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The Road to Virtual Equality

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The Road to Virtual Equality?

<http://worklaw.jotwell.com/the-road-to-virtual-equality/>

Miriam A. Cherry, *A Taxonomy of Virtual Work*, 44 *Ga. L. Rev.* __ (forthcoming 2010), available at [SSRN](#).



Angela Onwuachi-Willig

What if there was no “place” in the “law of the workplace?” In her article *A Taxonomy of Virtual Work*, forthcoming in the *Georgia Law Review*, Professor Miriam Cherry asks this provocative question, considering the ways in which the law might change to keep pace with the changing realities of work, including virtual realities. In so doing, Cherry writes an important, cutting-edge piece that helps to ignite a much needed conversation on how law may not only keep up with changing forms of discrimination but also the changing worlds in which discrimination may occur.

The increasing prevalence of what Cherry terms “virtual work” has profound implications for labor and employment law. As Cherry describes, millions of people worldwide supplement their incomes, entertain themselves, or do both simultaneously by meeting with fellow employees in virtual worlds such as Second Life, solving complicated problems on websites like Innocentive, or casually “clicking” to make money for simple tasks on Amazon.com’s Mechanical Turk. Cherry argues that these activities are far more than “games” or “pastimes,” and that these “virtual jobs” allow many to work in cyberspace to pay their rent in reality. Because she is seeking to classify all of the ways that technology influences worklaw, Cherry discusses whistleblowing, harassment, and disability law. In more depth, she also treats the issues of minimum wage protections, virtual unionization, and employment discrimination in cyberspace.

For instance, Cherry asks whether the Fair Labor Standards Act should apply to workers like those who “click” to do small tasks for pennies on Amazon.com’s Mechanical Turk website. This question is more difficult than it appears, given that many of the latest web 2.0 technologies involve “fun” activities that straddle the line between work and leisure. Ultimately, Cherry resolves the question by suggesting that more information should be disclosed to workers about volunteer or employee status, and that those who are working for pay should receive minimum wage. To discuss the role of unions and traditional labor groups, she discusses the group of Italian IBM workers who in 2007 organized an avatar strike in Second Life and won wage concessions. Finally, Cherry notes that virtual worlds may provide a rare opportunity for testing the amount of unconscious bias that exists in hiring. Because one person can switch the look of his or her avatar – in effect, choosing his or her own identity at will – it will be possible to determine whether various identity characteristics translate into more or less job opportunities.

As described in the article, virtual work may have great promise. It could increase efficiency by reducing the time and expense involved in gathering workers who live great distances apart. It also could allow for more efficient use of worker skills. At the same time, as Cherry argues, virtual work may present its own unique series of challenges for the regulation of the employment relationship. As virtual work encourages transnational

collaborations, traditional state-based employment regulation seems quaint, and labor standards in general could become increasingly easy to evade. While still nascent, all of the legal issues discussed in this article are of concern to employees and employers alike. In light of that fact, it is appropriate to begin formulating well-thought out approaches to address these issues. Cherry has skillfully and cogently started a dialogue about virtual work with this article, and the conversation about these cyber-work issues should and will continue long into the future. Cherry's work is certain to be and, in fact, should be a foundational piece in these discussions.

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