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Chapter 2
Equal Employment and Discrimination

Chapter Overview

This chapter explores the concept of equal employment opportunity. It first briefly describes the history of Equal Employment Opportunity (EEO) in the United States and explains protected categories, disparate treatment, and disparate impact. Then additional EEO concepts such as business necessity and job relatedness, bona fide occupational qualification (BFOQ), burden of proof, and non–retaliatory practices are discussed.

Next the chapter covers the provisions of the following federal laws that forbid discrimination in employment and/or require affirmative action: Title VII of the Civil Rights Act of 1964, Executive Orders 11246, 11375, and 11478, and the Civil Rights Act of 1991. Also issues around managing racial issues and racial harassment are included. Affirmative action and affirmative action plans are explained and the debate about affirmative action is included.

Then discrimination laws and issues dealing with sex and gender are explored. This discussion includes the topics of pregnancy discrimination, equal pay, and sexual harassment. Issues dealing with individuals with differing sexual orientations, nepotism, and consensual relationships at work are also presented. The section ends with a discussion of sexual harassment including the different types of sexual harassment, employer responses, liability, and harassment likelihood.

The next section deals with discrimination and issues surrounding individuals with disabilities. The Americans with Disabilities Act (ADA) is discussed including the definition of "disabled," mental disabilities, and amendments to ADA included in ADAAA. Genetic bias regulations including the Genetic Information Nondiscrimination Act (GINA) are presented. The section ends with a discussion of managing disabilities in the workforce including common means of reasonable accommodation.

The next section covers age discrimination and discusses the major laws, the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), and how to manage age discrimination issues. Then religion and spirituality diversity issues are presented followed by information regarding other discrimination issues including immigration reform, language issues, military status, sexual orientation, and appearance.

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The chapter concludes with coverage of diversity training including the components of diversity training, mixed results, and the backlash against this type of training.

Chapter Outline

I. The Nature of Equal Employment Opportunity

Equal employment opportunity (EEO) means that employment decisions must be made on the basis of job requirements and worker qualifications. Unlawful discrimination occurs when those decisions are made on the basis of **protected characteristics** such as the race, age, sex, disability, or religion of the worker. Under federal, state, and local laws employers are prohibited from considering the following factors in making hiring and other employment decisions:

- Age
- Color
- Disability
- Genetic information
- Marital status (some states)
- Military status or experience
- National origin
- Pregnancy
- Race
- Religion
- Sexual orientation (some states and cities)

These categories are considered protected characteristics under EEO laws and regulations. All workers are provided equal protection; the laws do not favor some groups over others.

Equal employment opportunity is a broad-reaching concept that essentially requires employers to make **status-blind** employment decisions. Most employers are required to comply with equal employment opportunity laws. Affirmative action means that an employer takes proactive measures to increase the number of women and minorities in the workforce. The objective of affirmative action plans is to compensate for past patterns of discrimination. Federal contractors are required to implement and maintain affirmative action plans.

A. Sources of Regulation and Enforcement

The employment relationship is governed by a wide variety of regulations. All three

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branches of government have played a role in shaping these laws. Federal statutes enacted by Congress form the backbone of the regulatory environment. State and city legislatures also enact laws governing activity within their domains. The courts interpret these laws and rule on cases. Case law helps employers to understand how laws are applied and what they must do to comply. Executive Orders are issued by the President of the United States to help government departments and agencies manage their operations.

Government agencies responsible for enforcing laws issue guidelines and rules to provide details on how the law will be implemented. Employers then use these guidelines to meet their obligations in complying with the laws.

The two main enforcement bodies for EEO are the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (in particular, the Office of Federal Contract Compliance Programs [OFCCP]). The EEOC enforces employment laws for employers in both private and public workplaces. The DOL has broad enforcement power and oversees compliance with many employment-related laws. The OFCCP enforces employment requirements set out by Executive Orders for federal contractors and subcontractors. Multinational companies face a confusing array of nondiscrimination laws in different countries.

Discrimination remains a concern as the U.S. workforce becomes more diverse. Charges filed with the EEOC continue to rise. The EEOC has also been held accountable for filing lawsuits against employers without properly investigating charges and has been forced to reimburse the employers' legal costs.

II. Theories of Unlawful Discrimination

There are two types of unlawful employment discrimination:

- **Disparate treatment**—occurs when either different standards are used to judge individuals or the same standard is used but it is not related to the individuals' jobs. Disparate treatment occurs when individuals with a particular characteristic are treated differently from others. This type of discrimination is typically overt and intentional and often follows a pattern or practice.
- **Disparate impact**—occurs when an employment practice that does not appear to be discriminatory has a disproportionally adverse impact on individuals with a particular characteristic. This type of discrimination is often unintentional because identical criteria are used but the results differ for certain groups.

Unlawful discrimination can occur in all employment-related decisions from external

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hiring to internal promotions, selection for training opportunities, and layoffs and terminations. Job analysis, recordkeeping, and reviewing the results of all employment decisions are important steps to prevent lawsuits on the basis of disparate treatment and disparate impact. Companies can also provide training to managers to increase awareness of discrimination and help to prevent unlawful decisions.

A. Equal Employment Opportunity Concepts

Court decisions and administrative rulings have helped to define several basic EEO concepts. The four key concepts—business necessity and job relatedness, bona fide occupational qualifications, burden of proof, and nonretaliatory practices—help to clarify key EEO ideas that lead to fair treatment and nondiscriminatory employment decisions.

Business Necessity and Job Relatedness

A **business necessity** is a practice necessary for safe and efficient organizational operations, such as restricting employees from wearing garments that might get caught in machinery although the attire may be required by an employee's religion. Business necessity has been the subject of numerous court cases. Educational requirements are often decided on the basis of business necessity. However, an employer that requires a minimum level of education, such as a high school diploma, must be able to defend the requirement as essential to the performance of the job (job related), which may be difficult.

Bona Fide Occupational Qualification

Employers may discriminate on the basis of sex, religion, or national origin if the characteristic can be justified as a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise. Thus, a **bona fide occupational qualification (BFOQ)** provides a legitimate reason why an employer can exclude persons on otherwise illegal bases of consideration. The application of a BFOQ is very narrowly determined and an employer seeking to justify hiring on this basis is advised to obtain prior authorization from the EEOC.

Burden of Proof

When a legal issue regarding unlawful discrimination is raised, the **burden of proof** must be satisfied to file suit against an employer and establish that unlawful discrimination has occurred. The plaintiff charging discrimination must establish a

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prima facie case of discrimination through either factual or statistical evidence. The prima facie case means that sufficient evidence is provided to the court to support the case and allow the plaintiff to continue with the claim. The burden then shifts to the employer who must provide a legitimate, nondiscriminatory reason for the decision. The plaintiff then must show either that the employer's reason was a pretext for discrimination or that there is an alternative selection technique that would not result in discrimination. The plaintiff maintains the final burden of proving that an employment decision was the result of unlawful discrimination.

Nonretaliatory Practices

Employers are prohibited from retaliating against individuals who file discrimination charges. **Retaliation** occurs when employers take punitive actions against individuals who exercise their legal rights.

III. Broad-Based Discrimination Laws

Comprehensive equal employment laws provide broad-based protection for applicants and employees. The following sections explain these major laws and compliance requirements.

A. Civil Rights Act of 1964, Title VII

Title VII, the employment section of the Civil Rights Act of 1964, details the legal protections provided to applicants and employees and defines prohibited employment practices. Title VII is the foundation on which all other workplace nondiscrimination legislation rests.

Title VII of the Civil Rights Act states that it is illegal for an employer to:

- Fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin
- Limit, segregate, or classify his 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 status as an employee because of such individual's race, color, religion, sex, or national origin

Title VII Coverage

Title VII, as amended by the Equal Employment Opportunity Act of 1972, covers

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most employers in the United States. Any organization meeting one of the following criteria must comply with rules and regulations that specific government agencies have established to administer the act:

- All private employers of 15 or more employees
- All educational institutions, public and private
- State and local governments
- Public and private employment agencies
- Labor unions with 15 or more members
- Joint labor/management committees for apprenticeships and training

Title VII has been the basis for several extensions of EEO law. For example, in 1980, the EEOC interpreted the law to include sexual harassment. Further, a number of concepts identified in Title VII are the foundation for court decisions, regulations, and other laws.

B. Civil Rights Act of 1991

In response to several Supreme Court decisions during the 1980s, Congress amended the Civil Rights Act of 1964 to strengthen legal protection for employees, provide for jury trials, and allow for damages payable to successful plaintiffs in employment discrimination cases. A key provision of the 1991 act relates to how U.S. EEO laws are applied globally.

C. Executive Orders 11246, 11375, and 11478

Several important executive orders have been issued by U.S. Presidents that affect the employment practices of federal contractors and subcontractors. The Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor is responsible for overseeing federal contractor operations and insuring that unlawful discrimination does not occur. Executive Orders 11246, 11375, and 11478 require federal contractors to take **affirmative action** to compensate for historical discrimination against women, minorities, and handicapped individuals.

Federal contractors are required to develop and maintain a written **affirmative action program (AAP)** that outlines proactive steps the organization will take to attract and hire members of underrepresented groups. This data-driven program includes analysis of the composition of company's current workforce with a comparison to the availability of workers in the labor market. The overall objective of the AAP is to have the company's workforce demographics reflect as closely as possible the demographics in the labor market from which workers are recruited.

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D. Managing Racial and Ethnic Discrimination Issues

The original purpose of the Civil Rights Act of 1964 was to address race discrimination in the United States. This concern continues to be important today and employers must be aware of potential HR issues that are based on race, national origin, and citizenship to take appropriate actions.

Charges of racial discrimination continue to make up one-third of all complaints filed with the EEOC. Employment discrimination can occur in numerous ways, from refusal to hire someone because of their race/ethnicity to the questions asked in a selection interview.

Racial/Ethnic Harassment

Racial/ethnic harassment is such a concern that the EEOC has issued guidelines on it. It is recommended that employers adopt policies against harassment of any type, including ethnic jokes, vulgar epithets, racial slurs, and physical actions.

IV. Sex/Gender Discrimination Laws and Regulations

The inclusion of sex as a basis for protected status in Title VII of the 1964 Civil Rights Act has led to additional areas of legal protection and a number of laws and regulations now address discrimination based on sex or gender.

A. Pregnancy Discrimination

The Pregnancy Discrimination Act (PDA) of 1978 amended Title VII to require that employers treat maternity leave the same as other personal or medical leaves. Closely related to the PDA is the Family and Medical Leave Act (FMLA) of 1993, which requires that qualified individuals be given up to 12 weeks of unpaid family leave and also requires that those taking family leave be allowed to return to jobs. The FMLA applies to both men and women. Provisions of the Affordable Care Act (2010) allow for break time and a private place for nursing mothers to express breast milk for one year after the birth of a child.

Unlawful discrimination can occur if a pregnant applicant is not hired or is transferred or terminated. Courts have generally ruled that the PDA requires employers to treat pregnant employees the same as nonpregnant employees with similar abilities or inabilities. Employers have a right to maintain performance standards and expectations

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of pregnant employees but should be cautious to use the same standards for nonpregnant employees and employees with other medical conditions.

B. Equal Pay and Pay Equity

The Equal Pay Act of 1963 requires employers to pay similar wage rates for similar work without regard to gender. A *common core of tasks* must be similar, but tasks performed only intermittently or infrequently do not make jobs different enough to justify significantly different wages. Differences in pay between men and women in the same jobs are permitted because of:

- Differences in seniority
- Differences in performance
- Differences in quality and/or quantity of production
- Factors other than sex, such as skill, effort, and working conditions

In response to a procedural issue in her pursuit of a fair pay claim, Congress enacted the Lilly Ledbetter Fair Pay Act in 2009, which eliminates the statute of limitations for employees who file pay discrimination claims under the Equal Pay Act. Each paycheck is essentially considered a new act of discrimination.

Pay equity is the idea that pay for jobs requiring comparable levels of knowledge, skill, and ability should be similar, even if actual duties differ significantly. This theory has also been called *comparable worth* in earlier cases. Some state laws have mandated pay equity for public-sector employees. However, U.S. federal courts generally have ruled that the existence of pay differences between the different jobs held by women and men is not sufficient to prove that illegal discrimination has occurred.

C. Managing Sex/Gender Issues

The growth in the number of women in the workforce has led to more sex/gender issues related to jobs and careers. Since women bear children and traditionally have a primary role in raising children, issues of work-life balance can emerge. Respect for employees' lives outside of the workplace can pay off in terms of attracting and retaining high quality talent.

For years, women's groups have alleged that women in workplaces encounter a **glass ceiling**, which refers to discriminatory practices that have prevented women and other minority status employees from advancing to executive-level jobs. Despite the fact that organizations with greater gender diversity enjoy better financial performance than those with less diversity, women still hold a small percentage of top leadership jobs in

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corporations.

A related problem is that women have tended to advance to senior management in a limited number of support or staff areas, such as HR and corporate communications.

D. Sexual Orientation

Demographers estimate that about 3% to 5% of Americans identify themselves as being lesbian, gay, bisexual, or transgender (LGBT). The U.S. Census reports that 650,000 couples reported living with same-sex partners, with 130,000 reporting being married. While there is no federal law prohibiting discrimination on the basis of sexual orientation, 18 states have passed laws to protect applicants and employees from such discrimination. Employers are increasingly offering same-sex employee benefits and accommodating varying lifestyles for their employees; some high-profile CEOs have spoken out in support of rights for LGBT employees.

E. Nepotism

Many employers have policies that restrict or prohibit **nepotism**, the practice of allowing relatives to work for the same employer. Other firms require only that relatives not work directly for or with each other or not be placed in positions where collusion or conflict could occur. The policies most frequently cover spouses, siblings, parents, sons, and daughters. Generally, employer antinepotism policies have been upheld by courts.

F. Consensual Relationships and Romance at Work

When work-based friendships lead to romance and off-the-job sexual relationships, managers and employers face a dilemma: Should they monitor these relationships to protect the firm from potential legal complaints, thereby "meddling" in employees' private, off-the-job lives? Or do they simply ignore these relationships and the potential problems they present?

Most executives and HR professionals agree that workplace romances are risky because they have great potential for causing conflict. However, looking beyond the legal issues and dealing with this as a strategic issue allows leaders to consider both the costs and the benefits such as greater job satisfaction and organization commitment. Adopting practices such as a written policy, ethics code, and performance management system along with training HR leaders can lead to a more balanced approach when dealing with workplace romances.

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V. Sexual Harassment

The Equal Employment Opportunity Commission has issued guidelines designed to curtail sexual harassment. **Sexual harassment** is unwelcome verbal, visual, or physical conduct of a sexual nature that is severe and affects working conditions or creates a hostile work environment. Sexual harassment can occur between a boss and a subordinate, among coworkers, and when nonemployees have business contacts with employees.

Most of the sexual harassment charges filed involve harassment of women by men. Most claims of harassment go unreported as victims are reluctant to speak out for fear of retribution. Supervisors are the most frequent harassers, but coworkers and even subordinates have also been involved in these incidents.

A. Types of Sexual Harassment

Two basic types of sexual harassment have been defined by EEOC regulations and a number of court cases. Figure 2-2 shows the two types and how they differ. They are defined as follows:

- **Quid pro quo** is harassment in which employment outcomes are linked to the individual granting sexual favors.
- **Hostile environment** harassment exists when an individual's work performance or psychological well-being is unreasonably affected by intimidating or offensive working conditions.

B. Preventing Sexual Harassment

A proactive prevention approach is the most effective way to reduce sexual harassment in the workplace. Companies may avoid liability if they take reasonable care to prohibit sexual harassment, the so-called affirmative defense. Important elements of the affirmative defense include:

- Establish a sexual harassment policy.
- Communicate the policy regularly.
- Train employees and managers on avoiding sexual harassment.
- Investigate and take action when complaints are voiced.

VI. Disability Discrimination

Several federal laws have been enacted to advance the employment of disabled individuals and to reduce discrimination based on disability. These laws and regulations affect employment matters as well as public accessibility for individuals with disabilities.

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A. Rehabilitation Act

The earliest law regarding disabled individuals was passed in 1973 and applied only to federal contractors. The Rehabilitation Act defined many of the terms and concepts incorporated into subsequent laws and provided for equal employment opportunity for disabled workers and applicants. The Act went further and required that federal contractors take affirmative action to employ disabled workers.

B. Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was enacted in 1990. This Act applies to private employers, employment agencies, and labor unions with 15 or more employees and is enforced by the EEOC. State government employees are not covered by the ADA, which means that they cannot sue in federal courts for relief and damages. However, they may still bring suits under state laws in state courts. Many of the concepts and definitions included in the ADA were based on the Rehabilitation Act.

In 2009, Congress passed amendments to the ADA, which overruled several key cases and regulations and reflected the original intent of the ADA. The effect was to significantly broaden the definition of disabled individuals to include anyone with a physical or mental impairment that substantially limits one or more major life activities *without* regard for the ameliorative effects of mitigating measures such as medication, prosthetics, hearing aids, and so on.

An area of concern to employers under the ADA (as amended) is individuals with mental disabilities. A mental disability is defined by the EEOC as “any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” Employers may find accommodating for mental disabilities is more difficult and that maintaining effective performance standards is a challenge. Mental disabilities may manifest in more unpredictable ways and medications taken to alleviate these conditions can have negative side effects.

For many employers, the impact of the ADA has been the greatest when handling employees who develop disabilities, not when dealing with applicants who already have disabilities. As the workforce ages, it is likely that more employees will develop disabilities. For instance, a warehouse stock worker who suffers a serious leg injury in a motorcycle accident away from work may request reasonable accommodation.

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Employers should be prepared to respond to accommodation requests from employees whose contribution to the organization has been satisfactory before they became disabled and who now require accommodations to continue working. Handled inappropriately, these individuals are likely to file either ADA complaints with the EEOC or private lawsuits.

C. ADA and Job Requirements

Discrimination is prohibited against individuals with disabilities who can perform the **essential job functions**—the fundamental job duties—of the employment positions that those individuals hold or desire. These functions do not include marginal functions of the position. The EEOC provides guidelines to help employers determine which job functions are essential. Figure 3-6 lists the criteria recommended by the EEOC.

For a qualified person with a disability, an employer must make a **reasonable accommodation**, which is a modification to a job or work environment that gives that individual an equal employment opportunity to perform. EEOC guidelines encourage employers and individuals to work together to determine what the appropriate reasonable accommodations are, rather than employers alone making those judgments. Under the ADAAA, the focus has shifted from determining whether or not an individual is disabled to an emphasis on finding ways to accommodate that individual in the workplace. Many options may be considered but in the end the employer has the authority to select the accommodation to be implemented.

Reasonable accommodation is limited to actions that do not place an undue hardship on an employer. An **undue hardship** is a significant difficulty or expense imposed on an employer in making an accommodation for individuals with disabilities. The ADA offers only general guidelines in determining when an accommodation becomes unreasonable and will place undue hardship on an employer. The determination of undue hardship is made on a case-by-case basis.

The ADA includes restrictions on obtaining and retaining medically related information on applicants and employees. Restrictions include prohibiting employers from rejecting individuals because of a disability and from asking job applicants any question about current or past medical history until a conditional job offer is made. Also, the ADA prohibits the use of pre-employment medical exams, except for drug tests, until a job has been conditionally offered. An additional requirement of the ADA is that all medical information be maintained in files separated from the general personnel files. Medical files must be stored in a secure location and only individuals with a "need-to-know" should be granted access to these files.

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VII. Age Discrimination Laws

The populations of most developed countries—including Australia, Japan, most European countries, and the United States—are aging. On one hand, these changes mean that as older workers with a lifetime of experiences and skills retire, companies face significant challenges in replacing them with workers with the capabilities and work ethic that characterize the many mature workers in the United States. On the other hand, many older people will remain in the workforce beyond traditional retirement age because of longer life spans, improvements in health, and financial shortfalls in their savings portfolios, leading to a greater possibility of bias and discrimination.

A. Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) of 1967, amended in 1978 and 1986, prohibits discrimination in terms, conditions, or privileges of employment against all individuals of age 40 or older working for employers having 20 or more workers. However, state employees may not sue state government employers in federal courts because the ADEA is a federal law.

As with most equal employment issues, a better understanding of what constitutes age discrimination continues to be defined by the courts and the EEOC.

B. Older Workers Benefit Protection Act (OWBPA)

The Older Workers Benefit Protection Act of 1990 is an amendment to the ADEA and protects employees when they sign liability waivers for age discrimination in exchange for severance packages during reductions in force. Workers over the age of 40 are entitled to receive complete accurate information on the available benefits, a list of all workers impacted in the reduction, and several weeks to decide whether or not to accept severance benefits in exchange for a waiver to sue the employer. This Act ensures that older workers are not compelled or pressured into waiving their rights under the ADEA. Procedures for laying off older workers require legal oversight and a strict protocol to ensure compliance.

C. Managing Age Discrimination

One issue that has led to age discrimination charges is labeling older workers as “overqualified” for jobs or promotions. Selection and promotion practices must be “age neutral.” Older workers face substantial barriers to entry in a number of occupations,

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especially those requiring significant amounts of training or where new technology has been recently developed.

A strategy used by employers to retain the talents of older workers for a period of time is **phased retirement**, whereby employees gradually reduce their workloads and pay levels. This option is growing in use as a way to allow older workers with significant knowledge and experience to have more personal flexibility, while the organizations retain them for their valuable capabilities. Some firms also rehire their retirees as part-time workers, independent contractors, or consultants. These strategies are intended to help the company retain its institutional knowledge and history.

VIII. Religion and Spirituality in the Workplace

Title VII of the Civil Rights Act prohibits discrimination on the basis of religion. The increasing religious diversity in the workforce has put greater emphasis on religious considerations in workplaces. Faith-based schools and institutions can use religion as a bona fide occupational qualification for employment practices on a limited scale. Also, employers must make reasonable accommodation efforts regarding an employee's religious beliefs unless they create an undue hardship for the employer.

Religious discrimination can take many forms, from hostile remarks to refusal to hire individuals from different faiths. Problems can also arise because of conflicts between employer policies and employee religious practices such as dress and appearance. Generally, employers are encouraged to make exceptions to dress code policies unless public image is so critical that it represents a business necessity. Deferring to customer preferences in making these determinations is risky and may lead to charges of unlawful discrimination. Employers are on firmer ground when worker safety is involved and the employer refuses to modify its dress or appearance policies.

A. Managing Religious Diversity

The EEOC recommends that employers consider the following reasonable accommodations for employees' religious beliefs and practices:

- Scheduling changes, voluntary substitutes, and shift swaps
- Changing an employee's job tasks or providing a lateral transfer
- Making an exception to dress and grooming rules
- Accommodations relating to payment of union dues or agency fees
- Accommodating prayer, proselytizing, and other forms of religious expression

Another issue concerns religious expression. In the last several years, employees in

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several cases have sued employers for prohibiting them from expressing their religious beliefs at work. In other cases, employers have had to take action because of the complaints by workers that employees were aggressively "pushing" their religious views at work, thus creating a "hostile environment."

IX. Managing Other Discrimination Issues

A number of other factors, such as national origin/immigration, language, military status, and appearance and weight, might lead to unlawful discrimination.

A. Immigration Reform and Control Acts

The influx of immigrants has led to extensive political, social, and employment-related debates. The Immigration Reform and Control Act (IRCA), enacted in 1986, requires employers to verify the employment status of all employees, while not discriminating because of national origin or ethnic background. Employers may not knowingly hire unauthorized aliens for employment in the United States.

Within the first three days of employment, each employee must complete an Employment Eligibility Verification (commonly called an I-9) form and provide documents proving that they are legally authorized to work in the United States. Figure 2-4 lists the documents accepted in this process. The employer is required to inspect the documents and maintain records for all new hires.

The E-verify federal database instantly verifies the employment eligibility of employees. Federal contractors are required to use the system as are employers in a number of states where it has been mandated.

B. Language Issues

As the diversity of the workforce increases, more employees have language skills in addition to English. Some employers have attempted to restrict the use of foreign languages at work, while other employers have recognized that bilingual employees have valuable skills.

The EEOC has issued guidelines clearly stating that employers may require workers to speak only English at certain times or in certain situations, but the business necessity of the requirements must be justified. Teaching, customer service, etc. are examples of positions that may require English skills and voice clarity.

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Some employers have found it beneficial to have bilingual employees so that foreign-language customers can contact someone who speaks their language. Bilingual employees are especially needed among police officers, airline flight personnel, hospital interpreters, international sales representatives, travel guides, and job requirements.

C. Military Status Protections

The employment rights of military veterans and reservists have been addressed in several laws. The two most important laws are the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994. Under the latter, employees are required to notify their employers of military service obligations. Employers must give employees serving in the military leaves of absence protections under USERRA.

This Act does not require employers to pay employees while they are on military leave, but many firms voluntarily provide additional compensation to bridge the gap between military pay and regular pay. Uniformed military personnel are provided up to five years of active duty service leave during which the employer must hold their job. Requirements regarding benefits, disabilities, and reemployment are covered in the Act as well.

D. Appearance and Weight Discrimination

Several EEOC cases have been filed concerning the physical appearance of employees. Court decisions consistently have allowed employers to set dress codes and appearance standards as long as they are applied uniformly. Also, employers should be cautious when enforcing dress standards for female employees whose religions prescribe appropriate and inappropriate dress and appearance standards. Some individuals have brought cases of employment discrimination based on height or weight. The crucial factor that employers must consider is that any weight or height requirements must be related to the job.

X. Diversity Training

Traditional diversity training has a number of different goals. One prevalent goal is to minimize discrimination and harassment lawsuits. Other goals focus on improving acceptance and understanding of people with different backgrounds, experiences, capabilities, and lifestyles. Employees are encouraged to recognize, evaluate, and appreciate differences.

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A. Components of Traditional Diversity Training

There are often three components to diversity training programs:

- *Legal awareness* is the first and most common component. Here, the training focuses on the legal implications of discrimination. This limited approach to diversity training focuses only on these legal "do's and don'ts."
- *Cultural awareness* training helps organizations to build greater understanding of the differences among people. Cultural awareness training helps all participants to see and accept the differences in people with widely varying cultural backgrounds.
- *Sensitivity training* is more difficult. The aim here is to "sensitize" people to the differences among them and how their words and behaviors are seen by others. Some diversity training includes exercises containing examples of harassment and other behaviors.

B. Mixed Results for Diversity Training

The results of diversity training are viewed as mixed by both organizations and participants. Studies on the effectiveness of diversity training raise some concern that the programs may be interesting or entertaining, but may not produce longer-term changes in people's attitudes and behaviors toward others with characteristics different from their own.

Some argue that traditional diversity training has failed because it has not reduced discrimination and harassment complaints. Rather than reducing conflict, in a number of situations diversity training has increased hostility and conflict. In some firms, it has produced divisive effects, and has not changed behaviors so that employees can work well together in a diverse workplace.

Negative consequences of diversity training may manifest themselves broadly in a backlash against all diversity efforts. Women and members of racial minorities sometimes see diversity programs as inadequate and nothing but "lip service." Thus, it appears that by establishing diversity programs employers raise expectations but fail to meet those expectations. On the other side, a number of individuals who are in the majority (primarily white males) interpret the emphasis on diversity as assigning them blame for societal problems. Diversity programs can be perceived as benefiting only women and racial minorities and taking away opportunities for men and nonminorities.

C. Improving Diversity Training Efforts

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Focusing on behavior seems to hold the most promise for making diversity training more effective. For instance, dealing with cultural diversity as part of training efforts for sales representatives and managers has produced positive results.

Trainers emphasize that the key to avoiding backlash in diversity efforts is to stress that people can believe whatever they wish, but at work their values are less important than their *behaviors*. Dealing with diversity is not about what people can and cannot *say*; it is about being *respectful* to others.

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