Workplace Heating and Gender Discrimination

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Forthcoming in Bioethics (this is the accepted version of the article)

Abstract

Across Europe, countries are reducing CO₂ emissions and energy demand by lowering the temperature in public office buildings. These measures affect men and women unequally because the latter prefer and, indeed, perform better under higher temperatures than the standard temperature. Lowering the temperature thus further increases an already existing inequality. We show that the philosophical literature on discrimination provides an interesting theoretical approach to understanding such measures. On prominent understandings of what discrimination is, the policy would be considered direct discrimination against women if it could be shown to reflect a broader inattentiveness to the needs of women in society. Alternatively, and more straightforwardly, the policies can be considered indirect discrimination because of their disparate effects on men and women. The final part of the paper shows that the policies are also wrong for the reasons it is often argued that discrimination is wrong – to wit, that it harms or disrespects those who are discriminated against. The final section suggests a range of measures to offset the discriminatory aspects of the policy.
I. Introduction

In response to the energy crisis triggered by the Russian invasion of Ukraine in the reverberation of the Covid-19 pandemic, different attempts have been made to lower energy demand. One of the steps taken is to reduce the temperature in public office buildings. Across Europe, countries such as Denmark,1 Germany,2 and Spain3 have decided that public buildings will only be heated to 19°C. While such initiatives reduce the emission of greenhouse gasses and the reliance on Russian fossil fuels, they also have specific adverse effects on the working environment that particularly affect women. Studies show that the chosen temperatures provide women with more discomfort than men.4 In addition, women ‘exhibit better cognitive performance at the warmer end of the temperature distribution while men do better at colder temperatures’.5 Current measures to lower public workplace temperatures exacerbate an existing problem.6

Because low office temperatures put women at a disadvantage relative to men, critics have argued that there is reason to consider cold working environments discriminatory or ‘sexist’.7 We argue that this view finds support in influential theories about what (wrongful) discrimination is. First, we argue that the measures are at least indirectly discriminatory and potentially directly discriminatory against women. Then we argue that this discrimination is wrongful.8 Specifically, we apply the harm-based account, the objective meaning account, and the deliberative account and argue i) that the initiatives harm women relative to men, ii) that they are an instance of a wider phenomenon expressing that women are morally inferior to men, and iii) that they manifest disrespect for women’s equal moral worth. These wrong-making features should be considered in an overall assessment of the justifiability of the policy.

Some may find the topic insignificant and point to the existence of more extensive, and egregious wrongs more worthy of attention. In response, we would like to offer two reasons to appease such a dismissal of our chosen topic. The first is that we hardly need to employ the toolkit of analytical philosophy to understand why glaring wrongs are indeed bad.9 The second is that our examined topic is a small puzzle in a larger picture. According to Perez, the author of Invisible Women, low office temperatures is just one example of a broader phenomenon where decision-makers assume that ‘male is normal’ and disregard or overlook female needs.10 They might therefore be considered a kind of micro-inequity. In her very helpful survey of the phenomenon, Brennan presents

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8 Importantly, not all people who are disadvantaged by the policy identify as ‘women’. While we focus on discrimination against cis-gendered women, this does not exclude that the policy involves wrongful discrimination towards other groups such as transmen and older people.


\textbf{II. Discrimination against women?}

In our analysis of whether lowering temperatures in workplaces is discriminatory, we initially apply Lippert-Rasmussen’s definition of direct group discrimination:

An agent, X, discriminates against someone, Y, in relation to another, Z, by \(\Phi\)-ing (e.g., hiring Z rather than Y) if, and only if:

(i) There is a property, P, such that Y has P or X believes that Y has P, and Z does not have P or X believes that Z does not have P,

(ii) X treats Y worse than he treats or would treat Z by \(\Phi\)-ing, and

(iii) It is because (X believes that) Y has P and (X believes that) Z does not have P that X treats Y worse than Z by \(\Phi\)-ing.
(iv) P is the property of being a member of a certain socially salient group (to which Z does not belong).¹³

According to this definition, members of a socially salient group are discriminated against when they are treated worse than others because of their membership of this group. Do low temperature policies satisfy these conditions? As described in the introduction, lowering the temperatures involves treating women worse than men. However, whether such disadvantageous treatment amounts to direct discrimination depends on how we interpret the definition’s third condition. This condition says that it must be because Y has the property of being a woman that X treats Y worse than Z, who does not have this property (i.e., who is a man). But treating women worse than men does not seem to be the motive behind the low temperature policies; the motive is to lower energy demand. Perhaps the policymakers, X, do not even know or consider that the policy is disadvantageous to women (or maybe they are aware of this but introduce it anyway due to the concerns about saving energy). Drawing on Lippert-Rasmussen’s definition, Berndt Rasmussen suggests that direct discrimination involves differential treatment in the following sense:

‘Had Y not (been believed to) have P, X would have χ-ed, rather than ϕ-ed, and ϕ-ing toward someone constitutes worse treatment of them than χ-ing’ (Berndt Rasmussen 2020, 732).

In our case, this means that unless X had acted differently if men, but not women, performed worse at lower temperatures, the policy does not qualify as direct discrimination.¹⁴ Here, one could argue

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that given that the policy is enacted for reasons unrelated to gender, we should expect it to have also
been introduced if the effects were reversed.

However, such reasoning relies on the assumption that the needs of men and women are
assessed with equal concern in the reasoning behind the policy. But this might be too quick an
assumption. A few examples illustrate this. When the Danish Government enacted the EU directive
regarding parental leave, specifying that at least 11 weeks should be earmarked for each parent,
exemptions were made for the self-employed. This was done because the decreased flexibility would
adversely affect the self-employed. However, as female self-employed pointed out, they had been
struggling with a similar inflexibility in relation to the part of the leave already earmarked for the
mother. But the problem was only addressed once men were also affected. At least the example
suggests one instance of how men’s and women's interests are taken differently into account.

Returning to office temperatures, it might be plausible to consider this a case where the interests
of men are given more weight than the interests of women. As Kingman and Lichtenbelt explain,
indoor heating temperatures are set based on estimates of thermal discomfort. Standard reference
values for the metabolic rate are employed in calculating these estimates. These values are ‘set by
convention based on the resting metabolic rate of only one 70 kg, 40-year-old male’. The upshot of
this is that women, who tend to have a lower resting metabolic rate, will feel colder and experience
more discomfort than men.\textsuperscript{15} Perez provides a number of additional examples of a similar pattern.\textsuperscript{16}

On the topic of heating, one illustrative way of understanding society’s approach would be to consider
how hot summers are handled. One thought would be that if, to reduce energy spent on cooling,
warmer offices were allowed, then the discomfort distribution would be reversed between men and
women. A parallel approach to air-conditioning that disadvantaged men more than women would

\textsuperscript{15} Kingma, van Marken Lichtenbelt (op. cit. n. 4) : 1054–1056
\textsuperscript{16} Perez (op. cit. n. 10)
corroborate the claim that energy preservation is the main concern in setting the temperatures. It would not, however, be a complete reversal as the starting point for calculating discomfort would still be biased against women. Moreover, empirical studies suggest that temperatures would need to reach very high levels for the relative negative impact to be equivalent to that experienced in winter by women.\textsuperscript{17} To sum up, the case for considering the rules as direct discrimination against women is weakened because the purpose is clearly unrelated to the effects on women. However, we would be hesitant to categorically dismiss the possibility that the enactment of such measures, despite the adverse effect on women, reflects a broader inattentiveness to the needs of women in society.

Even if there is no direct discrimination involved in the policy of lowering the temperature, the policy might be vulnerable to the charge of indirect discrimination. The concept of indirect discrimination features prominently in the legal literature. Both the European Court of Human Rights (ECRH) and the US Supreme Court have acknowledged the importance of indirect discrimination.\textsuperscript{18} According to Holroyd, indirect discrimination occurs when “a policy or procedure is on the face of it neutral, but in fact disproportionally disadvantages members of a particular social group”.\textsuperscript{19} Berndt Rasmussen suggests that the disparate impact involved in indirect discrimination can be described as follows:

\begin{quote}
Had Y not (been believed to) have P, X would still have \(\phi\)-ed, but \(\phi\)-ing toward someone with P constitutes worse treatment than \(\phi\)-ing toward someone without P.\textsuperscript{20}
\end{quote}

On the surface, the policy treats everyone equally because both men and women are exposed to lower temperatures. Given that the policymakers have no intention of treating women worse than men (and

\begin{itemize}
\item \textsuperscript{17} Chang, T.Y., & Kajackaite, A. (op. cit. n. 5))
\item \textsuperscript{18} Lippert-Rasmussen (op. cit. n. 11) : 54
\item \textsuperscript{19} Holroyd, J. (2017). The social psychology of discrimination. In The Routledge handbook of the ethics of discrimination (pp. 381–393). Routledge.
\item \textsuperscript{20} Berndt Rasmussen (op. cit. n. 12) : 732
\end{itemize}
they would not have acted differently had men instead of women been disadvantaged), but the policy has a disparate impact on women compared to men, the policy seems to qualify as indirect discrimination. The already cited empirical studies suggest that the criterion of disparate effects is fulfilled in this case. Thus, the policy can plausibly be considered a case of indirect discrimination.

III. Wrongful discrimination?

While not all instances of discrimination are wrong, we will argue below that the temperature reductions under consideration can be considered as such based on at least three prominent understandings of what makes discrimination wrong. Specifically, we will apply the desert-prioritarian harm-based account, the objective meaning account, and the deliberative account. These are chosen because of their respective prominence in the discrimination literature. A fourth possible candidate for the examination would be the belief-based account. On this account, discrimination is wrong when it involves ‘a[n incorrect] belief that some types of people are morally worthier than others’. However, unless the relevant policy-makers have degrading beliefs about women, the policy is not wrongful on this account. We, therefore, set this account aside.

The desert-prioritarian account

Lippert-Rasmussen presents and defends the desert-prioritarian account, which is harm-based. On this account, discrimination is wrong when it is because it harms people. Specifically, the view holds that discrimination harms the discriminatee ‘when it makes the discriminatee worse off than


22 Lippert-Rasmussen (op. cit. n. 11) : 154
she would have been had she not been subjected to it and we hold everything else other than the discriminatory act and what follows downstream from it constant’. The view is prioritarian as it assigns more negative moral weight to harm (i.e., deficiencies in well-being) the worse off in absolute terms the discriminatee is. Moreover, it assigns more negative moral weight to harm that is underserved.

The view implies that lowering workplace temperatures is pro tanto wrongful against women if it puts them at a disadvantage in terms of well-being compared to a situation without this initiative. How wrongful it is depends on the level of harm caused by the discrimination, women’s absolute well-being level, and the extent to which they have deserved the harm. The already cited studies suggest that reducing the temperature is a setback to women’s well-being compared to a situation where such reductions are not made. This suggests that there is a reasonable argument that lowering the temperatures is wronging women because they are made undeservingly worse off than they would otherwise have been had the initiative not been introduced.

While it is arguably hard to precisely say how harmful the measure is, we can at least substantiate the thought that we are not dealing with trivial harm. Being discomforted in your work environment by the temperature is in itself no small thing. Many of us do, after all, spend a considerable amount of our woken hours at work. But in addition to this discomfort, the adjusted temperatures also have differential effects in other ways. One study tests the ability of men and women to solve various task at different temperatures and find that ‘a one-degree Celsius increase in ambient temperature is associated with 0.17 (1.76%) increase in the number of math questions correctly answered by women (p-value < 0.001). In contrast, the associated decrease in male

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23 I.e., the account accepts the ‘straightforward baseline’. Ibid.
24 Lippert-Rasmussen writes, ‘desert prioritarianism, on the most straightforward understanding, is concerned with whole lives and not just part of lives; it applies to overall harm to [an] individual, not harm in particular dimension; harm refers to deficiencies in well-being; and desert prioritarianism focuses on individuals, not groups’. Ibid.
performance is generally small and statistically insignificant’. Working, continuously in an environment shaped in ways that negatively affect one’s productivity may affect the extent to which one is able to secure, for example, bonuses, higher wages, and promotions – something which indeed suggests that the harm should be taken seriously.

However, on a casual reading of the data presented so far, one could say that when lowering the temperature and accommodating men, we are really not harming women in a meaningful sense. We are, instead, removing a disadvantage currently put on men and achieving a fairer temperature. It is, after all, the case that men prefer cooler temperatures, while women prefer warmer, and is it then not misguided to consider what thereby transpires harm to women? This argument, however, does not work when properly scrutinized. This is because the current temperatures advantage men. Lowering them exacerbates an existing inequality.

However, this might still be perceived too quick a conclusion. We cannot yet conclude that these arrangements harm women because we must consider the background these measures are introduced against. In our assessment of harm, we should consider what follows downstream from the discriminatory act and in comparison, what would have happened had it not been introduced. The worry pointed to here is that this may have even worse consequences if we do not reduce the energy demand. A real power shortage due to the scarcity of gas may lead to blackouts, burnouts, or brownouts where – to various degrees – the voltage in the power supply system drops (or is lowered intentionally) because of excessive demand. The contention would then be that it might be the case that women are, in fact, not worse off compared to the relevant baseline where the discriminatory policy is not introduced. Suggesting such a comparison is relevant here because the desert-prioritarian

25 Chang, Kajaikaite (op. cit. n. 5) : 3–4
26 Parkinson, Schiavon, de Dear, Brager (op. cit. n. 6) : 23684; Kingma, van Marken Lichtenbelt (op. cit. n. 4) : 1054–1056
account is contingent on the actual outcome. It compares various outcomes created (not created) by enacting (not enacting) the policy in question.

In our view, this argument ignores that there are plausibly other avenues to pursue to reduce electricity demand. While some measures, such as increased reliance on renewable energy sources, are not immediately available, other measures undertaken by individuals or larger entities such as companies or states are. All of us can be encouraged to drive less and, in different ways, try to consume energy at those points during the day when demand is lower. Some of us may be able to improve the energy efficiency of our houses by insulating or changing power sources – and all these measures can, to various degrees, be supported and encouraged by employers and the government. Public and private workplaces may also pursue a wide range of initiatives themselves to reduce energy consumption, including (but not limited to) ensuring that machines and indoor lighting are energy efficient and turned off when not in use. In other words, the relevant non-discriminatory counterfactual might involve alternative energy-saving measures that do not disadvantage women relative to men, or as suggested in the final section, include additional measures to counteract the adverse effects.

The objective meaning account

According to Hellman’s objective meaning account of the wrongness of discrimination, discrimination is wrong when and because it is demeaning. On this account, the potential wrongness pertains to the meaning a discriminatory action expresses. It does not pertain to the mind-set of the discriminating agent; nobody needs to think badly about the person(s) discriminated against.
Moreover, ‘meaning’ is taken to be objective, and whether a policy has a specific meaning can only be understood by analysing its context.\textsuperscript{27}

When is a policy or action demeaning? In Hellman’s view, there are two dimensions of this. One is the expressive dimension, i.e., that a policy expresses ‘that a person or a group is of lower status’\textsuperscript{28}, and the other is the power dimension, where an ‘actor or institution expressing this meaning must have sufficient social power for this expression to have force’.\textsuperscript{29} Low temperature measures clearly fulfil the requirement regarding sufficient social power as these measures are introduced by the government nationwide or by the employer. Both are paradigmatic examples of actors with power. In the expressive dimension, it is interesting to consider how the policy might express lower status of women. On the one hand, a quick assessment might lead one to conclude that the policy does not involve such expressions. We are talking about workplace heating, and it may sound like hyperbole to consider reducing the temperature a couple of degrees as something that can raise concerns of degrading expressions.

On the other hand, the policy worsens an already unequal status quo, which is in place because the very starting point for calculating the ‘correct’ workplace temperature is the biological needs of men. Furthermore, the disparate effects of lowering the temperature are well-established, but the policy is introduced nonetheless (seemingly without any public recognition of how this affects women or compensatory measures to offset this). In addition, the continued employment of an estimate based on the needs of men can in itself be considered disrespectful. Importantly, Hellman suggests that what a discriminatory act expresses depends on the specific context in which it is performed. If the context is generally characterised by fitting men better than women, and the relative disregard for women’s


\textsuperscript{28} Ibid (op. cit. n. 25) : 102

\textsuperscript{29} Ibid.
interests involved in the low temperature policy is an instance of a broader phenomenon where such disregard is taking place on a structural basis, then it is not implausible to suggest that the policy does express that women have lower moral status.

*The deliberative account*

Finally, Eidelson suggests a deliberative account of the wrongness of discrimination. On this account, X’s discrimination against Y relative to Z is wrong when X, in their deliberation behind their discriminatory act, fails to give appropriate weight to Y’s equal moral worth or Y’s autonomy but does not (or to a lesser extent) fail to do so towards Z. Through his *interest thesis*, Eidelson shows how X may fail to give appropriate weight to the equal moral worth of Y relative to Z:

To respect a person’s equal value relative to other persons one must value her interests equally with those of other persons, absent good reason for discounting them.

If, for example, an employer, Peter, does not give Fatima’s interest in being promoted equal weight to Christopher’s corresponding interest because of Fatima’s ethnicity, then the employer does not respect Fatima’s equal moral value relative to Christopher’s. Fatima’s ethnicity is not a good reason for discounting her interest in promotion.

As illustrated above, low temperature policies do not give equal weight to the interests of men and women because they disregard the biological differences between men and women that give women an interest in higher temperatures. In his presentation of his theory, Eidelson cites the

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31 Ibid. : 97
32 Ibid.
following quote by Frankfurt. In our view, the quote illustrates a crucial respect-based concern that arises when women’s interest in higher temperatures is not considered:

Failing to respect someone is a matter of ignoring the relevance of some aspect of his nature or his situation. The lack of respect consists in the circumstance that some important fact about the person is not properly attended to or is not taken appropriately into account. In other words, the person is dealt with as though he is not what he actually is.  

When a policy changes the environment in ways that cater to the needs of men but not the needs of women, women may reasonably object that the policy is inattentive to important aspects of who they are.

One might object that it is difficult to see that the policymakers, who are simply inattentive to these different interests of men and women, necessarily manifest disrespect. However, in Eidelson’s account, being inattentive does not exempt one from charges of disrespect. As he writes, ‘one may act disrespectfully by failing to make a serious effort to ascertain a person’s interests accurately, at least where one knows one’s choice is liable to affect him’.  

When politicians and employers set rules that interfere with people, they should consider how these rules affect the people interfered with. Not least because, as the ‘invisible women’ phenomenon – and the idea of micro-inequities – illustrates, accepting seemingly small cases of inattention to certain groups’ interests can become a significant disadvantage for the relevant group. Accordingly, one should be cautious in accepting such disregard, even in isolated cases.

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34 Eidelson (op. cit. n. 28) : 101
Of course, Eidelson’s interest thesis states that it is not disrespectful to discount the interests of particular groups if there are good reasons for doing so. As described above, saving energy is clearly a legitimate purpose. However, this seems to justify the disadvantageous treatment of women in question only to the extent that no other feasibly non-discriminatory options are available. In other words, a similar reply to the one we gave in the harm discussion is available here.

IV. Solutions

The above shows that policies of lowering office temperatures are, even in the current situation, a case of indirect discrimination (if not direct discrimination). Furthermore, the policy seems wrong for harm- and respect-based reasons. How should we react to this? As already touted, one possibility is, of course, to drop the policy in favor of other policies and initiatives to the same end. One rejoinder to this is that we should do both to lower energy consumption and the associated CO₂-emissions. Therefore, this last section will briefly discuss how we might react to the finding that the policy is discriminatory without giving up the policy completely. Policies that would increase energy consumption are not discussed.35

One category of counteracting measures would seek to offset the identified problem. Here, a wide range of measures could be considered, each of which will vary in its applicability depending on the arrangements at the workplace. The appropriateness of measures may also vary with what one ultimately believes to be the wrong with the associated policy (i.e., whether one tends to consider this to be most a case of harm or one of disrespect). One category of measures seeks to limit exposure to the lower temperature. This can be done in many ways. For example, workplaces with individual

offices can allow some workers to have a higher temperature in their own offices. Workplaces with shared offices can set the temperatures differently at various offices, allowing people to select their preferred temperature. Exposure can also be lessened by allowing women to work more from home (though this may also mean that other costs are incurred by those who use their private facilities). Other avenues to pursue (which would also work in a large, shared office environment), would be to offer writing gloves, woolen blankets, or other measures to keep the body less exposed to the lower temperature. There are also measures to improve the situations of the affected women. One would be monetary compensation through higher pay during the winter. Another would take a non-monetary form in the form of public recognition of those who are most affected by the policy. The latter may help if the problem is mostly about lack of recognition, but it may do little to amend the inattentiveness to women’s needs.

Presumably, the plausibility of the above measures depends partly on whether the wrong associated with the (indirect) discrimination is mostly considered harm or disrespect. If lower office temperature is mostly a nuisance and a source of discomfort, then paying people for enduring them or handing out blankets, etc. may be what is required. But if the problem is mostly about lack of respect and recognition, then these measures may do little to challenge the perceived inattentiveness to women’s needs. Some might feel a different form of discomfort working in a shared office space wrapped in a blanket and wearing finger gloves – at least if the reasoning behind making these available is not communicated sufficiently clearly.

V. Conclusion

Lowering the temperature in public office buildings increases an already existing inequality. It involves setbacks to women's interests, which are not trivial. Employing the philosophical literature
on discrimination shows that according to prominent understandings of what discrimination is, the policy would be considered direct discrimination against women if it could be shown to reflect a broader inattentiveness to the needs of women in society. We have not justified the latter part of this claim, but we have provided some evidence for why it cannot easily be dismissed. More straightforwardly, it can be argued that the policies are indirectly discriminatory because of their disparate effects on men and women. Interestingly, the policy seems wrong for various reasons why discrimination is often considered wrong: it harms and disrespects the discriminatees. These findings call for at least reconsideration or a recalibration of the policies.