

Chapter 3

Ensuring Equal Employment Opportunity and Safety

A MANAGER'S PERSPECTIVE

ALEX RETURNS TO HIS OFFICE AFTER MEETING WITH JASMINE, ONE OF HIS MOST VALUED TEAM MEMBERS. JASMINE JUST INFORMED ALEX THAT SHE WILL BE MAKING A FORMAL CLAIM OF SEXUAL HARASSMENT. BOB, A MEMBER OF THE SAME MANUFACTURING TEAM AS JASMINE—THE RED TEAM—HAS REPEATEDLY BEEN MAKING SEXUAL COMMENTS THAT CAUSE JASMINE TO FEEL UNCOMFORTABLE. JASMINE MENTIONED THIS TO ALEX A FEW WEEKS AGO, BUT ALEX HOPED THE ISSUE WOULD JUST GO AWAY. NOW HE IS WORRIED THAT HIS RESPONSE WAS NOT WHAT IT SHOULD HAVE BEEN. TODAY HE ASSURED JASMINE THAT HE WOULD SEE TO IT THAT THERE WAS NO RETALIATION FOR MAKING A HARASSMENT CLAIM. HOWEVER, ALEX WONDERS IF THINGS WOULD HAVE GOTTEN THIS BAD IF HE HAD STEPPED IN SOONER.

Alex knows that he should have tried to help resolve Jasmine's concern. Yet, he is unclear whether the company is responsible for Bob's actions. Does he as a supervisor have a responsibility to reprimand Bob for making sexual comments? Are there laws

that protect people from having to work in environments that make them uncomfortable? Is there real harm as long as Bob is not physically touching Jasmine?

As Alex thinks about legal issues, he remembers seeing an accident report for the blue team. Tim, one of the team members, received an injury while cleaning a piece of equipment. He tried a shortcut procedure that was not approved by company policy. In the accident report, however, Tim stated that he did not know there was a specific policy about how the equipment was to be cleaned. Tim will probably not be able to work for the next two weeks. Is the company required to pay him for the work he misses during the two weeks? Is the company responsible for the medical bills? After talking to Jasmine, Alex is now wondering if Tim might sue the company.

Alex also remembers a story he recently saw on the morning news. A nearby company is having legal difficulties because minority workers are not





THE BIG PICTURE *A Number of Laws and Court Decisions Protect Workers from Discrimination and Unsafe Working Conditions*

being promoted. Alex thinks about his company and realizes that there are very few employees who are racial minorities. He wonders if having a more diverse workforce would be helpful. Since he personally thinks diversity might be good, Alex also wonders what he could do to better promote diversity. What could he do to better enhance work opportunities for groups of people that have not historically been hired?

Of all the things he has faced as a supervisor, Alex realizes that legal issues are the things he fears most. What are his responsibilities? He remembers receiving some training when he was promoted from the line. It seemed like common sense at the time. But maybe he should review the material now that he has gained experience to help him understand what things are really important.



WHAT DO YOU THINK?

Suppose you are having a conversation with Alex. He is trying to remember the training he received and makes the following statements. Which of the statements do you think are true?

- T OR F** People who are victims of sexual harassment can sue the person who harassed them but not the company.
- T OR F** Companies must hire minority workers even when they are not as qualified as other people who are applying for the same job.
- T OR F** A company can have legal problems when it doesn't hire enough women, even if it treats men and women the same.
- T OR F** Men and women must be paid the same when they perform the same job.
- T OR F** Employees have a right to know about any hazardous chemicals they are exposed to at work.

LEARNING OBJECTIVES

After reading this chapter you should be able to:

- LEARNING OBJECTIVE 1** Explain how Title VII of the Civil Rights Act of 1964 and its amendment by the Civil Rights Act of 1991 protect workers against discrimination.
- LEARNING OBJECTIVE 2** Describe how major laws such as the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Family and Medical Leave Act protect workers.
- LEARNING OBJECTIVE 3** Describe different methods for increasing workplace diversity, including opportunity enhancement, equal opportunity, tiebreak, and preferential treatment.
- LEARNING OBJECTIVE 4** Explain the laws and practices concerning employee safety, including (a) the Occupational Safety and Health Act and (b) workers' compensation.
- LEARNING OBJECTIVE 5** Describe specific practices that can help an organization comply with legal guidelines and promote good health and safety practices.

Why Is It Important to Understand Legal and Safety Issues?

People sometimes criticize human resource departments for being too concerned about following laws. However, a major part of the employee advocate role is ensuring that people are treated fairly. The human resource function can provide important guidance for treating employees fairly and helping organizations comply with laws. Complying with laws, in turn, can save organizations a great deal of money—money they would have to spend to fight legal accusations or to try to repair damaged reputations.

The importance of fulfilling legal responsibilities often becomes apparent only when things go wrong. Consider that many well-known companies have faced lawsuits over employment discrimination. Most of these cases have been settled outside of legal courts, but a substantial amount of money is usually spent defending and settling claims. Some of the most widely publicized and expensive examples of discrimination settlements include those made by State Farm Insurance, Coca-Cola, Texaco, Shoney's, and Home Depot. Some of these high-profile cases involved alleged sex discrimination. For instance, State Farm paid \$240 million to settle a case brought by 800 women employees. Home Depot took a charge of \$104 million to settle claims that women were denied jobs and promotions. Other cases involve allegations of racial discrimination. Settling racial lawsuits cost Texaco \$176 million, Coca-Cola \$192 million, and Shoney's \$132 million.¹

In 2001, six former and current employees filed a large discrimination case against Walmart. These unhappy employees claimed that Walmart denied women equal pay and opportunities for promotion. The case, however, became a major story in 2004 and again in 2007 when judges ruled that it could proceed as a class-action suit. In fact, the case continued into 2010 with the parties still arguing about the appropriateness of the decision to allow a class-action suit. This is an important issue, because class-action status means that anyone who might have been harmed by Walmart's alleged actions—in this case, women applying for jobs or working at Walmart after December of

1998—could choose to join forces and be represented together in the case. Estimates suggest that as many as 1.6 million women could ultimately be involved. Some early estimates placed the possible cost of defending and settling the case as high as \$8 billion.² A different lawsuit alleging racial discrimination for truck drivers was settled in 2009 for \$17.5 million.

The women and their attorneys used a number of statistics to make their case. For instance, they pointed out that women make up over two-thirds of the hourly workers at Walmart but only about one-third of the managers. They also argued that men earn promotions to assistant manager in less than three years, but it takes women over four years to earn similar promotions. They claimed payroll records show that women doing hourly jobs take home over \$1,000 less each year than men doing comparable jobs; for women managers, the difference is said to be over \$14,000. The judge who allowed the class-action suit determined that these statistics were enough evidence of potential discrimination for a lawsuit to go forward.³

Walmart spokespersons denied the allegations. They argued that fewer women than men apply for promotions and that pay differences were the result of women not performing the same jobs as men. Walmart also embarked on a proactive campaign to address its employment practices. The company says that it has established a number of programs to advance the causes of women. It recently evaluated and restructured its pay scales, and it now posts job openings through an electronic system. In addition, the CEO announced a more affordable health plan, and executives now receive bonuses for meeting diversity goals.⁴

The company also mounted a national television campaign that aggressively publicized the millions of dollars Walmart gives to community organizations and featured long-time employees describing the benefits of working at Walmart. Walmart also created a website to tell its side of the story. All these measures may help Walmart to successfully defend itself, but the cost will have been very high. In the end, it seems safe to conclude that Walmart would prefer that the legal action had never begun.⁵



Building Strength Through HR

RESPONDING TO DISCRIMINATION CLAIMS

Walmart, Coca-Cola, State Farm Insurance, and other large employers have learned the importance of preventing and quickly responding to allegations of discrimination. Organizations accomplish these goals by

- Developing and enforcing clear policies against discrimination.
- Adopting programs that provide employment opportunities for groups that have been historically disadvantaged.
- Using advertising and public relations campaigns to improve the image of their company as a desirable place to work.



Of course, there are no magic methods for ensuring that at least some employees will not feel they are victims of discrimination. But being familiar with employment laws reduces the likelihood of facing discrimination charges. Thus, an important part of effective human resource management is knowing the laws and then teaching managers and others involved in personnel decisions how to comply with legal requirements.

LEARNING OBJECTIVE 1

What Is the Main Law Relating to Discrimination and Employment?

Who is protected from discrimination? The cases mentioned so far have dealt with racial and sexual discrimination. But what happens if a company has a policy prohibiting employees from having long hair? What about a policy against wearing a nose ring? Can a company have a policy against hiring college students?

Although there seem to be laws to protect everyone, in reality federal laws in the United States only protect a few specific groups of people. In most cases, people can only claim discrimination based on immutable characteristics, that is, traits they cannot reasonably change if they really want a job.

Immutable characteristics

Personal characteristics that cannot reasonably be changed, such as race and sex.

Immutable characteristics usually include sex, race, age, and religion. Specific laws have been enacted to protect people in each of these categories from discrimination. Laws to protect people with certain characteristics are not confined to the United States. Figure 3.1 shows protected classes of employees in a number of different countries.

In the United States the Constitution and its amendments provide people with some assurance that they will be treated fairly. However, protection

Common Protected Classes										
	Race	Sex	National/ Ethnic Origin	Color	Age	Religion	Disability	Political Opinion	Sexual Orientation	Marital/ Family Status
Canada	X	X	X	X	X		X	X	X	X
Chile	X	X	X	X	X	X		X		X
Germany	X	X	X			X	X		X	
India		X					X			
Italy	X	X			X	X	X	X	X	
Japan		X	X		X	X	X	X		
Kenya	X	X	X	X		X	X	X		
Korea	X	X	X	X	X	X	X	X	X	X
South Africa	X	X	X	X	X	X	X	X	X	X
Spain	X	X	X		X	X	X	X	X	X
Taiwan	X	X	X			X	X	X		X
United Kingdom	X	X	X	X	X		X			X
United States	X	X	X	X	X	X	X			

Figure 3.1 Protected Classes of Employees in Various Countries. *Source:* Adapted from Brett Myers et al., “Industrial and Organizational Psychology,” 1 (2008): 231.

Table 3.1

Major U.S. Employment Laws

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

from discrimination comes primarily from specific laws, most of which were enacted in the last 50 years. Table 3.1 presents an overview of major federal laws related to discrimination and employment. States and even cities have acts that provide additional protection in many cases. For instance, most states have laws against discrimination based on marital status, and a number of states prohibit discrimination based on sexual orientation.⁶ These state laws can provide additional guidelines, but they cannot conflict with the concepts set forth by federal acts. If a state law does conflict with a federal law, the federal law rules.

In the realm of employment and discrimination, one law is the basis for a majority of legal issues. That law is Title VII of the Civil Rights Act of 1964. We discuss Title VII in this section, along with an amendment known as the Civil Rights Act of 1991.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

The most important law affecting human resource practices, the Civil Rights Act of 1964,⁷ was passed by Congress and signed into law as a result of the civil rights movement of the 1960s, which sought to end racial discrimination. Being a law passed by the U.S. Congress, the Civil Rights Act of 1964 is of course a federal law. The part of the act that specifically applies to equal opportunity in employment is **Title VII**. Thus, people working in human resources often refer to the Civil Rights Act of 1964 simply as Title VII.

Given that it was passed as part of a larger effort to end racial discrimination, it seems obvious that Title VII should protect the interests of racial minorities. It does more than that, however. Title VII provides protection to people based on five specific traits: race, color, national origin, religion, and sex. Title VII was written to protect people of all races, colors, national origins, religions, and of either gender. In practice, however, the law is usually applied for the protection of people who have been historically disadvantaged. This most often includes women and members of minority racial groups. These groups are referred to as **protected classes**, because they represent a collection of individuals specifically protected from discrimination by the wording and intent of Title VII.

Most, but not all, companies are required to comply with Title VII. When the Civil Rights Act was originally passed in 1964, lawmakers were concerned that it would place an unreasonable burden on small employers who did not have enough resources to make sure they were in compliance. The law was thus limited to companies with 25 or more employees. It has since been

Title VII

The portion of the Civil Rights Act of 1964 that focuses specifically on employment discrimination.

Protected classes

Groups of people, such as racial minorities and women, who are protected against discrimination by law.

Equal Employment Opportunity Commission (EEOC)

A federal agency with responsibility to oversee, investigate, and litigate claims of employment discrimination.

Discrimination

In the context of employment, unfair treatment that occurs when people from particular groups are not given the same employment opportunities as people in other groups.

Equal employment opportunity

Absence of discrimination in the workplace; the condition in which people have an equal chance for desirable employment regardless of belonging to a certain race, gender, or other group.

Disparate treatment

The practice of treating job applicants and employees differently based on race, gender, or some other group characteristic.

amended to exclude only companies with fewer than 15 employees. Another exemption is religious institutions. Churches are not required to comply with the guidelines of Title VII. Even with these exceptions, however, Title VII covers almost all employees who work for either private or public organizations. Furthermore, in cases of exemption, state laws often provide the same protection as Title VII. Thus, a company that has too few employees to come under federal Title VII may still have to comply with a similar state law.

A major part of Title VII was creation of the **Equal Employment Opportunity Commission (EEOC)**. The EEOC is a federal agency in charge of administrative and judicial enforcement of federal civil rights laws. The commission is led by five commissioners who are appointed by the president of the United States. The president also appoints a general counsel who conducts and oversees litigation. A large number of people work under the direction of these leaders in regional offices. An individual who feels that he or she has been the victim of employment discrimination can file a complaint with the EEOC. EEOC staff members research the claim and try to help resolve the complaint. Where the complaint cannot be resolved, the EEOC can sometimes take the case to court, where it proceeds with a lawsuit on behalf of the alleged victim or victims.

In a broad sense, Title VII protects people from discrimination. **Discrimination** in the context of employment occurs when not all people are given the same opportunity for employment and promotions. In this sense, Title VII requires **equal employment opportunity**, meaning that people should be given an equal chance to obtain employment regardless of their race, color, national origin, gender, or religion. Specifically, Title VII offers protection from three distinct types of discrimination: disparate treatment, adverse impact, and harassment.

Disparate Treatment

What happens when a restaurant decides to hire women but not men to serve food? Is it fair to make being female a requirement for doing the job? Does it violate Title VII? What if the restaurant is trying to differentiate itself by providing a certain type of atmosphere? Should the government step in and help men who want to work as servers? These issues were hotly debated a number of years ago when a lawsuit was filed against the Hooters restaurant chain. Hooters has a company policy of having food served by women dressed in shorts and small T-shirts. The company openly denies men the opportunity to apply for server positions. A few men who wanted to work as servers complained to the EEOC, which brought legal action against Hooters. The case was eventually settled out of court, but it illustrates an important legal principle.⁸

Having a policy against hiring men is an example of **disparate treatment**, which is the specific practice of treating certain types of people differently than others. In the Hooters case, men were treated differently than women. A more common example might be asking some people but not others certain interview questions. For instance, suppose that an interviewer asks women applicants if they have childcare arrangements that will enable them to be available to work when scheduled. If the interviewer does not ask the same question of men, disparate treatment has taken place. Holding women to a different standard than men is disparate treatment. Another example is requiring job applicants from a certain racial group to pass a problem-solving test when no such requirement is in place for people from other racial groups. In most cases, Title VII prohibits disparate treatment. There are, however, some instances in which disparate treatment is allowed.

Suppose, for example, that a prison system that houses men wants to hire only male guards. Should the prison be allowed to refuse applications from women? One reason an exclusion might be allowed is that the presence of women to guard convicted rapists could create a dangerous situation for the women guards, the prisoners, and other male guards.⁹ In this case, Title VII may allow men and women job applicants to be treated differently. The entertainment industry provides another example. Only males might be given the opportunity to perform male roles in theater productions, and only females might perform female roles. In both cases, being one gender rather than the other is seen as a **bona fide occupational qualification (BFOQ)**. The idea of a BFOQ usually applies to gender—and in some cases religion—and means that it is reasonable to assume that only a person with that particular characteristic can do the job.

Bona fide occupational qualification (BFOQ)

Characteristic of members of a specific group that is necessary to perform a certain job.

Let's return to the Hooters case, which, as noted, was settled before it actually went to court. The settlement required the restaurant to give men an opportunity to work in a different job that was seen as being similar to the waitress position.¹⁰ Had a trial been conducted, a central issue would have been the type of job being performed. If the job was simply to serve food, then the restaurant would most likely be in violation of Title VII. It's difficult to think of a good reason why men could not serve food. In contrast, if the job was to provide a particular form of sex entertainment, then BFOQ would be a possible defense for not hiring men. No man could provide the particular type of entertainment Hooters required. Examples of BFOQ are rare. In most cases as noted, disparate treatment is a violation of Title VII.

What can a company do to protect itself against claims of disparate treatment? In most cases, it must ensure consistent treatment for all employees. Company policies and practices should treat everyone the same. Fair treatment has other benefits as well. Treating people differently because of their race, sex, or religion is not only illegal but also reduces motivation. People are less likely to work hard when they see themselves or others being treated in unfavorable ways.¹¹

Adverse Impact

What would happen if your professor decided to base grades on students' height? On average women would receive lower grades than men. Such an act might seem unfair, but it would not be disparate treatment. Grades for men and women would be based on the same thing: height. Nevertheless, basing grades on height would create unequal results for men and women. Discrimination of this sort is called **adverse impact** discrimination. Adverse impact is subtler than disparate treatment and occurs when a company's policies treat all applicants the same but result in different employment opportunities for different groups.

Adverse impact

Discrimination that results from employer practices that are not discriminatory on their face but have a discriminatory effect.

An example of adverse impact occurred years ago when airlines had height requirements for flight attendants. Everyone had to meet a certain standard of height, so all applicants were treated the same. However, using height to make selection decisions had the effect of screening out most Asian applicants. Another example occurred approximately 40 years ago when a power company began to require laborers to have a high school diploma.¹² Educational opportunities were not the same for members of different races. As a result of requiring a diploma, the power company hired a very small number of minority applicants. There was no disparate treatment, as everyone was required to have a diploma. Yet requiring a diploma had the effect of screening out a greater proportion of minority applicants.

Although disparate treatment is normally a violation of Title VII, the legality of adverse impact is less clear. The very purpose of employee selection is to separate people so that those who are less qualified are not hired. Problems arise when certain groups are screened out at a higher rate than others. Still, screening out more people from some groups than others isn't by itself necessarily a violation of Title VII.

An important key is whether the selection method accurately identifies people who can do the job better. Companies do not violate the law when they hire fewer applicants from a protected class if they use appropriate methods to make hiring decisions. A common defense for adverse impact is thus validity. **Validity** is shown when the measures used to select employees provide assessments that accurately identify the people most likely to succeed.

Potential victims of discrimination are usually unable to determine whether a company's selection methods are valid. The courts have thus placed the burden of proof in adverse impact cases on the company. The potential victim of discrimination must simply show that members of the protected class are hired, promoted, or laid off at a different rate than others. For example, the potential victim might show that the company hires a larger percentage of men than women. The burden of proof would then shift to the company to demonstrate that its selection procedures are valid—that is, that the procedures identify the people who are best able to do the job.¹³

Note, too, that the courts have not required companies to employ exactly the same proportion of people from all categories. Rather, they have adopted the **four-fifths rule**. This rule is violated when the percentage of people selected from one group is less than 80 percent of the percentage of people selected from the best-represented group. For instance, suppose a company selects 50 percent of male applicants but selects less than 40 percent (four-fifths of 50 percent) of female applicants. Under the four-fifths rule, a potential victim of adverse impact discrimination would simply need to show that the company selects people from the protected class at this lower rate. That doesn't necessarily mean the company is in violation of Title VII. It does mean that the burden of proof falls to the company, which is required to demonstrate the validity of its selection procedures. The typical legal proceedings in adverse impact cases are shown in Figure 3.2.

Validity

The quality of being justifiable. To be valid, a method of selecting employee must accurately predict who will perform the job well.

Four-fifths rule

Evidence of adverse impact that occurs when the hiring rate of one group is less than 80 percent of the hiring rate of another group.

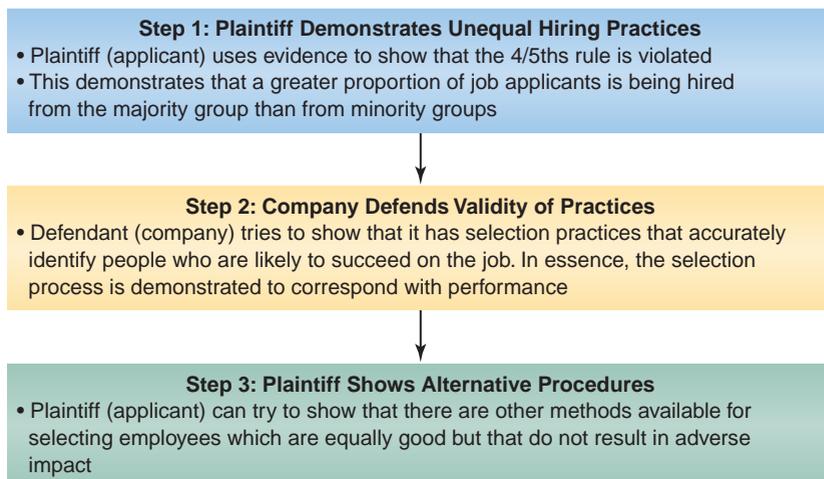


Figure 3.2 Adverse Impact Case Proceedings.

The example in the “How Do We Know?” feature describes how companies that use good human resource practices are less likely to be seen as discriminatory. The potential value of effective HR is illustrated by the case mentioned earlier in which laborers were required to have a high school diploma clearly illustrates the purposes and procedures associated with adverse impact. The company, Duke Power, established the policy near the time that Title VII was passed into law. Because of the policy, many minority group members were barred from applying for a position they desired. These people believed that requiring a diploma was nothing more than a pretext; in their view, the company’s real goal was to avoid hiring members of the minority group. They produced statistics showing that only a small percentage of people from their protected class were hired, even though a large percentage of white applicants were hired. The burden of proof then shifted, and the power company was required to demonstrate that having a diploma was indeed necessary to successfully perform the job. When the company was unable to show an adequate link between having a diploma and job performance, the case was decided in favor of the minority applicants.



How Do We Know?

DO COURTS GIVE COMPANIES CREDIT FOR GOOD HR PRACTICES?

What can a company do to reduce the chances of being found guilty of discrimination? Does it help to follow good human resource practices? Maury Buster, Philip Roth, and Philip Bobko answer this question in a study that describes a scientific method for ensuring that hiring practices are related to job performance.

The process these researchers describe is used to determine the minimum qualifications for jobs. Minimum qualifications often include certain educational degrees and job experience. Such requirements are common, but an important question is whether they are really necessary. The researchers’ process for linking minimum qualifications to job performance involves obtaining expert ratings and includes three steps.

1. People currently doing the job and their supervisors generate statements of minimum qualifications.
2. These statements are placed into a questionnaire, and experts in the field rate each potential statement with respect to whether the qualifications it describes are truly necessary for a minimally acceptable candidate on the first day of the job.
3. The statements rated most favorably are then used in determining minimum qualifications for job applicants.

The three-step procedure was used to develop minimum qualifications for an engineering position. The problem was that use of the qualifications resulted in adverse impact—fewer members of some minority groups were hired. When the case went before a federal court, however, the court accepted the three-step process as an appropriate method for determining whether minimum qualifications for education and experience were necessary.

The Bottom Line. Federal courts do indeed look favorably on the use of scientific practices to show that hiring methods result in choosing the most qualified applicants. Professor Buster and colleagues conclude that scientific principles can be used to develop selection methods that properly screen applicants, even when adverse impact exists.

Source: Maury A. Buster, Philip L. Roth, and Philip Bobko, “A Process for Content Validation of Education and Experienced-Based Minimum Qualifications: An Approach Resulting in Federal Court Approval,” *Personnel Psychology* 58 (2005): 771–799.

Duke Power could have benefitted from better development of employee selection practices. The most critical practice is to make sure a company uses valid methods to select employees. The results of tests, interviews, and other measures must be linked to differences in job performance, as described in Chapter 6. Employers with good human resource practices not only treat employees better but are also able to better defend themselves against claims of discrimination.

The legal requirement of showing a relationship between selection practices and job performance is consistent with actions that increase profitability. Why incur the effort and expense of testing and evaluating job applicants if the measures do not provide information that helps make better selection decisions? A company that doesn't check to make sure its selection procedures accurately identify the applicants most likely to succeed on the job may be wasting its resources as well as unfairly discriminating against applicants from protected classes.

Harassment

What if you are required to work with someone who says and does things that make you uncomfortable? Do you have the right to ask that person to stop? Can you require the company to create an environment that is less harmful to you? These questions get at the notion of **harassment**, which occurs when an employee is persistently annoyed or alarmed by the improper words or actions of other people in the workplace, such as supervisors or coworkers.

Whether harassment is illegal depends on what the person who bothers you is saying and doing. In terms of Title VII, harassment is illegal if the harassing behavior is related to any of the five protected classes. Most cases of harassment, however, involve behavior directed at an employee because of his or her gender. This kind of harassment is known as **sexual harassment**. According to the EEOC, which monitors compliance with Title VII, "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, 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."¹⁴ Because sexual harassment has received a great deal of attention and is the kind most commonly discussed, we'll focus on it here. Table 3.2 provides a list of specific guidelines for dealing with sexual harassment.

The courts have defined two types of sexual harassment. One type is **quid pro quo** (literally, "something for something") sexual harassment, which occurs when an employee is told that continued employment or advancement depends on sexual favors. This type of harassment occurs, for example, if a supervisor informs an employee that she will be promoted only if she engages in sexual activities with him. Quid pro quo sexual harassment is fairly straightforward. It is illegal to make employment consequences dependent on sexual favors. Even a single quid pro quo statement by a supervisor is enough to warrant a sexual harassment action under Title VII.

Quid pro quo harassment can also affect employees who are not directly propositioned. For instance, suppose two people are competing for a promotion and one engages in sexual activities with the supervisor in order to obtain the position. Does this constitute harassment for the employee who did not

Harassment

In the workplace, improper actions or words of coworkers that cause an employee to feel persistently annoyed or alarmed.

Sexual harassment

In the workplace, improper words or actions that are sexual in nature or that are directed toward workers of a specific sex or sexual orientation.

Quid pro quo

In the context of sexual harassment, a form of harassment that makes continued employment and advancement contingent upon sexual favors.

Table 3.2

Sexual Harassment Guidelines

Define harassment and affirmatively express company disapproval of harassing actions.
Clearly define the sanctions and penalties for violation of the harassment policy.
Inform employees of their legal rights, including how to make an EEOC claim.
Establish a grievance procedure that is sensitive to the rights of all parties.
Widely communicate the plan and rapidly investigate and resolve complaints.

Source: Adapted from Arthur Gutman, *EEO Law and Personnel Practices*, 2nd ed. (Thousand Oaks, CA: Sage, 2000), p. 126. [Reprinted with permission.]

receive the promotion? The courts have ruled that it does. An employee who does not receive a promotion may be a victim of harassment if he or she can show that the person who did receive the promotion received it as the result of a sexual relationship.¹⁵

The second type of sexual harassment is labeled **hostile environment** harassment. This type of harassment occurs when comments or behavior in the workplace have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. For example, continually subjecting a woman (or a man) to unwelcome sexual remarks can create a hostile environment. The person making the remarks need not be a supervisor.

An important issue in harassment cases has been whether the company should be liable for the actions of an employee or supervisor who has engaged in harassment. Some early court rulings suggested that only the individuals doing the harassing would be accountable. However, a number of harassment cases made their way to the Supreme Court, which clearly established that organizations are indeed liable for the actions of their employees.¹⁶ If the organization knows or should have known about the harassment, then the victim of harassment can look to the company to pay damages.

Most people would agree that continually asking someone for sexual favors or improperly touching someone represents harassment, but the effects of other actions are less clear. What if male workers place pictures of nude women in the workplace? What if men tease women in a way that doesn't seem offensive to them but does seem offensive to the women? In these cases, it is sometimes difficult to determine whether actions represent violations of Title VII. A single isolated comment would not normally be enough to show a pattern of hostility. However, repeated comments and unwelcome requests do constitute harassment. Behavior that makes others feel uncomfortable is generally forbidden. In short, actions and comments become harassment when a reasonable person would interpret them as harassment. Victims need not show that the comments and actions make them completely incapable of performing their jobs, but only that the environment had a negative impact on their psychological well-being.¹⁷

Sexual harassment has been linked to a number of undesirable outcomes. Individuals who are harassed report decreased physical and mental health. They also have lower job satisfaction and are more likely to avoid tasks, be absent, and quit. Work groups where harassment occurs are also less productive.¹⁸ Individuals and organizations can thus benefit greatly from organizational policies and practices that stop harassment. What can a company do to keep harassment from occurring? As explained in the

Hostile environment

In the context of sexual harassment, a form of harassment that occurs when employees create an offensive environment in the workplace that interferes with an individual's ability to perform work duties.



How Do We Know?

WHO IS MOST LIKELY TO UNFAIRLY DISCRIMINATE?

When is unfair discrimination most likely to occur? Most of us think that some people are more likely than others to discriminate against women and minorities. We also think that discrimination is more likely in some circumstances than others. But who is most likely to discriminate, and when? A study by Jonathan Ziegert and Paul Hanges provides answers to these questions.

The researchers asked 103 undergraduate students to complete a number of measurement scales. One scale measured their implicit racial attitudes, which are attitudes and ingrained beliefs about race. Students also provided a measure of their motivation to control prejudice. People with higher motivation seek to hide their prejudices. About a month after completing these measures, students completed an exercise that asked them to evaluate potential job applicants. Some of the applicants were members of racial minorities. Students were also told to assume that they were working for a boss with certain preferences about hiring minority workers.

Students gave lower evaluations to minority job candidates when they were told that their supposed

boss preferred not to hire members of the minority group. This negative bias against recommending minority job candidates was highest for people with an implicitly negative attitude toward minorities. Students who were implicitly biased but were also motivated to control their prejudice were not as likely to give lower evaluations to minorities.

The Bottom Line. The organizational climate for prejudice is important. People seem less likely to discriminate when their supervisors establish a clear preference that everyone be treated equally. People who have subtle negative attitudes about minorities are more likely to discriminate than people who are not as biased. Yet these negative attitudes can be controlled when people consciously choose to control them. The authors conclude that in order to understand discrimination we need to assess both people's attitudes and their level of motivation to appear nonprejudiced.

Source: Jonathan C. Ziegert and Paul J. Hanges, "Employment Discrimination: The Role of Implicit Attitudes, Motivation, and Climate for Racial Bias," *Journal of Applied Psychology* 90 (2005): 553–562.

"How Do We Know?" feature, not all employees are equally likely to unfairly discriminate. More important, organizations can do things to reduce discrimination. Sexual harassment is less likely to occur when an organization has a climate of respect. Such a climate can be facilitated by formal procedures that provide guidelines for appropriate behavior, as well as channels for reporting harassment without fear of retaliation. Education can also help prevent harassment.¹⁹ Most organizations have thus outlined specific procedures for making sure that no unwanted sexual and racial comments and behavior occur in the workplace. Formal policies concerning harassment, as well as formal channels to communicate allegations of harassment, are important for demonstrating that the organization is taking reasonable care to eliminate unwanted behavior. Companies must also aggressively act when allegations are made. The accompanying "Technology in HR" feature describes how organizations are managing internet and email use.

THE CIVIL RIGHTS ACT OF 1991

The Civil Rights Act of 1991 created some important extensions of Title VII.²⁰ One significant issue concerned shifting of the burden of proof to companies accused of adverse impact discrimination. Normally, the burden of proof in a



Technology in HR

LEGAL ISSUES WITH INTERNET AND EMAIL USE

Widespread use of email messaging and the Internet has certainly made it easier to exchange information. This ease of information exchange can, however, create legal problems for organizations. Employees who might know better than to directly make a harassing remark often write inappropriate notes in email messages that get forwarded around the office.

A sense of anonymity might also encourage employees to post inappropriate sexual comments to electronic bulletin boards. Similar problems occur when employees create a hostile work environment by viewing pornographic material on company computers. A number of court decisions have established that organizations are responsible for offensive acts such as inappropriate email messages, sexually derogatory electronic board postings, and viewing of pornographic material.

Another potential legal liability arises when an organization allows employees to use company computers to share copyrighted material such as music and videos. Integrated Information Systems, a software company located in Arizona, paid the Recording Industry Association of America more than \$1 million to settle a claim that it had allowed employees to use its equipment to share illegal copies of music. The Motion Picture Association of America has also made it clear that it will prosecute corporations if they do not take steps to discourage and eliminate sharing of illegal video copies.

Of course, an important question is whether an employer has the right to access its employees' private email messages and associated computer content. The clear answer is yes. The courts have consistently ruled that employees have no right to privacy when it comes to communications produced on company time with company equipment. The very act of accepting employment provides the employer with permission to monitor employee communications. Employees should therefore not assume privacy for email messages and other electronic content created and sent with company equipment.



So what can an organization do to protect itself from problems that occur when employees misuse electronic communication? The first answer is that an organization needs a clear policy that describes acceptable uses of company computers and other equipment. This policy must prohibit messages and communications that are sexually, religiously, and racially offensive. Many companies also have policies that prohibit the use of peer-to-peer (P2P) technology that facilitates the transfer of illegal music and videos. In fact, some organizations are designing their computer systems to prevent the use of P2P software. Although these safeguards might eliminate the use of some helpful electronic tools, they are necessary to limit the liability that organizations assume for the acts of employees.

Sources: Daniel J. Langin, "Employer Liability for Employee Use of Peer-to-Peer Technology," *Journal of Internet Law* 9, no. 5 (2005): 17–20; Chauncey M. DePree, Jr., and Rebecca K. Jude, "Who's Reading Your Office E-mail? Is That Legal?" *Strategic Finance* 87, no. 10 (2006): 44–48.

lawsuit is on the plaintiff—the person bringing the suit. That means that it is the plaintiff's responsibility to show that the defendant committed a wrongful act. If the plaintiff can't meet this burden of proof, the defendant is not required to prove anything. However, the burden is somewhat different in employment discrimination cases.

Let's look briefly at the history of this issue to clarify what happened. Following passage of Title VII in 1964, the Supreme Court issued a number of rulings that essentially shifted the burden of proof to companies in discrimination cases. If the plaintiff could show adverse impact, then the company bore the responsibility for demonstrating that its hiring practices were not unfairly discriminatory. However, the makeup of the Court changed over time, and in the years leading up to 1991 the Court decided a number of cases that appeared to signal that the burden of proof should not be shifted to the company.²¹ To counter this trend, the 1991 act directly specified that the burden of proof rests with the company once a potential victim establishes that adverse impact exists.

Another question that was repeatedly debated in the courts in the 1980s was whether it was appropriate for companies to use different methods to score tests for people from different protected classes. When this practice, known as **race-norming**, is used, each person receives a score that only tells how he or she did in comparison with others of the same race or gender. The effect is to make some people rank higher than they otherwise would, since scores in their group are lower on average. The Civil Rights Act of 1991 made race-norming illegal. Now an individual's scores must be compared with all other scores, not just with the scores of members of his or her own group.

The 1991 act also changed the kind of damages that could be awarded in discrimination cases. Until 1991, companies found guilty of discrimination could only be held liable for the actual damages caused to employees; these actual damages might include such things as lost wages. The 1991 act provides for not only actual damages but also punitive damages. **Punitive damages** are payments designed to punish the company and can be substantially higher than actual damages. Many victims now receive punitive damages. For instance, a woman who brought a sex discrimination case against Merrill Lynch & Company received a \$2.2 million settlement that included not only back pay and lost earnings but also punitive damages against the company.²² The award was given by a board of arbitrators who determined that the company had failed to train and discipline employees who engaged in sexual harassment.

Finally, until 1991 judges heard employment cases, and potential victims could not ask for a jury trial. The 1991 act allows jury trials for employment discrimination cases. In many cases juries appear to be more willing than judges to award punitive damages. Allowing jury trials, along with awards of punitive damages, substantially changed the nature of employment law.

APPLICATION OF U.S. LAWS TO INTERNATIONAL EMPLOYERS

The application of Title VII and other employment discrimination laws can be complex for international employers. What laws apply if the employer is based in a foreign country? Do U.S. laws apply to U.S. citizens who are working in foreign countries? The trend toward increased globalization is making issues such as these increasingly important.

Race-norming

The practice of evaluating an applicant's score by comparing the score only with scores achieved by people of the same race.

Punitive damages

Payments ordered by courts that exceed actual damages and are designed to punish a defendant—for example, to punish a company for discrimination.

Figure 3.3 shows a decision tree that can be used to help determine whether U.S. discrimination laws apply to international employers. The first step is to determine whether the job is located in the United States. If it is, and if the employer is a U.S. company, then U.S. laws protect the employee holding that job against discrimination, as long as the employee is authorized to work in the United States. Protection may be limited if the employee entered the United States illegally or without permission to work. Even if the employer is not a U.S. company, discrimination laws generally apply to jobs located in the United States. An exception arises if a treaty or special status exempts the foreign employer from U.S. law. For example, an individual located in the United States but working for a foreign government may not be protected from discrimination because the employer is granted special diplomatic status.²³ This is a rare exception, so most employees working in the United States are covered by Title VII and other discrimination laws, even if the employer is a foreign-based company.

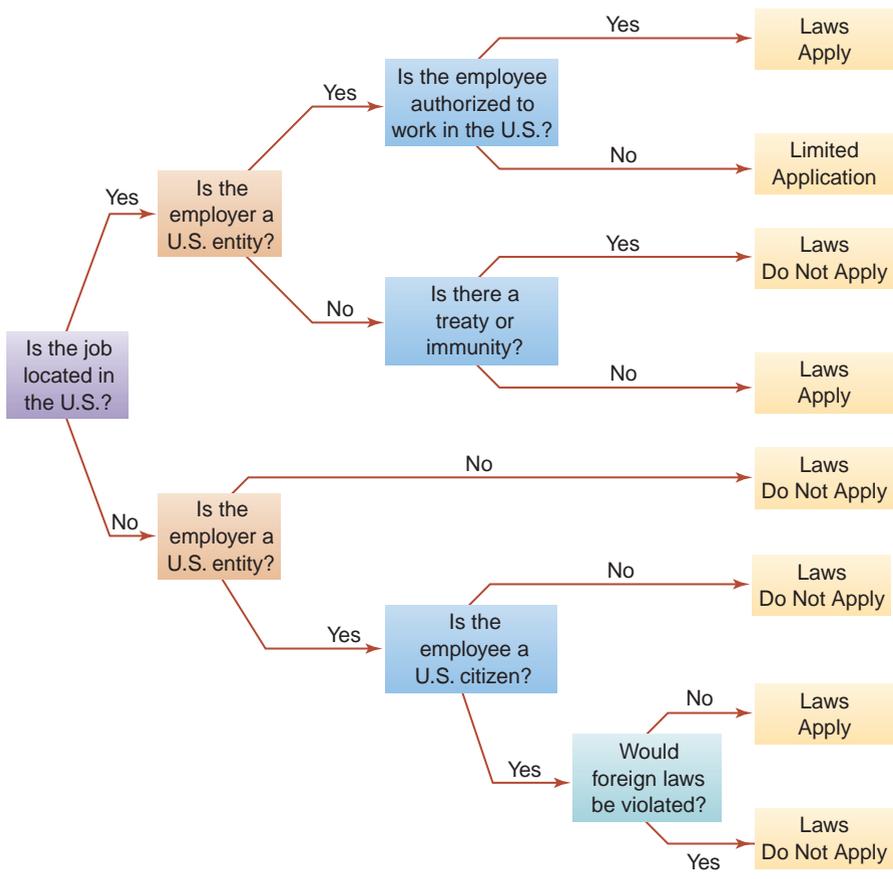


Figure 3.3 Do U.S. Discrimination Laws Apply to International Employers?
 Source: Adapted from Richard A. Posthuma, Mark V. Roehling, and Michael A. Campion, "Applying U.S. Employment Discrimination Laws to International Employers: Advice for Scientists and Practitioners," *Personnel Psychology* 59 (2006): 711.
 [Reprinted by permission of Wiley-Blackwell.]

If the job is located outside the United States, a different set of rules applies. Of course, Title VII and similar laws do not apply in other countries when the employer is not a U.S. company. This makes sense, as there is no basis for the U.S. government to enforce its laws on foreign companies doing business in their own lands. However, if the employer is a U.S. company, then its employees who are U.S. citizens are protected by U.S. discrimination law, unless such protection would violate the laws of the country where the job is located. We can see an example of this exception in a case involving a non-Muslim who was prevented from working as a helicopter pilot flying into a sacred area in Saudi Arabia. U.S. courts allowed the U.S.-based employer to disqualify the pilot—a U.S. citizen—from employment on religious grounds (a potential violation of Title VII) because the presence of a non-Muslim in this area would have violated the law of Saudi Arabia.²⁴ We should also point out that U.S. law does not generally protect employees who are citizens of foreign countries from discrimination, even if the employer is a U.S. business. Thus, workers in foreign lands are only protected by U.S. discrimination laws when they are U.S. citizens working for U.S. organizations.

In summary, most people working in the United States are covered by Title VII and other discrimination laws, even if the headquarters of their employer is not located in the United States. In foreign countries, U.S. law generally provides protection to employees who are U.S. citizen working for U.S. companies.



CONCEPT CHECK

1. *What is the major law regarding employment discrimination, and who is protected by this law?*
2. *How are disparate treatment and adverse impact different?*
3. *What are the two types of sexual harassment?*
4. *What are some major provisions of the Civil Rights Act of 1991?*
5. *How do U.S. discrimination laws apply to international employers?*

LEARNING OBJECTIVE 2

What Are Other Important Employment Laws?

We've seen that Title VII and its 1991 amendment provide protection against discrimination based on race, religion, and sex. Other laws extend similar protections to individuals based on different characteristics, such as age and disability status. Still other laws protect employees who need to take time off from work to help family members or deal with medical conditions.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Older people comprise a protected class that is not included in Title VII. Lawmakers were uncertain about the right way to address age discrimination, so they decided to study the issue further before passing a specific law. The law that was created from this study is the Age Discrimination in Employment Act of 1967 (ADEA), which essentially provides Title VII protections to older workers.²⁵ Specifically, the law as amended applies to everyone over 40. Some special occupations, such as police officer and firefighter, have been allowed to require people to retire at a specific age.

An interesting feature of the ADEA is that it doesn't simply classify people as either younger or older than 40. In cases of gender, race, and religion, people can simply be classified as being or not being a member of the protected class. When it comes to age, people are compared against others. Thus, discrimination can occur when a worker who is 50 receives better treatment than a worker who is 60. Companies cannot defend themselves against claims of age discrimination by simply showing that they employ a number of people over 40.

ADEA is similar to Title VII in that small employers are exempt. The difference is that the minimum number of employees is 20 rather than 15. Like Title VII, the ADEA protects people from several types of discrimination, including disparate treatment, adverse impact, and hostile environment discrimination.

Whereas Title VII is usually applied to hiring and promotion decisions, ADEA protection has historically been focused mostly on termination decisions, even though the reach of the law includes hiring and promotion. In fact, the most common complaint associated with the ADEA occurs when older employees are laid off or have their job benefits reduced. Disparate treatment is shown when a qualified person older than 40 is terminated and replaced with someone substantially younger. Some cases of disparate treatment are subtler, however. For example, a company might replace a worker with someone slightly younger, and then replace the new person with someone else slightly younger, until finally the person in the position is substantially younger than the original person. Another sometimes disguised form of disparate treatment occurs when a company terminates a number of employees in all age categories but then offers younger workers better opportunities for other positions.²⁶

Adverse impact operates the same as for Title VII. Statistical patterns are used to show that negative employment decisions harm older workers more than other groups. Companies then bear the burden of showing that their termination policies were based on reasonable factors other than age. In the case of hostile environment, an older employee can claim that derogatory comments and conditions create an abusive workplace. For instance, an older woman going through menopause successfully used the ADEA in her claim that comments related to her age were intimidating and hostile.²⁷

Age discrimination is of particular concern to companies when they must reduce their workforces. Unfortunately, many companies face the task of workforce reduction and thereby have the potential of negatively harming older workers more than younger workers. Good human resource practices can help these companies manage layoffs better. For instance, companies should carefully document the need for layoffs. They should then create a

written policy that describes the principles that they use to determine who is laid off. Table 3.3 provides important suggestions for things that an organization should take into account when it faces the difficult task of laying off workers.

Organizations' performance can also be enhanced by eliminating age discrimination. Some people have stereotypes of older workers as less effective than younger workers. However, these notions are generally false. Research clearly shows that older workers are just as effective as younger workers when it comes to completing core job tasks. Moreover, older workers are less likely to do things that harm the organization. They engage in more safe work practices, arrive to work on time, take fewer days off, and spend extra effort to improve performance.²⁸ Older workers thus perform as well as, and in many cases better than, their younger coworkers.

THE AMERICANS WITH DISABILITIES ACT

What if you were in a skiing accident and lost the use of your legs? Should business organizations bear a burden to help you find work that can be done even with your disability? Should businesses be required to alter some of their work processes so that you can perform certain jobs? What if your eyesight is bad and you need to wear glasses? Are you disabled? These are questions addressed by the Americans with Disabilities Act (ADA), which was passed into law in 1990.²⁹

Who Is Covered?

The ADA provides protection for individuals with physical and mental disabilities. **Physical disabilities** include conditions such as loss of an arm or leg, blindness, and chronic illnesses, such as cancer and diabetes. **Mental disabilities** include conditions such as depression, learning disorders, and phobias. Actually determining whether an individual has a disability can, however, be somewhat difficult in practice. In order to be classified as a disability, a condition must impair or limit a major life activity. Major activities include functions such as caring for oneself, walking, hearing, speaking, performing manual tasks, and learning. In essence, the ADA provides protection for individuals who have physical or mental impairments that prevent them from doing normal life activities.

Lawmakers excluded a few specific conditions. People are not protected by ADA if they have sexual behavior disorders or gambling addictions, for example, or if they currently use illegal drugs. In addition, a disability must be

Physical disabilities

Body impairments that substantially limit an individual's ability to engage in normal life activities.

Mental disabilities

Impairments of the mind that substantially limit an individual's ability to engage in normal life activities.

Table 3.3

Guidelines for Effective Layoffs

Conduct a management study to support necessity of a layoff and what principles will guide who is affected.

Based on the management study, construct a written layoff policy.

Document alternatives to layoff that were considered and/or used.

Use length of service as a layoff principle whenever possible.

Use an internal committee for layoff decisions, not individual department heads.

Source: Adapted from Arthur Gutman, *EEO Law and Personnel Practices*, 2nd ed. (Thousand Oaks, CA: Sage, 2000), p. 224. [Reprinted with permission.]

something that cannot be easily fixed. For instance, poor vision can normally be fixed with eyeglasses or contact lenses. Someone who has poor vision that can be corrected with glasses is thus not considered disabled.³⁰

The ADA provides specific protection to individuals currently suffering from a disability. The law also protects people in two other categories: those who have a record of having a disability in the past and those who are regarded as having a disability, even if they do not. The distinction between being currently disabled and having a record of being disabled is particularly important in the case of illegal drug use. Current drug addicts are specifically exempted from the law. However, people who have a record of drug use in the past may be covered. The condition must have been a true addiction rather than just casual use, and sufficient time must have passed since the last drug use.³¹ But a former addict who has not used drugs for at least a number of months can qualify for protection under the ADA.³²

What Protection Is Offered?

The ADA does not guarantee that people with disabilities will be given any job they want. ADA guidelines apply only when the disabled person has the knowledge, skills, and abilities that are essential for performing the job. In some cases, a disabled person may not be required to perform functions that are not essential to the job. This means that organizations need to be very specific about the essential and nonessential parts of jobs. They do this through the process of job analysis, which will be discussed in Chapter 4.

The ADA also may require companies to provide disabled individuals with **reasonable accommodation** to help them perform the essential duties of their jobs. Under the law, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. Common accommodations include making facilities accessible to people in wheelchairs, restructuring parts of the job, modifying work schedules, modifying work equipment, reassigning a person to a different job, and providing a helper to read or interpret.³³ An organization is not required to change the job conditions to meet the preferences of the employee, however.³⁴

An organization may not have to make reasonable accommodations if doing so would create **undue hardship** for the organization. Whether making an accommodation creates an undue hardship depends on several issues. The courts generally take into account the cost of the accommodation, the overall financial resources of the organization, the size of the business, and the nature of what it produces.³⁵ In essence, bigger companies with more resources are expected to be capable of making more accommodations. However, even a large company need not make an accommodation that severely harms the company's productivity. For instance, one disabled person brought a lawsuit asking that a company be required to change the assembly-line process so that he could perform a specific job. The court concluded that changing the assembly line placed an undue hardship on the company.³⁶

A special case within the ADA is alcoholism. Alcoholism is covered to a degree within the ADA, but that doesn't mean that a person with a drinking problem will be excused from performing his or her work tasks. The law specifically says that a company can prohibit the use of alcohol at the workplace, that it can prohibit employees from being under the influence of alcohol at the workplace, and that alcoholics can be held to the same performance expectations as other employees.³⁷ Employees who drink at work or are under

Reasonable accommodation

Under the ADA, an alteration of the work environment that enables a qualified individual with a disability to perform essential tasks.

Undue hardship

Under the ADA, a severe economic or other hardship placed on an employer by the requirement to make accommodations for workers with disabilities; an employer is not required to make accommodations that impose undue hardship.

the influence of alcohol at work can be terminated. The area where reasonable accommodation comes into play is usually reduced performance or absences that come from alcohol use outside of work. One court settlement suggested that a company should strive to help the person deal with alcoholism as a disability. This includes informing the person of available counseling services, offering a choice between treatment and discipline, providing progressive discipline, and allowing sick days to be used for receiving treatment.³⁸

How Do Companies Comply?

The ADA places some important limitations on what organizations can ask and measure during the job application process. Asking people whether they have a disability on an application form or in an interview is prohibited. Conducting a medical exam to learn of a disability is also prohibited, with one important exception. A medical exam can be required after a conditional job offer has been made, as long as the medical exam is required of all job applicants. In essence, the person is offered the job with the provision that he or she pass a physical exam testing for the abilities necessary to perform job tasks.³⁹

The ADA requires employers and employees to work together to find ways to accommodate disabilities. Unless the disability is obvious, the employer cannot ask the employee whether he or she has a condition that limits his or her ability to perform job-related tasks. This means that disabled people bear a responsibility to communicate their needs for reasonable accommodation. Similarly, students who are disabled have an obligation to inform their professors and seek help. They cannot simply claim a disability after they have already completed the coursework. The ADA does not offer protection to someone who is disabled but does not make requests for accommodation.

A company can help ensure that it follows the guidelines of the ADA by first clearly describing the content of jobs. Specific lists of the tasks that are part of each job are necessary for determining whether someone who is disabled is capable of performing the job. A company should also develop clear lines of communication so that people with disabilities can comfortably ask for reasonable accommodations. When requests for accommodation are made, the company needs to carefully examine them and thoroughly study whether the accommodation can be made. In many cases, making accommodations can help companies find and keep high-quality employees. For instance, McDonald's specifically recruits workers with disabilities and has found them to be among the company's best and most loyal employees.⁴⁰

THE EQUAL PAY ACT

Suppose a man and woman sit at desks next to each other and perform the same tasks. Is it fair to pay one of them more than the other? Does lower pay for the woman mean that the company discriminates? Can the woman make the company pay her the same as it pays the man? As described earlier, one major complaint in the lawsuit against Walmart was that women were paid less on average than men. The Equal Pay Act, which was passed into law in 1963, addresses the issue of pay differences for men and women. Unlike many other laws, this act applies only to gender.⁴¹ It provides no protection for differences based on race or other factors.

The Equal Pay Act specifically makes it illegal for a company to pay men and women different wages, as long as they are doing equal work. Equal work is defined as tasks that require equal skill, effort, and responsibility and that

are performed under similar working conditions. Of course, it is often difficult to determine if all job factors are truly equal. Soon after the Equal Pay Act became law, some organizations tried to get around it by adding a few minor tasks to jobs performed by men. For instance, one firm allowed only men to lift certain objects and then paid them more.⁴² A medical firm tried to justify paying male nurses more by saying that they worked harder to lift patients and that men had to use extra skills to perform private duties for male patients.⁴³ In both cases, the court system found the reason for the differences to be little more than an excuse to pay men more. The court then prescribed keys for determining when jobs are truly different: (1) One job must require extra effort and more time than the other and (2) that job must affect the company's financial results more than the other job.⁴⁴

The Equal Pay Act does recognize reasons why people in the same job might be paid differently. One reason is seniority. Paying people according to seniority is acceptable as long as men and women with the same years of service are paid the same. Another acceptable reason for differential pay is merit. The law recognizes differences in performance and allows higher compensation for stronger contributors, as long as accurate performance measures are in place. Paying some people more than others is also acceptable if the employees are paid according to a piece-rate system—that is, when they are paid a certain amount for each part they produce or service they perform. For instance, it would be permissible for men and women working as sewing machine operators to be paid differently if their pay was based on the number of shirts they made each day.

One thing that the Equal Pay Act does not require is basing pay on **comparable worth**. This practice involves determining what each job is worth to the company and paying accordingly, so that people whose jobs make equally important contributions are paid the same, even if the jobs are quite different in nature. Although comparable worth has been advocated at times, no U.S. law requires it. Under the Equal Pay Act, companies are only required to ensure that pay is equal for men and women performing the same job. Comparable worth is, nevertheless, a topic that is often debated.

Complying with the Equal Pay Act requires that the human resource function make a number of important contributions:

- Job analysis provides tools for determining when jobs are equal. We look more closely at job analysis in Chapter 4.
- Job evaluation uses surveys and statistics to determine how much to pay people based on comparisons both within the organization and between the organization and other organizations. These practices are described in Chapter 11.
- Performance measures assess the contribution of each employee and ensure that people who contribute more to the organization can be recognized and paid more. Performance measures are discussed in Chapter 8.

Comparable worth

A measure that assumes that each job has an inherent value to the organization and that dissimilar jobs can be compared to determine whether the pay for these jobs reflects this value.

THE FAMILY AND MEDICAL LEAVE ACT

Suppose a woman who is about to give birth to a child decides she would like to take time off work to spend with the new baby. Must the company that she works for grant her request for leave? If so, how long can the leave last? Will she be paid while she is on leave? When she returns to work, will she be able to

return to the same job? These important questions are addressed by the Family and Medical Leave Act (FMLA), enacted in 1993.⁴⁵ The FMLA provides up to 12 weeks of unpaid leave for people in certain situations. Furthermore, when the employee returns to work, he or she must be restored to the same position or an equivalent position in terms of pay, benefits, and responsibilities.

Under the FMLA, an employee—either male or female—may request a leave of absence for four reasons:

1. The employee is unable to work because he or she has a serious health condition.
2. The employee needs to care for an immediate family member with a serious health condition. Immediate family members are usually limited to spouses, parents, and children who are either under 18 or disabled.
3. The employee needs to care for a newborn child.
4. The employee needs to care for a child just adopted by the employee or placed with the employee for foster care.

Not everyone is covered by FMLA. Only companies with 50 or more employees who live within 75 miles of the workplace are required to grant leave under FMLA. In addition, in order to be covered, an employee must have worked for the company for at least 12 months and must have worked at least 1,250 hours during the previous 12 months. Also, certain key employees may be ineligible for FMLA leave.

Employees who take leave under FMLA receive no pay while they are not working. The company is, however, required to continue providing health-care coverage under a group plan. Employees who wish to take the leave must usually provide 30 days' advance notice, when possible. The company may also require an employee requesting leave based on a serious health condition to provide certification of the condition. The requirement that employees inform employers before taking leave for medical conditions is an important feature of FMLA. The courts have ruled that an employee who is fired cannot later claim that absences were caused by medical conditions and thus are covered by FMLA.⁴⁶ The employee must inform the employer of the condition when the absence occurs and before being terminated.

The goal of FMLA is to help employees balance their work demands with their family needs. Providing time off so that employees can meet their family obligations provides benefits to the company as well as to employees, because employees who are worried about family needs may not be able to focus their attention and effort while at work. Companies can ensure that they comply with FMLA by informing employees of their rights for unpaid leave. When an employee does take a leave of absence, the company should communicate support and caring for the individual. In the end, companies often find that policies that support families are an important tool for retaining a diverse workforce.



CONCEPT CHECK

1. *Who is protected by the ADEA, the ADA, the Equal Pay Act, and the FMLA?*
2. *How do the concepts of reasonable accommodation and undue hardship guide the application of ADA principles?*

LEARNING OBJECTIVE 3

How Can Organizations Increase Diversity?

Organizations need to prevent discrimination and provide equal employment opportunity in order to comply with laws. However, a strong case can be made that preventing discrimination increases employee diversity, which in turn increases organizational performance. Although increased diversity does not automatically improve organizational results, evidence suggests that a more diverse workforce is particularly beneficial when work tasks require creativity and diverse inputs.⁴⁷ As described in the “Building Strength Through HR” feature, people from minority racial and ethnic groups are effective at



Building Strength Through HR

PEPSICO

PepsiCo is a global food and beverage company with annual revenues of more than \$35 billion. The company has over 168,000 employees in nearly 200 different countries and seeks to sell its food and beverage products to consumers in all racial and ethnic groups. Increasing the diversity of employees as a means of increasing sales to minority groups is therefore a critical objective at Pepsi.

Pepsi actively recruits diverse employees in several ways. First, the company cultivates relationships with African American colleges and universities and has an affirmative action planning process that seeks to increase the percentage of minority workers. Two external advisory boards of academics, politicians, and customers provide guidance on diversity issues. In addition, Pepsi encourages employees to join *affinity groups* that consist of people of a particular race or gender who get together to discuss issues that affect them. Each group has as its sponsor an executive who is not a member of that race or gender.

Diversity initiatives at PepsiCo have increased the number of its minority workers. People of color now represent 17 percent of managers at midlevel and above, and women represent 34 percent of managers. This representation has significantly increased in the past five years. The company is routinely rated as one of the best places of



employment for minorities, a rating that has led to increases in the number of minority job applicants.

Diversity also adds to PepsiCo’s profits. Innovation centers on identifying new product flavors to match the unique tastes of diverse customers. Among these products are guacamole Doritos and Mountain Dew Code Red.

Sources: Information from Irene Chekassky, “Pepsi’s for Everybody,” *Beverage World* 117 (1998): 248; Carol Hymowitz, “The New Diversity: In a Global Economy,” *Wall Street Journal*, November 14, 2005; Chad Terhune, “Pepsi, Vowing Diversity Isn’t Just Image Polish, Seeks Inclusive Culture,” *Wall Street Journal*, April 19, 2005; Sonia Alleyne, Alfred A. Edmond, Jr, Sakina P. Spruell, and Carolyn M. Brown, “The 30 Best Companies for Diversity,” *Black Enterprise* 35, no. 12 (2005): 112–126; http://www.pepsico.com/PEP_Diversity/commitment/index.cfm.

meeting the needs of customers from the same group. Diversity enhancement programs can also increase the available pool of potential employees, which makes it more likely that the best job applicants are identified and hired. An important question is thus what organizations can do to increase diversity. Approaches to diversity enhancement can be classified into four categories:⁴⁸

1. Opportunity enhancement programs focus on identifying and actively recruiting employees from groups that have historically been targets of discrimination, such as women and minorities.
2. Equal opportunity programs emphasize the elimination of biases and forbid unfair treatment toward underrepresented groups.
3. Tiebreak programs suggest that minority status be considered a plus when deciding between otherwise equally qualified individuals.
4. Preferential treatment programs give positive weight to being a member of an underrepresented group.

Not surprisingly, people almost universally agree that the first two forms of diversity enhancement are appropriate. But some people harbor negative attitudes about the tiebreak and preferential treatment programs. As might be expected, women and members of racial minority groups tend to have less negative views.⁴⁹ Interestingly, white males may develop negative views of diversity enhancement as a way to preserve their self-esteem.⁵⁰

Evidence clearly suggests that attitudes about diversity can be influenced by effective communication. Employees are more accepting of diversity enhancement when they are exposed to logical reasoning about why it is beneficial. Organizations should specifically provide empirical facts about the need for diversity, focus on the economic benefits of diversity, and encourage employees to think deeply about reasons behind diversity enhancement.⁵¹ Diverse groups also perform better when they have been specifically shown how their group's diversity can benefit their processes and outcomes.⁵² This often requires an organizational training initiative, which is described in Chapter 10.

EXECUTIVE ORDER 11246

There is no law requiring organizations to increase diversity. However, practices to increase the representation of women and minority workers are often contained in **affirmative action plans** that are required by Executive Order 11246.⁵³ Executive orders are not passed by Congress but rather are issued by the president of the United States. Executive Order 11246 was issued by President Lyndon B. Johnson in 1965 and requires any organization doing business with the federal government to have an affirmative action plan. Doing business with the federal government is defined as having government contracts valued at over \$10,000.

Executive Order 11246 does not have the force of law and is only indirectly related to private businesses. Nonetheless, it affects any organization that wants to do business with the federal government. Since a large number of organizations contract with the federal government, Executive Order 11246 has a long reach that makes it very similar to law. Most universities are covered by 11246, for example, because they receive federal funding. Construction companies that want to build public roads or buildings are also covered. In essence, the government uses its power as a large business

Affirmative action plan

A plan aimed at increasing representation of employees from protected classes who have historically been victims of discrimination.

partner to encourage companies to follow the affirmative action guidelines of Executive Order 11246.

An affirmative action plan that complies with Executive Order 11246 requires organizations to submit a number of reports to show their progress in providing work opportunities for minorities and women. One requirement is a **utilization study**, which compares the percentages of women and minorities currently holding jobs in the company with the percentages of minorities and women in the population of the immediate labor area. Once a utilization analysis has been conducted, the next step, if needed, is to use the results of the analysis to develop *goals and timetables*—specific plans to increase the representation of women and minorities in the company’s work force. Plans should not include quotas, which prescribe certain percentages to be hired; rather, they must be flexible objectives. Organizations must then show a *good faith effort*, or reasonable actions, to achieve the goals and timetables. There is no requirement to hire unqualified workers. Indeed, evidence suggests that organizations pursuing affirmative action plans do not have fewer qualified workers.⁵⁴

Organizations doing business with the federal government that do not follow affirmative action guidelines face a number of possible sanctions. Their contracts with the government can be canceled, and they can be prohibited from doing further business with the government. In rare cases, the Department of Justice or the EEOC may also pursue lawsuits for violations of criminal law or Title VII. In most cases, however, a company cannot be sued for failing to follow an affirmative action plan.

Utilization study

An assessment to determine how closely an organization’s pool of employees reflects the racial and gender profile of the surrounding community.

RESTRICTIONS ON AFFIRMATIVE ACTION PLANS

A series of court decisions has placed important restrictions on affirmative action plans. One of the first of these cases concerned medical school admission. The medical school in question set aside a certain number of places in each entering class for members of minority groups. When a white male was denied admission to the school, even though he had higher grades and scores than some minority applicants who were accepted, he brought a lawsuit against the school claiming that its admission policy resulted in reverse discrimination—denying him admission on account of his race. The case was eventually heard by the Supreme Court, which ruled that the school’s quota system was unacceptable. However, the Court upheld the principle of affirmative action and stated that race could be used along with other factors in making admission decisions.⁵⁵

Other court cases have focused on the issue of layoffs. In one instance, a fire department was forced to lay off some of its workers. In order to meet its affirmative action goals, the department terminated some white firefighters who had more seniority than some minority employees who were retained. The Supreme Court ruled that the policy was unacceptable because it punished innocent employees to remedy past discrimination. In this particular case, helping minorities procure jobs was seen as coming at too high a cost to others.⁵⁶

More recent cases related to affirmative action include a high-profile case in which a contractor was found guilty of discrimination for giving favorable status to minority subcontractors. The Supreme Court rejected the need for affirmative action in this particular case because the plan seemed too broad and not specifically tailored to correct a particular problem.⁵⁷

This decision illustrates the necessity of creating an affirmative action plan that corrects a specific problem.

AFFIRMATIVE ACTION PLANS TODAY

A year seldom passes without a number of hotly debated questions surrounding affirmative action plans. One basic question that is frequently debated is whether affirmative action is contrary to the aims of Title VII. If Title VII is designed to provide equal opportunity for all, then how can Executive Order 11246 require preferential treatment for some? In general, the courts have upheld the legality of Executive Order 11246 by ruling that its practices are consistent with the intent of Title VII. Another frequently debated issue is whether it is appropriate to give preference to people who were not themselves actual victims of discrimination. In most cases, they receive preferential treatment because they are of the same race as others who may have been harmed in the past. People in favor of affirmative action, however, argue that because of past discrimination, some groups of people still have less opportunity than others in terms of education and career preparation.

Issues surrounding affirmative action will likely continue to be argued and, given the appointment of several new justices on the Supreme Court, new direction and guidelines might result. At the state level, affirmative action has come under attack in recent years. Proposition 209, a law passed by voters in California, has had perhaps the most critical implications for affirmative action. The law applies to the state as an employer and specifically prohibits the state from using affirmative action.

What should organizations do about affirmative action and diversity enhancement? First, it is important to remember that discrimination is still felt by many. Women, as well as racial and ethnic minorities, continue to report feelings of discrimination in organizations where they are not well represented. Women from minority racial groups are particularly in jeopardy of being harassed.⁵⁸ Research evidence confirms the validity of such perceptions. For example, research findings have shown that many people perceive mothers as less competent employees.⁵⁹ Some of the negative feelings of discrimination decrease when organizations have supervisors who are from underrepresented groups.⁶⁰ Organizations can also benefit from creating a work climate that values and encourages differences and communicates caring for all employees. Chapter 5 discusses methods for making the workplace a desirable environment for members of protected classes and provides guidance for helping all employees feel valuable to the company. The chapter also describes recruiting practices that increase minority applications. In many cases, these procedures can help organizations meet affirmative action goals through practices that are widely accepted.



CONCEPT CHECK

1. *What are four approaches to increasing workforce diversity?*
2. *What is Executive Order 11246, and what does it require of companies doing business with the federal government?*

LEARNING OBJECTIVE 4

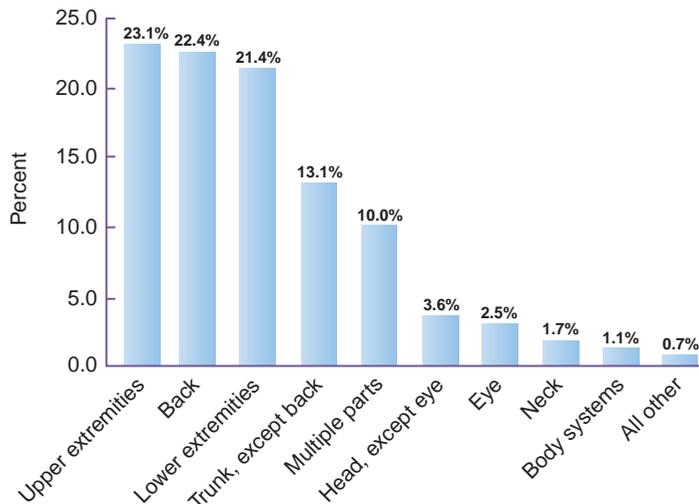
What Are the Major Laws Relating to Occupational Safety?

As we've seen, the federal government has passed a number of laws that address discrimination in the workplace, and similar laws have been passed at the state level. Other areas of law are equally important to businesses. One such area is occupational safety.

In early 2006, an explosion in a West Virginia coal mine resulted in the deaths of 12 miners. The mine was relatively new but had received numerous citations for safety violations. During 2005, a total of 208 violations were recorded, and 96 of the violations were considered significant and substantial. Among the violations were problems with ventilation and safety inspections.⁶¹ Could the deaths have been prevented by closer adherence to safety guidelines?

Although many people think very little about safety in the workplace, a look at a few statistics shows that problems exist. As many as 5,703 people are killed in occupational accidents during a calendar year.⁶² Each year there are also as many as 4.3 million workplace injuries and accidents that do not result in death. This translates to approximately five injury cases for every 100 workers. Injuries and illnesses are most common in jobs such as transportation, manufacturing, and agriculture.⁶³ Figure 3.4 shows that most of the injuries and illnesses involved problems with arms and backs.⁶⁴

Two major types of law provide employees with some assurance of safety and protection on the job. The first is a federal law passed in 1970, the



The upper extremities and back were involved in almost one-half of all occupational injuries and illnesses.

Figure 3.4 Nonfatal Occupational Injuries and Illnesses with Days Away from Work by the Part of Body Affected, 2004. *Source: Bureau of Labor Statistics, U.S. Department of Labor, Survey of Occupation Injuries and Illness.*

Occupational Safety and Health Act. The second is not a specific law but a group of laws at the state level generally labeled workers' compensation laws.

OCCUPATIONAL SAFETY AND HEALTH ACT

Suppose an employee of a construction company works with chemicals that could cause blisters on his feet and hands. Does the company have an obligation to protect him from exposure to such chemicals? Is the company required to provide him with information about the chemicals? What are his rights as a worker who must use these chemicals? Such issues are the focus of the Occupational Safety and Health Act (OSHA), a federal law passed in 1970.⁶⁵ Compliance with these laws, and general efforts to promote employee well-being, not only reduce workplace accidents but also improve productivity. The “Building Strength Through HR” feature illustrates specific benefits from safety and health initiatives at Union Pacific.

Like most other laws affecting work practices, OSHA requires employers to keep records—in this case, about safety practices and incidents. Companies must have records of the information they provide to teach employees about the health concerns and dangers present in the workplace; they must keep track of all illnesses and injuries that occur at work; and they must also conduct periodic inspections to ensure workplace safety. In these inspections, they examine and test structures, machines, and materials to guarantee proper operation and not place employees in dangerous situations. Employers must provide information and keep employees informed of protections and safety obligations.

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

OSHA provides a number of safety and health standards that companies must follow. Some of the standards apply only to a few employers, such as construction companies, but a number of standards apply to most employers. These standards cover such topics as emergency plans, hazardous chemicals, workspace layout, and medical and first aid availability.

Emergency Plans

Plans for dealing with fires and other emergencies are the main subject of the **emergency action plan standard**. Not all companies are required to have formal emergency plans, but many organizations find them helpful for planning ways to prepare for potential disasters. The plan should provide details about reporting fires and other emergencies and should also describe evacuation procedures and escape routes, establishing a process to account for all employees after evacuation. If employees have responsibility to rescue others or provide medical attention, the plan should make these duties clear. In addition, the plan should guide the actions of employees who might need to remain and operate or shut down critical equipment before they evacuate.

Hazardous Chemicals

Exposure to certain chemicals can create both long-term and short-term problems. Which chemicals are harmful? What should employees do if they

Emergency action plan standard

The OSHA requirement that organizations develop a plan for dealing with emergencies such as fires or natural disasters.



Building Strength Through HR

UNION PACIFIC CORPORATION

Union Pacific Corporation is a leading transportation company with over 32,000 miles of railroad operations covering 23 states. The company employs over 48,000 workers and has an annual payroll of over \$3 billion. The safety and wellness of employees are particular areas of emphasis for Union Pacific.

Safety initiatives are highly visible throughout the company. Newsletters, job briefings, and safety hotlines provide ways to make sure that everyone talks about how to make the workplace safer. Employees frequently provide input that results in modifications to equipment and work practices. Supervisors are held accountable for achieving safety goals. An industrial hygiene program assures compliance with regulations related to toxic chemicals, noise, dust, and fumes. Employees receive supplies such as safety glasses, hearing protection, and safety shoes.

Union Pacific also has a wellness program that seeks to reduce illnesses by improving employee health and fitness. Since fatigue and stress can cause accidents, this program also helps to reduce accidents. Employees are encouraged to improve their fitness by exercising in fitness centers. Programs to help people quit smoking have reduced the number of employees who smoke from 40 percent in 1990 to 23 percent. The company also provides health assessments to identify health risk factors such as obesity, diabetes, and high blood pressure.

Health and safety programs at Union Pacific have had a positive impact on bottom-line results. On-the-job injuries have decreased over the past 10 years, and healthcare claims related to lifestyle problems such as high blood pressure have



dropped from 29 percent to 19 percent. Union Pacific also estimates that reducing the prevalence of excess weight among employees by one percentage point can save the company \$1.7 million—and so reducing the prevalence by 10 percent can save nearly \$17 million.

Sources: Information from Sandy Smith, "At Union Pacific Safety Is Number One," *Occupational Hazards* 67, no. 10 (2005): 30; Marybeth Luxzak, "... with UP Director-Health and Safety Marcy Zauha," *Railway Age* 206, no. 8 (2005): 9.

accidentally spill a harmful chemical? These concerns are the focus of the **hazard communication standard**, which is aimed at ensuring that employers and employees know about hazardous chemicals in the workplace. Under this standard, organizations must identify any chemicals to which workers might be exposed on the job. All chemical containers must be clearly labeled. Organizations must also provide information about protective measures that reduce the chance of harm from the chemicals. Each workplace must have a

Hazard communication standard

The OSHA requirement that organizations identify and label chemicals that might harm workers.

AMMONIA (ANHYDROUS)

ICSC: 0414

TYPES OF HAZARD/ EXPOSURE		ACUTE HAZARDS/ SYMPTOMS	PREVENTION	FIRST AID/ FIRE FIGHTING
FIRE		Flammable.	NO open flames, NO sparks, and NO smoking.	In case of fire in the surroundings: use appropriate extinguishing media.
EXPLOSION		Gas/air mixtures are explosive.	Closed system, ventilation, explosion-proof electrical equipment and lighting.	In case of fire: keep cylinder cool by spraying with water.
EXPOSURE			AVOID ALL CONTACT!	
• INHALATION		Burning sensation. Cough. Laboured breathing. Shortness of breath. Sore throat. Symptoms may be delayed (see Notes).	Ventilation, local exhaust, or breathing protection.	Fresh air, rest. Half-upright position. Artificial respiration may be needed. Refer for medical attention.
• SKIN		Redness. Skin burns. Pain. Blisters. ON CONTACT WITH LIQUID: FROSTBITE.	Cold-insulating gloves. Protective clothing.	ON FROSTBITE: rinse with plenty of water, do NOT remove clothes. Refer for medical attention.
• EYES		Redness. Pain. Severe deep burns.	Face shield or eye protection in combination with breathing protection.	First rinse with plenty of water for several minutes (remove contact lenses if easily possible), then take to a doctor.
• INGESTION				
SPILLAGE DISPOSAL		STORAGE		PACKAGING & LABELLING
Evacuate danger area! Consult an expert! Ventilation. NEVER direct water jet on liquid. Remove gas with fine water spray. Personal protection: gas-tight chemical protection suit including self-contained breathing apparatus.		Fireproof. Separated from oxidants acids, halogens. Cool. Keep in a well-ventilated room.		T symbol N symbol R: 10-23-34-50 S: 1/2-9-16-26-36/37/39-45-61 UN Hazard Class: 2.3 UN Subsidiary Risks: 8
SEE IMPORTANT INFORMATION ON BACK				
ICSC: 0414		Prepared in the context of cooperation between the International Programme on Chemical Safety & the Commission of the European Communities (C) IPCS CEC 1994. No modifications to the international version have been made except to add the OSHA PELs, NIOSH RELs and NIOSH IDLH values.		

Figure 3.5 Sample Materials Safety Data Sheet. Source: *International Occupational Safety and Health Information Centre (CIS)*, www.ilo.org/public/english/protection/safework/cis/products/icsc/dtasht/a_index.htm. [Copyright © International Labour Organization 2007]

Material safety data sheet (MSDS)

An OSHA-required document that describes the nature of a hazardous chemical and methods of preventing and treating injuries related to the chemical.

written plan that includes a list of the chemicals present at the site, the names of people who are responsible for overseeing the chemicals, and information about where employees can learn more about the chemicals. This information is usually contained in a **material safety data sheet (MSDS)**, a paper that specifically describes the nature of the chemical and how to prevent injury. An example of an **MSDS** is shown in Figure 3.5.

Walking/working surfaces standard

The OSHA requirement that an organization maintain a clean and orderly work environment.

Workspace Layout

The **walking/working surfaces standard** emphasizes the need to keep the workplace clean and orderly in order to prevent slips and falls that may result in injury. Organizations are required to keep floors clean and dry and to keep aisles sufficiently wide and clear of obstructions. The standard also provides

guidelines for the proper use of ladders and scaffolding and requires covers and guards for potentially dangerous structures, such as pits, tanks, and ditches.

Medical and First Aid

Even when an employer takes precautionary steps, some accidents are likely to occur. The **medical and first aid standard** requires employers to make medical personnel and first aid supplies available to workers to treat injuries. Employees must also have access to medical personnel and treatment facilities so that they can receive treatment for more serious injuries. This requirement is particularly important for employees who are required to handle dangerous chemicals or to work in potentially dangerous environments.

Medical and first aid standard

The OSHA requirement that an organization make medical and first aid resources available to workers who may become injured.

WORKERS' COMPENSATION

Each state has laws and programs governing workers' compensation. Although some differences exist between states, all these programs have a common purpose, and most are quite similar. **Workers' compensation** provides protection for employees who are injured or disabled while working. In most cases, workers' compensation takes the form of an insurance program. Employers are required to carry workers' compensation insurance, insurance that provides benefits to compensate for injuries suffered during work, no matter how the injuries were caused. Benefits include payment of medical expenses for injured workers, disability benefits to replace income for injured workers unable to return to work, and benefits for family members of workers killed on the job. Most states make workers' compensation a no-fault and exclusive remedy for injury. This means that insurance must compensate an injured employee even if the actions of the employee caused the injury, but the employee cannot bring a lawsuit to try to collect more money than what is provided by the insurance policy.⁶⁶

Workers' compensation programs require employees and employers to record and report workplace accidents. In most states, workers must report an accident or injury within a certain time, such as 90 days after it occurs. Employers also must file an injury report with a state agency within a certain amount of time. An important role of the human resource function is thus to ensure the accuracy of the relevant records. Training workers in how to report injuries is important as well. Human resource professionals in many companies work with medical providers who treat injuries and help determine when employees are ready to return to work.

Workers' compensation

State programs that provide workers and families with compensation for work-related accidents and injuries.



CONCEPT CHECK

1. *What is OSHA, and how does it affect business organizations?*
2. *What protection is provided by state workers' compensation laws?*

LEARNING OBJECTIVE 5

What Specific Practices Increase Fairness and Safety?

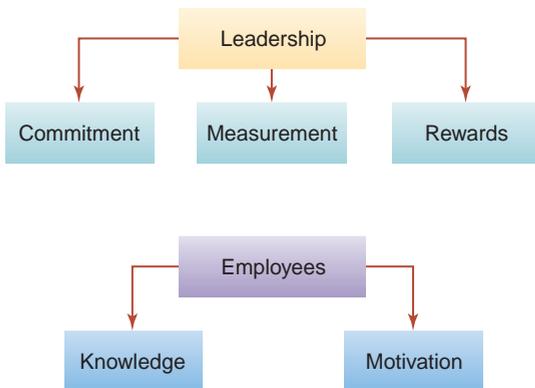


Figure 3.6 Encouraging Legal and Safety Compliance.

Failure to comply with laws and regulations can be costly to an organization. What can an organization do to help all its members follow the necessary rules? A few key areas are outlined in Figure 3.6. As shown in the figure, employees need knowledge and motivation; knowledge and motivation, in turn, can be increased by leaders who show commitment, measure progress, and provide rewards.⁶⁷

EMPLOYEES

Employees cannot follow laws and other guidelines unless they know about them; an important part of the human resource management function is thus to provide information about laws and guidelines. Managers involved in hiring and supervising employees must know about relevant employment laws. Specifically, they need to know what

things to avoid, such as asking interview questions about protected issues such as age and disability. They also need to know how to prevent harassment. Employees working in hazardous areas must be trained in procedures to protect them from injuries and illnesses. Ongoing training programs, which are discussed in Chapter 9, are thus an important aspect of complying with laws and ensuring fair treatment. For instance, Calpine Corporation, a producer and marketer of electrical power, uses video and other materials to train employees in hazard communication, fire prevention, and disciplinary procedures. The training increases knowledge and helps employees understand why certain procedures are required.⁶⁸

Knowledge alone is not enough, however. Members of an organization must also be committed to doing what they know is right. Motivation can be increased when organizational leaders help managers and employees see that they have the skills necessary to do what is being asked. Worker motivation for safe actions is also enhanced when supervisors have personal values that correspond with safety.⁶⁹ Individuals who work hard to ensure fairness and safety should be rewarded with higher pay and promotions. Conversely, workers who try to accomplish tasks using shortcuts that compromise safety may need to suffer penalties.

LEADERSHIP

Employees generally follow their leaders. They are therefore much more likely to comply with laws and guidelines when leaders show high commitment to compliance. Leaders make a difference. Leaders must set a good example and clearly communicate their expectations.⁷⁰ In the case of Calpine Corporation, mentioned earlier, employees are shown a video of top executives talking about the importance of safety. This video is effective because employees tend to follow directions and engage in behaviors that they hear their leaders emphasize. Compliance with regulations is thus much more likely when leaders develop and carry out programs that emphasize the goals of the regulations, such as

diversity and safety. The “How Do We Know?” feature explains how leaders can create work climates that encourage safety.

Leadership can also encourage compliance by measuring key results; put simply, what gets measured gets done. Progress in hiring and recruiting minorities, women, disabled workers, and older workers should be tracked. Keeping track of these numbers not only shows that the company is complying with legal guidelines but also demonstrates that leaders value progress in these areas. In a similar way, efforts to track and reduce injuries and accidents not only comply with laws but also communicate interest on the part of leaders.

Managers who create fair hiring practices should be rewarded for their efforts. Achievement of diversity objectives should result in positive evaluations and bonuses, and supervisors’ efforts to communicate the importance of safety should be tracked and rewarded. Groups of employees who follow guidelines and remain accident-free should also receive bonuses.

An example of the value of leadership in encouraging compliance is shown by the results of initiatives undertaken by Catholic Healthcare West (CHW), which operates hospitals in Arizona, Nevada, and California. The company implemented a program designed to reduce workers’ compensation claims.



How Do We Know?

WHAT CAN ORGANIZATIONS DO TO PROMOTE SAFETY?

What factors explain safe behavior? Is creation of an organizational climate that encourages safety the key? Are some people just more safety conscious than others? Does emphasizing safety decrease productivity? Craig Wallace and Gilad Chen conducted a study to find the answers to these questions. They collected data from 254 employees organized into 50 work groups. They assessed safety climate by measuring the extent to which supervisors emphasized compliance with safe procedures. They asked employees to report their conscientiousness, which captures the degree to which someone is organized and goal driven. Employees also reported on the extent to which they focused on either a) accomplishing a lot of work or b) following rules and regulations. Supervisors rated each employee on both safety performance (carrying out work in a safe manner) and production (completing tasks on time).

Conscientious employees simultaneously emphasized accomplishing work and following rules and regulations. Conscientious employees were thus successful on both performance dimensions; they completed a lot of work and did so in a safe manner. A different pattern of results was observed for safety climate. When supervisors emphasized safety,

workers focused on following rules and regulations and were thus rated higher on safety performance. However, an emphasis on safety came at the expense of production. A strong safety climate resulted in less emphasis on accomplishing a lot of work and thereby resulted in decreased production. Safety climate thus exhibits a tradeoff. A work climate that encourages safe behavior does result in employees who focus on rule compliance, yet increased safety comes at the expense of productivity.

The Bottom Line. Creation of a strong safety climate increases safe behavior, but the strong safety climate may also reduce productivity. Professors Wallace and Chen thus suggest that organizations think carefully about the balance between safety and production. Leaders should emphasize safe behavior when accidents and injuries are prevalent, or in setting where they are most likely to occur and cause a great deal of damage. The authors also suggest that hiring conscientious workers is one way to increase both safety performance and productivity.

Source: Craig Wallace and Gilad Chen, “A Multilevel Integration of Personality, Climate, Self-Regulation, and Performance,” *Personnel Psychology* 59 (2006): 529–557.

The program began with upper management, whose bonuses were tied to reducing costs associated with worker injuries. Organizational leaders carefully measured and monitored the number and severity of injuries and were given clear responsibilities to ensure that information was obtained and communicated throughout the organization. The end result has been a 50 percent decrease in the cost of workers' compensation claims. For CHW, compliance with safety guidelines therefore not only made employees safer but increased bottom-line profits.



CONCEPT CHECK

1. What can organizational leaders do to encourage compliance with laws and regulations?

A MANAGER'S PERSPECTIVE REVISITED

IN THE MANAGER'S PERSPECTIVE THAT OPENED THE CHAPTER, ALEX WAS THINKING ABOUT LEGAL AND SAFETY ISSUES. HE WAS CONCERNED ABOUT HIS RESPONSE TO A CLAIM OF SEXUAL HARASSMENT, AND HE DIDN'T KNOW IF HE WAS DOING ALL THAT WAS NECESSARY TO PROMOTE WORKFORCE DIVERSITY. HE ALSO WONDERED ABOUT THE CORRECT RESPONSE TO SAFETY VIOLATIONS AND ACCIDENTS. FOLLOWING ARE THE ANSWERS TO THE "WHAT DO YOU THINK?" QUIZ THAT FOLLOWED THE CASE. WERE YOU ABLE TO CORRECTLY IDENTIFY THE TRUE STATEMENTS? COULD YOU DO BETTER NOW?

1. People who are victims of sexual harassment can sue the person who harassed them but not the company. **FALSE.** Employers can be held accountable for the illegal actions of their employees.
2. Companies must hire minority workers even when they are not as qualified as other people who are applying for the same job. **FALSE.** Diversity enhancement and affirmative action require companies to increase their efforts to hire minority workers, but they do not require that preference be given to minority applicants who are less qualified.
3. A company can have legal problems when it doesn't hire enough women, even if it treats men and women the same. **TRUE.** Treating people the same can result in adverse impact discrimination, which occurs when employees from one group are hired at a higher rate than employees from other groups, even though the groups

are treated the same. When a company's hiring procedures result in adverse impact discrimination, the company is required to demonstrate that the procedures identify the people most likely to succeed on the job.

4. Men and women must be paid the same when they perform the same job. **TRUE.** The Equal Pay Act requires them to be paid the same when the job is the same. Exceptions can be made for differences in job tasks, seniority, or performance.
5. Employees have a right to know about any hazardous chemicals they are exposed to at work. **TRUE.** The Occupational Safety and Health Act requires employers to inform workers of chemical hazards.

The questions that Alex faced are common to most managers. Employment and safety laws require organizations to follow certain guidelines. Alex, for example, does have an obligation to stop sexual harassment. He must also comply with a number of laws to eliminate discrimination and provide a safe workplace. Although Alex may have thought company guidelines were common-sense matters, he is wise to review them and see that he and other members of the organization are meeting legal requirements. Fortunately, compliance with the laws and guidelines can also increase productivity and profits in many ways.



SUMMARY

LEARNING OBJECTIVE 1

What is the main law relating to discrimination and employment?

Title VII of the Civil Rights Act of 1964 is the most important law providing protection against employment discrimination. Title VII specifically prohibits discrimination based on race, color, national origin, sex, and religion. Disparate treatment is one generally prohibited form of discrimination that occurs when employees and potential employees are treated differently. Adverse impact occurs when employees are treated the same but the outcome in terms of employment opportunity is different. Adverse impact discrimination can also be illegal unless an organization can show that its methods for hiring people truly identify the people most likely to succeed. Title VII also prohibits sexual harassment in the form of either quid pro quo or hostile environment harassment. The Civil Rights Act of 1991 extended Title VII by clarifying burden of proof, outlawing race-norming, and adding punitive damages. U.S. discrimination laws apply to most people working in the United States and to most U.S. citizens working in foreign countries for U.S. companies.

LEARNING OBJECTIVE 2

What are other important employment laws?

The Age Discrimination in Employment Act makes it illegal to discriminate against people over 40. Age discrimination is frequently observed when organizations lay off workers, and the act states that employees cannot be terminated and replaced by younger workers. The Americans with Disabilities Act protects people who have physical or mental disabilities. Organizations are required to provide reasonable accommodations so that qualified disabled workers can perform essential job tasks. Accommodation is not required when it creates an undue hardship for the organization. The Equal Pay Act requires men and women to be paid the same when they do the same job. People doing the

same job can be paid differently based on seniority or merit, however. The Family Medical Leave Act provides employees with the opportunity to take up to 12 weeks of unpaid leave. Acceptable reasons for taking the leave include personal illness, illness of a direct family member, birth of a child, and adoption of a child.

LEARNING OBJECTIVE 3

How can organizations increase diversity?

There are four basic approaches to increasing workforce diversity. Opportunity enhancement programs focus on recruiting minorities and women. Equal opportunity programs assure that people from underrepresented groups are not victims of discrimination. When applicants are equally qualified, tiebreak programs give an edge for employment or promotion to members of groups that have historically been victims of discrimination. Preferential treatment programs give positive weight to minority status. Executive Order 11246 requires affirmative action plans for organizations that do business with the federal government. A number of court decisions provide guidance for organizations pursuing affirmative action plans. Organizations cannot use quotas to ensure that a specific portion of new hires are from protected classes. Affirmative action plans also are illegal when they unduly harm the interests of individuals who are not members of a protected class.

LEARNING OBJECTIVE 4

What are the major laws pertaining to occupational safety?

The Occupational Safety and Health Act is a federal law that requires organizations to provide a safe work environment. The act requires organizations to provide information and training to employees and to keep records related to accidents and injuries. Some specific OSHA guidelines relate to hazardous chemicals, emergency plans, workspace layout, and medical treatment and first aid.

Workers' compensation laws exist at the state level. These laws require companies to carry insurance that pays medical bills and disability claims for people who are injured while working. Claims are paid even if the injured employee was at fault for causing an accident, but employees cannot generally sue an employer to receive additional compensation.

LEARNING OBJECTIVE 5

What specific practices increase fairness and safety?

Organizations can encourage compliance with laws and guidelines by ensuring that managers

and employees have knowledge and motivation. Managers who hire and supervise others need to be familiar with the requirements of major employment laws. Managers and employees need to be aware of safety procedures. Knowledge and motivation increase when organizational leaders demonstrate high commitment to following laws and guidelines. Organizations that measure and reward compliance are also less likely to experience negative results from lawsuits, injuries, and accidents.

KEY TERMS

Adverse impact	81	Medical and first aid standard	105
Affirmative action plan	98	Mental disabilities	92
Bona fide occupational qualification (BFOQ)	81	Physical disabilities	92
Comparable worth	95	Protected classes	79
Discrimination	80	Punitive damages	88
Disparate treatment	80	Quid pro quo	84
Emergency action plan standard	102	Race-norming	88
Equal employment opportunity	80	Reasonable accommodation	93
Equal Employment Opportunity Commission	80	Sexual harassment	84
Four-fifths rule	82	Title VII	79
Harassment	84	Undue hardship	93
Hazard communication standard	103	Utilization study	99
Hostile environment	85	Validity	82
Immutable characteristics	78	Walking/working surfaces standard	104
Material safety data sheet (MSDS)	104	Workers' compensation	105

DISCUSSION QUESTIONS

- How can human resource professionals reduce employment discrimination?
- Why do you think the majority of employment and safety laws have been passed in the last 50 years, rather than at an earlier time?
- How is adverse impact different from disparate treatment?
- How are Title VII and Executive Order 11246 similar? How are they different?
- What trends in society do you think encouraged the Americans with Disabilities Act and the Family and Medical Leave Act?
- What are some reasons employees might engage in unsafe acts even when they know they could be harmed?
- How do workers' compensation laws protect both employees and employers?
- How might efforts to hire more minorities and women result in greater productivity and profits?

9. What are some ways in which organizations can motivate employees to follow safety guidelines?

10. Why are the example and actions of top organizational leaders so important for encouraging employees and supervisors to follow laws and guidelines?

EXAMPLE CASE

Xerox

Leslie Varon's boss lived by a simple rule: If he was in the office, she should be, too. In the early 1990s Varon worked in finance at Xerox, and the department's VP was an old-style organization man. "You could set your watch by the hours this man worked," Varon says, recalling 12-hour days that often began at 7 A.M. For Varon and her colleagues, that meant missing family dinners. After much discontent, they called a meeting. Couldn't they take work home in order to get out in time for supper? The boss agreed, slowly growing to believe that an employee's value lies in her work, not the hours spent at her desk. As for Varon, her earlier departures don't seem to have impeded her career: Today she's Xerox's finance VP.

Her status as a female officer would make her a rarity at many companies, but not at Xerox. The \$15.7 billion document-management company is one of only nine in the Fortune 500 with a female CEO, but its gender diversity extends far beyond the corner office. Of Xerox's 32 corporate officers, eight are women. So are 800 of its middle managers, more than 30 percent of the total. The company is routinely ranked among the best places for women to work. Inside its Connecticut headquarters, female employees describe a culture where no one hesitates to reschedule a meeting to take a child to the pediatrician. Managers are judged—and compensated—on meeting diversity goals. At Xerox, "people really believe this—this is not cosmetic," says David Nadler, chairman of Mercer Delta Consulting, who worked with Xerox for 20 years. It doesn't see diversity as being somehow in conflict with meritocracy.

It's an attitude that began taking root nearly 40 years ago, when Xerox's top management became concerned about its treatment of black employees. By the 1970s, Xerox was aggressively hiring blacks and supporting a caucus of black employees who met to network and discuss grievances. And as feminism took hold, Xerox's progressive attitudes on race made it especially receptive to changes. But David Kearns, Xerox's CEO from 1982 to 1991, says he moved to promote women not because of fairness or altruism but because drawing from a bigger labor pool would help Xerox compete. "You had to get all of the people [involved] or you weren't going to be able to succeed," he recalls. During the 1980s, female employees formed a Women's Alliance, which lobbied management to promote more women.

Many of today's senior Xerox women directly benefitted from these early moves. Anne Mulcahy began as a sales rep in 1976. Though her numbers were great, she figured her Xerox career would be limited by her refusal to relocate with her husband and two children. But her bosses accommodated her by letting her commute to ever-bigger jobs. "[They said], 'We think you've got a career path here and we want you to take it as far as you can'," she says. She took it far indeed: In 2001, with Xerox mired in financial crisis, Mulcahy became CEO. She cut the workforce from 79,000 to 58,000, refreshed the

product line, and strengthened the balance sheet. The result: Its stock price is up 65 percent, and Mulcahy recently ranked ahead of Oprah Winfrey on Forbes's 2005 list of powerful women.

QUESTIONS

1. How has hiring women and minorities improved Xerox's profitability?
2. What changes did Xerox make to become a more attractive employer for women and minorities?
3. Do you think the emphasis on hiring and promoting women and minorities has been unfair to white men? Why or why not?

Source: With permission. Daniel McGinn, "Women Hold Close to a Third of Top Management Jobs at Xerox. Insider a Kinder Culture," *Newsweek*, October 24, 2005, p. 68.

DISCUSSION CASE

Jones Feed and Seed

Jones Feed and Seed is a large regional warehouse that supplies agricultural products to retail stores. These products include pesticides that are used to treat animals and herbicides that are used to improve crops. For its warehouse operations, the company generally hires employees who have just finished high school. These employees work under the supervision of a more senior laborer, who is usually someone with about one year of experience working in the warehouse. The supervisor is in charge of interviewing job candidates and normally makes final hiring decisions.

Job Description

- Receive and count stock items and record data manually or using computer.
- Pack and unpack items to be stocked on shelves in stockrooms, warehouses, or storage yards.
- Verify inventory computations by comparing them to physical counts of stock and investigate discrepancies or adjust errors.
- Store items in an orderly and accessible manner in warehouses, tool rooms, supply rooms, or other areas.
- Mark stock items using identification tags, stamps, electric marking tools, or other labeling equipment.
- Clean and maintain supplies, tools, equipment, and storage areas in order to ensure compliance with safety regulations.
- Determine proper storage methods, identification, and stock location based on turnover, environmental factors, and physical capabilities of facilities.
- Keep records on the use and/or damage of stock or stock handling equipment.
- Move controls to drive gasoline or electric-powered trucks, cars, or tractors and transport materials between loading, processing, and storage areas.
- Move levers and controls that operate lifting devices, such as forklifts, lift beams and swivel-hooks, hoists, and elevating platforms, in order to load, unload, transport, and stack material.
- Position lifting devices under, over, or around loaded pallets, skids, and boxes, and secure material or products for transport to designated areas.
- Manually load or unload materials onto or off pallets, skids, platforms, cars, or lifting devices.
- Load, unload, and identify building materials, machinery, and tools and distribute them to the appropriate locations, according to project plans and specifications.

QUESTIONS

1. What training would you provide to the supervisors who conduct job interviews?
2. What are some primary safety concerns that the company should have about the warehouse operation?
3. What OSHA guidelines does the company need to follow and communicate to employees?
4. What kind of disabilities do you think could be reasonably accommodated for this job position?

Source: Information for job description from <http://online.onetcenter.org/>.

EXPERIENTIAL EXERCISE

Locating Government Resources on the Web

Visit the website that describes workers' compensation for your state. Links can be found at http://www.workerscompensation.com/workers_comp_by_state.php.

1. Who can employees contact if they think they have claims?
2. How would an employee go about filing a workers' compensation claim?
3. How soon after an injury must an employee make a claim?
4. What types of benefits might an injured employee receive?
5. What happens if the employee and employer have a dispute over workers' compensation?

Visit the OSHA website at www.osha.gov. In the compliance assistance section, visit the area called

“Quick Start.” Look at the modules that describe guidelines for the construction industry.

Based on what you learn, answer the following questions.

1. What kind of records should a construction company keep?
2. What should be included in a jobsite safety program?
3. What type of training should construction companies offer to employees?

What features of the OSHA website do you find most helpful? What would you do to improve the website?

INTERACTIVE EXPERIENTIAL EXERCISE

The Legal Side of HR: Handling Equal Employment Issues at Mega Manufacturing
<http://www.wiley.com/college/sc/stewart>

Access the companion website to test your knowledge by completing a Mega Manufacturing interactive role-playing exercise.

In this exercise, it's Friday afternoon, and you're looking forward to catching up on some leisure activities this weekend. You accompany the owner of Mega Manufacturing on a tour of the plant to meet some of the hourly employees. A female employee comes up to you and complains that a male coworker has been sexually harassing her. While you are talking with her, the owner receives a phone call. When he hangs up, he tells you that the caller was a former job applicant, who insists that he was not hired because he is member of a minority group. The former applicant plans to file a claim with the EEOC. The owner asks for your advice on how to begin handling these issues. So much for that weekend of relaxation. •

ENDNOTES

1. Ann Zimmerman, "Judge Certifies Wal-Mart Suit as Class Action; Up to 1.6 Million Could Join Sex-Discrimination Case; Company Plans to Appeal," *Wall Street Journal*, A1, June 23, 2004.
2. *Ibid.*; Cora Daniels, "Wal-Mart's Women Problem," *Fortune*, July 12, 2004, 28.
3. Lisa Takeuchi Cullen, "Wal-Mart's Gender Gap," *Time*, July 5, 2004, 44.
4. Douglas P. Shuit, "People Problems on Every Aisle," *Workforce Management* 83, no. 2 (2004): 26–34; Daniel McGinn, Susanna Schrobsdorff, and Nicole Joseph, "Wal-Mart Hits the Wall," *Newsweek*, November 14, 2005, 42–44.
5. Andy Serwer, Kate Bonamici, and Corey Hajim, "Bruised in Bentonville," *Fortune*, April 18, 2005, 84–89. McGinn, Schrobsdorff, and Joseph, "Wal-Mart Hits the Wall."
6. Michael A. Zigarelli, *Can They Do That? A Guide to Your Rights on the Job* (New York: Lexington Books, 1994).
7. www.eeoc.gov/policy/vii.html.
8. Anonymous, "Restaurant Chain to Resist on Hiring Men," *New York Times*, A20, November 16, 1995.
9. *Dothard v. Rawlinson* (1977) 433 U.S. 321.
10. Anonymous, "Hooters Settles Suit by Men Denied Jobs," *New York Times*, A20, October 1, 1997.
11. Jason A. Colquitt, "Does the Justice of the One Interact with the Justice of the Many? Reactions to Procedural Justice in Teams," *Journal of Applied Psychology* 89 (2004): 633–646; Jason A. Colquitt, Donald E. Conlon, Michael J. Wesson, Christopher O. L. H. Porter, and K. Yee Ng, "Justice at the Millennium: A Meta-Analytic Review of 25 Years of Organizational Justice Research," *Journal of Applied Psychology* 86 (2001): 425–445.
12. *Griggs v. Duke Power* (1971) 401 U.S. 424.
13. Arthur Gutman, *EEO Law and Personnel Practices*, 2nd ed. (Thousand Oaks, CA: Sage, 2000).
14. Code of Federal Regulations, from the U.S. Government Printing Office, Title 29, Vol. 4, 29CFR 1604.11.
15. Gutman, *EEO Law*.
16. *Burlington v. Ellereth* (1988) 18 S. Ct. 2257; *Faragher v. City of Boca Raton* (1998) 139 LED 2d 867 (no. 97-282).
17. *Harris v. Forklift* (1993) 114 S. Ct. 367.
18. Nathan A. Bowling and Terry A. Beehr, "Workplace Harassment from the Victim's Perspective: A Theoretical Model and Meta-Analysis," *Journal of Applied Psychology* 91 (2007): 998–1012; Chelsea R. Willness, Piers Steel, and Kibeom Lee, "A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment," *Personnel Psychology* 60 (2007): 127–162.
19. *Ibid.*
20. www.eeoc.gov/policy/cra91.html.
21. *Wards Cove Packing v. Antonio* (1989) 490 U.S. 642.
22. Patrick McGeehan, "Merrill Lynch Firm Is Told It Must Pay In Sexual Bias Case," *New York Times*, A1, April 21, 2004.
23. *Kato v. Ishihara*, 239 F. Supp. 2d 359 (S.D.N.Y.).
24. *Kern v. Dynalectron Corp.*, 577 F. Supp 1196 (N.D. Tex. 1983), *aff'd*, 746 F.2d 810 (5th Cir. 1984).
25. www.eeoc.gov/policy/adea.html.
26. Gutman, *EEO Law*.
27. *EEOC v. Massey* (CA11 1997) 117 F.3d 1244.
28. Thomas W. H. Ng and Daniel C. Feldman, "The Relationship of Age to Ten Dimensions of Job Performance," *Journal of Applied Psychology* 93 (2008): 392–423.
29. <http://www.usdoj.gov/crt/ada/adahom1.htm>.
30. *Sutton v. United Airlines* (1999) WL 407488 (No. 97-1943).
31. *Hartman v. Petaluma* (ND Calif. 1994) 841 F. Supp. 946.
32. *EEOC v. Exxon* (ND Texas 1997) 967 F. Supp. 208.
33. <http://www.usdoj.gov/crt/ada/pubs/ada.txt>.
34. *Stewart v. Happy Herman's Cheshire Bridge* (CA11 1997) 117 F.3d 1278.
35. www.usdoj.gov/crt/ada/pubs/ada.txt.
36. *Dexler v. Tisch* (D Conn 1987) 660 F. Supp. 1418.
37. www.usdoj.gov/crt/ada/pubs/ada.txt.
38. *Rodgers v. Lehman* (CA4 1989) 869 F.2d 253.
39. Gutman, *EEO Law*.
40. Gillian Flynn, "Can't Get This Big Without HR Deluxe," *Personnel Journal*, December 1996, 47–53; Margaret Sheridan, "Difficult Labor," *Restaurants and Institutions*, July 15, 1998, 79.
41. www.eeoc.gov/policy/epa.html.
42. *Schultz v. Wheaton Glass* (CA 3 1970) 421 F.2d 259.
43. *Hodgson v. Brookhaven General Hospital* (CA 5 1970) 423 F.2d 719; 470 F.2d 729.
44. Gutman, *EEO Law*.
45. www.dol.gov/esa/regs/statutes/whd/fmla.ht.
46. *Brenneman v. MedCentral Health Sys* (6th Cir. 2004) 366 F.3d 412.
47. Jurgen Wegge, Carla Roth, Barbara Neubach, Kaus-Helmut Schmidt, and Ruth Kanfer, "Age and Gender Diversity as Determinants of Performance and Health in a Public Organization: The Role of Task Complexity and Group Size," *Journal of Applied Psychology* 93 (2008): 1301–1313.
48. David A. Harrison, David A. Karvitz, David M. Mayer, Lisa M. Leslie, and Dalit Lev-Arey, "Understanding Attitudes Toward Affirmative Action Programs in Employment: Summary and Meta-Analysis of 35 Years of Research," *Journal of Applied Psychology* 91 (2006): 1013–1036.
49. *Ibid.*
50. Miguel M. Unzueta, Brian S. Lowery, and Eric D. Knowles, "Organizational Behavior and Human Decision Processes 105 (2008): 1–13.
51. Fiona A. White, Margaret A. Charles, and Jacqueline K. Nelson, "The Role of Persuasive Arguments in Changing Affirmative Action Attitudes and Expressed Behavior in Higher Education," *Journal of Applied Psychology* 93 (2008): 1271–1286.
52. Astrid C. Homan, Daan van Knippenberg, Gerben A. Van Kleef, and Carsten K. W. DeDreu, "Bridging Faultlines by Valuing Diversity: Diversity Beliefs, Information Elaboration, and Performance in Diverse Work Groups," *Journal of Applied Psychology* 92 (2007): 1189–1199.
53. www.dol.gov/esa/regs/statutes/ofccp/eo11246.t.
54. Harry Holzer and David Neumark, "What Does Affirmative Action Do?" *Industrial and Labor Relations Review* 53 (2000): 240–271.

55. *Regents of University of California v. Bakke* (1978) 438 U.S. 265.
56. *Firefighters of Local Union 1784 v. Stotts* (1984) 467 U.S. 561.
57. *Adarand v. Pena* (CA10 1999) 169 F.3d 1292.
58. Jennifer L. Berdahl and Celia Moore, "Workplace Harassment: Double Jeopardy for Minority Women," *Journal of Applied Psychology* 91 (2006): 426–436.
59. Madeline E. Heilman and Tyler G. Okimoto, "Motherhood: A Potential Source of Bias in Employment Decisions," *Journal of Applied Psychology* 93 (2008): 189–198.
60. Derek R. Avery, Patrick F. McKay, and David C. Wilson, "What Are the Odds? How Demographic Similarity Affects the Prevalence of Perceived Employment Discrimination," *Journal of Applied Psychology* 93 (2008): 235–249.
61. Alan Levin, Thomas Frank, and Paul Overberg, "Mine Had Hundreds of Violations," *USA Today*, A3, January 5, 2006.
62. www.stats.bls.gov/iif/oshcfoi1.htm#2004.
63. www.bls.gov/iif/oshsum.htm.
64. www.stats.bls.gov/iif/oshwc/osh/case/osch003.pf.
65. www.osha.gov/pls/oshaweb/owasrch.search_form?_doc_typeOSHACT&p_toc_level50&p_keyvalue5
66. A good overview of different state workers compensation laws can be found at www.comp.state.nc.us/ncic/pages/all50.htm.
67. Information in this section is based somewhat on an article by David A. Hofmann, Rick Jacobs, and Frank Landy, "High Reliability Process Industries: Individual, Micro, and Macro Organizational Influences on Safety Performance," *Journal of Safety Research* 26 (1995): 131–149.
68. Sandy Smith, "Calpine: Safety Is Personal," *Occupational Hazards*, October 2005, 10.
69. Sharon Newman, Mark A. Griffin, and Claire Mason, "Safety in Work Vehicles: A Multilevel Study Linking Safety Values and Individual Predictors to Work-Related Driving Crashes," *Journal of Applied Psychology* 93 (2006): 632–644.
70. David A. Hofmann and Frederick P. Morgeson, "Safety-Related Behavior as Social Exchange: The Role of Perceived Organizational Support and Leader-Member Exchange," *Journal of Applied Psychology* 84 (1999): 286–296.

