PART ONE **INTRODUCTION**

CHAPTER **Two**

Managing Equal Opportunity and Diversity

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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 for managing diversity and affirmative action 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, historically, have been discriminated against, or if it becomes a "crutch" that hinders their motivation and ability to compete and perform. Although these are delicate and potentially volatile issues, helping students see and understand both sides of the argument will help them understand the depth of these issues.

ANNOTATED OUTLINE

I. Equal Employment Opportunity Laws

A. Background

1. 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. Background

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 or 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 or her employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual’s race, color, religion, sex, or national origin.

2. Who does Title VII cover? It covers: a) all public or private employers of 15 or more persons; b) all private and public educational institutions; c) federal, state, and local governments; d) public and private employment agencies; e) labor unions with 15 or more members; and f) joint labor-management committees.

3. 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. Johnson’s administration (1963–1969) issued Executive Orders 11246 and 11375, which required 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 of more than $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, prohibits sex discrimination based on "pregnancy, childbirth, or related medical conditions."

H. Federal Agency Uniform Guidelines on Employee Selection Procedures are uniform guidelines issued by federal agencies charged with ensuring compliance with equal employment federal legislation explaining "highly recommended" employer procedures regarding matters such as employee selection, record keeping, preemployment inquiries, and affirmative action programs.

I. Selected Court Decisions Regarding Equal Employment Opportunity (EEO)

1. *Griggs v. Duke Power Company,* 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,* 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 — Employers cannot avoid liability by proving it would have taken the same action—such as terminating someone—even without the discriminatory motive.

K. The Americans with Disabilities Act requires employers to make reasonable accommodations for disabled employees, and it prohibits discrimination against disabled persons. Mental disabilities account for the greatest number of ADA claims. “Mental impairment” includes “any mental or psychological disorder, such as . . . emotional or mental illness.” Examples include major depression, anxiety disorders, and personality disorders.

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. Traditional Employer Defenses and the “New ADA” — Employers used to prevail in about 96% of federal appeals court ADA decisions. A U.S. Supreme Court decision typifies why. An assembly worker sued Toyota, arguing that carpal tunnel syndrome prevented her from doing her job. The employee admitted that she could perform personal chores such as fixing breakfast. The Court said the disability must be central to the employee’s daily living (not just job). The ADA Amendments Act of 2008 makes it much easier for employees to show that their disability is influencing one of their “major life activities.”

L. Uniformed Services Employment and Reemployment Rights Act — Under the Uniformed Services Employment and Reemployment Rights Act (1994), employers are generally required, among other things, to reinstate employees returning from military leave to positions comparable to those they had before leaving.

M. Genetic Information Non-Discrimination Act of 2008 — GINA prohibits discrimination by health insurers and employers based on people’s genetic information.

N. State and Local Equal Employment Opportunity Laws — All states and many local governments prohibit employment discrimination, many cover employees not covered by federal regulations. State and local equal employment opportunities agencies play a role in the equal employment compliance process.

O. Religious and Other Types of Discrimination — The EEOC has held that discrimination against a person who is transgendered is discrimination because of sex, and that sexual orientation claims by lesbian, gay, and bisexual individuals alleging sex-stereotyping have a sex discrimination claim under Title VII. Religious discrimination involves treating someone unfavorably because of his/her religious beliefs. This applies to anyone with sincerely held religious, ethical, or moral beliefs, unless it would cause an undue hardship for the employer.

P. Sexual Harassment — This is 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.

1. What is Sexual Harassment? Submission is either explicitly or implicitly a term or condition of an individual's employment. Submission to or rejection of such conduct is the basis for employment decisions affecting such individual. 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.

2. Proving Sexual Harassment. There are three main ways to prove sexual harassment.

    a. Quid Pro Quo — The most direct way is to prove that rejecting a supervisor's advances adversely affected what the EEOC calls a "tangible employment action."

    b. Hostile Environment Created by Supervisors — Supervisor advancements can interfere with performance and creates an offensive work environment. There is a difference between simple flirting and sexual harassment.

    c. Hostile Environment Created by Coworkers or Nonemployees — An employee's coworkers or customers can cause the employer to be held responsible for sexual harassment.

    d. When is the Environment Hostile? The intimidation, insults, and ridicule were sufficiently severe enough to alter the working conditions.

    e. Supreme Court Decisions — The Supreme Court used the *Meritor Savings Bank, FSB v. Vinson* case to endorse the EEOC's guidelines on sexual harassment. *Burlington Industries v. Ellerth*—quid pro quo harassment. *Faragher v. City of Boca Raton*—hostile work environment.

Q. Diversity Counts —

1. In sexual harassment — When harassing behaviors are not blatant, defining how a reasonable person would interpret the behavior becomes important. There are gender-based differences in how men and women view behaviors. Another problem is that employees often do not complain.

2. What the Employee Can Do — courts generally look to whether the harassed employee used the employer's reporting procedures to file a complaint promptly.

R. Social Media and HR — Employees' increasing use of social media to harass others can be problematic for employers. At a minimum, employers should have a zero-tolerance policy on social media bullying.

S. Recent Trends in Discrimination Law — The U.S. Supreme Court decision that the Defense of Marriage Act's exclusion of state-sanctioned, same-sex marriages was unconstitutional has implicaitons for HR practices. The Department of Labor guidance tells employers they must recognize "spouse" under state laws. Federal contractors must also meet new DOL regulations on hiring individuals with disabilities. Another U.S. Supreme Court decision made it more difficult for someone to bring a realiation claim against an employer.

II. Defenses Against Discrimination Allegations

Discrimination law distinguishes between disparate treatment and disparate impact. Disparate treatment means intentional discrimination. It "requires no more than a finding that women (or protected minority group members) were intentionally treated differently because they were members of a particular race, religion, gender, or ethnic group." Disparate impact means that "an employer engages in an employment practice or policy that has a greater adverse impact (effect) on the members of a protected group under Title VII than on other employees, regardless of intent."

A. The Central Role of 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. Employers may not institute an employment practice that has an adverse impact on a particular class of people unless they can show that the practice is job related and necessary. There are several ways of showing that an employment procedure has an adverse impact on a protected group.

1. Disparate Rejection Rates — One shows disparate rejection rates by comparing rejection rates for a minority group and another group (usually the remaining nonminority applicants).

2. The Standard Deviation Rule — In selection, the standard deviation rule holds that as a rule of thumb, the difference between the numbers of minority candidates we would have expected to hire and whom we actually hired should be less than two standard deviations.

3. Restricted Policy — The restricted policy approach means demonstrating that the employer's policy intentionally or unintentionally excluded members of a protected group.

4. Population Comparisons — This approach compares (1) the percentage of minority/protected group and white workers in the organization with (2) the percentage of the corresponding group in the labor market.

5. The McDonnell-Douglas Test requires four rules be applied: (1) The person belongs to a protected class, (2) He or she applied and was qualified for a job, (3) Despite being qualified, he or she was rejected, (4) After the rejection, the position remained open and the employer continued seeking applications from persons with the complainant's qualifications.

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 ever more narrowly interpreted by the courts.

   1. Religion as a BFOQ — Religion may be a BFOQ in religious organizations or socities that require employees to share their particular religion.

   2. National Origin as a BFOQ — A person's country of national origin may be a BFOQ.

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.

III. Illustrative Discriminatory Employment Practices

A note on what you can and cannot do — reemployment questions are not inherently legal or illegal. Rather, the impact of the questions is what the courts assess in making determinations about discriminatory practice. "Problem questions" are those which 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. 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. Application forms should not contain questions which may allow potentially discriminatory information to be gathered. Discharge due to garnishment may result in adverse impact to minority groups.

C. Sample Discriminatory 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 Discrimination 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.

   2. EEOC Investigation — 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.

B. 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.

C. Mandatory Arbitration of Discrimination Claims — Many employers, to avoid EEO litigation, require applicants and employees to agree to arbitrate such claims. The U.S. Supreme Court's decisions (in Gilmer v. Interstate/Johnson Lane Corp. and similar cases) make it clear that "employment discrimination plaintiffs [employees] may be compelled to arbitrate their claims under some circumstances."

V. Diversity Management and Affirmative Action

Diversity means being diverse or varied, and at work it means having a workforce comprised of two or more groups of employees with various racial, ethic, gender, cultural, national origin, handicap, age, and religious backgrounds.

A. Diversity's Barriers and Benefits — Behavioral barriers that undermine work team collegiality and cooperation include stereotyping, prejudice, and discrimination. Tokenism, ethnocentrism and discrimination based on gender-role stereotypes also may cause problems within teams and for overall productivity.

   1. Some Diversity Benefits — The key is properly managing these potential threats. In doing so, an organization can see benefits such as increased sales and profits.

B. Managing Diversity — Means taking steps to maximize diversity's potential advantages while minimizing the potential barriers, such as prejudices and biases that can undermine the functioning of a diverse workforce. 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 and education; 4) change culture and management systems; 5) evaluate the diversity management program.

C. 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 or 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.

D. Reverse Discrimination — Means discriminating against nonminority applicants and employees. Employers should emphasize recruiting and developing better-qualified minority and female employees while basing employment decisions on legitimate criteria.

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.
OFCCP	The office 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."
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.
Civil Rights Act of 1991 (CRA 1991)	The act that 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	An intentional disparity between the proportion of a protected group and the proportion getting the job.
Americans with Disabilities Act (ADA)	The act requiring employers to make reasonable accommodation for disabled employees. It prohibits discrimination against disabled persons.
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.
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.
BFOQ	Requirement 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.
diversity	Having a workforce comprising two or more groups of employees with various racial, ethnic, gender, cultural, natural origin, handicap, age, and religious backgrounds.
discrimination	Taking specific actions toward or against the person based on the person's group.
gender-role stereotypes	The tendancy to associate women with certain (frequently nonmanagerial) jobs.
affirmative action	Making an extra effort to hire and promote those in protected groups, particularly when those groups are underrepresented.
reverse discrimination	Discriminating against nonminority applicants and employees.

DISCUSSION QUESTIONS

2-1. Present a summary of what employers can and cannot do legally with respect to recruitment, selection, and promotion and layoff practices.

Answers can vary but students should identify several of the following:

a. Ensure that recruitment practices are nondiscriminatory, 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.

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

c. 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.

d. 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.

e. Do not give preference to relatives of current employees if your current employees are substantially nonminority.

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

g. 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.

h. 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.

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

j. Assure that all layoff practices do not violate any federal, state, or local employment laws. Special emphasis should be placed on the ADEA or Age Discrimination Employment Act.

2-2. Explain the Equal Opportunity Commission enforcement process. 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. Establishing the EECO greatly enhanced the federal government's ability to enforce equal opportunity laws. The EEOC receives and investigates job discrimination complaints from aggrieved individuals. When it finds reasonable cause that the charges are justified, it attempts to reach an agreement eliminating all aspects of the discrimination.

2-3. List five strategies for successfully increasing diversity in the workforce.

1. Provide strong leadership in managing diversity programs.
2. Assess the organizational situation as it relates to equal employment hiring.
3. Provide diversity training and education.
4. Change culture and management systems.
5. Evaluate the diversity management program.

2-4. What is Title VII? What does it state? Title VII of the 1964 Civil Rights Act states an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.

2-5. 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 case was 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. 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.

2-6. What is adverse impact? How can it be proven?
This item can be assigned as a Discussion Question in MyManagementLab. Student responses will vary.

2-7. 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 business necessity. BFOQ is a requirement that an employee be of a certain religion, sex, or national origin where it 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.

2-8. What is the difference between affirmative action and equal employment opportunity?
This item can be assigned as a Discussion Question in MyManagementLab. Student responses will vary.

INDIVIDUAL AND GROUP ACTIVITIES

2-9. 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 request 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. In answering the questions, the students should keep in mind the three main ways sexual harassment can be proved, as well as the steps the employee should take in alerting management. For these scenarios, those are (a) quid pro quo harassment, (b) hostile environment by supervisor, and (c) hostile environment created by coworkers.

2-10. Working individually or in groups, discuss how you would set up an affirmative action program. The plan students produce should be focused on going beyond equal employment opportunity. Steps might include issuing a written policy, appointing a top official to direct the program, surveying current minority and female employees, developing goals and timetables, developing specific programs to achieve goals, and evaluating efforts.

2-11. Working individually or in groups, use the Web to compile examples of actual EEOC claims that have used each of the methods we discussed (such as the standard deviation rule) for showing adverse impact. Students may find a variety of examples of claims that show adverse impact. The students should be able to explain the difference of the different methods to demonstrate adverse impact such as disparate rejection rates, the standard deviation rule, restricted policy, population comparisons, and the Mc-Donnell-Douglas test.

2-12. 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 or her own behalf. If EEOC finds reasonable cause for the charge, it must attempt 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.

2-13. 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 management practices you should avoid.

Acceptable answers include the following:

Ensure that recruitment practices are nondiscriminatory, 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 nonminority.

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.

2-14. The HRCI Knowledge Base holds the HR professional responsible to "Ensure that workforce planning and employment activities are compliant with applicable federal, state, and local laws and regulations." Individually or in teams, draw up a matrix that lists (down the side) each law we covered in this chapter, and (across the top) each HR function (job analysis, recruiting, selection, etc.). Then, within the matrix, give an example of how each law impacts each HR function. Student answers will vary but must include a list of the federal laws covered in this chapter and the chief HR functions. Examples in each cell could be listed numerically to allow enough space to describe the examples.

Students can find the following assisted-graded writing questions at **mymanagementlab.com**:

2-15. Summarize the basic equal employment opportunity laws regarding age, race, sex, national origin, religion, and handicap discrimination.

2-16. Explain the basic differences against discrimination allegations.

APPLICATION EXERCISES

HR in Action Case Incident 1: An Accusation of Sexual Harassment in Pro Sports

2-17. Do you think Ms. Browne Sanders had the basis for a sexual harassment suit? Why or why not? Ms. Browne Sanders did have the basis for a valid sexual harassment suit. In this case, the Garden demonstrated a failure to stop the harassment of Ms. Sanders.

2-18. From what you know of this case, do you think the jury arrived at the correct decision? If not, why not? If so, why? The jury did arrive at the appropriate decision given the facts that were presented in this case. The Garden had a responsibility to demonstrate concrete reasons for their termination decision. It does not appear that any specific reasons were shared with the jury.

2-19. Based on the few facts that you have, what steps could Garden management have taken to protect itself from liability in this matter? A number of steps could be taken. First, the Garden should have conducted a thorough investigation and documented the results in a written report. Second, the Garden supplied a very generalized response for the termination. Before terminating an employee for

performance, an organization should demonstrate that a number of actions were taken to the coach and counsel the employee before termination.

2-20. Aside from the appeal, what would you do now if you were the Garden's top management? The Garden should have a policy/program in place to show how claims of sexual harassment are addressed, including a clause that prohibits any type of retaliation.

2-21. "The allegations against Madison Square Garden in this case raise ethical questions with regard to the employer's actions." Explain whether you agree or disagree with this statement, and why. Continuing assessments of what is right and what is wrong change over time. The changes are sparked by evolution within our culture, and the changes contribute to further evolution, and more adjustments in the ways we measure certain kinds of conduct against ethical values. Denying a culture's ability to alter its understanding of what is right and wrong is ultimately futile. One area that has seen ethical evolution is the treatment of women in the workplace. It isn't surprising that the standards of appropriate treatment have changed over time.

HR in Action Case Incident 2: Carter Cleaning Company: A Question of Discrimination

2-22. Is it true, as Jack Carter claims, that "we can't be accused of being discriminatory because we hire mostly women and minorities anyway?" This is not true at all. Employers can be accused of discriminatory practices at any time. In this case, female applicants were being asked questions about childcare that males were not being asked; minority applicants were being asked questions about arrest records and credit histories that non-minorities were not. In addition, the reports of sexual advances toward women by a store manager and an older employee's complaint that he is being paid less than other employees who are younger for performing the same job all raise serious issues in terms of discriminatory employment practices. Potential charges include violation of Title VII, the Equal Pay Act, age discrimination, sexual harassment, and disparate treatment.

2-23. How should Jennifer and her company address the sexual harassment charges and problems? The first step would be to document the complaint and initiate an investigation; if the finding of the investigation is that sexual harassment did occur, then take the appropriate corrective action, which could include disciplinary action, including discharge. In addition, the company should develop a strong policy statement and conduct training with all managers.

2-24. How should she and her company address the possible problems of age discrimination? The company should review the compensation structure and pay rates to determine whether there is discrimination in their pay system with regard to older workers being paid less than younger workers for performing the same work. If there are significant differences, then adjustments should be made to the pay system in order to rectify the problem.

2-25. Given the fact that each of its stores has only a handful of employees, is her company in fact covered by equal rights legislation? Yes—the EEOC enforces equal employment compliance against all but the very smallest of employers. All employees, including part-time and temporary workers, are counted for purposes of determining whether an employer has a sufficient number of employees. State and local laws prohibit discrimination in most cases where federal legislation does not apply.

unless a supervisor's harassment did not result in tangible harm to the employee and the company can show that:
  - It acted reasonably to prevent and correct the harassment.
  - The employee acted unreasonably by failing to use internal processes or otherwise prevent the harm.

- ✓ The Equal Employment Opportunity Commission (EEOC) and federal courts of appeal have since made it clear that these decisions apply to all forms of harassment.
- ✓ Companies that train supervisors and employees to prevent sexual harassment will be able to show that they acted reasonably. Further, they will be able to show that employees were informed of the company's complaint procedures but failed to use them.
- ✓ And, as if all these legal developments weren't enough, the EEOC recently issued a guidance that directs employers to provide anti-harassment training.

WEB-e's EXERCISES

1. **Citicorp recently faced a billion dollar discrimination suit. Use Web sites such as http://www.forbes.com/2008/04/06/citigroup-women-discrimination-face-markets-face-cx_ra_0404autofacescan05.html to discuss what happened with these suits.** The complaint charges that, among other things, Citicorp/Smith Barney discriminates in the account distribution process, routinely assigning smaller and less valuable accounts to female brokers, including those who outperform their male counterparts; provides women with less sales and administrative support than it provides to men; and maintains a corporate culture hostile to female professionals. The lawsuit charges that Smith Barney has engaged in a pattern and practice of gender discrimination against its female financial consultants in account distribution, sales support, compensation, and other terms and conditions of employment throughout the company. The women allege violations of federal and state laws, including Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act.

2. **Using sites such as http://www.foxnews.com/story/2009/04/21/texas-man-settles-discrimination-lawsuit-against-hooters-for-not-hiring-male/ discuss the details of the discrimination suit against Hooters.** The complainant filed a complaint against Hooters of America in January alleging its Corpus Christi franchise would not hire him as a waiter because the position was being limited to females by an employer "who merely wishes to exploit female sexuality as a marketing tool to attract customers and insure profitability." Hooters argued a "bona-fide occupational qualification" defense, which applies when the "essence of the business operation would be undermined if the business eliminated its discriminatory policy." The complainant was suing on behalf of "all males across the country who applied for the position of waiter at a Hooters restaurant and were denied," and suggested all Hooters franchisees be certified as defendants. The settlement however applies only to the Corpus Christi franchise.

3. **What conclusions can you draw from sites such as http://www.usatoday.com/news/health/weightloss/2008-05-20-overweight-bias_N.htm about handling and avoiding discrimination against obese people?** Weight discrimination, especially against women, is increasing in U.S. society and is almost as common as racial discrimination, two studies suggest. Reported discrimination based on weight has increased 66 percent in the past decade, up from about 7 percent to 12 percent of U.S. adults, says one study, in the journal *Obesity*. The other study, in the *International Journal of Obesity*, says such discrimination is common in both institutional and interpersonal situations—and in some cases is even more prevalent than rates of discrimination based on gender and race. (About 17 percent of men and 9 percent of women reported race discrimination.)

ADDITIONAL ASSIGNMENTS

1. **What is sexual harassment? How can an employee prove sexual harassment?** Sexual harassment is 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. An employee can prove sexual harassment in three main ways: 1) quid pro quo—prove that rejecting a supervisor's advances adversely affected tangible benefits; 2) hostile environment created by supervisors; and 3) hostile environment created by coworkers or nonemployees.

2. **What is the difference between disparate treatment and disparate impact?** The main difference is one of intent. Disparate treatment means that there was an intent to treat different groups differently. Disparate impact does not require intent, but merely to show that an action has a greater adverse effect on one group than another.

3. **Explain with examples how the evolution of equal employment law in the 1960s helps illustrate how public policy considerations drove the original EEO legislation.** The Civil Rights Act of 1964 was a landmark piece of legislation in the United States that outlawed major forms of discrimination against blacks and women, and ended racial segregation in the United States. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace, and by facilities that served the general public ("public accommodations"). Once the Act was implemented, its effects were far-reaching on the country as a whole and had an immediate impact on the South. It prohibited discrimination in public facilities, in government, and in employment, invalidating the Jim Crow laws in the Southern United States. It became illegal to compel segregation of the races in schools, housing, or hiring. After passage of the law, the NAACP was the only major civil rights organization to maintain a large membership in the South, where it concentrated on organizing the ongoing struggle for black civil rights. During 1965–1975, the NAACP remained committed to using litigation to challenge racial injustice. Its legal efforts focused on four areas: enforcement of both the 1964 Civil Rights Act and the 1965 Voting Rights Act, school integration, employment discrimination, and the struggle to keep Southern states and localities from switching to at-large elections.

4. **Give at least three examples of how current EEOC policy reflects public policy decisions.** Embarking on an historic new area of jurisdiction, the U.S. Equal Employment Opportunity Commission (EEOC) recently presented a Notice of Proposed Rule Making, implementing employment provisions of the Genetic Information Non-Discrimination Act of 2008. In addition, the EEOC has passed legislation in the areas of privacy for employees as well as employer and employee rights as it relates to electronic monitoring in the workplace.