



Human Resource Management

ELEVENTH EDITION

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Part 1 | Introduction

Chapter 2

Equal Opportunity and the Law

After studying this chapter, you should be able to:

1. Cite the main features of at least five employment discrimination laws.
2. Define *adverse impact* and explain how it is proved and what its significance is.
3. Explain and illustrate two defenses you can use in the event of discriminatory practice allegations.
4. Avoid employment discrimination problems.
5. Cite specific discriminatory personnel management practices in recruitment, selection, promotion, transfer, layoffs, and benefits.
6. Define and discuss *diversity management*.

Early Court Decisions Regarding Equal Employment Opportunity (cont'd)

- *Albemarle Paper Company v. Moody*
 - If a test is used to screen candidates, then the job's specific duties and responsibilities must be analyzed and documented.
 - The performance standards for the job should be clear and unambiguous.
 - Federal guidelines on validation are to be used for validating employment practices.

Employer Obligations Under ADA

- An employer must make a reasonable accommodation for a qualified disabled individual unless doing so would result in undue hardship.
- Employers are not required to lower existing performance standards or stop using tests for a job.
- Employers may ask pre-employment questions about essential job functions but can not make inquiries about disability.
- Medical exams (or testing) for current employees must be job-related.
- Employers should review job application forms, interview procedures, and job descriptions for illegal questions and statements.
- Employers should have up-to-date job descriptions that identify the current essential functions of the job.

Disabilities and ADA

- Courts will tend to define “disabilities” quite narrowly.
- Employers are not required to tolerate misconduct or erratic performance, even if the behaviors can be attributed to the disability.
- Employers do not have to create a new job for the disabled worker nor reassign that person to a light-duty position for an indefinite period, unless such a position exists.
- Employers should not treat employees as if they are disabled so that they will not be “regarded as” disabled and protected under the ADA.

State and Local Equal Employment Opportunity Laws

- **State and Local Laws**
 - Cannot conflict with federal law but can extend coverage to additional protected groups.
 - The EEOC can defer a discrimination charge to state and local agencies that have comparable jurisdiction.

Other Considerations in Discriminatory Practice Defenses

1. Good intentions are no excuse.
2. Employers cannot hide behind collective bargaining agreements—equal opportunity laws override union contract agreements.
3. Firms should react by agreeing to eliminate an illegal practice and (when required) by compensating the people discriminated against.

Mandatory Arbitration

- *Gilmer v. Interstate/Johnson Lane Corp.*
 - Employers can compel employees to agree to mandatory arbitration of employment-related disputes.
- Recommendations
 - Request party be compelled to arbitrate claim.
 - Insert arbitration clause in employment applications and employee handbooks.
 - Protect arbitration process from appeal.
- Alternative Dispute Resolution (ADR)

Diversity Management Program

Steps in a Diversity Management Program:

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- 1 → Provide strong leadership
 - 2 → Assess the situation
 - 3 → Provide diversity training and education
 - 4 → Change culture and management systems
 - 5 → Evaluate the diversity management program

Designing an Affirmative Action Program

- **Good Faith Effort Strategy**
 - Eliminating the present effects of past practices that excluded or underutilized protected groups.
 - ❖ Identification through numerical analysis.
 - ❖ Proactive elimination of employment barriers.
 - ❖ Increased minority or female applicant flow.
- **Increasing Employee Support for Affirmative Action**
 - Transparent selection procedures
 - Communication
 - Justifications

Reverse Discrimination

- Reverse Discrimination
 - Discrimination against non-minority applicants and employees by quota-based systems.
 - ❖ *Bakke v. Regents of the University of California*
 - ❖ *Wygant v. Jackson Board of Education*
 - ❖ *U.S. v. Paradise*
 - ❖ *Johnson v. Transportation Agency, Santa Clara County*

KEY TERMS

Title VII of the 1964 Civil Rights Act

Equal Employment Opportunity
Commission (EEOC)

affirmative action

Office of Federal Contract Compliance
Programs (OFCCP)

Equal Pay Act of 1963

Age Discrimination in Employment Act
of 1967 (ADEA)

Vocational Rehabilitation Act of 1973

Vietnam Era Veterans' Readjustment Act
of 1974

Pregnancy Discrimination Act (PDA)

uniform guidelines

sexual harassment

Federal Violence Against Women Act
of 1994

protected class

Civil Rights Act of 1991 (CRA 1991)

mixed motive case

Americans with Disabilities Act (ADA)

qualified individuals

adverse impact

disparate rejection rates

restricted policy

bona fide occupational qualification (BFOQ)

alternative dispute resolution or ADR
program

good faith effort strategy

reverse discrimination