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PART ONE

INTRODUCTION

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In Brief: This chapter gives a history of equal opportunity legislation, outlines defenses against discrimination allegations, gives examples of discriminatory practices, describes the EEOC enforcement process, and suggests proactive programs.

Interesting Issues: Affirmative Action programs have come under fire in recent years, even by some members of protected groups. A very critical issue is whether Affirmative Action represents “a leg up” assistance for those who have been historically discriminated against, or if it becomes a “crutch” that hinders their

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motivation and ability to compete and perform. Although this is a delicate and potentially volatile issue, helping students see and understand both sides of the argument will help them understand the depth of these issues.

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ANNOTATED OUTLINE

I. Selected Equal Employment Opportunity Laws

A. Background

The Fifth Amendment (ratified in 1791) states, “No person shall be deprived of life, liberty, or property, without due process of the law.”

B. Equal Pay Act of 1963 (amended in 1972) made it unlawful to discriminate in pay on the basis of sex when jobs involve equal work, equivalent skills, effort, and responsibility, and are performed under similar working conditions.

C. Title VII of the 1964 Civil Rights Act

1. What the Law Says

- a. The act says it is unlawful to fail or refuse to hire or to discharge an individual or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.
- b. The act says it is unlawful to limit, segregate, or classify his/her employees or applicants foremployment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee, because of such individual’s race, color, religion, sex, or national origin.

2. The EEOC (Equal Employment Opportunity Commission) was established by Title VII. It consists of five members (serving five-year terms), appointed by the president with the advice and consent of the Senate. The EEOC investigates job discrimination complaints and may file charges in court.
- D. Executive Orders by various presidents have expanded the effect of equal employment laws in federal agencies. President Johnson's administration (1963–1969) issued Executive Orders 11246 and 11375, requiring contractors to take affirmative action (steps taken for the purpose of eliminating the present

effects of past discrimination) to ensure equal employment opportunity.

- E. Age Discrimination in Employment Act (ADEA) of 1967 made it unlawful to discriminate against employees or applicants for employment who are between 40 and 65 years of age.
- F. Vocational Rehabilitation Act of 1973 required employers with federal contracts over \$2500 to take affirmative action for the employment of handicapped persons.
- G. Pregnancy Discrimination Act (PDA) of 1978, an amendment to Title VII of the Civil Rights Act, broadened the definition of sex discrimination to encompass pregnancy, childbirth, or related medical conditions. It prohibits using such conditions to discriminate in hiring, promotion, suspension, discharge or any other term or condition of employment.
- H. Federal Agency Guidelines are uniform guidelines issued by federal agencies charged with ensuring compliance with equal employment federal legislation explaining “highly recommended” employer procedures regarding matters like employee selection, record keeping, pre-employment inquiries, and affirmative action programs.

I. Selected Court Decisions Regarding Equal Employment Opportunity

1. *Griggs v. Duke Power Company*. *Griggs* was a case heard by the Supreme Court in which the plaintiff argued that his employer’s requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related if it has an unequal impact on members of a protected class.
2. *Albemarle Paper Company v. Moody*. *Moody* was a Supreme Court case in which it was ruled that the validity of job tests must be documented and that employee performance standards must be unambiguous.

- J. The Civil Rights Act (CRA) of 1991 places burden of proof back on employers and permits compensatory and punitive damages.
1. Burden of Proof was shifted back to where it was prior to the 1980s with the passage of CRA 1991; thus, the burden is once again on employers to show that the practice (such as a test) is required as a business necessity. For example, if a rejected applicant demonstrates that an employment practice has a disparate (or “adverse”) impact on a particular group, the employer has the burden of proving that the challenged practice is job related for the position in question.
 2. Money Damages — Section 102 of CRA 1991 provides that an employee who is claiming intentional discrimination (disparate treatment) can ask for 1) compensatory damages and 2) punitive damages, if it can be shown the employer engaged in discrimination “...with malice or reckless indifference to the federally protected rights of an aggrieved individual.”
 3. Mixed Motives — CRA 1991 states: “*An unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.*” Employers cannot avoid liability by proving it would have taken the same action—such as terminating someone—even without the discriminatory motive. Plaintiffs in such so-called “mixed motive” cases recently gained an advantage from a U.S. Supreme Court decision in *Desert Palace Inc. v. Costa*, where the court decided that the plaintiff did not have to provide evidence of explicitly discriminatory conduct, but could provide circumstantial evidence.
- K. Sexual Harassment involves repeated actions against and individual on the basis of sex that has the purpose or effect of substantially interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment.
1. Submission is either explicitly or implicitly a term or condition of an individual’s employment.

2. Submission to or rejection of such conduct is the basis for employment decisions affecting such individual.
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
- L. Proving Sexual Harassment. There are three main ways to prove sexual harassment.
1. Quid Pro Quo — The most direct way of proving sexual harassment is to prove that rejecting a supervisor's advances adversely affected what the EEOC calls a "tangible employment action."
 2. Hostile Environment Created by Supervisors — Supervisor advancements can interfere with performance and create an offensive work environment. There is a difference between simple flirting and sexual harassment.
 3. Hostile Environment Created by Coworkers — An employee's coworkers or customers can cause the employer to be held responsible for sexual harassment.
- M. Sexual Harassment Court Decisions — The Supreme Court used the Meritor Savings Bank, *FSB v. Vinson* case to endorse the EEOC's guidelines on sexual harassment.
1. *Burlington Industries v. Ellerth* — quid pro quo harassment
 2. *Faragher v. City of Boca Raton* — hostile work environment
- N. Sexual Harassment Causes — The most important factor is a permissive social climate, one where employees conclude there's a risk to victims for complaining, that complaints won't be taken seriously, or that there's a lack of sanctions against offenders.

Gender harassment is a form of hostile environment harassment that appears to be motivated by hostility toward individuals who violate gender ideals.

- O. What the Manager/Employer Should Do — Employers should do two things: They should take steps to ensure harassment

does not take place. Second, once being apprised of such a situation, they should take immediate corrective action even if the complainant is a non-employee.

- P. What the Employee Can Do — Employees should immediately make it clear the behavior experienced was unwelcome. Following the employer’s policies is crucial but filing verbal and written reports with the harasser’s manager and HR is likely to help. If not, turn to the local office of the EEOC.
- Q. The Americans with Disabilities Act requires employers to make reasonable accommodations for disabled employees, and it prohibits discrimination against disabled persons.
1. Qualified Individual — The act prohibits discrimination against those who, with or without a reasonable accommodation, can carry out the essential functions of the job.
 2. Reasonable Accommodation — If the individual cannot perform the job as currently structured, the employer is required to make a “reasonable accommodation,” unless doing so would present an “undue hardship.”
 3. The ADA in Practice — ADA complaints are flooding the EEOC and the courts. However, 96% of federal court decisions in a recent year were for the employer.
 4. The “New” ADA — On January 1, 2009, the ADA Amendments Act of 2008 became effective. This will make it much easier for employees to show that their disability is influencing one of their “major life activities.”
 5. ADA Implications for Managers and Employers — The ADA imposes certain legal obligations on employers:
 - a. Although employers may not make pre-employment inquiries about a person’s disability, they may ask questions about the person’s *ability* to perform specific essential job functions.
 - b. If the employer rescinds an offer after an offer is extended, the applicant must be able to recognize a legitimate reason for the rejection.
 - c. Medical exams for all applicants are allowed as long as a concrete job offer is forthcoming prior to the exam.

- d. An employer must not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job; if the person is otherwise qualified but unable to perform an essential function, the employer must make a reasonable accommodation unless doing so would result in undue hardship. HIV-positive individuals are generally ADA disabled, whether or not they are showing symptoms.
 - e. Documentation of any disorder may be required in order to assess its impact on job performance.
 - f. Employers do not need to allow misconduct or erratic performance, even if that behavior is linked to the disability.
 - g. Don't treat employees as if they are disabled.
6. Improving Productivity Through HRIS: Accommodating Disabled Employees — Technology makes it easier for employers to accommodate disabled employees. Blind employees can work successfully using a screen-reading program named JAWS. Real-time translation captioning enables employees with hearing or speech impairments to participate in lectures and meetings.
- R. Genetic Information Non-Discrimination Act of 2008 — GINA prohibits discrimination by health insurers and employers based on people's genetic information.
- S. The Federal Employment Non-Discrimination Act — ENDA would prohibit workplace discrimination based on sexual orientation and gender identity if Congress passes it.
- T. State and Local Equal Employment Opportunity Laws — typically, further restrict employers' treatment of job applicants and employees, especially those not covered by federal legislation. State and local equal employment opportunities agencies play a role in the equal employment compliance process.

II. Defenses Against Discrimination Allegations

- A. What Is Adverse Impact? — Adverse impact refers to the total employment process that results in a significantly higher percentage of a protected group in the candidate population being rejected for employment, placement, or promotion.

1. Title VII prohibits both disparate treatment and disparate impact.
 - a. Disparate treatment refers to intentional discrimination.
 - b. Disparate impact refers to unintentional discrimination.

 2. Adverse impact “...refers to the total employment process that results in a significantly higher percentage of a protected group in the candidate population being rejected for employment, placement, or promotion.” The complainant would use one of two rules:
 - a. The “4/5Rule” is applied if 80% (4/5) of non-minority applicants passed a given test while only 20% of the minority applicants passed.
 - b. The McDonnell-Douglas Test requires four rules be applied:
 - i. the person belongs to a protected class;
 - ii. he or she applied and was qualified for a job;
 - iii. despite this qualification, he or she was rejected;
 - iv. after his or her rejection, the position remained open and the employer continued seeking applications from persons with the complainant’s qualifications.

 3. Workforce Analysis — Employers use workforce analysis to obtain and to analyze the data regarding the firm's use of protected versus non-protected employees in various job classifications.

 4. Bringing a Case of Discrimination: Summary — There are two defenses that the employer can use: BFOQ and business necessity.
- B. Bona Fide Occupational Qualification (BFOQ) — is a defense used to justify an employment practice that may have an adverse impact on members of a protected class. It is a requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization’s normal operation. This is even more narrowly interpreted by courts.
- C. Business Necessity — is a defense created by the courts, which requires an employer to show an overriding business purpose for the discriminatory practice and that the practice is therefore acceptable.

- D. Retaliation — To paraphrase the EEOC, “all of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people because they filed a charge, complained to their employer or other covered entity.

III. Illustrative Discriminatory Employment Practices

A note on what you can and cannot do — pre-employment questions are not inherently legal or illegal. Rather, the impact of the questions is what courts assess in making determinations about discriminatory practice. “Problem questions” are those that screen out members of a protected group. The EEOC approves the use of “testers” posing as applicants to test a firm’s procedures. Care should be taken in devising employment practices and in training recruiters.

- A. Recruitment — If the workforce is not truly diverse, relying on word of mouth to spread information about job openings can reduce the likelihood of all protected groups having equal access to job openings. However, word-of-mouth is an excellent source of quality candidates, as long as the workforce is diverse and representative of the area in which the firm recruits. It is unlawful to give false or misleading job information. Help-wanted ads should be screened for potential age and gender bias.
- B. Selection Standards — Educational requirements and tests that are not job-related, or which result in adverse impact can be found to be illegal. Showing preference to relatives may also contribute to a lack of racial diversity; height, weight, and physical characteristics should be job related. Felony conviction information can be sought, but arrest records negate the presumption of “innocent until proven guilty” and may result in adverse impact against groups with a high incidence of arrests. Tattoos and body piercings are an issue at work. For example, if an employee must respond to customers via telephone, having a piece of jewelry pierced through the tongue will likely be noisy and disturbing to the customer on the phone. Application forms should not contain questions that might allow potentially discriminatory information to be gathered.
- C. Promotion, Transfer, and Layoff Practices — Fair employment laws protect not just job applicants but also current employees.

Employees have filed suits against employers' dress, hair, uniform, and appearance codes under Title VII, claiming sex discrimination and sometimes, racial discrimination. In some cases, the courts have agreed.

IV. The EEOC Enforcement Process

- A. Processing a Charge — All managers should have a working knowledge of the steps in the EEOC claim process.
 - 1. File Claim — Under CRA 1991, the charge generally must be timely filed in writing and under oath by (or on behalf of) the person claiming to be aggrieved, or by a member of the EEOC who has reasonable cause to believe that a violation occurred. The EEOC can either accept the charge or refer it to the state or local agency. Serve notice—after the charge has been filed, the EEOC has 10 days to serve notice on the employer.
 - 2. Voluntary Mediation — A neutral third party may aid the parties in reaching voluntary resolution. The EEOC will ask the employer to participate if the claimant agrees to mediation. Employer options include mediating the charge, making a settlement offer, or preparing a position statement for the EEOC.

HR in Practice: Management Guidelines for Dealing with EEOC Charges During the EEOC Investigation — There are several things to keep in mind: be methodical, remember EEOC investigators are not judges, give the EEOC a position statement, ensure there is information in the EEOC's file demonstrating lack of merit of the charge, limit the information supplied as narrowly as possible, seek as much information as possible, and prepare for the EEOC's fact-finding conferences—preventing is better than litigating.

V. Diversity Management and Affirmative Action Programs

Today's Diverse Workforce — Companies today are striving for racial, ethnic, and sexual workforce balance, “not because of legal imperatives, but as a matter of enlightened economic self-interest.” Diversity means being diverse or varied, and at work means having a workforce comprised of two or more groups of employees with various racial, ethnic, gender, cultural, national origin, handicap, age, or religious backgrounds.

- A. Diversity's Potential Pros and Cons — Diversity has both benefits and threats for employers.
 - 1. Some Downsides — Demographic differences can produce behavioral barriers.
 - a. Stereotyping — the process in which someone ascribes specific behavioral traits to individuals based on apparent membership in a group.
 - b. Discrimination — taking specific actions toward or against the person based on the person's group.
 - c. Tokenism — happens when a company appoints a small group of women or minorities to high-profile positions.
 - d. Ethnocentrism — is the tendency to view members of other social groups less favorably than one's own.
 - e. Gender-role stereotypes — the tendency to associate women with certain jobs.
 - 2. Some Diversity Benefits — The key is properly managing these threats. Diversity climate is the extent to which employees believe the firm promotes equal opportunity and inclusion.
 - 3. Strategy and HR — Workforce diversity makes strategic sense. IBM is used as an example in the HR as a profit center discussion.
- B. Managing Diversity — means taking steps to maximize diversity's potential advantages while minimizing the potential barriers, such as prejudices and bias that can undermine the functioning of a diverse workforce.
 - 1. Top-Down Programs — One diversity expert concluded that five sets of voluntary organizational activities are at the heart of any diversity management program: 1) provide strong leadership, 2) assess the situation, 3) provide diversity training, 4) change culture and management system, 5) evaluate the diversity management program.
 - 2. "AGEM" — is a diversity training process involving *Approach, Goals, Executive commitment, and Mandatory Attendance*.
- C. Encouraging Inclusiveness — may be used on the personal, interpersonal, and organizational levels.

- D. **Boosting Workforce Diversity** — Employers use various means to manage workforce diversity, including voluntary affirmative action programs, organizing minority employees' networks, and expansion of multicultural markets. The aim is to voluntarily enhance employment opportunities for women and minorities.
- E. **Equal Employment Opportunity versus Affirmative Action** — Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age, has an equal chance for a job based on his/her qualifications. Affirmative action goes beyond equal employment opportunity by requiring the employer to make an extra effort to recruit, hire, promote, and compensate those in protected groups to eliminate the present effects of past discrimination.
- F. **Steps in an Affirmative Action Program** — Executive Order 11246 requires that a numerical analysis of the workforce be conducted, and that barriers to equal employment be eliminated through a good faith effort strategy. It is vital that current employees see this program as fair. This is accomplished through good communication, program justification, and transparent selection procedures. These are the steps in an affirmative action program:
1. Issue a written equal employment policy.
 2. Appoint a top official with responsibility and authority to direct and implement the program.
 3. Publicize the equal employment policy and affirmative action commitment.
 4. Survey present minority and female employment by department and job classifications to determine locations where affirmative action programs are especially desirable.
 5. Develop goals and timetables to improve utilization of minorities, males, and females.
 6. Develop and implement specific programs to achieve these goals (the heart of the plan).
 7. Establish an internal audit and reporting system.

8. Develop support for the program both internally and externally.

G. Affirmative Action Today — The instances of major court-mandated programs is down. However, many employers voluntarily implement affirmative action programs.

Court case — In *Ricci v. DeStefano* white firefighters and one Hispanic firefighter sued for what was identified as a form of “reverse” discrimination and won.

Improving Productivity through HRIS: Measuring Diversity

— A number of metrics for assessing the efficiency and effectiveness of the organization’s EEOC and diversity efforts are at the HR manager’s disposal. They include the number of EEOC claims per year; the cost of HR-related litigation; percent minority; women promotions; and various measures for analyzing the survival and loss rate among new diverse employee groups. HRIS applications provide several diversity-related software options aimed at boosting the accuracy of information to managers. Through such packages, calculations are available to compute cost per diversity hire; a workforce profile index; the numeric impact of voluntary turnover among diverse employee groups; the effectiveness of the company’s supplier diversity initiatives; current diversity measures; and direct and indirect replacement cost per hire.

Key Terms

Equal Pay Act of 1963

The act requiring equal pay for equal work, regardless of sex.

Title VII of the 1964 Civil Rights Act

The section of the act that says an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.

EEOC

The commission, created by Title VII, is empowered to investigate job discrimination complaints and sue on behalf of complainants.

Affirmative action

Steps that are taken for the purpose of eliminating the present effects of past discrimination.

OFCCP	This office is responsible for implementing the executive orders and ensuring compliance of federal contractors.
Age Discrimination in Employment Act of 1967	The act prohibiting arbitrary age discrimination and specifically protecting individuals over 40 years old.
Voc. Rehab. Act of 1973	The act requiring certain federal contractors to take affirmative action for disabled persons.
Pregnancy Discrimination Act (PDA)	An amendment to Title VII of the Civil Rights Act that prohibits sex discrimination based on “pregnancy, childbirth, or related medical conditions.”
Federal agency guidelines	Guidelines issued by federal agencies explaining recommended employer equal employment federal legislation procedures in detail.
Griggs v. Duke Power Co.	Supreme Court case in which the plaintiff argued that his employer’s requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related.
Protected class	Persons such as minorities and women protected by equal opportunity laws including Title VII.
Albermarle Paper Co. v. Moody	The case is important because it helped to clarify what the employer must do to prove that the test or other screening tool is related to performance on the job.
Civil Rights Act of 1991 (CRA 1991)	This act places the burden of proof back on employers and permits compensatory and punitive damages.
Disparate impact	An unintentional disparity between the proportion of a protected group applying for a position and the proportion getting the job.

Disparate treatment protected	An intentional disparity between the proportion of a group, and the proportion getting the job.
Sexual harassment	Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.
Gender harassment	A form of hostile environment harassment that appears to be motivated by hostility toward individuals who violate gender ideals.
Americans with Disabilities Act (ADA)	The act requiring employers to make reasonable accommodation for disabled employees. It prohibits discrimination against disabled persons.
Adverse impact	The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion.
Workforce analysis	Used to obtain and to analyze the data regarding the firm's use of protected versus non-protected employees in various job classifications.
Utilization analysis	The process of comparing the percentage of minority employees in a job (or jobs) at the company with the number of similarly trained minority employees available in the relevant labor market is utilization analysis.
BFOQ	Bona Fide Occupational Qualification. Allows requirements that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act.
Business necessity	Justification for an otherwise discriminatory employment practice, provided there is an overriding legitimate business purpose.
ADR	Alternative dispute resolution programs require employees to pursue mediation prior to pressing a claim.

Diversity	Means being diverse or varied, and at work means having a workforce comprised of two or more groups of employees with various racial, ethnic, gender, cultural, national origin, handicap, age, or religious backgrounds.
Stereotyping	A process in which someone ascribes specific behavioral traits to individuals based on their apparent membership in a group.
Discrimination	Means taking specific actions toward or against the person based on the person's group.
Tokenism	Occurs when a company appoints a small group of women or minorities to high-profile positions, rather than more aggressively seeking full representation for that group.
Ethnocentrism	Is the tendency to view members of other social groups less favorably than one's own.
Gender-role stereotypes	The tendency to associate women with certain jobs.

DISCUSSION QUESTIONS

- 1. What is Title VII? What does it state?** Title VII says an employer cannot discriminate based on race, color, religion, sex, or national origin. Title VII established the EEOC.
- 2. What important precedents were set by the *Griggs v. Duke Power Company* case? The *Albemarle Paper Co. v. Moody* case?** For the *Griggs v. Duke Power Company* case, the plaintiff argued to the Supreme Court that his employer's requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related. For the *Albemarle Paper Co. v. Moody* case, the Supreme Court ruled that the validity of job tests must be documented and that employee performance standards must be unambiguous.
- 3. What is adverse impact? How can it be proven?** The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion. The complainant need only establish a prima facie case: showing that the employer's selection procedures did have an adverse impact on a protected minority group. This is done by one of four basic approaches: disparate rejection rates; the restricted policy approach; population comparisons; or the *McDonnell-Douglas* Test.
- 4. Assume you are a supervisor on an assembly line; you are responsible for hiring employees, supervising them, and recommending them for promotion. Compile a list of potentially discriminatory management practices you should avoid.**

Acceptable answers include the following:

Ensure that recruitment practices are non-discriminatory, avoiding word-of-mouth dissemination of information about job opportunities when the workforce is substantially white, or all members of some other class. Avoid giving false or misleading information to members of any group or to fail or refuse to advise them of work opportunities. Avoid advertising classifications that specify gender or age unless it is a bona fide occupational qualification for the job.

Avoid asking pre-employment questions about an applicant's race, color, religion, sex, or national origin.

Do not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job. Make reasonable accommodations for candidates that are otherwise qualified but unable to perform an essential function unless doing so would result in a hardship.

Apply tests and performance standard uniformly to all employees and job candidates. Avoid tests if they disproportionately screen out minorities or women and are not job related.

Do not give preference to relatives of current employees if your current employees are substantially non-minority.

Do not establish requirements for physical characteristics unless you can show they are job related.

Do not make pre-employment inquiries about a person's disability, but do ask questions about the person's ability to perform specific essential job functions.

Review job application forms, interview procedures, and job descriptions for illegal questions and statements. Check for questions about health, disabilities, medical histories, or previous workers' compensation claims.

Do not ask applicants whether they have ever been arrested or spent time in jail. However, you can ask about conviction records.

5. **Explain the defenses and exceptions to discriminatory practice allegations.** The two main defenses you can use in the event of a discriminatory practice allegation are bona fide occupational qualification (BFOQ) and businessnecessity. BFOQ is a requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Business necessity is a justification for an otherwise discriminatory employment practice, provided there is an overriding legitimate business purpose.
6. **What is the difference between affirmative action and equal employment opportunity?** Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age has an equal chance for a job based on his/her qualifications. Affirmative action requires the employer to make an extra effort to hire and promote those in protected groups and includes specific actions designed to eliminate the present effects of past discrimination.
7. **Explain how you would set up an affirmative action program.** The student's answer should include the eight steps in an affirmative action program: (1) issue a written equal employment policy, (2) appoint a top official, (3) publicize the policy, (4) survey present minority and female employees, (5) develop goals and timetables, (6) develop and implement specific programs to achieve goals, (7)

establish an internal audit and reporting system, and (8) develop support of in-house and community programs.

INDIVIDUAL AND GROUP ACTIVITIES

- 1. Working individually or in groups, respond to these three scenarios based on what you learned in this chapter. Under what conditions (if any) do you think the following constitutes sexual harassment? (a) A female manager fires a male employee because he refuses her requests for sexual favors. (b) A male manager refers to female employees as “sweetie” or “baby”. (c) A female employee overhears two male employees exchanging sexually oriented jokes.** Student answers will vary, but should include concepts introduced in the chapter. Student answers may include a discussion of sexual harassment, quid pro quo, hostile environment, and court decisions. The student can also make assumptions concerning the organization culture.
- 2. Working individually or in groups, discuss how you would set up an affirmative action program.** It is important that students reach a decision of whether to use the good faith effort strategy or the quota strategy. Most experts would suggest the good faith effort strategy is the most legally acceptable approach. The following list of six actions should be demonstrated in the student plans: increasing the minority or female applicant flow; demonstrating top management support for the equal opportunity policy; demonstrating the equal opportunity commitment to the local community; keeping employees informed about the specifics of the affirmative action program; broadening the work skills of incumbent employees; and institutionalizing the equal employment policy to encourage supervisors’ support of it.
- 3. Compare and contrast the issues presented in recent court rulings on affirmative action. Working individually or in groups, discuss the current direction of affirmative action.** The basic questions addressed in *Bakke* focused on when preferential treatment becomes discrimination and under what circumstances discrimination will be temporarily permitted. Neither question was fully answered. Subsequent cases have continued to address these issues and clarify more specifically the scope and intent of affirmative action. For example, in the *Paradise* case, the court ruled that the courts can impose racial quotas to address the most serious cases of racial discrimination. In *Johnson*, the court ruled that the public and private employers may voluntarily adopt hiring and promotion goals to benefit minorities and women. The *Johnson* ruling may limit claims of reverse discrimination by white males.
- 4. Working individually or in groups, write a paper entitled “What the Manager Should Know about How the EEOC Handles a Person’s Discrimination Charge.”** The students should include the following information in their paper. The EEOC can either accept it or refer it to the state or local agency. After it has been filed, the EEOC has 10 days to serve notice on the

employer, and then investigate the charge to determine whether there is reasonable cause to believe it is true within 120 days. If charges are dismissed, EEOC must issue the charging party a Notice of Right to Sue. The person has 90 days to file suit on his/her own behalf. If EEOC finds reasonable cause for the charge, it must attempt a conciliation. If conciliation is not satisfactory, it can bring a civil suit in federal district court, or issue a Notice of Right to Sue to the person who filed the charge. Under Title VII, the EEOC has 30 days to work out a conciliation agreement between the parties before bringing suit. If the EEOC is unable to obtain an acceptable conciliation agreement, it may sue the employer in federal district court.

5. **Explain the difference between affirmative action and equal employment opportunity.** Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age has an equal chance for a job based on his or her qualifications. Affirmative action requires the employer to make an extra effort to hire and promote those in protected groups and includes specific actions designed to eliminate the present effects of past discrimination.
6. **Assume you are the manager in a small restaurant; you are responsible for hiring employees, supervising them, and recommending them for promotion. Working individually or in groups, compile a list of potentially discriminatory practices you should avoid.**

Acceptable answers include the following:

Ensure that recruitment practices are non-discriminatory, avoiding word-of-mouth dissemination of information about job opportunities when the workforce is substantially white, or all members of some other class. Avoid giving false or misleading information to members of any group or to fail or refuse to advise them of work opportunities. Avoid advertising classifications that specify gender or age unless it is a bona fide occupational qualification for the job.

Avoid asking pre-employment questions about an applicant's race, color, religion, sex, or national origin.

Do not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job. Make reasonable accommodations for candidates that are otherwise qualified but unable to perform an essential function unless doing so would result in a hardship.

Apply tests and performance standards uniformly to all employees and job candidates. Avoid tests if they disproportionately screen out minorities or women and are not job related.

Do not give preference to relatives of current employees if your current employees are substantially non-minority.

Do not establish requirements for physical characteristics unless you can show they are job related.

Do not make pre-employment inquiries about a person's disability, but do ask questions about the person's ability to perform specific essential job functions.

Review job application forms, interview procedures, and job descriptions for illegal questions and statements. Check for questions about health, disabilities, medical histories, or previous workers' compensation claims.

Do not ask applicants whether they have ever been arrested or spent time in jail. However, you can ask about conviction records.

APPLICATION EXERCISES

Case Incident: A Case of Racial Discrimination

- 1. What do you think of the way Chapman handled the accusations from Peters and his conversation with Anderson? How would you have handled them?** If you allow the class time to explore this, the class will likely divide over this issue. An essential element is Peters' lack of confrontation of Anderson. Peters might have had a reasonable claim of harassment had he informed Anderson of his disapproval of her behavior (informality, notes, and calls) and had she then persisted in her actions. At this stage, he appears to have very little legal grounds for harassment. Whether Anderson has a case or not hinges on whether Chapman made such a statement, whether she can show that there were other such statements, and whether there were indeed other incidents showing that the hospital was concerned about interracial relationships.
- 2. Do you think Peters had the basis for a sexual harassment claim against Anderson? Why or why not?** Based on the evidence presented here, it is difficult to tell and is actually unlikely that there was any basis for a sexual harassment claim. First, the nature of the cards and phone calls was not properly investigated. Many coworkers exchange cards and engage in similar activities on a friendship level. Without seeing the cards and notes, it is not possible to clearly evaluate this accusation. Additionally, until the person on the receiving end of such communication clearly communicates to the sender that the messages are unwelcome, it would not be considered harassment.
- 3. What would you do now if you were Chapman to avoid further incidents of this type?** It is clear that Chapman only has "a number of rudimentary steps to

guard against blatant violations” in place. He needs to put in place policies and procedures that clearly outline acceptable and unacceptable behavior and how complaints will be handled.

Continuing Case: Carter Cleaning Company

- 1. Is it true, as Jack Carter claims, that “we can’t be accused of being discriminatory because we hire mostly women and minorities anyway”?**
No, they must be concerned with discrimination based on pregnancy, age, wages, sex, civil rights, and the like. Even if federal discrimination laws do not impact them, they should check on state and local laws for fairness.

- 2. How should she and her company address the sexual harassment charges and problems?** First, Jennifer, her father, or both should meet with the manager in question and explain their written policies regarding sexual harassment if they have any. If they have none, they should create them but also explain to the manager that they will add written documentation about his behavior to his personnel file. In addition, they should explain why they believe it is important to harass employees and make him aware of the legal consequences of his actions. He should be allowed to respond in writing to the charge of sexual harassment, which may also be placed in his personnel file.

- 3. How should she and her company address the possible problems of age discrimination?** Jennifer should examine the claimed pay discrepancies. If found to be true, the older worker should be paid back pay and his wages increased to that of any worker doing his job. This situation is one in which a solid job description and written pay scales would have helped avoid the problem. The manager of that store should be informed of the situation and an announcement to all store managers provided. The federal ADEA does apply in this situation.

- 4. Given the fact that each of its stores has only a handful of employees, is her company covered by equal rights legislation?** Carter Cleaning is probably not covered by most of the federal equal rights legislation. The following is a list of the sizes of employers covered by the more prominent laws:
 - a. Title VII: 15 or more employees
 - b. Age Discrimination in Employment Act of 1967: 20 or more employees
 - c. Americans with Disabilities Act of 1990: 15 or more employees
 - d. Equal Pay Act of 1963: most employers with one or more employees

However, it is important to note that states and many cities have other laws regarding equal rights. To be sure, one should check with a local attorney.

- 4. And finally, aside from the specific problems, what other personnel management matters (application forms, training, and so on) have to be**

reviewed given the need to bring them into compliance with equal rights laws? Application forms should be examined to ensure they do not require answers to questions that could lead to discriminatory practices such as pregnancy, disabilities, and the like. More importantly, it is necessary to check for possible instances of disparate treatment, disparate impact, and adverse impact. For training purposes, all federal, state and local laws should be listed in management handbooks and discussed openly in mandatory scheduled training programs. Issues such as age discrimination, sexual harassment, and the like should be covered. Finally, interview questions should be written and structured and used universally. Discussions and examples of illegal interviewing questions should be covered during management training programs.

Experiential Exercise: Too Informal

Purpose: The purpose of this exercise is to provide practice in analyzing and applying knowledge of equal opportunity legislation to a realistic problem.

Required Understanding: Be thoroughly familiar with the material presented in this chapter. In addition, read “Too Informal?” the case on which this experiential exercise is based.

How to Set Up the Exercise/Instructions:

1. Divide the class into groups of four or five students.
2. Next, each group should develop answers to the following questions:
 - a. **How could the EEOC prove adverse impact?**
 - b. **Cite specific discriminatory personnel practices at Dan Jones’ company.**
 - c. **How could Jones’ company defend itself against the allegations of discriminatory practice?**
3. **If time permits, a spokesperson from each group can present his or her group’s findings. Would it make sense for this company to try to defend itself against the discrimination allegations?**