

Human Resource Management

Chapter 3

Ensuring Equal Employment Opportunity and Safety

Lecturer Dr. Michaella D. Castillo

WHY IS IT IMPORTANT TO UNDERSTAND LEGAL AND SAFETY ISSUES?

- To provide important guidance for treating employees fairly and helping organizations comply with laws.
- Complying with the law saves the organization money—money they would have to spend to fight legal accusations or to try to repair damaged reputations.

The Employment Laws

Table 3.1

Major Employment Laws

Law	Protection Based On
Title VII of Civil Rights Act of 1964	Race, color, national origin, religion, sex
Civil Rights of 1991	Race, color, national origin, religion, sex
Age Discrimination in Employment Act	Age (people over 40)
Americans with Disabilities Act	Physical and mental disability
Equal Pay Act	Sex
Family and Medical Leave Act	Illness and parental status
Executive Order 11246	Race and sex

Title VII of the Civil Rights Act of 1964

- This act was passed by Congress and signed into law as a result of the civil rights movement of the 1960s, which sought to end racial discrimination.
- The part of the act that specifically applies to equal opportunity in employment is **Title VII**.

Title VII

- Title VII provides protection to all people based on five specific traits: race, color, national origin, religion, and sex (gender).
- These groups are referred to as **protected classes**.

Title VII

- The law originally covered companies with 25 or more employees.
- It has been amended to exclude only companies with fewer than 15 employees.
- Religious institutions are exempted from the law – Do you know why?

Equal Employment Opportunity Commission (EEOC)

- A major part of Title VII was creation of the **Equal Employment Opportunity Commission (EEOC)**.
- The EEOC is a federal agency in charge of administrative and judicial enforcement of federal civil rights laws.
- The commission is led by five commissioners who are appointed by the President of the United States. The President also appoints a general counsel who conducts and oversees litigation.
- An individual who feels that he or she has been the victim of employment discrimination can file a complaint with the EEOC. EEOC will then investigate the claim.

Discrimination and Equal Employment Opportunity

- What is **Discrimination**?
 - Discrimination in employment occurs when all people are not given the same (equal) opportunity for employment and promotions.
- What is **equal employment opportunity**?
 - It means that people should be given an equal chance to obtain employment regardless of their race, color, national origin, gender, or religion.
- Title VII offers protection from three distinct types of discrimination: disparate treatment, adverse impact, and harassment.

Disparate Treatment.

- What is Disparate Treatment?
 - Is the specific practice of treating certain types of people differently than others.
 - In most cases, Title VII prohibits disparate treatment.
 - In what situations would disparate treatment be allowed?

Bona fide occupational qualification (BFOQ)

- What is a Bona Fide Occupational Qualification?
 - It is an exemption from the charges of Disparate Treatment.
 - a BFOQ usually applies to gender—and in some cases religion—and means that it is reasonable to assume that only a person with that particular characteristic can do the job.

Adverse Impact

- What is Adverse Impact?
 - Occurs when a company's policies treat all applicants the same but result in different employment opportunities for different groups.
 - Companies do not violate the law when they hire fewer applicants from a protected class if they use appropriate methods to make hiring decisions. A common defense for adverse impact is thus validity.

Validity

- What is Validity?
 - **Validity** is shown when the measures used to select employees provide assessments that accurately identify the people most likely to succeed.
- Courts have not required companies to employ exactly the same proportion of people from all categories. Rather, they have adopted the **four-fifths rule**.

Four-Fifths Rule

- Courts have not required companies to employ exactly the same proportion of people from all categories. Rather, they have adopted the **four-fifths rule**.
- The four-fifths rule is violated when the percentage of people selected from one group is less than 80 percent of the percentage of people selected from the best-represented group.
- Under the four-fifths rule, a potential victim of adverse impact discrimination would simply need to show that the company selects people from the protected class at this lower rate.
- The burden of proof would then falls to the company to demonstrate the validity of its selection procedures.

Harassment.

- What is **Harassment**?
 - It is when an employee is persistently annoyed or alarmed by the improper words or actions of other people in the workplace, such as supervisors or coworkers.
- Most cases of harassment, however, involve behavior directed at an employee because of his or her gender. This is called **Sexual Harassment**.

Sexual Harassment

- Sexual Harassment is classified as:
 - Unwelcome sexual advances requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when
 - (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
 - (2) submission to or rejection of such conduct by an individual is used as 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 working environment.

Quid Pro Quo

- What does **Quid Pro Quo** mean?
 - “something for something”
- How do you think this applies to Sexual Harassment?
 - It occurs when an employee is told that continued employment or advancement depends on sexual favors.
 - It is illegal to make employment consequences dependent on sexual favors. Even a single quid pro quo statement by a supervisor is enough to warrant a sexual harassment action under Title VII.

Hostile Environment

- What constitutes a **hostile work environment**?
 - This occurs when comments or behavior in the workplace have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
 - Victims need not show that the comments and actions make them completely incapable of performing their jobs, only that the environment had a negative impact on their psychological well-being.

The Civil Rights Act of 1991

- Made amendment to Title VII
 - The most important was the shifting of the burden of proof to companies accused of adverse impact discrimination.
 - Normally, the burden of proof in a lawsuit is on the plaintiff—the person bringing the suit. That means that it is the plaintiff's responsibility to show that the defendant committed a wrongful act.
- Another change to was to make **Race-norming** illegal.
 - It was used in employment testing -each person receives a score that showed how he or she did in comparison with others of the same race or gender. The effect is to make some people rank higher than they otherwise would, since scores in their group are lower on average.
 - Now an individual's scores must be compared with all other scores, not just with the scores of members of his or her own group.

The Civil Rights Act of 1991

- The Act of 1991 allowed for punitive damages to be awarded along with actual damages. This substantially increased the award a victim could receive.
 - **Punitive damages** are payments designed to punish the company and can be substantially higher than actual damages.
- Another change was prior to 1991 judges heard employment cases. The 1991 act allows jury trials for employment discrimination cases.
 - The result was juries appear to be more willing than judges to award punitive damages.

How do U.S. Laws Apply in foreign countries?

- The general rule is:
 - if the employer is a U.S. company, then its employees who are U.S. citizens are protected by U.S. discrimination law, unless such protection would violate the laws of the country where the job is located.

The Age Discrimination in Employment Act

- The **Age Discrimination in Employment Act of 1967 (ADEA)**, provides Title VII protections to older workers.
- The law applies to everyone over 40 and with 20 or more employees.
- The ADEA protects people from several types of discrimination, including disparate treatment, adverse impact, and hostile environment discrimination.

The Americans with Disabilities Act

- The ADA provides protection for individuals with physical and mental disabilities.
 - **Physical disabilities** include things such as loss of an arm or leg, blindness, and chronic illnesses, such as cancer and diabetes.
 - **Mental disabilities** include such conditions as bi-polar, depression, learning disorders, and phobias.

The Equal Pay Act

- The **Equal Pay Act**, which was passed into law in 1963, addresses the issue of pay differences for men and women. Unlike many other laws, this act applies only to gender.
- The Equal Pay Act specifically makes it illegal for a company to pay men and women different wages, as long as they are doing equal work.
 - Equal work is defined as tasks that require equal skill, effort, and responsibility and that are performed under similar working conditions.

HR role in Equal Pay Act Compliance.

- HR Department must conduct Job Analysis a tools for determining when jobs are equal.
- Job Evaluation uses surveys and statistics to determine how much to pay based on comparisons within the organization and with other organizations.
- Measuring performance, assessing the contribution made by each employee ensuring that people who contribute more are paid more.

Pay Differences

- The Equal Pay Act does recognize reasons why people in the same job might be paid differently.
 - Seniority
 - Merit
 - Piece-rate system

The Family Medical Leave Act-1993

- Under the FMLA, an employee—either male or female—may request an unpaid leave of absence, for up to 12 weeks, for four reasons:
 - The employee is unable to work because he or she has a serious health condition.
 - The employee needs to care for an immediate family member with a serious health condition. Immediate family members are usually limited to spouses, parents, and children who are either under 18 or disabled.
 - The employee needs to care for a newborn child.
 - The employee needs to care for a child just adopted by the employee or placed with the employee for foster care.

WHAT IS AFFIRMATIVE ACTION?

- **Affirmative action** goes beyond equal opportunity and gives preferential treatment to members of groups that have been discriminated against in the past.
 - Argument for:
 - Preferences are needed to correct past injustices and to provide disadvantaged groups with an opportunity to catch up with the rest of society.
 - Argument against:
 - Claim that preferential treatment is nothing more than reverse discrimination—discrimination against people who are not members of the groups receiving preferences.
- This was accomplished through Executive Order 11246.

Executive Order 11246

- Requires any organization doing business with the federal government to have an affirmative action plan.
- It applies to governmental contracts valued at over \$10,000.
- One requirement, of the order, is the business conduct a **utilization study**.
 - This compares the percentages of women and minorities currently holding jobs in the company with the percentages of minorities and women in the population of the immediate labor area.

Executive Order 11246

- Step 2 is to develop *goals and timetables*.
 - specific plans to increase the representation of women and minorities in the company's work force.
 - Plans are not to include quotas, which prescribe certain percentages to be hired. Rather, they must be flexible objectives.
 - Organizations must then show a good faith effort, or reasonable actions, to achieve the goals and timetables.
 - There is no requirement to hire unqualified workers.

Executive Order 11246

- In recent years a series of court decisions has placed important restrictions on affirmative action practices.
 - One of the first of these cases concerned medical school admission.
 - The court cases have also focused on the issue of layoffs.
 - More recently a contractor was found guilty of discrimination for giving favorable status to minority subcontractors.

Occupational Safety and Health Act

- The Occupational Safety and Health Administration is an organization within the U.S. Department of Labor that was created to help enforce the act.
- Officers of the agency can enter and inspect factories, plants, or other worksites.
- They can also issue citations to companies that are not in compliance with safety requirements.
- Employers that do not follow the guidelines of OSHA may receive civil penalties in the form of fines.

Occupational Safety and Health Act

- OSHA requires employers to keep records about safety practices and incidents.
- Must have records of the information they provide to teach employees about the health concerns and dangers present in the workplace.
- Keep track of all illnesses and injuries that occur at work.
- Conduct periodic inspections to make sure that the workplace is safe.
 - In these inspections, they examine and test structures, machines, and materials to make sure that things are operating properly and not placing employees in dangerous situations.
 - Employers must provide information and keep employees informed of protections and safety obligations.

Occupational Safety and Health Act

- Some specific Safety Standards
 - Hazardous Chemicals
 - Emergency Plans.
 - Workspace Layout
 - Medical and First Aid

Worker Compensation

- Workers' compensation provides protection for employees who are injured or disabled while working.
- It is in the form of an insurance program. Employers are required to carry workers' compensation insurance.
- The insurance provides benefits to compensate for injuries suffered during work, no matter how the injuries were caused.
 - Benefits include payment of medical expenses for injured workers, disability.
 - Replacement income for injured workers unable to return to work
 - Income for family members of workers killed on the job.
- Most states make workers' compensation a no-fault and exclusive remedy for injury.
 - This means that insurance must compensate an injured employee even if the actions of the employee caused the injury, but the employee cannot bring a lawsuit to try to collect more money than what is provided by the insurance policy