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Title: Forced Intimacy, Care, and Discrimination  
Abstract:

Forced intimacy – which requires individuals to interact with each other in spaces traditionally considered to be private – is an important and undertheorized context for discrimination. Residents of care facilities like nursing homes and adult care homes are likely to encounter forced intimacy because those spaces require residents to share what are typically private spaces like dining areas, living spaces, bedrooms, and more, without allowing residents to select who they interact with or exclude each other. This forced intimacy among residents has the potential to facilitate discrimination that the law inadequately addresses.

This Article introduces the concept of forced intimacy-induced discrimination and makes three significant contributions. First, it shines a light on the risks of forced intimacy in the context of care facilities. The law fails to robustly and fully account for this kind of discrimination because of an artificial conceptual divide between economic and familial relationships, with a willingness to intrude on economic ones but a reluctance to encroach on familial ones. Second, it challenges scholars who see promise in tort and accommodation-based anti-discrimination law as tools to combat discrimination. As this Article argues, such doctrine is largely limited to considering discrimination within commercially mediated relationships and does not account for the intimacy that care spaces require. Third, this Article argues that forced intimacy is a potentially significant context for discrimination, which anti-discrimination and disability accommodations law ought to account for more directly.

Discrimination that takes place within the context of forced intimacy in care spaces is inherently intersectional along the axes of ability, race, gender, and/or age. Understanding that forced intimacy can be a setting for potential discrimination can both provide recognition of the risks of such discrimination as well as more contextual solutions for those likely to experience discrimination. While this Article focuses on forced intimacy and discrimination in care spaces, its arguments extend to other contexts, including the workplace and schools. Explicitly identifying forced intimacy as a context for potential discrimination offers the opportunity to ensure that forced intimacy does not result in forced discrimination.