

## Employment Law and Equal Opportunity

### Chapter 23

## Equal Employment Opportunity

- The right of all persons to work & advance on the basis of
  - Merit
  - Ability
  - Potential

### Title VII, Civil Rights Act of 1964 (Title VII)

- Keystone federal legislation in equal employment opportunity
- Created the Equal Employment Opportunity Commission (EEOC)
- Enforced by EEOC
- Amended in 1991

### Title VII, Civil Rights Act of 1964 (Title VII)

- Prohibits discrimination on the basis of:
  - Race
  - Color
  - Religion
  - Sex (Gender)
  - National origin

### Title VII, Civil Rights Act of 1964 (Title VII)

- Covers 2 basic areas of discrimination:
  - **Disparate Treatment:** Refers to intentional discrimination & involves treating one class of employees differently from other employees
    - *Prima Facie* Case: Evidence presented by the plaintiff will prove the case until contradicted by other evidence presented by the defendant
  - **Disparate Impact:** Refers to unintentional discrimination & involves employment practices that appear to be neutral but adversely affect a protected class of people

## Equal Employment Opportunity Commission (EEOC)

- Federal Agency created under the Civil Rights Act of 1964 to:
  - Administer Title VII of the act
  - Ensure equal employment opportunity
- Investigates claims of discrimination
- Investigates equal pay allegations, age discrimination, discrimination against disabled persons

## Equal Employment Opportunity Commission (EEOC)

- **Membership:**
  - 5 members: independent agency
  - Appointed by the President
  - 7 year terms
  - No more than 3 members from one political party

## Equal Employment Opportunity Commission (EEOC)

- **Filing a complaint:**
  - Employee has 180 days to file a complaint
  - Investigation determines whether reasonable cause existed
  - EEOC or employee files suit
  - Employer must provide validation that a practice is justified if the practice has resulted in disparate impact
    - **Business necessity:** discriminatory practices must be shown to be related to job performance

## Equal Employment Opportunity Commission (EEOC)

- **Enforces the following acts:**
  - Equal Pay Act of 1963
  - Title VII, Civil Rights Act of 1964
  - ADEA (1967)
  - Rehabilitation Act of 1973
  - ADA (1990)
  - Civil Rights Act of 1991

## Categories of Discrimination

- Race or color
- Religion
- National origin
- Discrimination in favor of a foreign company's nationals
- Gender
- Pregnancy
- Gender discrimination in pension plans and life insurance

## Pregnancy Discrimination Act (1978)

- Amended Title VII
- Redefined gender discrimination to include discrimination based on pregnancy, childbirth, or related medical conditions
- Health & disability insurance plans must cover pregnancy, childbirth, or related medical conditions
- Employer must provide leaves of absence for pregnant women
- As long as the woman is able to perform her duties, she must be allowed to work
- Applies to married & unmarried women

## Sexual Harassment

- *Quid pro quo*
  - Employee's pay, hours, and other terms of employment depends on whether the employee submits to unsolicited verbal or physical sexual conduct
- **Hostile environment**
  - Employee is subjected to unwanted sexual innuendoes, vulgarity etc. creating an intimidating, hostile, or offensive environment of employment
- Applies to female/male and male/female discrimination
- Employers should have and enforce strict sexual harassment policies

### Equal Pay Act (1963)

- Prohibits sex-based discrimination in rates of pay paid to men & women working on the same or similar jobs
- Equal pay for equal work
- Permits wage differences if based on seniority, merit, quantity, & quality of production
- Enforced by EEOC

### Age Discrimination in Employment Act of 1967 (ADEA)

- Prohibits discrimination in employment against individuals aged 40 – 69
- Does not apply where age is a bona fide occupational qualification
- Amended 1978 & 1986
- Amendment of 1986 eliminated mandatory retirement age of 70
  - One exception: Permits mandatory retirement at age 65 for high-level executives whose pensions exceed \$44,000 a year
- Enforced by EEOC

### Age Discrimination in Employment Act of 1967 (ADEA)

- Prohibited practices include:
  - Failure to hire
  - Discharge
  - Denial of employment
  - Discrimination with respect to age

### Rehabilitation Act of 1973

- Prohibits discrimination against handicapped individuals
- Defines a handicapped person as any person who:
  - Has a physical or mental impairment which substantially limits one or more of such person's major life activities
  - Has a record of such an impairment
  - Is regarded as having such an impairment

### Americans with Disabilities Act (ADA) of 1990

- Gives disabled persons sharply increased access to services & jobs
- Employers must provide reasonable accommodations
- Enforced by EEOC

### Americans with Disabilities Act (ADA) of 1990

- Employers cannot:
  - Discriminate, in hiring or firing, against disabled persons who are qualified for the job
  - Inquire whether an applicant has a disability, but may ask about his or her ability to perform a job
  - Limit advancement opportunity for disabled employees
  - Use tests or job requirements that tend to screen out disabled applicants
  - Participate in contractual arrangements that discriminate against disabled persons

### Civil Rights Act of 1991

- Placed burden of proof on companies
- Must provide evidence that the business practice that led to the discrimination was not discriminatory but was job related

### Family & Medical Leave Act (FMLA) of 1993

- Enables qualified employees to take prolonged unpaid leave for family and health-related reasons without fear of losing their jobs

### *Wards Cove v. Atonio*

- Changed the requirements in job discrimination suits
- Burden of proof of discrimination on the person being discriminated against
- Civil Rights Act of 1991 reversed this decision

### Griggs v. Duke Power Company (1971)

- Concerned the promotion & transfer policies of Duke Power Company
- Use of Wonderlic Personnel (measures general verbal facility) & Bennett Mechanical Aptitude Tests questioned
- Argument of employees: The use of these tests violated Title VII, since neither having a high school education nor passing the tests was necessary for successful performance on the jobs in question

### Griggs v. Duke Power Company (1971)

- Company argument: The requirements were based on the company's judgment that they would generally improve the overall quality of the work force
- Supreme Court ruled in favor of the employees

### Griggs v. Duke Power Company (1971)

- Decision established three key points:
  - **Consequences** of employment practices, **not** simply the intent or motivation of the employer, are the main idea of Title VII
  - Disparate Impact Doctrine: provides that when the plaintiff shows that an employment practice disproportionately excludes groups protected by Title VII, the **burden of proof** shifts to the defendant to prove that the standard reasonably relates to job performance
  - Any qualification to hire must be job-related

## Albemarle Paper v. Moody (1975)

- Use of Beta (measures nonverbal skills) & Wonderlic tests questioned
- Reaffirmed that tests used in employment decisions must be job related
- Reaffirmed use of EEOC guidelines in validating tests

## Albemarle Paper v. Moody (1975)

- What is validity?
  - Measure what it is supposed to measure
  - Measurement must be job related

## Statutory Defenses

- BFOQ (bona fide occupational qualification)
- Bona fide seniority systems
- Professionally developed ability tests

## Affirmative Action

- Attempt to remedy past legally authorized discrimination
- Remedial steps taken to improve work opportunities for women and minorities
- Based on a series of presidential orders
  - John F. Kennedy
    - Committee on EEO
    - 1st to coin the term "affirmative action"
  - Lyndon B. Johnson
    - EEO, regardless of race, religion, national origin (1965)
    - Gender (1968)
  - Richard M. Nixon
    - Extended EEO to federal contractors
    - an affirmative action plan that does not create reverse discrimination
- Glass Ceiling
- Reverse Discrimination

## Seven Criteria of EEO Laws

- Civil Rights Act of 1964 prohibited discrimination on basis of:
  - Race
  - Color
  - Religion
  - Sex (Gender)
  - National Origin
- ADEA prohibited discrimination on basis of:
  - Age
- ADA prohibited discrimination on basis of:
  - Disabilities