

Providing Equal Employment Opportunity and a Safe Workplace

What Do I Need to Know?

After reading this chapter, you should be able to:

- L01** Explain how the three branches of government regulate human resource management.
- L02** Summarize the major federal laws requiring equal employment opportunity.
- L03** Identify the federal agencies that enforce equal employment opportunity, and describe the role of each.
- L04** Describe ways employers can avoid illegal discrimination and provide reasonable accommodation.
- L05** Define sexual harassment, and tell how employers can eliminate or minimize it.
- L06** Explain employers' duties under the Occupational Safety and Health Act.
- L07** Describe the role of the Occupational Safety and Health Administration.
- L08** Discuss ways employers promote worker safety and health.

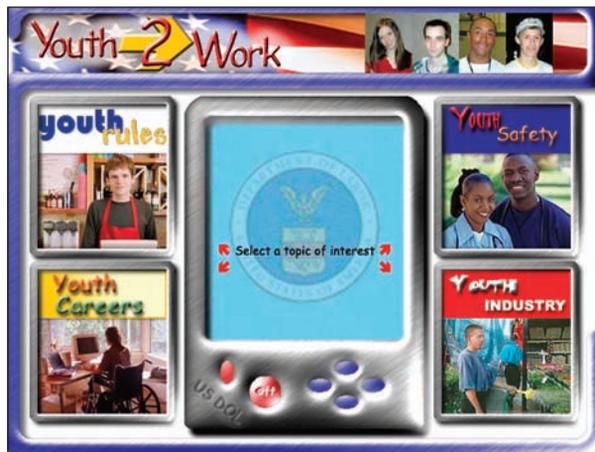
Introduction

More than a dozen years ago, the giant consulting and accounting firm Deloitte was urged to look more like its clients. While most Deloitte partners were white men, they were increasingly meeting with men and women of all races and ethnic backgrounds. Those clients were wondering why Deloitte remained so unrepresentative of the U.S. and global workforce.

Deloitte's response has included a women's initiative program, which combines four activities: A mentoring program develops female employees' professional and leadership ability. Women are intentionally placed in speaking engagements and other opportunities to be more visible to Deloitte's clients. Diversity groups for women and minority employees meet to develop a sense of community. And the firm has committed to innovation in the way it welcomes women as employees and as clients.

With regard to racial and ethnic diversity, Deloitte remains a mostly white firm. But recently, Deloitte expanded recruiting efforts beyond the

nation's top universities to include community colleges. While some people assume these schools don't attract top students, for many bright, hardworking individuals, they are an affordable way to begin preparing for a career. Deloitte hopes that recruiting at community colleges will introduce the firm to students with high potential who also represent a more diverse pool of talent. Deloitte intends to connect with them early on and guide them toward careers in accounting and management consulting. The company also has a mentoring program that identifies high-potential minority employees and coaches them in navigating the corporate environment.¹ Such efforts will translate into results when clients start to say that Deloitte's people really can relate to them.



One way the executive branch communicates information about laws is through Web sites like Youth2Work. This site is designed to provide young workers with a safe workplace by making them aware of laws that, for example, restrict the amount of work they can do and the machinery they can operate.

As we saw in Chapter 1, human resource management takes place in the context of the company's goals and society's expectations for how a company should operate. In the United States, the federal government has set some limits on how an organization can practice human resource management. Among these limits are requirements intended to prevent discrimination in hiring and employment practices and to protect the health and safety of workers while they are on the job. Questions about a company's compliance with these requirements can result in lawsuits and negative publicity that often cause serious problems for a company's success and survival. Conversely, a company that skillfully navigates the maze of regulations can gain an advantage over its competitors. A further advantage may go to companies that, like Deloitte, go beyond mere legal compliance to find ways of linking fair employment and worker safety to business goals

such as building a workforce that is highly motivated and attuned to customers.

This chapter provides an overview of the ways government bodies regulate equal employment opportunity and workplace safety and health. It introduces you to major laws affecting employers in these areas, as well as the agencies charged with enforcing those laws. The chapter also discusses ways organizations can develop practices that ensure they are in compliance with the laws.

One point to make at the outset is that managers often want a list of dos and don'ts that will keep them out of legal trouble. Some managers rely on strict rules such as "Don't ever ask a female applicant if she is married," rather than learning the reasons behind those rules. Clearly, certain practices are illegal or at least inadvisable, and this chapter will provide guidance on avoiding such practices. However, managers who merely focus on how to avoid breaking the law are not thinking about how to be ethical or how to acquire and use human resources in the best way to carry out the company's mission. This chapter introduces ways to think more creatively and constructively about fair employment and workplace safety.

L01 Explain how the three branches of government regulate human resource management.

Regulation of Human Resource Management

All three branches of the U.S. government—legislative, executive, and judicial—play an important role in creating a legal environment for human resource management. The legislative branch, which consists of the two houses of Congress, has enacted a number of laws governing human resource activities. Senators and U.S. Representatives generally develop these laws in response to perceived societal needs. For example, during the civil rights movement of the early 1960s, Congress enacted Title VII of the Civil Rights Act to ensure that various minority groups received equal opportunities in many areas of life.

The executive branch, including the many regulatory agencies that the president oversees, is responsible for enforcing the laws passed by Congress. Agencies do this through a variety of actions, from drawing up regulations detailing how to abide by

the laws to filing suit against alleged violators. Some federal agencies involved in regulating human resource management include the Equal Employment Opportunity Commission and the Occupational Safety and Health Administration. In addition, the president may issue executive orders, which are directives issued solely by the president, without requiring congressional approval. Some executive orders regulate the activities of organizations that have contracts with the federal government. For example, President Lyndon Johnson signed Executive Order 11246, which requires all federal contractors and subcontractors to engage in affirmative-action programs designed to hire and promote women and minorities. (We will explore the topic of affirmative action later in this chapter.)

The judicial branch, the federal court system, influences employment law by interpreting the law and holding trials concerning violations of the law. The U.S. Supreme Court, at the head of the judicial branch, is the court of final appeal. Decisions made by the Supreme Court are binding; they can be overturned only through laws passed by Congress. The Civil Rights Act of 1991 was partly designed to overturn Supreme Court decisions.

Equal Employment Opportunity

Among the most significant efforts to regulate human resource management are those aimed at achieving **equal employment opportunity (EEO)**—the condition in which all individuals have an equal chance for employment, regardless of their race, color, religion, sex, age, disability, or national origin. The federal government’s efforts to create equal employment opportunity include constitutional amendments, legislation, and executive orders, as well as court decisions that interpret the laws. Table 3.1 summarizes major EEO laws discussed in this chapter. These are U.S. laws; equal employment laws in other countries may differ.

Constitutional Amendments

Two amendments to the U.S. Constitution—the Thirteenth and Fourteenth—have implications for human resource management. The Thirteenth Amendment abolished slavery in the United States. Though you might be hard-pressed to cite an example of race-based slavery in the United States today, the Thirteenth Amendment has been applied in cases where discrimination involved the “badges” (symbols) and “incidents” of slavery.

The Fourteenth Amendment forbids the states from taking life, liberty, or property without due process of law and prevents the states from denying equal protection of the laws. Recently it has been applied to the protection of whites in charges of reverse discrimination. In a case that marked the early stages of a move away from race-based quotas, Alan Bakke alleged that as a white man he had been discriminated against in the selection of entrants to the University of California at Davis medical school.² The university had set aside 16 of the available 100 places for “disadvantaged” applicants who were members of racial minority groups. Under this quota system, Bakke was able to compete for only 84 positions, whereas a minority applicant was able to compete for all 100. The federal court ruled in favor of Bakke, noting that this quota system had violated white individuals’ right to equal protection under the law.

An important point regarding the Fourteenth Amendment is that it applies only to the decisions or actions of the government or of private groups whose activities are

L02 Summarize the major federal laws requiring equal employment opportunity.

Equal Employment Opportunity (EEO)

The condition in which all individuals have an equal chance for employment, regardless of their race, color, religion, sex, age, disability, or national origin.

Table 3.1**Summary of Major EEO Laws and Regulations**

ACT	REQUIREMENTS	COVERS	ENFORCEMENT AGENCY
Thirteenth Amendment	Abolished slavery	All individuals	Court system
Fourteenth Amendment	Provides equal protection for all citizens and requires due process in state action	State actions (e.g., decisions of government organizations)	Court system
Civil Rights Acts (CRAs) of 1866 and 1871 (as amended)	Grant all citizens the right to make, perform, modify, and terminate contracts and enjoy all benefits, terms, and conditions of the contractual relationship	All individuals	Court system
Equal Pay Act of 1963	Requires that men and women performing equal jobs receive equal pay	Employers engaged in interstate commerce	EEOC
Title VII of CRA	Forbids discrimination based on race, color, religion, sex, or national origin	Employers with 15 or more employees working 20 or more weeks per year; labor unions; and employment agencies	EEOC
Age Discrimination in Employment Act of 1967	Prohibits discrimination in employment against individuals 40 years of age and older	Employers with 15 or more employees working 20 or more weeks per year; labor unions; employment agencies; federal government	EEOC
Rehabilitation Act of 1973	Requires affirmative action in the employment of individuals with disabilities	Government agencies; federal contractors and subcontractors with contracts greater than \$2,500	OFCCP
Pregnancy Discrimination Act of 1978	Treats discrimination based on pregnancy-related conditions as illegal sex discrimination	All employees covered by Title VII	EEOC
Americans with Disabilities Act of 1990	Prohibits discrimination against individuals with disabilities	Employers with more than 15 employees	EEOC
Executive Order 11246	Requires affirmative action in hiring women and minorities	Federal contractors and subcontractors with contracts greater than \$10,000	OFCCP
Civil Rights Act of 1991	Prohibits discrimination (same as Title VII)	Same as Title VII, plus applies Section 1981 to employment discrimination cases	EEOC
Uniformed Services Employment and Reemployment Rights Act of 1994	Requires rehiring of employees who are absent for military service, with training and accommodations as needed	Veterans and members of reserve components	Veterans' Employment and Training Service
Genetic Information Non-discrimination Act of 2008	Prohibits discrimination because of genetic information	Employers with 15 or more employees	EEOC

deemed government actions. Thus, a person could file a claim under the Fourteenth Amendment if he or she had been fired from a state university (a government organization) but not if the person had been fired by a private employer.

Legislation

The periods following the Civil War and during the civil rights movement of the 1960s were times when many voices in society pressed for equal rights for all without regard to a person's race or sex. In response, Congress passed laws designed to provide for equal opportunity. In later years, Congress has passed additional laws that have extended EEO protection more broadly.

Civil Rights Acts of 1866 and 1871

During Reconstruction, Congress passed two Civil Rights Acts to further the Thirteenth Amendment's goal of abolishing slavery. The Civil Rights Act of 1866 granted all persons the same property rights as white citizens, as well as the right to enter into and enforce contracts. Courts have interpreted the latter right as including employment contracts. The Civil Rights Act of 1871 granted all citizens the right to sue in federal court if they feel they have been deprived of some civil right. Although these laws might seem outdated, they are still used because they allow the plaintiff to recover both compensatory and punitive damages (that is, payment to compensate them for their loss plus additional damages to punish the offender).

Equal Pay Act of 1963

Under the Equal Pay Act of 1963, if men and women in an organization are doing equal work, the employer must pay them equally. The act defines *equal* in terms of skill, effort, responsibility, and working conditions. However, the act allows for reasons why men and women performing the same job might be paid differently. If the pay differences result from differences in seniority, merit, quantity or quality of production, or any factor other than sex (such as participating in a training program or working the night shift), then the differences are legal.

Title VII of the Civil Rights Act of 1964

The major law regulating equal employment opportunity in the United States is Title VII of the Civil Rights Act of 1964. Title VII directly resulted from the civil rights movement of the early 1960s, led by such individuals as Dr. Martin Luther King Jr. To ensure that employment opportunities would be based on character or ability rather than on race, Congress wrote and passed Title VII, and President Lyndon Johnson signed it into law in 1964. The law is enforced by the **Equal Employment Opportunity Commission (EEOC)**, an agency of the Department of Justice.

Title VII prohibits employers from discriminating against individuals because of their race, color, religion, sex, or national origin. An employer may not use these characteristics as the basis for not hiring someone, for firing someone, or for discriminating against them in the terms of their pay, conditions of employment, or privileges of employment. In addition, an employer may not use these characteristics to limit, segregate, or classify employees or job applicants in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee. The act applies to organizations that employ 15 or

Equal Employment Opportunity Commission (EEOC)
Agency of the Department of Justice charged with enforcing Title VII of the Civil Rights Act of 1964 and other antidiscrimination laws.

more persons working 20 or more weeks a year and that are involved in interstate commerce, as well as state and local governments, employment agencies, and labor organizations.

Title VII also states that employers may not retaliate against employees for either “opposing” a perceived illegal employment practice or “participating in a proceeding” related to an alleged illegal employment practice. *Opposition* refers to expressing to someone through proper channels that you believe an illegal employment act has taken place or is taking place. *Participation in a proceeding* refers to testifying in an investigation, hearing, or court proceeding regarding an illegal employment act. The purpose of this provision is to protect employees from employers’ threats and other forms of intimidation aimed at discouraging employees from bringing to light acts they believe to be illegal. Companies that violate this prohibition may be liable for punitive damages.

Age Discrimination in Employment Act (ADEA)

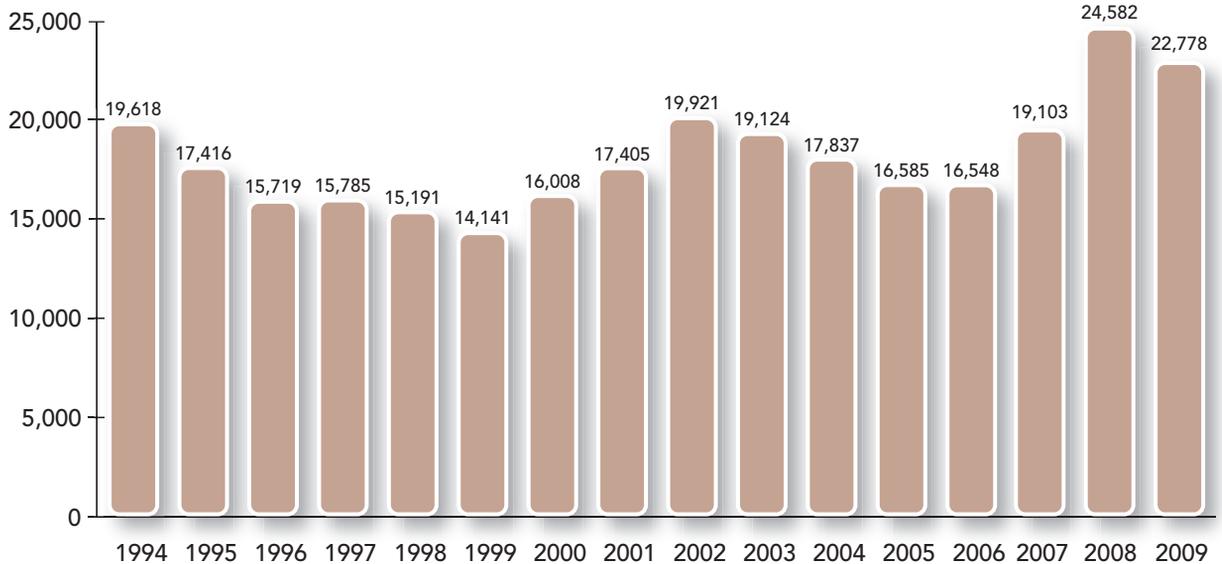
One category of employees not covered by Title VII is older workers. Older workers sometimes are concerned that they will be the targets of discrimination, especially when a company is downsizing. Older workers tend to be paid more, so a company that wants to cut labor costs may save by laying off its oldest workers. To counter such discrimination, Congress in 1967 passed the Age Discrimination in Employment Act (ADEA), which prohibits discrimination against workers who are over the age of 40. Similar to Title VII, the ADEA outlaws hiring, firing, setting compensation rates, or other employment decisions based on a person’s age being over 40.

Many firms have offered early-retirement incentives as an alternative or supplement to involuntary layoffs. Because this approach to workforce reduction focuses on older employees, who would be eligible for early retirement, it may be in violation of the ADEA. Early-retirement incentives require that participating employees sign an agreement waiving their rights to sue under the ADEA. Courts have tended to uphold the use of early-retirement incentives and waivers as long as the individuals were not coerced into signing the agreements, the agreements were presented in a way the employees could understand (including technical legal requirements such as the ages of discharged and retained employees in the employee’s work unit), and the employees had enough time to make a decision.³ However, the Equal Employment Opportunity Commission recently expanded the interpretation of discriminatory retirement policies when it charged a law firm with having an illegal “age-based retirement policy.” According to the charges, Sidley Austin Brown & Wood, based in Chicago, gave more than 30 lawyers older than age 40 notice that their status was being lowered from partner to special counsel or counsel and that they would be expected to leave the firm in a few years. The firm described the action as a way to provide more opportunities for young lawyers, but lawyers who were pressured to retire contended they were forced out as a way to boost profits by replacing highly paid partners with less-experienced, lower-paid lawyers. Sidley Austin settled the suit at a cost of \$27.5 million.⁴ One practical way to defend against such claims is to establish performance-related criteria for layoffs, rather than age- or salary-related criteria.

Age discrimination complaints make up a large percentage of the complaints filed with the Equal Employment Opportunity Commission, and whenever the economy is slow, the number of complaints grows. For example, as shown in Figure 3.1, the number of age discrimination cases jumped in 2008 and 2009, when many firms were

Figure 3.1

Age Discrimination Complaints, 1994–2009

SOURCE: Equal Employment Opportunity Commission, <http://www1.eeoc.gov/eeoc/statistics/enforcement/>.

downsizing. Another increase in age discrimination claims accompanied the economic slowdown at the beginning of the 2000s.

In today's environment, in which firms are seeking talented individuals to achieve the company's goals, older employees can be a tremendous pool of potential resources. McDonald's recently did some research that suggests just how valuable these resources can be, at least in the fast-food business. The company combined information about employees' ages and engagement with performance data for 635 of its outlets. The data showed that in the restaurants with a higher average age of employees, performance was better across several measures, including cleanliness, sales, customer satisfaction, and number of customer visits. Investigating further, the researchers found that performance was best in restaurants with at least one employee over age 60. Looking into employee attitudes, the researchers found that in these restaurants, there was more of a feeling that the crew was a family, an attitude that might be driving greater commitment to quality.⁵

Vocational Rehabilitation Act of 1973

In 1973, Congress passed the Vocational Rehabilitation Act to enhance employment opportunity for individuals with disabilities. This act covers executive agencies and contractors and subcontractors that receive more than \$2,500 annually from the federal government. These organizations must engage in affirmative action for individuals with disabilities. **Affirmative action** is an organization's active effort to find opportunities to hire or promote people in a particular group. Thus, Congress intended this act to encourage employers to recruit qualified individuals with disabilities and to make reasonable accommodations to all those people to become active members of the labor market. The Department of Labor's Employment Standards Administration enforces this act.

Affirmative Action
An organization's active effort to find opportunities to hire or promote people in a particular group.

Vietnam Era Veteran's Readjustment Act of 1974

Similar to the Rehabilitation Act, the Vietnam Era Veteran's Readjustment Act of 1974 requires federal contractors and subcontractors to take affirmative action toward employing veterans of the Vietnam War (those serving between August 5, 1964, and May 7, 1975). The Office of Federal Contract Compliance Procedures, discussed later in this chapter, has authority to enforce this act.

Pregnancy Discrimination Act of 1978

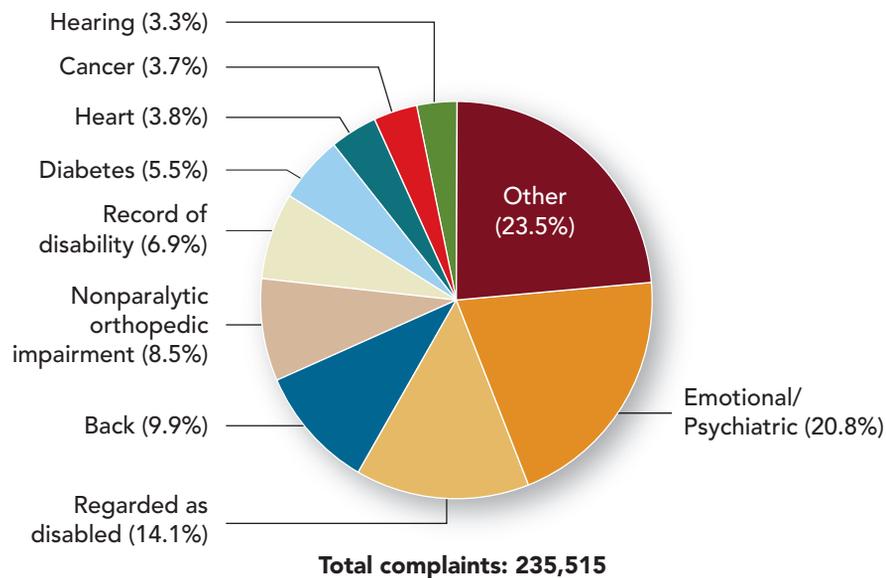
An amendment to Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act of 1978 defines discrimination on the basis of pregnancy, childbirth, or related medical conditions to be a form of illegal sex discrimination. According to the EEOC, this means that employers must treat "women who are pregnant or affected by related conditions . . . in the same manner as other applicants or employees with similar abilities or limitations."⁶ For example, an employer may not refuse to hire a woman because she is pregnant. Decisions about work absences or accommodations must be based on the same policies as the organization uses for other disabilities. Benefits, including health insurance, should cover pregnancy and related medical conditions in the same way that it covers other medical conditions.

Americans with Disabilities Act (ADA) of 1990

One of the farthest-reaching acts concerning the management of human resources is the Americans with Disabilities Act. This 1990 law protects individuals with disabilities from being discriminated against in the workplace. It prohibits discrimination based on disability in all employment practices such as job application procedures, hiring, firing, promotions, compensation, and training. Other employment activities

Figure 3.2

Disabilities Associated with Complaints Filed under ADA



SOURCE: Equal Employment Opportunity Commission, "ADA Charge Data by Impairments/Bases: Receipts," data for 2009, <http://www1.eeoc.gov>.

VERIZON CONNECTS WITH DISABLED WORKERS



Like many companies, Verizon Wireless until recently tackled accommodations for disabled employees purely on a case-by-case basis. But experiences with some disabled employees helped the HR department realize that if it planned ahead for addressing this need, it could do so in a way that saves money and retains employees. So Verizon established policies for helping employees continue working if they become disabled. These policies include short-term leave if an employee needs time to adjust emotional or physically to a new disability, as well as procedures for assessing the need for accommodations and making adjustments to job requirements and the workplace. The aim is to keep valued employees and enabling them to continue meeting their pre-disability performance targets.

Verizon put those policies in action when a supervisor of customer service representatives discovered she had progressive corneal degeneration. As her vision continued to deteriorate, the supervisor became legally blind, although she retained some limited vision. As this employee coped with her vision problems and associated fears, the HR staff swung into action. They brought together company specialists in human resources, information technology, and facilities management in meetings with a disability management consultant to determine what accommodations the supervisor could benefit from and how to set them up. They identified technologies such as computer screen readers and magnification, and they trained the supervisor how to use them. They also adapted her job requirements: instead of using computer graphics to monitor statistics about her employees' performance, the supervisor

reviews performance with the traditional method of listening in on calls, observing the representatives in action, and writing up individual reports on the employees. While the supervisor was making these changes, Verizon temporarily reduced the number of employees reporting to her; as she developed her competence with the new tools and procedures, Verizon restored employees to her team. The transition took about six months.

Verizon follows up with its disabled employees and measures the results of its policy. In the first few years of this systematic approach, Verizon estimates that it has spent about \$60,000 to accommodate employees and saved \$160,000 in what it would have spent to find and train replacements if disabled employees had left the company.

Source: J. Adam Shoemaker, "A 'Welcome Back' for Workers with Disabilities," *HR Magazine*, October 2009, pp. 30–32.

covered by the ADA are employment advertising, recruitment, tenure, layoff, leave, and fringe benefits.

The ADA defines **disability** as a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment. The first part of the definition refers to individuals who have serious disabilities—such as epilepsy, blindness, deafness, or paralysis—that affect their ability to perform Major bodily functions and major life activities such as walking, seeing, performing manual tasks, learning, caring for oneself, and working. The second part refers to individuals who have a history of disability, such as someone who has had cancer but is currently in remission, someone with a history of mental illness, and someone with a history of heart disease. The third part of the definition, "being regarded as having a disability," refers to people's subjective reactions, as in the case of someone who is severely disfigured; an employer might hesitate to hire such a person on the grounds that people will react negatively to such an employee.⁷

Disability

Under the Americans with Disabilities Act, a physical or mental impairment that substantially limits one or more major life activities, a record of having such an impairment, or being regarded as having such an impairment.

The ADA covers specific physiological disabilities such as cosmetic disfigurement and anatomical loss affecting the body's systems. In addition, it covers mental and psychological disorders such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. Conditions not covered include obesity, substance abuse, eye and hair color, and lefthandedness.⁸ Also, if a person needs ordinary eyeglasses or contact lenses to perform each major life activity with little or no difficulty, the person is not considered disabled under the ADA. (In determining whether an impairment is substantially limiting, mitigating measures, such as medicine, hearing aids, and prosthetics, once could be considered but now must be ignored.) Figure 3.2, on page 66, shows the types of disabilities associated with complaints filed under the ADA in 2009.

In contrast to other EEO laws, the ADA goes beyond prohibiting discrimination to require that employers take steps to accommodate individuals covered under the act. If a disabled person is selected to perform a job, the employer (perhaps in consultation with the disabled employee) determines what accommodations are necessary for the employee to perform the job. Examples include using ramps and lifts to make facilities accessible, redesigning job procedures, and providing technology such as TDD lines for hearing-impaired employees. Some employers have feared that accommodations under the ADA would be expensive. However, the Department of Labor has found that two-thirds of accommodations cost less than \$500, and many of these cost nothing.⁹ As technology advances, the cost of many technologies has been falling. The “Best Practices” box provides an example of a company where accommodating disabilities has been well worth the effort.

Civil Rights Act of 1991

In 1991 Congress broadened the relief available to victims of discrimination by passing a Civil Rights Act (CRA 1991). CRA 1991 amends Title VII of the Civil Rights Act of 1964, as well as the Civil Rights Act of 1866, the Americans with Disabilities Act, and the Age Discrimination in Employment Act of 1967. One major change in EEO law under CRA 1991 has been the addition of compensatory and punitive damages in cases of discrimination under Title VII and the Americans with Disabilities Act. Before CRA 1991, Title VII limited damage claims to *equitable relief*, which courts have defined to include back pay, lost benefits, front pay in some cases, and attorney's fees and costs. CRA 1991 allows judges to award compensatory and punitive damages when the plaintiff proves the discrimination was intentional or reckless. Compensatory damages include such things as future monetary loss, emotional pain, suffering, and loss of enjoyment of life. Punitive damages are a punishment; by requiring violators to pay the plaintiff an amount beyond the actual losses suffered, the courts try to discourage employers from discriminating.

Recognizing that one or a few discrimination cases could put an organization out of business, and so harm many innocent employees, Congress has limited the amount

Table 3.2

Maximum Punitive Damages Allowed under the Civil Rights Act of 1991

EMPLOYER SIZE	DAMAGE LIMIT
14 to 100 employees	\$ 50,000
101 to 200 employees	100,000
201 to 500 employees	200,000
More than 500 employees	300,000

of punitive damages. As shown in Table 3.2, the amount of damages depends on the size of the organization charged with discrimination. The limits range from \$50,000 per violation at a small company (14 to 100 employees) to \$300,000 at a company with more than 500 employees. A company has to pay punitive damages only if it discriminated intentionally or with malice or reckless indifference to the employee's federally protected rights.

Uniformed Services Employment and Reemployment Rights Act of 1994

When members of the armed services were called up following the terrorist attacks of September 2001, a 1994 employment law—the Uniformed Services Employment and Reemployment Rights Act (USERRA)—assumed new significance. Under this law, employers must reemploy workers who left jobs to fulfill military duties for up to five years. When service members return from active duty, the employer must reemploy them in the job they would have held if they had not left to serve in the military, providing them with the same seniority, status, and pay rate they would have earned if their employment had not been interrupted. Disabled veterans also have up to two years to recover from injuries received during their service or training, and employers must make reasonable accommodations for a remaining disability.

Service members also have duties under USERRA. Before leaving for duty, they are to give their employers notice, if possible. After their service, the law sets time limits for applying to be reemployed. Depending on the length of service, these limits range from approximately 2 to 90 days. Veterans with complaints under USERRA can obtain assistance from the Veterans' Employment and Training Service of the Department of Labor.

Genetic Information Nondiscrimination Act of 2008

Thanks to the decoding of the human genome and developments in the fields of genetics and medicine, researchers can now identify more and more genes associated with risks for developing particular diseases or disorders. While learning that you are at risk of, say, colon cancer may be a useful motivator to take precautions, the information opens up some risks as well. For example, what if companies began using genetic screening to identify and avoid hiring job candidates who are at risk of developing costly diseases? Concerns such as this prompted Congress to pass the Genetic Information Nondiscrimination Act (GINA) of 2008.

Under GINA's requirements, companies with 15 or more employees may not use genetic information in making decisions related to the terms, conditions, or privileges of employment—for example, decisions to hire, promote, or lay off a worker. This genetic information includes information about a person's genetic tests, genetic tests of the person's family members, and family medical histories. Furthermore, employers may not intentionally obtain this information, except in certain limited situations



Aric Miller, an Army reservist sergeant, was deployed for service with the 363rd military police unit in Iraq for over a year. When he returned to the states, he was able to resume his job as an elementary school teacher thanks to the 1994 Uniformed Services Employment and Reemployment Rights Act. The act requires employers to reemploy service members in the job they would have held if they had not left to serve in the military. Why is this act important?

(such as an employee voluntarily participating in a wellness program or requesting time off to care for a sick relative). If companies do acquire such information, they must keep the information confidential. The law also forbids harassment of any employee because of that person's genetic information.

Executive Orders

Two executive orders that directly affect human resource management are Executive Order 11246, issued by Lyndon Johnson, and Executive Order 11478, issued by Richard Nixon. Executive Order 11246 prohibits federal contractors and subcontractors from discriminating based on race, color, religion, sex, or national origin. In addition, employers whose contracts meet minimum size requirements must engage in affirmative action to ensure against discrimination. Those receiving more than \$10,000 from the federal government must take affirmative action, and those with contracts exceeding \$50,000 must develop a written affirmative-action plan for each of their establishments. This plan must be in place within 120 days of the beginning of the contract. This executive order is enforced by the Office of Federal Contract Compliance Procedures.

Executive Order 11478 requires the federal government to base all its employment policies on merit and fitness. It specifies that race, color, sex, religion, and national origin may not be considered. Along with the government, the act covers all contractors and subcontractors doing at least \$10,000 worth of business with the federal government. The U.S. Office of Personnel Management is in charge of ensuring that the government is in compliance, and the relevant government agencies are responsible for ensuring the compliance of contractors and subcontractors.

L03 Identify the federal agencies that enforce equal employment opportunity, and describe the role of each.

The Government's Role in Providing for Equal Employment Opportunity

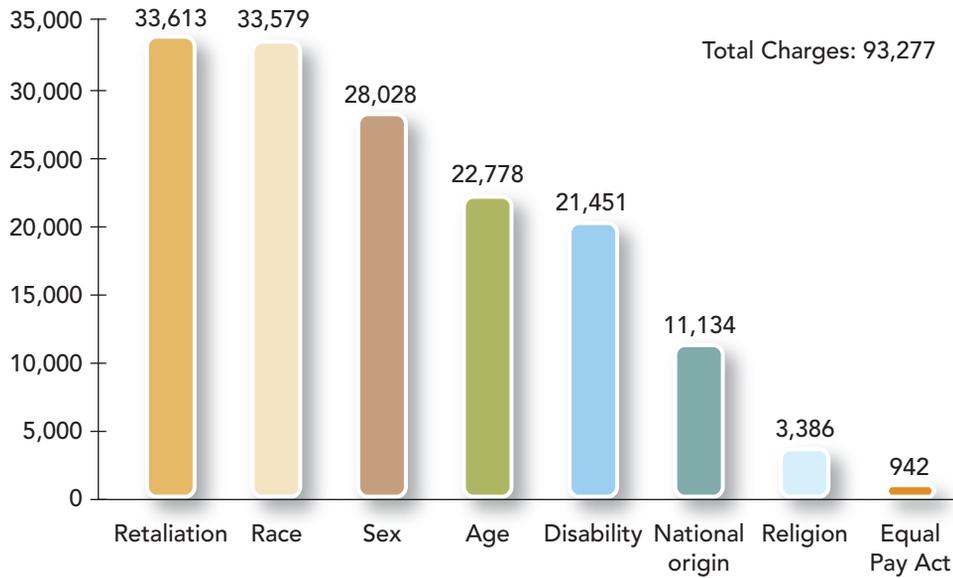
At a minimum, equal employment opportunity requires that employers comply with EEO laws. To enforce those laws, the executive branch of the federal government uses the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Procedures.

Equal Employment Opportunity Commission (EEOC)

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing most of the EEO laws, including Title VII, the Equal Pay Act, and the Americans with Disabilities Act. To do this, the EEOC investigates and resolves complaints about discrimination, gathers information, and issues guidelines.

When individuals believe they have been discriminated against, they may file a complaint with the EEOC or a similar state agency. They must file the complaint within 180 days of the incident. Figure 3.3 illustrates the number of charges filed with the EEOC for different types of discrimination in 2009. Many individuals file more than one type of charge (for instance, both race discrimination and retaliation), so the total number of complaints filed with the EEOC is less than the total of the amounts in each category.

After the EEOC receives a charge of discrimination, it has 60 days to investigate the complaint. If the EEOC either does not believe the complaint to be valid or fails to complete the investigation within 60 days, the individual has the right to

**Figure 3.3**

Types of Charges Filed with the EEOC

SOURCE: Equal Employment Opportunity Commission, "Charge Statistics FY 1997 through FY 2009," www.eeoc.gov, accessed March 2, 2010.

sue in federal court. If the EEOC determines that discrimination has taken place, its representatives will attempt to work with the individual and the employer to try to achieve a reconciliation without a lawsuit. Sometimes the EEOC enters into a consent decree with the discriminating organization. This decree is an agreement between the agency and the organization that the organization will cease certain discriminatory practices and possibly institute additional affirmative-action practices to rectify its history of discrimination. A settlement with the EEOC can be costly, including such remedies as back pay, reinstatement of the employee, and promotions.

If the attempt at a settlement fails, the EEOC has two options. It may issue a "right to sue" letter to the alleged victim. This letter certifies that the agency has investigated the victim's allegations and found them to be valid. The EEOC's other option, which it uses less often, is to aid the alleged victim in bringing suit in federal court.

The EEOC also monitors organizations' hiring practices. Each year organizations that are government contractors or subcontractors or have 100 or more employees must file an Employer Information Report (EEO-1) with the EEOC. The **EEO-1 report** is an online questionnaire requesting the number of employees in each job category (such as managers, professionals, and laborers), broken down by their status as male or female, Hispanic or non-Hispanic, and members of various racial groups. The EEOC analyzes those reports to identify patterns of discrimination, which the agency can then attack through class-action lawsuits. Employers must display EEOC posters detailing employment rights. These posters must be in prominent and accessible locations—for example, in a company's cafeteria or near its time clock. Also, employers should retain copies of documents related to employment decisions—recruitment letters, announcements of jobs, completed job applications, selections for training, and so on. Employers must keep these records for at least six months or until a complaint is resolved, whichever is later.

EEO-1 Report

The EEOC's Employer Information Report, which counts employees sorted by job category, sex, ethnicity, and race.

Uniform Guidelines on Employee Selection Procedures

Guidelines issued by the EEOC and other agencies to identify how an organization should develop and administer its system for selecting employees so as not to violate antidiscrimination laws.

Office of Federal Contract Compliance Procedures (OFCCP)

The agency responsible for enforcing the executive orders that cover companies doing business with the federal government.

Besides resolving complaints and suing alleged violators, the EEOC issues guidelines designed to help employers determine when their decisions violate the laws enforced by the EEOC. These guidelines are not laws themselves. However, the courts give great consideration to them when hearing employment discrimination cases. For example, the *Uniform Guidelines on Employee Selection Procedures* is a set of guidelines issued by the EEOC and other government agencies. The guidelines identify ways an organization should develop and administer its system for selecting employees so as not to violate Title VII. The courts often refer to the *Uniform Guidelines* to determine whether a company has engaged in discriminatory conduct. Similarly, in the *Federal Register*, the EEOC has published guidelines providing details about what the agency will consider illegal and legal in the treatment of disabled individuals under the Americans with Disabilities Act.

Office of Federal Contract Compliance Procedures (OFCCP)

The **Office of Federal Contract Compliance Procedures (OFCCP)** is the agency responsible for enforcing the executive orders that cover companies doing business with the federal government. As we stated earlier in the chapter, businesses with contracts for more than \$50,000 may not discriminate in employment based on race, color, religion, national origin, or sex, and they must have a written affirmative-action plan on file. This plan must include three basic components:

1. *Utilization analysis*—A comparison of the race, sex, and ethnic composition of the employer's workforce with that of the available labor supply. The percentages in the employer's workforce should not be greatly lower than the percentages in the labor supply.
2. *Goals and timetables*—The percentages of women and minorities the organization seeks to employ in each job group, and the dates by which the percentages are to be attained. These are meant to be more flexible than quotas, requiring only that the employer have goals and be seeking to achieve the goals.
3. *Action steps*—A plan for how the organization will meet its goals. Besides working toward its goals for hiring women and minorities, the company must take affirmative steps toward hiring Vietnam veterans and individuals with disabilities.

Each year, the OFCCP audits government contractors to ensure they are actively pursuing the goals in their plans. The OFCCP examines the plan and conducts on-site visits to examine how individual employees perceive the company's affirmative-action policies. If the agency finds that a contractor or subcontractor is not complying with the requirements, it has several options. It may notify the EEOC (if there is evidence of a violation of Title VII), advise the Department of Justice to begin criminal proceedings, request that the Secretary of Labor cancel or suspend any current contracts with the company, and forbid the firm from bidding on future contracts. For a company that depends on the federal government for a sizable share of its business, that last penalty is severe.

L04 Describe ways employers can avoid illegal discrimination and provide reasonable accommodation.

Businesses' Role in Providing for Equal Employment Opportunity

Rare is the business owner or manager who wants to wait for the government to identify that the business has failed to provide for equal employment opportunity. Instead, out of motives ranging from concern for fairness to the desire to avoid costly lawsuits

VIDEO RÉSUMÉS—PERILOUS POLICY?

Internet technology makes it easy for almost anyone to shoot a video and post it online. Some people are applying their technical talents to their own careers by creating video résumés. These résumés let people tell their story creatively and just might set a job applicant apart from the crowd.

The risk is that the technique might also set a candidate apart from the crowd in a harmful way. Employers know they must avoid discrimination based on race, color, national origin, disability, and so on. But if the video shows an applicant from a group the employer is biased against, it might be all too easy for that

employer to think of a reason not to interview the candidate.

On the up side, some experts think a well-executed video résumé can help a person shine. For Pat Woods, whose independent employment agency serves a primarily African American clientele, video résumés are a signal of keeping up with the times, as well as a chance to gain an audience. Video producer Alan Naumann says a professionally made video can be a vehicle for actually showing the job candidate in action—demonstrating skills or interacting with people in the hiring company's customer population.

In a recent survey by Vault.com, 89 percent of employers said they would look at a video résumé. Yet, companies crafting a policy for this use of technology should consider not only the benefits but also the possible drawbacks.

Source: Aysha Hussain, "Do Video Résumés Help or Lead to Discrimination?" *DiversityInc*, June 26, 2007, www.diversityinc.com; Steve Giegerich, "'Cruel' Market Forces Jobs Agent to Improvise," *St. Louis Post-Dispatch*, October 16, 2009, Business & Company Resource Center, <http://galenet.galegroup.com>; and Alan Naumann, "Résumé or Visumé?" *EventDV*, November 2009, Business & Company Resource Center, <http://galenet.galegroup.com>.

and settlements, most companies recognize the importance of complying with these laws. Often, management depends on the expertise of human resource professionals to help in identifying how to comply. These professionals can help organizations take steps to avoid discrimination and provide reasonable accommodation.

Avoiding Discrimination

How would you know if you had been discriminated against? Decisions about human resources are so complex that discrimination is often difficult to identify and prove. However, legal scholars and court rulings have arrived at some ways to show evidence of discrimination.

Disparate Treatment

One sign of discrimination is **disparate treatment**—differing treatment of individuals, where the differences are based on the individuals' race, color, religion, sex, national origin, age, or disability status. For example, disparate treatment would include hiring or promoting one person over an equally qualified person because of the individual's race. Or suppose a company fails to hire women with school-age children (claiming the women will be frequently absent) but hires men with school-age children. In that situation, the women are victims of disparate treatment, because they are being treated differently based on their sex. To sustain a claim of discrimination based on disparate treatment, the women would have to prove that the employer intended to discriminate.

Disparate Treatment
Differing treatment of individuals, where the differences are based on the individuals' race, color, religion, sex, national origin, age, or disability status.

To avoid disparate treatment, companies can evaluate the questions and investigations they use in making employment decisions. These should be applied equally. For example, if the company investigates conviction records of job applicants, it should investigate them for all applicants, not just for applicants from certain racial groups. Companies may want to avoid some types of questions altogether. For example, questions about marital status can cause problems, because interviewers may unfairly make different assumptions about men and women. (Common stereotypes about women have been that a married woman is less flexible or more likely to get pregnant than a single woman, in contrast to the assumption that a married man is more stable and committed to his work.)

Evaluating interview questions and decision criteria to make sure they are job related is especially important given that bias is not always intentional or even conscious. Researchers have conducted studies finding differences between what people *say* about how they evaluate others and how people actually *act* on their attitudes. For example, one set of studies applied a statistical method called conjoint analysis, which marketers use to see how consumers value particular packages of product features. In conjoint analysis, subjects indicate their preferences in a whole set of decisions (for example, cars with different features and prices), and researchers analyze the results to determine what various features are worth to the subjects. To mimic hiring decisions, the researchers invited subjects either to participate in a team game or to rate possible jobs they might take, and then described people with various qualities. Subjects selected which candidates they wanted on their team or which job they would take. Although subjects said they didn't care about teammates' weight, they actually sacrificed IQ scores to select thin teammates, and although subjects said they didn't care about their boss's sex, they selected lower-paying offers when the boss was male.¹⁰ These results suggest that even when we doubt we have biases, it may be helpful to use decision-making tools that keep the focus on the most important criteria.

Is disparate treatment ever legal? The courts have held that in some situations, a factor such as sex or race may be a **bona fide occupational qualification (BFOQ)**, that is, a necessary (not merely preferred) qualification for performing a job. A typical example is a job that includes handing out towels in a locker room. Requiring that employees who perform this job in the women's locker room be female is a BFOQ. However, it is very difficult to think of many jobs where criteria such as sex and race are BFOQs. In a widely publicized case from the 1990s, Johnson Controls, a manufacturer of car batteries, instituted a "fetal protection" policy that excluded women of childbearing age from jobs that would expose them to lead, which can cause birth defects. Johnson Controls argued that the policy was intended to provide a safe workplace and that sex was a BFOQ for jobs that involved exposure to lead. However, the Supreme Court disagreed, ruling that BFOQs are limited to policies directly related to a worker's ability to do the job.¹¹

Bona Fide Occupational Qualification (BFOQ)

A necessary (not merely preferred) qualification for performing a job.

Disparate Impact

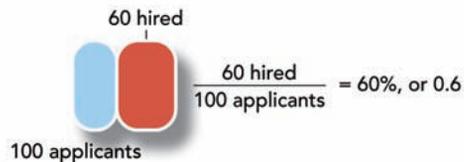
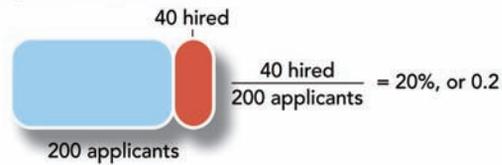
A condition in which employment practices are seemingly neutral yet disproportionately exclude a protected group from employment opportunities.

Disparate Impact

Another way to measure discrimination is by identifying **disparate impact**—a condition in which employment practices are seemingly neutral yet disproportionately exclude a protected group from employment opportunities. In other words, the company's employment practices lack obvious discriminatory content, but they affect one group differently than others. Examples of employment practices that might result in disparate impact include pay, hiring, promotions, or training. A complaint

Example: A new hotel has to hire employees to fill 100 positions. Out of 300 total applicants, 200 are black and the remaining 100 are white. The hotel hires 40 of the black applicants and 60 of the white applicants.

Step 1: Find the Rates



Step 2: Compare the Rates

$$\frac{0.2}{0.6} = 0.33 \quad \frac{4}{5} = 0.8$$

$$0.33 < 0.8$$

The four-fifths requirement is not satisfied, providing evidence of discrimination.

Figure 3.4

Applying the Four-Fifths Rule

was made by police officers and dispatchers in Jackson, Mississippi, that younger workers were receiving higher-percentage pay increases than the department was granting to older workers. Rather than intending to discriminate on the basis of age, the department was trying to bring starting pay into line with that of other police departments, but the policy had a disparate impact on different age groups.¹² A commonly used test of disparate impact is the **four-fifths rule**, which finds evidence of discrimination if the hiring rate for a minority group is less than four-fifths the hiring rate for the majority group. Keep in mind that this rule of thumb compares *rates* of hiring, not numbers of employees hired. Figure 3.4 illustrates how to apply the four-fifths rule.

If the four-fifths rule is not satisfied, it provides evidence of discrimination. To avoid declarations of practicing illegally, an organization must show that the disparate impact caused by the practice is based on a “business necessity.” This is accomplished by showing that the employment practice is related to a legitimate business need or goal. In our example, the city could argue that disparate impact of the pay increases between younger and older police officers and dispatchers was necessary to keep pay within the city’s budget. Of course, it is ultimately up to the court to decide if the evidence provided by the organization shows a real business necessity or is illegal. The court will also consider if other practices could have been used that would have met the business need or goal but not resulted in discrimination.

An important distinction between disparate treatment and disparate impact is the role of the employer’s intent. Proving disparate treatment in court requires showing that the employer intended the disparate treatment, but a plaintiff need not show intent in the case of disparate impact. It is enough to show that the result of the treatment was unequal. For example, the requirements for some jobs, such as firefighters or pilots, have sometimes included a minimum height. Although the

Four-Fifths Rule

Rule of thumb that finds evidence of discrimination if an organization’s hiring rate for a minority group is less than four-fifths the hiring rate for the majority group.



Regina Genwright talks to a voice-activated copier at the American Foundation for the Blind. The copier has a Braille keyboard and is wheelchair-accessible height. Equipment like this can help employers make reasonable accommodation for their disabled employees.

intent may be to identify people who can perform the jobs, an unintended result may be disparate impact on groups that are shorter than average. Women tend to be shorter than men, and people of Asian ancestry tend to be shorter than people of European ancestry.

One way employers can avoid disparate impact is to be sure that employment decisions are really based on relevant, valid measurements. If a job requires a certain amount of strength and stamina, the employer would want measures of strength and stamina, not simply individuals' height and weight. The latter numbers are easier to obtain but more likely to result in charges of discrimination. Assessing validity of a measure can be a highly technical exercise requiring the use of statistics. The essence of such an assessment is to show that test scores or other measurements are significantly related to job performance. In the case of age discrimination, the Supreme Court's recent ruling allows a somewhat easier standard: To

justify disparate impact on older employees, the employer must be able to show that the impact results from "reasonable factors other than age."¹³ The Jackson police department set up a pay policy to help it recruit new officers, and the Supreme Court considered this plan reasonable.

EEO Policy

Employers can also avoid discrimination and defend against claims of discrimination by establishing and enforcing an EEO policy. The policy should define and prohibit unlawful behaviors, as well as provide procedures for making and investigating complaints. The policy also should require that employees at all levels engage in fair conduct and respectful language. Derogatory language can support a court claim of discrimination.

Affirmative Action and Reverse Discrimination

In the search for ways to avoid discrimination, some organizations have used affirmative-action programs, usually to increase the representation of minorities. In its original form, affirmative action was meant as taking extra effort to attract and retain minority employees. These efforts have included extensively recruiting minority candidates on college campuses, advertising in minority-oriented publications, and providing educational and training opportunities to minorities. However, over the years, many organizations have resorted to quotas, or numerical goals for the proportion of certain minority groups, to ensure that their workforce mirrors the proportions of the labor market. Sometimes these organizations act voluntarily; in other cases, the quotas are imposed by the courts or the EEOC.

Whatever the reasons for these hiring programs, by increasing the proportion of minority or female candidates hired or promoted, they necessarily reduce the proportion of white or male candidates hired or promoted. In many cases, white and/or male individuals have fought against affirmative action and quotas, alleging what is called *reverse discrimination*. In other words, the organizations are allegedly discriminating against white males by preferring women and minorities. Affirmative action remains controversial in the United States. Surveys have found that Americans are least likely to favor affirmative action when programs use quotas.¹⁴

Figure 3.5

Examples of Reasonable Accommodations under the ADA



Note: Reasonable accommodations do *not* include hiring an unqualified person, lowering quality standards, or compromising co-workers' safety.

SOURCE: Based on Equal Employment Opportunity Commission, "The ADA: Your Responsibilities as an Employer," modified August 1, 2008, www.eeoc.gov.

Providing Reasonable Accommodation

Especially in situations involving religion and individuals with disabilities, equal employment opportunity may require that an employer make **reasonable accommodation**. In employment law, this term refers to an employer's obligation to do something to enable an otherwise qualified person to perform a job. The Vail Corporation recently settled a case in which a Christian supervisor claimed that the ski resort operator failed to make religious accommodation, because it scheduled her so she had to work during the time of her religious services, even though other employees were available to work during those hours. Under the terms of the settlement, the Vail Corporation agreed to accommodate the employee's religious practices with more flexible scheduling. The company also had to educate its employees on avoiding harassment, because the supervisor's manager and co-workers had created a hostile environment in which she repeatedly felt offended.¹⁵

In the context of religion, this principle recognizes that for some individuals, religious observations and practices may present a conflict with work duties, dress codes, or company practices. For example, some religions require head coverings, or individuals might need time off to observe the sabbath or other holy days, when the company might have them scheduled to work. When the employee has a legitimate

Reasonable Accommodation

An employer's obligation to do something to enable an otherwise qualified person to perform a job.

religious belief requiring accommodation, the employee should demonstrate this need to the employer. Assuming that it would not present an undue hardship, employers are required to accommodate such religious practices. They may have to adjust schedules so that employees do not have to work on days when their religion forbids it, or they may have to alter dress or grooming requirements.

For employees with disabilities, reasonable accommodations also vary according to the individuals' needs. As shown in Figure 3.5, employers may restructure jobs, make facilities in the workplace more accessible, modify equipment, or reassign an employee to a job that the person can perform. In some situations, a disabled individual may provide his or her own accommodation, which the employer allows, as in the case of a blind worker who brings a guide dog to work.

If accommodating a disability would require significant expense or difficulty, however, the employer may be exempt from the reasonable accommodation requirement (although the employer may have to defend this position in court). An accommodation is considered "reasonable" if it does not impose an undue hardship on the employer, such as an expense that is large in relation to a company's resources.

L05 Define sexual harassment, and tell how employers can eliminate or minimize it.

Sexual Harassment
Unwelcome sexual advances as defined by the EEOC.

Preventing Sexual Harassment

Based on Title VII's prohibition of sex discrimination, the EEOC defines sexual harassment of employees as unlawful employment discrimination. **Sexual harassment** refers to unwelcome sexual advances. The EEOC has defined the types of behavior and the situations under which this behavior constitutes sexual harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature constitute sexual harassment when

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.¹⁶

Under these guidelines, preventing sexual discrimination includes managing the workplace in a way that does not permit anybody to threaten or intimidate employees through sexual behavior.

In general, the most obvious examples of sexual harassment involve *quid pro quo harassment*, meaning that a person makes a benefit (or punishment) contingent on an employee's submitting to (or rejecting) sexual advances. For example, a manager who promises a raise to an employee who will participate in sexual activities is engaging in *quid pro quo harassment*. Likewise, it would be sexual harassment to threaten to reassign someone to a less-desirable job if that person refuses sexual favors.

A more subtle, and possibly more pervasive, form of sexual harassment is to create or permit a "hostile working environment." This occurs when someone's behavior in the workplace creates an environment in which it is difficult for someone of a particular sex to work. Common complaints in sexual harassment lawsuits include claims that harassers ran their fingers through the plaintiffs' hair, made suggestive remarks, touched intimate body parts, posted pictures with sexual content in the workplace, and used sexually explicit language or told sex-related jokes. The reason that these behaviors are considered discrimination is that they treat individuals differently based on their sex.

RESPONDING TO COMPLAINTS OF HARASSMENT

When an employee comes to an HR professional with a complaint that he or she has been harassed, that employee is probably already upset, so the HR response can make a huge difference in whether the complaint is resolved successfully or escalates into a lawsuit.

- *Listen with an open mind*—Consider that the employee may be describing a real problem, even if the supposed perpetrator is someone you respect. At the same time, consider that there is possibly another side to the story. So don't say, "That's
- terrible," unless you know for sure that something terrible really did happen.
- *Don't use legal jargon unless you're a lawyer*—For example, you could ask, "Did anyone else do anything you thought was inappropriate?" That keeps the focus on the facts. But if you ask, "Did anyone else harass you?" you're using a word that defines illegal conduct. Unless harassment is proven, that label could be unfair. Of course, you also shouldn't argue that harassment *didn't* occur. Stick to the facts.
- *Be serious and professional*—Jokes are unlikely to break the tension; more likely, they will signal that you don't take the complaint seriously. Likewise, putting a sympathetic hand on the shoulder of someone who is telling you he or she has been touched inappropriately is just asking for the situation to escalate.

Source: Based on Jonathan A. Segal, "A Sexual Harassment Complaint? Ten Responses to Avoid," *BusinessWeek*, February 12, 2010, <http://www.businessweek.com>.

Although a large majority of sexual harassment complaints received by the EEOC involve women being harassed by men, a growing share of sexual harassment claims have been filed by men. Some of the men claimed that they were harassed by women, but same-sex harassment also occurs and is illegal. The EEOC recently filed a charge against Boh Bros. Construction Company after investigating a male iron worker's complaint that he had been the victim of male-on-male sexual harassment by the company's site superintendent. According to the iron worker, the superintendent had subjected him to taunts, verbal abuse, and sexual advances.¹⁷

To ensure a workplace free from sexual harassment, organizations can follow some important steps. First, the organization can develop a policy statement making it very clear that sexual harassment will not be tolerated in the workplace. Second, all employees, new and old, can be trained to identify inappropriate workplace behavior. In addition, the organization can develop a mechanism for reporting sexual harassment in a way that encourages people to speak out. Finally, management can prepare to act promptly to discipline those who engage in sexual harassment, as well as to protect the victims of sexual harassment. The "HR How To" box provides some additional guidance on responding to complaints.

Valuing Diversity

As we mentioned in Chapter 2, the United States is a diverse nation, and becoming more so. In addition, many U.S. companies have customers and operations in more than one country. Managers differ in how they approach the challenges related to this diversity. Some define a diverse workforce as a competitive advantage that brings them a wider pool of talent and greater insight into the needs and behaviors of their diverse customers. These organizations say they have a policy of *valuing diversity*.

The practice of valuing diversity has no single form; it is not written into law or business theory. Organizations that value diversity may practice some form of affirmative action, discussed earlier. They may have policies stating their value of understanding and respecting differences. Organizations may try to hire, reward, and promote employees who demonstrate respect for others. They may sponsor training programs designed to teach employees about differences among groups. Whatever their form, these efforts are intended to make each individual feel respected. Also, these actions can support equal employment opportunity by cultivating an environment in which individuals feel welcome and able to do their best.

Valuing diversity, especially in support of an organization's mission and strategy, need not be limited to the categories protected by law. Root Learning, a management consulting firm in Sylvania, Ohio, believes that effective teamwork starts with a group of individuals who know they bring different strengths to the game. To highlight each employee's uniqueness, Root has caricatures drawn of each employee, showing each person with symbols of his or her talents and hobbies. The caricatures hang on the walls of Root's lobby, where clients and co-workers alike can see the employees as more than stereotypes and learn about what makes each employee special. The goal is for employees to know each other well enough to bring in the right people with the right expertise for a particular project. Other ways in which Root expresses appreciation of individual differences include employee reviews of co-workers' strengths, a budget for employee-selected training goals, and monthly meetings at which employees are encouraged to describe one another's accomplishments.¹⁸

LO6 Explain employers' duties under the Occupational Safety and Health Act.

Occupational Safety and Health Act (OSH Act)

U.S. law authorizing the federal government to establish and enforce occupational safety and health standards for all places of employment engaging in interstate commerce.

Occupational Safety and Health Administration (OSHA)

Labor Department agency responsible for inspecting employers, applying safety and health standards, and levying fines for violation.

LO7 Describe the role of the Occupational Safety and Health Administration.

Occupational Safety and Health Act (OSH Act)

Like equal employment opportunity, the protection of employee safety and health is regulated by the government. Through the 1960s, workplace safety was primarily an issue between workers and employers. By 1970, however, roughly 15,000 work-related fatalities occurred every year. That year, Congress enacted the **Occupational Safety and Health Act (OSH Act)**, the most comprehensive U.S. law regarding worker safety. The OSH Act authorized the federal government to establish and enforce occupational safety and health standards for all places of employment engaging in interstate commerce.

The OSH Act divided enforcement responsibilities between the Department of Labor and the Department of Health. Under the Department of Labor, the **Occupational Safety and Health Administration (OSHA)** is responsible for inspecting employers, applying safety and health standards, and levying fines for violation. The Department of Health is responsible for conducting research to determine the criteria for specific operations or occupations and for training employers to comply with the act. Much of the research is conducted by the National Institute for Occupational Safety and Health (NIOSH).

General and Specific Duties

The main provision of the OSH Act states that each employer has a general duty to furnish each employee a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm. This is called the act's *general-duty clause*. Employers also must keep records of work-related injuries and illnesses and post an annual summary of these records from February 1 to April 30 in the following year. Figure 3.6 shows a sample of OSHA's Form 300A,

Figure 3.6

OSHA Form 300A: Summary of Work-Related Injuries and Illnesses

OSHA's Form 300A (Rev. 01/2004)

Year 20

U.S. Department of Labor
Occupational Safety and Health Administration
Form approved OMB no. 1218-005

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.
Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."
Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G)	(H)	(I)	(J)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
(K)	(L)

Injury and Illness Types

Total number of ... (M)

(1) Injuries	(4) Poisonings
(2) Skin disorders	(5) Hearing loss
(3) Respiratory conditions	(6) All other illnesses

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 56 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspects of this data collection, contact: US Department of Labor, OSHA, Office of Statistical Analysis, Room N-3644, 200 Constitution Avenue, NW, Washington, DC 20220. Do not send the completed forms to this office.

Establishment information

Your establishment name _____

Street _____

City _____ State _____ ZIP _____

Industry description (e.g., Manufacturer of motor truck trailers) _____

Standard Industrial Classification (SIC), if known (e.g., 3715) _____

OR

North American Industrial Classification (NAICS), if known (e.g., 336212) _____

Employment information (If you don't have these figures, see the Worksheet on the back of this page to estimate.)

Annual average number of employees _____

Total hours worked by all employees last year _____

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge, the entries are true, accurate, and complete.

Company executive _____ Title _____

C. / / _____ Date _____

SOURCE: The OSHA Recordkeeping Handbook, U.S. Dept. of Labor, April 1, 2010, <http://osha.gov/recordkeeping/new-osa300form1-1-04.pdf>.

Job Safety and Health
It's the law!

OSHA
Occupational Safety and Health Administration
U.S. Department of Labor

EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the OSH Act that apply to your own actions and conduct on the job.

EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the OSH Act.

This free poster available from OSHA -
The Best Resource for Safety and Health

Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA-supported consultation programs in each state.

1-800-321-OSHA
www.osha.gov

OSHA is responsible for inspecting businesses, applying safety and health standards, and levying fines for violations. OSHA regulations prohibit notifying employers of inspections in advance.

the annual summary that must be posted, even if no injuries or illnesses occurred.

The act also grants specific rights; for example, employees have the right to:

- Request an inspection.
- Have a representative present at an inspection.
- Have dangerous substances identified.
- Be promptly informed about exposure to hazards and be given access to accurate records regarding exposure.
- Have employer violations posted at the work site.

Although OSHA regulations have a (sometimes justifiable) reputation for being complex, a company can get started in meeting these requirements by visiting OSHA's Web site (www.osha.gov) and looking up resources such as the agency's *Small Business Handbook* and its step-by-step guide called "Compliance Assistance Quick Start."

The Department of Labor recognizes many specific types of hazards, and employers must comply with all the occupational safety and health standards published by NIOSH. For example, NIOSH is currently investigating exposures of workers in nail salons to the vapor from solvents contained in nail products. One part of the investigation includes a study of vented nail tables, which are a type of work table on which customers rest their hands for a manicure. On the vented tables, a downdraft is supposed to pull the vapors away from the technician's face. NIOSH is measuring how effective these tables are at reducing exposure to vapor and will use information from the research to develop educational

guidelines for protecting workers in nail salons.¹⁹

Although NIOSH publishes numerous standards, it is impossible for regulators to anticipate all possible hazards that could occur in the workplace. Thus, the general-duty clause requires employers to be constantly alert for potential sources of harm in the workplace (as defined by the standard of what a reasonably prudent person would do) and to correct them. Information about hazards can come from employees or from outside researchers. A recent study found that health care workers are unusually likely to develop work-related asthma. The researchers found that the disease occurred because the workers were frequently exposed to latex and disinfectants known to cause asthma. They also worked around asthma-aggravating materials, including cleaning products and materials used in renovating buildings. Hospitals and other health care providers can protect their workers from asthma by substituting nonlatex or powder-free gloves for powdered latex gloves. They also can be more selective in their use of disinfectants.²⁰

Enforcement of the OSH Act

To enforce the OSH Act, the Occupational Safety and Health Administration conducts inspections. OSHA compliance officers typically arrive at a workplace unannounced; for obvious reasons, OSHA regulations prohibit notifying employers of

inspections in advance. After presenting credentials, the compliance officer tells the employer the reasons for the inspection and describes, in a general way, the procedures necessary to conduct the investigation.

An OSHA inspection has four major components. First, the compliance officer reviews the company's records of deaths, injuries, and illnesses. OSHA requires this kind of record keeping at all firms with 11 or more full- or part-time employees. Next, the officer—typically accompanied by a representative of the employer (and perhaps by a representative of the employees)—conducts a “walkaround” tour of the employer's premises. On this tour, the officer notes any conditions that may violate specific published standards or the less specific general-duty clause. The third component of the inspection, employee interviews, may take place during the tour. At this time, anyone who is aware of a violation can bring it to the officer's attention. Finally, in a closing conference, the compliance officer discusses the findings with the employer, noting any violations.

Following an inspection, OSHA gives the employer a reasonable time frame within which to correct the violations identified. If a violation could cause serious injury or death, the officer may seek a restraining order from a U.S. District Court. The restraining order compels the employer to correct the problem immediately. In addition, if an OSHA violation results in citations, the employer must post each citation in a prominent place near the location of the violation.

Besides correcting violations identified during the inspection, employers may have to pay fines. These fines range from \$20,000 for violations that result in death of an employee to \$1,000 for less-serious violations. Other penalties include criminal charges for falsifying records that are subject to OSHA inspection or for warning an employer of an OSHA inspection without permission from the Department of Labor.

Employee Rights and Responsibilities

Although the OSH Act makes employers responsible for protecting workers from safety and health hazards, employees have responsibilities as well. They have to follow OSHA's safety rules and regulations governing employee behavior. Employees also have a duty to report hazardous conditions.

Along with those responsibilities go certain rights. Employees may file a complaint and request an OSHA inspection of the workplace, and their employers may not retaliate against them for complaining. Employees also have a right to receive information about any hazardous chemicals they handle in the course of their jobs. OSHA's Hazard Communication Standard and many states' **right-to-know laws** require employers to provide employees with information about the health risks associated with exposure to substances considered hazardous. State right-to-know laws may be more stringent than federal standards, so organizations should obtain requirements from their state's health and safety agency, as well as from OSHA.

Under OSHA's Hazard Communication Standard, organizations must have **material safety data sheets (MSDSs)** for chemicals that employees are exposed to. An MSDS is a form that details the hazards associated with a chemical; the chemical's producer or importer is responsible for identifying these hazards and detailing them on the form. Employers must also ensure that all containers of hazardous chemicals are labeled with information about the hazards, and they must train employees in safe handling of the chemicals. Office workers who

Right-to-Know Laws

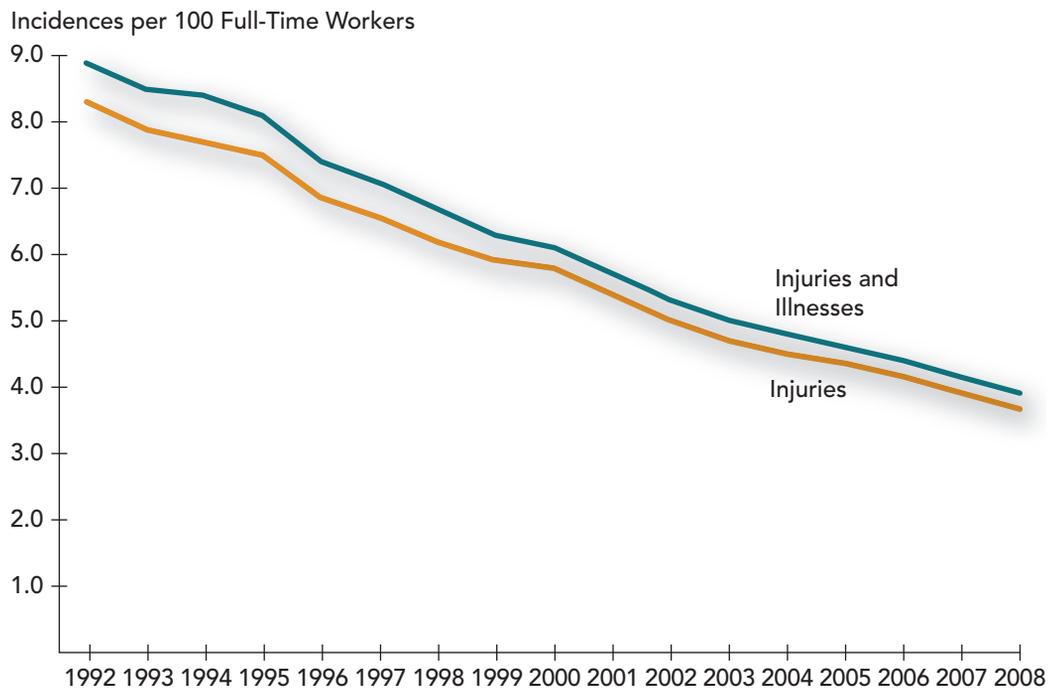
State laws that require employers to provide employees with information about the health risks associated with exposure to substances considered hazardous.

Material Safety Data Sheets (MSDSs)

Forms on which chemical manufacturers and importers identify the hazards of their chemicals.

Figure 3.7

Rates of Occupational Injuries and Illnesses



Note: Data do not include fatal work-related injuries and illnesses.

SOURCE: Bureau of Labor Statistics, "Industry, Injury, and Illness Data," www.bls.gov, accessed March 2, 2010.

encounter a chemical infrequently (such as a secretary who occasionally changes the toner in a copier) are not covered by these requirements. In the case of a copy machine, the Hazard Communication Standard would apply to someone whose job involves spending a large part of the day servicing or operating such equipment.

Impact of the OSH Act

The OSH Act has unquestionably succeeded in raising the level of awareness of occupational safety. Yet legislation alone cannot solve all the problems of work site safety. Indeed, the rate of occupational illnesses more than doubled between 1985 and 1990, according to the Bureau of Labor Statistics, while the rate of injuries rose by about 8 percent. However, as depicted in Figure 3.7, both rates have shown an overall downward trend since then.²¹

Many industrial accidents are a product of unsafe behaviors, not unsafe working conditions. Because the act does not directly regulate employee behavior, little behavior change can be expected unless employees are convinced of the standards' importance.²²

Conforming to the law alone does not necessarily guarantee their employees will be safe, so many employers go beyond the letter of the law. In the next section we examine various kinds of employer-initiated safety awareness programs that comply with OSHA requirements and, in some cases, exceed them.

Employer-Sponsored Safety and Health Programs

Many employers establish safety awareness programs to go beyond mere compliance with the OSH Act and attempt to instill an emphasis on safety. A safety awareness program has three primary components: identifying and communicating hazards, reinforcing safe practices, and promoting safety internationally.

L08 Discuss ways employers promote worker safety and health.

Identifying and Communicating Job Hazards

Employees, supervisors, and other knowledgeable sources need to sit down and discuss potential problems related to safety. One method for doing this is the **job hazard analysis technique**.²³ With this technique, each job is broken down into basic elements, and each of these is rated for its potential for harm or injury. If there is agreement that some job element has high hazard potential, the group isolates the element and considers possible technological or behavior changes to reduce or eliminate the hazard. The “Did You Know?” box shows the leading causes of injuries at work in 2007.

Another means of isolating unsafe job elements is to study past accidents. The **technic of operations review (TOR)** is an analysis method for determining which specific element of a job led to a past accident.²⁴ The first step in a TOR analysis is to establish the facts surrounding the incident. To accomplish this, all members of the work group involved in the accident give their initial impressions of what happened. The group must then, through discussion, come to an agreement on the single, systematic failure that most likely contributed to the incident, as well as two or three major secondary factors that contributed to it.

United Parcel Service combined job analysis with employee empowerment to reduce injury rates dramatically. Concerned about the many sprains, strains, and other injuries experienced by its workers, UPS set up Comprehensive Health and Safety Process (CHSP) committees that bring together management and nonmanagement employees. Each committee investigates and reports on accidents, conducts audits of facilities and equipment, and advises employees on how to perform their jobs more safely. For example, the committees make sure delivery people know safe practices for lifting packages and backing up trucks. Whenever committee members see someone behaving unsafely, they are required to intervene. Since the CHSP committees began their work, the injury rate at UPS has fallen from over 27 injuries per 200,000 hours worked to just 10.2 injuries per 200,000, well on the way to the company’s target injury rate of 3.2 per 200,000 hours.²⁵

To communicate with employees about job hazards, managers should talk directly with their employees about safety. Memos also are important, because the written communication helps establish a “paper trail” that can later document a history of the employer’s concern regarding the job hazard. Posters, especially if placed near the hazard, serve as a constant reminder, reinforcing other messages.

In communicating risk, managers should recognize that different groups of individuals may constitute different audiences. For example, as women started entering more sectors of the workforce, it became apparent that personal protective equipment designed with men in mind did not always fit women very well. For example, cut-resistant leather gloves designed for men’s hands often proved too clumsy and bulky for female workers. Likewise, gloves that are too big can actually make handling of slippery or wet items more dangerous. And when gloves or other equipment doesn’t fit properly, workers are less motivated to wear it, losing the equipment’s protection altogether.

Job Hazard Analysis Technique

Safety promotion technique that involves breaking down a job into basic elements, then rating each element for its potential for harm or injury.

Technic of Operations Review (TOR)

Method of promoting safety by determining which specific element of a job led to a past accident.

Did You Know?

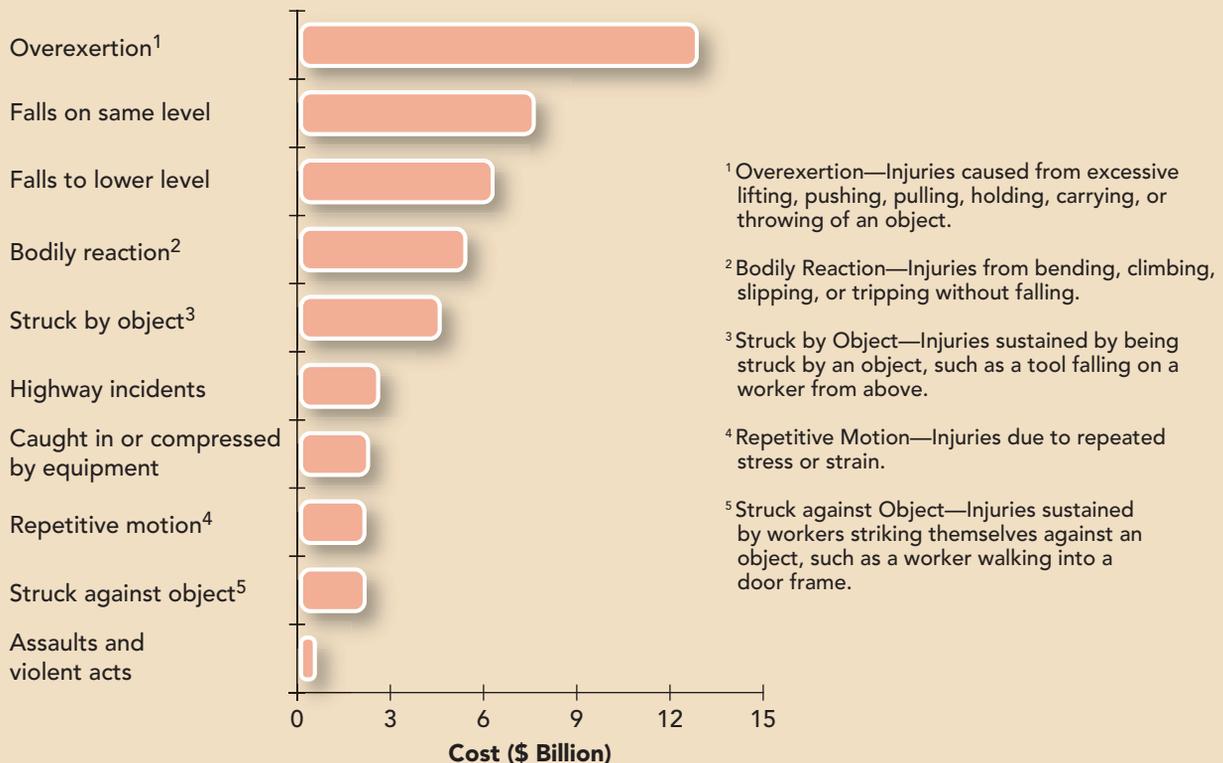
Top 10 Causes of Workplace Injuries

Every year, the Liberty Mutual Research Institute for Safety produces the Liberty Mutual Workplace Safety Index, which estimates the direct costs of disabling workplace injuries in the United States. In 2007, serious work-related injuries

cost employers \$53 billion. The leading cause was overexertion (for example, excessive lifting, pushing, carrying, or throwing), followed by falls on the same level (rather than from a height), and falls to a lower level (such as from a ladder).

Source: Liberty Mutual Research Institute for Safety, "2009 Workplace Safety Index," www.libertymutual.com/researchinstitute, accessed March 2, 2010.

10 Leading Causes of Workplace Injuries in 2007



Fortunately, equipment designers today are becoming more aware of the needs of their customers' female employees, so more sizes and designs are now available.²⁶

Other workers who may be at higher risk are at each end of the age spectrum. Older workers tend to have fewer but more severe injuries and take longer to recover. In addition, whereas young workers are more likely to suffer an acute injury such as a cut or burn, older workers are more likely to injure themselves as a result of cumulative trauma, such as repetitive motions, awkward postures, and the use of too much force over and over. Such injuries can often be prevented with careful job design.²⁷ Organizations may need to make reasonable accommodations in response to their concerns, both to protect their employees and to meet the challenges of an aging workforce, described in Chapter 2. With young workers, the safety challenge is to protect them

HR Oops!

Construction Firm Falls Down on the Training Job

Recently, OSHA fined C. A. Franc, a Valencia, Pennsylvania, construction company, more than half a million dollars for its failure to protect its workers from falls. The investigation came after a worker fell 40 feet from a pitched roof at a Washington, Pennsylvania, work site and died.

According to OSHA, the company failed to provide its roofers with any fall protection. Furthermore, a newly hired worker, a college student, was not trained in hazards or in the safety measures required for roofing work. The agency's penalties included fines

for each worker who lacked fall protection plus a fine for failure to train the young employee.

John M. Hermanson, the OSHA administrator for the region noted, "Falls are the leading cause of fatalities in the construction industry. Failure to provide employees with fall protection is unconscionable."

Source: Based on Occupational Safety and Health Administration, "US Department of Labor's OSHA Cites C.A. Franc \$539,000 for Willful Fall Hazard Violations following Worker's Death at Washington, Pa., Worksite," news release, February 12, 2010, <http://osha.gov>.

Questions

1. Do you think college students around age 20 would be more vulnerable to falls during roofing jobs than older employees? Why or why not? How could a roofing company protect these workers from falls?
2. Imagine that C. A. Franc called you in to give human resources advice. The owner points out that these are difficult times for the construction industry, so there is really no budget for training. What advice would you give?

from risk taking. Young workers may be especially eager to please the adults they work with, and they may be more fearful than their older colleagues when safety requires challenging authority. Employees who are new to the workforce may not be aware of the health and safety laws that are supposed to protect them. Research by the National Safety Council indicates that 40 percent of accidents happen to individuals in the 20-to-29 age group and that 48 percent of accidents happen to workers during their first year on the job.²⁸ The "HR Oops!" box shows the danger of assuming that employees are aware of safety risks on the job.

Reinforcing Safe Practices

To ensure safe behaviors, employers should not only define how to work safely but reinforce the desired behavior. One common technique for reinforcing safe practices is implementing a safety incentive program to reward workers for their support of and commitment to safety goals. Such programs start by focusing on monthly or quarterly goals or by encouraging suggestions for improving safety. Possible goals might include good housekeeping practices, adherence to safety rules, and proper use of protective equipment. Later, the program expands to include more wide-ranging, long-term goals. Typically, the employer distributes prizes in highly public forums, such as company or department meetings. Using merchandise for prizes, instead of cash, provides a lasting symbol of achievement. A good deal of evidence suggests that such incentive programs are effective in reducing the number and cost of injuries.²⁹

Besides focusing on specific jobs, organizations can target particular types of injuries or disabilities, especially those for which employees may be at risk. For example, Prevent Blindness America estimates that 2,000 eye injuries occur every day in occupational settings.³⁰ Organizations can prevent such injuries through a combination

of job analysis, written policies, safety training, protective eyewear, rewards and sanctions for safe and unsafe behavior, and management support for the safety effort. Similar practices for preventing other types of injuries are available in trade publications, through the National Safety Council, and on the Web site of the Occupational Safety and Health Administration (www.osha.gov).

Promoting Safety Internationally

Given the increasing focus on international management, organizations also need to consider how to ensure the safety of their employees regardless of the nation in which they operate. Cultural differences may make this more difficult than it seems. For example, a study examined the impact of one standardized corporationwide safety policy on employees in three different countries: the United States, France, and Argentina. The results of this study indicate that employees in the three countries interpreted the policy differently because of cultural differences. The individualistic, control-oriented culture of the United States stressed the role of top management in ensuring safety in a top-down fashion. However, this policy failed to work in Argentina, where the culture is more “collectivist” (emphasizing the group). Argentine employees tend to feel that safety is everyone’s joint concern, so the safety programs needed to be defined from the bottom of the organization up.³¹

Another challenge in promoting safety internationally is that laws, enforcement practices, and political climates vary from country to country. With the increasing use of offshoring, described in Chapter 2, more companies have operations in countries where labor standards are far less strict than U.S. standards. Managers and employees in these countries may not think the company is serious about protecting workers’ health and safety. In that case, strong communication and oversight will be necessary if the company intends to adhere to the ethical principle of valuing its foreign workers’ safety as much as the safety of its U.S. workers. The Gap treats this issue as part of its corporate social responsibility. The company views its supply chain as socially sustainable only when working conditions and factory conditions meet acceptable business practices. According to Eva Sage-Gavin, Gap’s executive vice president of human resources and corporate communications, “We know that better factory working conditions lead to better factories, and better factories make better products.” In addition, Sage-Gavin notes, Gap employees in the United States care about working for a company they view as socially responsible, so these efforts also matter for corporate performance at home.³²



thinking ethically

DO FAMILY FRIENDLY POLICIES HURT MEN?

As more women have entered the workforce, companies wanting the best talent have moved toward adding more benefits that help mothers in particular juggle the responsibilities of job and family. Part-time work schedules and flexible hours help parents find time to tend to children and—with the aging of the nation’s population—help adult children tend to elderly parents. Traditionally, these family responsibilities have been taken up primarily by women.

But as companies add these benefits, some male employees (and some childless women as well) have complained that the company is spending money on benefits that flow to some workers at the expense (at least theoretically) of others. Some men have even complained that fathers don’t get assistance with child care or an opportunity to bring their babies to work.

In fact, in the United States, companies do have to extend the same benefits to fathers as to mothers (except, of course, that if a mother is disabled after

childbirth, she is the one who gets the disability benefit). But men note that it is women who are more likely to use these benefits, even though studies show that men are experiencing more work–life conflict than male workers did a few decades ago. And as more pregnant women stay on the job, the disparity is as obvious as the bulging bellies.

SOURCES: Sue Shellenbarger, “Do Work-Family Policies Discriminate against Men?” *Wall Street Journal*, February 4, 2010, <http://blogs.wsj.com>; and Sue Shellenbarger, “Handling the Office Baby Boom,” *Wall Street Journal*, January 13, 2010, <http://online.wsj.com>.

Questions

1. Who, if anyone, suffers when some workers get flexible hours? What would be a fair way to distribute the costs and benefits of flexibility in work schedules?
2. Do employee benefits have to be used equally in order for them to be fair or ethical? Why or why not? If you were in the HR department of a company where some employees were unhappy about this issue, how would you recommend that the company address it?

SUMMARY

LO1 Explain how the three branches of government regulate human resource management.

The legislative branch develops laws such as those governing equal employment opportunity and worker safety and health. The executive branch establishes agencies such as the Equal Employment Opportunity Commission and Occupational Safety and Health Administration to enforce the laws by publishing regulations, filing lawsuits, and performing other activities. The president may also issue executive orders, such as requirements for federal contractors. The judicial branch hears cases related to employment law and interprets the law.

LO2 Summarize the major federal laws requiring equal employment opportunity.

The Civil Rights Acts of 1866 and 1871 grants all persons equal property rights, contract rights, and the right to sue in federal court if they have been deprived of civil rights. The Equal Pay Act of 1963 requires equal pay for men and women who are doing work that is equal in terms of skill, effort, responsibility, and working conditions. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. The Age Discrimination in Employment Act prohibits employment discrimination against persons older than 40. The Vocational Rehabilitation Act of 1973 requires that federal contractors engage in affirmative action in the employment of persons with disabilities. The Vietnam Era Veteran’s Readjustment Act of 1974 requires affirmative action in employment of veterans who served during the Vietnam War. The Pregnancy Discrimination Act of 1978 treats discrimination based on pregnancy-related conditions as illegal sex discrimination. The Americans with Disabilities Act requires reasonable accommodations for

qualified workers with disabilities. The Civil Rights Act of 1991 provides for compensatory and punitive damages in cases of discrimination. The Uniformed Services Employment and Reemployment Rights Act of 1994 requires that employers reemploy service members who left jobs to fulfill military duties. Under the Genetic Information Nondiscrimination Act (GINA) of 2008, employers may not use genetic information in making decisions related to the terms, conditions, or privileges of employment.

LO3 Identify the federal agencies that enforce equal employment opportunity, and describe the role of each.

The Equal Employment Opportunity Commission is responsible for enforcing most of the EEO laws, including Title VII and the Americans with Disabilities Act. It investigates and resolves complaints, gathers information, and issues guidelines. The Office of Federal Contract Compliance Procedures is responsible for enforcing executive orders that call for affirmative action by companies that do business with the federal government. It monitors affirmative-action plans and takes action against companies that fail to comply.

LO4 Describe ways employers can avoid illegal discrimination and provide reasonable accommodation.

Employers can avoid discrimination by avoiding disparate treatment of job applicants and employees, as well as policies that result in disparate impact. Companies can develop and enforce an EEO policy coupled with policies and practices that demonstrate a high value placed on diversity. Affirmative action may correct past discrimination, but quota-based activities can result in charges of reverse discrimination. To provide reasonable accommodation, companies should recognize needs based on individuals’

religion or disabilities. Employees may need to make such accommodations as adjusting schedules or dress codes, making the workplace more accessible, or restructuring jobs.

- LO5** Define sexual harassment, and tell how employers can eliminate or minimize it.

Sexual harassment is unwelcome sexual advances and related behavior that makes submitting to the conduct a term of employment or the basis for employment decisions or that interferes with an individual's work performance or creates a work environment that is intimidating, hostile, or offensive. Organizations can prevent sexual harassment by developing a policy that defines and forbids it, training employees to recognize and avoid this behavior, and providing a means for employees to complain and be protected.

- LO6** Explain employers' duties under the Occupational Safety and Health Act.

Under the Occupational Safety and Health Act, employers have a general duty to provide employees a place of employment free from recognized safety and health hazards. They must inform employees about

hazardous substances, maintain and post records of accidents and illnesses, and comply with NIOSH standards about specific occupational hazards.

- LO7** Describe the role of the Occupational Safety and Health Administration.

The Occupational Safety and Health Administration publishes regulations and conducts inspections. If OSHA finds violations, it discusses them with the employer and monitors the employer's response in correcting the violation.

- LO8** Discuss ways employers promote worker safety and health.

Besides complying with OSHA regulations, employers often establish safety awareness programs designed to instill an emphasis on safety. They may identify and communicate hazards through the job hazard analysis technique or the technic of operations review. They may adapt communications and training to the needs of different employees, such as differences in experience levels or cultural differences from one country to another. Employers may also establish incentive programs to reward safe behavior.

KEY TERMS

affirmative action, p. 65

bona fide occupational qualification (BFOQ), p. 74

disability, p. 67

disparate impact, p. 74

disparate treatment, p. 73

EEO-1 report, p. 71

equal employment opportunity (EEO), p. 61

Equal Employment Opportunity Commission (EEOC), p. 63

four-fifths rule, p. 75

job hazard analysis technique, p. 85

material safety data sheets (MSDSs), p. 83

Occupational Safety and Health Act (OSH Act), p. 80

Occupational Safety and Health Administration (OSHA), p. 80

Office of Federal Contract Compliance Procedures (OFCCP), p. 72

reasonable accommodation, p. 77

right-to-know laws, p. 83

sexual harassment, p. 78

technic of operations review (TOR), p. 85

Uniform Guidelines on Employee Selection Procedures, p. 72

REVIEW AND DISCUSSION QUESTIONS

1. What is the role of each branch of the federal government with regard to equal employment opportunity?
2. For each of the following situations, identify one or more constitutional amendments, laws, or executive orders that might apply.
 - a. A veteran of the Vietnam conflict experiences lower-back pain after sitting for extended periods of time. He has applied for promotion to a supervisory position that has traditionally involved spending most of the workday behind a desk.
 - b. One of two female workers on a road construction crew complains to her supervisor that she feels uncomfortable during breaks, because the other employees routinely tell off-color jokes.
 - c. A manager at an architectural firm receives a call from the local newspaper. The reporter wonders how the firm wishes to respond to calls from two of its employees alleging racial discrimination. About half of the firm's employees (including all of its partners and most of its architects) are white. One of the firm's clients is the federal government.

3. For each situation in the preceding question, what actions, if any, should the organization take?
4. The Americans with Disabilities Act requires that employers make reasonable accommodations for individuals with disabilities. How might this requirement affect law enforcement officers and firefighters?
5. To identify instances of sexual harassment, the courts may use a “reasonable woman” standard of what constitutes offensive behavior. This standard is based on the idea that women and men have different ideas of what behavior is appropriate. What are the implications of this distinction? Do you think this distinction is helpful or harmful? Why?
6. Given that the “reasonable woman” standard referred to in Question 5 is based on women’s ideas of what is appropriate, how might an organization with mostly male employees identify and avoid behavior that could be found to be sexual harassment?
7. What are an organization’s basic duties under the Occupational Safety and Health Act?
8. OSHA penalties are aimed at employers, rather than employees. How does this affect employee safety?
9. How can organizations motivate employees to promote safety and health in the workplace?
10. For each of the following occupations, identify at least one possible hazard and at least one action employers could take to minimize the risk of an injury or illness related to that hazard.
 - a. Worker in a fast-food restaurant
 - b. Computer programmer
 - c. Truck driver
 - d. House painter

BUSINESSWEEK CASE

BusinessWeek Attacked by a Whale

A veteran SeaWorld trainer was rubbing a killer whale from a poolside platform when the 12,000-pound creature reached up, grabbed her ponytail in its mouth and dragged her underwater. Despite workers rushing to her, the trainer was killed.

Horrified visitors who had stuck around after a noon-time show watched the animal charge through the pool with the trainer in its jaws. Workers used nets as an alarm sounded, but it was too late. Dawn Brancheau had drowned. It marked the third time the animal had been involved in a human death.

Brancheau’s interaction with the whale appeared leisurely and informal at first to audience member Eldon Skaggs. But then, the whale “pulled her under and started swimming around with her,” Skaggs told *The Associated Press*.

Some workers hustled the audience out of the stadium while the others tried to save Brancheau, 40.

Skaggs said he heard that during an earlier show the whale was not responding to directions. Others who attended the earlier show said the whale was behaving like an ornery child.

But [Chuck] Tompkins [head of animal training at all SeaWorld parks] said the whale had performed well in the show and that Dawn was rubbing him down as a reward for doing a good job. “There wasn’t anything to indicate that there was a problem,” Tompkins told the CBS “Early Show.”

Because of his size and the previous deaths, trainers were not supposed to get into the water with Tilikum, and only about a dozen of the park’s trainers worked with him. Brancheau had more experience with the 30-year-old

whale than most. She was one of the park’s most experienced trainers overall.

A SeaWorld spokesman said Tilikum was one of three orcas blamed for killing a trainer in 1991 after the woman lost her balance and fell in the pool at Sealand of the Pacific near Victoria, British Columbia. Steve Huxter, who was head of Sealand’s animal care and training department then, said he’s surprised it happened again. He says Tilikum was a well-behaved, balanced animal.

Tilikum was also involved in a 1999 death, when the body of a man who had sneaked by SeaWorld security was found draped over him. The man either jumped, fell or was pulled into the frigid water and died of hypothermia, though he was also bruised and scratched by Tilikum.

According to a profile of Brancheau in the *Sentinel* in 2006, she was one of SeaWorld Orlando’s leading trainers. Brancheau worked her way into a leadership role at Shamu Stadium during her career with SeaWorld, starting at the Sea Lion & Otter Stadium before spending 10 years working with killer whales, the newspaper said.

Bill Hurley, chief animal officer at the Georgia Aquarium—the world’s largest—said there are inherent dangers to working with orcas, just as there are with driving race cars or piloting jets.

“In the case of a killer whale, if they want your attention or if they’re frustrated by something or if they’re confused by something, there’s only a few ways of handling that,” he said. “If you’re right near pool’s edge and they decide they want a closer interaction during this, certainly they can grab you.”

And, he added, “At 12,000 pounds there’s not a lot of resisting you’re going to do.”

SOURCE: Excerpted from Mike Schneider, “Whale Drags Trainer off Platform in Fatal Attack,” *BusinessWeek*, February 25, 2010, www.businessweek.com.

Questions

1. React to Bill Hurley’s comment that some jobs, like race car driver, are inherently dangerous. Do some employees simply have to accept the risk of death? If so, what is the employer’s responsibility, if any, with regard to the safety of such jobs?
2. How can human resource management contribute to a lower risk of death among trainers at a facility such as SeaWorld? Consider the various HR functions, such as employee selection and training, and how they might contribute to this goal.
3. Imagine that you worked in SeaWorld’s human resources department when this incident occurred. What are some actions that you would want your department to take at that time or in the months afterward?

Case: Walmart’s Discrimination Difficulties

Perhaps it shouldn’t be a surprise, since it is the largest private employer in the United States, but Walmart periodically has made headlines because someone has accused the discount retailer of discrimination. For instance, the company not long ago reached a settlement in a federal lawsuit that charged the company with racial discrimination. According to the class-action lawsuit, thousands of black applicants were repeatedly denied jobs as truck drivers over a period of seven years. The settlement requires hiring some of these individuals and notifying others as positions become available. Walmart also promised that it would try harder to recruit minorities.

A more recent settlement involved allegations of discrimination against women. The Equal Employment Opportunity Commission charged the company with turning down female applicants to fill orders in its distribution center in London, Kentucky, even though they were at least as well qualified as the male applicants who were hired. According to the lawsuit, those whose names on job applications were clearly female were not considered for the positions. The basis for the conclusion was that there was a statistically significant pattern of hiring males and turning down females.

A female job applicant added details of her experience: Brenda Overby said an interviewer asked her if she could lift a 150-pound bag of potatoes over her head. She said no, and she recalled later that the interviewer responded that “women weren’t needed” to work in the warehouse. Overby went on to find a warehouse job at another company, performing work similar to what Walmart required.

In this settlement, Walmart agreed to pay \$11.7 million, most of it to be distributed among the plaintiffs, and

to hire women for 50 of the warehouse’s order-filling positions, as well as every other position of the next 50 that become available. It also agreed to avoid discrimination, to make hiring decisions based on validated interview questions, and to give its employees training in how to avoid discrimination.

As it faces these challenges among hourly employees, Walmart is also tackling the challenge of bringing more diversity to its management ranks. The company has assembled a women’s council consisting of 14 members from each of the retailer’s global markets, tasked with finding ways to bring in more female managers. So far, about one-fourth of Walmart’s senior managers are women. This statistic is surprising, considering that the company has said about 8 out of 10 Walmart shoppers are women.

SOURCES: “Bias Suit Settlement,” *MMR*, July 13, 2009, Business & Company Resource Center, <http://galenet.galegroup.com>; Equal Employment Opportunity Commission, “Walmart to Pay More than \$11.7 Million to Settle EEOC Sex Discrimination Suit,” news release, March 1, 2010, <http://www1.eeoc.gov>; Bill Estep and Dori Hjalmarson, “Wal-Mart Will Pay Millions in Bias Case,” *Lexington Herald-Leader*, March 3, 2010, Business & Company Resource Center, <http://galenet.galegroup.com>; and Matthew Boyle, “Wal-Mart Vows to Promote Women,” *BusinessWeek*, June 5, 2009, www.businessweek.com.

Questions

1. According to this case, which employment laws has Walmart been accused of violating? How might it have avoided those charges?
2. Which challenge do you think will be more difficult for Walmart: diversifying its top-management ranks or ending charges of discrimination? Why?
3. Do you think more diversity among its executives would help Walmart avoid problems with discrimination? If so, how? If not, why not?



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Review

- Chapter learning objectives
- Review HR Forms: EEOC Form 100: Employer Information Report and OSHA Form 300A: Summary of Work-Related Injuries and Illnesses
- Test Your Knowledge: Comparing Affirmative Action, Valuing and Managing Diversity

Application

- Manager's Hot Seat segment: "Office Romance: Groping for Answers"
- Video case and quiz: "Working through a Medical Crisis"
- Self-assessments: What Do You Know about Sexual Harassment? and Appreciating and Valuing Diversity
- Web exercise: Equal Employment Opportunity Commission
- Small-business case: Medical-Testing Company Flunks the Fair-Employment Test

Practice

- Chapter quiz

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