



CHAPTER 6

Implementing Equal Employment

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

- Discuss the two types of sexual harassment and how employers should respond to complaints.
- Give examples of two sex-based discrimination issues besides sexual harassment.
- Identify two age discrimination issues.
- Discuss the major requirements of the Americans with Disabilities Act.
- Describe two bases of EEO discrimination in addition to those listed above.
- Identify typical EEO record-keeping requirements and those records used in the EEO investigative process.
- Discuss the contents of an affirmative action plan (AAP).

HR TRANSITIONS

The Costs of Discrimination

Over the past several decades since passage of the Civil Rights Act of 1964, numerous employers have been found guilty of illegal employment discrimination. Whether based on age, sex, race, disability, or other factors, both large and small employers have paid for their illegal human resource actions. But employers continue to engage in discriminatory practices that lead to large fines and settlements, sometimes through ignorance and sometimes intentionally. Some examples illustrate that employment discrimination is expensive.

Sex Discrimination and Sexual Harassment

Smith-Barney, a Wall Street brokerage firm, agreed to spend \$15 million over four years to increase diversity in the firm. As part of the settlement of a lawsuit, the firm agreed over a three-year time period to raise the percentage of female brokers in its training classes to 33% of the total, and to have 25% of its investment banker training classes composed of females. At the time, only 14.5% of the 15,000 Smith-Barney brokers were women.

Mitsubishi Motors paid \$34 million to settle a class-action sexual harassment lawsuit filed by 350 current and former female employees. This settlement was the largest class-action settlement ever paid for sexual harassment charges brought by the EEOC. Separately, the firm also agreed to pay \$9.5 million to 27 current and former employees.

Rustic Inn Crabhouse, a Fort Lauderdale restaurant, was found to have discriminated against three women who were pregnant. The restaurant had a policy of shifting waitresses to lower-paying cashier and hostess jobs

after their fifth month of pregnancy, based upon trying to protect pregnant women from lifting and carrying heavy food trays. Rejecting that policy, a federal jury awarded the three women almost \$800,000. The firm announced that it was appealing the decision.

Racial/Ethnic Discrimination

Tempel Steel Co., based in Niles, Illinois, settled a race bias case on behalf of African Americans who had applied for or who could show that they would have applied for jobs at the firm. Only 70 of the firm's 1,000 workers were African Americans. The case involved Tempel's recruiting prac-

tices, in which job advertisements were placed in Polish- and German-language newspapers where few African Americans would see them. Therefore, the recruiting continued a past pattern of discrimination. In addition to paying \$4 million total to the victims of past discrimination, the firm was required to file reports on its hiring practices for four years and pay \$500,000 to set up a training program to help African American employees qualify for the higher-skilled, higher-paying jobs in the two factories in the Chicago area.

An African American lawyer at a national law firm's Washington, D.C., office was awarded \$2.5 million for race discrimination. He alleged that even though he was given good perfor-

mance reviews, he was paid \$3,000 less per year than others, was not considered for partnership on the same schedule, and was dismissed from the firm due to his race.

Age Discrimination

First Union, a large financial institution based in Charlotte, North Carolina, settled an age discrimination lawsuit by agreeing to pay \$58.5 million. The 239 workers in the case, all over age 40, lost their jobs when smaller banks were bought by First Union. The lawsuit charged that in many situations the plaintiffs were replaced by younger, less-experienced workers who were paid lower salaries.

Whether based on age, sex, race, disability, or other factors, both large and small employers have paid for their illegal discriminatory actions.

First America, an Iowa-based telemarketing firm, was ordered by a federal jury to pay over \$300,000 to a 62-year-old sales representative. The sales rep was not promoted, despite a satisfactory work record, so he filed a lawsuit. Also, the sales rep charged that once he filed the lawsuit, the firm refused to pay him some sales commissions, which was a form of retaliation prohibited by EEOC regulations.

All of these cases emphasize that illegal employment discrimination can represent significant costs. Therefore, employers of all sizes must be familiar with EEO laws and regulations and ensure that their practices are nondiscriminatory.¹

“Our equality lies in the right for each of us to grow to our full capacity whatever it is.”

PEARL BUCK

As the examples in the opening discussion indicate, the days are past when employers can manage their workforces in any manner they wish. Federal, state, and local laws prohibit unfair discrimination against individuals on a variety of bases. One purpose of this chapter is to discuss the range of issues that have been addressed by Equal Employment Opportunity (EEO) laws, regulations, and court decisions. The other purpose is to review what employers should do to comply with the regulations and requirements of various EEO enforcement agencies. Because race discrimination is still the most prevalent form of employment discrimination, a look at this area is next.

Discrimination Based on Race, National Origin, and Citizenship

The original purpose of the Civil Rights Act of 1964 was to address race discrimination. This area continues to be important today, and employers must be aware of practices that may be discriminatory on the basis of race. Further, the EEOC and the affirmative action requirements of the Office of Federal Contract Compliance Programs (OFCCP) specifically designate race as an area for investigation and reporting.

Race is often a factor in discrimination on the basis of national origin. What are the rights of people from other countries, especially those illegally in the United States, with regard to employment and equality? Illegal aliens often are called *undocumented workers* because they do not have the appropriate permits and documents from the Immigration and Naturalization Service. The passage of the Immigration Reform and Control Acts (IRCA) and later revisions to it have clarified issues regarding employment of immigrants.

Immigration Reform and Control Acts (IRCA)

To deal with problems arising from the continued flow of immigrants to the United States, the IRCA was passed in 1986 and has been revised in later years. The IRCA makes it illegal for an employer to discriminate in recruiting, hiring, or terminating based on an individual's national origin or citizenship. Many employers were avoiding the recruitment and hiring of individuals who were “foreign looking” or who spoke with an accent, fearing they might be undocumented workers. Hispanic leaders voiced concern about the discriminatory effects of this practice on Hispanic Americans.

A revision of the act attempted to address this issue by prohibiting employers from using disparate treatment, such as requiring more documentation from some prospective employees than from others. In addition, the IRCA requires that employers who knowingly hire illegal aliens be penalized.

HIGH-TECHNOLOGY AND SKILLED WORKER VISAS Recent revisions to the IRCA changed some of the restrictions on the entry of immigrants to work in U.S. organizations, particularly those organizations with high-technology and other “scarce-

HR PERSPECTIVE

Bilingual Employees and “English-Only” Requirements

As the diversity of the workforce has increased, 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.

“English-Only” Requirements

A number of employers have policies requiring that employees speak only English at work. Employers with these policies contend that the policies are necessary for valid business purposes. For instance, a manufacturer has a requirement that all employees working with dangerous chemicals use English in order to communicate hazardous situations to other workers and to be able 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.

Some cases that have created more difficulties for employees involve retailers requiring that sales employees speak only English. Such policies generally have been enforced for use when waiting on customers. However, requiring employees to speak only English in

situations not requiring customer contact has been ruled to be more questionable. Also, questions asked during the selection process about an applicant’s language skills should be limited to situations in which workers will have job-related reasons for using a foreign language. The employer is restricted to making such inquiries only for jobs that make use of the foreign language.

The prudent use of English-only rules can be seen at 3Com Corporation in Illinois. Among its 1,200 employees, over 20 different languages are spoken. Employees of 3Com are required to speak English in group settings on the job, but may use other languages in nonwork situations. The company also offers courses on English as a second language for employees wishing to improve their English skills.

Bilingual Employees

Some employers with a diverse customer base have found it beneficial to have bilingual employees. For instance, some teleservicing firms have identified employees with Spanish-speaking skills, so that calls from Spanish-language customers can be directed to the bilingual representatives. Also, a number of airlines have bilingual flight attendants on international flights.

Those individuals often wear pins with the flag of the country whose language they speak, so that foreign-language customers can contact someone speaking their languages.

However, one issue with bilingual employees is whether they should receive extra pay for having the additional language capabilities and using them at work. Some employers do not pay bilingual employees extra, believing that paying for the jobs being done is more appropriate than paying individuals for language skills that are used infrequently on the job. Other employers pay “language premiums” if employees must speak to customers in another language. For instance, MCI-World Com pays workers in some locations a 10% bonus if they are required to use a foreign language a majority of the time with customers. Delta Airlines pays bilingual flight attendants extra hourly pay on international routes.

As both employees and customers of more companies become more diverse, English-language and bilingual policies are likely to be issues. It seems that the difficulties of deciding when English-only is a business necessity, and when bilingual language skills are advantageous, will be faced by employers in all types of industries.²

skill” areas. The number of immigrants allowed legal entry was increased, and categories for entry visas were revised.³ As the HR Perspective indicates, foreign-language skills have created issues with many employers.

EMPLOYER DOCUMENTATION REQUIREMENTS Under the acts just described, employers are required to examine identification documents for new employees, who also must sign verification forms about their eligibility to work legally in the United States. Employers must ask for proof of identity, such as a driver’s license

with a picture, Social Security card, birth certificate, immigration permit, or other documents. The required I-9 form must be completed by all new employees within 72 hours.

Conviction and Arrest Records

Court decisions consistently have ruled that using records of arrests, rather than records of convictions, has a disparate impact on some racial and ethnic minority groups protected by Title VII. An arrest, unlike a conviction, does not imply guilt. Statistics indicate that in some geographic areas, more members of some minority groups are arrested than nonminorities.

Generally, courts have held that conviction records may be used in determining employability if the offense is job related. For example, a bank could use an applicant's conviction for embezzlement as a valid basis for rejection. Some courts have held that only job-related convictions occurring within the most recent five to seven years may be considered. Consequently, employers inquiring about convictions often add a phrase such as "indication of a conviction will not be an absolute bar to employment."

Gender Discrimination and Sexual Harassment

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of gender. Other laws and regulations are aimed at eliminating such discrimination in specific areas. This section begins with a discussion of sexual harassment and then discusses other forms of gender-based discrimination.

The Equal Employment Opportunity Commission (EEOC) has issued guidelines designed to curtail sexual harassment. A variety of definitions of sexual harassment exist, but generally **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.

Because of the increased awareness of sexual harassment resulting from events such as those involving President Clinton, employers and individuals affected by sexual harassment are less tolerant of it. However, as more men and women work together, more voluntary relationships based on affection and romance develop.

Workplace Relationships and Romances

As more and more men and women work together in teams and on projects, more employers are becoming concerned about personal relationships between employees. Could permitting such relationships lead to liability for sexual harassment claims when relationships end?

The appeal of workplace relationships was succinctly described by a 28-year-old single male information systems specialist: "When you're working 50 to 60 hours per week, the only place to meet women is at work." When work-based friendships lead to romance and off-the-job sexual relationships, managers and employers face a dilemma: Do they monitor for and protect the firm from potential sexual harassment complaints, thereby "meddling" in employees' private,

Sexual harassment

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

off-the-job lives? Or do they simply ignore such relationships and the potential problems they present?

The greatest concerns are romantic relationships between supervisors and subordinates, because the harassment of subordinates by supervisors is the most frequent type of sexual harassment situation. Though many companies prohibit relatives from having direct-reporting relationships, extending this policy to people who are dating raises resistance from those involved, who may believe that what they do after work is none of their employers' concern.

Some experts even suggest that romantically involved employees who have a supervisor-subordinate relationship be required to sign a written agreement releasing the employer from any current or future claim of sexual harassment. Employment attorneys generally recommend that the HR manager remind both parties in workplace romances of the company policy on sexual harassment and encourage either party to contact the HR department should the relationship cool and become one involving unwanted and unwelcome attentions. Also, the HR manager always should document that such conversations occurred.⁴

Types of Sexual Harassment

The victims of sexual harassment are more likely to bring charges and take legal actions against employers and harassing individuals than they were in the past. According to EEOC statistics, well over 90% of the sexual harassment charges filed have involved harassment of women by men. However, some sexual harassment cases have been filed by men against women managers and supervisors and for same-sex harassment.

Two types of sexual harassment are defined as follows.

- *Quid pro quo* harassment occurs when an employer or supervisor links specific employment outcomes to the individuals' granting sexual favors.
- *Hostile environment* harassment occurs when the harassment has the effect of unreasonably interfering with work performance or psychological well-being or when intimidating or offensive working conditions are created.

Cathy



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QUID PRO QUO Linking any condition of employment—including pay raises, promotions, assignments of work and work hours, performance appraisals, meetings, disciplinary actions, and many others—to the granting of sexual favors can be the basis for a charge of *quid pro quo* (meaning “something for something”) harassment. Certainly, harassment by supervisors and managers who expect sexual favors as a condition for a raise or promotion is inappropriate behavior in a work environment. This view has been supported in a wide variety of cases.

HOSTILE ENVIRONMENT The second type of sexual harassment involves the creation of a hostile work environment. In *Harris v. Forklift Systems, Inc.*, the U.S. Supreme Court ruled that in determining if a hostile environment exists, the following factors should be considered.⁵

- Whether the conduct was physically threatening or humiliating, rather than just offensive
- Whether the conduct interfered unreasonably with an employee’s work performance
- Whether the conduct affected the employee’s psychological well-being

Numerous cases in which sexual harassment has been found illustrate that what is harmless joking or teasing in the eyes of one person may be offensive and hostile behavior in the eyes of another. Commenting on dress or appearance, telling jokes that are suggestive or sexual in nature, allowing centerfold posters to be on display, or making continual requests to get together after work can lead to the creation of a hostile work environment.

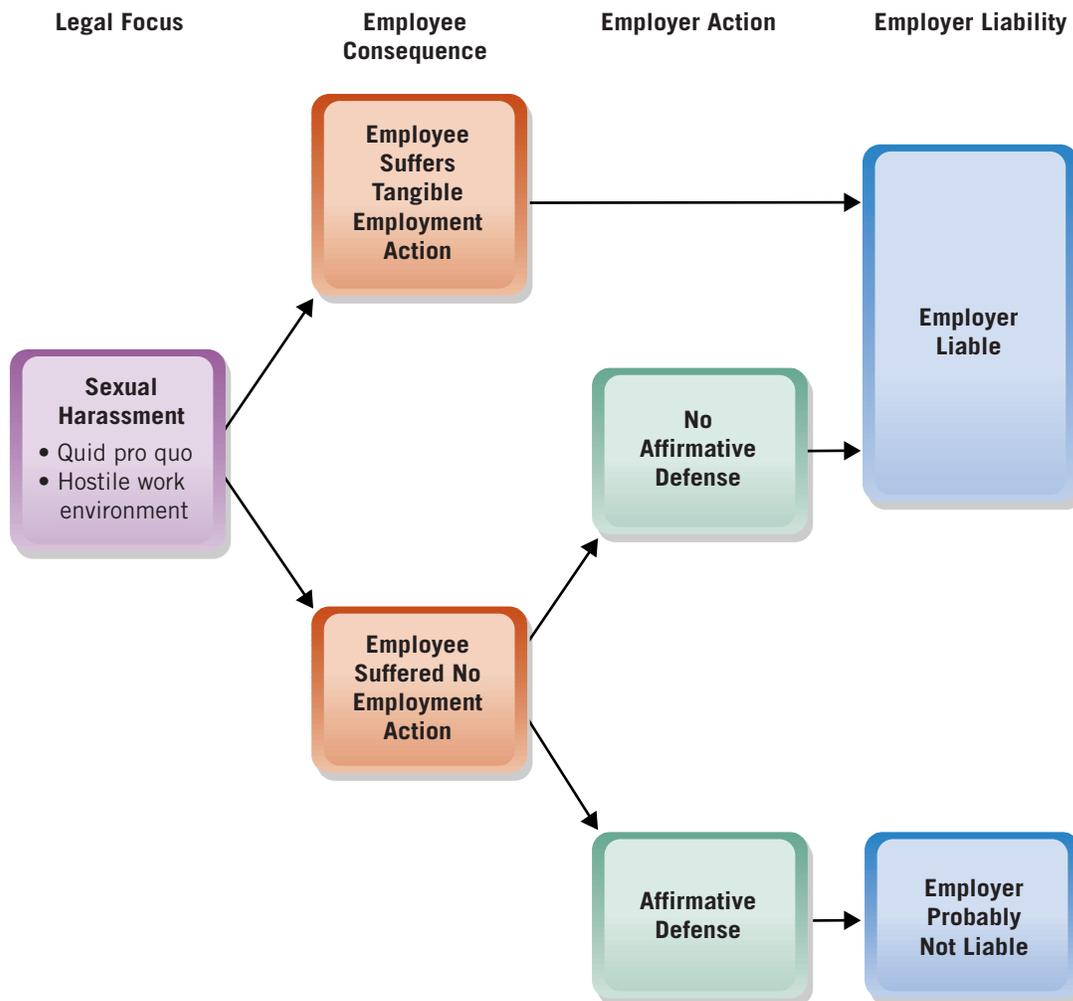
Changing Legal Standards on Sexual Harassment

In 1998, the U.S. Supreme Court issued rulings in three different cases in which charges of sexual harassment were brought by different individuals working for different employers.⁶ Grouping these cases together, the U.S. Supreme Court issued decisions that significantly clarified both the legal aspects of when sexual harassment occurs and what actions employers should take to reduce their liabilities if sexual harassment claims are filed. A look at the implications of the three cases follows.

DEFINITION OF SEXUAL HARASSMENT First, the three decisions make it clear that sexual harassment, whether *quid pro quo* or hostile environment, or whether with different or same-sex individuals, is illegal. The courts will look at the conduct and actions of both the employer’s representatives and the complainants.

TANGIBLE EMPLOYMENT ACTIONS As Figure 6–1 indicates, if the employee suffered any tangible employment action (such as being denied raises, being terminated, or being refused access to training) because of the sexual harassment, then the employers are liable. However, even if the employee suffered no tangible employment action, and the employer has not produced an affirmative defense, then employer liability still exists.⁷

AFFIRMATIVE DEFENSE AND REASONABLE CARE Only if the employer can produce evidence of an affirmative defense in which the employer took *reasonable care* to prohibit sexual harassment does the employer have the possibility of avoiding liability.

FIGURE 6-1 *Sexual Harassment Liability Determination*

SOURCE: Virginia Collins, SilverStone Consulting, Omaha, Nebraska. May not be reproduced without permission.

Components of ensuring reasonable care include the following:

- Establishing a sexual harassment policy
- Communicating the policy regularly
- Training all employees, especially supervisors and managers, on avoiding sexual harassment
- Investigating and taking action when complaints are voiced

Employer Responses to Sexual Harassment Complaints

Employers generally are held responsible for sexual harassment unless they take appropriate action in response to complaints. Also, employers are held responsible if they knew (or should have known) of the conduct and failed to stop it.

HR PERSPECTIVE

Research on Confronting Sexual Harassment

As awareness of sexual harassment has grown, more women have reported incidents of sexual harassment to both internal organizational representatives and governmental enforcement agencies. To add some research on women's decisions to report or confront sexual harassment, Adams-Roy and Barling conducted a study that was published in the *Journal of Organizational Behavior*.

The authors conducted a survey of 800 women in seven different Canadian organizations. The wide range of organizations included employees at a hospital, a manufacturing plant, one prison, three military bases, and a real estate agency. Almost 18% of the women surveyed

indicated that they had experienced sexual harassment at work some time in the past. Then the research questionnaire inquired about actions that the individuals took, if any, to report the incident or confront the harasser. Additionally, the individuals were asked to complete some questions inquiring about organizational and interaction justice.

Using all of this data, the analyses done by the researchers found that individual perceptions of the fairness of organizational policies about sexual harassment affected reporting or confronting sexual harassment at work. But most surprising, those who had reported sexual harassment by following formal policies and procedures had poorer

perceptions of organizational justice. The researchers suggest that these results indicate that the women who utilized the formal processes likely were disappointed with the resolution of their complaints.

In summary, the study indicates that just having a formal complaint process and using it is not enough. The outcome of the process must be seen as just; otherwise, the process is viewed negatively. Therefore, both having a process and having it operate in a manner seen as fair are necessary for employees facing sexual harassment to believe that their treatment is just.⁹

SEXUAL HARASSMENT POLICY AND COMPLAINT PROCESS The U.S. Supreme Court decisions make it clear that every employer should have a policy on sexual harassment that addresses such issues as the following:

- Instructions on how to report complaints, including how to bypass a supervisor if he or she is involved in the harassment
- Assurances of confidentiality and protection against retaliation by those against whom the complaint is filed
- A guarantee of prompt investigation
- A statement that disciplinary action will be taken against sexual harassers, up to and including termination of employment

It is important that all employers, even small ones, have specific sexual harassment complaint procedures and policies that allow a complainant to bypass a supervisor if the harasser is the supervisor.⁸ If such a complaint process exists and it is not used by the complainant, the employer has a better standing in refuting sexual harassment claims. The HR Perspective discusses a research study on using complaint processes to confront sexual harassment.

COMMUNICATION OF SEXUAL HARASSMENT POLICY All employees, especially supervisors and managers, should be informed that sexual harassment will not be tolerated in an organization. To create such an awareness, communications to all employees should highlight the employer's policy on sexual harassment and the importance of creating and maintaining a work environment free of sexual

harassment. The communications should be ongoing to reinforce to all employees that sexual harassment will not be tolerated and will be dealt with severely.

TRAINING OF MANAGERS, SUPERVISORS, AND EMPLOYEES Training of all employees, especially supervisors and managers, is recommended. The training should identify what constitutes sexual harassment and alert employees to the types of behaviors that create problems. Analyses of the Supreme Court decisions by legal experts consistently stress that all employers should hold sexual harassment training regularly.¹⁰ For smaller employers without formal training programs, this training can be developed by training and human resource consultants, legal counsel, local college human resource professors, or others. But regardless of organizational size, specific training on sexual harassment should be done regularly in all companies.

INVESTIGATION AND ACTION Once management has knowledge of sexual harassment, the investigation process should begin. Often, to provide objectivity, an HR staff member, a key senior manager, and/or outside legal counsel will lead the investigation. The procedures to be followed should be identified at the time the sexual harassment policy is developed, and all steps taken during the investigation should be documented. It is crucial to ensure that the complainant is not subjected to any further harassment or to retaliation for filing the complaint.

Prompt action by the employer to investigate sexual harassment complaints and then to punish the identified harassers aid an employer's defense. In summary, if harassment situations are taken seriously by employers, the ultimate outcomes are more likely to be favorable for them.

Pregnancy Discrimination

The Pregnancy Discrimination Act (PDA) of 1978 was passed as an amendment to the Civil Rights Act of 1964. Its major provision was that any employer with 15 or more employees had to 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 15 for details). The FMLA applies to both men and women.

In court cases filed by pregnant workers alleging illegal discrimination, it generally has been ruled that the PDA requires employers to treat pregnant employees the same as nonpregnant employees with similar abilities or disabilities. Therefore, if a nonpregnant employee with a bad back is accommodated by not having to lift some file boxes, then a pregnant employee who has been advised by a physician to avoid heavy lifting must be accommodated in the same manner.¹¹

Compensation Issues and Sex Discrimination

A number of concerns have been raised about employer compensation practices that discriminate on the basis of sex. At issue in several compensation practices is the extent to which men and women are treated differently, with women most frequently receiving lower compensation or benefits. Equal pay, pay equity, and benefits coverage are three prominent issues.

EQUAL PAY The Equal Pay Act, enacted in 1963, requires employers to pay similar wage rates for similar work without regard to gender. Tasks performed only intermittently or infrequently do not make jobs different enough to justify significantly different wages. Differences in pay may be allowed because of (1) differences in seniority, (2) differences in performance, (3) differences in quality and/or quantity of production, and (4) factors other than sex, such as skill, effort, and working conditions.

The importance of considering job responsibilities and skills under equal pay can be seen in a case involving a female vice president of an insurance company who was paid less than the five other vice presidents, all of whom were male. The court decision ruled against the woman because the employer was able to show that her job had substantially different tasks that were not as crucial to company operations. Also, the court noted that the skills needed to do her job were not as great as those associated with the vice presidential jobs held by the males.¹²

Pay equity

Similarity in pay for jobs requiring comparable levels of knowledge, skill, and ability, even where actual job duties differ significantly.

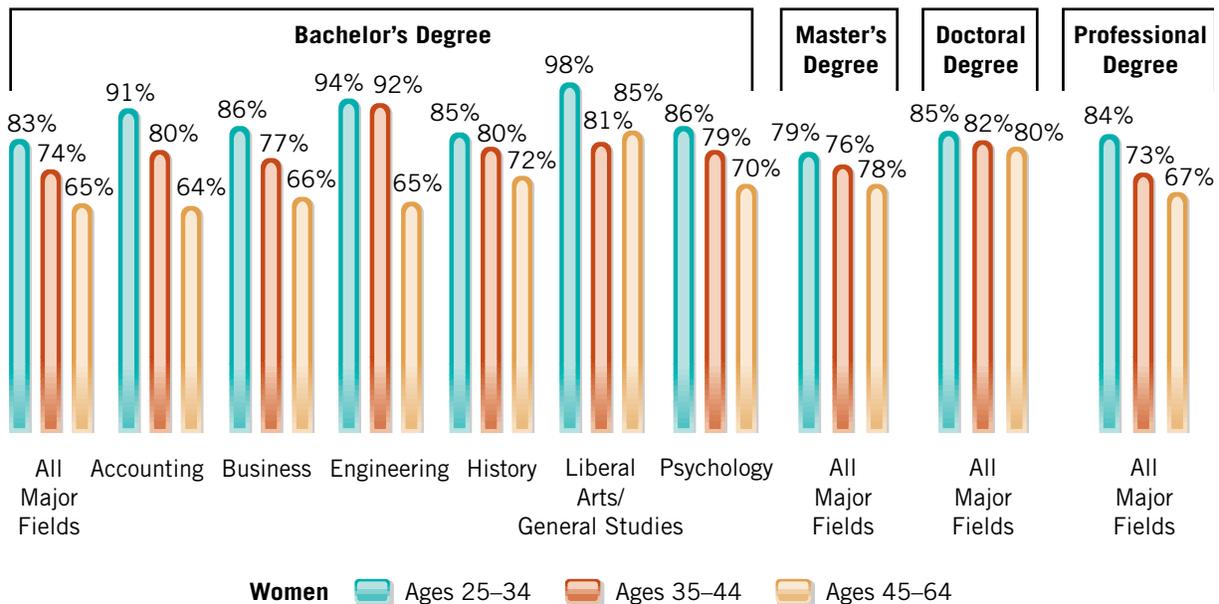
PAY EQUITY According to the concept of **pay equity**, the pay for jobs requiring comparable levels of knowledge, skill, and ability should be similar even if actual duties differ significantly. This concept has also been called *comparable worth* when earlier cases were addressed. The Equal Pay Act applies to jobs that are substantially the same, whereas pay equity applies to jobs that are *valued* similarly in the organization, whether or not they are the same.

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 1959, the average pay of full-time women workers was 59% of that of full-time men workers. By the late 1990s, the gap had shrunk to about 76%.¹³ More in-depth data show that the education and age of women workers affects the size of the gaps. As Figure 6-2 indicates, the pay of younger female college graduates consistently is higher than that of older female graduates. Even greater disparity exists when pay for lower-skilled, less-educated women is compared with pay for lower-skilled, less-educated men.

As discussed in more detail in Chapter 13 on compensation, a number of state and local government employers have mandated pay equity for public-sector employees through legislation. Some Canadian provinces have enacted similar laws. But except where state laws have mandated pay equity, U.S. federal courts generally have ruled that the existence of pay differences between jobs held by women and jobs held by men is not sufficient to prove that illegal discrimination has occurred.

PAYCHECK FAIRNESS ACT OF 1999 To address the continuing gap between men's and women's wages, in 1999 President Clinton proposed new legislation, called the Paycheck Fairness Act. This legislation would allow women to sue employers for unlimited damages, in addition to the back pay available under such laws. Also, the act would provide the EEOC more enforcement workers to handle equal pay and cases related to pay equity. As of the writing of this text, this bill has not been passed into law.

BENEFITS COVERAGE A final area of sex-based differences in compensation relates to benefits coverage. One concern has been labeled "unisex" pension coverage. The *Arizona Governing Committee v. Norris* decision held that an employer's deferred compensation plan violated Title VII because female employees received

FIGURE 6-2 Women's Earnings as a Percentage of Men's, By Degree and Major

SOURCE: Adapted with permission from *Bulletin to Management (BNA Policy and Practice Series)*, Vol. 49, No. 25, Pp. 197 (June 25, 1998) by the Bureau of National Affairs, Inc. (800-372-1033) <<http://www.bna.com>>

lower monthly benefits payments than men received on retirement, despite the fact that women contributed equally to the plan.¹⁴ Regardless of longevity differences, men and women who contribute equally to pension plans must receive equal monthly payments.

Sex Discrimination in Jobs and Careers

The selection and promotion criteria that employers use can discriminate against women. Some cases have found that women were not allowed to enter certain jobs or job fields. Particularly problematic is the use of marital or family status as a basis for not selecting women.

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 be placed in a position where potential collusion or conflicts could occur. The policies most frequently cover spouses, brothers, sisters, mothers, fathers, sons, and daughters. Generally, employer anti-nepotism 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 leave employers more often as a result of marriage to other employees).

However, inquiries about previous names (not maiden names) under which an applicant may have worked may be necessary in order to check reference infor-

Nepotism

Practice of allowing relatives to work for the same employer.

mation with former employers, educational institutions, or employers' own files, in the case of former employees. This kind of inquiry is not illegal.

JOB ASSIGNMENTS AND “NONTRADITIONAL JOBS” One result of the increasing number of women in the workforce is the movement of women into jobs traditionally held by men. More women are working as welders, railroad engineers, utility repair specialists, farm equipment sales representatives, sheet metal workers, truck drivers, and carpenters. Many of these jobs typically pay higher wages than the office and clerical jobs often held by women. Nevertheless, women hold a small percentage of the blue-collar jobs traditionally held by men, such as welder, carpenter, mechanic, and bricklayer.¹⁵ Thus, it appears there still are gender-based groupings of jobs, in which women hold most jobs of certain types and men hold most other types of jobs. Clearly, discrimination in the assignment of women to certain jobs and job fields still exists.

The right of employers to reassign women from hazardous jobs to jobs that may be lower paying because of health-related concerns is another issue. Employers' fears about higher health-insurance costs, and even 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 such policies are illegal. Also, having different job conditions for men and women usually is held to be discriminatory.

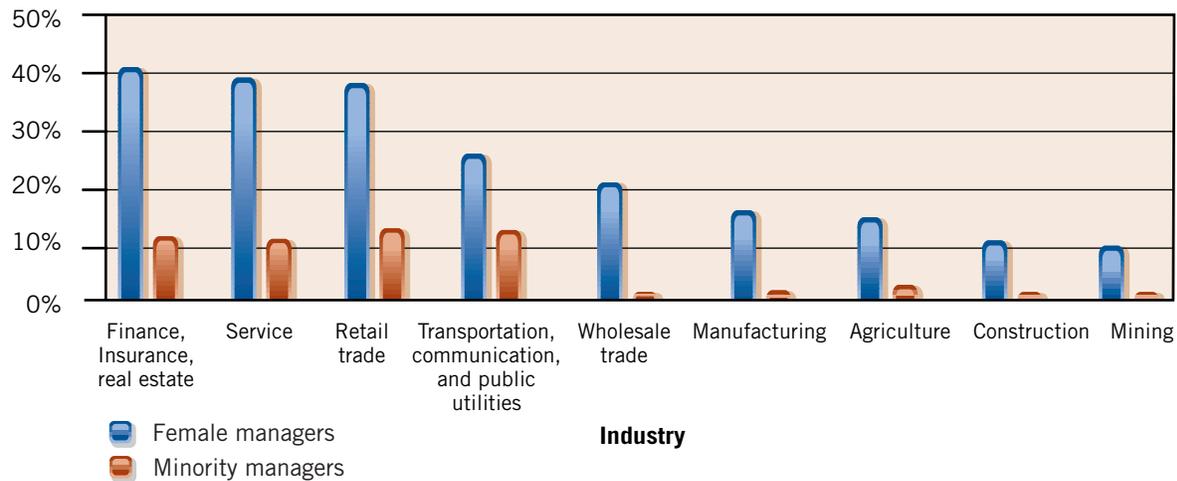
Glass ceiling

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

THE “GLASS CEILING” For years, women's groups have alleged that women encounter a “glass ceiling” in the workplace. The **glass ceiling** refers to discriminatory practices that have prevented women and other protected-class members from advancing to executive-level jobs. The extent of the problem is seen in the fact that white males compose 43% of the workforce but hold 95% of all senior management positions. In the nation's largest corporations, only a few women are CEOs, and women compose less than 10% of the executive vice presidents in larger firms. Figure 6–3 shows the percentages of women and minority managers by industry segment. Statistics reveal that women tend to have better opportunities to progress in smaller firms and, of course, when they start their own businesses. Also, in computer-related fields, women are increasing their representation in management, particularly in data processing service and software development firms.¹⁶

The Glass Ceiling Act of 1991 was passed in conjunction with the Civil Rights Act of 1991. A Glass Ceiling Commission was established to conduct a study on how to shatter the glass ceiling encountered by women and other protected-class members. Key recommendations in the commission's report included the following:¹⁷

- Employers should include diversity goals in strategic business plans, and managers should be accountable for meeting these goals.
- Affirmative action should be used to encourage firms to recruit more widely and give promotion opportunities to more diverse individuals.
- Women and minorities should be prepared for senior positions by the use of mentoring, training, and other programs.
- Federal government agencies should refine data collection requirements to avoid “double counting” of minority women, so that true statistics and measures of progress can be obtained.
- Increased government enforcement efforts are needed, as well as more funding and staffing of agencies such as the EEOC.

FIGURE 6-3 Percentages of Women and Minority Managers, by Industry Segment

SOURCE: U.S. Government, Federal Glass Ceiling Commission Report, 1995, as updated.

“GLASS WALLS” AND “GLASS ELEVATORS” A related problem is that women have tended to advance to senior management in a limited number of functional areas, such as human resources and corporate communications. Because 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.” Some firms have established formal mentoring programs in order to break down glass walls.

Age Discrimination

For many years, race and sex discrimination cases overshadowed those dealing with age discrimination. Starting with passage of the 1978 amendments to the Age Discrimination in Employment Act (ADEA) of 1967, a dramatic increase in age discrimination suits occurred. However, in recent years, age discrimination still has followed race and sex discrimination as the basis for complaints filed with the EEOC.

Age Discrimination in Employment Act (ADEA)

The Age Discrimination in Employment Act of 1967, amended in 1978 and 1986, makes it illegal for an employer to discriminate in compensation, terms, conditions, or privileges of employment because of an individual’s age. The later amendments first raised the minimum mandatory retirement age to 70 and then eliminated it completely. The ADEA applies to all individuals above the age of 40 working for employers having 20 or more workers. However, the act does not apply if age is a job-related occupational qualification.

Prohibitions against age discrimination do not apply when an individual is disciplined or discharged for good cause, such as poor job performance. Older



LOGGING ON . . .

Administration on Aging

This is an on-line Internet and e-mail resource on aging. This site provides information in its directory on associations, educational programs, government agencies and organizations, new sources, and current research.

<http://www.aoa.dhhs.gov/aoa/pages/jpostlst.html>

workers who are poor performers can be terminated, just as anyone else can be. However, numerous suits under the ADEA have been filed involving workers over 40 who were forced to take “voluntary retirement” when organizational restructuring or workforce reduction programs were implemented.

“OVERQUALIFIED” OLDER EMPLOYEES 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.¹⁸

AGE DISCRIMINATION AND WORKFORCE REDUCTIONS In the past decade, early retirement programs and organizational downsizing have been used by many employers to reduce their employment costs. Illegal age discrimination sometimes occurs in the process when an individual over the age of 40 is forced into retirement or is denied employment or promotion on the basis of age. If disparate impact or treatment for those over 40 exists, age discrimination occurs.

Ensuring that age discrimination—or any kind of illegal discrimination—does not affect employment decisions requires that documentation of performance be completed by supervisors and managers. In the case of older employees, care must be taken that references to age (“good old Fred” or “need younger blood”) in conversations are not used with older employees. As mentioned, terminations based on documented performance deficiencies not related to age are perfectly legal.

However, employers should be careful about what they document and say. In one case, Westinghouse Electric abolished a number of jobs held by individuals over 40. A year after the terminations, a Westinghouse executive wrote a memo describing older employees as “blockers” who prevented young managers from being promoted. A 52-year-old former Westinghouse employee sued for age discrimination, and the U.S. Supreme Court ruled against Westinghouse because the memo reflected a “cumulative management attitude” about older workers. The terminated employee was awarded almost \$250,000.¹⁹

Older Workers Benefit Protection Act (OWBPA)

The Older Workers Benefit Protection Act (OWBPA) of 1990 was passed to amend the ADEA to ensure that equal treatment for older workers occurs in early retirement or severance situations. Many early retirement and downsizing efforts by employers target older workers by hoping to entice them to choose early retirement buyouts and enhanced severance packages. In exchange, employers often require the workers to sign waivers indicating that by accepting the retirement incentives, the workers waive their rights to sue the employers for age discrimination.

The OWBPA specifies that employees considering an early retirement buyout enhancement must:

- Receive copies of any waiver of their rights to sue for age discrimination.
- Be given sufficient time to consider the buyout offer, most frequently up to 45 days if they must sign a waiver of age discrimination rights.
- Be able to revoke their retirement agreement within seven days of signing the waiver.

These and other provisions of the OWBPA have provided guidelines to employers, as well as protection for older workers, when early retirement buyout and downsizing programs are used.



BNA: 1805.60.60.10

OWBPA Waivers

Details on the provisions for waivers and older worker rights in early retirement buyouts and workforce reductions can be reviewed here.

FIGURE 6–4 Major Sections of the Americans with Disabilities Act

Title I	Title II	Title III	Title IV	Title V
Employment Provisions Prohibits employment-related discrimination against persons with disabilities	Public Participation and Service Prohibits discrimination related to participation of disabled persons in government programs and for public transportation	Public Access Ensures accessibility of public and commercial facilities	Telecommunications Requires provision of telecommunications capabilities and television closed captions for persons with hearing and speech disabilities	Administration and Enforcement Describes administrative and enforcement provisions and lists who is not covered by ADA

Americans with Disabilities Act (ADA)

The passage of the Americans with Disabilities Act (ADA) in 1990 represented an expansion in the scope and impact of laws and regulations on discrimination against individuals with disabilities. All employers with 15 or more employees are covered by the provisions of the ADA, which are enforced by the EEOC. The ADA was built upon the Vocational Rehabilitation Act of 1973 and the Rehabilitation Act of 1974, both of which applied only to federal contractors.

The ADA affects more than just employment matters, as Figure 6–4 shows, and it applies to private employers, employment agencies, labor unions, and state and local governments. The ADA contains the following requirements dealing with employment:

- Discrimination is prohibited against individuals with disabilities who can perform the *essential job functions*, a standard that is somewhat vague.
- A covered employer must have *reasonable accommodation* for persons with disabilities, so that they can function as employees, unless *undue hardship* would be placed on the employer.
- Preemployment medical examinations are prohibited except after an employment offer is made, conditional upon individuals passing a physical examination.
- Federal contractors and subcontractors with contracts valued at more than \$2,500 must take affirmative action to hire qualified disabled individuals.

Discrimination Against Individuals with Disabilities

Employers looking for workers with the knowledge, skills, and abilities to perform jobs often have neglected a significant source of good, dedicated people—individuals with physical or mental disabilities. According to U.S. government estimates, almost 50 million Americans have some sort of disability. Many of them between the ages of 16 and 64 are unemployed but would like to work if given appropriate opportunities. When individuals with disabilities are hired and placed in jobs that match their capabilities, they often succeed.

The number of complaints filed under the ADA has skyrocketed in recent years. According to statistics from the EEOC, over 40,000 disability discrimina-

tion complaints were filed in the first several years the act was in effect. Over half of those complaints had to do with discharge of employees with disabilities or employees who became disabled. Another 25% dealt with failure to provide reasonable accommodation.²⁰

Who Is Disabled?

Disabled person

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.

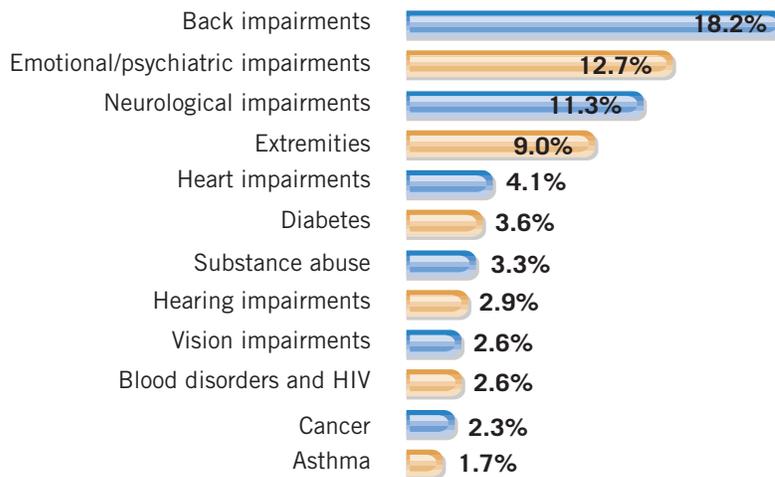
As defined by the ADA, a **disabled person** is someone who has a physical or mental impairment that substantially limits that person in some major life activities, who has a record of such an impairment, or who is regarded as having such an impairment. Persons who qualify for protection under the act include those who have obvious disabilities such as the absence of a limb, sight or hearing impairments, or other physical disabilities. Individuals with less visible disabilities classified as disabled under the ADA include persons with life-threatening diseases (AIDS, cancer, leukemia), rehabilitated drug users and alcoholics, and persons with major muscular limitations or breathing difficulties. People with various mental disabilities or impairments also qualify under the ADA. Regulations exclude current users of illegal drugs, people with sexual behavior disorders, and compulsive gamblers from being classified as disabled.²¹

EEOC GUIDELINES ON DISABILITIES To provide better guidance to those covered by the ADA, the EEOC issued additional clarifications of its guidelines, including the following:

- *Impairment* was defined as a physiological disorder affecting one or more body systems or a mental/psychological disorder. Specifically *excluded* are
 - Environmental, cultural, and economic disadvantages
 - Homosexuality and bisexuality
 - Normal deviation in height and weight
 - Normal personality traits (rudeness, quick temper, arrogance, etc.)
 - Pregnancy
 - Physical characteristics
- *Thinking, concentrating, and interacting with other people* were included as *major life activities*. Individuals impaired in one of these areas are covered by the ADA.
- A *substantial limitation* was clarified to mean a limitation in life activities other than working.

In spite of the EEOC guidelines, there is still some confusion as to who is disabled. For example, some court decisions and laws have protected individuals perceived as impaired to a degree that their employment is affected. Thus, even individuals with facial disfigurements may qualify for protection against employer discrimination. Other court decisions have found individuals who have high blood pressure, epilepsy, allergies, obesity, and color blindness to be disabled. Figure 6–5 indicates the most frequently cited impairments in ADA cases filed with the EEOC.

MENTAL DISABILITIES A growing area of concern under the ADA is individuals with mental disabilities. A mental illness is often more difficult to diagnose than a physical disability. In an attempt to add clarification, the EEOC has released explanatory guidelines; but the situations are still confusing. In one case, an employee claimed that mental stress due to a negative performance review meant

FIGURE 6-5 ADA Most Frequently Identified Impairments

SOURCE: Equal Employment Opportunity Commission, 1997.

that she had a disability. Fortunately for employers, a U.S. Court of Appeals ruled against the employee.²²

Deciding whether job pressures can create a disability covered under the ADA has been the subject of several court cases. Generally, employers have prevailed when mental disability charges have been brought against employers.²³

LIFE-THREATENING ILLNESSES In recent years, the types of disabilities covered by various local, state, and federal acts prohibiting discrimination have been expanded. For example, a U.S. Supreme Court case held that an employer cannot discriminate against an individual whom the employer believes may have a contagious disease. The case involved an individual who had a relapse of tuberculosis and was discharged from her job as a schoolteacher because her employer feared her illness might be contagious.²⁴

The most feared contagious disease is acquired immunodeficiency syndrome (AIDS). The disease was almost unknown in 1980, but it currently is estimated that a million people in the United States either have AIDS or are classified as HIV-positive.²⁵ A recent U.S. Supreme Court decision ruled that individuals infected with human immunodeficiency virus (HIV), not just those with AIDS, have a disability covered by the ADA.²⁶

Unfortunately, employers and employees often react with fear about working with an AIDS victim. Nevertheless, if an employer does have an employee with a life-threatening illness, educating other employees is more appropriate than terminating the victim's employment. A medical leave of absence (without pay if that is the general policy) can be used to assist the AIDS-afflicted employee during medical treatments. Other employees should be told to keep medical records of affected persons confidential. Also, employees who indicate that they will not work with an AIDS victim should be told that their refusal to work is not protected by law, and that they could be subject to disciplinary action up to and including discharge.

Essential job functions

The fundamental job duties of the employment position that an individual with a disability holds or desires.

Reasonable accommodation

A modification or adjustment to a job or work environment that enables a qualified individual with a disability to have equal employment opportunity.

Undue hardship

Condition created when making a reasonable accommodation for individuals with disabilities that imposes significant difficulty or expense on an employer.

Essential Job Functions

The ADA requires that employers identify the **essential job functions**—the fundamental job duties of the employment position that an individual with a disability holds or desires. These functions do not include marginal functions of the position.

The essential functions should be identified in written job descriptions that indicate the amount of time spent performing various functions and their criticality. Most employers have interpreted this provision to mean that they should develop and maintain current and comprehensive job descriptions for all jobs. These job descriptions should list the job functions in the order of “essentiality.” Also, the job specification statements that identify the qualifications required of those in the jobs should specify the exact knowledge, skills, abilities, and physical demands involved. For example, hearing, seeing, speaking, climbing, lifting, and stooping should be mentioned when those actions are necessary in performing specific jobs.

Reasonable Accommodation

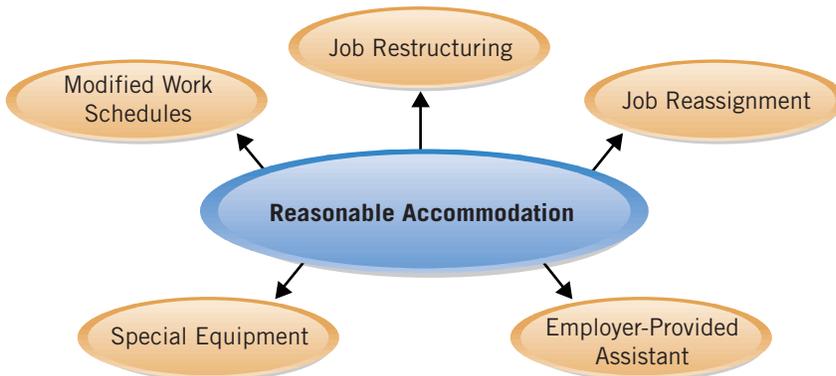
A **reasonable accommodation** is a modification or adjustment to a job or work environment that enables a qualified individual with a disability to have equal employment opportunity. Employers are required to provide reasonable accommodation for individuals with disabilities to ensure that illegal discrimination does not occur.

There are several areas of reasonable accommodation. First, architectural barriers should not prohibit disabled individuals’ *access to work areas or rest rooms*. A second area of reasonable accommodation is the *assignment of work tasks*. Satisfying this requirement may mean modifying jobs, work schedules, equipment, or work area layouts. Some examples include teaching sign language to a supervisor so that a deaf person can be employed, modifying work schedules to assist disabled workers, and having another worker perform minor duties. Also, employers can provide *special equipment*, such as visually enhanced computers or speech synthesizers for those with vision impairments.²⁷ Figure 6–6 shows some means commonly used by employers to provide reasonable accommodations. In summary, there are few specific rules on which an employer can rely in this area, because the courts consider every situation on its own merits.

Undue Hardship

Reasonable accommodation is restricted to actions that do not place an “undue hardship” on an employer. An action places **undue hardship** on an employer if it imposes significant difficulty or expense. The ADA offers only general guidelines on when an accommodation becomes unreasonable and places undue hardship on an employer. More information on reasonable accommodations is given in Chapter 7, on job analysis and design.

Initially, employers were very concerned about facing extensive costs for remodeling facilities or making other accommodations, because some accommodations can be expensive. However, a study of compliance efforts done by the U.S. General Accounting Office found that over 50% of all accommodations cost employers nothing, while another 30% cost less than \$500.²⁸

FIGURE 6-6 *Common Means of Reasonable Accommodation*

Other Bases of Discrimination

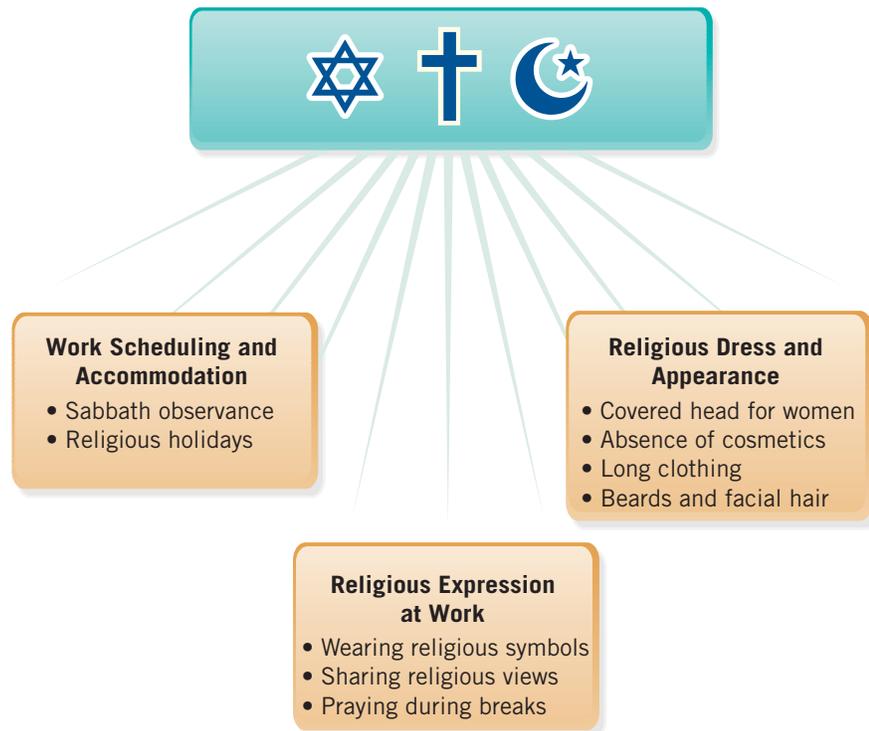
There are several other bases of discrimination that various laws have identified as illegal. Religious discrimination is an area in which a growing number of issues are having to be addressed by employers.

Religious Discrimination

Title VII of the Civil Rights Act identifies discrimination on the basis of religion as illegal. However, religious schools and institutions can use religion as a bona fide occupational qualification (BFOQ) for employment practices on a limited scale. As Figure 6-7 depicts, three major facets must be considered by employers with employee religious issues at work. The extent of religious discrimination is seen in a 99% increase in charges of illegal religious discrimination being filed with the EEOC in a recent year, totaling about 1,700. Another sign of the growing concern about religion is the development of religious guidelines for U.S. government employees issued in 1997. A bill to extend the guidelines to all employers has been proposed as well. The Workplace Religious Freedom Act explicitly spells out employer requirements to accommodate employees' religious practices. However, that bill has not yet been passed into law.

WORK SCHEDULES AND REASONABLE ACCOMMODATION Many religions have days of worship other than Sunday, which is typical in many U.S. religious denominations. Also, holidays other than Christmas are observed by individuals of the Jewish, Muslim, and other faiths.²⁹ As the workforce has become more diversified, all of these differences are affecting employers' holiday time-off and work-scheduling policies.

A major guide in this area was established by the U.S. Supreme Court in *TWA v. Hardison*. In that case, the Supreme Court ruled that an employer is required to make *reasonable accommodation* of an employee's religious beliefs. Because TWA had done so, the ruling denied Hardison's discrimination charges.³⁰

FIGURE 6-7 Religious Issues at Work

The impact of that decision can be seen in a recent case involving an employee who wished to make a religious pilgrimage in October. However, the retailer for whom the individual worked had a policy prohibiting employee vacations between October and January, due to the heavy holiday customer demands. A U.S. Court of Appeals ruled for the employer, finding that the employer's policy had a business purpose and that the employee could have taken the trip at a different time.³¹ Both this case and others indicate that employers are advised to offer alternative work schedules, make use of compensatory time off, or otherwise adjust to employees' religious beliefs. Once reasonable accommodation efforts have been made, employers are considered to have abided by the law.³²

EXPRESSION OF RELIGIOUS BELIEFS Another issue relates to *religious expression*. In the last several years, there have been several cases in which employees have sued employers for prohibiting them from expressing their religious beliefs at work. In one case, a Muslim employee filed a complaint that the employer would not let him pray during his work breaks, and that coworkers harassed him and wiped their shoes on his prayer rug. A state discrimination agency ruled for the employee.³³ In other cases, employers have had to take action because of the complaints by other workers that employees were aggressively "pushing" their religious views at work.

RELIGIOUS DRESS AND APPEARANCE Another potential area for conflict between employer policies and employees' religious practices is in the area of dress and appearance. Some religions have standards about the appropriate attire for women.

Also, some religions expect men to have beards and facial hair. For instance, a woman was fired for violating a retailer's dress standards by wearing a *hijab*, a head scarf worn by many Muslim women. After she filed a complaint outside the organization, the corporate office of the retailer requested that the woman be reinstated and granted her back pay for two weeks.³⁴ However, if the clothing represents a safety hazard, such as wearing of long clothing around machinery, then employers generally have been able to enforce their requirements.

Discrimination and Appearance

In addition to appearance issues related to religion, several EEO cases have been filed concerning the physical appearance of employees. Court decisions consistently have allowed employers to have dress codes as long as they are applied uniformly. However, requiring a dress code for women but not for men has been ruled to constitute disparate treatment; therefore, it would be discriminatory. Most of the dress standards contested have required workers to dress in a conservative manner.

HEIGHT/WEIGHT RESTRICTIONS Many times, height/weight restrictions have been used to discriminate against women or other protected groups. For example, the state of Alabama violated Title VII in setting height and weight restrictions for correctional counselors. The restrictions (5 feet 2 inches and 120 pounds) would have excluded 41.14% of the female population of the country, but less than 1% of the men. The Supreme Court found that the state's attempt to justify the requirements as essential for job-related strength failed for lack of evidence. The Court suggested that if strength was the quality sought, the state should have adopted a strength requirement.³⁵

Individuals also have brought cases claiming employment discrimination based on obesity or on unattractive appearance. Employers have lost many of the cases because of their inability to prove any direct job-related value in their requirements. In other cases, some courts have ruled that under the Americans with Disabilities Act (ADA), obese individuals may qualify as having a covered disability when they are perceived and treated as if they have a disability.

HAIR AND GROOMING Some employers have policies regarding the length of hair, facial hair, and other grooming standards. In one case, four men were fired for refusing to cut their long hair. The men claimed that they were being discriminated against because women workers were allowed to have longer hair. A U.S. Court of Appeals ruled that employer policies prohibiting long hair on male employees, but not female employees, are allowed.³⁶

Cases also have addressed the issue of facial hair for men. Because African American men are more likely than white males to suffer from a skin disease that is worsened by shaving, they have filed suits challenging policies prohibiting beards or long sideburns. Generally, courts have ruled for employers in these cases, unless religious issues are involved.

Sexual Orientation and Gay Rights

Recent battles over revising policies for nonheterosexuals in the U.S. military services illustrate the depth of emotions that accompany discussions of "gay rights." Some states and cities have passed laws prohibiting discrimination based



LOGGING ON . . .

American Federation of Teachers—Human Rights and Community Relations

This website provides information on conferences, conventions, news developments, resource materials, civil and human rights issues, and related sites regarding sexual orientation.

<http://www.aft.org/humanrights/issues.htm>

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. However, at the federal level no laws of a similar nature have been passed. Whether gay men and lesbians have rights under the equal protection amendment to the U.S. Constitution has not been decided by the U.S. Supreme Court.

Regarding transsexuals (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 other sexual behavior disorders are specifically excluded from being considered as disabled under the Americans with Disabilities Act of 1990.

Veterans’ Employment Rights

The employment rights of military veterans and reservists have been addressed several times. The two most important laws are highlighted next.

VIETNAM-ERA VETERANS READJUSTMENT ACT OF 1974 Concern about the readjustment and absorption of Vietnam-era veterans into the workforce led to the passage of the Vietnam-Era Veterans Readjustment Act. The act requires that affirmative action in hiring and advancing Vietnam-era veterans be undertaken by federal contractors and subcontractors having contracts of \$10,000 or more.

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

Under the Uniformed Services Employment and Reemployment Rights Act of 1994, employees are required to notify their employers of military service obligations. Employees serving in the military must be provided leaves of absence and have reemployment rights for up to five years. Other provisions protect the right to benefits of employees called to military duty.³⁷

Seniority and Discrimination

Conflict between EEO regulations and organizational practices that give preference to employees on the basis of seniority represent another problem area. Employers, especially those with union contracts, frequently make layoff, promotion, and internal transfer decisions by giving employees with longer service first consideration. However, the use of seniority often means that there is disparate impact on protected-class members, who may be the workers most recently hired. The result of this system is that protected-class members who have obtained jobs through an affirmative action program are at a disadvantage because of their low levels of seniority. They may find themselves “last hired, first fired” or “last hired, last promoted.” In some cases, the courts have held that a valid seniority system does *not* violate rights based on sex or race. In other cases, gender and racial considerations have been given precedence over seniority.

EEO Compliance

Employers must comply with EEO regulations and guidelines. To do so, management should have an EEO policy statement and maintain all required EEO-related records.

EEO Policy Statement

It is crucial that all employers have a written EEO policy statement. This policy should be widely disseminated throughout the organization. The policy can be communicated by posting it on bulletin boards, printing it in employee handbooks, reproducing it in organizational newsletters, and reinforcing it in training programs. The contents of the policy should clearly state the organizational commitment to equal employment. Particularly important is to incorporate the listing of the appropriate protected classes in the policy statement.³⁸

EEO Records

All employers with 15 or more employees are required to keep certain records that can be requested by the Equal Employment Opportunity Commission (EEOC). If the organization meets certain criteria, then reports and investigations by the Office of Federal Contract Compliance Programs (OFCCP) also must be addressed. Under various laws, employers also are required to post an “officially approved notice” in a prominent place where employees can see it. This notice states that the employer is an equal opportunity employer and does not discriminate.

EEO RECORDS RETENTION All employment records must be maintained as required by the EEOC, and employer information reports must be filed with the federal government. Further, any personnel or employment record made or kept by the employer must be maintained for review by the EEOC. Such records include application forms and records concerning hiring, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation, and selection for training and apprenticeship. Even application forms or test papers completed by unsuccessful applicants may be requested. The length of time documents must be kept varies, but generally three years is recommended as a minimum.

Keeping good records, whether required by the government or not, is simply a good HR practice. Complete records are necessary for an employer to respond when a charge of discrimination is made and a compliance investigation begins.

ANNUAL REPORTING FORM The basic report that must be filed with the EEOC is the annual report form EEO-1 (see Appendix E). The following employers must file this report:

- All employers with 100 or more employees, except state and local governments
- Subsidiaries of other companies where total employees equal 100
- Federal contractors with at least 50 employees and contracts of \$50,000 or more
- Financial institutions in which government funds are held or saving bonds are issued

The annual report must be filed by March 31 for the preceding year. The form requires employment data by job category, classified according to various protected classes.

APPLICANT FLOW DATA Under EEO laws and regulations, employers may be required to show that they do not discriminate in the recruiting and selection of members of protected classes. For instance, the number of women who applied



BNA: 410.40.50

EEO Policy Statement

A sample EEO policy statement can be found at this location. Review it and compare it to the EEO policy statement in an actual employee handbook.

and the number hired may be compared with the selection rate for men to determine if adverse impact exists. The fact that protected-class identification is not available in employer records is not considered a valid excuse for failure to provide the data required.

Because collection of racial data on application blanks and other preemployment records is not permitted, the EEOC allows employers to use a “visual” survey or a separate *applicant flow form* that is not used in the selection process. An example of such a form is shown in Figure 6–8. Notice that this form is filled out voluntarily by the applicant, and that the data must be maintained separately from all selection-related materials. These analyses may be useful in showing that an employer has underutilized a protected class because of an inadequate applicant flow of protected-class members, in spite of special efforts to recruit them.



LOGGING ON . . .

The U.S. Equal Employment Opportunity Commission— Enforcement Statistics

The EEOC website gives access to statistics regarding the Equal Pay Act, ADA, Age Discrimination Act, and the Civil Rights Act.

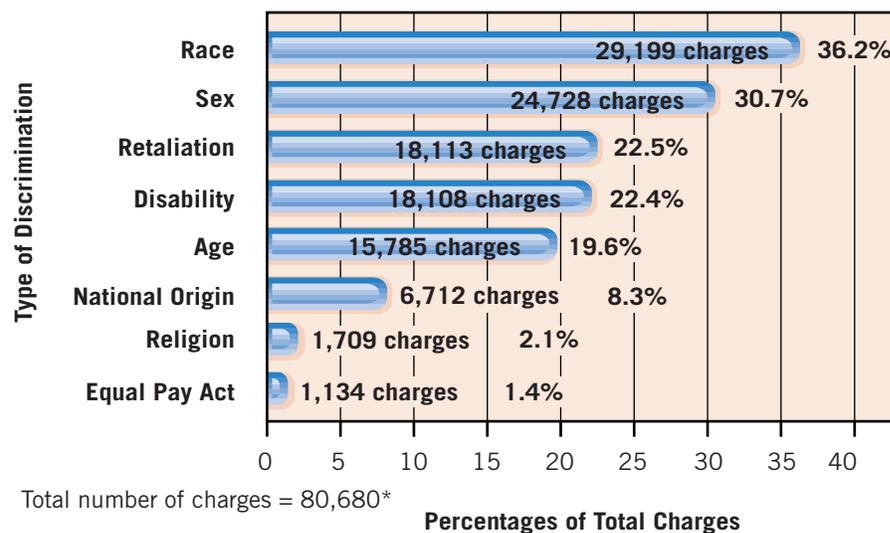
<http://www.eeoc.gov/stats/>

EEOC Compliance Investigation Process

When a discrimination complaint is received by the EEOC or a similar agency, it must be processed. Figure 6–9 indicates the number of complaints in a recent year by type of discrimination. To handle a growing number of complaints, the EEOC has instituted a system that categorizes complaints into three categories: *priority*, *needing further investigation*, and *immediate dismissal*.³⁹ If the EEOC decides to pursue a complaint, it uses the process outlined here.

COMPLIANCE INVESTIGATIVE STAGES In a typical situation, a complaint goes through several stages before the compliance process is completed. First, the charges

FIGURE 6–9 *Recent Year Charge Statistics from EEOC*



*Number for total charges reflects the number of individual charge filings. Because individuals often file charges claiming multiple types of discrimination, the number of total charges may be less than the total of the eight types of discrimination.

SOURCE: U.S. Equal Employment Opportunity Commission, 1998
(<http://www.eeoc.gov/stats/charges.html>).

are filed by an individual, a group of individuals, or their representative. A charge must be filed within 180 days of when the alleged discriminatory action occurred. Then the EEOC staff reviews the specifics of the charges to determine if it has *jurisdiction*, which means that the agency is authorized to investigate that type of charge. If jurisdiction exists, a notice of the charge must be served on the employer within 10 days after the filing, and the employer is asked to respond. Following the charge notification, the EEOC's major thrust turns to investigating the complaint.

If the charge is found to be valid, the next stage involves mediation efforts by the agency and the employer. If the employer agrees that discrimination has occurred and accepts the proposed settlement, then the employer posts a notice of relief within the company and takes the agreed-on actions. This notice indicates that the employer has reached an agreement on a discrimination charge and reiterates the employer's commitment to avoid future discriminatory actions.

Right-to-sue letter

A letter issued by the EEOC that notifies a complainant that he or she has 90 days in which to file a personal suit in federal court.

INDIVIDUAL RIGHT TO SUE If the employer objects to the charge and rejects conciliation, the EEOC can file suit or issue a **right-to-sue letter** to the complainant. The letter notifies the person that he or she has 90 days in which to file a personal suit in federal court. Thus, if the EEOC decides that it will not bring suit on behalf of the complainant, the individual has the right to bring suit. The suit usually is brought in the U.S. District Court having jurisdiction in the area.

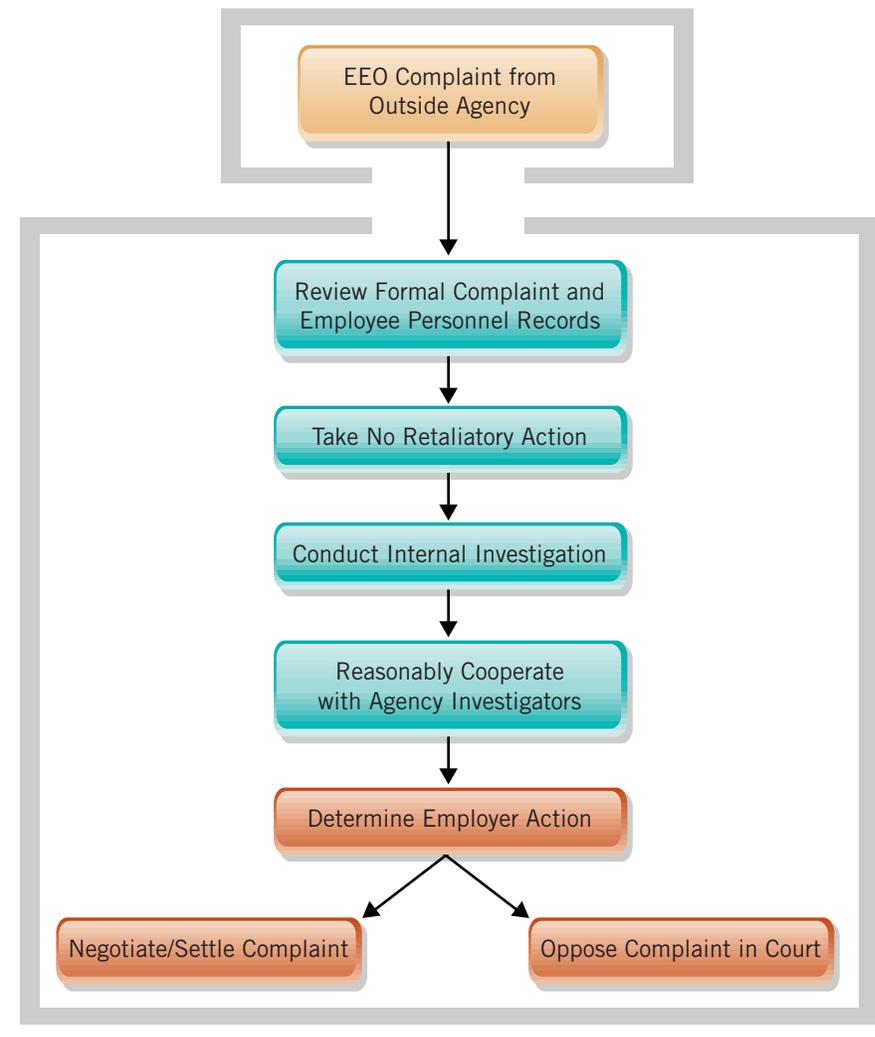
LITIGATION In the court litigation stage, a legal trial takes place in the appropriate state or federal court. At that point, both sides retain lawyers and rely on the court to render a decision. The Civil Rights Act of 1991 provides for jury trials in most EEO cases. If either party disagrees with the court ruling, either can file appeals with a higher court. The U.S. Supreme Court becomes the ultimate adjudication body.

Employer Responses to EEO Complaints

Many problems and expenses associated with EEO complaints can be controlled by employers who vigorously investigate their employees' discrimination complaints before they are taken to outside agencies. An internal employee complaint system and prompt, thorough responses to problem situations are essential tools in reducing EEO charges and in remedying illegal discriminatory actions. The general steps in effectively responding to an EEO complaint are outlined in Figure 6–10 and discussed next.

REVIEW CLAIM AND EMPLOYEE'S PERSONNEL FILE By reviewing the claim, the HR staff can determine which individuals and agencies are handling the investigation. Also, any personnel files on the employees involved should be reviewed to determine the nature and adequacy of internal documentation. For many employers, contacting outside legal counsel at this point also may be advisable.

TAKE NO RETALIATORY ACTION It is crucial that no retaliatory actions, even snide remarks, be used against individuals filing EEO complaints.⁴⁰ The HR staff should also notify relevant managers and supervisors of the complaint, instructing them to refrain from any retaliatory actions, such as changing job assignments or work schedules unnecessarily. However, appropriate disciplinary action that is work related still can be administered.

FIGURE 6–10 *Stages in Responding to EEO Complaints*

CONDUCT INTERNAL INVESTIGATION A thorough internal investigation of the facts and circumstances of the claim should be conducted. Some firms use outside legal counsel to conduct these investigations in order to obtain a more objective view. Once the investigative data have been obtained, then a decision about the strength or weakness of the employer's case should be determined. If the case is weak, possible settlement discussions may begin with the enforcement agency representatives. However, if the employer believes that a strong case exists, then the employer likely will draft a response to the claim that states the relevant facts and reasons why the employer does not believe the complaint is valid.

REASONABLY COOPERATE WITH AGENCY INVESTIGATORS It is highly recommended that the agency investigators be treated professionally, rather than as

FIGURE 6–11 Guidelines to Lawful and Unlawful Preemployment Inquiries

Subject of Inquiry	It May Not Be Discriminatory To Inquire About:	It May Be Discriminatory To Inquire About:
1. Name	<ul style="list-style-type: none"> a. Whether applicant has ever worked under a different name 	<ul style="list-style-type: none"> a. The original name of an applicant whose name has been legally changed. b. The ethnic association of applicant's name
2. Age	<ul style="list-style-type: none"> a. If applicant is over the age of 18 b. If applicant is under the age of 18 or 21 if job related (i.e., selling liquor in retail store) 	<ul style="list-style-type: none"> a. Date of birth b. Date of high school graduation
3. Residence	<ul style="list-style-type: none"> a. Applicant's place of residence; length of applicant's residence in state and/or city where employer is located 	<ul style="list-style-type: none"> a. Previous addresses b. Birthplace of applicant or applicant's parents
4. Race or Color		<ul style="list-style-type: none"> a. Applicant's race or color of applicant's skin
5. National Origin and Ancestry		<ul style="list-style-type: none"> a. Applicant's lineage, ancestry, national origin, parentage, or nationality b. Nationality of applicant's parents or spouse
6. Sex and Family Composition		<ul style="list-style-type: none"> a. Sex of applicant b. Dependents of applicant c. Marital status d. Child-care arrangements
7. Creed or Religion		<ul style="list-style-type: none"> a. Applicant's religious affiliation b. Church, parish, or holidays observed
8. Citizenship	<ul style="list-style-type: none"> a. Whether the applicant is a citizen of the United States b. Whether the applicant is in the country on a visa that permits him or her to work or is a citizen 	<ul style="list-style-type: none"> a. Whether applicant is a citizen of a country other than the United States
9. Language	<ul style="list-style-type: none"> a. Language applicant speaks and/or writes fluently, if job related 	<ul style="list-style-type: none"> a. Applicant's native tongue; language commonly used at home
10. References	<ul style="list-style-type: none"> a. Names of persons willing to provide professional and/or character references for applicant 	<ul style="list-style-type: none"> a. Name of applicant's pastor or religious leader

“the enemy.” Berating the investigator, creating unnecessary procedural demands, or refusing to allow access to requested documentation (within reason) serve only to antagonize the investigator. However, cooperating does not mean agreeing with all requests by the agency investigators, whether related to the existing charge or not.

DETERMINE WHETHER TO NEGOTIATE, SETTLE, OR OPPOSE COMPLAINT Once the agency investigation has been completed, the employer will be notified of the results. Also, the remedies proposed by the agency investigators will be identified. At that point, the HR staff, outside legal counsel, and senior managers often meet

FIGURE 6–11 Guidelines to Lawful and Unlawful Preemployment Inquiries (continued)

Subject of Inquiry	It May Not Be Discriminatory To Inquire About:	It May Be Discriminatory To Inquire About:
11. Relatives	a. Names of relatives already employed by the employer	a. Name and/or address of any relative of applicant b. Whom to contact in case of emergency
12. Organizations	a. Applicant's membership in any professional, service, or trade organization	a. All clubs or social organizations to which applicant belongs
13. Arrest Record and Convictions	a. Convictions, if related to job performance (disclaimer should accompany)	a. Number and kinds of arrests b. Convictions unless related to job performance
14. Photographs		a. Photograph with application, with resume, or before hiring
15. Height and Weight		a. Any inquiry into height and weight of applicant except where a BFOQ
16. Physical Limitations	a. Whether applicant has the ability to perform job-related functions with or without accommodation	a. The nature or severity of an illness or the individual's physical condition b. Whether applicant has ever filed workers' compensation claim c. Any recent or past operations or surgery and dates
17. Education	a. Training applicant has received if related to the job under consideration b. Highest level of education attained, if validated that having certain educational background (e.g., high school diploma or college degree) is necessary to perform the specific job	
18. Military	a. What branch of the military applicant served in b. Type of education or training received in military c. Rank at discharge	a. Type of military discharge
19. Financial Status		a. Applicant's debts or assets b. Garnishments

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to decide whether to settle the complaint, negotiate different terms of the settlement, or to oppose the charges and begin court proceedings.

Preemployment vs. After-Hire Inquiries

Figure 6–11 lists preemployment inquiries and identifies whether they may or may not be discriminatory. All those preemployment inquiries labeled in the figure as “may be discriminatory” have been so designated because of findings in a variety of court cases. Those labeled “may not be discriminatory” are practices



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**Job Offers and
Acceptance and Rejection
Letters**

Information on making job offers and contents of job offer letters are contained here.

Executive order

An order issued by the President of the United States to provide direction to government departments on a specific issue or area.

that are legal, but only if they reflect a business necessity or are job related for the specific job under review.

Once an employer tells an applicant he or she is hired (the “point of hire”), inquiries that were prohibited earlier may be made. After hiring, medical examination forms, group insurance cards, and other enrollment cards containing inquiries related directly or indirectly to sex, age, or other bases may be requested. Photographs or evidence of race, religion, or national origin also may be requested after hire for legal and necessary purposes, but not before. Such data should be maintained in a separate personnel records system in order to avoid their use in making appraisal, discipline, termination, or promotion decisions.

Affirmative Action Plans (AAPs)

Throughout the last 30 years, employers with federal contracts and other government entities have had to address additional areas of potential discrimination. Several acts and regulations have been issued that apply specifically to government contractors. These acts and regulations specify a minimum number of employees and size of government contracts. The requirements primarily come from federal Executive Orders 11246, 11375, and 11478. Many states have similar requirements for firms with state government contracts.

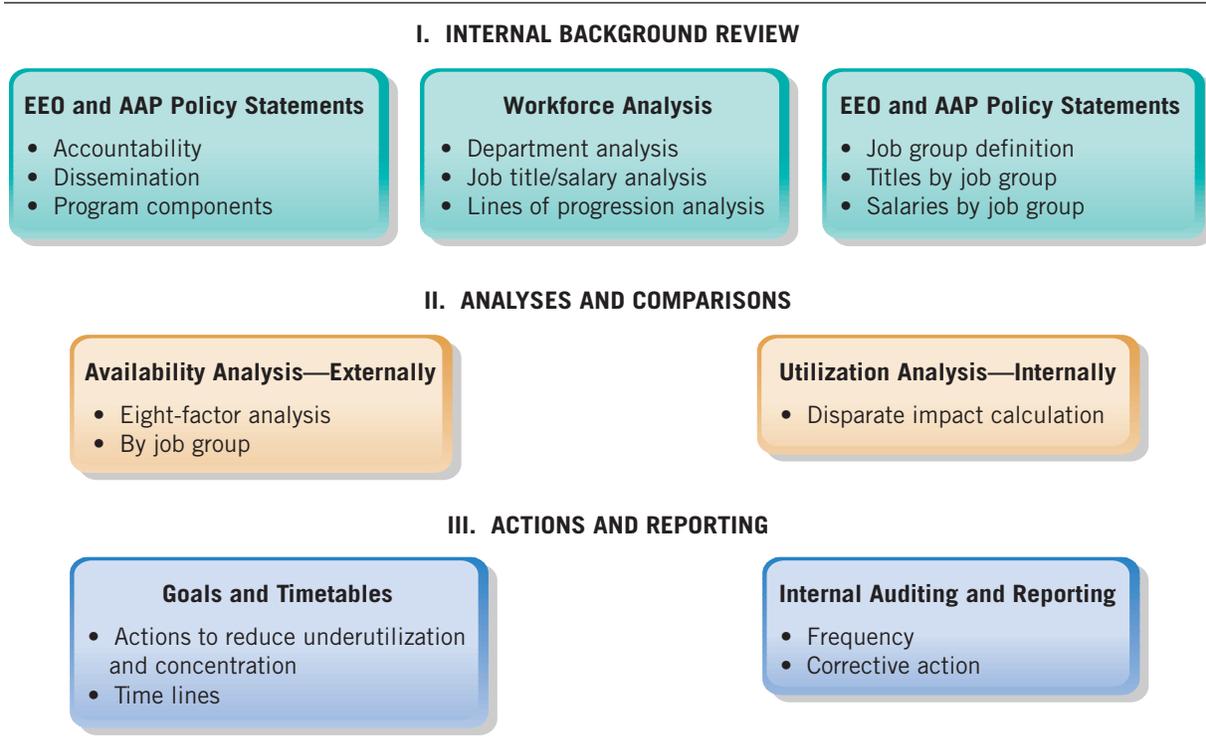
Executive Orders 11246, 11375, and 11478

Numerous executive orders have been issued that require employers holding federal government contracts not to 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 issue or area.

During the 1960s, by executive order, the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor was established and given responsibility for enforcing nondiscrimination in government contracts. Under Executive Order 11246, issued in 1965, amended by Executive Order 11375 in 1967, and updated by Executive Order 11478 in 1979, the Secretary of Labor was given the power to cancel the contract of a noncomplying contractor or blacklist a noncomplying employer from future government contracts. These orders and additional equal employment acts have required employers to take affirmative action to overcome the effects of past discriminatory practices.

Who Must Have an Affirmative Action Plan?

Even though affirmative action as a concept has been challenged in court, as described in Chapter 5, most federal government contractors still are required to have affirmative action plans (AAPs). Generally, an employer with at least 50 employees and over \$50,000 in government contracts must have a formal, written affirmative action plan. A government contractor with fewer than 50 employees and contracts totaling more than \$50,000 can be required to have an AAP if it has been found guilty of discrimination by the EEOC or other agencies. The contract size can vary depending on the protected group and the various laws on which the regulations rest.

FIGURE 6–12 *Components of an Affirmative Action Plan*

Courts have noted that any employer that is not a government contractor may have a *voluntary* AAP, although the employer *must* have such a plan if it wishes to be a government contractor. Where an employer that is not a government contractor has a required AAP, a court has ordered the employer to have an AAP as a result of past discriminatory practices and violations of laws.

Contents of an Affirmative Action Plan

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. Figure 6–12 depicts the phases in the development of an AAP.⁴¹

INTERNAL BACKGROUND REVIEW In this phase, the EEO and AAP *policy statements* are presented, including the employer's commitment to equal employment and affirmative action. Then the *workforce analysis* is done by detailing the makeup of the workforce as seen on an organization chart and by depicting departmental groupings, job titles and salaries, and the lines of progression. This analysis details the status of employees by gender, race, and other bases. The final part of the internal background review is to prepare a *job group analysis*. Unlike the workforce analysis, in which data are classified by organizational unit, the job group analysis looks at similar jobs throughout the organization, regardless of department. For instance, EEO *demographic* data on incumbents in all engineering jobs will be reported, regardless of departments. For instance, an electric utility may have eight levels of engineers in twelve different operating divisions.

Availability analysis

An analysis that identifies the number of protected-class members available to work in the appropriate labor markets in given jobs.

Utilization analysis

An analysis that identifies the number of protected-class members employed and the types of jobs they hold in an organization.

ANALYSES AND COMPARISONS Two different types of analyses are done. The first one is **availability analysis**, which identifies the number of protected-class members available to work in the appropriate labor markets in given jobs. This analysis, which can be developed with data from a state labor department, the U.S. Census Bureau, as well as other sources, serves as a basis for determining if *underutilization* exists within an organization. The census data also must be matched to job titles and job groups used in the utilization analysis.

Another major section of an AAP is the **utilization analysis**, which identifies the number of protected-class members employed and the types of jobs they hold in an organization. According to Executive Order 11246, employers who are government contractors meeting the required levels for contract size and number of employees must provide data on protected classes in the organization. In calculating utilization, the employer considers the following:

- Number of protected-class members in the population of the surrounding area
- Number of protected-class members in the workforce in the surrounding area compared with number in the total workforce of the organization
- Number of unemployed members of protected classes in the surrounding area
- General availability of protected-class members having requisite skills in the immediate area and in an area in which an employer reasonably could recruit
- Availability of promotable and transferable protected-class members within the organization
- Existence of training institutions that can train individuals in the requisite skills
- Realistic amount of training an employer can do to make all job classes available to protected-class members

Fortunately for many employers, much of the data on the population and workforce in the surrounding area is available in computerized form, so availability analysis and underutilization calculations can be done more easily. However, an employer still must maintain an accurate profile of the internal workforce.

ACTION AND REPORTING Once all of the data have been analyzed and compared, then *underutilization* statistics must be calculated by comparing the workforce analyses with the utilization analysis. It is useful to think of this stage as comparing to see if the internal workforce is a “representative sampling” of the available external labor force from which employees are hired. One of several means of determining underutilization is the 4/5ths rule. Recall that the 4/5ths rule states that discrimination generally is considered to occur if the rate for a protected group is less than 80% of the group’s representation in the relevant labor market, or less than 80% of the selection rate for the majority group.

Using the underutilization data, goals and timetables for reducing the 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 implementation of an AAP must be built on a commitment to affirmative action. The commitment must begin at the top of the organization. A crucial factor is the appointment of an affirmative action officer to monitor the plan.

Once a plan is developed, it should be distributed and explained to all managers and supervisors. It is particularly important that everyone involved in the employment process review the plan and receive training on its content. Also,

**LOGGING ON . . .****AAP Software**

An example of a firm specializing in HR software management systems is available here. This firm offers a software program to assist employers in writing their affirmative action plans.

<http://www.criterioninc.com/Home.htm>

the AAP must be updated and reviewed each year to reflect changes in the utilization and availability of protected-class members. If an audit of an AAP is done by the OFCCP, the employer must be prepared to provide additional details and documentation.

Summary

- Discrimination on the basis of national origin still is illegal, but the Immigration Reform and Control Act has affected how many employers inquire about and verify citizenship.
- Sexual harassment takes two forms: (a) quid pro quo and (b) hostile environment.
- Employers should have policies on sexual harassment, have identifiable complaint procedures, train all employees on what constitutes sexual harassment, promptly investigate complaints, and take action when sexual harassment is found to have occurred.
- Sex discrimination can include any of the following: unequal job assignment, sexual harassment, pregnancy discrimination, or unequal compensation for similar jobs.
- Age discrimination, especially in the form of forced retirements and terminations, is a growing problem.
- The definition of who is disabled has been expanding in recent years.
- The Americans with Disabilities Act requires that most employers identify the essential functions of jobs, and make reasonable accommodation for individuals with disabilities, unless undue hardship results.
- Reasonable accommodation is a strategy that can be used to deal with religious discrimination situations.
- Implementation of equal employment opportunity requires appropriate record keeping, such as completing the annual report (EEO-1) and keeping applicant flow data.
- Many employers are required to develop affirmative action plans (AAPs) that identify problem areas in the employment of protected-class members and initiate goals and steps to overcome those problems.

Review and Discussion Questions

1. Give examples that you have experienced or observed of the two types of sexual harassment in employment situations.
2. Based on your experiences, identify examples of sex discrimination in job conditions, sexual stereotyping, and pregnancy discrimination.
3. Why are age discrimination issues growing in importance?
4. The Americans with Disabilities Act contains several key terms. Define each: (a) *essential job function*, (b) *reasonable accommodation*, and (c) *undue hardship*.
5. Respond to the following comment made by the president of a company: "It's getting so that you can't ask anybody anything personal, because there are so many protected classes."
6. Discuss the following question: "How can I report protected-class statistics to the EEOC when I cannot ask about them on my application blank?"
7. Describe how to perform availability analyses and compute underutilization for an affirmative action plan.

Terms to Know

availability analysis	206	glass ceiling	186	right-to-sue letter	200
disabled person	190	nepotism	185	sexual harassment	178
essential job functions	192	pay equity	184	undue hardship	192
executive order	204	reasonable accommodation	192	utilization analysis	206

Using the Internet



Americans with Disabilities Act Regulations

As the HR manager, it is your job to ensure compliance with the Americans with Disabilities Act regulations. The division managers have recently brought forward some questions regarding compliance with this act. Answer the following questions for them so they might assist you in ensuring compliance.

1. What are the guidelines required legally for an individual to be protected by the Americans with Disabilities Act?

2. What organizations are affected by the employment provisions of the ADA? How are they affected by public accommodations?

3. Summarize what the final rule on Title III means for employers.

Use the following website to assist you:

<http://janweb.icdi.wvu.edu/kinder/>

CASE

Denny's Deals with Discrimination

Denny's a national restaurant chain with over 500 locations, faced a crisis in the mid 1990s due to discriminatory practices. For a number of years, African Americans and the National Association for the Advancement of Colored People (NAACP) had charged that African American customers were discriminated against in various ways. Finally, the NAACP and the U.S. Justice Department filed lawsuits against Denny's for illegal discrimination.

Denny's is owned by Flagstar Companies, a conglomerate with a number of subsidiaries. Flagstar signed an agreement with the NAACP to take aggressive action against racism at Denny's. Terms of the agreement included the following:

- A payment of \$45 million was made to settle two class-action lawsuits brought under civil rights laws.
- Flagstar promised to increase the number of minority franchisees to 53 by 1997.
- Denny's agreed to purchase over \$50 million worth of goods and services from minority-owned firms, representing about 12% of total supply purchases.
- Flagstar agreed to increase the percentage of minorities among employees, managers, and corporate staff. The firm indicated that almost half of its

new management positions would be staffed with African Americans by 2000.

- A toll-free number was established at Denny's corporate headquarters to be used by customers to report service problems, including discrimination. The number is displayed in Denny's restaurants. Complaints are investigated by a lawyer independent of the company.

All of these actions helped Denny's deal with some of its discriminatory practices. But the major change was to replace virtually all of the top management at Denny's. The current management team is headed by James Adamson, chairman and CEO of Flagstar. The team includes several women and minorities. Previously, the Denny's executive group had been almost exclusively white males.

To change the organizational culture throughout Denny's, a diversity training program was developed, and participation in it is mandatory for managers. Also, a portion of bonus payments to managers is now based on results in reducing customer complaints, including those relating to discrimination.

Several years later, Denny's took steps to make its commitment to equality even more evident. Denny's instituted a major TV advertising campaign featuring race and minority issues. In each ad, a minority

teenager talks about race by stating, “Noticing a person’s color doesn’t make you a racist. Acting like it matters does.”

In summary, Adamson recognized that continuing efforts are needed for Denny’s to convince customers and employees, both nonminorities and minorities, that it believes in equal opportunity for all. For several years Adamson has had a very clear message for employees, managers, and franchises: “If you discriminate, you’re history!”⁴²

Questions

1. Discuss why the previous absence of equal employment opportunity at Denny’s showed ineffective management of human resources.
2. How likely is it that Denny’s treatment of African Americans would have changed without legal intervention? Support your answer.
3. What are the advantages and disadvantages of Denny’s approach to taking affirmative action to remedy its past problems with discrimination?

Notes

1. “Record \$34 Million for Sex Harassment,” *Fair Employment Practices*, June 25, 1998, 73–74; “\$86,257 Awarded in Discrimination Suit,” *Omaha World-Herald*, February 1998, 4B; M.A. Jacobs, “Law Firm Loses Race Discrimination Case,” *The Wall Street Journal*, March 25, 1996, B8; Patrick McGeehan, “Smith Barney Diversity Plan Represents a Major Leap for Women on Wall Street,” *The Wall Street Journal*, November 19, 1997, B17; Stephanie Armour, “Age-Bias Case Sounds Warning,” *USA Today*, October 24, 1997, B1; “Merrill Lynch Is Told to Pay \$1.8 Million in Discrimination Case,” *The Wall Street Journal*, January 22, 1997, B14; and “Iowan Awarded \$300,000 in Age-Bias Lawsuit,” *Omaha World-Herald*, May 16, 1998, A19.
2. Based on “Operating a Multilingual Workplace,” *Bulletin to Management*, June 25, 1998, 200; Ann Davis, “English-Only Rules Spur Workers to Speak Legalese,” *The Wall Street Journal*, November 23, 1997, B1+; and “Choice Words,” *Human Resource Executive*, June 5, 1998, 95–97.
3. “Visa Quotas Are Increased for Foreign Professionals,” *Human Resource Executive*, February 1999, 9; and Michael Maggio, “Understanding H-1B Specialty Workers,” *Legal Report*, Summer 1998, 7–12.
4. Charles A. Pierce and Herman Aquinis, “Bridging the Gap between Romantic Relationships and Sexual Harassment in Organizations,” *Journal of Organizational Behavior* 18 (1997), 197–200.
5. *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993).
6. *Burlington Industries v. Ellerth*, U.S. S.Ct. No. 97–569, June 26, 1998; *Faragher v. Boca Raton*, U.S. S.Ct. No. 97–282, June 26, 1998; and *Oncala v. Sundowner Offshore Services*, U.S. S.Ct. No. 96–568, March 4, 1998.
7. Jennifer Laabs, “What You’re Liable for Now,” *Workforce*, October 1998, 34–42.
8. Michael Barrier, “Sexual Harassment,” *Nation’s Business*, December 1998, 14–19.
9. Based on Jane Adams-Roy and Julian Barling, “Predicting the Decision to Confront or Report Sexual Harassment,” *Journal of Organizational Behavior* 19 (1998), 329–336.
10. Gilbert Casellas and Irene L. Hill, “Sexual Harassment: Preventing and Avoiding Liability,” *Legal Report*, Fall 1998, 1–5.
11. James A. Burns, Jr., “Accommodating Pregnant Employees,” *Employee Relations Law Journal* 23 (1997), 139–144.
12. *Stopka v. Alliance of American Insurers*, CA7, No. 97–1974, April 1, 1998; and Sue Schellenbarger, “Pregnant Workers Clash with Employers Over Job Inflexibility,” *The Wall Street Journal*, February 10, 1999, B1.
13. U.S. Bureau of the Census, 1998; Diana F. Furchtgott-Roth and Christine Stolba, “Comparable Worth Makes a Comeback,” *The Wall Street Journal*, February 4, 1999, A22.
14. *Arizona Governing Committee v. Norris*, 103 S.Ct. 3492 (1983).
15. Diana Kunde, “Women Build Careers in Construction Trades,” *Omaha World-Herald*, January 24, 1999, 1G.
16. U.S. Equal Employment Opportunity Commission, 1998.
17. Glass Ceiling Commission, *A Solid Investment: Making Use of the Nation’s Human Capital* (Washington, DC: U.S. Department of Labor, 1995).
18. Timothy D. Schellhardt, “Jury to Consider If ‘Overqualified’ Signals Age Bias,” *The Wall Street Journal*, July 27, 1998, B1, B8.
19. *Westinghouse Electric Corp v. Ryder*, U.S. S.Ct. No. 97–1070, February 23, 1998.
20. Based on data compiled by the federal Equal Employment Opportunity Commission, 1998.
21. Definitions used in this discussion of the Americans with Disabilities Act are those contained either in the act itself or in the *Technical Assistance Manual* issued by the EEOC; and Robert W. Thompson, “Justices May Clarify Definition of ADA-Covered Disabilities,” *HR News*, February 1999, 9–10.
22. Francis A. McMorris, “Employee’s Transfer Plea Rejected in Another Disabilities Act Ruling,” *The Wall Street Journal*, January 21, 1997, B9.
23. Timothy Bland, “ADA: The Law Meets Medicine,” *HR Magazine*, January 1999, 99–104; and Ann

- Davis, "Courts Reject Many Mental-Disability Claims," *The Wall Street Journal*, July 22, 1997, B1, B6.
24. *School Board of Nassau County, Florida v. Airline*, 107 S.C. 1123 (1987).
 25. Peter J. Petesch, "The ADA, HIV, and Risk Management Strategies," *Legal Report*, Summer 1998, 1-6.
 26. *Bragdon v. Abbott*, U.S. S.Ct. No. 97-156, June 25, 1998.
 27. Carolyn Hirschman, "Reasonable Accommodations at a Reasonable Cost," *HR Magazine*, July 1997, 85-88.
 28. Barbara Gamble McGill, "ADA Accommodations Do Not Have to Break the Bank," *HR Magazine*, July 1997, 85-88.
 29. For a discussion of various religions and their observance schedules, see Patricia Digh, "Religion In the Workplace," *HR Magazine*, December 1998, 85-91.
 30. *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977).
 31. Jodi Spiegel Arthur, "Religious Rights Not Violated, Court Says," *Human Resource Executive*, June 5, 1998, 22.
 32. Ronald A. Lindsay and Elizabeth H. Bach, "Religious Discrimination," <http://www.shrm.org/docs/whitepapers/61214.htm>, 1997.
 33. Jessica Guynn, "Another Y2K Worry: Messiahs in the Workplace," *Omaha World-Herald*, February 7, 1999, 1G; and Stephanie Armour, "Conflict Grows between Bosses, Devout Workers," *USA Today*, November 21, 1997, 1B-2B.
 34. "Companies Feel Push to Accommodate Employees' Religious Beliefs," *HR Policies and Practices Update*, September 19, 1997, 1-2.
 35. *Dothard v. Rawlinson*, 433 U.S. 321 (1977).
 36. *Harper v. Blockbuster Entertainment Corp.*, CA11, No. 96-2461-CV-DLG, April 29, 1998.
 37. Public Law 103-353, October 13, 1994.
 38. Jonathan Segal, "EEO Policies: Walking the Razor's Edge," *HR Magazine*, December 1997, 109-116.
 39. Bill Leonard, "A New Era at the EEOC," *HR Magazine*, February 1999, 55-62; and Linda Micco, "EEOC Cuts Number of Pending Cases in Half Over Three Years," *HR News*, September 1998, 9.
 40. Stephanie Armour and Barbara Hansen, "Flood of 'Retaliation' Cases Surfacing in U.S. Workplace," *USA Today*, February 10, 1999, 1A.
 41. In structuring the components of AAPs, the authors acknowledge the assistance of Raymond B. Weinberg, SPHR, CCP; and Kathleen Shotkoski, PHR; of SilverStone Consulting, Omaha, NE.
 42. Based on Bruce Horovitz, "Denny's Airs Anti-Racism Ads," *USA Today*, January 12, 1999, B1; F. Rice, "Denny's Changes Its Spots," *Fortune*, May 13, 1996, 133-142; and N. Harris, "A New Denny's—Diner by Diner," *Business Week*, March 25, 1996, 166-168.