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CHAPTER 2: Legal Compliance

Sample Answers for Discussion Questions

1. Do you agree that "the employer usually has the upper hand" when it comes to establishing the employment relationship? When might the employee have maximum power over the employer?

Sample Response: Sometimes the employer has the upper hand, but this must be considered in light of employee actions as well. The employer has control over the creation of the job, the specifications of the job, and the location of the job. The employer also controls access to the job, retention, and termination of the job. The employee has maximum power over the employer when there is short supply of the skill the employee possesses, and the company has a critical need for this same skill. The employer is then in the position of having to offer the job to the prospective employee, probably at a relatively high compensation rate. This short supply can also be created artificially, and en masse when workers go out on strike. This action has the potential of stopping production completely and bringing the company to the brink of bankruptcy, at which point the company may be forced to agree to the employee (i.e., union) terms of employment. On the other hand, the employee can control his or her work effort on the job, can seek to change employment practices internally, or can leave the company whenever he or she wants.

2. What are the limitations of disparate impact statistics as indicators of potential staffing discrimination?

Sample Response: Disparate impact statistics describe existing demographic patterns, but they do not necessarily explain the reasons these patterns exist. The underlying reasons for the patterns may, or may not, be caused by discrimination. There may be cultural and historical reasons for concentrations of categories of people in certain jobs. For example, the historical role of women is still affecting the concentration by gender that can be observed in certain jobs. Until fairly recently, most women remained at home as full-time mothers and housewives. And, when women did work, they were discouraged from seeking jobs that required manual labor or heavy physical exertion. To this day, relatively few women are applying for jobs as forklift truck drivers or welders. Admittedly, these so-called cultural norms involved discrimination, but their historical significance in establishing patterns has still not been overcome. It is still rare for men to assume jobs as elementary school teachers or nurses, which have traditionally

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been considered female jobs. In cases such as these, it is unlikely that either AA measures or quotas would resolve the disparities in concentration of jobs. Men might not change their frequency of either seeking or accepting jobs traditionally considered "female" for historical, cultural reasons.

There can also be patterns attributable to age or socio-economic class. For example, some occupations like food servers or front line customer service are not considered suitable for mid-career wage earners and are held respectively by teenagers and foreign nationals in disproportionate numbers. There are also disparities due to indirect forms of discrimination; that is, discrimination other than hiring discrimination, that impacts on the ability to hire. For example, residential housing patterns are impacted by convert segregation and economic disparities between the races. Accordingly, members of one race do not, or cannot afford economically, to work in certain sections of cities dominated by another race. The point is not that these demographic patterns are desirable, acceptable, or just. In many cases they are not. But, they exist and they are not always susceptible to legislative or regulatory correction in the short term.

3. Why is each of the four situational factors necessary to establishing a claim of disparate impact?

Sample Response: The first factor is that of belonging to a protected class. This factor is necessary because there has to be a rationale that a given class of people has been discriminated against in the past in order for a given anti-discrimination statute to have legal relevance.

The second factor is for the person to have applied for, and been qualified for, a job the employer was trying to fill. Unless someone has tried to apply for a job, there is no possibility of demonstrating that the "intent to discriminate" rule has been violated, and disparate treatment hinges on this "intent" factor.

The third factor is having been qualified, but having been rejected for a job despite being qualified. Rejection must take place because one could hardly prove discrimination in a court of law if the plaintiff had been offered the job. The "qualified" factor is important because, if the person was not qualified, then the employer can justify having not hiring the person for factors "reasonably" related to the special nature of the job. In other words, the employer has a viable affirmative defense for failing to hire the plaintiff.

The fourth factor is that the position has remained open after the qualified individual was rejected, and the employer continued to seek other candidates with similar qualifications. This factor makes it possible to establish prima facie evidence that the employer elected "intentionally" not to hire a person who is qualified for the job. Unless the employer can present a satisfactory rebuttal,

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discrimination has been proved in the eyes of the law and the employer will be held liable.

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4. **What factors would lead an organization to enter into a consent agreement rather than continue to pursue a suit in court?**

Sample Response: There are many economic reasons why an organization might enter into a consent agreement. One of these is the extent of the liability for either continuing the suit or losing the suit altogether. Suits are expensive in terms of damages awarded to plaintiffs, management time lost in attending to the suit, and legal costs. An organization may wish to minimize all of these costs through a consent agreement.

There are other repercussions that can occur as a result of suits. If the magnitude of the potential liability is large and will continue to escalate , this liability can be viewed by the financial community as a negative, and can effect the price of an organization's stock or its ability to raise money on reasonable terms in the capital markets.

There is also the question of an organization's public image. Organizations with the negative image associated with discrimination can have trouble attracting customers and/or employees, especially managerial employees. These eventualities can threaten the future financial and operational viability of the organization.

5. **What are the differences between staffing in the private and public sectors? Why would private employers probably resist adopting many of the characteristics of public staffing systems?**

Sample Response: Public sector staffing is shaped by the "merit principles" and civil service laws and regulations. These regulations place the public organization under more constraints, more bureaucratic red tape, more outside control, and greater standards of accountability. The public organization is under greater obligation to advertise all job vacancies, open up the application and selection processes to all interested parties, and restrict testing only to certain criteria such as KSAOs. There is a more elaborate system for all phases of the hiring process, and the rights of applicants to appeal hiring decisions are far more liberal than would be the case for private organizations.

Private organizations resist many of these public staffing procedures because of their costs in terms of management time, paperwork, processing costs, and expenses to ensure compliance. This last point could involve, for example, interviewing greater numbers of people, with a consequent increase in costs for travel and transportation. Also, in a sense, private organizations do want to discriminate at times in the staffing process. There are many characteristics of individuals that are not reducible to description on application forms and job descriptions. It is often necessary to rely on personal judgment in assessing such

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factors as motivation, interpersonal skills, leadership ability, honesty, integrity, and commitment to the job. It is quite possible, even probable, that two individuals might rate the same on paper instruments used in the staffing process and be vastly different when rated judgmentally. Private organizations do not want to be locked into an exclusively bureaucratic, objective process in making decisions on people, the most critical factor to organizational success.

Sample Answers for Ethical Issues

Issue 1

Assume that you're the staffing manager in a company that informally, but strongly, discourages you and managers from hiring people with disabilities. The company's rationale is that people with disabilities are unlike to be high performers or long term employees, and are costly to train, insure, and integrate into the work unit. What is your ethical assessment of the company's stance; do you have an ethical obligation to try to change the stance, and if so, how might you go about that?

Many organizations have tacit policies of discrimination that are not openly communicated but that are known to most managers. In this case, the organization's position is generally ethically (and legally) unjustifiable. The ethical imperative for an organization is to hire individuals on the basis of their qualifications, so if a disabled individual is truly unable to perform the job, they need not be hired, but if they are capable of performing core work tasks, the organization should make accommodations. Students may differ in their opinion regarding the ethics of resisting the policy, but one who is in a position of making important staffing decisions should probably make some effort to correct the situation. Examples of effective techniques for influence include finding ways to demonstrate to senior managers that disabled individuals are capable of doing the required work, providing senior managers with information regarding the legal ramifications of this informal policy, and also, if these techniques are not effective, refusing to comply with an unjust policy.

Issue 2

Assume the company you work for practices strict adherence to the law in its relationships with employees and job applicants. The company calls it "staffing by the book." But beyond that, it seems that anything goes in terms of tolerated staffing practices. What is your assessment of this approach?

This approach may be effective in generating profits for an organization in the short run, but it may create negative externalities in terms of the organization's reputation. Companies that enact cutthroat employment policies that fail to recognize the ethical implications of the relationship between an organization and its employees often find that their ability to attract and retain top quality applicants

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is compromised. It is also often the case that legal strictures on organizations become problematic only when they are treated as a problem—creative organizations learn to use the law to their advantage by incorporating features of ethical compliance into their corporate culture.

Sample Answers for Applications

1. Application #1: Age Discrimination in a Promotion?

Arguments in Favor of Gus Tavus' Disparate Treatment Claim

The merit of Gus' claim of disparate treatment based on his age would be based on demonstrating a "prima facie case" consisting of evidence supporting the presence of four conditions:

1. The person belonged to a protected class.

Supporting Evidence

- Gus Tavus was 52 years old. According to ADEA, he is the member of a protected class because is over 40 years old.

2. The person applied for, and was qualified for, a job the employer was trying to fill.

Supporting Evidence

- Gus' boss, the VPRC, stated that Gus was clearly qualified for the job of CCS.
- Gus' previous performance appraisals were "above average."

3. The person was rejected despite being qualified.

Supporting Evidence

- Gus did not receive an offer for one of the five new CCS positions.

4. The position remained open and the employer continued to seek applicants as qualified as the person rejected.

Supporting Evidence

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- Gus was passed over and other younger job candidates identified by the SVPCC and the two MCCs were selected instead.

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Other Information Which May Strengthen Gus' Case

1. The SVPCC and the two MCCs conducted the entire staffing process themselves without any input from Gus' boss or HR. This calls into question how "open" the process really was.

2. There was no job description for the new CCS job. If this was the case, how could the person/job match be assessed?

3. No internal job posting. Again, this calls into question whether the process was open or not.

4. The personnel files and performance appraisals of candidates (including Gus') were not reviewed in the selection stage of the process. If this was the case, what information was used for selection?

5. There was no evidence that Gus lacked the skills needed to perform the CCS job.

6. All of the other applicants over 40 years old were not selected for the five CCS positions either.

Arguments in Defense of BPIC's Staffing Practices

The basis of BPIC's defense is to demonstrate that it has nondiscriminatory reasons for its practices.

Specific Arguments in Defense of BPIC's Staffing Practices

1. There was an extremely large number of highly qualified applicants. The new CCS position was redesigned and upgraded such that it required a broader set of KSAOs than was the case before. Although it was not at all intentional, the candidates who had the best KSAO -job requirements match happened to be five individuals under the age of 40. It was the KSAOs and job performance of job candidates that determined who to hire.

2. A substantial number of individuals over 40 years old were included in the initial applicant pool.

3. There was no indication of age discrimination experienced by any of the "over 40" job applicants, based on their past performance reviews.

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2. Application #2: Disparate Impact -What Do the Statistics Mean?

A. How can an organization go about collecting and reporting the statistics presented in Exhibit 2.3?

Flow Statistics

This requires the HR department to track the following data: 1. total number of applicants, 2. number hired, 3. gender, 4. age, and 5. racial/ethnic background. Based on this data, the selection rate (# hired out of # applied) must be computed and then broken down by age, gender and racial/ethnic background. This will yield a percentage score for each category.

Stock Statistics

This involves collecting data regarding the demographics (i.e., protected characteristics) of the organization's current work force and comparing them with the demographics of the geographic location in which the company operates. This can be obtained from the most recent census data. Now the company must compare the demographics for the work force against those for the geographic location in which the company operates.

Concentration Statistics

This would involve examining the percentage of people in different job classifications in the company (e.g., clerical, managerial, etc.) again broken down by gender, age, and racial/ethnic background.

B. What "rule of thumb" or guidelines would you recommend for deciding whether statistical differences reflect discrimination occurring through the staffing system?

Flow Statistics

A rule of thumb called the 80% or 4/5 rule can be used with flow statistics to assess whether there may be evidence of discrimination in staffing practices. The way the 4/5 rule works is to calculate the selection rates for each of the protected classes (e.g., gender, age, race). Now identify the group with the highest selection rate. This is the benchmark group. Next, compare the selection rate of every other group within a given protected class with the benchmark group. If the selection rate of any of the other groups is less than 4/5 or 80% of the benchmark group, then this suggests the presence of disparate impact.

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Example

Job: Management Trainee					
No. Applicants		No. Hired		Selection Rate	
Males	Females	Males	Females	Males	Females
100	100	50	90	50%	90%

Question: Is the selection rate of males (50%) at least 80% of the selection rate of the benchmark group, females (90%)? No. Thus, this suggests disparate impact on males for this particular job.

Stock Statistics

There is no magic formula for determining whether stock statistics reflect discrimination in staffing. The person analyzing this data will have to use their judgment in determining whether a problem may exist. Specifically, you want to look for anything discrepancies which appear to "pop out" in the data. For example, if your company is based in a city with 15% African Americans, but your work force has only 1% African Americans, this would be a "red flag" which needs further investigation.

Concentration Statistics

Similar to stock statistics, there is no specific magic formula or guideline to use here. The decision maker will need to again look for differences which "pop out" of the data. For example, if there are 50% females in your organization's work force, but 90% of them are concentrated in clerical positions, this would suggest a problem which needs to be investigated further.

C. What types of staffing activities (recruitment, selection, employment) might be causing the statistical differences? For example, in Exhibit 2.3 the selection rate for men is 50% and for women is 11%. How would the organization collect the data necessary to compute these selection rates, how would you decide if the difference in selection rates (50% vs. 11%) is big enough to indicate possible discrimination, and what sorts of practices might be causing the difference in selection rates?

Recruitment

A major way in which recruiting can contribute to differences in group selection rates deals with the sources and methods of recruiting used to attract applicants. For example, if an employer wants to increase the

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diversity of its work force in terms of its racial/ethnic composition, then it needs to place advertisements in the newspapers or on the radio/TV stations which will tap into diverse groups of people. If this is NOT done, it shouldn't be too surprising to organizations if their applicant pool is highly homogeneous..

Selection

The selection methods used may also contribute in a significant way to group differences in selection rates. For example, if a written test is given to all job applicants in which some groups of individuals consistently perform better, this may be discriminatory. The question becomes, "What does this test measure?" and, "Does the test measure an essential KSAO?" If not, then the test may be artificially weeding out applicants who are otherwise qualified.

Employment

A major problem here could be the composition of job offers made to various individuals. It is possible that the terms and conditions associated with job offers are making it less likely that members of certain protected groups will accept the job offers. For example, suppose that a company makes a job offer to a highly qualified woman who happens to be a single mother. Because this woman is a single mother, she needs child care benefits and flexibility in her-work schedule. The employer provides neither of these two benefits and the woman subsequently rejects the employer's job offer.

In terms of explaining the difference in selection rates between males and females in Exhibit 2.3, there are a number of issues to address. First, an organization could ask all job applicants to complete a voluntary applicant background information form that is sent to the HR department for tracking purposes. This could later be used as a basis for calculating the selection rate for males vs. females overall or by position. One approach for determining whether a selection rate of 50% vs. 11% is really significant is to apply the 4/5 or 80% rule. If the selection rate for females is less than 80% of the selection rate for males, then this would suggest a problem with discriminatory staffing practices. Potential causes of the difference in selection rates are discussed above.

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Staffing Organizations

Chapter 2:
Legal Compliance

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Learning Objectives for Chapter 2

- Contrast legal differences among employees, independent contractors, and temporary employees
- Appreciate why staffing laws are necessary, and their sources
- Review six major federal equal employment opportunity and affirmative action laws
- Distinguish between disparate treatment and adverse (disparate) impact approaches to enforcement
- Examine specific staffing provisions of the six major laws
- Look at other important staffing laws and regulations
- Gain an overview of legal issues covered in Chapters 3–14

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Legal Compliance

The Employment Relationship

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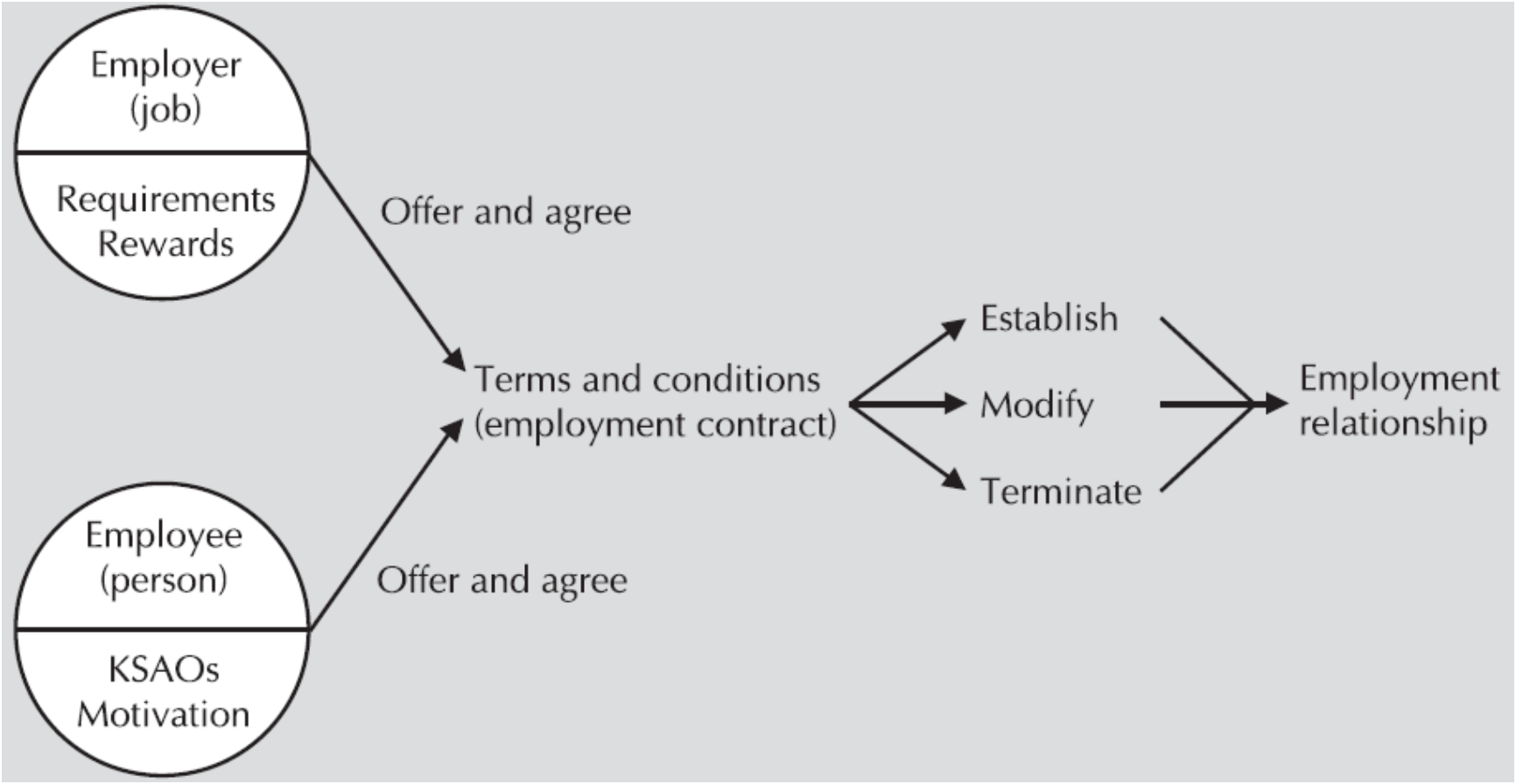
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The Employment Relationship

- Employer-employee
  - Most prevalent form of employment relationship
  - Involves an agreement between employer and employee on terms and conditions of employment
- Independent contractors
  - Are not considered employees, in a legal sense, of employer
- Temporary employees
  - Do not have special legal stature

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Exhibit 2.1: Matching Process, Employment Contract, and Employment Process



Jump to Exhibit 2.1: Matching Process, Employment Contract, and Employment Process, Appendix

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Discussion Question

- Do you agree that “the employer usually has the upper hand” when it comes to establishing the employment relationship? When might the employee have maximum power over the employer?

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Legal Compliance

Laws and Regulations

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Laws and Regulations

- Need for laws and regulations
  - Balance of power
  - Protection of employees
  - Protection of employers
- Exhibit 2.2: Sources of Laws and Regulations
  - Common law
  - Constitutional law
  - Statutory law
  - Executive order
  - Agencies

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Exhibit 2.3: Major Federal EEO/AA Laws

Law or Executive Order	Coverage	Prohibited Discrimination	Enforcement Agency	Important Rules, Regulations, and Guidelines
Civil Rights Act (1964, 1991)	• Private employers with 15 or more employees • Federal, state, and local governments • Educational institutions • Employment agencies • Labor unions	Race, color, religion, national origin, sex	EEOC	• Uniform Guidelines on Employee Selection Procedures • Sex Discrimination Guidelines • Religious Discrimination Guidelines • National Origin Discrimination Guidelines
Age Discrimination in Employment Act (1967)	• Private employers with 20 or more employees • Federal, state, and local governments • Employment agencies • Labor unions	Age (40 and over)	EEOC	• Interpretations of the Age Discrimination in Employment Act

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Exhibit 2.3: Major Federal EEO/AA Laws

Law or Executive Order	Coverage	Prohibited Discrimination	Enforcement Agency	Important Rules, Regulations, and Guidelines
Americans with Disabilities Act (1990)	• Private employers with 15 or more employees • Federal, state, and local governments	Qualified individual with a disability	EEOC	• ADA-Employment Regulations • Definition of the Term Disability • Pre-Employment Disability-Related Questions and Medical Examinations
Rehabilitation Act (1973)	• Federal contractors with contracts in excess of $2,500	Individual with a handicap	DOL (OFCCP)	• Affirmative Action Regulations on Handicapped Workers
Executive Order 11246 (1965)	• Federal contractors with contracts in excess of $10,000	Race, color, religion, national origin, sex	DOL (OFCCP)	• Sex Discrimination Guidelines • Affirmative Action Programs Regulations

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Disparate Treatment

- Involves allegations of intentional discrimination where employer knowingly discriminated on basis of specific characteristics
- Evidence
  - May be direct
  - May consist of a mixed motive
  - May be inferred from situational factors
    - Person belongs to a protected class
    - Person applied for, and was qualified for, a job employer was trying to fill
    - Person was rejected despite being qualified
    - Position remained open and employer continued to seek applicants as qualified as person rejected

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Disparate/Adverse Impact

- Focuses on effect of employment practices, rather than on motive or intent underlying them
  - As a result of a protected characteristic, people are adversely affected by an employment practice
- Evidence -- Involves use of statistics
  - Exh. 2.5: Types of Disparate Impact Statistics
    - Applicant flow statistics
      - Four-fifths rule - An employment practice has disparate impact if hiring rate for minority group is less than four-fifths (or 80%) of hiring rate for majority group
    - Stock statistics
    - Concentration statistics

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Litigation Process: EEOC

	Disparate Treatment	Disparate Impact
Show intent?	Yes	No
Prima facie case	Disparate treatment; intentional practice	Disparate impact; effect of practice
Employer's rebuttal	Nondiscriminatory reason for practice or show BFOQ	Practice job-related and consistent with business necessity
Plaintiff's rebuttal	Reason is a pretext for discrimination	Practice is not job-related, employer does not adopt practice with less disparate impact
Remedies	Consent degree: compensatory and punitive damages	Consent decree: equitable relief (i.e. back pay)

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Exhibit 2.5: Types of Disparate Impact Statistics, 1

Flow statistics: Significant differences in selection rates between groups

Example

Job Category: Customer Service Representative

Number of Applicants: Men	Number of Applicants: Women	Number Hired: Men	Number Hired: Women	Selection Rate: Percentage of Men	Selection Rate: Percentage of Women
50	45	25	5	50	11

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Exhibit 2.5: Types of Disparate Impact Statistics, 2

Stock statistics: Underutilization of women or minorities relative to their availability in the relevant population

Example

Job Category: Management Trainee

Current Trainees: Percentage of Nonminority	Current Trainees: Percentage of Minority	Availability: Percentage of Nonminority	Availability: Percentage of Minority
90	10	70	30

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Exhibit 2.5: Types of Disparate Impact Statistics, 3

Concentration statistics: Concentration of women or minorities in certain job categories

Example

Job Categories: Clerical, production, sales, and managers

Gender	Clerical	Production	Sales	Managers
Percentage of Men	3	85	45	95
Percentage of Women	97	15	55	5

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Discussion Questions

- What are the limitations of disparate impact statistics as indicators of potential staffing discrimination?
- Why is each of the four situational factors necessary to establishing a claim of disparate treatment?

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Legal Compliance

EEO/AA Laws:
General Provisions and Enforcement

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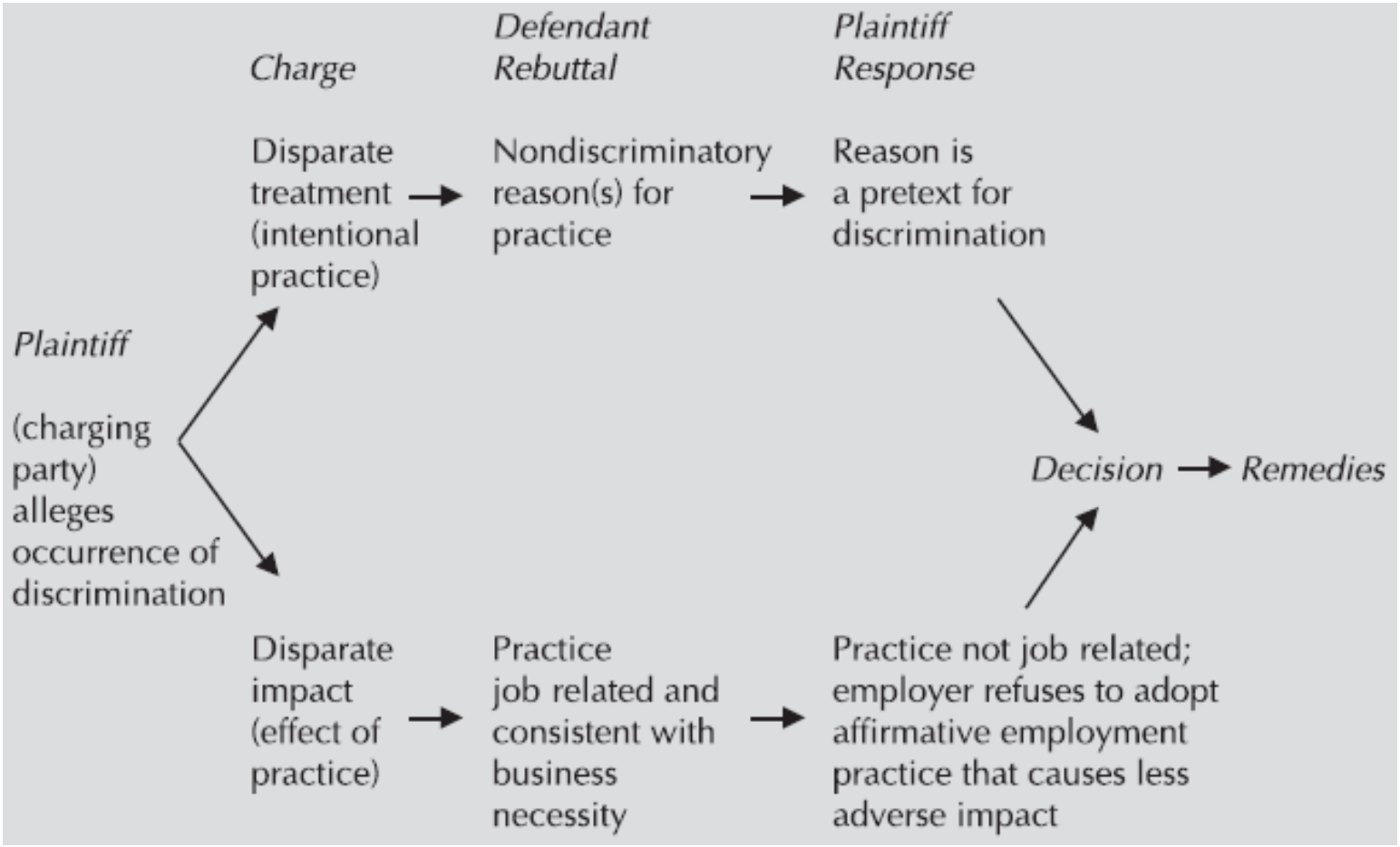
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Enforcement by EEOC: Initial Charge and Conciliation

- Charge filed
- Investigation to determine “reasonable cause”
- If “reasonable cause” found, conciliation is pursued
  - Voluntary settlement process
  - Preferred method of settlement
- If EEOC decides not to pursue a claim, a “right to sue” letter is issued to complaining party
- Complementing conciliation is mediation
  - Neutral, third-party mediates dispute to obtain agreement to resolve dispute

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Exhibit 2.7: Basic Litigation Process - E E O C



Jump to Exhibit 2.7: Basic Litigation Process - E E O C, Appendix

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Enforcement by OFCCP

- Enforcement mechanisms differ from those of EEOC
- Covered employers required to develop and implement written AA plans
- Enforcement involves
  - Off-site desk audits/reviews of employers' records and AA plans
  - On-site visits/compliance reviews of employers' AA plans
- Employers found in noncompliance urged to change practices through conciliation
  - If conciliation is unsuccessful, employers subject to penalties affecting their status as federal contractors

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Discussion Questions

- What factors would lead an organization to enter into a consent agreement rather than continue pursuing a suit in court?

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Legal Compliance

EEO/AA Laws:
Specific Staffing Provisions

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EEO/AA Laws: Specific Staffing Provisions

- Civil Rights Act of 1964
  - Prohibits discrimination on the basis of age, gender, religion, race or color, and national origin
  - Unlawful employment practices
  - Bona fide occupational qualification (BFOQ)
  - Testing
  - Seniority or merit systems
- Age Discrimination in Employment Act (1967)
  - Prohibited age discrimination
  - Factors other than age
  - Seniority systems
- Americans with Disabilities Act (1990)
  - Prohibited discrimination on the basis of disability status
  - Definition of disability
  - Physical and mental impairments substantially limiting a major life activity

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EEO/AA Laws: Americans with Disabilities Act EEOC Clarifications

- Impairment - “A physiological disorder affecting one or more of a number of body systems or a mental or psychological disorder.”
- Expanded major life activities include “sitting, standing, lifting, and mental and emotional processes such as thinking, concentrating, and interacting with others.”
- Whether an impairment is substantially limiting depends on its nature and severity, duration or expected duration, and its permanency or long-term impact.
- To be substantially limiting, impairment must prevent/significantly restrict a person from performing a class or broad range of jobs in various classes.

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EEO/AA Laws: Americans with Disabilities Act EEOC Clarifications

- Qualified individual with a disability
- Essential job functions
- Reasonable accommodation and undue hardship
- Selection of employees
- Medical exams for job applicants and employees
- Affirmative action

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Legal Compliance

Other Staffing Laws

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Other Staffing Laws: Immigration Reform and Control Act (1986)

- Purpose
  - To prohibit employment of unauthorized aliens
  - To provide civil and criminal penalties for violations
- Prohibited discrimination
- Employment verification system -- I-9 form
  - Employer must verify individual is not an unauthorized alien and is legally eligible for employment
  - Individuals must offer proof of identity
- Temporary foreign workers
- Enforcement
  - Enforced by Department of Justice
  - Noncompliance may result in fines up to $10,000

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Other Staffing Laws: Employee Polygraph Protection Act (1988)

- Purpose
  - Prevent most private employers from using a polygraph on job applicants or employees
- Prohibited practices
  - Requiring applicants or employees to take a polygraph
  - Using results of a polygraph for employment decisions
  - Discharging or disciplining individuals for refusal to take a polygraph
- Examples of instances where polygraph may be used
- Enforcement
  - Enforced by Department of Labor
  - Noncompliance may result in fines up to $10,000

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Other Staffing Laws: Fair Credit Reporting Act (1970)

- Purpose
  - Regulates organization's acquisition and use of consumer reports on job applicants
- Required compliance
  - Before obtaining a report, organization must
    - Give applicant notice in writing a report may be obtained
    - Obtain written authorization from applicant
  - If an "adverse action" is taken, organization must
    - Notify (written, oral, electronic) applicant of adverse action
    - Provide information of consumer reporting agency to applicant
    - Provide notice of applicant's rights to applicant
- Enforcement
  - Enforced by Federal Trade Commission
  - Noncompliance may result in fines up to $1,000

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Other Staffing Laws: State and Local Laws

- EEO / AA laws
  - Often patterned after federal laws
  - Basic provisions vary from state to state
  - Often provide protections beyond those contained in federal laws and regulations
- Other state laws
  - Employment-at-will
  - Workplace torts
  - Examples of other covered areas
    - Criminal record inquiries by employer, polygraph and "honesty" testing, drug testing, AIDS testing, employee access to personnel records

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Other Staffing Laws: Civil Service Laws and Regulations

- Merit principles and staffing practices
  - To recruit, select, and promote employees on the basis of their KSAOs
  - To provide for fair treatment of applicants and employees without regard to political affiliation, race, color, national origin, sex, religion, age, or handicap
  - To protect privacy and constitutional rights of applicants and employees as citizens
  - To protect employees against coercion for partisan political purposes
- Principles codified in civil service laws and regulations

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Civil Service Laws and Regulations Compared to the Private Sector

- Notable differences exist between public and private sectors
- Examples of public sector staffing practices
  - Open announcement of all vacancies, along with content of selection process to be followed
  - Large numbers of applicants due to applications being open
  - Legal mandate to test applicants only for KSAOs directly job-related
  - Limits on discretion in final hiring process, such as number of finalists, ordering of finalists, and AA considerations
  - Rights of applicants to appeal hiring decision, testing process, or actual test content and method

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Discussion Questions

- What are the differences between staffing in the private and public sectors?
- Why would private employers probably resist adopting many of the characteristics of public staffing systems?

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Ethical Issues in Staffing

- Issue 1
  - Assume that you're the staffing manager in a company that informally, but strongly, discourages you and managers from hiring people with disabilities. The company's rationale is that people with disabilities are unlike to be high performers or long term employees, and are costly to train, insure, and integrate into the work unit. What is your ethical assessment of the company's stance; do you have an ethical obligation to try to change the stance, and if so, how might you go about that?
- Issue 2
  - Assume the company you work for practices strict adherence to the law in its relationships with employees and job applicants. The company calls it "staffing by the book." But beyond that, it feels that "anything goes" in terms of tolerated staffing practices. What is your assessment of this approach?

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APPENDICES

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Exhibit 2.1: Matching Process, Employment Contract, and Employment Process, Appendix

There are two circles on the left, placed one below the other. Both the circles are divided into two halves. The upper half of the circle at the top has the text employer open parenthesis job close parenthesis, and the lower half of the circle has the text requirements and rewards. The upper half of the circle at the bottom has the text employee open parenthesis person close parenthesis, and the lower half of the circle has the text K S A O's and motivation. An arrow labeled offer and agree originates from each of these circles. These arrows point to the text labeled terms and conditions open parenthesis employment contract close parenthesis. Three arrows branch from this text, and each points to a term. The first arrow points to the term establish, the second arrow points to the term modify, and the third arrow points to the term terminate. Arrows from each of these terms converge and point to the text labeled employment relationship.

Jump back to Exhibit 2.1: Matching Process, Employment Contract, and Employment Process

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Exhibit 2.7: Basic Litigation Process - E E O C, Appendix

If the plaintiff, or the charging party, alleges occurrence of discrimination and files charges of disparate treatment, or intentional practice, the defendant rebuttal should be that the reasons for practice are nondiscriminatory and the plaintiff response should be that the reason is a pretext for discrimination.

If the plaintiff, or the charging party, alleges occurrence of discrimination and files charges of disparate impact, or the effect of practice, the defendant rebuttal should be that the practice is job related and consistent with business necessity and the plaintiff response should be that the practice is not job related and that the employer refuses to adopt affirmative employment practice that causes less adverse impact.

In both disparate treatment and disparate impact cases, the plaintiff response leads to a decision, which, in turn, leads to remedies.

Jump back to Exhibit 2.7: Basic Litigation Process - E E O C

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