quits from employment are well documented (e.g., Light and Ureta 1992; Zax 1989), the literature on involuntary employment dismissals is still in its infancy (Petersen and Saporta 2004; Zwerling and Silver 1992). In the early 1990s, a few pivotal studies (published in popular sociology journals) widely introduced the problem of racial differentials in involuntary job losses to sociology (e.g., Hachen 1990, 1992; Zwerling and Silver 1992). These studies suggest that, controlling for human capital and job characteristics, Blacks have significantly higher rates of involuntary dismissals from jobs than Whites (Hachen 1992; Zwerling and Silver 1992). In fact, Zwerling and Silver (1992) demonstrate that Blacks are more than two times as likely to be fired than Whites (all else being held constant), even within a large federal bureaucracy. More recent analyses support the existence of a racial gap in involuntary job exits by conducting separate analyses of men in their early work career (Park and Sandefur 2003; Wilson 2005), men in upper tier occupations (Wilson and McBrier 2005), and young women (Reid 2002; Reid and Padavic 2005). It is clear from this body of work that racial inequality in exiting employment is a pervasive problem.

While these investigations are helpful to this dissertation, they are limited along three fronts. First, there are few studies that focus specifically on firing as the outcome of interest (for an exception see Slonaker, Wednt, and Williams 2003). Instead, the general approach is to aggregate job separations (e.g., layoffs and firings) under the label of
involuntary job dismissals (e.g., Hachen 1990; Park and Sandefur 2003; Wilson 2005) or to analyze racial inequality in layoffs exclusively (e.g., Elvira and Zatzick 2002; Reid 2002; Wilson and McBrier 2005). Automatically transferring the lessons learned from these prior works to discussions of firing would be problematic because the factors involved in layoffs are empirically different than those influential in firings (Campbell 1997; Teratanavat and Kleiner 2005). A second limitation of the existing sociological literature on employment inequality is that it has yet to explore the potential effect of gender in firing decisions (see Petersen and Saporta 2004).

The third, and perhaps most important, limitation is that discrimination in dismissals can only be inferred from prior analyses. Because the primary method of studying involuntary dismissal is through regression analyses, scholars are left to speculate that discrimination is a central mechanism behind the residuals in their statistical models of inequality (e.g., Reid 2002; Reid and Padavic 2005; Zwerling and Silver 1992). Other scholars, in contrast, argue that inferences of discrimination may be overestimated in analyses where all human capital characteristics are not controlled (Borjas 1983; Heckman 1998; Marini 1989). The only way for this disagreement to be settled is through systematic research on discrimination which highlights how it serves as a mechanism of inequality. However, despite continuing calls from prominent scholars (e.g., Reskin 2003; Reid and Padavic 2005; Vallas 2003), research on the mechanisms surrounding workplace inequality is rare.
Inequality Research and the Possibility of Discriminatory Firing

The possibility of race and gender bias in terminations is considerable given the evidence of discriminatory biases in other workplace decisions. Many studies document the effect of race and sex in hiring differentials (e.g., Bendick and Jackson 1994; Neumark, Roy, and Van Nort 1996; Pager and Quillian 2005), performance appraisals for promotions (Elvira and Town 2001; Halpert, Wilson, and Hickman 1993; Landau 1995), and experiences with harassment (Roscigno 2007; Rosenberg, Perlstadt, and Phillips 1993). At its base, firing behavior will likely be influenced by the same pervasive stereotypes that plague African Americans and women at these other stages of employment.

I turn now to a discussion of barriers in the hiring process because a sound understanding of employers’ initial biases against African American and female workers may reflect the underpinnings of unjust employment exits. The subject of discrimination in the hiring stage is also one of the most frequently studied processes of employment inequality.

Bias in Access to Employment

For much of our history in the United States, employment discrimination against minorities and women was a matter of overt exclusion from paid work. Discriminatory employers would simply deny access to anyone that they did not want on their payroll. With the passage of the Civil Rights Act of 1964, however, these behaviors became illegal. Consequently, discriminatory actions are now much more subtle and especially difficult to measure (Deitch et al. 2003; Pager 2007; Pager and Shepherd 2008).
Facing this obstacle, social scientists largely depend on audit studies and interview techniques to provide evidence of race and gender bias in the workplace. Audit study methodology uses opposite race or sex applicants (also called testers) to detect differential treatment in the hiring process. These testers receive similar resumes, apply for the same jobs, and report (to the investigators of the study) how they are treated by employers.

Audits clearly illustrate that despite its illegality, employment discrimination is still a significant workplace problem. In one study, Turner, Fix, and Struyk (1991) suggest that Black job seekers are denied job opportunities at a rate three times that of Whites. Moreover, this racial bias is so strong that White men with a criminal record are more likely to receive call backs for jobs than Black men without a criminal record (Pager 2003). Across multiple geographic locations and time frames, these studies cumulatively demonstrate that Blacks are between 50 and 500 percent less likely than equally qualified Whites to be given a job opportunity (Pager 2007).

Though this literature predominantly measures racial (e.g., Black-White) differences in access to jobs, there is growing evidence of a gender disadvantage as well. Women are significantly less likely to be hired than men into certain jobs (Neumark, Bank and Van Nort 1996; see also Taylor and Illgen 1981). Moreover, women who are pregnant or mothers face more hostility as job applicants and are less likely to be offered a job when competing with men and women who are not mothers (Correll 2007; Hebl et al. 2007).

Importantly, some scholars criticize these findings because investigators cannot control all unobservable characteristics of the job applicants- characteristics that may
prove influential in hiring decisions (Heckman 1998). Nevertheless, even in tests where employers only receive resumes, there is still evidence of a racial bias in hiring. In a recent correspondence test, for example, Bertrand and Mullainathan (2004) mailed similar resumes with White (Emily, Greg) and Black (Lakisha, Jamal) sounding names out to prospective employers. Sadly, resumes with Black sounding names received 50% less callbacks than resumes with White sounding names.

Puzzled by the pervasiveness of these empirical findings a second line of work attempts to understand hiring differentials by interviewing employers themselves. These studies suggest that employers are reluctant to hire African Americans because they expect them to be poor performers, tardy, unmotivated, and resistant to authority (Kennelly 1999; Kirschenman and Neckerman 1994; Moss and Tilly 1996; Shih 2002). Employers, in fact, have few apologies about using race as a proxy for job success.

Similar negative stereotypes appear to hinder women’s access in employment. Employers expect women to be less competent, less assertive, and even physically weak until proven otherwise (Correll 2007; Herbert 1998; Kennelly 2002). And women who are pregnant or mothers fare even worse. In effect, employers more heavily penalize pregnant women and mothers because they view them as non ideal workers who will be less committed to their jobs and more likely to miss work or need time off (Correll 2007; Cunningham and Macan 2007; Fuegen et al. 2004; Halpert & Burg 1997; Kennelly 1999). The sad reality is that these cultural stereotypes persist despite any evidence of actual productivity gaps between individuals from different groups with equivalent objective skills (Tomaskovic-Devey and Skaggs 1999; Cohn 2000).
Nonetheless, this body of work on differential treatment in hiring provides important insight into the underpinnings of discrimination in firing. Employers reportedly discriminate in hiring because they hold stereotypical biases about the applicant’s “appropriateness” (Gorman 2005; Tomaskovic-Devey 1993) and educational or social background (Bendick and Jackson 1994; Kirschenman and Neckerman 1994; Moss and Tilly 1996), in addition to pressure from customers who themselves exhibit preferences for certain people (Brown and Jewell 1994; Holzer and Ihlanfeldt 1998). Regrettably, however, audit and interview research is limited to differential treatment during one’s entry into jobs. Therefore it is important to empirically investigate whether pre-existing cultural biases factor into forced exits out the “back door” of employment as well. But first, given that all employees who are ultimately discriminated against in firing were hired at some point, I offer potential explanations for why employers did not merely discriminate in the hiring process.

**Legal Initiatives and Efforts to Extend Access to Jobs**

Despite persistent trends in hiring discrimination, the legal spotlight that Title VII of the Civil Rights Act and affirmative action measures place on fair institutional access (Blankenship 1993; Kauffman, Miller, and Ivey 1995) has allowed some minorities and women to enter formerly segregated jobs. Indeed, rates of race and gender segregation in American workplaces are decreasing (Cotter et al. 1995; Tomaskovic-Devey et al. 2006; Tomaskovic-Devey and Stainback 2007). The bulk of this desegregation came early after the Civil Rights Act of 1964 when organizations first adopted personnel policies in response to the new mandate (Tomaskovic-Devey et al. 2006; Tomaskovic-Devey and
As years went by, these protections were extended to other specific causes. The Pregnancy Discrimination Act of 1978, for example, helps women who are pregnant or have the intention of becoming pregnant gain employment by making questions about future family planning illegal. These federal protections were soon supplemented with more localized affirmative action mandates, many of which had the goal of increasing the representation of African Americans and women at work.

Though these initiatives are somewhat successful at placing legal and social pressures on employers to be fair in their decisions, anti discrimination mandates notably cultivate unintended consequences as well. The “moral hazard” of employment decision making is a prominent example. The moral hazard hypothesis suggests that employers, who are legally obligated to treat minorities and women fairly in hiring, may also be concerned about the propensity of minorities to file discrimination claims (a privilege provided by the Civil Rights Act). While there is no reliable evidence that Blacks file unfounded employment discrimination charges at higher rates than whites (Coleman, Darity, and Sharpe 2008), employers may still perceive that they do and therefore see blacks as less attractive potential hires (Thomas 2003; Shih 2002). And employers who feel coerced into hiring minorities, because of fears of social or punitive damages—especially when under a federal contract (Thomas 2003), may exercise their power at other employment stages (e.g., firing). In the end, while civil rights legislation and affirmative action explain part of minority and women’s increasing representation at work, there remain important concerns about how effectively these mandates protect women and minorities once on the job.


**Remaining Chapters**

In the chapters that follow I explore the experiences of African Americans and women at work by analyzing race and gender based firing discrimination, which includes discrimination on the basis of pregnancy. Much like prior work on hiring inequality, I speculate that stereotypes likely play an integral part in the process of employment discrimination. Though clearly, because all victims of firing discrimination are initially employed, hiring discrimination evidence is only partly useful. One of the benefits of the data used in this dissertation is that it can expose the full context of what happens at the end of employment.

In chapter two, I begin by describing two structural factors - employment-at-will and globalization – which provide a unique backdrop for firing discrimination (compared to other forms of employment inequality). Though these two factors are largely neglected in analyses of firing inequality, they remain important to the discussion because they challenge the enforcement of equal employment opportunity by enhancing employer latitude and motivation to fire certain workers. I next discuss how the organizational structure of workplaces conditions employment discrimination. Although the literature generally refers to the influence of these organizational variables on the incidence of discrimination, I extend the discussion to the process of firing discrimination. I close this chapter by arguing that analyses must still reach beyond structural factors to fully understand discriminatory mechanisms.

In chapter three, I discuss how micro-level ideology and interaction affect the process of discriminatory firing. Specifically, I use an interdisciplinary literature (i.e., sociology, economics, social psychology, and law) to develop hypotheses about how
firing discrimination is enacted and legitimated. I borrow from and extend statistical discrimination and social closure perspectives. These perspectives also provide a range of ideas about why firing discrimination continues to persist.

Chapter four offers a detailed description of the Ohio Civil Rights Commission dataset and the methodology used in this dissertation. Within this discussion, I explain how the processes of firing discrimination are operationalized for this project. I then discuss the multi-method approach used to explore the patterns of discriminatory firing. Finally, I elaborate on the strengths and limitations of using discrimination complaint data.

Chapter five presents the descriptive patterns of my data. I use a qualitative sub-sample of cases to explore the bivariate relationships between the variables first discussed in Chapter four. These descriptive statistics set the stage for the more rigorous analyses to come.

Chapter six integrates prior literature on racial discrimination (i.e., African Americans) in employment with the findings of this study. I use logistic regression models to predict the various processes of firing discrimination. The main purpose of these statistical models is to account for the fact that the process of firing discrimination is likely to be influenced by structural contexts as well as social status (i.e., race and sex). Consequently, I investigate the effects of various workplace characteristics (e.g., occupational prestige, work sector, percent of black employees etc.) on the probability of specific firing discrimination processes.

Next, I examine how these statistical differences manifest in the lives of real people through an immersion into the rich qualitative narratives of discrimination in
firing. I use the perspectives of both employees and employers, but rely more heavily on the employee’s viewpoint because case investigations support their position. I suspect that biased evaluations of performance play a key role in the expulsion of African Americans from workplaces because evidence suggests that it is central to the decision among employers to exclude them in the first place (Kennelly 1999; Kirschenman and Neckerman 1994; Moss and Tilly 1996; Shih 2002).

I also use this chapter to explore distinct processes of discrimination in firing among African American men and women. Given their unique social locations, all African Americans may not be cast in the same light by employers (Browne and Misra 2003). For example, African American women may be preferred over African American men who are viewed as hostile and sometimes evoke fear among potential employers (Moss and Tilly 1996; Pager and Karafin 2009).

Chapter seven analyzes the process of gender discrimination in firing. As in chapter six, I begin with logistic regression models which are meant to highlight the importance of relevant structural factors. I then use the rich qualitative narratives to illuminate the experience by Caucasian and African American women. Again, I suspect that cultural biases also lie at the foundation of unjust dismissals for women. In particular, women may be especially vulnerable when they enter into motherhood because of employer concerns about whether they are competent and committed workers (Correll 2007; Cunningham and Macan 2007; Fuegen et. al 2004; Halpert & Burg 1997).

In chapter eight, I review the findings of the prior three chapters. I also highlight the policy implications of this project. I end by discussing the most recent scholarly ideas on how to combat workplace discrimination in general.
CHAPTER 2
THE STRUCTURAL CONTEXTS OF FIRING DISCRIMINATION

Underlying Structural Factors and Firing Discrimination

Prior empirical analyses of firing have tended to overlook the influence of the employment-at-will doctrine and globalization in the production of inequality. These structural factors may indeed play a unique role in discriminatory firing by providing both ample flexibility in employer decision making and an economic motivation for firing itself. Therefore, I begin this chapter by discussing the recent literature on employment-at-will and globalization. Although not directly measured in this project, these factors frame the underlying structural context that many episodes of discriminatory firing are embedded within. They may also be pivotal to understanding how employers come to justify firing discrimination.

The Employment-at-Will Doctrine and Firing Discrimination

For more than a century, private sector employers within the United States have operated under a doctrine known as employment-at-will. The common law doctrine of employment-at-will states that “all may dismiss their employee[s] at-will, be they many or few, for good cause, for no cause, or even for cause morally wrong without being guilty of legal wrong” (Eger 2004, p. 394). This explicit decision making leeway
represents an ever present threat to workers who can, at any time, be arbitrarily dismissed without notice. Indeed, the philosophy of the employment-at-will may very likely be an underpinning of many private sector firing discrimination cases.

Importantly, however, the late 20th century did bring about some significant statutory developments which have eroded part of employer’s freedom to fire at will. The most substantial challenge to employment-at-will came with the adoption of the Civil Rights Act of 1964 which provides a structural umbrella of protection against discrimination in firing for certain causes (e.g., race and sex but not sexual orientation). The Age Discrimination Act of 1967, the Pregnancy Discrimination Act of 1978, the American with Disabilities Act of 1990, and the Civil Rights Act of 1991 all added a new list of protected citizens and expanded the options for employee reparation in cases of discrimination. In addition to these anti-discrimination statutes, three exceptions to employment at-will have developed as well (Eger 2004; Nielsen 1999). The public policy exception protects employees from being fired for refusing to violate an established public policy (i.e., perjury) at the employer’s direction. Moreover, the implied contract exception states that written, oral, or implied contracts (based on the company’s prior practices) may be held as legal contracts for the continuation of employment. Finally, the good faith exception protects employees from being fired by companies who want to skirt contractual agreements (i.e., paying pensions) (Eger 2004; Nielsen 1999).

Though these developments sound very promising for workers, there is substantial variation in whether states recognize any or all of these exceptions (for a review see Muhl 2001). Only ten states sanction all three classes of exemption, meanwhile Florida, Rhode Island, and Georgia did not alter the employment-at-will
doctrine in any way (Autor, Donohue, and Schwab 2006; Muhl 2001). And Ohio, (the source of this dissertation), has yet to recognize the good faith exception (Autor, Donohue, and Schwab 2006; Muhl 2001).

Furthermore, only one state (Montana in 1987) embraces a Wrongful Discharge Statute which creates a “good cause” standard of dismissal for all employees (Abraham 1998; Autor, Donohue, and Schwab 2006). This good cause standard in Montana is similar to “just cause” protections widely afforded to government workers and private sector workers under collective bargaining agreements (less than 10% according to the U.S. Census Bureau; see Riccucci 2007). Within these contexts, employers must find a reasonable cause for dismissal in order to avoid grievance arbitration procedures (Eger 2004).

The protection of a uniform “good cause” standard, which is widely available throughout Canada and Europe (Eger 2004; Nielsen 1999), lags in the United States for two notable reasons. First, there is significant resistance from employers who suggest that a “good cause” mandate is bad for business. Specifically, employers express concern about the costs of keeping “talented shirkers” (underproductive employees who do just enough not to be fired) for longer than necessary and the added costs of employee-employer negotiations for processing “good cause” cases (Eger 2004; Roehling 2002). Second, workers mistakenly believe that they are already covered by “good cause” protection (Kim 1997; Roehling 2002; Rudy 2002). This pervasive normative belief that employers are legally barred from dismissing employees without cause unfortunately

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2 Surprisingly, at least three states (Texas, Georgia, and Florida) have recently dismantled segments of their public sector’s merit system protections in favor of “at will employment” (see Bowman, Gertz, Gertz, and Williams 2003; Coggburn 2006; West 2002). Similar to the private sector, the logic of these reforms is to produce greater public sector efficiency and flexibility in meeting changing organizational goals.
does not match the reality that the vast majority of jobs are still governed by employment-at-will (Grenig 1991; Kim 1997).

*Globalization, Cost Containment, and Firing Discrimination*

Since the 1970s, an emerging global economy has also created an environment that is conducive to discriminatory firing. The growth of global competition raised significant concern about cost reduction among American employers and motivated them to move away from the postwar social contract of lifetime employment (Scott 2004; Stone 2007). Employers instead advocated contingent, temporary, or part-time work arrangements, which would allow them the flexibility to expand and contract their workforce in line with the demands of the global market (Kalleberg 2009; Scott 2004; Tilly 1991). Thus, global competition provides both a rationalization for the protection of at-will jobs and a direct economic incentive to displace costly workers.

A prime example of how globalization has led to the displacement of “expensive” workers can be seen in the massive scale of deindustrialization in the United States. Deindustrialization brought about the downsizing and relocation of many U.S. manufacturing\(^3\) plants to developing countries where they could garner reduced production costs. Unsurprisingly, this trend coincided with a rise in reports of involuntary job loss among Americans (Boisjoly, Duncan, and Smeeding 1998).

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\(^3\) As manufacturing firms closed their doors, the service sector quickly became the mainstay of American employment (Hatch and Clinton 2000; Plunkert 1990). Unfortunately, compared to stable manufacturing jobs, service sector work and contingent positions are ‘bad’ jobs – those that are lower paying, less likely to be unionized, and less secure (Gallagher and Sverke 2005; Kalleburg, Reskin, and Hudson 2000; Scott 2004).
In the end, global competition appears to have cultivated a labor market where cutting costs is a top organizational priority. In this environment, employers may hastily dismiss certain employees that are deemed too expensive for the organization. Such cost containment strategies, which are at the foundation of standard business models, are notably influential in age based discriminatory dismissals (Roscigno, Mong, Byron, and Tester 2007). Older workers, who very likely earn more because of seniority and are eligible for pensions, are often discriminatorily fired so that the organization can save money. These cost containment strategies may apply to race and gender based discrimination as well especially given evidence that rising maternity leave and health insurance costs may cause some workers (i.e., pregnant women) to be viewed as economic burdens (Edwards 1996).

Cost containment business justifications are also crucial to rationalizations of discrimination. In fact, experimental research demonstrates that when a legitimate authority figure provides a business justification for discrimination against Blacks in hiring, participants select significantly fewer Blacks to be hired (Brief et al. 2000). The perception of “economic necessity” is reinforced by global competition and may blind employers to potential discriminatory treatment. Therefore, globalization very likely represents an unseen economic factor in firing discrimination episodes.

In sum, although employment-at-will and globalization are not measured directly in this study, they create an underlying structural context that is essential to understanding the full story of firing inequality. They may also shed much light on the

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4 This practice is an exception (i.e., the good faith exception) to the employment-at-will doctrine which is not protected within Ohio.
implicit and explicit rationalizations that employers invoke in order to justify discrimination. I will return to the full implications of these overarching structural factors in Chapter 6 and Chapter 7.

**Measurable Proxies and the Organization of Workplaces**

In addition to the overarching structural influences of employment-at-will and globalization, studies of workplace inequality provide evidence that discriminatory outcomes are influenced by various organizational contexts as well. One such context is the extent of workplace formalization. Formalized procedures provide managers with objective and meritocratic criteria on which to base their employment decisions. These criteria are believed to overshadow the potential effect of ascriptive characteristics such as race and sex (Baron and Pfeffer 1994). In fact, scholars widely herald formalization as being central to creating equal opportunities for women and minorities in hiring (Kaufman 2002, Pager and Shepherd 2008) and access to supervisory positions (Reskin, McBrier, and Kmec, 1999; Tomaskovic-Devey, 1993). Some have even gone as far as to consider it the “great leveler” of employment opportunity (see Baron et al. 2007).

Most empirical analyses measure formalization in one of two ways: “size of the organization” or “public and private sector” work. The logic behind using a proxy of “the size of the organization” is that as organizations grow, they will inevitably need more standardized practices (compared to smaller firms) in order to operate successfully. Using a measure of establishment size as a proxy, Hirsh and Kornrich (2008) suggest that

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5 This logic persists despite explicit analyses which suggest that organizational size and formalization should not be conflated (see Hall, Haas, and Johnson 1967).
the presence of formalized workplace structures decreases charges of race and sex based employment discrimination. More specifically, Earnshaw, Marchington, and Goodman (2000) report that some small organizations face claims of unfair dismissals because they either lack formal discipline procedures or fail to follow procedures in favor of more informal (and potentially emotional) decisions due to the closeness of contact between managers and employees.

Another common proxy for the intensity of formalization is the distinction between public and private sector employment (Marsden, Cook, and Kalleberg 1994; Byron and Roscigno 2007). The public sector, for example, is commonly viewed as the model for fair employment because of its dedication to formalized procedures (Bozeman and Rainey, 1998; Dobbin, Sutton, Meyer & Scott, 1993). While formalization is certainly not unique to the public sector, Marsden and colleagues (1994) demonstrate that even after controlling for organizational size and complexity the public sector still has more comprehensive formalization than the private sector. Public sector performance evaluations and exams provide an objective basis for managerial decision making (Diprete, 1987; Dobbin et al., 1993). Because such policies in the public sector help decrease bias in hiring, scholars speculate that they may be important to protecting minorities and women from unfair dismissal as well (e.g. Wilson and McBrier 2005).

Irrespective of formalization, however, there exist other rationales for why large or public sector firms may exhibit less discrimination. Indeed, these establishments may have greater governmental and public pressure not to discriminate. That is, while some establishments are not even policed by federal equal opportunity, these large firms and public firms are much more likely to be pressured to abide by the rule of federal
contracts, undergo compliance reviews, and face punishment for violations of equal opportunity law (Carrington and Troske 1995; Holzer 1998).

Although it is difficult to identify an underlying mechanism from mostly quantitative models, it is clear from prior work that large organizations and public sector organizations will have fewer complaints of discrimination. This finding is useful in terms of assessing the prevalence of discrimination. I extend this argument to my study on the process of firing discrimination by suggesting that level of formalization within a workplace will affect the social account offered to explain a firing event. In fact, prior work warns that public sector managers may be more likely than private sector managers to explain discriminatory promotion behavior through exams (that were later deemed unnecessary), educational credential requirements (that were later deemed excessive), and other seemingly “objective” means (Byron and Roscigno 2007). Thus, I offer my first hypothesis: Representatives within larger organizations or public sector firms will be more likely to use formalized workplace procedures and seemingly “objective” rationales to defend against claims of discrimination. Conversely, these organizations will be less likely to use arbitrary or blatantly ascriptive explanations of discriminatory firing.

Organizational Composition

Another aspect of the organizational context that is believed to affect discrimination is the organization’s race and sex composition. Using discrimination charge data from the Equal Employment Opportunity Commission, Hirsh and Kornrich (2008) demonstrate that organizations with a small share of women and minority
managers have the highest rates of race and sex discrimination charges (especially when there is a small representation of women and minority non-managers). They explain that workers may look at minority and female representation in management as evidence to bolster or refute their own perceptions of discrimination.

While this research argues for a connection between workplace composition and *perceptions* of discrimination, classic sociological work maintains that women and minorities who are under represented in organizations may actually *experience* higher levels of mistreatment. For example, Kanter (1977) describes that certain employees (because of their token status) are subject to the most severe mistreatment at work. She contends that if women or minorities are tokens in a particular establishment (or position within an establishment) they may become conspicuously visible, amplifying their imperfections in the minds of other employees. Thus, I develop my second hypothesis: *As the percentage of women and African American managers (or women and African American employees) increases, employees should be sheltered from the most hostile processes of firing discrimination.*

**Structure, Interaction, and the Process of Firing Discrimination**

Although the employment-at-will doctrine, globalization, and various organizational factors reveal important structural contexts involved in discriminatory terminations; it is crucial to look beyond macro-level aspects of employment stratification. This is especially true if the goal is to discuss the *process* of discrimination in firing. Indeed, discrimination itself is dynamic and is produced through micro-level interaction (see Feagin and Eckberg 1980; Ridgeway 1997).
Thus far, however, the literature tells us little about how inequality in firing transpires. Employer gate-keeping of internal personnel documents and a general lack of reliable data on firing may provide a partial explanation for this considerable research gap. Alternatively, this gap may also be a byproduct of imperfect theoretical conceptions of stratification.

Although much of the current sociological research declares that structural factors play the largest role in explaining employment inequality (e.g., Huffman and Cohen 2004; McCall 2001), other work makes the case that micro-level discretion must not be overlooked when discussing workplace outcomes (Kirschenman and Neckerman 1994; Moss and Tilly 1996; West and Zimmerman 1987). This structure-agency theoretical debate remains a key division among scholars, even though neither stance is critique free. Structural arguments have been accused of embracing a rigid causal determinism where social actors are defenseless hostages to the structures that they live within (Reskin 1988; Sewell 1992; Simpson 1989); while agency (actor) related arguments have been charged with claims of reductionism where actors are disconnected from structural burdens (Wharton 1991). But, because these differing perspectives very often fall along dissimilar methodological lines, there has been an asymmetrical acceptance of structural explanations (over agential accounts). This tendency often leaves scholars puzzled about where the actors have gone in accounts of workplace inequality (Reskin 1988; Simpson 1989).

Our biggest mistake thus far has been the assumption that these factors are competing. William Sewell aptly remarked that, “structures shape people’s practices, but it is also people’s practices that constitute (and reproduce) structures” (1992; p. 4).
Accordingly, we must avoid the temptation toward structural determinism whereby our conceptions dismiss the role of proximate actors who work within structural bounds. This project moves forward with the explicit expectation that workplace inequality results from an interaction between structure and agency (see Feagin and Eckberg 1980; Ridgeway 1997; Wharton 1991). The multi-method approach used here can discuss the ways that structure and agency act together to produce and maintain discriminatory behavior. And firing is an essential employment arena, in this regard, because it is often subject to discretion by gate-keeping agents- but agents nonetheless who work within structural contexts (Eger 2004; Roscigno 2007).

Conclusions

The literature on workplace inequality provides significant insight into the structural considerations that are central to understanding firing discrimination. Indeed, there is a distinctive framework of motivations and liberties that make vulnerabilities to discriminatory firing somewhat different from what occurs in hiring and promotion. Employment-at-will and global competition in many ways represent barriers to the enforcement of Civil Rights law. Therefore, systematic analyses of the firing process would be remiss without first considering this macroscopic backdrop.

Still other studies assert that organizational characteristics play an important and simultaneous role in discriminatory outcomes. Formalized policies and adequate minority workforce representation are generally speculated to mitigate the frequency and intensity of discrimination. The research on the structural contexts of firing, however, fails to incorporate the ways that micro-level agency reproduces discrimination within these
structures. As a result, much of the existing literature is far removed from the real world experience of individuals.

Sociologists have argued for some time that we must recognize agency on the part of organizational actors when discussing workplace inequality. The argument for agency is understandable given the fact that, even within similar macroscopic contexts, there may be variation in the process (or the prevalence) of discriminatory firing. To effectively move forward in the goal of assuaging discriminatory firing, we must bridge this structure-agency divide. Accordingly, the next chapter is devoted to micro-level explanations of employment discrimination.
Prejudice has long been described as a primary micro-level motivation for discriminatory behavior. Less recognized is the idea that prejudicial attitudes also shed light on the process of employment discrimination. For example, levels of prejudice may temper how explicit discrimination is because overtly racist people and groups (e.g., White supremacists) tend to be far more blatant about their disdain for ethnic minorities. Therefore, a discussion of recent evidence on prejudice is an important step in unraveling discriminatory employment processes.

**Trends in Prejudice, Colorblindess, and Meritocracy**

National surveys show a substantial decline in anti-Black prejudicial attitudes among Whites (e.g., Firebaugh and Davis 1988; Quillian 1996). These trends, at first glance, seem to suggest that race relations are improving. Yet some scholars warn that there is a discrepancy between survey and interview research whereby respondents appear more prejudiced in interviews (Bonilla-Silva and Forman 2000). A great deal of work, in fact, notes that the very nature of prejudice and discrimination has changed. Though overt intolerance was once customary, forms of intolerance are now more subtle and modern racism and sexism is characterized by the denial of personal prejudice but a
continuation of underlying unconscious negative beliefs (for a full discussion see Dovidio 2001; Bonilla-Silva and Forman 2000; Swim, Aikin, Hall, Hunter 1995). This transition causes Whites to talk differently about race\(^6\) by using disclaimers of innocence before making racially biased statements (Bonilla-Silva 2002; Bonilla-Silva and Forman 2000; Pierce 2003; Mallinson and Brewster 2005). Such political correctness does not represent a true decline in discriminatory behavior; but it does obscure the measurement of contemporary discrimination.

Modern racism and sexism is also conditioned by an ideology of colorblindness, which is the dominant belief system among Americans (Bonilla-Silva 2003; Gallagher 2003; McDermott and Samson 2005; Pierce 2003). Colorblindness is an ideological assertion that discriminatory racial (or sexual) barriers no longer exist because we now live in a merit based society where you get what you earn (Bonilla-Silva 2003; Gallagher 2003). Simply, people view prejudice and discrimination as issues of the past. Data from the General Social Survey, for example, demonstrates a national decline in the belief that discrimination is behind racial gaps in socioeconomic status and an upsurge in the view that these differences are attributable to individual levels of motivation (Hunt 2007).

The findings that contemporary discrimination is more subtle and, in the face of widespread beliefs of meritocracy, that it is deemed less important to outcomes of inequality will have a significant impact on how discrimination in the workplace is understood. Indeed, most employers state that their organizations are completely meritocratic when accused of discriminatory decision making (Light and Roscigno 2007).

\(^6\) Studies similarly note resistance among Americans to talk bluntly about other sensitive topics (i.e., religion) that may reveal prejudiced attitudes (Trinitapoli 2007).
This leads to my third hypothesis: The majority of cases of firing discrimination will hinge upon disagreements about elements of meritocracy because 1) blatantly discriminatory explanations are no longer politically correct and 2) colorblindness and meritocracy represent the new dominant ideology.

Specifically, the literature suggests that productivity is a primary meritocratic issue in employment differentials. Using the theory of statistical discrimination, I extend hypothesis three and create two corollary hypotheses which address the specific ways that alleged productivity differentials may be at the center of discriminatory firing.

**Statistical Discrimination, Productivity, and Firing Behavior**

Statistical discrimination theory suggests that managers\(^7\) make rational decisions to avoid employing and promoting certain groups based on evidence (or statistics) of inferior productivity amongst that group (Baume and Fossett 2005; Sattinger 1998). Less strict versions of this theory argue that employers need only to perceive that statistical differences between groups exist before making decisions (see Tomaskovic-Devey and Skaggs 1999). In both situations the underlying justification for the employer’s decision is economic and not consciously race or sex based. Qualitative studies are replete with examples where employers are resistant to hire African American employees because of their alleged productivity deficiencies (Moss and Tilly 1996; Kirschenman and

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\(^7\) I speak specifically about managers here, while recognizing that there may be other actors in discriminatory events, because they have positional power received from their place in the organizational hierarchy and may also have status based power derived from their race or sex (Roscigno et al. 2007). Moreover, they are among the few actors who have enough authority to navigate structural pressures and make discretionary firing decisions.
Neckerman 1994). Employers may, in turn, rationalize their biased selection as being meritocratic and argue that they are merely trying to keep organizational costs low.

Though economic models of statistical discrimination are usually applied to the context of hiring, statistical discrimination may also be activated during firing episodes. If African Americans are hired (e.g., through diversity initiatives) and managers perceive them to be less productive on average as a group than non-blacks (Sattinger 1998), these employer biases may contribute to the unjust termination of African Americans.

Economist Glenn Loury (1998) offers a specific mechanism. He speculates that statistical discrimination will affect the preconceived stereotypes about the effort that African Americans are willing to put into work. In turn, employers may set a lower threshold of mistakes necessary for dismissal and in knowing about this lower threshold Black employees may succumb to a self-fulfilling prophecy and exert less effort in training. Thus, the employer’s beliefs will be confirmed through direct evidence (Loury 1998, p.123-124). And because we tend to justify discrimination when presented with information that supports our biases (see Hodson, Dovidio, and Gaertner 2002; Hoffman and Hurst 1990), statistical discrimination in firing will likely happen very early in employment. Upon receiving even the slightest indication that a stereotyped employee is not meeting their performance expectations, some employers will use that as justification for their dismissal. In this way, statistical discrimination undermines the fair implementation of progressive discipline because employers may be overly motivated to fire Blacks based on preconceptions about their eventual failure.

Statistical discrimination may also be detrimental to women during firing decisions. Widely shared cultural stereotypes of women as less competent, less assertive,
and otherwise less agentic (e.g., Gorman 2005; Leidner 1991; Ridgeway and Correll 2004) puts them at an inherent disadvantage compared to men. These biases, which appear as a natural extension of sex differences, lie behind inequality in hiring, promotion ratings, and workplace gender segregation (Gorman 2005; Landau 1995; Leidner 1991). Here too it is argued that some women internalize these biases, which then affects their performance and assertiveness in the workplace (Correll 2001; Ridgeway and Correll 2004). Therefore, employers may feel justified in dismissing women over men based on their observed “evidence” of skill differences. Cumulatively, this work leads to a corollary of my third hypothesis. In hypothesis 3b, I expect that:

Statistical discrimination and perceptions of productivity deficiencies among workers will be central to the presumed “meritocratic” process of firing.

**Statistical Discrimination, Pregnancy, and Firing Behavior**

Stereotypes about pregnant women may also influence employers to invoke statistical discrimination which can create an incentive to terminate them. Once pregnant, women are often regarded as less ambitious and inevitably less productive because of assumptions that they cannot be both a “good mother” and a “good worker” (Ridgeway and Correll 2004b). That is, because their attention will be divided between formal work and childcare, employers believe their pregnant women will be poorer performers who are less committed to their jobs (Swiss and Walker 1993). The perceived juxtaposition between what it means to be a good mother and a good worker produces a unique status for working mothers – a status that potentially induces more discrimination than gender alone (Ridgeway and Correll 2004b).
The visible transformation of the maternal body exacerbates conspicuous
differences between pregnant women and “ideal male workers” (Gattrell 2007). This
physical change alone prompts differential treatment through staring, avoidance, or
hostility; actions which are meant to reinforce the view that the “proper role” for pregnant
woman should be in the home (Hebl et al. 2007; Taylor and Langer 1977). Furthermore,
Cuddy, Fiske, and Glick (2004) find that working moms are also viewed as less
competent than before they have children and penalized in hiring and promotion
decisions.

In this way, pregnancy and future motherhood can lead to discriminatory firing
because this new condition causes women tend to be reevaluated as less productive, less
competent, and less committed employees (despite all prior accomplishments). Such
notions are striking given evidence that motherhood slightly increases commitment to
work because of the economic and psychological benefits that work provides mothers
(Bielby and Bielby 1984; Noonan, Rippeyoung, and Glass 2007).

However, supervisors still question when or if women will return from maternity
leave, they remain apprehensive about how women’s work will be covered during leave,
and they treat women like their pregnancy is deliberately meant to cause workplace
hardships (Halpert and Burg 1997). These psychological incentives to arbitrarily dismiss
pregnant women are heightened by economic justifications. The rising costs of maternity
leave and health insurance only bolster employer rationale for firing pregnant employees (Edwards 1996).

However, employers do not always dismiss pregnant women and mothers outright. In describing the micro inequities (differential treatment that is not actionable) of pregnancy, Swiss and Walker (1993) note how employers would withhold information about departmental events, present roadblocks to arranging maternity leaves, and create barriers to re-entry after maternity leave. This treatment is echoed in other accounts where pregnant women are subject to unfairly lowered performance appraisals (Halpert, Wilson, and Hickman 1993), have changes made to their job while on maternity leave, and are denied reinstatement when their leave ends (Davis et al. 2003; Slonaker and Wednt 1991). These strategies are apparently meant to justify the future dismissal of “costly” pregnant women and mothers.

Moreover, recent empirical work warns that there may be an interaction between pregnancy as a status and race. Both Ortiz and Roscigno (2009) and Johnson (2008) suggest that Caucasian women may be more vulnerable to the pregnancy/motherhood penalty in firing than African American women. In fact, in a survey funded by the U.S. Census Bureau, Johnson (2008) finds that the percentage of Caucasian women who reported being “let go” during pregnancy preceding their first birth was nearly twice that of African American women. Part of this difference may indeed by explained by the fact that African American women are less likely to work during pregnancy (Johnson 2008). This racial difference may also result from the concentration of Black and White women

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8 Pregnancy discrimination complaints increased by 46% from 1992 to 2008 (Equal Employment Opportunity Commission 2008), with more than half of these complaints resulting in women being fired (Grossman 2007; see also Small 2005).
in different industrial sectors. To the extent that the public sector’s formalized maternity leave policies protect women from firing discrimination, African American females may be the largest beneficiaries because they are overrepresented in the public sector (Zipp 1994). Thus, in hypothesis 3c I expect that: Statistical discrimination will be a damaging mechanism that is enacted during the firing discrimination of pregnant women. This may be especially true for Caucasian women.

**Social Closure and Firing Behavior**

Discussions of workplace stratification would, however, be incomplete without considering the role of power and status in producing inequality. In this vein, scholars argue that a social closure perspective explains discrimination in employment exits (Roscigno, Garcia, and Bobbit-Zeher 2007). Social closure denotes the processes whereby individuals and groups are excluded from institutional access or access to premium positions because dominant group members seek to keep them for themselves or similar others (Parkin, 1979; Tomaskovic-Devey, 1993). In other words, social closure allows certain employees to monopolize status hierarchy dominance and the rewards that are associated with this dominance.

According to this perspective, dominant group members treat African Americans and women differently primarily because of their race and sex and perceptions of diminished privilege. The activities of closure include exclusion which may be carried out overtly or indirectly through the arbitrary adoption of educational credentialing and licensure which restricts the labor supply (Weeden 2002). Or managers may initiate differential treatment against African Americans and women (while on the job) as a form
of hierarchy maintenance (Roscigno, Garcia, Mong, and Byron 2007; Slonaker, Wendt, and Williams 2003). Prior work calls our attention to two particular forms of hierarchy maintenance that can lead to firing: quid pro quo sexual harassment and retaliation.

Quid Pro Quo Sexual Harassment, Social Closure, and Firing Discrimination

Quid pro quo sexual harassment occurs when an employer/manager uses his power to gain sexual favors in return for employment privileges or to avoid the threat of negative tangible employment consequences (Conte 2000). So, for example, women who refuse sexual advances may be fired.

Analyses of court cases offer much anecdotal evidence to validate quid pro quo sexual harassment as a mechanism of firing (see Conte 2000). In fact, Coles (1986) found that nearly 50% of his sample reported being fired for failing to agree with sexual advances. The objective of the termination in these circumstances is retribution – it is an effort to injure the woman who denied the sexual advances (Mackinnon 1979). Women also report being called “dykes” and receiving other poor treatment in retaliation for their refusals (Collins 2004; Texeira 2002). This behavior situates quid pro quo sexual harassment well within a social closure framework. In other words, some men sexually harass women as a form of status hierarchy maintenance because they view women as subordinates who must pay a sexual price for invading the workplace (Mackinnon 1979; Whaley and Tucker 1998).

Legal scholars also define a second type of sexual harassment, hostile environment, which occurs when an employee is subject to physical, verbal, or psychological harassment without the threat of any further employment outcome (Conte 2000). While hostile environment sexual harassment can certainly precede or co-exist with quid pro quo sexual harassment, these two types are purported to have different foundations (Whaley and Tucker 1998).
Retaliation, Social Closure, and Firing Discrimination

Sadly, employees who complain about employment discrimination are commonly further penalized through acts of retaliation. Retaliation is now the fastest growing type of discrimination claim, having increased 105% between 1992 and 2002 (Sherwyn, Eigen, and Gilman 2006; Neilsen and Nelson 2005). The most developed evidence about the causes and consequences of retaliation comes from the literature on whistle-blowing in organizations. Whistle blowing occurs when an employee complains about a violation of some established ethic (including discrimination) and employer retaliation is very often a direct result of these whistle-blowing activities (Rothschild and Meithe 1999).

Involuntary dismissal is a common form of retaliation for workplace complaints (Rothschild and Meithe 1999; Sincoff, Slonaker, and Wendt 2006). Wendt and Slonaker (2002), for example, estimate that 47% of women who complain about sexual harassment experienced retaliation from employers and termination was the most frequent retaliatory act (occurring 61% of the time). This frequency is similar to the work of Terpstra and Cook (1985) who found that 66% of their sample who made formal sexual harassment complaints was subsequently discharged. Of course, managers also use firing to retaliate against claimants who file race claims as well (Sincoff, Slonaker, and Wendt 2006). Retaliation is especially prevalent among lower status workers (Baucus and Dworkin 1994; Cortina and Magley 2003; Rothschild and Meithe 1999) and when employees
complain to external\textsuperscript{10} grievance channels (Dworkin and Baucus 1998; Mesmer-Magnus and Viswesvaran 2005).

Baucus and Dworkin (1998) detail two distinct processes of retaliatory firing. In one, employers label the whistleblowers as “deviant” and “complainers”, harass the employees with sudden criticisms of their performance, and pressure them to be silent or quit. If this pressure does not work, employers fire the “troublemaking” employees. Other employers tend to emotionally interpret the complaints of the employee as too costly to the organization and see immediate dismissal as a way of “resolving” the problem (Baucus and Dworkin 1998). Retaliatory firing, then, represents a form of social closure whereby employers exercise their power to illegally discharge those who question and threaten the status quo within the organization.

Yet closure mechanisms may not always stem from conscious biases against women and minorities (see Reskin 2000). One less conscious method of closure is the subjective application of organizational rules (Roscigno 2007). Rule violations may provide a seemingly meritocratic justification for differential treatment in firing. So, employers may, for example, unconsciously but disproportionately pay attention when African Americans break workplace rules because these actions fall in line with stereotypical notions about them.

Employers may also differentially treat African Americans because of their self-presentation and other “soft skills”. In fact, employers have consistently voiced concern about Blacks’ styles of speech and dress as being unprofessional (Kirschenman and

\textsuperscript{10} The entire sample of this dissertation uses an external grievance channel (the Ohio Civil Rights Commission).
Neckerman 1994; Moss and Tilly 1996; Pager and Karafin 2009; Shih 2002). So not only are Black workers penalized because of their race, but they must also assimilate to a White standard of speech and dress in order to escape the reach of differential treatment.

Similarly, there are a host of subjective “soft” skills that employers believe African Americans lack (Moss and Tilly 1996). These include things such as motivation, ability to interact with customers, and long term potential. Some scholars reason that perceptions of particularistic “soft skill” deficiencies may play a role in the firing of African Americans (e.g., Wilson 2005). That is, in the absence of objective skill differences, employers may utilize these seemingly neutral qualities as evaluative criteria for decision making in dismissals. This strategy, it is argued, inadvertently places minorities at higher risk for dismissal because of the aforementioned negative stereotypes attached to minority membership (Wilson 1997). This perspective maintains that employers may prefer to keep Caucasians over African Americans given soft skill differences; and that the outcome (differential firing) is not caused by race but nonetheless has an inadvertent negative impact on African Americans.

Thus, I formulate my fourth expectation: African Americans and women will be subject to variety of forms of social closure in discriminatory firing. This may include more conscious processes such as quid pro quo sexual harassment or retaliation for complaining about discrimination, but may also manifest through differential treatment in the enforcement of organizational policies and soft skills.
How is Firing Discrimination Justified?

The final piece to understanding how micro-level ideology perpetuates discriminatory firing lies in how people justify discrimination. Again, rather than being overtly racist or sexist, contemporary discrimination is less conscious. The literature points to the creation of fictionalized identities as a particular mechanism that people engage in to justify discrimination.

According to Robert and Harlan (2006), the creation of fictional identities may explain how stereotypes become mechanisms of differential treatment in discrimination cases. Because coworkers of disabled employees often resent them due to the belief that they are the recipients of special treatment, they are motivated to create powerful fictionalized identities of disabled workers as incompetent and helpless (Robert and Harlan 2006). In turn, these labels facilitate a perception that disabled workers are liabilities to the organization and justify differential treatment against them (Robert and Harlan 2006).

This pre-existing resentment is strikingly similar to the resentment that comes along with affirmative action. Minorities and women who are associated with affirmative action in hiring are often stigmatized as incompetent (Heilman, Block, and Lucas 1992; Heilman, McCullough, Gilbert 1996), less qualified (Durr and Logan 1997; Heilman, Block, and Statathos 1997), and even thought to have an unfair advantage in subsequent workplace promotions (Camp and Langan 2005). This may motivate the creation of fictionalized identities in discriminatory firing. And, the self fulfilling

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11 While affirmative action helps to increase the representation of minorities and women at work and in managerial positions (Konrad and Linnehan 1995; Kalev, Dobbin, and Kelly 2006); there has also been a strong opposition to many of these programs by White males who feel that is violates their assumptions of fairness and meritocracy (Bobo and Klugel 1993; Kravitz et al. 2000).
reassurance that stigmatized group members match these stereotyped identities then
provides a rationalization for the maintenance of power differentials (Hoffman and Hurst 1990; Roscigno 2007).

Conclusions

The employment inequality literature provides a useful framework to begin
understanding the interpersonal aspects of discrimination. One of the most consistent
findings of this literature is that widespread beliefs of meritocracy and colorblindness
cause many observers of contemporary inequality to doubt the relevance of
discrimination as a meaningful explanatory factor. Instead, workplace inequality is
largely attributed to statistical differences in productivity and job performance. All too
often though, these inferences about inherent differences in productivity are not based on
measurable evidence but result from unconscious employer biases about minorities and
women (Pager and Karafin 2009). Knowing this, we should not expect the bulk of
modern discrimination to look like the clear-cut discriminatory actions of traditional
times. Nor should we expect that conscious prejudice is always the only motivating
factor. Indeed, prior work urges us to move away from deliberate perpetrator models and
look at the ways that unconscious bias becomes imbedded within the structure of
workplace decisions (Green 2003; Nelson, Berrey, and Nielsen 2008; Reskin 2000).

To the extent that these discriminatory dynamics are unintended by employers,
they may be justified through meritocratic lenses. Biased assessments of job
performance, “soft skills”, and rule obedience have certainly been instrumental to firing
inequality in prior work (Roscigno 2007; Wilson 2005). These meritocratic justifications
for firing, importantly, do not merely represent post hoc explanations to scapegoat public scrutiny (Norton et al. 2006). Employers may truly be blind to their own biases because they see them as evidentiary truths, especially given the unrecognized tendency to create fictionalized identities and engage in other actions which support their biases. Employees, meanwhile, are inclined to keep track of these dynamics especially when their presumed meritocratic deficiencies expose them to differential treatment.

But, scholars also advise that power, status, and conflict remain important to discriminatory behavior. The struggle for scarce resources (e.g., jobs, prestige) is arguably a perpetual motivation for workplace inequality. And, although social closure can certainly be unconscious, many expressions of it are directly intended to preserve long established hierarchies. Quid pro quo sexual harassment is a prime example here because it represents men’s effort to maintain dominance over women, especially threatening women who enter “male” jobs. Retaliatory firing represents another example of more conscious discrimination. It is an emotional reaction by managers to reassert power when employees challenge the status quo of organizations.

A final under theorized method of firing which fits within the social closure framework comes from recent studies of workplace bullying. Bullying and other forms of general harassment operate to ensure the rigid social and positional hierarchies that privileged group members relish (Roscigno 2007). Much like other forms of social closure, bullying and general harassment put employees in a devastating bind. Those who resist the demands of workplace bullies are often met with real or implied threats of job loss, while those who surrender face the prospect of a demeaning and hostile work environment (Robert and Harlan 2006; Roscigno, Lopez, and Hodson 2009).
In conclusion, statistical discrimination and social closure are two dominant theories in the literature that explain competing interpersonal motivations for discriminatory firing behavior. The current debate about whether the bulk of contemporary discrimination is more unconscious or conscious, however, only gets us so far. Because one can never truly get into the minds of people, discussions of discriminatory motivations should now take a side seat to investigations that explore the mechanisms and processes of discrimination (Reskin 2003). By embracing this philosophy, scholars can finally uncover precisely how discriminatory firing transpires and offer important steps toward redress.
CHAPTER 4
DATA AND METHODS

Data for these analyses comes from public archived records at the Ohio Civil Rights Commission (OCRC). The OCRC is an agency headquartered in Columbus, Ohio whose job it is to enforce civil rights legislation in Ohio. According to Ohio law (Ohio Revised Code 4112.02), it is illegal for employers to discriminate against workers on the basis of race, sex, age, disability or national origin. The OCRC abides by both state law and federal Equal Employment Opportunity Commission (EEOC) guidelines in enforcing anti-discrimination statutes and has a work sharing agreement with the EEOC which provides that employment discrimination charges are dual filed (OCRC 2004).

When an employee, also known as the charging party, contacts the Civil Rights Commission at one of its six regional offices (Columbus, Akron, Cincinnati, Cleveland, Dayton, Toledo) the OCRC assigns a neutral fact finding agent (investigator) to the case. The investigator contacts the employer (also known as the respondent) to make them aware of the charge and the investigation begins. The results of these investigations were compiled and were made accessible as a part of the Ohio Discrimination Project at The Ohio State University.

There are two sources of information, a quantitative file and a narrative archive. The full quantitative data contains all discrimination complaints filed within Ohio from
1986-2003. Variables within this dataset include but are not limited to the race/sex of the charging party, the basis of the charge, the determination of the case, the issue of the charge, and various other individual and industrial characteristics. Below, I expand upon some of these mutually exclusive categories and justify my sample selection.

**General Sample Selection**

*Basis of the Charge*

Given that the primary interest is to investigate the process of firing by race and gender, I first limit my sample to cases that are filed on these bases (N=60,726). Cases that are solely based on age, disability, religion etc. are not included in my analysis. The OCRC permits complainants to file for up to two bases per complaint. I define race and sex based cases as those in which the primary or secondary basis of charge was identified to be race or sex or an issue clearly related to these categories (e.g., pregnancy is considered sex discrimination). Preliminary descriptive analyses reveal a remarkable pattern of racial homogeneity when looking at the bases that different race/sex groups file (see Figure 2).
The majority of African American males (73%) and African American females (61%) claim that race is their primary basis of discrimination. Moreover, 82% of African American males and 75% of African American females who did not claim race as their primary charge go on to claim it as their secondary charge. In contrast, Caucasians homogeneously tend to see sex as the primary basis of discrimination against them. In fact, 90% of White females and 62% of White males file for sex discrimination as their primary basis of charge.

This divergent weighting of identities has certainly been predicted in prior work. Jaret and Reitzes (1999), for example, note that racial identity is far more important to Blacks’ sense of self than Whites’, especially in workplace settings (where there may be tension and motivation to make self-other comparisons). These results may also be a product of gender segregation in workplaces, which continues to be more prevalent than race segregation (Tomaskovic-Devey et al. 2006). Working in the same establishment,
Black men and White men may often find each other in contest for positions and sometimes identify racial discrimination as the basis for unequal outcomes because gender is held constant. Such reasoning tends to explain why White males place a surprisingly significant amount of emphasis on racial discrimination as well (Figure 2; also see Jaret and Reitzes 1999).

In contrast, the frequent claim of sex discrimination among White females likely relates to their continued struggle for parity with (mostly White) men - especially given their strides in entering management and traditionally male jobs (Ortiz and Roscigno 2009). Thus, because White women already possess a relative advantage in job queues over minority women due to their situational white privilege (McDermott and Samson 2005; McIntosh 1988) they may more clearly identify sex discrimination and competition with White males as a major obstacle to their advancement. It is after all White female feminists who had the loudest voice in bringing the struggle for gender equality to the forefront of the equal rights movement (Blankenship 1993). Yet, to the extent that pregnancy and motherhood discrimination in firing is important, sex discrimination is salient to both White and Black women and even within completely gender segregated jobs.

Other racial minorities (e.g., Hispanics, Asians, and Native Americans) are grouped together because of the low frequency of their claims (7% of all complaints; see Table 2). Nonetheless, it is noteworthy that women in these groups claim that sex is the most important basis (59%) followed by national origin (31%) and men more frequently claim discrimination on the basis of national origin (68%).
Case Determinations

In addition to race and sex bases, I further limit my sample based on the outcome of the case. In each case, an investigator has the job of determining whether it is probable that discrimination has taken place (as measured by a preset legal standard). Notably, the employee making the charge and/or their outside legal representation bear the burden of proof and must provide the investigator with supporting documents and witnesses to substantiate their case.

Evidence in the form of charging party testimonies, position statements from the employer, witness affidavits, and on-site investigations are all weighed by the OCRC investigator. Investigation determinations can take one of three forms: dismissed, settled, or probable cause. In a large majority of cases, a lack of supporting evidence causes the case to be dismissed. In a second verdict, the employer may offer a settlement before an official determination is reached by the civil rights commission. Still, other cases may be deemed “probable cause” which denotes that the preponderance of evidence suggests a likely occurrence of discrimination. The “probable cause” determination represents the smallest proportion of cases (see Table 1). This pattern is largely a product of administrative barriers at watchdog discrimination agencies. Given the difficulties in gathering explicit evidence of discrimination, especially with the limited budgets to investigate cases, this pattern—which also emerges nationally\(^\text{12}\)—should not merely be attributed to the frivolity of cases (Hirsh and Kornrich 2008).

\(^{12}\) These attributes and similarities in population and industrial characteristics between Ohio and the U.S. (U.S. Census 2003) make the OCRC data quite generalizable.
However, because I cannot assume a discrimination claim necessarily implies that discrimination occurred, I limit my analysis to verified cases of discrimination (N=14,722). Verified cases include those deemed probable cause—denoting the preponderance of evidence suggests that discrimination has taken place as well as cases settled (either by monetary or reparatory means) before an official determination was reached. These cases, which have a similar race/sex distribution with all complaints in general (see Table 2), are viewed as a good representation of discrimination suits by legal scholars (see Roscigno 2007). Moreover, the ability to draw out these verified cases from all complaints filed represents an improvement in the attempts to measure the process of discrimination because prior analyses have only captured perceptions of discrimination.

<table>
<thead>
<tr>
<th>Type of Discrimination</th>
<th>All Complaints</th>
<th>Dismissed</th>
<th>Settled</th>
<th>Probable Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex…………</td>
<td>24,666</td>
<td>73.0%</td>
<td>20.3%</td>
<td>6.7%</td>
</tr>
<tr>
<td>Race………</td>
<td>36,060</td>
<td>77.7%</td>
<td>18.0%</td>
<td>4.3%</td>
</tr>
<tr>
<td>Total………</td>
<td>60,726</td>
<td>75.4%</td>
<td>19.2%</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

Table 1 ● Breakdown of Discrimination Charges By OCRC Determination
Table 2 • Distribution of All Cases and All Verified Cases

<table>
<thead>
<tr>
<th></th>
<th>All Cases Filed</th>
<th>Verified Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Black females</td>
<td>18,990 31.0</td>
<td>4,641 31.5</td>
</tr>
<tr>
<td>Black males</td>
<td>18,832 31.3</td>
<td>3,990 27.1</td>
</tr>
<tr>
<td>White females</td>
<td>13,046 21.5</td>
<td>3,790 25.7</td>
</tr>
<tr>
<td>White males</td>
<td>3,281 5.4</td>
<td>670 4.6</td>
</tr>
<tr>
<td>Other females</td>
<td>2,078 3.5</td>
<td>575 3.9</td>
</tr>
<tr>
<td>Other males</td>
<td>1,971 3.2</td>
<td>412 2.8</td>
</tr>
<tr>
<td>Unidentified cases</td>
<td>2,528 4.1</td>
<td>644 4.4</td>
</tr>
<tr>
<td><strong>Total...</strong></td>
<td><strong>60,726 100</strong></td>
<td><strong>14,722 100</strong></td>
</tr>
</tbody>
</table>

**Issue of the Charge – Selecting Firing Discrimination Cases**

I further limit my analyses to cases where “discharge” is the primary issue of charge (N=6,369). The OCRC allows a complainant to file up to three issues of charge. The first issue of charge generally represents the most pressing concern. Forty percent of verified discharge complaints also had a second issue of charge and only eight percent had a third issue. These patterns are not significantly different from non-verified discharge complaints (35% and 8% respectively had a second and third issue of charge).

The vast majority of second and third issues of charge denote unfair terms and conditions of employment or harassment prior to the actual termination. Such results, which yield preliminary insight into the process of discriminatory firing, are understandable upon recognizing that the discharge cases shown here do not include

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\[13\] In total, there are 29,380 discharge complaints representing nearly half of all 60,726 complaints as noted in Chapter 1-Figure 1.
layoffs (which may have directly financial underpinnings). Firing cases are treated uniquely due to relevant methodological concerns about interpreting aggregated firing-layoff results (Campbell 1997; Teratanavat and Kleiner 2005).

White males, “other” males, and “other” females were also dropped from the analysis at this stage. Their smaller than ideal numerical representation in the data (see Table 2) hinders reliable cross group comparisons. After excluding these under represented groups, the final verified sample of discriminatory firing cases consists of 5,334 people (1,798 Black men; 1,827 Black women, and 1,696 White women).

**Qualitative Subsample**

Beyond this aggregate quantitative file, I was also given access to rich qualitative case files that correspond with these 5,334 verified cases of discriminatory firing. Each file, with narratives between 20 and 120 pages long, contains detailed first hand accounts of any correspondence used in the analysis of the case by the OCRC investigator. These narratives, which are the mainstay of my analysis, provide significant leverage in identifying the various processes of discrimination.

Using a uniform coding scheme, 329 (roughly 6% of the full sample of 5,334) firing discrimination viewpoints (e.g., from the employee, employer, and investigator) were coded at random from microfiche reels by 12 graduate students over a two year period (inter-coder reliability was .94). To bolster generalizability of these randomly selected firing discrimination cases, I present a side by side table of descriptive statistics comparing the larger sample of 5,334 verified cases and the subsample of 329 cases on all variables available at both levels. As a result, Table 3 shows only slight differences
between the distribution of the verified cases of firing discrimination and the randomly selected subsample.

<table>
<thead>
<tr>
<th>Race/Sex Group</th>
<th>Verified Cases</th>
<th>Subsample</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Black females</td>
<td>1,827</td>
<td>34.3</td>
</tr>
<tr>
<td>Black males</td>
<td>1,798</td>
<td>33.7</td>
</tr>
<tr>
<td>White females</td>
<td>1,696</td>
<td>31.8</td>
</tr>
<tr>
<td><strong>Total...</strong></td>
<td><strong>5,334</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Work Sector</th>
<th>Verified Cases</th>
<th>Subsample</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Core Industry</td>
<td>1,550</td>
<td>29.1</td>
</tr>
<tr>
<td>Low Wage Service Industry</td>
<td>2,377</td>
<td>44.6</td>
</tr>
<tr>
<td>High Wage Service Industry</td>
<td>1,092</td>
<td>20.5</td>
</tr>
<tr>
<td>Public Sector</td>
<td>315</td>
<td>5.9</td>
</tr>
<tr>
<td><strong>Total...</strong></td>
<td><strong>5,334</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

|                      |       |       |
| Average Age of Complainant | 33.15 | 33.21 |

Table 3 • Distribution of All Verified Firing Discrimination Cases and the Subsample

But, the main contribution of these content coded narratives is to reveal the process of discriminatory firing. In order to ascertain relevant themes about this process, coders paid special attention to the employee charge form which was filled out by the employee with the aid of the OCRC staff on the initial day of the complaint. Eight relevant themes emerged from the complainant’s perspective in firing discrimination cases. The themes were then tabulated and quotes representative of the most frequent themes are included in
the text of this dissertation. A more detailed explanation for how these themes were formed appears in Table 4.

<table>
<thead>
<tr>
<th>Category</th>
<th>Basis for Categorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Differential Treatment</td>
<td>Employee used the term &quot;differential treatment&quot; on their charge form, provided a comparison group member, and/or identified unfair evaluation of their performance</td>
</tr>
<tr>
<td><em>Performance</em></td>
<td>Same as above, except employee identified unfair evaluation of a verbal or physical confrontation</td>
</tr>
<tr>
<td><em>Behavior</em></td>
<td>Employee referred to &quot;pregnancy&quot; or &quot;maternity&quot; on their charge form and generally provided a non-pregnant comparison group member</td>
</tr>
<tr>
<td><em>Pregnancy</em></td>
<td>Blatant subjective explanations given to employees (e.g., &quot;had to go to the bathroom too much&quot;)</td>
</tr>
<tr>
<td><em>Arbitrary</em></td>
<td>Employee identified a prior complaint and its apparent connection to their firing</td>
</tr>
<tr>
<td>Financial / Downsizing</td>
<td>Employee was given a financial explanation for why they were being let go</td>
</tr>
<tr>
<td><em>Hostile Environment</em></td>
<td>Employee complained that the workplace environment was “hostile” on the charge form</td>
</tr>
<tr>
<td><em>Refused Sexual Advances</em></td>
<td>Employee identified the connection between denying their supervisor’s sexual advances and their firing</td>
</tr>
</tbody>
</table>

*Table 4* • Description of ‘Employee’ Interpretations of Firing Discrimination

However, it is also important to simultaneously consider the views of employers suspected of discrimination. Most employers our data provided the OCRC with a written position statement through which they explained why their given case was non-discriminatory. Analyzing these perspectives brings us closer to the multidimensional nature of discrimination and allows us to peer into the justifications and practices that
employers use to explain away bias in their workplaces. Eight themes also emerged from the company’s position statement. A more detailed explanation for how these themes were formed appears in Table 5.

<table>
<thead>
<tr>
<th>Category</th>
<th>Basis for Categorization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of Company Policy</td>
<td>Employer reported a specific policy which led to the employee's dismissal</td>
</tr>
<tr>
<td>Poor Performance</td>
<td>Employer stated &quot;poor performance&quot; as their justification for termination or named a performance related issue as the main cause</td>
</tr>
<tr>
<td>Poor Attendance</td>
<td>Same as above except &quot;poor attendance&quot; was stated</td>
</tr>
<tr>
<td>Insubordination</td>
<td>Employer specifically used the word &quot;insubordination&quot; in their statement to the OCRC</td>
</tr>
<tr>
<td>Simple Denial</td>
<td>Employer only denied the employee's claims without presenting a specific reason for the termination</td>
</tr>
<tr>
<td>Employee Quit</td>
<td>Employer stated that the employee quit before being formally fired</td>
</tr>
<tr>
<td>Financial / Downsizing</td>
<td>Employer identified a financial reason for why they had to terminate the employee</td>
</tr>
<tr>
<td>OCRC Lacks Jurisdiction</td>
<td>Employer challenged the jurisdiction of the OCRC assuming that because of their size or private sector status they were not be subject to EEO law</td>
</tr>
</tbody>
</table>

**Table 5** ● Description of ‘Employer’ Interpretations of Firing Discrimination

**Analytic Strategy**

One of the core goals of this project is to demonstrate how both the structure of workplaces and employer ideology simultaneously mold the process of discriminatory firing. To do this, my analysis is multi-method. I first use descriptive quantitative patterns to provide an overview of the bivariate relationships between variables in my subsample.

I then offer a series of multivariate logistic regression models to assess the role of organizational structures in discriminatory firing. Finally, I return to the rich qualitative
case narratives to illuminate the complex process of real world race and sex based firing discrimination.

**Quantitative Analyses**

From this point on, all quantitative analyses focus on the 329 cases within my randomly selected subsample. This quantitative information was gathered from qualitative narratives using a uniform coding device. It was then input into an SPSS worksheet to facilitate quantitative analysis. Because the main variables of interest are various categorical dimensions of the firing discrimination process, I use binomial logistic regressions in the chapters to come. The benefit of logistic regression models over general descriptive statistics is that they allow me to predict the odds of a given process of discriminatory firing while holding other variables constant.

**Dependent variables**

**Process of Discriminatory Firing:** All dependent variables are dummy coded with the process of interest being set to 1 and all other processes are set to 0. The main dependent variable in Chapter 6 will be defined as: 1 = differential treatment based on performance; 0 = all other firing processes. The main dependent variable in Chapter 7 will be defined as 1= differential treatment on the basis of pregnancy; 0 = all other firing processes. Notably, sample sizes will also vary by model. For example, a model where differential treatment based on performance is the outcome can make use of all 329 cases; whereas when pregnancy based firing is the outcome the sample size will decrease because males will automatically be omitted from the model.
Independent Variables

Workplace formalization has long been described as important to reducing the prevalence and intensity of discrimination. To test my first hypothesis that more formalized organizations will use seemingly objective explanations for discrimination in firing, I measure formalization in two distinct ways (organizational size and work sector). If my hypotheses hold, then- net of controls- these two measures should be significantly related to the more meritocratic justifications of discriminatory firing (e.g., differential treatment in performance).

Organizational Size: Though formalization is typically referred to as a continuous variable measuring “the size of the organization”, I recode it into three dummy variables. In this analysis, small organizations are those with less than 50 people, mid-sized organizations are composed of more than 50 and less than 500 people, and large organizations employ over 500 people.

There is an important theoretical justification for this decision. Although the Ohio Fair Employment Practices Act\(^\text{14}\) (OFEPA) has jurisdiction over any firm with 4 or more people (OCRC 2004b), the Equal Employment Opportunity Commission (EEOC) does not require\(^\text{15}\) firms with less than 50 people to file mandatory yearly EEO-1 forms (EEOC 2006). EEO-1 reports provide an overview of information on the race and sex composition of workplaces cross referenced with occupational statuses. Therefore, small organizations with less than 50 people may escape much of the scrutiny of EEO

\(^{14}\) Ohio’s law is more conservative than the government’s requirements under Title VII of the Civil Rights Act of 1964. The federal jurisdiction covers only those employers with 15 or more employees.

\(^{15}\) Thankfully, some small firms do voluntarily submit these EEO-1 reports to the OCRC in the fact finding process. Indeed, this variation in organizational size enriches my analysis.
regulations. Small organizations are also the most likely to rely on informal employment practices (see Earnshaw, Marchington, and Goodman 2000). On the other hand, firms with more than 500 employees are certainly required to file EEO-1 forms and are very likely to have concentrations of formalization alluded to in the literature (given the sheer number of employees).

**Work Sector:** In line with prior work, I also measure sectoral membership as a proxy for workplace formalization. Yet, although most investigations about the effects of one’s work sector on discriminatory outcomes measure “sector” as a dichotomous variable (public v.s. private), I choose a more nuanced approach and measure it using four dummy variables. I divide the private sector into three industries (core, low wage service, and high wage service) to test whether sector differences are uniform across the private sector. Specifically, 1 = core, 0 = all others; 1 = low wage service, 0 = all others; 1 = high wage service, 0 = all others. General manufacturing firms are good examples of the types of business measured under “core” industries. Retail and fast food establishments are representative of the “low wage service” industry. And, medical and legal services are prime examples of the “high wage service” industry. The public sector was constructed following conventional methods as an aggregated dummy variable where 1 = all government, state, and city jobs and 0 = all other industries. The public sector generally serves as the omitted reference category. In some cases however, the core industry is made the referent group because the public sector variable is constant.

**Organizational Composition:** I also include continuous variables that measure the percent of Black employees and the percent female managers within given firms. These variables are used to test my second hypothesis. If it holds, the percent of Black
employees and female managers should be significantly and positively related to the more meritocratic explanations of firing discrimination (e.g., differential treatment in performance).

It is noteworthy to mention that many of these EEO-1 reports, from which the organizational size and composition variables were derived, were missing from the original qualitative case file. This yields missing values in the final quantitative data set. To correct this problem without drastically reducing the sample size for the regression analyses I use multiple imputation for the variables with missing values. The missing cases here were imputed (the average of 5 imputations) using the new multiple imputation command in SPSS version 17. Identical findings were exhibited after running the PROC MI imputation command in the SAS statistical package, but due to the ease of computations and alterations the results shown here are from SPSS output.

Multiple imputation is appropriate because the missing values were determined to be missing at random (MAR). In other words, the missing cases were not systematically related to the dependent variables after controlling for other independent variables (regressions not shown; see Acock 2005). Moreover, multiple imputation is currently one of the best ways to estimate these missing values because 1) it uses information from non-missing variables to estimate parameters, 2) it introduces random error into the imputation process and, 3) it pools the parameter estimates to provide a final parameter that is virtually identical to when there are no missing cases in the data (Acock 2005).

Race/Sex Status of the Complainant: The literature highlights the importance of one’s specific social location in discriminatory outcomes. My third hypothesis, in particular, suggests that African Americans may be especially vulnerable to biased
evaluations of their performance (which includes soft skills) during firing episodes. Furthermore, I also hypothesize that employed Caucasian women face a higher pregnancy/motherhood penalty than African American women. Thus, a primary independent variable in all models is the race/sex of the complainant. Similar to the construction of the dependent variables, I created three dummy variables to capture the race/sex nexus. Specifically, 1= African American men; 0 = all others; 1= African American women; 0 = all others; 1 = Caucasian women; 0=all others. Caucasian women will be the referent (omitted) race/sex category in the first two models and African American women will be the referent in the last two models.

Controls

I also include a variety of controls in my regression models. The age of the complainant is measured as the number of years from the date of birth of the complainant until the date of discrimination. The seniority of the complainant is measured in months from the date of hire until the date of discrimination. Months are selected as the unit of analysis because measuring seniority in years reduces the variability of discriminatory firing within the first year. It is important to capture this variability because prior work suggests that the vast majority of involuntary dismissals take place in probationary periods which generally end before the first full year (Zwerling and Silver 1993). Occupational prestige was coded from the qualitative description of the complainants’ job title using the 1990 Hauser-Warren SEI codes. Age, seniority, and occupational prestige all had missing values (see Table 8 for specific number missing) which were
deemed missing at random and imputed using the process described for the organizational variables.

Prior work argues that timing is important to consider when measuring firing discrimination complaints. Specifically, using the Survey of Income and Program Participation, Oyer and Schaefer (2000) find that the share of involuntary displacements coming from firings decreased dramatically among black workers since the passage of the revised Civil Rights Act in November 1991. They argue that because the Civil Rights Act of 1991 strengthened workers’ rights to sue for unlimited punitive damages, cunning employers who sought to avoid litigation started labeling their discharges as layoffs.

These data are in line with Oyer and Schaefer’s hypothesis (see Figure 3). The rate of firing discrimination complaints declined dramatically in 1992 and continued to decline thereafter. Due to this fluctuation, I control for the year that the charge was filed in all models. The year of the charge, however, has been recoded from 1 to 18 where 1 equals 1986 (the first year of the data). This keeps the variable continuous but allows me to check for non-linearity with the addition of squared term (year*year), without artificially inflating the coefficients and standard errors.
Finally, I control for race or sex basis of the charge in the first two models. I created a dummy variable where 1 = charging party claimed race as their first basis; 0 = charging party claimed sex as their first basis. Importantly, I could not incorporate both primary and secondary bases of charge because of the resulting correlation between the race/sex of the complainant and the race or sex basis of the charge (i.e., collinearity). The race or sex basis dummy variable was excluded from the models where pregnancy based firing discrimination was the dependent variable because it would be a constant.

**Qualitative Immersion**

In keeping with the goal of producing insight into the process of discrimination, I also inductively explore the 329 qualitative cases of my subsample. Due to the highly
personal nature of many of these cases, all names of complainants are fictional and organization types have been generalized to protect anonymity. Nonetheless, the rich narratives that result not only expand upon the eight themes that emerged from the data (Table 4), but also extend the discussion on how firing discrimination unfolds for people in distinct social locations (e.g., Black men, Black women, and White women). This information allows us to move beyond purely quantitative models through their ability to explicate the ways that employers invoke statistical discrimination and social closure when justifying discriminatory firing. Finally, by tapping into the perspectives of employers and witnesses, we can truly begin to understand the multifaceted nature of discrimination.

**Strengths and Limitations**

These data have much strength but there are also limitations as well. These data likely underestimate the frequency and type of employment discrimination. Before a formal complaint reaches the OCRC, victims must first be aware of anti-discrimination law and label their experiences as discrimination (Felstiner, Abel, and Sarat 1980-81; Fischer and Massey 2004). Indeed, “discrimination is a socially constructed process, in which workers, employers, and regulatory agents negotiate what constitutes discriminatory behavior.” (Hirsh and Kornrich 2008, p. 1395). Moreover, after they have “blamed” their experience on discrimination, victims must also surmount certain bureaucratic roadblocks (such as the ease of filing a complaint) and interpersonal barriers (e.g., fear of stigmatization or retaliation) that come along with filing a formal discrimination complaint to a government agency (Felstiner, Abel, and Sarat 1980-81;
Kaiser and Miller 2003). This filtering process may lead certain groups to be underrepresented and others overrepresented (Fischer and Massey 2004). These conditions may also affect the type of discrimination that is reported. More blatant incidents of discriminatory behavior may be over reported in these data, while those where intent is harder to prove may be inadvertently filtered out.

Despite these potential biases in estimation, these data represent the most effective way to uncover the relational processes and mechanisms that are at the crux of the workplace inequality (see Feagin and Eckberg 1980; Ridgeway 1997). The qualitative narratives are also able to highlight the dynamic between the various actors during discriminatory incidents, and in ways that strictly quantitative data cannot. This point is particularly true of discriminatory firing which often has a host of not easily quantifiable preceding factors that play a role in the firing decision. Finally, these data allow for the exploration of not yet theorized patterns of discrimination.
The bivariate analyses that follow focus on the 329 discriminatory firing cases that were gathered from the qualitative narratives. These descriptive patterns will be used to provide a preliminary evaluation of my four main hypotheses. A more rigorous multivariate and qualitative analysis will be provided in the next two empirical chapters.

The Process of Firing Discrimination

Indeed, in support of my first three hypotheses, employees report that much of contemporary firing centers on issues of meritocracy and presumed objectivity. In fact, Figure 4 demonstrates that questions about general performance, behavior, and performance related to pregnancy far overshadow the more hostile forms of discriminatory firing. Collectively, these “meritocratic” processes make up 68% of all forms of firing, compared to only 28% of cases with more blatant forms (i.e., retaliatory firing, quid pro quo sexual harassment, arbitrary firing, and firing through hostile environments). This finding is in line with the work of Bonilla Silva (2002) and others who argue that an emerging colorblind ideology has changed the conversation on contemporary discrimination from a discussion about more overt biases to one of a more subtle invoking of productivity differences among groups. Yet, in line with my fourth
hypothesis, the struggle to maintain status hierarchies is still the source of some discriminatory activity. Interestingly, straightforward economic foundations are present in only 3.6% of these cases. This is perhaps true because layoffs have been selected out of these analyses.

![Figure 4: Percentages of Discriminatory Firing Process](image)

Of course, however, discrimination is an interactional process that is subject to differing interpretations from the parties involved. In chapter 4, Table 4 and Table 5 highlight the views of employees and employers with eight distinct themes from both sides of the firing discrimination episode. Here, I expand on these similarities and
differences in interpretation by presenting a dyad of employee and employer explanations of firing discrimination episodes (Table 6).

**Employee/Employer Interpretations of Process**

The vast majority of employers agreed with employees that a debate over meritocracy was at the foundation for terminations. Employers, however, sometimes described the issue in more specific terms. For example, while employees stated that they were differentially treated on the basis of performance; employers largely understood these umbrella performance issues as either: violations of company policy, consistent general poor performance, poor attendance, or insubordination.

Consider the case of Clifford Jenkins, an African American who was told he was being fired from his car detailer’s position for vague performance reasons. Yet, in response to the OCRC, Clifford’s employer stated that “the reason for his dismissal was because he was drunk on the job and damaged 2 or 3 cars with the buffer.” It would be impossible to tell whether this specific justification was merely created to defend against claims of discrimination. But, ultimately this case was deemed a probable cause case after a Caucasian witness sent in a letter to the OCRC noting that the supervisor who fired Clifford “brought food and alcohol if the employers worked over-time so we were permitted to drink on the job.” Clearly, even if Clifford did violate the company’s policy, it was a violation that many employees participated in.

Violation of company policy was also the main justification among employers who were found to differentially treat their employees on the basis of behavior (see Table 6). The case of Tamika Washington presents a pertinent example. Tamika Washington,
an African American medical receptionist, was fired for a physical altercation with Joann Huskin (a White nurse and co-worker). Although witness testimony identified that Joann instigated the incident by pulling a medical door shutter down on Tamika, Joann was never even disciplined. Again, the OCRC decided that the violation of company policy was applied differentially on the basis of race.

Also in line with prior work, a significant amount (31%) of firing cases surrounding differential treatment and pregnancy involved the employer’s perception of a deficient work performance by their pregnant employee. Marsha Walsh, a Caucasian property manager, was fired from her job after she became pregnant despite having no disciplinary warnings prior to her discharge. Yet, in reporting to the Civil Rights commission, her male supervisor claimed that Marsha’s “job interest and performance decreased weekly and monthly reports were not completed on time.” Ultimately, evidence of her employer’s comments about controlling one’s weight during pregnancy (which he admitted to, but argued were not job related) and witness testimony that Marsha was a “very motivated manager” swayed the case in Marsha’s favor.

Throughout this analysis, I choose to rely more heavily on the employee’s interpretation of events because their perspectives are more closely aligned with the evidence collected during the OCRC investigations. One must also realize that within all of these cases employers have a vested interest in defending their organizations. In fact, employers rarely openly admitted that a member of their organization was possibly discriminatory. And, as can be seen in Table 6, even the more hostile forms of firing
discrimination were explained through meritocracy, simple denials that discrimination took place, and challenges to the OCRC’s jurisdiction.

For instance, in cases of quid pro quo sexual harassment that led to firing, nearly half (41%) of employers either simply denied discrimination (without offering an alternative account of the firing episode) or accused the OCRC of overstepping its jurisdictional boundaries. In one example, although the official company response was a denial of any wrongdoing, it did not present Jim Lasso (the alleged perpetrator) during the Fact Finding conference. The company’s representative justified his absence by claiming that he no longer worked for the company. Yet, the case investigator notes that, even though he no longer worked at that facility, he continues to be an owner of the Company. His failure to show at the Fact Finding Conference not only impacted the Respondent, but also raised suspicion of certain wrong doing on his part; plus the fact that Jim Lasso never provided an affidavit denying the sexual harassment allegations in the charge.

Clearly, some employers accused of the more blatant forms of firing discrimination may feel that simple denials and technicalities will cause the case to be dismissed. Thus, they are more likely to present these excuses. The benefit of this data, however, is that these justifications must withstand the scrutiny of Civil Rights investigators.
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of Policy</td>
<td>48 (31%)</td>
<td>10 (77%)</td>
<td>9 (16%)</td>
<td>6 (38%)</td>
<td>11 (26%)</td>
<td>---</td>
<td>4 (33%)</td>
<td>8 (36%)</td>
</tr>
<tr>
<td>Poor Performance</td>
<td>55 (36%)</td>
<td>1 (8%)</td>
<td>18 (31%)</td>
<td>6 (38%)</td>
<td>11 (26%)</td>
<td>1 (8%)</td>
<td>4 (33%)</td>
<td>4 (18%)</td>
</tr>
<tr>
<td>Poor Attendance</td>
<td>18 (12%)</td>
<td>1 (8%)</td>
<td>10 (17%)</td>
<td>---</td>
<td>2 (5%)</td>
<td>1 (8%)</td>
<td>1 (8%)</td>
<td>---</td>
</tr>
<tr>
<td>Insubordination</td>
<td>7 (5%)</td>
<td>---</td>
<td>2 (3%)</td>
<td>1 (6%)</td>
<td>5 (12%)</td>
<td>---</td>
<td>1 (8%)</td>
<td>---</td>
</tr>
<tr>
<td>Denial of Discrimination</td>
<td>14 (9%)</td>
<td>1 (8%)</td>
<td>5 (9%)</td>
<td>2 (13%)</td>
<td>7 (16%)</td>
<td>1 (8%)</td>
<td>2 (17%)</td>
<td>5 (23%)</td>
</tr>
<tr>
<td>Complainant Quit</td>
<td>6 (4%)</td>
<td>---</td>
<td>4 (7%)</td>
<td>1 (6%)</td>
<td>2 (5%)</td>
<td>2 (17%)</td>
<td>---</td>
<td>1 (5%)</td>
</tr>
<tr>
<td>Financial/Downsizing</td>
<td>4 (3%)</td>
<td>---</td>
<td>8 (14%)</td>
<td>---</td>
<td>4 (9%)</td>
<td>7 (58%)</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>OCRC lacks jurisdiction</td>
<td>1 (1%)</td>
<td>---</td>
<td>2 (3%)</td>
<td>---</td>
<td>1 (2%)</td>
<td>---</td>
<td>---</td>
<td>4 (18%)</td>
</tr>
<tr>
<td>Total number of cases…</td>
<td>153</td>
<td>13</td>
<td>58</td>
<td>16</td>
<td>43</td>
<td>12</td>
<td>12</td>
<td>22</td>
</tr>
</tbody>
</table>

Note: Percentages in parentheses are rounded so may not total to 100%; "---" represents zero cases in that category

Table 6 • Dyad of Employee and Employer View of the Firing Discrimination Episode
Evaluating the Effect of Formalization

Figure 5 demonstrates the breakdown of forms of discriminatory firing by organizational size. As shown, employees within mid-sized (52%) and large companies (48%) were substantially more likely than employees within small organizations (31%) to claim that they were fired on the basis of differential treatment in performance. This provides preliminary support for my first hypothesis that larger organizations will resort to more objective rationales to explain firing.

Interestingly, Figure 5 also demonstrates that firing stemming from differential treatment on the basis of pregnancy is twice as frequent in small organizations (28.2%)
than large organizations (14.1%). This may be partially be explained by the fact that large employers are significantly more likely to create maternity leave policies (Kelly and Dobbin 1999). Established maternity procedures may reduce the likelihood of biases being used against pregnant women in firing.

Figure 6 provides further evidence for my first hypothesis. Public sector employees (63%) are more likely to claim that they were fired on the basis of differential treatment in performance than employees in the other work industries (all under 50%). The action of invoking alleged performance deficiencies among public sector managers is in line with prior work (Byron and Roscigno 2007). Importantly, there were no public sector complaints of differential treatment on the basis of pregnancy as a source of discriminatory firing. Pregnant women are protected in the public sector because these jobs are more likely (than for profit employers) to have uniform and generous maternity leave policies (Kelly and Dobbin 1999; United States Office of Personnel Management 2000).
Figure 6: Process of Firing Discrimination by Industrial Sector

**Evaluating the Effect of Workplace Composition**

Table 7 partially supports my second hypothesis. On average\textsuperscript{16}, higher concentrations of African Americans appears to protect them from firings that result from hostile work environments. In workplaces that had racially hostile environments there were relatively few African Americans (12.4\%). Surprisingly, this is not the case for women. In fact, differential treatment on the basis of pregnancy tended to take place in organizations with \textit{high} percentages of female employees (61\% on average) and female

\textsuperscript{16} The averages in this table may appear high when compared to national workplace composition averages because this data set is not representative of all workplaces. It only measures those that have discrimination charges filed against them.
managers (48% on average). This result does, however, confirm the expectation that pregnancy discrimination remains salient even within gender segregated jobs.

### Table 7 - Cross Tabulations of Workplace Composition by Process of Discrimination

<table>
<thead>
<tr>
<th>Process of Discrimination</th>
<th>% Black Employees</th>
<th>% Female Employees</th>
<th>% Black Managers</th>
<th>% Female Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Differential Treatment: Performance</td>
<td>21.6</td>
<td>48.8</td>
<td>15.1</td>
<td>38.5</td>
</tr>
<tr>
<td>Differential Treatment: Behavior</td>
<td>17.0</td>
<td>45.4</td>
<td>8.0</td>
<td>42.3</td>
</tr>
<tr>
<td>Differential Treatment: Pregnancy</td>
<td>13.1</td>
<td>61.1</td>
<td>8.4</td>
<td>47.3</td>
</tr>
<tr>
<td>Arbitrary Firing</td>
<td>15.2</td>
<td>42.8</td>
<td>11.4</td>
<td>32.9</td>
</tr>
<tr>
<td>Retaliatory Firing</td>
<td>19.2</td>
<td>39.6</td>
<td>11.2</td>
<td>30.4</td>
</tr>
<tr>
<td>Financial/Downsizing</td>
<td>11.6</td>
<td>49.9</td>
<td>7.5</td>
<td>40.3</td>
</tr>
<tr>
<td>Hostile Environment</td>
<td>12.4</td>
<td>44.1</td>
<td>12.6</td>
<td>44.5</td>
</tr>
<tr>
<td>Refused Sexual Advances</td>
<td>17.9</td>
<td>34.1</td>
<td>16.9</td>
<td>28.9</td>
</tr>
</tbody>
</table>

**Evaluating the Effects of Social Location**

Figure 7 presents a general description of how each process of firing discrimination varies by race and sex. As shown, approximately 60% of all Black men and Black women report that differential treatment on the basis of performance was the primary cause of their dismissals. In contrast, only 26% of White women reported biased assessments of performance as the main issue in their termination.

These results lend support to my third hypotheses (3b). Biased evaluations of performance and productivity are the most common complaints of African Americans who were unjustly fired. Furthermore, blatant firing processes such as arbitrary unfair
treatment and hostile work environments (where malicious bullying takes place) are much less frequently reported among all groups (between 2% and 10%).

In line with hypothesis 3c, pregnancy is an especially damaging condition for women. There are also clear racial differences in this process with nearly 40% of White women arguing that they were mistreated and fired because of their pregnancy compared to only 10% of Black women. Some of this gap can arguably be attributed the different types of jobs that White and Black women are concentrated in (Ortiz and Roscigno 2009). Accordingly, in chapter 7, I explore whether this racial gap in pregnancy based firing holds after organizational controls.

Figure 7 also speaks to my fourth hypothesis. Quid pro quo sexual harassment (i.e., refusing sexual advances) is responsible for 6% and 13%, respectively, of the claims of discrimination in firing among Black women and White women. Moreover, retaliatory firing is reported as an important process for over 10% of Black men, Black women, and White women.
**Conclusion**

The descriptive statistics reported above provide preliminary evidence that both structural and interactional factors are important to the process of firing discrimination. Although the majority employee/employer debates about discriminatory firing center on differential treatment in regards to some form of meritocracy, struggles for power and hierarchy maintenance are still relevant as well. Fortunately, it appears from these bivariate patterns that formalized organizational structures may in some ways protect workers from the more hostile forms of discriminatory firing.
In the next two chapters, I build on these findings with a more rigorous quantitative analysis that estimates the effect of these variables (net of other important factors) in a multivariate context. The descriptive patterns and correlation matrix of the variables used in my regression analysis are located on the last two pages of this chapter (Table 8 and Table 9). The correlations among the variables in my model are all reasonable, except where high correlations were expected (e.g., year and the square of year). Therefore, I have little concern about multi-collinearity among the variables.

Though I spend some time addressing these quantitative models, the main contribution of the next two chapters is an in depth discussion of the case narratives from which this quantitative information was drawn. My primary focus will be on the “meritocratic” justifications for discriminatory firing because they are the most common (see Table 6). These narratives shed significant light on the process of discriminatory firing as experienced by African Americans and women.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Standard Deviation</th>
<th>Number missing Pre-Imputation</th>
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</thead>
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<tr>
<td>Differential Treatment:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance</td>
<td>0.4650</td>
<td>0.4995</td>
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</tr>
<tr>
<td>Differential Treatment: Pregnancy</td>
<td>0.1763</td>
<td>0.3816</td>
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<tr>
<td>Social Location</td>
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<tr>
<td>Black Male</td>
<td>0.3374</td>
<td>0.4735</td>
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</tr>
<tr>
<td>Black Female</td>
<td>0.2736</td>
<td>0.4464</td>
<td>---</td>
</tr>
<tr>
<td>White Female</td>
<td>0.3891</td>
<td>0.4882</td>
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<tr>
<td>Organizational Structure</td>
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<tr>
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<td>0.3910</td>
<td>163</td>
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<tr>
<td>Mid-Sized Organization</td>
<td>0.3191</td>
<td>0.4667</td>
<td>163</td>
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<tr>
<td>Large Organization</td>
<td>0.4930</td>
<td>0.5006</td>
<td>163</td>
</tr>
<tr>
<td>Organizational Composition</td>
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<tr>
<td>Percent Black Employees</td>
<td>18.42</td>
<td>16.45</td>
<td>154</td>
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<tr>
<td>Percent Female Managers</td>
<td>38.65</td>
<td>26.70</td>
<td>171</td>
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<td>Work Sector</td>
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<tr>
<td>Core</td>
<td>0.3040</td>
<td>0.4606</td>
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<td>Low Service</td>
<td>0.3860</td>
<td>0.4875</td>
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<tr>
<td>High Service</td>
<td>0.2036</td>
<td>0.4032</td>
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<tr>
<td>Public Sector</td>
<td>0.1064</td>
<td>0.3088</td>
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<td>Controls</td>
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<td>Occupational Prestige</td>
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<td>10.88</td>
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<td>Age</td>
<td>33.29</td>
<td>8.387</td>
<td>33</td>
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<td>Seniority in Months</td>
<td>50.34</td>
<td>51.28</td>
<td>150</td>
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<td>0.5046</td>
<td>0.5007</td>
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<td>Year of Charge</td>
<td>1992.02</td>
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Table 8 • Descriptive Statistics of Variables Used in the Regression Analysis
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<th>13</th>
<th>14</th>
<th>15</th>
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<tr>
<td>2.</td>
<td>Age</td>
<td>-0.04</td>
<td>1.00</td>
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<td>3.</td>
<td>Seniority in Months</td>
<td>-0.01</td>
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<td>1.00</td>
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<td>4.</td>
<td>Race Basis of the Case</td>
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<td>0.20</td>
<td>0.16</td>
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<td>5.</td>
<td>Year of Charge</td>
<td>-0.12</td>
<td>0.06</td>
<td>0.15</td>
<td>-0.04</td>
<td>1.00</td>
<td></td>
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<td>6.</td>
<td>Year of Charge (squared)</td>
<td>-0.12</td>
<td>0.06</td>
<td>0.18</td>
<td>-0.04</td>
<td>0.98</td>
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<tr>
<td>7.</td>
<td>Black Male</td>
<td>-0.13</td>
<td>0.13</td>
<td>0.05</td>
<td>-0.51</td>
<td>-0.13</td>
<td>-0.12</td>
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<tr>
<td>8.</td>
<td>Black Female</td>
<td>0.03</td>
<td>-0.01</td>
<td>0.06</td>
<td>-0.26</td>
<td>0.02</td>
<td>0.01</td>
<td>-0.44</td>
<td>1.00</td>
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<td>9.</td>
<td>Small Firm</td>
<td>0.01</td>
<td>0.02</td>
<td>-0.04</td>
<td>-0.07</td>
<td>-0.01</td>
<td>0.01</td>
<td>0.05</td>
<td>-0.11</td>
<td>1.00</td>
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<td></td>
</tr>
<tr>
<td>10.</td>
<td>Mid-Sized Firm</td>
<td>-0.04</td>
<td>0.02</td>
<td>-0.08</td>
<td>0.01</td>
<td>0.16</td>
<td>0.17</td>
<td>-0.07</td>
<td>-0.01</td>
<td>-0.33</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>% Black Employees</td>
<td>-0.09</td>
<td>0.03</td>
<td>-0.01</td>
<td>0.10</td>
<td>0.10</td>
<td>0.08</td>
<td>-0.02</td>
<td>0.27</td>
<td>-0.14</td>
<td>0.01</td>
<td>1.00</td>
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<tr>
<td>12.</td>
<td>% Female Managers</td>
<td>0.11</td>
<td>-0.15</td>
<td>-0.01</td>
<td>-0.03</td>
<td>-0.01</td>
<td>0.01</td>
<td>-0.21</td>
<td>0.17</td>
<td>-0.13</td>
<td>-0.01</td>
<td>0.17</td>
<td>1.00</td>
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<td>13.</td>
<td>Core</td>
<td>-0.13</td>
<td>0.11</td>
<td>0.10</td>
<td>0.09</td>
<td>0.05</td>
<td>0.03</td>
<td>0.16</td>
<td>-0.15</td>
<td>0.06</td>
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<td>-0.07</td>
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<td>14.</td>
<td>Low Service</td>
<td>-0.09</td>
<td>-0.11</td>
<td>-0.15</td>
<td>-0.08</td>
<td>0.03</td>
<td>0.03</td>
<td>-0.04</td>
<td>0.05</td>
<td>0.10</td>
<td>-0.01</td>
<td>-0.07</td>
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<td>15.</td>
<td>High Service</td>
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<td>-0.04</td>
<td>-0.22</td>
<td>0.23</td>
<td>-0.08</td>
<td>0.00</td>
<td>0.14</td>
<td>0.30</td>
<td>-0.33</td>
<td>-0.40</td>
<td>1.00</td>
</tr>
</tbody>
</table>

**Table 9 • Correlations of Variables in the Analysis**
CHAPTER 6
AFRICAN AMERICANS AND DISCRIMINATORY FIRING

Table 10 presents the results of a logistic regression predicting performance based differential treatment in firing by the race and sex of the employee, organizational characteristics, and available control variables. Surprisingly, my first two hypotheses are not supported in this multivariate context. That is, despite striking bivariate patterns, the variables measuring the organizational structure of work are not significant in full models (See Model 2). However, supplemental analyses show that these organizational variables are all significant and in the hypothesized directions when they are presented in the model alone. This pattern suggests that the race/sex of the employee and the control variables are genuinely stealing explanatory power from the organizational context, rather than the lack of hypothesized significance stemming from a sample size bias. Furthermore, the decrease in the likelihood ratio (-2 Log Likelihood) indicates that these variables yield a better fit model when they are all considered simultaneously.

Two control variables reach at least marginal significance. First, every extra month of seniority decreases the odds of firing based on differential treatment in performance by 1%. Understandably, employees who accrue seniority should have

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17 With the exception of pregnancy based differential treatment in firing, none of the other 6 processes of firing discrimination had any significant predictors in supplemental regression models. This is likely due to the relative infrequency of these other processes (see Table 6). Therefore, these analyses are omitted.
received at least satisfactory performance reviews along the way. Therefore, it seems unlikely that performance will be the explanation for their discharge. The other significant control variable is time. Time has a curvilinear relationship with the dependent variable. The odds of a performance based discriminatory firing process decreases in the early years of this data, only to increase in the later years.

Most importantly, in line with prior work, these models present strong evidence that an employee’s race/sex status is significantly related to the mechanism of discriminatory firing that they experience. African American women and men have over two and three times (respectively) the odds of facing discriminatory firing on the basis of differential treatment in performance than Caucasian women. Wilson (2005) speculates that race based firing gaps such as these exist because employers hold biases against African Americans and seek out particular characteristics and “soft skills” that African Americans are presumed to be deficient in.

In the following section of this chapter I explore this speculation and evaluate my final two hypotheses to see how statistical discrimination and social closure are implicated in these quantitative patterns. To do this, I delve into the rich qualitative narratives associated with each of these cases. This approach reveals the process of firing discrimination in ways that quantitative models alone cannot.
Table 10: Logistic Regression of Differential Treatment: Performance vs. All Other Processes

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Odds Ratio</td>
</tr>
<tr>
<td>Individual Controls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupational Prestige</td>
<td>.007 (.011)</td>
<td>1.01</td>
</tr>
<tr>
<td>Age</td>
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<td>1.01</td>
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<tr>
<td>Seniority in Months</td>
<td>-.005† (.003)</td>
<td>.99</td>
</tr>
<tr>
<td>Race Basis of the Case</td>
<td>1.29*** (.320)</td>
<td>3.63</td>
</tr>
<tr>
<td>Year of Charge</td>
<td>-.344† (.196)</td>
<td>.71</td>
</tr>
<tr>
<td>Year of Charge Squared</td>
<td>.020 (.012)</td>
<td>1.02</td>
</tr>
<tr>
<td>Social Location</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black Male</td>
<td>1.15* (.449)</td>
<td>3.16</td>
</tr>
<tr>
<td>Black Female</td>
<td>.96* (.422)</td>
<td>2.62</td>
</tr>
<tr>
<td>Organizational Structure</td>
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<td></td>
</tr>
<tr>
<td>Small Organization</td>
<td>-.610 (.375)</td>
<td>0.54</td>
</tr>
<tr>
<td>Mid-Sized Organization</td>
<td>.349 (.326)</td>
<td>1.41</td>
</tr>
<tr>
<td>Organizational Composition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent Black Employees</td>
<td>.019 (.012)</td>
<td>1.01</td>
</tr>
<tr>
<td>Percent Female Managers</td>
<td>.000 (.008)</td>
<td>1.00</td>
</tr>
<tr>
<td>Work Sector</td>
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<td></td>
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<tr>
<td>Core</td>
<td>-.411 (.469)</td>
<td>.614</td>
</tr>
<tr>
<td>Low Service</td>
<td>-.664 (.488)</td>
<td>.519</td>
</tr>
<tr>
<td>High Service</td>
<td>-.661 (.529)</td>
<td>.516</td>
</tr>
<tr>
<td>Intercept</td>
<td>.152 (.940)</td>
<td></td>
</tr>
<tr>
<td>-2 Log Likelihood</td>
<td>418.447***</td>
<td></td>
</tr>
</tbody>
</table>

Note: Standard Error in Parentheses; † p<.1, * p<.05; **p<.01; ***p<.001; 5 imputations pooled; Reference Variables for a= White female; b= Large Organizations; c= State Industry
Statistical Discrimination, Race, and Firing

The theory of statistical discrimination suggests that employers use statistics or perceptions of productivity differences between groups to avoid employing or promoting certain workers. Indeed, these biased perceptions about deficient productivity may be exhibited most clearly when employers evaluate new employees or appoint employees to new roles where productivity is highly regarded. So, when Brooke Tills was denied a nursing promotion and told by her supervisor that “this place would be better run without all the niggers and fags”, there is a blatant implication that Brooke’s supervisor felt that African American and gay people are less productive.

Yet, Loury (1998) predicts that statistical discrimination may also play a role in the discriminatory firing of African Americans. These data provide some support for this expectation. Take for example the case of Benjamin Cannon, an African American part-time activities assistant at a psychiatric center for children. Benjamin worked for five months until he was fired by his supervisor, Nancy Kline, for alleged performance issues. Yet, Benjamin suggests that

On several occasions, Ms. Kline made racially biased comments to me. She stated that I don’t work as well with the White children as I do with the Black children. Ms. Kline had very little contact with me and had nothing to support this statement except her belief that my race affected my ability to do the job.

Janet Howard, an African American who led Benjamin’s work group, joined him in refuting these allegations. In fact, Janet maintains that

Benjamin was a good worker, and I totally disagreed with his mid-term and final performance evaluations, but I was not asked for my input. Benjamin was tardy at times, but he also explained them to Ms. Kline. Ms. Kline did not counsel Benjamin prior to giving him a written warning. Ms. Kline was absent a great deal herself and did not observe Benjamin’s attendance… Ms. Kline would take the Whites’ word over Blacks and she would base her decisions on what the Whites said, as she did with Benjamin.
Reasonably, Janet felt that she should have been consulted about the decision to fire Benjamin because she was in a leadership role and actually observed his interactions. But instead, Ms. Kline seemed to rely on the word of Caucasian workers to bolster her preconceived beliefs about Black men’s potential to interact with White children. Because this interaction was an important part of Benjamin’s job performance, Ms. Kline’s preconceived beliefs penalized him without giving him a chance to demonstrate his skills.

And, Ms. Kline had apparently done this before. Jerrell Taylor, an African American activity therapist aide, came forward as a witness noting that he too was fired during his probationary period “for no reason.” But after filing a charge with the OCRC regarding his discharge, he was reinstated within two and a half weeks with the explanation that his termination was a mistake.

In another example, Jewel Sampson an African American contract employee for the state government was terminated for alleged “budgetary considerations.” In defending the termination, her supervisor Maya Spalding (White) told the OCRC that “Jewel was expendable because she was not working on as many projects as the other researchers or on any projects with any real importance.” Yet, Jewel and at least two witnesses claimed that “this is because Mrs. Spalding would not assign a high number of projects or high priority projects to me or the other Black researchers because of our race.” In fact, Farah Jefferson (who was a African American researcher with the company prior to Jewel’s hiring) maintains that
Mrs. Spalding did not want to hire Jewel and, not until Jewel threatened to sue, did Mrs. Spalding agree to hire her. I feel that Mrs. Spalding does not believe that Blacks are capable of doing research work…Mrs. Spalding would not assign her projects.

Moreover, Laurie Green (a White Fiscal officer) concurs.

Mrs. Spalding had no faith in Black employees. Because of this, Mrs. Spalding wouldn’t assign Jewel (and other Blacks) projects…this led to a lot of tension in the office because White employees are accusing the Black employees of not doing their share of the work, but they can’t because Mrs. Spalding wouldn’t allow them to.

This tension in fact became so palpable that Laurie Green shouted loudly one day that she was tired of “the Black shit in this office”, an offense for which she was suspended for two days. This case reveals the powerful and lasting effects of statistical discrimination.

Indeed, employers who rely on statistical discrimination may use the distribution of assignments to enact a self-fulfilling prophecy and create a justification for dismissing African Americans. Mrs. Spalding arrives at the conclusion that Jewel is expendable without recognizing that her own biases contribute to Jewel’s marginalization - marginalization which is ultimately used as evidence to support Jewel’s dismissal.

Interestingly, everyone notices this mechanism but Mrs. Spalding.

Some managers are even more explicit in their assumptions about African Americans and performance. The witness in one discriminatory firing case reports that the President of her company expressed his hesitancy in hiring an African American female as an accounting technician. On one occasion he boldly asked, “She’s Black, do you think she’ll steal from me?”

In line with Loury’s (1998) expectation, employers do sometimes use their preconceived beliefs about race and performance to the detriment of African American employees. These preconceptions seemingly influence employers to unconsciously act in
ways that will ultimately support their biases. The vast majority of African American claimants, however, expressed direct differential treatment as the primary reason for their termination. Admittedly, it may be that clear race based differential treatment is more likely to be filed with the OCRC or verified by its investigators. I now turn to these cases.

**Performance, Closure, and Race Based Firing Discrimination**

Firing discrimination against African Americans is, unfortunately, still influenced by the lingering effects of racism and the desire amongst the powerful to maintain existing status hierarchies. Maintaining the status quo allows for the privileged to keep the rewards of their positions for themselves or similar others. Indeed, this enforcement of racial hierarchies is sometimes more overt (e.g., arbitrary firing, retaliatory firing, and hostile environments). But, because overt discrimination is no longer socially desirable, these racial hierarchies are often enforced in subtle ways.

In one mechanism, managers closely monitor African Americans, hold them to more strict standards of performance than Whites, and do not follow contractual progressive disciplinary policies prior to termination. This roundabout method creates a guise of meritocracy in dismissals. Employers simply justify these terminations with the claim that their African American employees are underperforming.

For example, Monique Thomas, a black auditor for the State government, was terminated for unsatisfactory work performance. While Monique’s work record showed that she had previous written reprimands (one for an alleged conversation between herself and another co-worker and another for time away from her desk), a review of the
personnel files revealed that there were no other reprimands found for any other
employee in the office. Ironically, Monique (the only black employee) had been accused
of talking to a co-worker. Yet somehow, the employer ignored the posted progressive
disciplinary policy and fired Monique (only).

Similarly, despite receiving favorable performance reviews, Joe Jackson (an
African American sales manager) was discharged and complained about more strict
standards.

Michael Kent, Regional Supervisor (White) set my sales goals much higher than the
previous sales managers at the same location. Mr. Kent immediately replaced me with
Josh Becker, White, who had much lower performance reviews than I. I became aware
from my co-workers that Mr. Kent was trying to fire me prior to my discharge.

These cases provide evidence of race based differential treatment in firing,
especially because both Monique and Joe were able to provide a White comparative that
received more favorable treatment. This scenario occurs across a wide range of jobs.
Even African American executives could not escape unwarranted managerial scrutiny
and differential treatment.

Consider the case of Karen Davis, an African American Director of a private
sector corporation.

I was discharged (from the position of Director) by Luke Wrigley, Chief Executive
Officer. Wrigley said that he was not satisfied with my performance in the area of staff
turnover and the status of one grant program. I feel that I was discharged due to
considerations of my race. I was subjected to closer scrutiny than similarly situated co-
workers. Wrigley required that I give him a calendar of upcoming appointments, but this
was not required of the White managers. In 1993, Wrigley told me that I should hire
someone “totally opposite” of me when I hired an African American employee. He later
told me that I hired too many minorities and should review my hiring
practices…Wrigley’s criticisms of my performance are unfounded. Turnover in my
department was no higher than in [other departments], but those Directors were not
formally reprimanded or discharged.
According to employer records, in Karen’s only review as a Director her overall rating was “Fully Satisfactory.” Yet her boss maintains that she was given ample warning that her performance was inadequate. Although Mr. Wrigley did not follow the progressive disciplinary policies that call for the issuance of documented verbal and written warnings before termination, he claims,

While there was no written documentation prior to that and he didn’t specifically state that Karen faced further disciplinary action, he told her that he was “concerned about her performance”. He furthers, “Someone would have to be very naïve not to be aware that ultimately their job was in jeopardy”. [And in response to telling her to hire someone totally opposite of herself]….he denies that he meant the comment racially but asserts that he meant the assistant should be strong where Karen was weak. He says that he did not specifically tell Karen not to hire anyone because of their race, but admits that he did tell her that he was concerned that it would appear as if she was giving African American candidates preference and that she should maintain a “good balance.”

The case investigator also found that Mr. Wrigley was deceptive in reporting Karen’s high turnover which he stated as evidence that she was improperly managing her personnel. While Mr. Wrigley suggests that more than 60% of the Karen’s employees left, he included a temporary and a per diem employee in the calculation, which inflated the actual rate of 35.7%. This true rate was comparable if not lower than other departments.

The aforementioned examples reveal much about contemporary discrimination. In line with prior work, some employers try to build fictive cases of performance issues against stigmatized employees to justify differential treatment (see Robert and Harlan 2006). African Americans are continually accused of being poor performers, an identity that coincides with overarching negative stereotypes. And, as one witness fittingly
remarks, employer’s constant criticism and close monitoring leaves African Americans with the sense that “they could not do anything to satisfy their supervisors.”

Within these narratives, we also begin to see how employers express their feelings about race without sounding racist (see Bonilla Silva 2002). Mr. Wrigley’s open ended reference telling Karen to hire someone totally opposite of herself and to achieve a “good balance” by not hiring too many Blacks highlights how managers tiptoe around the issue of race with African Americans who are in positions of authority.

“Soft Skills”, Closure, and Race

Differentially evaluating measurable performance criteria is a common mechanism of firing discrimination. However, even in the absence of these alleged differences managers sometimes invoke “soft skill” performance issues as justifications for firing. As Chad Johnson, an African American Shipping Clerk notes

On October 20, 1991 I was terminated from my job. I had been working there since February 18, 1991. John Castiglio (owner) terminated me because he said I did not get along with my co-workers. I had no trouble getting along with my co-workers. I got along with my supervisor Paul even though he watched me more closely than he did other co-workers …and there have never been complaints about my work.

A former co-worker who served as a witness on this case sent in a signed letter expressing that she felt that Chad was discriminated against as well.

In having worked closely with Mr. Johnson I’ve found out that he was a very easy guy to get along with, always happy and eager to help out. As far as his dismissal I believe it to be unfair and unjust. John (owner) stated that Chad was fired because he was not dependable, abusive, and couldn’t work with other people. I personally find that hard to believe…As far as being abusive, I don’t think he uttered one abusive word the whole time he worked there…I strongly believe Mr. Johnson was let go because of his color, not his work…Respondent company does not like African Americans, and has said so many times to its supervision. It’s a family owned corporation….The respondent employs
between 80 and 100 employees but only two African American employees. None are in supervision.

In another case, Terrance Smith, an African American desk clerk was fired from his job at a motel because of “communication problems.” Specifically, Terrance’s manager claims that

He could not maintain eye contact with the guests and “froze” on several occasions requiring another person on occasion to take over the communication process; as a result of “freezing” in guest contact Terrance could not complete guest conversation without stuttering…Terrance showed no stuttering or stammering when I interviewed him earlier.

Terrance’s firing is discriminatory because he was discharged without progressive discipline. Meanwhile, personnel files substantiate that Rachel Fritz (White) was talked to on five different occasions about her attitude with guests at the front desk and over the telephone.

These cases validate Wilson’s (2005) conclusion that managers do sometimes draw on particularistic soft skill differences as evaluative criteria in firing. Dependability and communication are clearly subjective employment criteria. It is perhaps this ambiguity that makes them appealing scapegoats in instances of discrimination.

Employers also use “professionalism” and self presentation as a motivation to fire African Americans. Professionalism, however, commonly supplements claims of general performance issues. For example, the two reasons Carlese Martin (an African American assistant manager at a retail store) was discharged were because she “insisted on wearing her shirrtail out, which presented a sloppy, unkempt appearance” and “had repeated difficulty following bank deposit procedures.” Likewise, Lakisha Mills (an African American nurse), was terminated for an “unprofessional image and conduct” and a
patient complaint about her care. In her charge affidavit, Lakisha reflects on how her supervisor, Patricia West (White), “frequently criticized my hair style, though there was no written policy about hair. I wore an Afro American hairstyle.” Patricia West defends her actions by suggesting that

Lakisha demonstrated unprofessional appearance by wearing, for example, pants that were too tight and tops that were too short...sometimes Lakisha’s hair looked professional and, at other times, it did not...sometimes Lakisha had accessories in her hair, the style of her hair being fixed with different things.

The investigators for both cases, however, came to the conclusion that there was no evidence that either employee flagrantly violated the dress code and there were no further performance issues before they were dismissed. Moreover, both witnesses and personnel files corroborate that Whites were accused of similar performance issues yet treated more favorably with discipline.

According to employers, African American’s soft skill deficiencies lead to their termination. But evidence from workers, witnesses, and case investigators suggests that the managerial evaluation of soft skill performance is racially biased. In some cases, supervisors even seek to generate negative reports about Black workers and in failing to find any they resort to complaints about soft skills.

What we learn from the above accounts is that supervisors more closely scrutinize the performance of African Americans and this action allows them to find justifications for their dismissal. This subtle form of differential treatment falls in line with social closure theory because employers sometimes strive to build cases against African Americans while showing favoritism toward Caucasian employees. Whether their
motivation is ultimately conscious or unconscious, this discriminatory mechanism will be particularly difficult to prevent because it looks meritocratic on paper.

*Performance, Race, and the Public Sector*

Although there were no sectoral differences in the odds of performance based discriminatory firing after controls (see Table 10 – model 2), the qualitative material did reveal a notable characteristic about the process of firing in the public sector. In fact, the majority of African Americans who are terminated for alleged performance deficiencies in the public sector are dismissed during their initial probationary period. Darnell Thomson, for example, was fired from his correction officer’s position within a few days before the end of his probationary period because of alleged performance concerns. Krista Reno (White) who worked in the prison’s dental unit was also removed during probation from the same facility because of absenteeism and tardiness. Yet Krista was returned to her previous post at another correctional institution. The respondent acknowledges this fact and defensively claims that when the facility posted the vacancy “Krista was the only one to apply for the job and we needed to fill the position due to the specialized skills that are required for the dental equipment that she worked with… Krista has since resigned prior to eminent probationary removal.” The respondent’s actions were discriminatory because Krista was given at least three chances in three different probationary periods and Darnell was not afforded a similar opportunity.

Importantly, this case also highlights how rampant probationary firing may be in the public sector. Zwerling and Silver (1992) note that nearly 90% of U.S. postal workers
who are involuntarily dismissed are let go during their probationary period. It is during this period that supervisor discretion is likely highest in that employees are usually not covered by unions and that employers do not have to follow progressive disciplinary actions (Zwerling and Silver 1992).

When Gerri Rodgers, an African American police officer, was fired near the end of her probationary period she was also told that is was because of her poor performance. But Gerri argues that her performance deficiency stemmed from her training officer who would “work on crossword puzzles and read the newspaper as opposed to training her. Thus, she did not receive proper training or a fair evaluation.”

Inadequate training also emerges in the case of Lisa Flick. Lisa (an African American) was fired from her position as an eligibility specialist for the state because “she failed her probation.” Lisa explains

I began my probation on June 25, 1997 with a trainer, also Black who had never trained before. While it seemed my first three months were going well. I learned in the second half of my probation that I had not been taught many things I needed to know. I tried to catch up, but apparently, was not successful. I was not given a fair opportunity to make up for my inadequate early training. Immediately before me, two Caucasians, with experienced Caucasians trainers, passed their probations.

The idea that African Americans may be assigned to racially similar instructors is not new. Lefkowitz (1994), in fact, notes that African American employees are statistically more likely to be assigned supervisors of the same race within large corporations. Moreover, Durr and Logan (1997) report that African Americans in the New York state government are also relegated to racial submarkets where they are hired specifically to serve other African Americans. To the extent that these practices are prevalent in the
public sector, race based organizational matching and disparate training may represent two underlying explanations for aggregate differences in dismissals.

**Policy Violations, Closure, and Race Based Firing Discrimination**

Similar to the accusations of general poor performance, employers also make links between African Americans and a propensity to violate company policies. These alleged violations, in turn, justify their dismissals. There are two distinct responses among employees accused of violating rules. Some employees deny that they have violated any policy. Others, however, admit to rule breaking but suggest that their actions are within the established norms of the workplace. Accordingly, their terminations are discriminatory because they are more harshly reprimanded than their co-workers.

When Betty Jones (an African American nursing assistant) was fired for violating company policy she vehemently denied the accusation. Betty was fired because she allegedly committed an act of physical abuse on a patient. Betty presented a witness, Martha Smith, who was present during the alleged violation. Ms. Smith explained that Betty did not abuse the patient and that this patient complained all the time about employees abusing her. Yet, Ms. Smith was never interviewed by the respondent concerning the incident. Ms. Smith also asserted that this patient had also complained that Arvin Daly (Caucasian) abused her, yet nothing was done to Mr. Daly.

Likewise, Shauna Hart, an African American housekeeping ambassador was discharged because she was accused of smoking in a guest’s room and making a harassing phone call to a White supervisor. Shauna denied these claims. She also noted
that she was never given progressive steps of discipline, as were Whites, after being accused of violating company rules.

In yet another case, Emmett Johns, an African American corrections officer was fired for allegedly violating rules regarding sexual misconduct during his probationary period. Emmett was “accused of fondling an unnamed inmate in an incident report prepared more than a month prior to his discharge.” Emmett denied the allegation - an allegation that he was not made aware of until minutes before his termination.

And, the case investigator notes that, “it appears that Respondent relied on inmate testimony to incriminate Emmett of sexual misconduct.” Emmett’s supervisor openly admits that one female inmate “accused Emmett of fondling another unnamed inmate on an unspecified date…[but she] identified the [allegedly abused] inmate from a selection of pictures.” Furthermore, when asked by the commission why Emmett was not fired earlier for the alleged violation, Emmett’s supervisor responds, “he should have been removed before. He was not because finding good employees to work in a correctional setting is not easy.” In the end, Emmett was fired with “no history of formal discipline or corrective counseling” and other African American correction officers were left with the impression that Emmett was “set up” because “he never touched that girl.”

These cases as well as others where African Americans are accused of sleeping on duty, not reporting off work properly, or otherwise breaking company rules indicate a “guilty until proven innocent” indictment against African Americans. Simply, some employers who accuse African Americans of policy violations invest little effort in
substantiating these claims and do not use progressive discipline as they do with White employees.

In other examples of differential treatment regarding rule violations, African Americans admit to the alleged actions. But, they insist that supervisors apply the strictest standards to them while Whites who violate rules are not as severely disciplined, if disciplined at all. Take the case of Anthony Brown, a hylo driver for a manufacturing business. Anthony was terminated after damaging some equipment while driving, yet Whites who had arguably done worse damage during accidents (e.g., breaking a water main) were retained.

Likewise, Jerome Miller (a cashier at a fast food restaurant) was discharged for “violation of policy-mishandling a void.” He was “called into Mark Seamer’s office [General Manager-White] and asked to sign a notice of unsatisfactory performance and turn in my keys.” Yet, Jerome identified Sean Baxter (a White manager) who was only issued a warning after losing a deposit of over $1000 dollars. Moreover, witnesses attest that the “void done by Jerome is commonly practiced and Carla Stack (White) performed the same void and she was not disciplined in any manner.”

Although calling on company policy to fire African Americans is a common practice in low status jobs, higher occupational prestige does not shield African Americans from this mechanism. For example, Cheryl Pace (an African American nurse) was held to the strictest interpretations of company policy. Bob Lassner, an administrator at the nursing home where Cheryl worked, justified her dismissal to the Commission stating that “company policy requires that the charge nurse, at the very start of her shift,
count and sign the narcotic sheet.” In an affidavit, Lassner states that he told Mrs. Pace “as soon as you enter the Nurses’ station, take off your coat and sign the count sheet.” Lassner argues that on one occasion Mrs. Pace failed to sign the sheet for an hour into her shift. To this Cheryl responds that the other (White) employees could sign the sheet at their leisure and when she asked why she was the only one required to sign the sheet right away, Lassner replied, “Don’t ask me.”

Similarly, Larry Wallace was fired from his store manager’s position because he “asked and pressured employees reporting to him to over charge customers on their purchases and to charge customers for items they did not purchase.” In a plea to the civil rights commission, Larry’s employer asserts that “he violated the most basic policy—honesty. As a result he was fired.” Yet, in defending himself, Larry notes that he did tell cashiers that if a customer breaks something after they pay for it, they must pay again to get another one. This was his and several witnesses’ understanding of company policy. Moreover, Larry asserts that his boss did not investigate the allegations by checking the register receipts or sending a mystery shopper, but simply took the cashier’s allegations as true.

In situations where both black and white employees received reprimands for breaking rules, Whites are treated in a more lenient fashion by simply being moved or counseled as opposed to being discharged. John, a Black bank manager notes I was discharged for failing to follow procedure and expectations by policy, yet Ms. Stewart (white) was afforded the opportunity to be demoted to the position of Customer Service Representative wherein, I was denied the same privilege of continued employment.
In conclusion, the above cases represent the many examples whereby African Americans report being harshly reprimanded for violating company policies, while similarly situated Whites are given leniency or not reprimanded at all. The case investigations validate that many of these violations are workplace norms that are routinely engaged in and that African Americans are the only employees to be terminated for involvement in them. And despite employer justifications, organizational guidelines and witness accounts reveal these cases as differential treatment.

Social closure theory provides a fitting explanation for this mistreatment. As noted in prior research, managers will sometimes use their discretion to subjectively apply existing organizational rules along racial lines (Roscigno, Garcia, and Bobbit-Zeher 2007). This seemingly neutral mechanism targets African Americans for firing and simultaneously reinforces a racial hierarchy in the workplace.

**Retaliation, Closure, and Race Based Firing Discrimination**

Retaliation is the core mechanism in nearly 10% of the discriminatory firing cases filed by African Americans (Figure 7). Retaliatory discrimination presents a “double edge sword” for employees. Not only do they experience prior mistreatment, but they are then re-victimized by being fired. Take the case of Cory Blake an African American crusher operator at a recycling company. Cory reports that he was subjected to unwarranted criticism and an offensive environment because of his race. In his charge affidavit, Cory notes that his supervisor constantly screamed and used foul language toward him. On June 9, 1990 Cory was suspended and complained to the NAACP about what he viewed
as discriminatory treatment. While the suspension was lifted due to union intervention, 4
days after his employer was contacted by the NAACP Cory was fired. Cory writes about
a meeting between him and the company owner Doug Benson.

I was called into the office by the company’s owner, Mr. Benson, who told me that he
was upset that I had contacted the NAACP. He said it would cause problems in the
company to have an outside agency involved.

Half an hour later, Mr. Benson rescinded Cory’s vacation request which was to
start the next day. The next morning Cory explained to his supervisor that he needed his
vacation to attend a funeral and the supervisor remarked that he should do what he
thought was best. The following Monday, Cory was fired for refusing to work. Similarly,
Matt Baker, an African American car salesman was subjected to “Black jokes and
stereotyping.” He complained to the manager but nothing was done. However, the
manager warned him that if he did “go to the owner, you’d better start looking for
another job.” Matt instead went to the NAACP. The NAACP investigator, Joan Willis,
called the employer and the General Manager answered. Mrs. Willis explains to the
OCRC that as the manager tried to set up a meeting between the owner and the NAACP
to discuss the complaint, the owner stated, “I don’t care about a damn NAACP; those
niggers can’t do anything to me.” The owner then refused subsequent calls, refused to
meet with the investigator, and directed her to his attorney. Evidence substantiates that
less than one month from the file with the NAACP, Matt was written up for two alleged
but non-terminable issues, charged with sexual harassment of a co-worker, and
terminated.
In another case, Floyd Master an African American Shuttle Bus Driver was fired 3 days after filing a complaint with the OCRC about being denied a shift change. Although the employer insists that he did not know of the prior complaint, the OCRC investigator substantiates that in accordance with OCRC policy the employer was informed by phone on the day the charge was filed. Despite the apparent causal link and witness testimony supporting Floyd’s case, the employer insists that Floyd was fired because of poor attendance and poor relationships with supervisors. These three examples as well as others reveal that complaints of discrimination are often temporally related to instances of firing. Plainly, employers become very upset when employees allow external agencies to challenge their existing workplace culture.

In other examples, employers retaliate even when African Americans complain within the organization itself. Samantha Holloway, an African American cashier/bartender at a large hotel chain, and various witnesses agree that there were frequent racially derogatory comments in the form of “coon” jokes which pervaded the workplace. Within a month of complaining to the management headquarters, Samantha was fired for alleged absenteeism. Employees who complain to upper level management about unequal pay, unequal promotions, and other different terms of employment face similar results. While managers state a variety of reasons for these terminations, they do not hold up during the investigations. Moreover, there appears to be an atmosphere of insensitivity among employers when African Americans complain about discrimination. The case of Jerry Smith is a prime example. Before being fired, Jerry Smith, an African American health educator, complained to his manager that he considered some comments
she made at a meeting to be racist. The respondent admits (through a letter from his lawyer) that the conversation between Lisa Hill (his manager) and Jerry took place. The respondent notes,

Lisa Hill commented to Jerry, after detecting alcohol on his breath after lunch, that blacks had a special duty to avoid having alcohol on their breath because they tended to stand out more than white people engaging in the same conduct...Coming from a black person such comments might have been more palatable. However coming from a white person such as Lisa Hill, it apparently caused him offense...If Jerry Smith were white, there would be no second guessing the company’s reason for firing him.

Either by inaction or by participation some employers imply that African Americans should just deal with racially derogatory remarks and offensive environments. And the action of complaining about “jokes” or other inappropriate behavior irritated employers so much that they resort to firing those employees.

Prior research correctly predicts that African Americans who complain about discrimination must also be wary of retaliatory firing. Retaliating against vocal workers is seen by employers as a strategy for silencing them and therefore resolving the problem (see Baucus and Dworkin 1998). Unfortunately, employers have a warped perception that those who complain about discrimination are trouble makers that need to be dealt with. This sentiment is summed up by one police sergeant who replied “It’s all out war” when he found out that he was being brought up on harassment charges with the OCRC. Being seen in this light, retaliatory firing is a clear example of social closure whereby employers quite intentionally discharge those who threaten the status quo within their organizations.
Different Processes by Sex

African American men and Arbitrary Firing Discrimination

Figure 7 also reveals that African American men (nearly 10%) are subject to a higher percentage of arbitrary unfairness in firing situations than other groups. Arbitrary discharge is differentiated from other performance based firings because of the overtly egregious nature of the dismissals. The qualitative case material speaks volumes about the volatile employment of African American men.

In some arbitrary firing cases, harassment and firing discrimination are intertwined. For example, Terrell Jones an African American electrician was fired within two months of being hired. The employer’s stated reason was that Terrell “did not hang enough lights on January 14th.” Terrell disputed this fact stating that there was no quota for handling lights and that he never received any verbal or written warning regarding unsatisfactory performance. Furthermore, within one month of employment both Terrell and another black employee observed a rope on a conduit rack tied to form a hanging noose. One week later Clint Harrison (White foreman) displayed himself as a Ku Klux Klansman while on the job and proceeded to taunt him with fire as he was working on a scaffold. According to the Civil Rights investigator, the company’s owner admitted to the incident. The investigator notes,

Evidence substantiates that the Respondent’s Owner, and the perpetrator admitted to the incident. The perpetrator did not view his actions as having racial overtones or undertones. He viewed his actions as being a joke. Respondent’s owner issued a verbal reprimand only to the perpetrator and stated that the perpetrator’s possible discharge for his actions was unthinkable, due to the perpetrator being an excellent foreman.
Cases such as these reveal the persistence of overtly racist actions and people. Within these antagonistic environments Blacks are only welcome if they remain submissive to this kind of abuse. Sadly, these actions are often justified as merely being “jokes.” The bulk of modern discrimination, however, is far more subtle. Employers, in these arbitrary cases, are remarkably ambiguous when explaining why African Americans are fired.

Lawrence Shell, the only African American truck driver at his place of employment was given vague reasons as to why he was fired. After just 17 days on the job Lawrence’s foreman informed him that he “wasn’t working out” and then discharged him. In their official reply to the OCRC, the company president and foreman suggest that Mr. Shell was released because his job performance was unacceptable. But evidence substantiates unfair treatment throughout his employment. For example, Lawrence notes,

I was forced to drive a truck that was unsafe; in that (2) of the (5) gears were inoperable. I was forced to drive out of state in inclement weather; also I was constantly accused of taking too much time to complete my duties. On several occasions I was instructed to carry loads that were in direct violation of policy.

Various White co-workers supported Lawrence. They validated that Lawrence took no more time than they did to make identical stops. And, in fact, “there were numerous problems with the truck and company was simply too cheap to make the necessary repairs.” Moreover, derogatory racial remarks committed by supervisory employees permeated the Respondent’s facility.

In another case, Clark Sampson (an African American sheet metal worker), was fired on the same day as his Black colleague. While the company’s official response is that both workers were unqualified, the company provided no substantiation of this.
Moreover, Clark was fired within 9 days of employment because “he didn’t know what he was doing.” This is despite union testimony that he had 13 years of experience in sheet metal and duct work.

Employers also try to tie in organizational rules to their arbitrary dismissal decisions. Paul Massey a Black factory worker was terminated for breaking General Plant Rule #1 Not steal from fellow employees of or the Company.” [The undisputed fact, however, is that Mr. Massey was accused of stealing]… “two pink compound bags (similar to clear plastic 30 gallon garbage bags) from the Employer’s inventory to remove aluminum cans from the employer’s parking lot.”

Even more, the respondent, Mr. Welder pointed out that... “the cost (5 cents) was not the issue, this is Company property” [and that] “the assertion that Massey was the only employee disciplined for theft is irrelevant.” Finally, there is the case of Omar Prince an African American order puller at a warehouse who was fired within 5 days for “not properly stacking his paperwork.” Omar notes that he worked with a White team member each day (who was not disciplined) and had two years experience at another warehouse.

One overarching pattern that should be noticed from the qualitative reports above is that firing discrimination against black men tends to occur unusually fast. In fact, 48% of African American men in my sample are fired within 6 months of being hired and 58% are fired within one year (see also Slonaker, Wendt, and Williams 2003). This is compared to the much longer tenure of all other groups (22% fired within six months and 38% within one year). In justifying this pattern, employers sometimes explicitly refer to their protection afforded by the employment-at-will doctrine.
Recall the case of Terrance Smith the African American motel clerk. Terrance was fired two months into employment. His employer emphasizes that their policy allows them to fire employees for any reason within the first ninety days. They point to their Standard Operating Procedures where,

All employees enter a ninety calendar day evaluation period from the date of hire. During this period, the employer may evaluate conduct, performance or reliability of the individual and decide to terminate the individual’s employment. Employment of any individual is neither a fixed term or by contract and may be ended at will.

While the employment at will justification is only explicitly stated in some cases, the default application of employment-at-will in the private sector is likely an implicit justification behind many cases of differential treatment in firing—particularly those where employees have low seniority. Moreover, the low status of African American men on the job queue due to overarching negative stereotypes may compound their exposure to quick dismissals. Again, these accounts suggest that modern day inequality is motivated by social closure objectives and that despite the rhetoric of meritocracy, discriminatory employers continue to use purposive strategies (e.g., firing very quickly) and existing structures (e.g., employment-at-will status) to skirt the objection of equal opportunity advocates.

But the question remains, why do employers even hire African American men if they intend to fire them within a few months? One particularly intuitive African American male Laborer of a construction company who was fired within a month provides his perspective. He suggests that his employer “only had the minimum number of Blacks required to meet the State’s contract guidelines.”
Indeed, prior research demonstrates that firms who work with federal contractors do have consistently lower levels of workplace segregation and are more likely to create equal employment opportunity (EEO) structures (Edelman 1992; Stainback, Robinson, and Tomaskovic-Devey 2005). Stainback and colleagues (2005) explain that these firms must produce annual affirmative action reports and are more likely to comply with hiring mandates so as not to lose the government contract. Moreover, private sector employers take seriously the threat of losing government contracts for not abiding by affirmative action hiring guidelines (Thomas 2003). But even in cases where specific affirmative action mandates do not exist, impression management motivations may be in play (see Elsbach 2003). In fact, with contemporary social norms that make it less acceptable to express prejudicial beliefs (Bonilla-Silva 2003); some employers may hire Blacks merely to say that they are not discriminatory in hiring. And when Blacks are fired, their alleged performance deficiencies and rule violations again shield employers from being labeled discriminatory. This subtle circuitous method does not challenge widespread assertions of meritocracy and colorblindness.

Conclusions

At one time, race based discriminatory firing was largely explained as an intentional activity that was carried out by overtly prejudiced individuals. Most contemporary scholars agree that modern discrimination is far more subtle and cannot be attributed to a solitary foundation. In this chapter, I acknowledge these complexities by evaluating the distinct process of discriminatory firing that emerge from these data.
The most common process of race based firing discrimination involves differential treatment on the basis of performance. Specifically, African Americans have between two and four times the odds (compared to Caucasian women) of reporting performance based differential treatment as the reason for their unjust discharge. This effect remains significant even after accounting for characteristics of the organization where they worked and a number of controls (see Table 10). But how do these different processes played out in the lives of real people?

The theories of statistical discrimination and social closure provide a meaningful motivational framework within which to evaluate these processes. In using statistical discrimination, managers call on their biased perceptions about African Americans’ performance to unjustly dismiss them from positions. Although this mechanism has been speculated about in prior research (Loury 1998), the rich narratives used here reveal how employer biases about the productivity potential of African Americans lead them to 1) make hasty judgments about their performance and 2) unfairly divert important assignments away from them. These actions then produce a self-fulfilling prophecy whereby employers justify firing African Americans because they have “evidence” of the performance deficiency that they expected all along.

Race based discriminatory firing is also explained by the theory of social closure. The goal of closure is to reinforce racial hierarchies and maintain the status quo within organizations. But, because of norms which make overt discrimination socially undesirable, hierarchies for firing are often enforced as employers hold Blacks to more strict standards than their White counterparts, differentially evaluate their “soft skills”,
and differentially treat them in regards to policy violations. Whether the motivation of employers is ultimately conscious or unconscious, these mechanisms remain detrimental to African Americans who seek job security.

Importantly, despite the promise of formalized protections, the organization of work alone does little to protect African American employees from this mistreatment. Public sector managers, instead, seem to use their agency to dismiss workers within their probationary period (sometimes days before they were supposed to end). In this way, there are many similarities between probationary firing and invoking employment-at-will because both allow managers to dismiss employees without progressive discipline.

Although the vast majority of cases take these more subtle forms, retaliation and the arbitrary firing of Black men denote the continuation of more intentional and overt forms of closure. Retaliation is a direct backlash against those who are attempting to usurp power and dismantle racial hierarchies. And, arbitrary firing reveals the precariousness that African American men continue to endure in the labor market because of their position at the bottom of the job queue. As a whole, these cases shed new light on the mechanisms of discriminatory dismissals and in doing so they fly in the face of the ideology of colorblindness.
CHAPTER 7
WOMEN AND DISCRIMINATORY FIRING

Table 11 presents the results of a logistic regression predicting pregnancy based differential treatment in firing by race, organizational characteristics, and various control variables. Although my first two hypotheses are not fully supported in this multivariate analysis, size of the organization is a significant predictor of pregnancy based firing. Pregnant women who work in small organizations face nearly three times the odds of pregnancy based discriminatory firing than those who work in large organizations. Prior work sheds light on this result with evidence that small firms (less than 50 people) offer fewer formal programs and policies to balance work-family life (MacDermid, Litchfield, and Pitt-Catsouphes 1999; see also Kelly and Dobbin 1999). There was some hope that this would change with the adoption of the Family Medical Leave Act of 1993, which extends the maternity leave benefits originally granted by the Pregnancy Discrimination of 1978. This new act, however, is not enforced for firms with less than 50 people (U.S. Department of Labor 2009).

Without comprehensive enforcement, small business owners endorse inconsistent maternity leave policies. In fact, a recent qualitative study of pregnancy at work suggests that some small business owners tend to use maternity leave as a reward kept only for valued pregnant employees (Barrett and Mayson 2008). Clearly, the subjective
distribution of maternity leave is not beneficial for all women. But owners of small businesses defend this practice because they see maternity leave as a costly burden that ultimately disadvantages them in global competition (Barrett and Mayson 2008). Indeed, as predicted, global competition provides the backdrop for some termination decisions.

Among the control variables, age is the only one that reaches significance. Age is negatively related to discriminatory firing based on differential treatment in pregnancy. Every one year increase in the age of the complainant decreases the odds of reporting pregnancy based firing discrimination by 14%. This result can be explained by the fact that older women are less likely to become pregnant.

But the strongest predictor in this regression (Table 11-Model 2) is race. In fact, net of controls, White women still have over five times the odds of reporting pregnancy based firing discrimination than Black women. This finding is consistent with the work of Ortiz and Roscgino (2009) and Johnson (2008) who find that Caucasian women are more likely to report pregnancy based firing than African American women.

Part of this significant racial gap is likely structural. Recall that within this subsample there are no cases of pregnancy based firing discrimination within the public sector – a fact that forces me to change the referent in model 2 to the core industry (see Table 11 notes). Because African American females are more likely to be employed in the public sector than Caucasian females (Zipp 1994), they may be largely protected from pregnancy based firing discrimination given the public sector’s formalized maternity policies.
Another potential explanation for this racial gap is that African American women are less likely than Caucasian women to work during pregnancy (Johnson 2008). Thus, if a smaller percentage of African American women participate in the labor force prior to giving birth, they may be less vulnerable to pregnancy discrimination. I now turn to the qualitative narratives to explore these speculations and evaluate my final two hypotheses more fully. There is good reason to believe that statistical discrimination and social closure theories can shed much light on the gendered nature of discriminatory firing.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
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<tr>
<td></td>
<td>(N=200)</td>
<td></td>
</tr>
<tr>
<td>\textit{Individual Controls}</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupational Prestige</td>
<td>.026(\dagger) (.011) 1.02</td>
<td>.021 (.018) 1.02</td>
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<tr>
<td>Age</td>
<td>-.132***(.031) 0.87</td>
<td>-.148***(.031) 0.86</td>
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<tr>
<td>Seniority in Months</td>
<td>-.005 (.007) .99</td>
<td>-.003 (.008) .99</td>
</tr>
<tr>
<td>Year of Charge</td>
<td>.167 (.295) 1.18</td>
<td>.387 (.344) 1.47</td>
</tr>
<tr>
<td>Year of Charge Squared</td>
<td>-.007 (.019) .93</td>
<td>-.021 (.022) .97</td>
</tr>
<tr>
<td>\textit{Social Location}(a)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Female</td>
<td></td>
<td>1.740***(.498) 5.69</td>
</tr>
<tr>
<td>\textit{Organizational Structure}(b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small Organization</td>
<td></td>
<td>1.084* (.548) 2.95</td>
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<tr>
<td>Mid-Sized Organization</td>
<td></td>
<td>.163 (.534) 1.17</td>
</tr>
<tr>
<td>\textit{Organizational Composition}</td>
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<tr>
<td>Percent Black Employees</td>
<td></td>
<td>-.023 (.015) .97</td>
</tr>
<tr>
<td>Percent Female Managers</td>
<td></td>
<td>.008 (.009) 1.00</td>
</tr>
<tr>
<td>\textit{Work Sector}(c)</td>
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<td></td>
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<tr>
<td>Low Service</td>
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<td>.397 (.544) 1.48</td>
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<tr>
<td>High Service</td>
<td></td>
<td>.797 (.621) 2.21</td>
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<tr>
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<td>-.389 (1.664)</td>
</tr>
<tr>
<td>-2 Log Likelihood</td>
<td>201.564***(</td>
<td>169.430***(</td>
</tr>
</tbody>
</table>

Note: Standard Error in Parentheses; \(\dagger\) \(p<.1\), \(*\) \(p<.05\); **\(p<.01\); ***\(p<.001\); [5 imputations pooled]; Reference Variables for \(a\)= Black female; \(b\)=Large Organizations; \(c\)=Core Industry; Males were dropped because they do not file for pregnancy; No pregnancy cases took place in the State sector.

**Table 11: Logistic Regression of Differential Treatment: Pregnancy vs. All Other Processes**
Statistical Discrimination, Gender, and Firing Discrimination

These case files are replete with evidence that employers use statistical discrimination to unfairly evaluate gender and dismiss women from work. Employers, in fact, seem much more comfortable making broad assumptions about the effect of gender (and pregnancy) on performance than they do when talking about race. In one case, a husband and wife were both hired as superintendents of an apartment community. When the husband, Don Maple, decided to resign, his wife was immediately fired. And, when the Don inquired if Sheila would be able to stay on, he was told “No way…what would she do if something happened?” This comment left Don reasonably “flabbergasted.” The owner of the company then transferred a male superintendent from a smaller property that he also owned to Don and Sheila’s former position. Yet this new male superintendent did not last long and by the time of the investigation the company had gone through three different sets of superintendents - without once considering Sheila for the position.

In another case, Nancy Briggs, a Caucasian security guard explains her discriminatory termination.

The reason given was he [white male supervisor] received a letter from the home office stating that as a female I would not be able to perform my duties due to a fifty pound weight restriction placed on my lifting and that I would not be able to lift a fire extinguisher…I have proven on two occasions that I can lift the fire extinguisher with no problems.

The respondent, in this case, supports their decision to terminate Nancy by asserting the bona fide occupational qualification (BFOQ) defense. This defense allows some employers to legally exclude or dismiss groups of people from their jobs if they fail to
meet a qualification that may, for example, threaten the safety of their institution (Manley 2009). The company in this case argues that

A security officer must be able to protect the client’s property and the safety of employees, and be able to respond immediately and decisively in emergency situations such as fires. Accordingly, [the company’s] lifting requirement vis-à-vis fire extinguishers is clearly related to the security officer position and is a necessary task that all security officers must be able to perform…if Nancy could not move the 40 pound fire extinguisher close enough to the fire and be able to lift and use it, the spreading of the fire could endanger her as well as other employees and [our] clients.

However, the investigator ultimately decided that “the evidence fails to substantiate that Nancy was unable to perform the full range of her duties and witness testimony substantiates that lifting a fire extinguisher is a task that is done infrequently.”

In line with the theory of statistical discrimination, Sheila and Nancy are both fired because of stereotyped expectations that they cannot adequately perform “a man’s job.” The tendency for women to be perceived as less competent, poorer performers, and physically weaker than men (Correll 2007; Herbert 1998; Kennelly 2002), sometimes causes unjust firing without allowing women the opportunity to demonstrate their abilities. Nancy’s case, in particular, highlights a longstanding challenge to gender discrimination law – the bona fide occupational qualification defense. Even now 44 years after its inception, the general public has trouble deciding whether the infrequent physical requirements of safety are more important than fighting gender discrimination (Manley 2009).

Assumptions about gender do not only involve the mental and physical capabilities of women themselves. In fact, gendered expectations are sometimes filtered through traditional views of “a woman’s rightful place.” Consider the case of Connie
Jenkins an African American security guard who was fired from her post. The company’s official response was that Connie violated its policy regarding attendance. The policy states that if an employee accrues 12 days of absence or 8 occasions of tardiness within a year, termination would be justifiable. Connie, however, had only accumulated 9 days of absence prior to her termination. Yet White males had actually exceeded the 12 days of absence allowed but were not fired. Connie’s shift sergeant, Mary Frantz, elaborates on the case in a letter to the OCRC.

Training Sergeant Paul Coleman hired Connie. He came to me with some reservations about her. Paul had asked Connie if she were pregnant. Connie had told him no, and she said she had a baby and a nine year old daughter at home. Paul told Connie that she should go home and seriously think about staying home with her children instead of working. Paul also told me that he thought Connie was too heavy and couldn’t handle the job. He also worried about being able to find a uniform for her and another woman he was considering for the job at the same time.

Paul’s comments represent the essence of sexism and statistical discrimination. The notion that women with children should stay at home because they cannot be good at both parenting and working is common (Ridgeway and Correll 2004b). These perceptions and the concerns about Connie’s weight clearly affected her manager’s beliefs about how she would “handle the job.”

As sometimes is the case with Black women, Connie also faced bias because of her race. In one meeting between the management personnel, Paul and another sergeant “voiced their concerns about hiring too many niggers.” When Mary Frantz spoke to the building manager about the language used, “he said he would talk to Paul, and he brushed off the incident at the meeting by saying they were just kidding around.” Mary continues in her letter
[Paul] asked me if I would be interested in switching to the controller position because he was going to have to let Connie go since she was having an attendance problem. I replied that almost the entire shift has an attendance problem. Then Paul told me he had only looked up Connie’s file…I am fairly certain that there are other employees with more absences than Connie. However, our managers have a nasty habit of removing anything that might incriminate from the files if they think there is going to be a problem.

In the end, these sexist and racist notions affected Paul’s behavior. Admittedly, Paul only looked at Connie’s attendance file prior to making the decision to fire her. This is a prime example of how statistical discrimination creates a self-fulfilling prophecy through selective attention to the violation of company rules.

**Pregnancy and Discriminatory Firing**

In line with prior research (Halpert and Burg 1997, Masser, Grass, and Nesic 2007), both male and female employers have very negative attitudes toward pregnant women at work. Some managers, in fact, are blatantly discriminatory toward pregnant employees. When, May Christie, the owner of a daycare center found out that her unmarried employee was pregnant she fired her within two hours. Mrs. Christie boldly notes in a signed affidavit,

I will restate again, Ginger Shultz (a Caucasian day care worker) knew she was pregnant when she came to work for me, and on her application chose to omit this important fact. Had she been honest on her application she would not have been considered for the job at this time, because it would have alerted me to the fact that her promiscuous lifestyle was totally out of harmony with our standards, values, and morals. Had she been permitted to remain on staff, it would have presented me with the loss of at least three families…Ginger’s lifestyle flies in the face of everything we have worked so hard for 28 years to build and maintain, our reputation as to excellence…I have asked a number of people who are on staff to write a letter in regard to their feelings as to treatment, and what the consequences would be should a staff member of questionable character be employed. I hope that these will be read and taken into consideration.
What Mrs. Christie fails to recognize is that there are legal repercussions to differentially treating pregnant women. Her tirade about “morals” is a clear-cut case of discrimination. Incredibly, there are other managers that are equally blatant about their disregard for pregnant women. One berated a pregnant employee with negative comments about her body image and another even recommended that his employee should have an abortion. Overt derogatory sentiments such as these represent the minority of pregnancy discrimination cases, but they remain important because they highlight the range of mistreatment that pregnant women face in the workplace. Most employers, instead, voice great concern about how pregnancy will affect productivity and the economic bottom line of their organizations.

**Statistical Discrimination, Pregnancy, and Firing Discrimination**

Negative cultural stereotypes about how pregnant women will perform at work are rampant. With the impending onset of motherhood, women are viewed as less competent and dependable than before they were mothers (Cuddy, Fiske, and Glick 2004). Managers seemed at ease using statistical discrimination to evaluate the future performance of pregnant women and mothers.

For example, Melanie Dawson, a Caucasian sales clerk, was asked by her female manager, “if I could realistically see coming back after having a baby. She told me that I was not going to have the energy and I’m not going to want to work.” Melanie was then discharged while on maternity leave. Meanwhile, Traci Josephs, a Caucasian cashier at a large convenience store was fired for alleged excessive absenteeism. Traci called off on
two occasions and went home sick on two occasions during the first three months of her pregnancy and each time someone was notified. The respondent’s policy on excessive absenteeism defines it as “two incidents in a 30 day period without notification”, a violation which would then begin the progressive discipline process. Yet the evidence substantiates that Traci’s manager (Louise) “recommended Traci’s discharge because she felt that, due to her pregnancy, Traci’s absences would increase.” The notion that all pregnant women are not going to have energy to work and therefore will be increasingly absent is the epitome of statistical discrimination. These expectations are then used to justify the decisions to terminate pregnant women.

Managers also directly question pregnant women’s future productivity. Priscilla McHale, a Caucasian data entry operator, was allegedly discharged for errors that were not discovered until after her baby was born. The case investigator for the OCRC, however, gathered evidence that “Priscilla’s employment situation came into question when [the] Respondent’s owner learned that Priscilla’s original plan to put her child up for adoption changed.” Once the owner realizes that Priscilla is planning to keep her child, he automatically assumes that her productivity will decline.

In some circumstances employers even try to justify this discrimination by claiming that they are merely abiding by their customer preferences. Stacy Wells, for example, was fired from her job as a barmaid because “customers did not want a woman in her condition working around them.” Megan Brady, a customer of the bar, served as a witness on the case. She reports to the commission what she heard from the bar’s owner.
Trish Henderson, the bar’s owner, did not want a pregnant female in the bar because it was not attractive…Trish also stated that she did not want to be liable if Stacy slipped and fell or hurt herself.

Similarly, Marlese Lewis (an African American waitress) was dismissed because her employer “could not afford another liability.” These two cases demonstrate how employers in businesses that require public contact worry about the appeal of pregnant workers as their body changes (see Gatrell 2007). We also see statistical discrimination in the belief that pregnant employees will be more prone to injury and therefore liabilities on the job.

Another common theme that noticeably links many of these cases is the almost immediate disappointment that employers express when they hear that their employees were pregnant. The investigator for Alicia Green’s case relays the information about Alicia’s telephone conversation when she disclosed that she was pregnant. Alicia (a sorter for a shipping company) had been told the prior Friday that the shipment they expected was running late but to call back in on Monday to see if she was needed.

When Ms. Green spoke to Mr. Hughes (her boss) that morning, he informed her that the truck had not arrived yet, but that it was expected in the afternoon. He also told Ms. Green to call back later because he definitely needed her to work that afternoon. [Since she had the morning off, she went to see her doctor and found out that she was pregnant]. Sometime between 11:00 am and noon, Ms. Green called Mr. Hughes again. Mr. Hughes informed her that she should just “come on in.” At this point, Ms. Green decided that it was best to tell Mr. Hughes that she was pregnant. Mr. Hughes in response, told her not to come into work and that he didn’t want any pregnant women working for his company.

Though she had not received any physical restrictions from her doctor, Alicia was fired that same day because she allegedly “would not be able to lift the 50 pound mail bags.”

Laura Delphi, a Caucasian credit manager notes similar mistreatment after visiting the doctor.
I went to work and told everyone in the office that I was pregnant. The Owner’s wife, Shelly Bond, was visiting the office when I was telling everyone of my news. Ms. Bond asked me if it was a planned pregnancy. She told me I should deal with Joe [the Owner] about it….later that day Joe told me that I was let go because I was no longer dependable. At the time of my discharge Joe gave me a memo which outlined several concerns. Joe asked me to sign the memo and I refused…I have always received excellent raises which were reflective of my good performance.

These examples illustrate how, in line with statistical discrimination, employer views of pregnant women as less dependable and even liabilities are used to legitimize firing them. Furthermore, the stereotypical assumptions about the capabilities of pregnant women cause them to be fired very quickly. It is important to note that in many of these jobs pregnant employees are replaced by other (non-pregnant) women. This reality exposes pregnancy discrimination as a ubiquitous form of gender discrimination. That is, even within completely segregated jobs statistical discrimination can work to disadvantage pregnant women.

Social Closure, Cost Containment, and Pregnancy Discrimination

Cultural stereotypes about pregnancy are also compounded by direct financial concerns that employers have about maternity leave. In line with prior work (see Barrett and Mayson 2008), many of these cost savings justifications came from small businesses. For example, Regina Flowers, a Caucasian secretary at a small law firm was fired because “as a standard practice [the law firm] has never granted a leave of absence for any reason.” Furthermore, the case investigator notes that

Respondent is alleging that the Commission’s rule, by allowing pregnancy leave, where no other leave exists, creates an inequality between men and women. However, to put men and women on an equal basis, when only women can bear children, is inherently unequal.
In a similar case, Janelle Plessy, a Caucasian bridal boutique manager was fired when her employer found out that she was pregnant. She states,

> [My boss] seemed upset and wanted to know whether or not my pregnancy would interfere with the store. I assured him that with the exception of a medically approved maternity leave, my pregnancy would not adversely affect the store.

Yet, shortly after that conversation, Janelle was fired for alleged performance issues. Despite never having been warned of any performance problems, the company’s lawyer insists that the store’s retail performance was continually down while Janelle worked there. In a secondary defense the company’s lawyer also challenged the jurisdiction of the OCRC. A jurisdiction that he believes “flies in the face of the logical intent of the statute’s framers.” He furthers,

> It is my opinion that your Agency [the OCRC] is without jurisdiction over my client, due to the [state level] statute only covering employers with four or more employees. While it has been decided that part-time employees count the same as full-time employees, there has been no decision regarding the counting of sequentially hired employees [over the period of one year]... The reason there is a limitation of four employees, rather than no limitation at all in the statute, is to exempt “mom and pop” business owners from the overly burdensome requirements of complying with the statute... You should be advised that forcing my client to go to hearing and any resultant litigation will probably result in him closing the store, as the business barely makes a profit at the present moment.

These reports expand upon the findings in Table 11, whereby small businesses have significantly higher odds of pregnancy based discrimination than large organizations because dismissal is seen as more cost effective than instituting formal maternity leave policies. Small business owners in my sample, who are already disadvantaged in the global marketplace, express desperation in their need to fire pregnant women. One sly dentist, in fact, attempted to misreport the number of employees who were on the payroll. This would enable him to claim a lack of jurisdiction as a secondary defense. To him,
“granting an extended leave to [his pregnant employee], consisting of eight weeks, was not practical due to the nature and size of his practice.” Thus, in a letter to the other employees, he states rather explicitly, “Christine’s last day of work in the office is June 24, 1998 due to the impending birth of her baby.”

The cost of maternity leave and health insurance is certainly not limited to small businesses. Even in well established larger organizations these economic incentives provided employers with a strong motivation to dismiss pregnant women. In one example, the seemingly benign comment “I hope you don’t have any complications with this pregnancy” was found to have a cost savings undertone because the manager was ultimately concerned about the cost of maternity leave extensions.

Another case expands upon the general sentiment of employers regarding pregnancy leave. After a meeting with her Vice President Jim Warren, Jennifer, a Caucasian purchasing agent maintains that Jim indicated that six weeks was too much time off for maternity leave. He further stated that I could have three weeks off and don't expect this much time off for your next six kids.

Tom (a White mid level manager) asserts his opinion about Jennifer’s unfair treatment in a signed affidavit.

When I told Jim that Jennifer was pregnant, he already knew. While I can’t remember his exact words, it was something like – Oh my God, I told you not to put her in that position – now she is in a critical position and she is going to have a baby... During the first week of April, Jim came to the office to review the prior quarter’s financial numbers. He said he wanted to talk to Jennifer about her maternity leave. The first thing that he said to her was that he came to see her because he didn’t want a discrimination lawsuit against us. He handed her a copy of a newspaper article and told her that I was unprofessional when I told her she could have six to eight weeks. He said “I can see 2-3 weeks maternity leave and if Tom is willing to give you your vacation on top of that - 5-6 weeks maximum”. “And if you need more than that – you are expendable”... Privately he read me the riot act for my willingness to give her two weeks vacation on top of maternity leave. It was as if he thought her having a baby was a vendetta against him... [And when dismissal was
brought up] I told him that there were others I would prefer to lay off...there were three less essential people with less seniority... [but Jim responded] you have had your say. Larry (the owner) and I have reviewed your situation. These are your instructions and this is what I’m telling you to do.

Clearly in violation of fair employment policies the owners chose to dismiss Jennifer over less essential (non-pregnant) workers. Employers’ complaints about too much time off during maternity leave demonstrate that pregnant women are regarded as a financial liability to firms who usually provide monetary support during these leaves. Employers are equally concerned about the cost and difficulty of hiring a temporary to cover their pregnant employee’s work. One manager notes,

The ability to replace a full-time oncology nurse temporarily is very difficult and this particular time was impossible. To hire a RN not skilled in oncology for a temporary position is not feasible. This is from patient safety and economical standpoints.

These reasons caused Sheryl, the pregnant oncology nurse, to be fired from her job of nearly two years. Clearly, cost containment imperatives are a strong motivation for the discriminatory firing of pregnant women (Edwards 1996).

Women who are actually allowed to go on maternity leave do not fare much better. Many women experience what Swiss and Walker (1993) refer to as the “micro-inequities” of pregnancy. Some have changes made to their jobs while on leave and others are left with little certainty about their jobs being held open upon their return to work. The case of Jessica Hartman, a Caucasian employee at a private sector social service facility is a pertinent example.

I was hired on May 8, 1995. I have received two evaluations and both were good. My attendance was also good. In October, 1995 I informed the management of my pregnancy and thereafter I noticed a change in attitude toward me. The level of friendly interaction was reduced. On March 15, 1996 my maternity leave began and on March 25, 1996 I discovered a want ad for my job in the newspaper. Before learning of the ad, I submitted
a letter requesting that I be returned to my position upon being released by my doctor. I contacted the personnel officer and was informed that my position was unavailable.

In attempting to explain away why positions are no longer available, employers often presented pregnant women with falsehoods of performance issues while they are on maternity leave. Similar to the experience of African Americans, fictive identities are constructed to justify firing pregnant women as well (Robert and Harlan 2006). Janice Redman, a Caucasian accounts receivable clerk explains that she was discharged the day she returned from her maternity leave.

Karl Meyer, Treasurer told me that I was being discharged for poor work performance, which happened right before pregnancy leave. I deny such allegations. [Before pregnancy leave] I received a pay raise and I was doing a good job. I was changed from hourly to salary status, which indicates that I was doing a good job. [During my absence] I was replaced by a non-pregnant part-time employee.

The manager did not have any documentation to substantiate the allegations that Janice had work performance problems because she had no disciplinary record. Yet he insisted that “she did have issues, some of which were not discovered until after Janice went on maternity leave”.

In most situations where discriminatory employers allow pregnant women to go on maternity leave, they either distribute the responsibilities of pregnant women amongst non-pregnant employees (invoking cost savings) or hire a new full-time non-pregnant employees (claiming excessive difficulty in finding temporary workers). Regardless, employers do not allow pregnant women to return to work as they do with employees out on other leaves of absence.
While pregnancy is a large motivation for discriminatory firing, women in general also have their performance questioned by male managers. In fact, women were often assumed to be less competent than men and after making mistakes were differentially treated in regards to their performance. Take the case of Marianne Duffy. Although Marianne was hired as an inside sales person for a manufacturer, she reports that her boss continually treated her like a secretary and even made her babysit his daughter while she visited the office. This devaluation influenced Marianne to apply to an outside sales position, a position that she was denied because she allegedly was unqualified. Case evidence substantiates, however, that males with less experience were frequently hired as outside salesman. Ultimately, Marianne was fired from her position for “not paying attention to minor details.”

The owner of the company, Benson Mead, defended his decision to the OCRC. Mr. Mead argued that Marianne’s inattention to detail ultimately resulted in her termination when her error caused the manufacture of the wrong parts producing a loss of $5,000. But witnesses testified that male employees also made mistakes and were not disciplined or terminated. When asked in an interview with the commission why males who had made errors were not similarly discharged, Mr. Mead stated that

It was his prerogative as to how important a particular error or mistake was…his only concern as a businessman was to make money and he didn’t care about anything else…it was easier and less expensive to replace a secretarial/clerical person as compared to a machine operator.

The commission decided in favor of Marianne after interviewing various witnesses. The former business manager for Mr. Mead suggests that “there was no job description [for
Marianne’s position] and that Marianne was assigned a lot of Mr. Mead’s personal non-business-related work.” Moreover, other female employees asserted that Mr. Mead “had little respect for women by the way he talked about them and referred to them” and that even though the company who was the main buyer for the wrongfully manufactured parts “made a verbal commitment to buy them as soon as they were needed”, Marianne was fired anyway.

Employers such as Mr. Mead seem to have preconceived notions about the duties that women are capable of handling at work. Such notions quickly close women off from positions that would allow them greater autonomy. Ultimately, these notions are also used to reinforce the view of women as less valuable employees and justify their differential treatment when terminations are made.

Notably, such mechanisms of differential treatment in regards to performance occur most frequently when women work in traditionally male jobs. Consider Michelle Dalton’s experience. Michelle, a public sector park ranger, was fired during her twelve month probationary period because of alleged serious performance problems. Yet Michelle notes a history of clear differential treatment based on sex. For one, only male probationary officers were allowed to have PIN numbers to get gas at the depot. Michelle complained about this policy, which was initially justified because the probationary males supposedly had more seniority, and the policy was eventually changed. Also, the male rangers would refuse to let the female rangers drive the patrol cars and took credit for all the arrests. This gendered demarcation of “a woman’s role” was made even more
explicit by the male Captain who joked to another male ranger that he’d “better watch out for those split-tails."  

Despite this blatant differential treatment, the Captain claimed that Michelle’s performance on the park issued ATV was the cause of her termination. The respondent’s own safety committee, however, suggested that two accidents were not her fault and did not impose any discipline for the other two. Perhaps the biggest support for Michelle’s case came from another female who had recently resigned from her position as a ranger. In her testimony to the OCRC, she concurred with virtually all of Michelle’s complaints. On her last day, she initially told the Captain that she needed more time to be with her family, but he asked “is there any particular reason for your quitting?” She replied, “this is the most discriminatory place I’ve ever seen.” To that the captain replied, “that’s a damn big accusation don’t you think.”

Indeed, hierarchies at work are still enforced along gendered lines. Women who compete with males for jobs are seen as less competent and poorer performers (e.g., Gorman 2005; Ridgeway and Correll 2004). And, these stereotypes are then used to justify exposing them to differential treatment if they do make mistakes. Though the motivation for this behavior is difficult to pinpoint, social closure is a reasonable explanation. Both Marianne and Michelle are intentionally restricted to certain duties because they are women. Ultimately, these restrictions contribute to their devaluation as employees and leave them more vulnerable to dismissal.

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18 Split-tail is derogatory term that refers to women as sex objects (e.g., vaginas).
Perhaps the most explicit sign of a social closure motive was exhibited in the case of Sasha Bentley (a Caucasian plant manager). After Sasha was fired because of alleged performance issues, two witnesses came forward to argue that this was a case of differential treatment. The witnesses claimed that derogatory remarks against women were abundant in the factory. In fact, on one occasion when Sasha was out getting parts her boss Nathan Gamble asked “where’s Sasha, out whoring around somewhere?” But Mr. Gamble made his motivation even more explicit after Sasha’s termination when he told one witness “they needed a man in here instead of a woman anyway.”

**Quid Pro Quo Sexual Harassment, Closure, and Gendered Firing Discrimination**

Quid pro quo sexual harassment is an activity where (usually) male managers attempt to gain sexual favors from one of their subordinates under the threat of some tangible and negative employment outcome. If that employee (usually a woman) denies their sexual advances, termination may be resorted to as an act of retribution (Coles 1986; Mackinnon 1979). In line with my fourth hypothesis, quid pro quo sexual harassment is a noteworthy process of discriminatory firing within these data.

Along these lines, the bivariate statistics (in Chapter 5) highlight two interesting patterns. First, figure 5 suggests that quid pro quo sexual harassment is more likely in small (50 or less people) organizations. Prior research suggests that financial limitations generally prohibit small businesses from establishing sexual harassment policies or training programs (Robinson, Jackson, Franklin, and Hensley 1998). Without specific
policies or education about sexual harassment, it may indeed be more widespread within small establishments.

Also, figure 7 illustrates that the percentage of Caucasian women who report quid pro quo sexual harassment as the cause for their unjust termination is nearly twice the percentage of African American women. I now turn to the qualitative case files which expand upon the process of quid pro quo sexual harassment.

Paula Lawson, a Caucasian accounts receivable clerk for a country club, was subjected to unwanted sexual harassment by her manager Jerry Frick. She notes,

Jerry Frick would often bring nude posters and photographs to show me and tell me what a nice figure the nude females had. I told him that I did not find those pictures amusing and that they were also disgusting. Mr. Frick was always making comments about my figure and my large bust and said he could see them through my camisole…When I rejected his advances on March 15, 1993, I was terminated.

After Paula initially complained to Jerry about his advances, she started getting written up for allegedly disregarding company rules. Upon her final rejection of his advances she was fired. This pattern is identical to the work of Mackinnon (1979) who found that women who rejected sexual advances were subject to sudden allegations of job incompetence - allegations that were then used to defend the employment penalties. Paula’s case was deemed probable cause because she was able to demonstrate the link between her refusal of Jerry’s advances and the tangible employment outcomes (e.g., write-ups and dismissal).

Unfortunately, other women experienced much more explicit examples of quid pro quo sexual harassment. Consider the case of Molly Wexner, a Caucasian machine
operator at a factory. Molly endured constant and escalating harassment from her general manager, Glen Neary, for nearly six months before she would no longer tolerate it.

Mr. Neary was constantly patting my behind and making sexual comments to me. On one occasion he asked me if [another female employee] and myself would be interested in having sex with him at the same time. At the company picnic in June 1989 he attempted to arrange a sexual encounter between a friend of his and myself. Despite rejecting his advances Mr. Neary continued to pursue me for sexual purposes. On October 11, 1989 he forced me to a secluded area of the warehouse and exposed himself. He asked me to fondle his penis and when I refused he attempted to physically force me to perform oral sex on him. I could no longer tolerate his conduct, so I reported off work for two days [after that incident]. Subsequently, I was discharged for reporting off work. I believe I was terminated because I rejected Mr. Neary’s sexual advances.

Notably, in neither of the above cases is there an explicit discussion of “you give me sex or else.” According, to sexual harassment law, the tangible employment outcome can be explicit or implied (Robinson et al. 1998). If the harasser is a person with the power to deliver tangible consequences, employees may interpret their submission as necessary. Such an interpretation explains why Molly endured this repulsive behavior for so long.

In the end, women who are subjected to quid pro quo sexual harassment are left with few viable options. Most endure the harassment for some time before being terminated. Mackinnon (1979) argues that this is because women are socialized to “play along” and avoid open refusals of sexual advances that may anger men (p. 44). In this way, quid pro quo sexual harassment is used to reinforce sexual hierarchies. It is a clear example of social closure. Sexual harassment keeps women in low status positions – these same positions generate their initial susceptibility to sexual harassment in the first place (Mackinnon 1979).
Retaliation, Closure, and Gender Based Firing Discrimination

Gender based retaliatory firing is yet another mechanism of social closure. As seen with African Americans, when women complain about sex discrimination some employers become angry and use terminations to get even. Consider the case of Melinda Watts. Melinda is an African American who was employed as a Manager for 13 years. Yet nearly one month after making complaints to the OCRC about unequal pay because of her gender, Melinda was allegedly discharged for “speaking out of place.” In a similar case, Carla Berry a Caucasian nurse’s aid was fired after she wrote a letter to the Executive Director stating that she was a victim of gender based disparate treatment. She notes,

After the company received the letter, I was treated differently by everybody at the executive level, including the executive director. Less than two months later I was discharged. My performance had not declined and I was never given reason to believe my job was in danger of termination.

While complaints about pay and general disparate treatment are important concerns in retaliatory firing, sexual harassment appears to be the most frequent complaint that women make before they are retaliated against (see also Wendt and Slonaker 2002). Diane Hammerstein, a Caucasian cashier, describes her experience.

On February 8, 1994, Harold Foster (co-owner) grabbed my buttocks. I told him to stop. On February 17, 1994, Harold Foster [asked her to reach over the register and get a pen, at which time he] grabbed my buttocks and genital region.

Oddly, Harold’s wife (Ann; also a co-owner) was there on the second occasion. Harold and Ann both laughed at the incident. Ann even replied, “Oh he just likes you.” These two incidents within one week “made Diane angry and feel even more degraded.”
After complaining to the store manager, the manager told Diane to contact Ann by phone and confront her about what her husband did. Diane notes, “Less than 15 minutes after the initial telephone conversation, Ann Foster called me to tell me not to report for work and to pick up my check.”

Though Harold Foster denied sexually harassing Diane, neither Harold nor his wife showed up for the fact finding conference. Their attorney was left to explain away their absence. Moreover, after interviewing the store manager she notes that

[Ann Foster] fired several employees who had complained about Harold Foster sexually harassing them in order to keep stories from spreading.

Similarly, Ashley Holmes was fired from her screen printing job after making complaints about sexual harassment. The investigator for this case notes,

Ashley also alleges that Penton Smith (her supervisor) made sexual gestures as her with a hose and stated sexual words. Witness testimony substantiates that Smith would put an air line hose between his leg and make sexual comments. Witness testimony also substantiates that Smith would walk up behind employees, put his hands on their waists and act like he was having intercourse…Staff asked Smith about the “intercourse” incident and Smith claimed that he was giving the person a hug.

The company in this case initially defends itself by suggesting that jokes and slang language were commonly used in the department. The company further argues that Ashley was not fired but that she resigned (although they could not produce a written resignation).

Workplace retaliation has been, and continues to be, a significant form of discrimination. Indeed, the impending threat of retaliation likely causes many women to work in intolerable environments without ever using their voice. But here we see examples where women are terminated soon after employers are made aware that they
have complained. Retaliatory firing is a direct assault on the rights of workers because once they try to speak about a prior form of inequality, they are then unjustly fired. Much like race based retaliatory firing, victims of gender based retaliatory firing are usually able to demonstrate a temporal link between complaining and firing that makes the retaliatory motive hard to deny.

**Conclusions**

Gender discrimination in firing is a complex phenomenon, involving both gender itself and the status of pregnancy/motherhood. Throughout most of the narratives employers seem very comfortable using gender and pregnancy as proxies for the abilities of women. Such proxies, of course, lie at the foundation of statistical discrimination. When statistical discrimination is enacted for gender managers invoke notions of women as less competent and even physically weaker than men (in line with Correll 2007; Herbert 1998). These preconceptions, in turn, create a justification for their dismissal.

More surprisingly, this data reveals disturbing news about what managers think of pregnant women. Most managers react very negatively when women announce that they are pregnant. In fact, the issue of pregnancy accounts for nearly forty percent of all gender based discriminatory firing cases. Fortunately, the regression model highlights some factors that can reduce women’s susceptibility to this process of firing. Women who work in larger organizations, women who work in the public sector, and older women are all significantly less likely to report being fired because of pregnancy based differential treatment. Moreover, Black women (in part because of their concentration in
the public sector) are also significantly less likely to report discrimination in firing on the basis of pregnancy.

The case narratives speak volumes about why managers are so discriminatory toward (White) pregnant women. On the whole, employers feel that pregnant women will have less energy, be less dependable, and even become liabilities to their organization. In addition, the traditional view that a woman cannot possibly be a good worker and a good mother also serves to disadvantage women with impending childbirths. This statistical discrimination prompts the firing of many pregnant women within hours of informing their employers. Such patterns are ironic because evidence suggests that work commitment after childbirth actually increases (Bielby & Bielby, 1984; Noonan, Rippeyoung, & Glass, 2007).

But there are additional motivations to dismiss pregnant women. Cost containment is perhaps the strongest motivation and one that is common among small employers. Many small employers, in fact, emphasize that they can not afford to pay for maternity leave and additional health insurance for pregnant workers (in line with Barrett and Mason 2008). So, they must fire women who become pregnant because any other action would simply be too expensive and likely threaten the survival of their business.

Yet even larger employers and those with a formal maternity leave policy attempt to cut the cost of a pregnant employees by firing them. To maintain the appearance of propriety, though, some pregnant women who are allowed to go on maternity leave then fall prey to micro-inequities such as additional barriers to their return after pregnancy leave (Swiss and Walker 1993). Cost containment and the pervasive micro-inequities
after maternity leave are two mechanisms that organizations utilize to justify the exclusion of employees they consider to be liabilities. As such, they are clearly in line with social closure theory.

Social closure is also exhibited in other ways. Some women are purposely restricted to certain tasks at work primarily because they are women. These restrictions, in the long run, are then used to justify their devaluation as employees and differential treatment in firing. Finally, quid pro quo sexual harassment and retaliatory firing illustrate the continuing significance of overt sexism and efforts at maintaining the status quo in organizations through social closure.
CHAPTER 8
CONCLUSION

In July of 1964 the Civil Rights Act was signed into law in a landmark attempt to reverse the tide of open discrimination against minorities. Title VII of this act specifically makes it unlawful for employers “to fail or refuse to hire or to discharge any individual…because of such individual’s race, color, religion, sex or national origin” (EEOC 2009). Over four decades later scholars are still trying to grasp the impact of this sweeping legislation on employment inequality. Surprisingly, however, while there are a multitude of studies pertaining to hiring discrimination; there are virtually none which address firing discrimination (Petersen and Saporta 2004). The purpose of this dissertation is to fill this considerable gap by investigating the process of discriminatory firing in contemporary workplaces.

Despite the noted lack of direct empirical research, speculations about firing discrimination do exist. Some scholars contend that the employment-at-will doctrine, globalization pressures to cut costs, and overarching cultural stereotypes represent strong and enduring motivations to discriminate in firing (e.g., Stone 2007; Wilson 2005). Yet others maintain that certain organizational characteristics (e.g., formalization) may undermine employer’s discriminatory tendencies (see Baron et al. 2007). Nonetheless, most scholars agree that current discriminatory behavior (to the extent that it exists) will
be more subtle than in the past (Deitch et al 2003; Bonilla-Silva and Forman 2000). To explore these arguments, this project uses a unique multi-method analysis of complaints made to the Ohio Civil Rights Commission.

My general findings reveal eight distinct processes of firing discrimination that range from subtle to overt. In evaluating these processes, I find that discriminatory firing is primarily a product of employer biases and less frequently determined by the structural organization of work. In fact, the results of logistic regression models reveal that proxies for formalization (organizational size, organizational composition, and work sector) are mostly¹⁹ insignificant. These results largely fail to support my first two hypotheses regarding the significance of workplace formalization to the process of firing discrimination.

In my final two hypotheses, I explore how employer ideology affects the process of firing discrimination. Specifically, prior work argues that most cases of firing discrimination will hinge upon elements of meritocracy and that statistical discrimination and social closure are the primary motivations for discriminatory firing. My data reveal ample support for these hypotheses. Indeed, most contemporary firing discrimination episodes are not overt and instead represent disputes about meritocracy. That is, most employers argue that dismissed workers are simply under productive, while most employees assert that they have been differentially treated (Table 6). Let us now consider these results in detail.

¹⁹ As a caveat, pregnant women do experience relative protection from discriminatory firing in more formalized organizational contexts (i.e., larger organizations and the public sector).
Overarching Racial Differences in the Process of Discriminatory Firing

While the majority of contemporary firing is less subtle and involves some form of differential treatment, an important finding of this dissertation is that discriminatory terminations do not usually unfold for African Americans in the same way that they do for Caucasian women. On one hand, African American women and men have over two and three times the odds (respectively) of reporting performance based differential treatment in firing when compared to Caucasian women. Caucasian women, in contrast, have over five times the odds (compared to African American women) of reporting being fired because of differential treatment in regards to pregnancy. These discrepancies, which remain after controlling for a number of individual and workplace characteristics, suggest that discrimination in firing is complex and that “one size fits all” firing protections will not be an effective solution to this problem.

These patterns can be explained by comparing the results of chapters six and seven. Indeed, African Americans face a wider array of differential treatment in performance prior to being fired. Whereas Caucasian women predominantly face social closure directly related to their performance in traditionally male jobs, race based closure surrounding alleged performance issues occurs in every type of job measured. In fact, African Americans are often differentially treated (and fired) because of alleged performance issues within the public sector.

African Americans are also uniquely discriminated against based on alleged “soft skill” performance problems (Wilson 2005). Managers report particular problems with African American hair styles, dress, communication, and interaction skills. Caucasian
women may have greater cultural similarity with their managers and therefore be less exposed to “soft skills” biases prior to their terminations (Moss and Tilly 1996).

African Americans also face differential policing of company rules along racial lines (see also Roscigno et al. 2007). While the underlying motive is certainly subject to interpretation, these mechanisms fall in line with social closure because in each circumstance case evidence reveals a Caucasian comparative who receives more preferential treatment. Taken together, the multifaceted nature of performance based differential treatment that African Americans endure very likely explains why they have significantly higher odds of reporting this discriminatory firing process.

There are also a number of reasons to explain the gap between Caucasian and African American women who report pregnancy based differential treatment in firing. Indeed, part of this gap is structural. Recall that there are no employees in the public sector who claim to face firing because of their pregnancy. This is likely a product of formalized maternity leave policies available in the public sector. African American women, who are overrepresented as public sector employees (Zipp 1994), benefit from these protections. An alternative explanation stems from the idea that African American women are less likely to work during pregnancy (Johnson 2008). Simply, if pregnant African American women are not in the workforce they will be less vulnerable to pregnancy discrimination.

Below I elaborate further on how firing discrimination unfolds in the lives of real people. I ground these findings with the theories of statistical discrimination and social
closure. I then offer the policy implications of this research and broad suggestions to reduce discrimination in general.

**African Americans and Discriminatory Firing**

These data suggest that African Americans experience both statistical discrimination and social closure in firing. The common thread lingering behind both of these theoretical frameworks is the pervasive and negative stereotypes about African Americans as workers. We know from prior work that employers express their reluctance to hire African American workers because of cultural biases that they are underproductive (e.g., Kirschenman and Neckerman 1994; Shih 2002). Although there is no proof of aggregate differences in productivity between Black and White employees, the preconceived biases that employers hold can lead to perceptions of statistical differences. And as witnessed in this data, these perceptions encourage employers to unfairly judge the performance potential of African Americans or limit them from working on important projects. In this way, statistical discrimination has the effect of producing a self-fulfilling prophecy that ultimately provides a justification for the dismissal of “expendable” African American employees.

While statistical discrimination represents one form of differential treatment, much of the differential treatment in firing experienced by Africans Americans appears to result from social closure (Roscigno et al. 2007). Yet, because of contemporary social norms against overt discrimination, many of the mechanisms are covert. For example, when managers more closely monitor African Americans and hold them to higher
standards of performance than Caucasians, they tend to nurture fictionalized identities of African Americans as unqualified (Robert and Harlan 2006) – identities that are then used to justify their dismissals. And when there are few measurable differences in productivity, managers tend to resort to “soft skill” evaluations (Wilson 2005). These subtle efforts fall in line with social closure theory because many employers knowingly ignore contractual obligations of progressive discipline for Blacks while they offer them to similarly situated Whites.

Another covert mechanism of discriminatory firing occurs when managers differentially enforce company policy along racial lines (also see Roscigno 2007). Although these policies may be routinely violated by other employees, African Americans are the only ones held accountable. These violations are also used to legitimize the dismissal of African Americans from work.

Other processes of firing discrimination more clearly represent the struggle to maintain racial hierarchies in employment. In one example, African Americans report facing retaliatory firing for making prior claims of racial discrimination. Amazingly, some employers expect African Americans to merely cope with discriminatory practices without complaining. If they do complain employers quite intentionally discharge them to set an example and maintain the status quo within their establishments (Baucus and Dworkin 1998).

In another process, African American men are the victims of arbitrary firing discrimination – discrimination that seems to lack any real justification. These arbitrary dismissals may be a symptom of the negotiation between contemporary social norms and
backlash to affirmative action hiring mandates. In other words, some employers may hire Black men and fire them soon after merely to proclaim that they gave them a chance.

Together, my analyses present new challenges to the enforcement of anti-discrimination in firing. Not only are there various forms of discriminatory firing that must be addressed but these data suggest that the organization of work has limited effects on race based firing. Indeed, despite formalized protections, workers in the public sector are almost invariably fired during their probationary periods. Public sector managers are quick to defend these actions claiming that they have the liberty to fire employees without cause within their probationary periods. This strategy is identical to the assertion made by private sector managers who proclaim that they have firing flexibility because of the employment-at-will doctrine. These similar justifications across organizational contexts suggest that efforts must address the source of the problem (i.e., the persistence of stereotypes) rather than simply hoping that formalization will be a panacea.

Women and Discriminatory Firing

Women’s vulnerability to firing discrimination generally results from differential treatment in regards to gender and (to a greater extent) differential treatment in regards to pregnancy. Similar to race based firing; statistical discrimination lingers behind both of these processes as well. Employers are sometimes even blatant in their opinion that women, especially those within traditionally male jobs, are less competent and even physically less able than men (Ridgeway and Correll 2004; Herbert 1998). These alleged deficiencies provide the necessary justification to differentially treat women in firing.
Though both gender based differential treatment and pregnancy based differential treatment can be explained by statistical discrimination, the stereotypes that managers call upon in decisions to fire pregnant women are somewhat different than those for non-pregnant women. With pregnant women employers are concerned about future productivity, absenteeism, and commitment to work. In fact, without even allowing pregnant women the opportunity to demonstrate their dependability, managers assume that they will be less dependable and fire pregnant women within hours or days of finding out that they are pregnant.

Pregnant women also face social closure at work. In one example, employers use cost containment perspectives to dismiss pregnant women who are considered financial liabilities (see also Edwards 1996). Simply, employers who feel that they cannot afford to pay for maternity leave fire their pregnant employees and replace them with non-pregnant workers. While this strategy occurs in organizations of all sizes, small organizations are the most discriminatory against pregnant women in part because global competition coerces them to cut costs by any means (Barrett and Mayson 2008). Knowing this, small businesses may ultimately need additional funding from the government to assure that fair arrangements can be made for their pregnant employees.

But not all processes of firing discrimination that women experience stem from unconscious stereotypes or cost considerations. Quid pro quo sexual harassment and gender based retaliatory firing are the most explicit (and intentional) forms of social closure that women face. When women deny their manager’s sexual advances or complain about sexual harassment, they are often subsequently fired. In both scenarios,
the goal of the termination is to enforce hierarchies at work. These motivations of social closure appear to transcend gender and race.

Policy Implications

Based on the above findings I offer three specific policy implications. First, the methods of studying employment discrimination must evolve to address its complexities. The bulk of what we now know about the process of employment discrimination hails from audit studies. While audit studies are certainly helpful, they are limited to hiring discrimination. Indeed, more attention must be paid to discriminatory firing especially because it accounts for almost half of all formal complaints. But how do we study firing discrimination?

Analyses that utilize discrimination case data are fruitful. But to attain an even less filtered view of discriminatory firing, undercover (on site) investigations may be the next best option. Ferraro (2000) argues that undercover workplace investigations surrounding issues like drug use and sabotage provide a unique opportunity to uncover the process and motive of harmful workplace conduct. If skilled investigators were paid to work undercover in establishments that have been deemed (through probable cause findings) as frequent violators of discrimination law, much could be learned about discriminatory firing that would not otherwise be exposed. Such novel strategies would go a long way towards the development of a theory that pertains to the process of discriminatory firing.
Second, anti-discrimination enforcement needs to be redirected toward inequality at the end of employment. Unfortunately, current policies such as affirmative action do little to address discriminatory firing. The simplest way to initiate this change would be to adapt pre-existing methods. For example, the same EEO-1 compliance forms currently used to examine hiring and promotion behavior could easily be modified to monitor the demographic composition of people selected to be fired. This practice may reveal patterns of firing discrimination to employers who are not conscious of their tendencies to discriminate in firing.

Finally, this research warns that any strategies developed to curb discrimination in firing must be mindful of its multi-dimensional nature. Acknowledging that, regardless of organizational context, managers work around formalization to exercise their racial biases in firing; educational campaigns that focus on dispelling stereotypes about race and performance appear to be the most effective strategy. On the other hand, stronger laws mandating paid maternity leaves and educational campaigns are both necessary to help Caucasian women. Meanwhile special considerations must be made for small organizations due to their expressed difficulty in paying for maternity leaves. Due to these complexities blanket policies will not prevent discriminatory firing.

In addition to these specific policy implications, the literature on employment inequality offers a more comprehensive list of modifications that are necessary to curb discrimination. These modifications must take place at the individual level, the organizational level, and the legal level. Below I discuss these ideas and propose that, if
adopted, these suggestions will produce significant strides in reducing firing discrimination as well as other forms of workplace inequality.

**Future Initiatives to Combat Discrimination**

**The Individual Level – A Proactive Push for a National Report Card**

Legal mobilization (i.e., discrimination charges and litigation) is a prominent “proper channel” for social change (Burstein 1991, p. 1201). The verdict on whether it actually brings about social change, however, is less clear. While the initial discrimination charge brought against a company does enhance the managerial representation of some group members (i.e., Black men), the number of subsequent charges do **not** reduce levels of race or sex segregation (Hirsh 2009; Kalev and Dobbin 2006). In other words, organizations that do not change in response to the first discrimination charge are unlikely to be affected by charges at all. On the other hand, discrimination lawsuits, (which often result from charges), are noted to be more uniformly successful at increasing the managerial representation of minorities and women (Kalev and Dobbin 2006). Though this work signals a glimmer of hope about the effectiveness of legal activity, most scholars agree that more must be done.

Perhaps one of the biggest challenges to relying on legal mobilization **alone** is the idea that most acts of discrimination go unreported. In fact, Neilson and Nelson (2005b) use extrapolation to estimate that less than 1% of African Americans who feel they are discriminated against actually file a claim (p. 704). Such a low prevalence of claiming is undoubtedly related to various situational factors, organizational dynamics, the political
climate, and the economy (see Burstein 1991; Feltiner, Abel, and Sarat 1980; Wakefield and Uggen 2004). In addition, as evidenced in this study, the probability of retaliation for filing a discrimination claim likely dissuades\textsuperscript{20} some victims from reporting (see also Dworkin and Baucus 1998).

Facing these challenges, it is imperative that victims of discrimination and other advocates of equality remain proactive. Certainly, victims must continue to exercise their legal right to file claims/suits. Also, the importance of witness corroboration in cases of workplace discrimination cannot be understated (Easteal and Judd 2008).

But employees must embrace new strategies as well. For example, concerned parties should petition congress or scientific institutions (e.g., the National Science Foundation) to fund a national report card on employment discrimination. This national report card would create a better understanding of the prevalence and the subtleties of employment discrimination (Bendick 1998). Investigations of charges filed with civil rights agencies (e.g., OCRC), employer interviews, audit testing, and undercover investigations would serve as a fruitful starting point in this national report card. And, because these investigations will likely be standardized, they can be compared to produce the most reliable estimate of the prevalence of discrimination. A national report card would also serve to educate the public about the various forms of discrimination and the complications that remain in overcoming them. Furthermore, these efforts will challenge

\textsuperscript{20} Despite these obstacles, in 2008, the EEOC received 95,402 charges of discrimination (EEOC 2009). Put another way, this number represents an average of nearly 11 people every hour – an average that does not include the myriad of children who are vicariously affected.
the pervasive ideology of colorblindness as we learn about how modern discrimination unfolds.

Comprehensive attempts such as these have been successfully conducted in Europe. In fact, the European Union launched a study to develop a national report card of sorts on pregnancy discrimination in 2003. After consulting over 1,000 employers, 1,000 pregnant women, and a host of professional organizations in England, Scotland, and Wales, the Equal Opportunities Commission\(^{21}\) (EOC) was shocked to find that nearly one half of all pregnant women reported that they experienced dismissal from work or differential treatment (EOC 2005). This comprehensive campaign, which was dubbed “Pregnant and Productive”, included surveys and interviews that revealed remarkably similar accounts to those found in this dissertation (see EOC 2005). Such results heighten the urgency of exposing the processes of contemporary firing discrimination in America and identifying solutions that could potentially have a global impact.

*The Organizational Level – U.S. Firms and Organizational Learning*

In addition to calls for individuals to be more proactive in fighting discrimination, organizations must change the way they respond to discrimination cases. As noted in this dissertation, employers are very reluctant to concede that discrimination of any sort could have possibly occurred within their establishment. Specifically, they defend their firing decisions by invoking their rights under the employment-at-will doctrine or the protection of probationary period dismissals. Wooten and James (2004) argue that such responses

\(^{21}\) As of October 2007, Britain’s EOC was subsumed under the Equality and Human Rights Commission.
are indicative of the tendency for U.S. companies to be reactive rather than reflective when accused of discrimination. Indeed, because of a great deal of uncertainty about potential monetary damages in suits of wrongful termination, U.S. firms are quick to hire lawyers who can present a strong legal defense (Nielsen 1999). The purpose of this defensive response is to resolve discrimination suits rather than reflect on the behavior that led to the suit in the first place (Wooten and James 2004). These tendencies, however, do not allow organizations to learn about how to stop discrimination.

Furthermore, even organizations that appear less defensive are sometimes driven by the wrong objectives. Impression management and the desire to reduce their exposure to negative publicity may encourage some organizations to develop symbolic responses to mandates for policy change (Edelman and Petterson 1999; Wooten and James 2004). These symbolic structures (e.g., EEO offices) provide a guise of compliance and yet have little effect on the representation of women and minorities in the workforce (Edelman and Petterson 1999).

A final obstacle to organizational learning is the idea that some firms who have never had discriminatory lawsuits against them tend to rely on vicarious learning from the status quo of their industry (Wooten and James 2004). If industry norms encourage discrimination, newer firms may blindly follow these practices and use industry practices as a justification of their behavior (Wooten and James 2004). Optimistically, however, when firms see that other discriminatory firms in their industry undergo enforcement they may feel compelled to be non discriminatory (i.e., less sex segregation) (Hirsh 2009).

22 This approach differs from Canada’s practice of “paying workers” at the point of termination through severance packages to reduce the likelihood of a wrongful termination claim/suit (see Nielsen 1999).
In sum, the literature is clear that defensive organizational reactions do little to curb discriminatory tendencies or help organizations learn from discrimination cases. However, there are at least two things that organizations can do. First, organizations which use compliance reviews to alter their organizational routines are successful at increasing managerial diversity (Kalev and Dobbin 2006). Second, a growing body of work highlights the importance of holding specific entities accountable for equal employment measures (Bielby 2000; James and Wooten 2004; Kalev, Dobbin, and Kelly 2006). In fact, when specific people (or committees) are held accountable for diversity management, race and gender bias is minimized and there are broad increases in workplace diversity (Bielby 2000; Kalev, Dobbin, and Kelly 2006). Compliance reviews that monitor firing (instead of hiring) and the establishment of entities that are accountable for fairness in dismissals would likely reduce levels and forms of discriminatory firing.

The Legal Level – The Evolution of U.S. Discrimination Law

The last component to reducing discrimination within workplaces is the notion that U.S. employment discrimination law must evolve to recognize contemporary forms of discrimination. Scholars argue that U.S. employment discrimination law continues to emphasize a “perpetrator” model whereby discrimination is conceived as an individual and intentional action that can only be solved through individual remedies (Nelson, Berrey, Nielsen 2008; Suk 2008). This tort logic (the idea that discrimination occurs through individual actions and harms individual dignity) stems from the creation of Title
VII when discrimination consisted of intentional and easily identifiable acts of segregation against minorities and women (Suk 2008).

Yet, this dissertation and other recent work suggest that much employment discrimination is the result of subtle and often unintentional biases (see also Nelson, Berrey, Nielsen 2008). As such, the current requirement of proving intent in court has the effect of reducing the legitimacy of discrimination claims and hindering change in those cases that are dismissed for not meeting the burden of tort.

A final lesson about U.S. employment discrimination law can be learned from France. Interestingly, French law considers employment discrimination a criminal act where offenders can be punished with prison sentences. Although such a radical legal change is not recommended for America because of our distinct criminal case burdens (e.g., the burden of proof beyond a reasonable doubt), adopting the philosophy that discrimination represents an injury to the general public rather than a simple dispute between individuals would bring about a greater sense of repudiation of discrimination (Suk 2008). Moving away from “perpetrator” models by acknowledging that discrimination is often unconscious in nature and still harmful to all people will broaden our understandings of and distaste for discriminatory behavior.
References


