

3

Equal Employment Opportunity

After you have read this chapter, you should be able to:

- Describe key provisions in Title VII of the Civil Rights Acts of 1964 and 1991.
- Show how women are affected by pay, job assignment, and career issues in organizations.
- Define the two types of sexual harassment and how employers should respond to sexual harassment complaints.
- Identify two means that organizations are using to deal with the aging of their workforces.
- Discuss how reasonable accommodation is made when managing individuals with disabilities and differing religious beliefs.
- Evaluate several arguments supporting and opposing affirmative action.
- Discuss why diversity training is important.

Sexual Harassment at the United Nations



(DANIEL GARCIA/AFP/Getty Images)

The United Nations (U.N.) is struggling with a series of sexual harassment complaints as it strives to protect human rights globally. The U.N.'s global staff includes around 60,000 people stationed around the world. These employees come from many different cultures and backgrounds. The U.N. handles sexual harassment problems differently from other large organizations. Many U.N. managers have diplomatic immunity that protects them from criminal prosecution and from civil lawsuits as well; therefore, the internal justice system of the organization is the only one employees can use. This system dates back to 1946 and employs a “bewildering array” of channels and processes. The net effect has been many harassment cases that have not been settled to anyone’s satisfaction.

For example, a female Syrian employee filed a complaint against her boss in the Kuwait office alleging he had made sexual advances, grabbing and kissing her. He then refused to renew her contract when she did

not respond. Ten days after a report found evidence of her accusations, the supervisor resigned and could not be disciplined. In another case, a French woman who was in Gaza for the U.N. complained she was harassed by her director. She said he used binoculars to spy on her in her apartment, made sexually explicit comments, and groped her. The Director was cleared at first after an investigation by a “colleague.” Another investigation was stymied when the director reached mandatory retirement age. His accuser’s employment contract ran out and was not renewed and the case ended. In a final case to illustrate the problem, a translator for the U.N. in Lebanon accused a U.N. security officer of rape, but her employment contract expired before her appeal was heard; that was the end of the case.

Employees at the U.N. in the United States who have been harassed have found that filing a suit in U.S. courts will not work because of the diplomatic immunity.¹ Sexual harassment is an international problem in employment, but the U.N., regardless of whether it has a bigger problem than other international organizations, has some unique difficulties in dealing with it.

In the United States, using race, gender, disability, age, religion, and certain other characteristics as the basis for choosing among people at work is generally illegal. Doing so can also be quite expensive, as fines and back wages can be awarded as well as sizable law suit settlements. Inequality in the treatment of people with different backgrounds has been an issue for many years, but it was the Civil Rights Act of 1964 that started a legislative movement toward leveling the playing field in employment. Initially focus was on race, gender, and religion, but these characteristics were soon followed by age, pregnancy, and individuals with disabilities. Since then numerous Executive Orders, regulations, and interpretations by courts have affected the employer/employee relationship. Perhaps nothing has had the impact of Equal Employment Opportunity (EEO) on HR during the same period of time. See Appendix C for a listing of the relevant federal laws.

Employers have paid (and continue to pay) large amounts for violating EEO laws. Familiarity with EEO requirements and ways to successfully manage workforce diversity are the goals and focus of this chapter.²

NATURE OF EQUAL EMPLOYMENT OPPORTUNITY (EEO)

At the core of equal employment is the concept of discrimination. The word *discrimination* simply means “recognizing differences among items or people.” For example, employers must discriminate (choose) among applicants for a job on the basis of job requirements and candidates’ qualifications. However, when discrimination is based on race, gender, or some other factors, it is illegal and employers face problems. The following bases for protection have been identified by various federal, state, and/or local laws:

- Race, ethnic origin, color (including multiracial/ethnic backgrounds)
- Sex/gender (including pregnant women and also men in certain situations)
- Age (individuals over age 40)
- Individuals with disabilities (physical or mental)
- Military experience (military status employees and Vietnam-era veterans)
- Religion (special beliefs and practices)
- Marital status (some states)
- Sexual orientation (some states and cities)

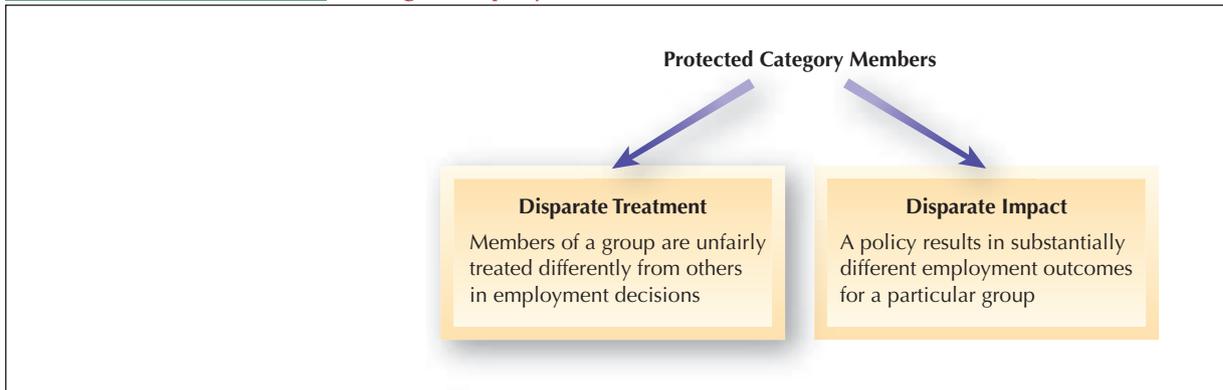
These categories are composed of individuals who are members of a **protected category** under EEO laws and regulations.

Discrimination remains a concern as the U.S. workforce becomes more diverse. As Figure 3-1 indicates, there are two types of illegal employment discrimination: disparate treatment and disparate impact.

Protected category A group identified for protection under EEO laws and regulations.

FIGURE 3-1

Illegal Employment Discrimination



Disparate Treatment

The first type of illegal discrimination occurs with employment-related situations in which either: (1) different standards are used to judge individuals, or (2) the same standard is used, but it is not related to the individuals' jobs. **Disparate treatment** occurs when members of one group are treated differently from others. For example, if female applicants must take a special skills test not given to male applicants, then disparate treatment may be occurring.³

Often disparate treatment cases are based on evidence that an employer's actions were intentionally discriminatory. For example, a manufacturing firm in Cleveland, Ohio, paid almost \$1 million to settle an EEO lawsuit involving 20 people, charging that S&Z Tool & Die Company intentionally refused to hire African Americans and women except in clerical jobs.⁴

Disparate treatment

Occurs when members of a group are treated differently from others.

Disparate impact

Occurs when members of a protected category are substantially underrepresented as a result of employment decisions that work to their disadvantage.

Disparate Impact

Disparate impact occurs when members of a protected category are substantially underrepresented as a result of employment decisions that work to their disadvantage. The landmark case that established the importance of disparate impact as a legal foundation of EEO law is *Griggs v. Duke Power*, 1401 U.S. 424 (1971). The decision by the U.S. Supreme Court established two major points:

1. It is not enough to show a lack of discriminatory intent if the employment tool results in a disparate impact that discriminates against one group more than another or continues a past pattern of discrimination.
2. The employer has the burden of proving that an employment requirement is directly job related as a "business necessity." Consequently, the intelligence test and high school diploma requirements of Duke Power were ruled not to be related to the job.

This and a number of other decisions make it clear that employers must be able to document through statistical analyses⁵ that disparate treatment and disparate impact have not occurred.⁶ Knowing how to perform these analyses is important in order for employers to follow appropriate equal employment guidelines. See Appendix E for information relating to these issues.



LOGGING ON

Equal Employment Opportunity Commission

This website provides information on the EEOC. It includes details on employment discrimination facts, enforcement statistics, and technical assistance programs. Visit the site at www.eeoc.gov.

FIGURE 3-2

EEO Concepts



Equal Employment Opportunity Concepts

Several basic EEO concepts have resulted from court decisions, laws, and regulatory actions. The four key areas discussed next (see Figure 3-2) help clarify key EEO ideas.

Business Necessity and Job Relatedness A **business necessity** is a practice necessary for safe and efficient organizational operations. Business necessity has been the subject of numerous court decisions. Educational requirements often are based on business necessity. However, an employer who requires a minimum level of education, such as a high school diploma, must be able to defend the requirement as essential to the performance of the job (job related), which may be difficult. For instance, equating a degree or diploma with the possession of math or reading abilities is considered questionable.

Further, employers are expected to use job-related employment practices. The *Washington v. Davis* case involved the hiring of police officers in Washington, DC. The issue was a reading comprehension and aptitude test given to all applicants for police officer positions. The test contained actual material that the applicants would have to learn during a training program. The city could show a relationship between success in the training program and success as a police officer, although a much higher percentage of women and blacks than white men failed this aptitude test.

The Supreme Court ruled that the City of Washington, DC, did not discriminate unfairly because the test was definitely job related. If a test is clearly related to the job and tasks performed, it is *not illegal* simply because a greater percentage of minorities or women do not pass it. The crucial outcome is that the test must be specifically job related and cannot be judged solely on its disparate impact.⁷

Business necessity

A practice necessary for safe and efficient organizational operations.

Bona Fide Occupational Qualification (BFOQ) Employers may discriminate on the basis of sex, religion, or national origin if the characteristic can be justified as a “bona fide occupational qualification reasonably necessary to the

normal operation of the particular business or enterprise.” Thus, a **bona fide occupational qualification (BFOQ)** is a characteristic providing a legitimate reason why an employer can exclude persons on otherwise illegal bases of consideration.

What constitutes a BFOQ has been subject to different interpretations in various courts. Legal uses of BFOQs have been found for hiring Asians to wait on customers in a Chinese restaurant or Catholics to serve in certain religious-based positions in Catholic churches.

Burden of Proof Another legal issue that arises when discrimination is alleged is the determination of who has the **burden of proof**. Burden of proof must be established to file suit against employers and establish that illegal discrimination has occurred.

Based on the evolution of court decisions, current laws, and regulations the plaintiff charging discrimination must:

- be a *protected-category member*, and
- prove that *disparate impact* or *disparate treatment* existed.

Once a court rules that a preliminary case has been made, the burden of proof shifts to the employer. The employer then must show that the bases for making employment-related decisions were specifically job related and consistent with considerations of business necessity.

Nonretaliation Employers are prohibited from retaliating against individuals who file discrimination charges. **Retaliation** occurs when employers take punitive actions against individuals who exercise their legal rights. For example, an employee who had reported harassment by a supervisor was fired, but the Supreme Court found that it is unlawful to discriminate against someone who has “made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.”⁸

To avoid charges of retaliation, the following actions are recommended for employers:

- Train supervisors on what retaliation is and what is not appropriate.
- Conduct a thorough internal investigation of any claims and document the results.
- Take appropriate action when any retaliation occurs.

Progressing Toward Equal Employment Opportunity

After almost 50 years, equal employment continues to be a significant focus of HR management. Discrimination, harassment, and retaliation lawsuits are the legal actions most likely to affect employers. (See HR Perspective: “Officer Dirt.”) The number of EEO complaints continues to rise, indicating that more progress is needed to reduce employment discrimination.⁹

Not everyone agrees on the best way to achieve equal employment opportunity. There seems to be little disagreement that the goal is **equal employment**, or employment that is not affected by illegal discrimination. However, the way to achieve that goal is open to debate.¹⁰ One way is to use the “**blind to differences**” approach, which argues that differences among people should be ignored and everyone should be treated equally. The second common approach is **affirmative action**, through which employers are urged to employ people based on their race, age, gender, or national origin. The idea is to make

Bona fide occupational qualification (BFOQ)

Characteristic providing a legitimate reason why an employer can exclude persons on otherwise illegal bases of consideration.

Burden of proof What individuals who file suit against employers must prove in order to establish that illegal discrimination has occurred.

Retaliation Punitive actions taken by employers against individuals who exercise their legal rights.

Equal employment

Employment that is not affected by illegal discrimination.

Blind to differences

Differences among people should be ignored and everyone should be treated equally.

Affirmative action

Employers are urged to employ people based on their race, age, gender, or national origin to make up for historical discrimination.

“Officer Dirt”



When a former police officer suggested age discrimination was involved in his dismissal, the Kansas City Police Department investigated and decided to fight the case. They might have done a more thorough job, as later was shown.

Anthony Hogan had been a police officer for 24 years. With the jury in state court listening, he countered his supervisor's denials with tape recordings he had made during three meetings in which the supervisor said Officer Hogan was “burned out,” “dragging his feet,” and “no longer a fireball.” Another police official called him “Officer Dirt” because he was “Older than Dirt.”

The jury ruled 10–2 in favor of the former officer and awarded him \$700,000 in actual damages and \$2 million in punitive damages. He settled for \$1.95 million during an appeal.

EEOC officials expect an increase in discrimination filings as legislation (e.g., the Lilly Ledbetter Fair Pay

Act), economic pressures, and baby boomers reaching retirement age change the landscape for such suits. The case of “Officer Dirt” can provide some useful lessons in dealing with similar claims:

- *Be thorough in the investigation:* Check performance evaluations for the past few years, resist the temptation to talk to only one or two people, and keep a record of interviews.
- *Do not demonize the claimant:* Rather than giving in to the tendency to view someone negatively just because the person has brought a claim, ask what the work record says. Managers get emotional when accused of discrimination, but the result of actions that are not thought out can be a retaliation claim.

One manager notes that “workers are watching and waiting to see how we handle the claim . . . we want others to believe we did the right thing.”¹¹

up for historical discrimination by giving groups who have been affected enhanced opportunities for employment.

RACE/ETHNIC/NATIONAL ORIGIN

The focus now shifts to equal employment laws and necessary considerations for managing HR in light of these laws.

Civil Rights Act of 1964, Title VII

Although the very first civil rights act was passed in 1866, it was not until passage of the Civil Rights Act of 1964 that the keystone of antidiscrimination employment legislation was put into place. The Equal Employment Opportunity Commission (EEOC) was established to enforce the provisions of Title VII, the portion of the act that deals with employment.

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

1. *fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin, or*
2. *limit, segregate, or classify his employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment*

opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin.

Title VII Coverage Title VII, as amended by the Equal Employment Opportunity Act of 1972, covers most employers in the United States. Any organization meeting one of the criteria in the following list is subject to rules and regulations that specific government agencies have established to administer the act:

- All private employers of 15 or more persons who are employed 20 or more weeks a year
- All educational institutions, public and private
- State and local governments
- Public and private employment agencies
- Labor unions with 15 or more members
- Joint labor/management committees for apprenticeships and training

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

Executive Orders 11246, 11375, and 11478

Numerous executive orders require that employers holding federal government contracts not discriminate on the basis of race, color, religion, national origin, or sex. An *Executive Order* is issued by the president of the United States to provide direction to government departments on a specific area. The Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor has responsibility for enforcing nondiscrimination in government contracts.

Executive Orders 11246, 11375, and 11478 are major federal EEO efforts for government contractors; many states have similar requirements for firms with state government contracts.

Civil Rights Act of 1991

The Civil Rights Act of 1991 requires employers to show that an employment practice is *job related for the position* and is consistent with *business necessity*. The act clarifies that the plaintiffs bringing the discrimination charges must identify the particular employer practice being challenged and must show only that protected-class status played *some role in their treatment*. For employers, this requirement means that an individual's race, color, religion, sex, or national origin *must play no role* in their employment practices. This act allows people who have been targets of intentional discrimination based on sex, religion, or disability to receive both compensatory and punitive damages. One key provision of the 1991 act relates to how U.S. laws on EEO are applied globally.

Managing Racial and National Origin Issues

The original purpose of the Civil Rights Act of 1964 was to address race and national origin discrimination. This concern continues to be important today,

and employers must be aware of potential HR issues that are based on race, national origin, and citizenship in order to take appropriate actions.

Employment discrimination can occur in numerous ways, from refusal to hire someone because of the person's race/ethnicity to the questions asked in a selection interview. See Appendix D for examples of legal and illegal question areas. For example, a trucking company settled a discrimination lawsuit by African American employees who were denied job assignments and promotions because of racial bias. In addition to paying a fine, the firm must report to the EEOC on promotions from part-time to full-time for dock worker jobs.

Sometimes racial discriminations can be more subtle. For example, some firms have tapped professional and social networking sites to fill open positions. However, networking sites exclude many people. According to one study, only 5% of LinkedIn users are black and 2% are Hispanic. This lack of access to these sites can easily be viewed as racial discrimination.¹²

Under federal law, discriminating against people because of skin color is just as illegal as discriminating because of race. For example, one might be guilty of color discrimination but not racial discrimination if one hired light-skinned African Americans over dark-skinned people.

Racial/Ethnic Harassment The area of racial/ethnic harassment is such a concern that the EEOC has issued guidelines on it. It is recommended that employers adopt policies against harassment of any type, including ethnic jokes, vulgar epithets, racial slurs, and physical actions. The consequences of not enforcing these policies are seen in a case involving a small business employer that subjected Latinos to physical and verbal abuse. Hispanic males at the firm were subjected to derogatory jokes, verbal abuse, physical harm, and other humiliating experiences. Settling the case was expensive for the employer.

Contrast that case with another that shows the advantage of taking quick remedial action. An employee filed a lawsuit against an airline because coworkers told racist jokes and hung nooses in his workplace. The airline was able to show that each time any employee, including the plaintiff, reported problems, management conducted an investigation and took action against the offending employees. The court ruled for the employer in this case because the situation was managed properly.

Affirmative Action

Through **affirmative action**, employers are urged to hire groups of people based on their race, age, gender, or national origin to make up for historical discrimination. It is a requirement for federal government contractors to document the inclusion of women and racial minorities in the workforce. As part of those government regulations, covered employers must submit plans describing their attempts to narrow the gaps between the composition of their workforces and the composition of labor markets where they obtain employees. However, affirmative action has been the subject of numerous court cases and an ongoing political and social debate both in the United States and globally.¹³

For example, a recent Supreme Court ruling held that race should *not* be used to the detriment of individuals who passed an examination and were qualified for promotions. In this case, the city of New Haven, Connecticut, threw out the results of a test for promotion where more white firefighters passed than blacks or Hispanics. The City claimed it had to junk the tests because they would lead to an avalanche of lawsuits by black candidates who

Affirmative Action

The hiring of groups of people based on their race, age, gender or national origin.

had not passed. The court said fear of litigation was no reason to rely on race to throw out the results.¹⁴

Supporters offer many reasons why affirmative action is important, while opponents argue firmly against it. Individuals can examine the points of both sides in the debate and compare them with their personal views of affirmative action. The authors of this text believe that whether one supports or opposes affirmative action, it is important to understand why its supporters believe that it is needed and why its opponents believe it should be discontinued. The reasons given most frequently by both sides are highlighted in Figure 3-3.

Managing Affirmative Action Requirements

Federal, state, and local regulations require many government contractors to compile affirmative action plans to report on the composition of their workforces. An **affirmative action plan (AAP)** is a formal document that an employer compiles annually for submission to enforcement agencies. Generally, contractors with at least 50 employees and \$50,000 in government contracts annually must submit these plans. Courts have noted that any employer *may* have a *voluntary* AAP, although employers *must* have such a plan if they are government contractors. Some courts have ordered employers that are not government

Affirmative action plan (AAP) A document reporting on the composition of an employer's workforce, required for federal contractors.

FIGURE 3-3

The Debate about Affirmative Action

Arguments: Why Affirmative Action Is Needed

- ◆ Affirmative action is needed to overcome past injustices or eliminate the effects of those injustices.
- ◆ Affirmative action creates more equality for all persons, even if temporary injustice to some individuals may result.
- ◆ Raising the employment level of protected-class members will benefit U.S. society in the long run.
- ◆ Properly used, affirmative action does not discriminate against males or whites.
- ◆ Goals indicate progress is needed, not quotas.

Arguments: Why Affirmative Action Is Not Needed

- ◆ Affirmative action penalizes individuals (males and whites) even though they have not been guilty of practicing discrimination.
- ◆ It is no longer needed as an African American has been elected President.
- ◆ Affirmative action results in greater polarization and separatism along gender and racial lines.
- ◆ Affirmative action stigmatizes those it is designed to help.
- ◆ Goals become quotas and force employers to "play by the numbers."

contractors to submit required AAPs because of past discriminatory practices and violations of laws.

The contents of an AAP and the policies flowing from it must be available for review by managers and supervisors within the organization. Plans vary in length; some are long and require extensive staff time to prepare.



Affirmative Action Plan Metrics A crucial but time-consuming part of an AAP is the analyses. The **availability analysis** identifies the number of protected-class members available to work in the appropriate labor markets for given jobs. This analysis can be developed with data from a state labor department, the U.S. Census Bureau, and other sources. The **utilization analysis** identifies the number of protected-class members employed in the organization and the types of jobs they hold.

Once all the data have been analyzed and compared, then *underutilization* statistics must be calculated by comparing the availability analysis with the utilization analysis. It is useful to think of this stage as a comparison of whether the internal workforce is a “representative sampling” of the available external labor force from which employees are hired.

Using the underutilization data, *goals* and *timetables* for reducing underutilization of protected-class individuals must then be identified. Actions that will be taken to recruit, hire, promote, and train more protected-class individuals are described. The AAP must be updated and reviewed each year to reflect changes in the utilization and availability of protected-category members. If the AAP is audited, the employer must be prepared to provide additional details and documentation. Appendix F provides information about EEO enforcement.



LOGGING ON

The Affirmative Action and Diversity Project

A resource for opinions surrounding the issues of affirmative action and its cultural and economic aspects can be found at <http://aad.english.ucsb.edu>.

SEX/GENDER DISCRIMINATION LAWS AND REGULATIONS

A number of laws and regulations address discrimination based on sex or gender. Historically, women experienced employment discrimination in a variety of ways. The inclusion of sex as a basis for protected-class status in Title VII of the 1964 Civil Rights Act has led to various areas of legal protection for women.

Pregnancy Discrimination

The Pregnancy Discrimination Act (PDA) of 1978 requires that any employer with 15 or more employees treat maternity leave the same as other personal or medical leaves. Closely related to the PDA is the Family and Medical Leave Act (FMLA) of 1993, which requires that individuals be given up to 12 weeks of family leave without pay and also requires that those taking family leave be allowed to return to jobs (see Chapter 13 for details). The FMLA applies to both men and women.

Courts have generally ruled that the PDA requires employers to treat pregnant employees the same as nonpregnant employees with similar abilities or inabilities. Employers have been found to have acted properly when terminating a pregnant employee for excessive absenteeism due to pregnancy-related

Availability analysis

Identifies the number of protected-class members available to work in the appropriate labor markets for given jobs.

Utilization analysis

Identifies the number of protected-class members employed in the organization and the types of jobs they hold.

illnesses, because the employee was not treated differently from other employees with absenteeism problems.

Equal Pay and Pay Equity

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

1. Differences in seniority
2. Differences in performance
3. Differences in quality and/or quantity of production
4. Factors other than sex, such as skill, effort, and working conditions

For example, a university was found to have violated the Equal Pay Act by paying a female professor a starting salary lower than salaries paid to male professors with similar responsibilities. In fact, the court found that the woman professor taught larger classes and had more total students than some of the male faculty members.¹⁵

Ledbetter v. Goodyear Tire & Rubber Co. was a significant U.S. Supreme Court decision on pay discrimination. Ledbetter, a female manager with Goodyear in Alabama, claimed that she was subjected to pay discrimination because she received lower pay during her career back to 1979, even though she did not file suit until 1998.¹⁶ The decision examined this view and stated that the rights of workers to sue for previous years of paid discrimination are limited. However, in 2009 Congress passed the Lilly Ledbetter Fair Pay Act that canceled the Supreme Court ruling. The new law effectively eliminates the statute of limitations for employees to file pay discrimination claims.¹⁷

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

A major reason for the development of the pay equity idea is the continuing gap between the earnings of women and men. For instance, in 1980, the average annual pay of full-time female workers was 60% of that of full-time male workers. By 2008, the reported rate of about 80% showed some progress but a continuing disparity.¹⁸ See Figure 3-4.

Sexual Harassment

The Equal Employment Opportunity Commission has issued guidelines designed to curtail sexual harassment. **Sexual harassment** refers to actions that are sexually directed, are unwanted, and subject the worker to adverse employment conditions or create a hostile work environment. Sexual harassment can occur between a boss and a subordinate, among coworkers, and when nonemployees have business contacts with employees.

Most of the sexual harassment charges filed involve harassment of women by men. However, some sexual harassment cases have been filed by men

Pay equity The idea that pay for jobs requiring comparable levels of knowledge, skill, and ability should be similar, even if actual duties differ significantly.

Sexual harassment Actions that are sexually directed, are unwanted, and subject the worker to adverse employment conditions or create a hostile work environment.

FIGURE 3-4

Female Annual Earnings as Percentage of Male Earnings



against women managers and supervisors, and some have been filed by both men and women for same-sex harassment.

Managing Sex/Gender Issues

The influx of women into the workforce has had major social, economic, and organizational consequences. The percentage of women in the total U.S. civilian workforce has increased dramatically since 1950, to almost 50% today.

This growth in the number of women in the workforce has led to more sex/gender issues related to jobs and careers. A significant issue is related to biology (women bear children) and to tradition (women have a primary role in raising children). A major result of the increasing share of women in the workforce is that more women with children are working. According to the U.S. Bureau of Labor Statistics, about three-fourths of women aged 25–54 are in the workforce. Further, about half of all women currently working are single, separated, divorced, widowed, or otherwise single heads of households. Consequently, they are “primary” income earners, not co-income providers, and must balance family and work responsibilities. This responsibility may affect managers’ perceptions of family/work conflict that may lead to promotability issues for women.¹⁹

To guard against pay inequities that are considered illegal under the Equal Pay Act, employers should follow these guidelines:

- Include all benefits and other items that are part of remuneration to calculate total compensation for the most accurate overall picture.
- Make sure people know how the pay practices work.
- Base pay on the value of jobs and performance.
- Benchmark against local and national markets so that pay structures are competitive.
- Conduct frequent audits to ensure there are no gender-based inequities and that pay is fair internally.

Nontraditional Jobs The right to reassign women from hazardous jobs to ones that may be lower paying but less hazardous because of health-related concerns is another gender-related issue encountered by employers. Fears about

FIGURE 3-5

Women as Percentage of Total Employees by Selected Industries

Higher Percentages		Lower Percentages	
Child day care	95.3 %	Taxi/limousine services	11.6%
Home health care	89.1%	Automotive repair	10.6%
Veterinary services	81.7%	Construction	9.7%
Hospitals	76.7%	Landscaping services	8.6%
Elementary and secondary schools	75.6%	Coal mining	7.2%
Pharmacies and drug stores	64.8%	Rail transportation	5.9%
Travel/reservation services	61.6%	Logging	4.4%

Source: U.S. Department of Labor, Bureau of Labor Statistics, 2008, www.bls.gov.

higher health insurance costs and possible lawsuits involving such problems as birth defects caused by damage sustained during pregnancy have led some employers to institute reproductive and fetal protection policies. However, the U.S. Supreme Court has ruled that such policies are illegal. Also, having different job conditions for men and women is usually held to be discriminatory. Figure 3-5 shows some of the occupations in which women constitute high percentages and low percentages of those employed.

Jobs that pay well but are nontraditional jobs for women include: architects, computer programmers, software engineers, detectives, chefs, engineers, computer repair, construction, building inspectors, machinists, aircraft pilots, and firefighters.²⁰

Glass Ceiling For years, women's groups have alleged that women in workplaces encounter a **glass ceiling**, which refers to discriminatory practices that have prevented women and other protected-class members from advancing to executive-level jobs. Women in the United States are making some progress in getting senior-level, managerial, and professional jobs. Nevertheless, women hold only a small percentage of the highest-ranking executive management jobs in big companies. By comparison, women hold a considerably lower percentage of the same kinds of jobs in France, Germany, Brazil, and many other countries.

A related problem is that women have tended to advance to senior management in a limited number of support or staff areas, such as HR and corporate communications. Because executive jobs in these "supporting" areas tend to pay less than jobs in sales, marketing, operations, or finance, the overall impact is to reduce women's career progression and income. Limits that keep women from progressing only in certain fields have been referred to as "glass walls" or "glass elevators." These limitations are seen as being tied to organizational, cultural, and leadership issues.²¹

Glass ceiling Discriminatory practices that have prevented women and other protected-class members from advancing to executive-level jobs.

"Breaking the Glass" A number of employers have recognized that "breaking the glass," whether ceilings, walls, or elevators, is good business for both

women and racial minorities. Some of the most common means used to “break the glass” are as follows:

- Establish formal mentoring programs for women and members of racial/ethnic minorities.
- Provide opportunities for career rotation into operations, marketing, and sales for individuals who have shown talent in accounting, HR, and other areas.
- Increase the memberships of top management and boards of directors to include women and individuals of color.
- Establish clear goals for retention and progression of protected-category individuals and hold managers accountable for achieving these goals.
- Allow for alternative work arrangements for employees, particularly those balancing work/family responsibilities.

Individuals with Differing Sexual Orientations

As if demographic diversity did not place enough pressure on managers and organizations, individuals in the workforce today have widely varying lifestyles that can have work-related consequences. Legislative efforts have been made to protect individuals with differing lifestyles or sexual orientations from employment discrimination, though at present only a few cities and states have passed such laws.

One visible issue that some employers have had to address is that of individuals who have had or are undergoing sex-change surgery and therapy. Federal court cases and the EEOC have ruled that sex discrimination under Title VII applies to a person’s gender at birth. Thus, it does not apply to the new gender of those who have had gender-altering operations. Sexual orientation or sex-change issues that arise at work include the reactions of coworkers and managers and ensuring that such individuals are evaluated fairly and not discriminated against in work assignments, raises, training, or promotions.

Nepotism

Many employers have policies that restrict or prohibit **nepotism**, the practice of allowing relatives to work for the same employer. Other firms require only that relatives not work directly for or with each other or not be placed in positions where collusion or conflict could occur. The policies most frequently cover spouses, brothers, sisters, mothers, fathers, sons, and daughters. Generally, employer antinepotism policies have been upheld by courts, in spite of the concern that they tend to discriminate against women more than men (because women tend to be denied employment or to leave employers more often as a result of marriage to other employees).²²

Consensual Relationships and Romance at Work

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

Nepotism Practice of allowing relatives to work for the same employer.

are significant, given a survey that found that about 40% of workers have dated coworkers.²³

Most executives and HR professionals (as well as employees) agree that workplace romances are risky because they have great potential for causing conflict. They strongly agree that romance must not take place between a supervisor and a subordinate. Some employers have addressed the issue of workplace romances by establishing policies dealing with them.²⁴

Different actions may be appropriate if a relationship is clearly consensual than if it is forced by a supervisor–subordinate relationship. One consideration is the observation that consensual workplace romances can create hostile work environments for others in organizations.

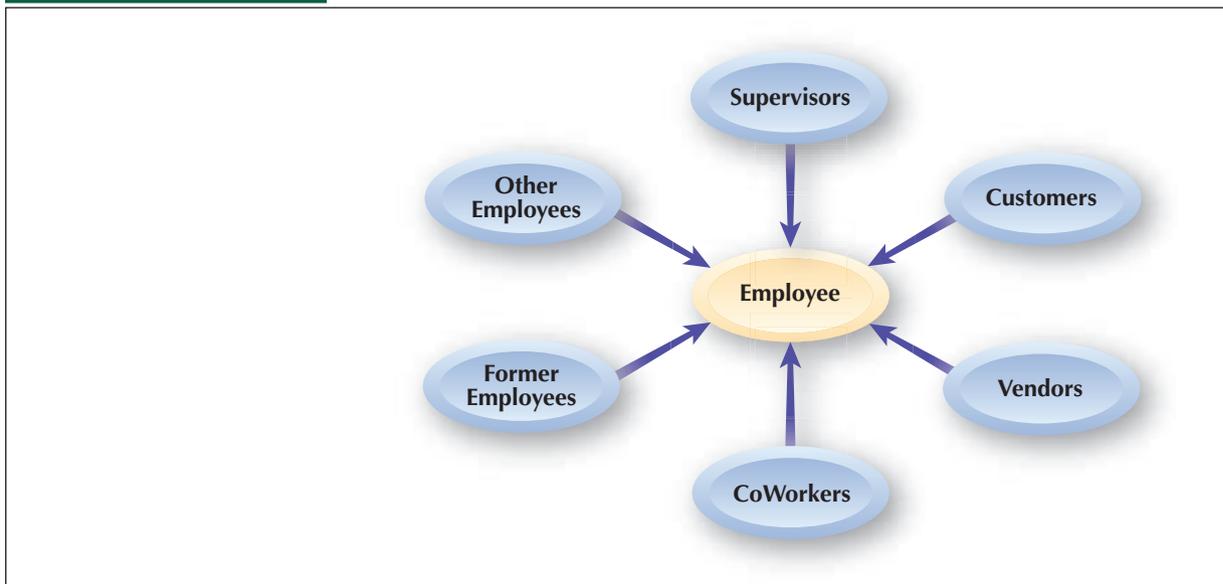
Dealing with Sexual Harassment

Sexual harassment is a significant concern in many organizations and can occur in a variety of workplace relationships. As shown in Figure 3-6, individuals in many different roles can be sexual harassers. For example, third parties who are neither employers nor employees have been found to be harassers. Both customer service representatives and food servers have won sexual harassment complaints because their employers refused to protect them from regular sexual harassment by aggressive customers.

Most frequently, sexual harassment occurs when a male in a supervisory or managerial position harasses women within his “power structure.” However, as noted earlier, women managers have been found guilty of sexually harassing male employees, and same-sex harassment also has occurred. Court decisions have held that a person’s sexual orientation neither provides nor precludes a claim of sexual harassment under Title VII. It is enough that the harasser engaged in pervasive and unwelcome conduct of a sexual nature.

FIGURE 3-6

Potential Sexual Harassers



Types of Sexual Harassment

Two basic types of sexual harassment have been defined by EEOC regulations and a large number of court cases. The two types are different in nature and defined as follows:

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

In quid pro quo harassment, an employee may be promised a promotion, a special raise, or a desirable work assignment, but only if the employee grants some sexual favors to the supervisor. The second type, hostile environment harassment, may include actions such as commenting on appearance or attire, telling jokes that are suggestive or sexual in nature, allowing revealing photos and posters to be on display, or making continual requests to get together after work that can lead to the creation of a hostile work environment. Rude and discourteous behavior often is linked to sexual harassment.

As computer and Internet technology has spread, the number of electronic sexual harassment cases has grown.²⁵ Sexual harassment is increasingly occurring via e-mails and Internet access systems. Cyber sexual harassment may occur when an employee forwards an e-mail joke with sexual content or accesses pornographic websites at work and then shares content with other employees. Cyber stalking, in which a person continually e-mails an employee requesting dates and sending personal messages, is growing as instant messaging expands.

Many employers have policies addressing the inappropriate use of e-mail, company computer systems, and electronic technology usage. Serious situations have led to employee terminations. Once a company disciplined more than 200 employees and fired 50 of them for having e-mailed pornographic images and other inappropriate materials using the company information system.

Many employers have equipped their computer systems with scanners that screen for inappropriate words and images. Offending employees receive warnings and/or disciplinary actions associated with "flagged" items.

Employer Responses to Sexual Harassment

Employers must be proactive to prevent sexual and other types of harassment. If the workplace culture fosters harassment, and if policies and practices do not inhibit harassment, an employer is wise to reevaluate and solve the problem before lawsuits follow.

Only if the employer can produce evidence of taking reasonable care to prohibit sexual harassment does the employer have the possibility of avoiding liability through an affirmative defense.²⁶ Critical components of ensuring such reasonable care include the following:

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

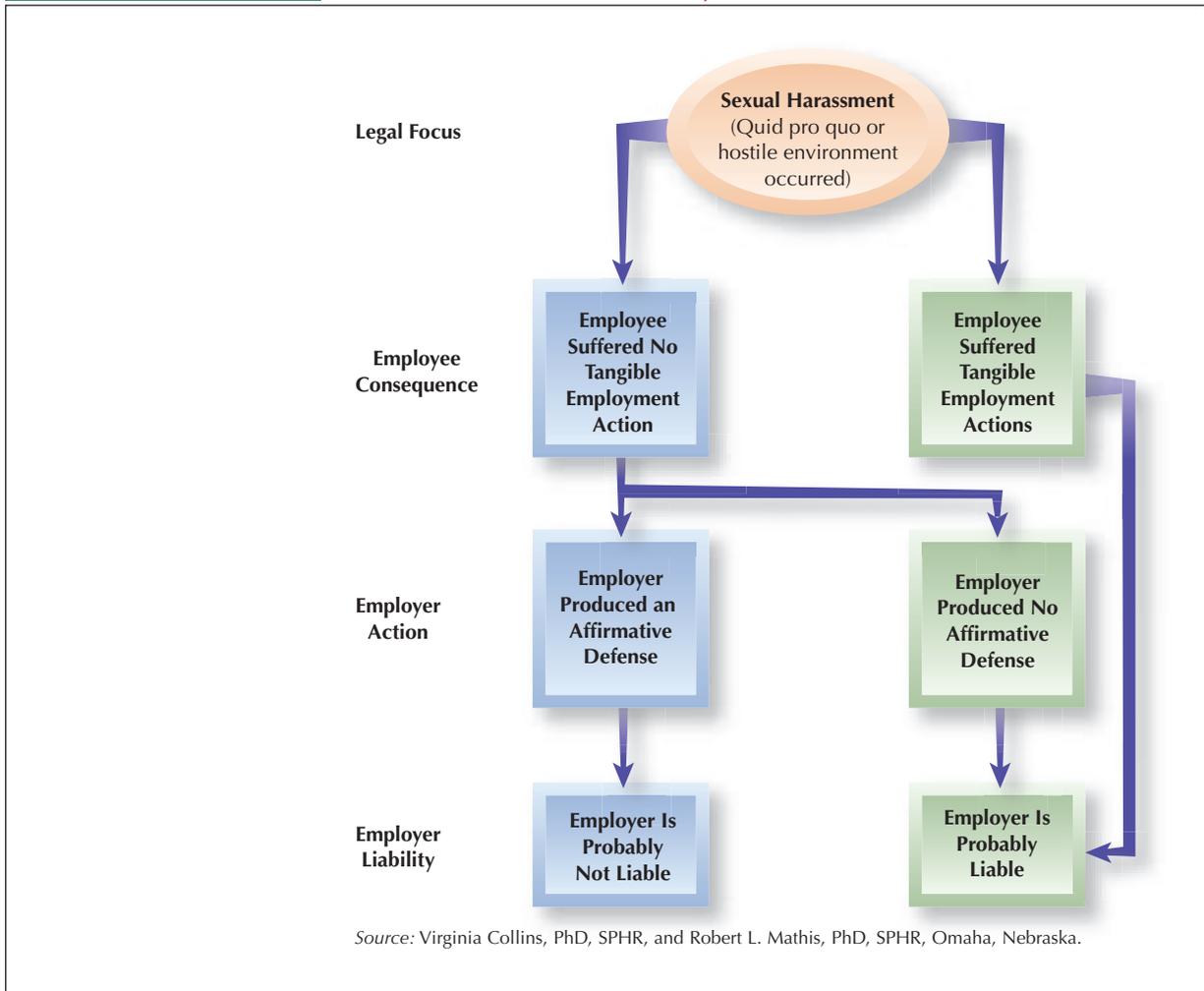
As Figure 3-7 indicates, if an employee has suffered any tangible employment action (such as being denied raises, being terminated, or being refused access to

Quid pro quo Sexual harassment in which employment outcomes are linked to the individual granting sexual favors.

Hostile environment Sexual harassment in which an individual's work performance or psychological well-being is unreasonably affected by intimidating or offensive working conditions.

FIGURE 3-7

Sexual Harassment Liability Determination



training) because of sexual harassment, then the employer is liable. Even if the employee has suffered no tangible employment action, if the employer has not produced an affirmative defense, then employer liability still exists.



Harassment Likelihood

Research suggests that some people are more likely to be sexually harassed than others. For example, one study found that supervisors or women with more workplace authority are more likely to be harassed.²⁷ Further research suggests that the likelihood of men to sexually harass, and the tolerance for sexual harassment by women vary across countries. Fundamental differences regarding power between men and women and a cultural support of sexual harassment lead to very different sexual harassment situations from country to country. According to this research, Canada, Denmark, Germany, The Netherlands, Sweden, and the United States are likely to have relatively *less* sexual harassment than countries like East Africa, Hong Kong, Indonesia, Malaysia, Mexico, Turkey, and Yugoslavia.²⁸

INDIVIDUALS WITH DISABILITIES

The passage of the Americans with Disabilities Act (ADA) in 1990 began the laws and regulations on discrimination against individuals with disabilities. These laws and regulations affect employment matters as well as public accessibility for individuals with disabilities.

Americans with Disabilities Act (ADA)

Organizations with 15 or more employees are covered by the provisions of the ADA, which are enforced by the EEOC. The act applies to private employers, employment agencies, and labor unions.²⁹ State government employees are not covered by the ADA, which means that they cannot sue in federal courts for redress and damages. However, they may still bring suits under state laws in state courts.

ADA and Job Requirements Discrimination is prohibited against individuals with disabilities who can perform the **essential job functions**—the fundamental job duties—of the employment positions that those individuals hold or desire. These functions do not include marginal functions of the position.

For a qualified person with a disability, an employer must make a **reasonable accommodation**, which is a modification to a job or work environment that gives that individual an equal employment opportunity to perform. EEOC guidelines encourage employers and individuals to work together to determine what are appropriate reasonable accommodations, rather than employers alone making those judgments.

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

Essential job functions

Fundamental job duties.

Reasonable accommodation

A modification to a job or work environment that gives a qualified individual an equal employment opportunity to perform.

Undue hardship Significant difficulty or expense imposed on an employer in making an accommodation for individuals with disabilities.

Disabled person Someone who has a physical or mental impairment that substantially limits life activities, who has a record of such an impairment, or who is regarded as having such an impairment.

ADA Restrictions and Medical Information The ADA contains restrictions on obtaining and retaining medically related information on applicants and employees. Restrictions include prohibiting employers from rejecting individuals because of a disability and from asking job applicants any question about current or past medical history until a conditional job offer is made. Also, the ADA prohibits the use of preemployment medical exams, except for drug tests, until a job has been conditionally offered.

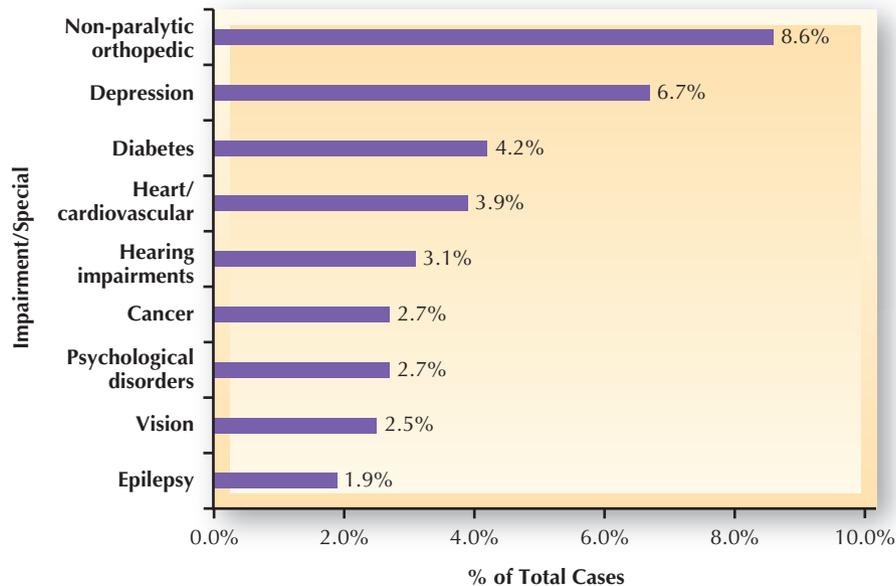
Who Is Disabled?

As defined by the ADA, a **disabled person** is someone who has a physical or mental impairment that substantially limits that person in some major life activities, who has a record of such an impairment, or who is regarded as having such an impairment. Figure 3-8 shows the most frequent disabilities identified in ADA charges.

However, it is not always concluded that people have disabilities when they feel they are disabled. For example, in a case involving United Parcel Service, the Court ruled that an employee who had high blood pressure but was on blood pressure medications was not disabled under the ADA.³⁰ Another U.S. Supreme Court case found that an employee who had been fired for drug

FIGURE 3-8

Most Frequent ADA Disabilities Cited



Source: Based on data from U.S. Equal Employment Opportunity Commission, 2009; see www.eeoc.gov for details.

addiction was not entitled to be rehired because his addiction was not a disability. The ADA does not protect current users of illegal drugs and substances, but it does protect those who are recovering addicts.

Mental Disabilities A growing area of concern to employers under the ADA is individuals with mental disabilities. A mental illness is often more difficult to diagnose than a physical disability. Employers must be careful when considering “emotional” or “mental health” factors such as depression in employment-related decisions. They must not stereotype individuals with mental impairments or disabilities but must instead base their evaluations on sound medical information.

Amendments to ADA (ADAAA) Congress passed amendments to the ADA, effective in 2009, that overruled several key cases and regulations. The effect was to *expand* the definition of disabled individuals to include anyone with a physical or mental impairment that substantially limits one or more major life activities without regard for the ameliorative effects of mitigating measures such as medication, prosthetics, hearing aids, and so on. Major life activities include, among others, walking, seeing, breathing, working, sleeping, concentrating, thinking, and communicating.³¹

Genetic Bias Regulations

Related to medical disabilities is the emerging area of workplace genetic bias. As medical research has revealed the human genome, medical tests have been developed that can identify an individual’s genetic markers for various diseases. Whether these tests should be used and how they are used can raise ethical issues.

Employers that use genetic screening tests do so for two primary reasons. Some use genetic testing to make workers aware of genetic problems that

may exist so that medical treatments can begin. Others use genetic testing to terminate employees who may make extensive use of health insurance benefits and thus raise the benefits costs and utilization rates of the employer. A major railroad company, Burlington Northern Santa Fe, had to publicly apologize to employees for secretly testing to determine if they were genetically predisposed to carpal tunnel syndrome.

Genetic Information Nondiscrimination Act (GINA) Congress passed GINA to limit the use of information by health insurance plans. Employers are prohibited from collecting genetic information or making employment decisions based on genetic decisions. “Genetic information” includes genetic tests of the employee or family members and family medical history. It does not apply to “water cooler talk,” or the inadvertent acquisition of information.³²

Managing Disabilities in the Workforce

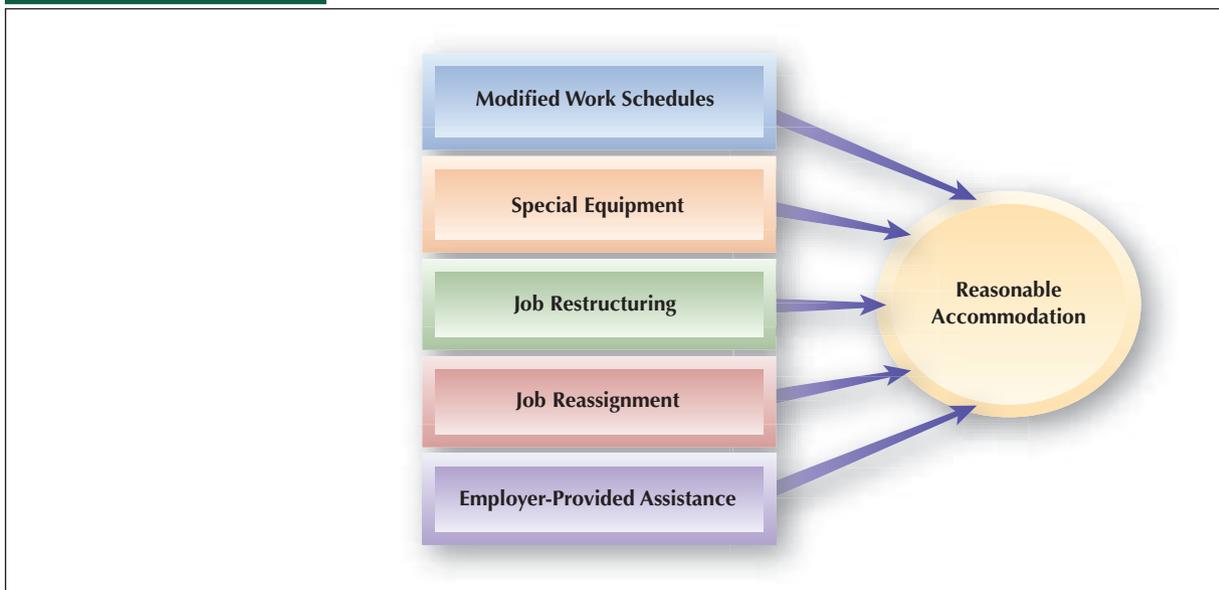
At the heart of managing individuals with disabilities is for employers to make reasonable accommodations in several areas. Common means of reasonable accommodation are shown in Figure 3-9. First, architectural barriers should not prohibit disabled individuals’ access to work areas or restrooms. Second, appropriate work tasks must be assigned. Satisfying this requirement may mean modifying jobs, work area layouts, or work schedules or providing special equipment.

Key to making reasonable accommodations is identifying the essential job functions and then determining which accommodations are reasonable so that the individual can perform the core job duties. Fortunately for employers, most accommodations needed are relatively inexpensive.³³

Recruiting and Selecting Individuals with Disabilities Numerous employers have specifically targeted the recruitment and selection of individuals with disabilities. However, as the HR On-the-Job indicates, questions asked in the employment process should be job related.

FIGURE 3-9

Common Means of Reasonable Accommodation



ADA and Employment Questions



The Americans with Disabilities Act prohibits asking job applicants questions about past or current health history until a conditional job offer is made. The offer often is based on passing a physical exam or a medical background check. Any physical or medical requirements must be related to the specific job for which the applicant is being considered.

Two HR areas that are affected are employment applications and interviews. In these areas, a general question such as the following is often used:

Can you perform the essential functions of the job for which you are applying with or without accommodation?

Several examples of specific questions concerning disabilities that should and should not be asked in employment interviews are shown in the following chart. As is evident, the questions that should be asked are specifically related to the job and address essential job functions.

✗ DO NOT ASK

- Do you have any physical or mental disabilities?
- Why are you using crutches, and how did you become injured?
- How many times were you absent due to illness in the past two years?
- Have you been treated for any of the following medical conditions?
- Have you ever filed for or collected workers' compensation?

✓ DO ASK

- How would you perform the essential tasks of the job for which you have applied?
- If hired, which tasks outlined in the job description that you reviewed would be more enjoyable and which ones most difficult?
- Describe your attendance record on your last job.
- Describe any problems you would have reaching the top of a six-foot filing cabinet.
- What did your prior job duties consist of, and which ones were the most challenging?

One common selection test is a physical abilities test, which can be challenged as discriminatory based on the ADA. Such physical tests must be specifically job related, and not general. For example, having all applicants lift 50-pound weights, even though only some warehouse workers will have to lift that much, could be illegal. Also, rather than testing with barbells or other artificial weights, the employer should use the actual 50-pound boxes lifted in performing the specific jobs.

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

Employers must develop responses for handling accommodation requests from individuals who have been satisfactory employees without disabilities, but who now must be considered for accommodations if they are to be able to

continue working. Handled inappropriately, these individuals are likely to file either ADA complaints with the EEOC or private lawsuits.

Employees sometimes can be shifted to other jobs where their disabilities do not affect them as much. For instance, the warehouse firm might be able to move the injured repair worker to a purchasing inventory job inside so that climbing and lifting are unnecessary. But the problem for employers is what to do with the next worker who develops problems if an alternative job is not available. Even if the accommodations are just for one employee, the reactions of coworkers must be considered.

Individuals with Mental Disabilities More ADA complaints are being filed by individuals who have or claim to have mental disabilities. The cases that have been filed have ranged from individuals with a medical history of paranoid schizophrenia or clinical depression to individuals who claim that job stress has affected their marriage or sex life. Regardless of the type of employees' claims, it is important that employers respond properly by obtaining medical verifications for claims of mental illnesses and considering accommodation requests for mental disabilities in the same manner as accommodation requests for physical disabilities.

Individuals with Life-Threatening Illnesses The U.S. Supreme Court has determined that individuals with life-threatening illnesses are covered by the ADA. Individuals with leukemia, cancer, or AIDS are all considered as having disabilities, and employers must respond to them appropriately or face charges of discrimination. Numerous individuals with life-threatening illnesses may intend to continue working, particularly if their illness is forecast to be multiyear in nature.

An additional requirement of the ADA is that all medical information be maintained in files separated from the general personnel files. The medical files must have identified security procedures, and limited access procedures must be identified.

Management Focus on ADA Adaptation After the changes made by ADA, less effort should be placed on determining whether an individual is indeed disabled—the individual probably is disabled. Rather, management should:

- Define essential functions in advance.
- Handle all requests for accommodation properly.
- Interact with the employee with good faith and documentation.
- Know and follow the reasonable accommodation rules.

AGE AND EQUAL EMPLOYMENT OPPORTUNITY

The populations of most developed countries—including Australia, Japan, most European countries, and the United States—are aging. These changes mean that as older workers with a lifetime of experiences and skills retire, HR faces significant challenges in replacing them with workers having the capabilities and work ethic that characterize many mature workers in the United States. Employment discrimination against individuals age 40 and older is prohibited by the Age Discrimination in Employment Act (ADEA).

Age Discrimination in Employment Act (ADEA)

The Age Discrimination in Employment Act (ADEA) of 1967, amended in 1978 and 1986, prohibits discrimination in terms, conditions, or privileges of employment against all individuals age 40 years or older working for employers having 20 or more workers. However, the U.S. Supreme Court has ruled that state employees may not sue state government employers in federal courts because the ADEA is a federal law. The impact of the ADEA is increasing as the U.S. workforce has been aging.³⁴ Consequently, the number of age discrimination cases has been increasing, according to EEOC reports.

A number of countries have passed age discrimination laws. For example, age discrimination regulations in Great Britain focus on preventing age discrimination in recruitment, promotion, training, and retirement-related actions.³⁵

As with most EEO issues, age discrimination details are continuing to be defined by the various courts, with the Supreme Court having decided employers are *not* liable if the disparate age impact is due to “reasonable factors other than age” (RFOA). The specific cases decided recently suggest that the employee retains the heavier burden for proving that the adverse employment action was taken because of the employee’s age.³⁶ However, employers that focus on recruiting or providing “preferential treatment” of older workers do not violate the ADEA.

Older Workers Benefit Protection Act (OWBPA)

This law is an amendment to the ADEA and is aimed at protecting employees when they sign liability waivers for age discrimination in exchange for severance packages. To comply with the act, employees must be given

complete accurate information on the available benefits. For example, an early retirement package that includes a waiver stating the employee will not sue for age discrimination if the employee takes the money for early retirement must include a written, clearly understood agreement to that effect.

The impact of the OWBPA is becoming more evident. Industries such as manufacturing and others offer early retirement buyouts to cut their workforces. For instance, Ford and General Motors have offered large buyouts of which thousands of workers have taken advantage.



LOGGING ON

Administration on Aging

This government website provides information on aging and age discrimination from government agencies, associations, and organizations. Visit the site at www.aoa.gov.

Managing Age Discrimination

One issue that has led to age discrimination charges is labeling older workers as “overqualified” for jobs or promotions. In a number of cases, courts have ruled that the term *overqualified* may have been used as a code word for workers being too old, thus causing them not to be considered for employment. Also, selection and promotion practices must be “age neutral.” Older workers face substantial barriers to entry in a number of occupations, especially those requiring significant amounts of training or ones where new technology has been recently developed. In some cases involving older employees, age-related comments such as “That’s just old Fred” or “We need younger blood” in conversations were used as evidence of age discrimination.

To counter significant staffing difficulties, some employers recruit older people to return to the workforce through the use of part-time and other scheduling options. During the past decade, the number of older workers holding part-time jobs has increased. It is likely that the number of older workers interested in working part-time will continue to grow.

A strategy used by employers to retain the talents of older workers is **phased retirement**, whereby employees gradually reduce their workloads and pay levels. This option is growing in use as a way to allow older workers with significant knowledge and experience to have more personal flexibility, while the organizations retain them for their valuable capabilities. Some firms also rehire their retirees as part-time workers, independent contractors, or consultants.³⁷ Some provisions in the Pension Protection Act of 2006 allow pension distributions for employees who are reducing their work hours.

RELIGION AND SPIRITUALITY IN THE WORKPLACE

Title VII of the Civil Rights Act identifies discrimination on the basis of religion as illegal. The increasing religious diversity in the workforce has put greater emphasis on religious considerations in workplaces. However, religious schools and institutions can use religion as a bona fide occupational qualification for employment practices on a limited scale. Also, employers must make *reasonable accommodation* efforts regarding an employee's religious beliefs according to the U.S. Supreme Court.

Since the terrorist attacks in New York and Washington, DC, increased discrimination complaints have been filed by Muslims because of treatment or insults made by coworkers and managers.³⁸ Religious cases also have addressed the issues of beards, mustaches, and hair length and style. African American men, who are more likely than white men to suffer from a skin disease that is worsened by shaving, have filed suits challenging policies prohibiting beards or long sideburns. Generally, courts have ruled for employers in such cases, except where certain religious standards expect men to have facial hair. The legal requirement to reasonably accommodate religious practices and beliefs leads to different types of religious expression in the workplace and different limits to accommodation.³⁹

Managing Religious Diversity

Employers increasingly are having to balance the rights of employees with differing religious beliefs. One way to do that is to make reasonable accommodation for employees' religious beliefs when assigning and scheduling work, because many religions have differing days of worship and holidays. For example, some firms have established "holiday swapping pools," whereby Christian employees can work during Passover or Ramadan or Chinese New Year, and employees from other religions can work on Christmas. Other firms allow employees a set number of days off for holidays, without specifying the holidays in company personnel policies. Figure 3-10 indicates common areas for accommodating religious diversity.

One potential area for conflict between employer policies and employee religious practices is dress and appearance. Some religions have standards about appropriate attire for women. Also, some religions expect men to have beards and facial hair, which may violate company appearance policies.⁴⁰

Phased retirement

Approach in which employees gradually reduce their workloads and pay levels.

FIGURE 3-10

Managing Religion and Spirituality in Workplaces

Another issue concerns religious expression. In the last several years, employees in several cases have sued employers for prohibiting them from expressing their religious beliefs at work. In other cases, employers have had to take action because of the complaints by workers that employees were aggressively “pushing” their religious views at work, thus creating a “hostile environment.” Executives and owners of some firms have strong evangelical Christian beliefs that are carried over into their companies. Some display crosses, have Bible study groups for employees before work, sponsor Christian prayer groups, and support other efforts. But such actions can lead to non-Christians feeling discriminated against, thus creating a “hostile environment.” Other areas that may need to be considered when dealing with religion at work are food, on-site religion-based groups, office decorations, and religious practices at work.⁴¹

MANAGING OTHER DISCRIMINATION ISSUES

Several different employment circumstances have resulted in a number of other key areas of potential discrimination. Some of the key issues are immigration, language, military status, sexual orientation, and appearance and weight.

Immigration Reform and Control Acts (IRCA)

The United States has always had a significant number of immigrants who come to work in this country. The increasing number of immigrants who have entered illegally has led to extensive political, social, and employment-related debates. The existence of more foreign-born workers means that employers must comply with the provisions of the Immigration Reform and Control Acts (IRCA). Employers are required to obtain and inspect I-9 forms, and verify documents such as birth certificates, passports, visas, and work permits. They can be fined if they knowingly hire illegal aliens. E-verify is a federal government source that can be used for this verification.⁴² Federal contractors must use it to verify employees legal status.

Visas and Documentation Requirements Various revisions to the IRCA changed some of the restrictions on the entry of immigrants to work in U.S.

organizations, particularly organizations with high-technology and other “scarce skill” areas. More immigrants with specific skills have been allowed legal entry, and categories for entry visas were revised.

Visas are granted by U.S. consular offices (there are more than 200 such offices throughout the world). Many different types of visas exist. Among those most commonly encountered by employers are the B1 for business visitors, H-1B for professional or specialized workers, and L-1 for intracompany transfers.

Usually an employer must sponsor the workers. Companies are not supposed to hire employees to displace U.S. workers, and they must file documents with the Labor Department and pay prevailing U.S. wages to the visa holders. Despite these regulations, a number of unions and other entities view such programs as being used to circumvent the limits put on hiring foreign workers to displace U.S. workers. Given the volatile nature of this area, changes in federal, state, and local laws are likely to continue to be discussed, implemented, and reviewed in court decisions.⁴³

Language Issues

As the diversity of the workforce increases, more employees have language skills beyond English. Interestingly, some employers have attempted to restrict the use of foreign languages, while other employers have recognized that bilingual employees have valuable skills

A number of employers have policies requiring that employees speak only English at work. These employers contend that the policies are necessary for valid business purposes. For instance, a manufacturer requires that employees working with dangerous chemicals use English to communicate hazardous situations to other workers and to read chemical labels.

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

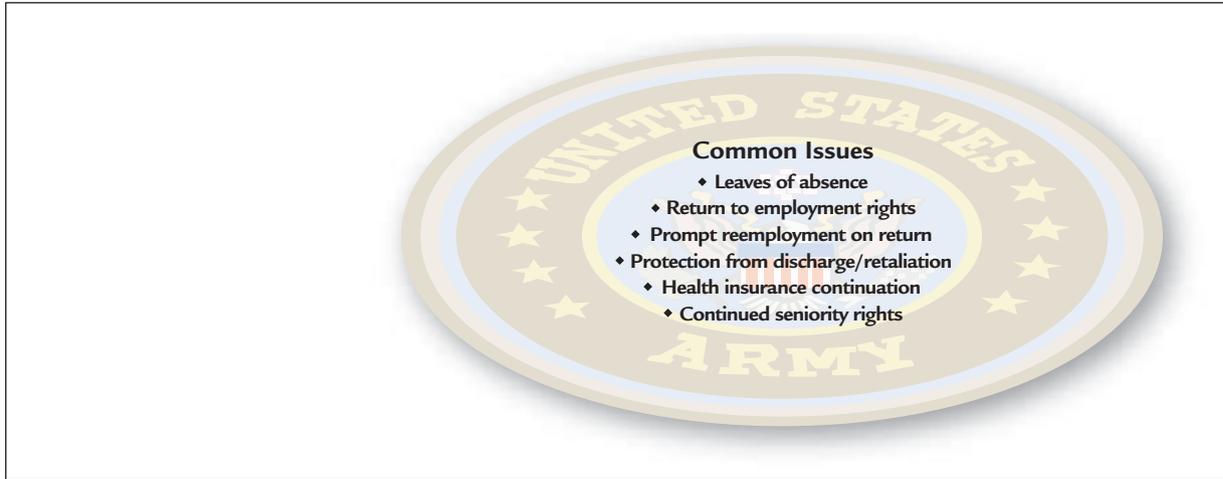
Some employers have found it beneficial to have bilingual employees so that foreign-language customers can contact someone who speaks their language. Some employers do not pay bilingual employees extra, believing that paying for the jobs being done is more appropriate than paying for language skills that are used infrequently on those jobs. Other employers pay “language premiums” if employees must speak to customers in another language. For instance, one employer pays workers in some locations a bonus if they are required to use a foreign language a majority of the time with customers. Bilingual employees are especially needed among police officers, airline flight personnel, hospital interpreters, international sales reps, and travel guides.

Military Status and USERRA

The employment rights of military veterans and reservists have been addressed in several laws. The two most important laws are the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994. Under the latter, employees are required to notify their employers of military service obligations. Employers must give employees serving in the military leaves of absence protections under the USERRA, as Figure 3-11 highlights.

FIGURE 3-11

Uniformed Services Employment and Reemployment Rights Act (USERRA) Provisions



LOGGING ON

Uniformed Services Employment and Reemployment Rights Act (USERRA)

For information on the U.S. Department of Labor's Uniformed Services Employment and Reemployment Rights Act (USERRA), visit www.dol.gov/vets/programs/userra.

With the use of reserves and National Guard troops abroad, the provisions of USERRA have had more impact on employers. This act does not require employers to pay employees while they are on military leave, but many firms provide some compensation, often a differential. Many requirements regarding benefits, disabilities, and reemployment are covered in the act as well.⁴⁴

Sexual Orientation

Recent battles in a number of states and communities illustrate the depth of emotions that accompany discussions of “gay rights.”⁴⁵ Some states and cities have passed laws prohibiting discrimination based on sexual orientation or lifestyle. Even the issue of benefits coverage for “domestic partners,” whether heterosexual or homosexual, has been the subject of state and city legislation. No federal laws of a similar nature have been passed. Whether gays and lesbians have any special rights under the equal protection amendment to the U.S. Constitution has not been decided by the U.S. Supreme Court.

A related issue is dealing with transgender individuals who have had sex-change surgery. Court cases and the EEOC have ruled that sex discrimination under Title VII applies to a person's gender at birth. Thus, it does not apply to the new gender of those who have had gender-altering operations. Transvestites and individuals with sexual behavior disorders are specifically excluded from being considered as disabled under the Americans with Disabilities Act of 1990. However, some states and several cities have laws prohibiting bias against transgender persons.⁴⁶

Appearance and Weight Discrimination

Several EEO cases have been filed concerning the physical appearance of employees. Court decisions consistently have allowed employers to set dress codes as long as they are applied uniformly. For example, establishing a dress code for women but not for men has been ruled discriminatory. Also, employers should

Discrimination against “Caregivers”



The federal government is receiving increasing complaints that new mothers are being discriminated against on the job, but it is not just new mothers who are complaining. Men also are complaining that if they must care for an aging parent, they are no longer considered on a “fast track” for promotion. The complaints have been numerous enough that the EEOC has issued guidance for employers on the issue (available at the EEOC website under unlawful disparate treatment of workers with caregiving responsibilities). The phenomenon has even received its own label: FRD, or family responsibility discrimination.

Cases under FRD usually involve an employee who must care for a disabled spouse, aging parent, or child. Classic complaints may include retaliation and not being hired or promoted because of caregiving responsibilities. The FRD issue arises as the “sandwich generation,” employees with both children and aging relatives, is appearing. Caregivers do not all file suits;

some try to hide the fact they are caring for someone in hope of avoiding discrimination.

Family responsibility discrimination charges come in many forms, but the allegations are usually that a person has been disadvantaged in promotion, pay, or work. The lawsuits are usually filed under Title VII or the Family Medical Leave Act, but suits have been filed under the ADA as well. The Supreme Court in 1971 held that women with school-aged children could not be barred from applying for jobs held by fathers of school-aged children. Then the Civil Rights Act of 1991 gave employees claiming sex discrimination the right to a jury trial and damages for emotional suffering and punitive damages.

However, the issue of disparate treatment is not always clear. For example, is a failure to promote a young mother the result of her work history before her current job, current job performance, caregiving, or failure to apply for a specific job opening? This is the type of debate going on in courtrooms regarding FRD.⁴⁸

be cautious when enforcing dress standards for women employees who are members of certain religions that prescribe appropriate and inappropriate dress and appearance standards. Some individuals have brought cases of employment discrimination based on height or weight. The crucial factor that employers must consider is that any weight or height requirements must be related to the job, such as when excess weight would hamper an individual’s job performance.⁴⁷

Family Responsibility Discrimination (FRD)

The HR Perspective shows the emergence of a recently identified and labeled discrimination based on complaints “caregivers” have about the way they are treated at work. The EEOC has issued guidelines for employers. The phenomenon has been labeled *family responsibility discrimination* (FRD).

DIVERSITY TRAINING

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

Components of Traditional Diversity Training

Approaches to diversity training vary, but often include at least three components. *Legal awareness* is the first and most common component. Here, the training focuses on the legal implications of discrimination. A limited approach to diversity training stops with these legal “do’s and don’ts.”

By introducing *cultural awareness*, trainers hope to build greater understanding of the differences among people. Cultural awareness training helps all participants to see and accept the differences in people with widely varying cultural backgrounds.

The third component of diversity training—*sensitivity training*—is more difficult. The aim here is to “sensitize” people to the differences among them and how their words and behaviors are seen by others. Some diversity training includes exercises containing examples of harassment and other behaviors.



LOGGING ON

American Institute for Managing Diversity

The nation’s leading nonprofit think tank dedicated to promoting and furthering the field of diversity management can be found at www.aimd.org.

Mixed Results for Diversity Training

The effects of diversity training are viewed as mixed by both organizations and participants. A limited number of studies have been done on the effectiveness of diversity training.⁴⁹ There is some concern that the programs may be interesting or entertaining, but may not produce longer-term changes in people’s attitudes and behaviors toward others with characteristics different from their own.

Some argue that traditional diversity training more often than not has failed, pointing out that it does not reduce discrimination and harassment complaints. Rather than reducing conflict, in a number of situations diversity training has heightened hostility and conflicts. In some firms, it has produced divisive effects, and has not taught the behaviors needed for employees to work well together in a diverse workplace.⁵⁰

This last point, focusing on behaviors, seems to hold the most promise for making diversity training more effective. For instance, dealing with cultural diversity as part of training efforts for sales representatives and managers has produced positive results. Teaching appropriate behaviors and skills in relationships with others is more likely to produce satisfactory results than focusing just on attitudes and beliefs among diverse employees.

Backlash against Diversity Training Efforts

The negative consequences of diversity training may manifest themselves broadly in a backlash against all diversity efforts. This backlash takes two main forms. First, and somewhat surprisingly, the individuals in protected groups, such as women and members of racial minorities, sometimes see the diversity efforts as inadequate and nothing but “corporate public relations.” Thus, it appears that by establishing diversity programs, employers are raising the expectation levels of protected-group individuals, but the programs are not meeting the expectations.

On the other side, a number of individuals who are not in protected groups, primarily white males, believe that the emphasis on diversity sets them up as scapegoats for societal problems. Sometimes white males show hostility and anger at diversity efforts. Diversity programs are widely perceived as

benefiting only women and racial minorities and taking away opportunities for men and nonminorities. This resentment and hostility is usually directed at affirmative action programs that employers have instituted.⁵¹

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

S U M M A R Y

- Equal employment is an attempt to level the field of opportunity for all people at work.
- Disparate treatment occurs when members of a protected category are treated differently from others.
- Disparate impact occurs when employment decisions work to the disadvantage of members of protected categories.
- Employers may be able to defend their management practices using business necessity, job relatedness, and bona fide occupational qualifications (BFOQ).
- Title VII of the 1964 Civil Rights Act was the first significant equal employment law. The Civil Rights Act of 1991 both altered and expanded on the 1964 provisions.
- Affirmative action has been intensely litigated, and the debate continues today.
- Several laws on sex/gender discrimination have addressed issues regarding pregnancy discrimination, unequal pay for similar jobs, and sexual harassment.
- It is vital that employers train all employees on what constitutes sexual harassment, promptly investigate complaints, and take action when sexual harassment is found to have occurred.
- As more women have entered the workforce, sex/gender issues in equal employment have included both discrimination through pay inequity and discrimination in jobs and careers.
- The Americans with Disabilities Act (ADA) requires that most employers identify the essential functions of jobs and that they make reasonable accommodations for individuals with disabilities unless doing so would result in undue hardship.
- Age discrimination against persons older than age 40 is illegal, according to the Age Discrimination in Employment Act (ADEA).
- The Immigration Reform and Control Acts (IRCA) identify employment regulations affecting workers from other countries.
- A number of other concerns have been addressed by laws, including discrimination based on religion, military status, and other factors.
- Individuals with disabilities represent a significant number of current and potential employees.
- Employers must make reasonable accommodations for individuals with disabilities, including those with mental or life-threatening illnesses.
- Diversity training has had limited success, possibly because it too often has focused on beliefs rather than behaviors.

C R I T I C A L T H I N K I N G A C T I V I T I E S

1. If your employer asked you to review the decision *not to hire* an African American applicant for a job, what would you need to consider?
2. Explain why you agree or disagree with affirmative action and how affirmative action may be affected by growing workforce diversity.
3. From your own experience or that of someone you know, give examples of the two types of sexual harassment.
4. Use this text and the U.S. Department of Justice website (www.usdoj.gov/crt/ada/) to identify what is reasonable accommodation and how it is determined.

HR EXPERIENTIAL PROBLEM SOLVING

The leadership in your company has changed as the result of a merger of your company with another company. The other company provides services similar to those provided by your company; however, the workforce demographic varies from that of your existing employees. For instance, the other company in the merger has a culture that recognizes and supports domestic partners. You have received a request to prepare a Diversity Initiative Plan. As HR Manager, you are aware that your existing employees will have

issues and concerns and that you will need to institute some new policies, practices, and procedures. A resource for information on developing a Diversity Initiative Plan and diversity training is www.diversitycentral.com.

1. What should the plan include?
2. What diversity training programs should be offered to assist the employees of both companies in merging the two companies together?

CASE

Religious Accommodation?

As immigrants continue to come to the United States from many different cultures and religions, differences will cause some challenges and problems. One area where this has occurred is with Islamic culture and religion in the meat processing industry.

A plant (a fresh chicken facility) belonging to Tyson Foods, Inc., in Shelbyville, Tennessee, is one example. The company hired about 250 people from Somalia. A long-running civil war in their country has forced many Somalis to settle in the United States as refugees, and many Somalis are Muslim.

The union at the plant requested replacing the paid holiday Labor Day with Eid ul-Fitr, a religious holiday marking the end of the Muslim holy month of Ramadan. The request was brought up as part of negotiations for a new labor contract, and was part of the overall contract proposal approved by union members. The plant is often open on Labor Day anyway to meet consumer demand during the barbecue season. Along with holiday pay, the workers also received time and a half for hours worked on Labor Day.

The EEOC says employers may not treat people more or less favorably because of their religion. However, religious accommodation may be warranted unless it would impose an undue hardship on the employer. Flexible scheduling, voluntary time swaps, transfers, and reassignments are possible means of accommodation, along with other policies and practices.

Tyson's consideration of exchanging Labor Day for Eid ul-Fitr brought strong reactions from non-Muslim workers and the general public. The union voted again on the issue and overwhelmingly voted to reinstate Labor Day as a paid holiday. The company's solution was to have eight paid holidays, including a "personal holiday" that could be either the employee's birthday, Eid ul-Fitr, or another day approved by the employee's supervisor. That compromise was acceptable to the workers.

Another company that faced similar issues is JBS-SWIFT, a meat packer with plants in Grand Island, Nebraska, and Greeley, Colorado. That company also hired many Somali Muslims. The issue there was prayer time. In Greeley, the Muslim workers demanded time to pray at sundown—a requirement during Ramadan. The plant works three shifts. More than 300 workers walked out when they were told they could not have the time to pray. More than 100 were fired later, not for walking out but for not returning to work. The walkout touched off protests from workers of different faiths who thought the request for religious accommodation was too much.

The EEOC ruled that JBS-SWIFT had violated the civil rights of the employees it had fired. The company was found to have denied religious accommodation and retaliated against workers who complained. JBS-SWIFT has since set up special prayer rooms at its plants and allows Muslim workers to meet their religious obligations, which include prayers five times daily.⁵²

QUESTIONS

1. What is the legal basis for the EEOC to hold that JBS-SWIFT had violated the employees' civil rights?
2. Contrast the solutions to the Tyson situation and the JBS-SWIFT situation. Which is likely to have the greatest positive impact on the company and why?

S U P P L E M E N T A L C A S E S

Keep on Trucking

This case illustrates the problems that can be associated with the use of employment tests that have not been validated. (For the case, <http://www.cengage.com/management/mathis.>)

Mitsubishi Believes in EEO—Now

This case shows the problems Mitsubishi had with sexual harassment in the United States. (For the case, <http://www.cengage.com/management/mathis.>)

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