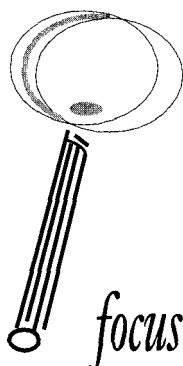


# 1

## Equal Employment Opportunity Laws and Executive Orders



### Learning Objectives and Skills Addressed

By the end of this chapter, you should be able to:

- Identify the different groups protected under current EEO laws and Executive Orders.
- Describe reverse discrimination.
- Explain the key provisions of Title VII of the Civil Rights Act of 1964.
- Define "protected group."

### YOU BE THE JUDGE

If you were the courtroom judge and the applicant in the following case petitioned your court, would you hear this case? Decide how you would rule before reading the actual court response.

#### Exempt from the Law?

George employs ten full-time workers and six part-timers, all of them male, all of them white. When one of his longtime employees decided to retire, George advertised for a replacement, and an African-American applied for the position. His resume was excellent, his education and training hit the mark, but George never hired a minority before and was concerned that his other employees would resent it if he did. When his attorney told him that Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 apply only to companies with 15 employees or more, and even though he might possibly be sued in the state courts, he

rejected the disputed application, confident that he had not broken the law. Imagine George's surprise when he was sued in federal court for racial discrimination under Title VII. George asked that the case be summarily dismissed because he had fewer than 15 employees.

### **Size Is a Matter of Legal Definition**

Yes, you should hear the case. As of January 14, 1997, the Supreme Court defined part-time workers as employees under Title VII. Therefore, George's 16 employees made him liable under federal as well as state law. The Supreme Court unanimously ruled that under Title VII a company's list of workers includes anyone with whom it has an "employment relationship," which includes part-timers and employees on leave of absence.

### **"PROTECTED GROUP"**

Civil rights laws are designed for one reason: to protect large segments of people from economic disenfranchisement. They must help because, while discrimination complaints by current or former employees are increasing, court cases involving *discrimination in hiring* seem to have leveled off. The groups of people protected by various civil rights laws are identified below.

### **Definition**

The legal definition of "protected group" or "protected class" is any classification of people protected by federal or state laws. However, that definition does little to explain the concept. A clearer definition emerges from the details embodied in a variety of EEO laws. A protected group is any group of people that historically has experienced unfair hiring, management, or firing practices and that can demonstrate that its chances for equal opportunity in employment can be achieved only through legislation and legal guidelines.

### **EEO Laws and Protected Groups**

Knowing which laws apply to safe hiring, managing, and firing practices gives you the ability to research gray legal areas in whatever you do. EEO laws make it illegal to discriminate against *anyone* regardless of race, color, gender, age, national origin, religion, creed, disabilities, and military status (including veteran status and current obligations in the National Guard or Reserve). Some state laws legislate an even more expansive list of classes. Given the complexities of most of these laws, you still should contact an attorney if you have any specific questions or concerns about how to apply a federal or a state statute to your situation.

At the same time, these laws also refer to specific groups of people identified as previously injured by social, legal, and business practices that prevented them from entering the mainstreams of society. Knowing the legal definitions of "protected group" could help keep you out of trouble without consulting a lawyer. (Summaries of all the Acts listed below are in the Appendix.)

1. Title VII of the Civil Rights Act of 1964 applies to companies employing 15 or more employees (full- or part-time). This law sets the basic parameters of what the phrase *protected group* means and prohibits discrimination against:
  - a. People of race or color other than white. "Other than white" is defined by the Civil Rights Act of 1866 as "all ethnic minorities."
  - b. People of any bona fide religious persuasion.
  - c. Members of either sex.
  - d. People whose national origin is other than the United States.The Civil Rights Act of 1991 expands on the rights of protected groups to sue for discrimination.
2. Executive Order No. 11,246 Covering Government Contractors and Subcontractors (as amended by Executive Orders 11,375 and 12,086) and Sex Discrimination Guidelines, 41 C.E.R., Pt. 60-20, prohibits discrimination on the basis of race, religion, color, creed, sex, or national origin by any company doing business with the federal government. President Bill Clinton has expanded the order to apply to hiring *legal* aliens as well.
3. The Age Discrimination in Employment Act of 1967 (ADEA) makes it illegal to discriminate against anyone over the age of 40 or to force someone into retirement because he or she has reached a certain age.
4. The Rehabilitation Act of 1973, as reinforced by the Americans with Disabilities Act of 1990 (ADA), expands the definition of "protected groups" to include:

Individuals with a disability (a physical or mental impairment) that substantially limits one or more major life activities, who have a record of such impairment, or who are perceived as having such an impairment, who with or without reasonable accommodation, can perform the essential functions of the job that he or she holds or wants. Those not covered include applicants and current employees currently using controlled substances; homosexuals, bisexuals, transvestites, and persons whose sexual behaviors do not stem from physical impairments; compulsive gamblers, kleptomaniacs, pyromaniacs, and people who experience compulsive psychoactive substance use disorders (e.g., "flashbacks").

The disability acts and their administrative guidelines also provide general guidelines for "reasonable accommodation."

5. Vietnam Era Veterans Readjustment Assistance Act of 1974, Title IV Veterans, Wives, and Widow Employment Assistance and Preference

and Veterans' Reemployment Rights) makes it illegal to discriminate against anyone who has served in the armed forces between 1964 and 1991, or who is currently serving in an active reserve unit. It also defines a "protected group" as:

- a. Any veteran of the Vietnam Era, which means anyone who served in the armed forces for 180 days or more between 1964 and 1991.
- b. Any member of the Active Reserves or National Guard.
- c. Any person discharged or released from active duty because of a service-connected disability or who is entitled to compensation under the laws administered by the Veterans Administration. This law protects the jobs of people called up for military service and prevents you from not hiring or from firing someone who has to meet specific military obligations. The term *military* is used here to include members of both the active armed forces and veterans.

## **AFFIRMATIVE ACTION**

A California referendum in November 1996 on Proposition 209 put an end to all affirmative action programs in that state. It was promptly challenged in the federal court of the Ninth Circuit, which upheld Proposition 209. The U.S. Supreme Court, in November 1997, refused to review that decision. In the meantime, in 1997, the voters in Houston, Texas, overwhelmingly refused to repeal that city's affirmative action legislation. Confusing? Let's try to clarify the situation.

### **What Is Affirmative Action?**

Legally and linguistically, affirmative action is nothing more than a proactive attempt to improve the employment or educational opportunities for members of minority groups and for women. An affirmative action plan outlines steps a company will take to recruit, hire, and promote such protected group members; it also makes provisions for documenting the numbers and percentages of the company's work force of minority group members and women. Organizations are legally required to produce a written affirmative action plan *only* if they are government contractors or subcontractors, or if they are under a court order because someone has demonstrated that the company or other legal entity has a pervasive history of discrimination. The Office of Federal Contract Compliance Programs (OFCCP) has responsibility for enforcing Executive Order No. 11,246 (amended by Executive Orders 11,375 and 12,086) by specifically prohibiting job discrimination by government contractors based on race, color, religion, sex, national origin, disability, or veteran's status. Your own responsibility with regard to affirmative action, unless otherwise constrained (as just described), is to see to it that you

hire and promote from a *broad pool of talent* that makes no distinction on the basis of a characteristic covered by protection clauses.

### **Affirmative Action, Not Preferential Treatment**

A confusion between affirmative action and "preferential treatment" has roiled the issue, and many companies have voluntarily included hiring preferences in their work force planning in the mistaken belief that affirmative action requires them to do so. This is not true, except in the case of a company with an established history of racial, gender, age, or any other form of discrimination, where a court might mandate that the company's affirmative action plan *include* hiring preferences that would bring the company into compliance with the law.

Too often, however, this is seen by many as creating a quota system in which minorities or women must be hired or promoted in accordance with a statistical formula that matches employee numbers with numbers in the community. They think that, for example, if the community has a 12 percent African-American population, then the company must attempt to hire 12 percent of its employees from that population unless it can be shown that, given the nature of the company's work, it's impossible to achieve that goal. Such numbers usually represent a moderately long-term goal, however, not an immediate requirement, and it certainly does not represent a cap; nothing prevents a company from hiring a larger percentage of African-Americans. The misapplication of affirmative action has, for example, led many white males to assume that there is such a legal thing as "reverse" discrimination, which is discussed below.

### **Affirmative Action and Qualified Employees**

Another issue that is often debated is that affirmative action requires a company to hire an unqualified or underqualified applicant simply to fulfill affirmative action requirements. In fact, the courts have often ruled that so-called race norming, which some organizations have used for lowering standards to admit or promote more African-Americans, is illegal, banned by the Civil Rights Act of 1991. There are no laws that require a company to hire people incapable of performing, or of learning how to perform, the functions of the available jobs.

How these issues will finally be resolved by the courts remains to be seen. In the meantime, to repeat the theme of this course, the safest management practice is simply the good management practice of hiring the best from the broadest possible available pool of talent.

Exhibit 1-1, What Affirmative Action Efforts Does My Company Make?, provides a series of questions you can answer that will determine whether your company uses affirmative action properly or if it includes an unnecessary, and illegal, preferential treatment policy. Exhibit 1-2, How Diversity Is of Value to Our Company, asks you to consider how affirmative action benefits your company.

**Exhibit 1-1****What Affirmative Action Efforts Does My Company Make?**

INSTRUCTIONS: *Answer as many questions as you can. You may have to consult with your HR professionals to answer some of them. In statements that include a series of alternatives in parentheses, circle the correct answer. If you are a member of a minority group, a woman, a person with a known disability, or a person over 40 years of age, include yourself where appropriate to an answer.*

1. When I look about me, I see (many) (several) (one) (no) members of minority groups. I see (many) (several) (one) (no) women. If the answer is one or no, you may want to ask why.
2. As far as I know, the company has (never) (at one time or another) hired members of minority groups, and has (never) (at one time or another) hired women. If the answer is never, you may want to ask why.
3. The company values diversity and has made a sincere effort to recruit, hire, and promote members of minority groups and women.  Yes  No. If the answer is no, you may want to ask why not.
4. The company has written policies that require hiring or promoting people on the basis of merit, regardless of race, color, gender, age, religion, creed, national origin, disability, or military status.  Yes  No. If the answer is no, you may want to ask why not.
5. The company (is) (is not) under a court order to hire more members of minority groups or women. If the company *is* under such a court order, you may want to find out why and what the company is doing to comply with the order.
6. Estimate the percentage of employees from the following list of protected group members:
  - African-Americans (or African resident aliens)
  - Hispanic-Americans (or Hispanic resident aliens)
  - Asian-Americans (or Asian resident aliens)
  - Native Americans
  - Women
  - People with disabilities
  - Employees over 40 years of age
7. The company encourages recruiting and hiring members of religious minorities (e.g., Muslims, Jews, Buddhists) by recognizing the differences in religions among employees, e.g., by allowing members of religious minorities to observe their holy days without penalties and by not decorating with heavily religious themes at Christmas.  Yes  No. If the answer is no, you may want to discuss what the company can do about the situation to encourage recruiting and hiring members of religious minorities.
8. The company provides training for supervisors on the importance of diversity and methods for hiring without regard to race, color, gender, age, religion, creed, national origin, disability, or military status.  Yes  No. If no, you may want to find out why not.
9. I personally have attended training sessions on the importance of diversity and methods for hiring without regard to race, color, gender, age, religion, creed, national origin, disability, or military status (not to include this self-study course).  Yes  No. If no, you may want to find out what you can do to rectify that situation.



Still, white males per se are not defined as members of a protected group under the law. If the company is under a court order to increase its minority or female population, or if the company has a proven history of deliberate discrimination injuring nonwhites or women, white males may not succeed in seeking legal remedies.



## Think About It . . .

**As unfair as the laws may seem to some white males, the courts have ruled that nonwhites and women have suffered far more unfair treatment for a much longer period of time. White males have historically hired and promoted white males to the exclusion and detriment of other people merely on the basis of race or gender. That amounts to de facto preferential treatment. The courts have therefore ordered that where historical exclusion has occurred, protected groups must receive special consideration. In your opinion, what constitutes genuine fairness?**



Several major pieces of legislation deal with the definition of "protected group," which comes down to the simple statement that you shouldn't discriminate against anyone on the basis of race, color, gender, religion, creed, national origin, age, disability, or military status. You should be especially careful not to discriminate against anyone whose group of

origin has historically experienced unfair hiring, management, or firing practices, and that now can demonstrate that its chances for equal opportunity in employment can be achieved only through legislation and legal guidelines.

### Notes

1. In the case of *Piscataway v. Taxman*, the white teacher (Taxman) claimed her school district illegally discriminated against her in order to promote its diversity policies. This case took several years and three appeals to get to the Supreme Court, and the Justice Department wavered back and forth between supporting her and not supporting her. See Associated Press "High Court to Hear Reverse-Bias Case," in the *St. Louis Post-Dispatch* (June 5, 1997), p. 1A; see also "Supreme Court to Hear Affirmative Action Case," *Wall Street Journal* (June 30, 1997), p. 138; "Administration May Join Affirmative Action Case," *St. Louis Post-Dispatch* (October 4, 1997), A4; "Civil Rights Groups Help Fund Settlement for Reverse Discrimination Case," *St. Louis Post-Dispatch* (November 22, 1997), p. 3A; Eva M. Rodriguez, "Rights Group's Settlement Settles Little," *Wall Street Journal* (November 24, 1997), p. A3.





## Review Questions

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1. A "protected" person belongs to a group: 1. (a)
  - (a) that is defined as "protected" by one or more pieces of federal or state statute.
  - (b) that believes it has suffered from discrimination in the past and is now seeking preferential treatment.
  - (c) of racial minorities, e.g., African-Americans, Asian-Americans, Native-Americans.
  - (d) of individuals with disabilities.
  
2. The Civil Rights Act of 1991
  - (a) replaces the Civil Rights Act of 1964
  - (b) makes it more difficult for employers to enter a lawsuit with regard to discriminatory practices.
  - (c) expands on the rights of protected groups that can sue for discrimination.
  - (d) expands the rights of illegal aliens.
  
3. Title VII of the Civil Rights Act of 1964 applies only to companies: 3. (c)
  - (a) employing all full-time employees.
  - (b) employing racial minorities.
  - (c) with 15 or more employees.
  - (d) doing business with the federal government.

4. The definition of a Vietnam Era veteran applies: 4. (b)
- (a) only to veterans who served in the military during the Vietnam War.
  - (b) to anyone who served in the armed forces for 180 days or more between 1964 and 1991.
  - (c) of veterans of any recent armed conflict.
  - (d) only to veterans of the Vietnam War and the Persian Gulf War.
5. Affirmative action refers to an attempt to: 5. (b)
- (a) legislate a quota system for hiring and promoting minority group members and women.
  - (b) improve the employment or educational opportunities of minority group members and women.
  - (c) lower the entry requirements for all minority group members and women.
  - (d) increase employment opportunities of minority group members through "race norming."