

SOLUTIONS MANUAL



A Framework for
**Human Resource
Management**



Fifth Edition

Gary Dessler

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INTRODUCTION

CHAPTER

Two

Managing Equal Opportunity And Diversity

2

Lecture Outline

Selected Equal Employment Opportunity Laws

- Background
- Equal Pay Act of 1963
- Title VII of the 1964 Civil Rights Act
- Executive Orders
- Age Discrimination in Employment Act of 1967
- Vocational Rehabilitation Act of 1973
- Pregnancy Discrimination Act of 1978
- Federal Agency Guidelines
- Sexual Harassment
- Proving Sexual Harassment
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- Causes
- Selected Court Decisions Regarding EEO
- The Civil Rights Act of 1991
- The Americans with Disabilities Act
- State and Local EEO Laws

Defenses Against Discrimination Allegations

- What is Adverse Impact?
- Bona Fide Occupational Qualification
- Business Necessity

Illustrative Discriminatory Employment Practices

- A Note on What You Can and Cannot Do
- Recruitment
- Selection Standards
- Sample Discriminatory Procedures

The EEO Enforcement Process

- Processing a Charge
- How to Respond to Discrimination Charges

Diversity Management and Affirmative Action

- Managing Diversity
- Boosting Workforce Diversity
- Equal Employment Opportunity vs. Affirmative Action
- Steps in an Affirmative Action Program

In Brief: This chapter gives a history of equal opportunity legislation, outlines defenses against discrimination allegations, gives examples of discriminatory employment practices, describes the EEOC enforcement process, and suggests proactive programs.

Interesting Issues: Affirmative action programs have come under fire in recent years, even by some members of protected groups. A very critical issue is whether affirmative action represents a “leg up” assistance for those who have been historically discriminated against, or whether it becomes a “crutch” that hinders their motivation and ability to compete and perform. Although this is a delicate and potentially volatile issue, helping students to see and understand both sides of the argument will help them grasp the depth of these issues.

ANNOTATED OUTLINE

- I. **Selected Equal Employment Opportunity Laws** (Table 2.2)
 - A. Background
 - B. The Equal Pay Act of 1963
 - C. Title VII of the 1964 Civil Rights Act
 - 1. It is unlawful to fail or refuse to hire or to discharge an individual or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin.
 - 2. It is unlawful to limit, segregate, or classify his/her employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee because of such individual's race, color, religion, sex, or national origin.
 - 3. The EEOC
 - D. Executive Orders
 - 1. 11246 & 11375 require contractors take affirmative action to ensure equal employment opportunity.
 - 2. established the Office of Federal Contract Compliance Programs (OFCCP)
 - E. Age Discrimination in Employment Act of 1967 (ADEA)
 - F. Vocational Rehabilitation Act of 1973
 - G. Pregnancy Discrimination Act of 1978
 - 1. If the employer offers disability coverage, pregnancy and childbirth must be treated like any other disability.
 - H. Federal Agency Guidelines
 - 1. Uniform guidelines on employee selection procedures
 - I. Sexual Harassment: The Federal Violence Against Women Act of 1994
 - 1. Unwelcome sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature that takes place under any of the following conditions:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

J. Proving Sexual Harassment

1. Quid pro quo
2. Hostile environment created by supervisors
3. Hostile environment created by coworkers or nonemployees

K. Court decisions

1. Meritor Savings Bank, FSB v. Vinson
2. Burlington Industries v. Ellerth
3. Faragher v. City of Boca Raton

L. Causes

1. Gender harassment
2. What the manager/employer should do (see HR in Practice box)
3. What the employee can do

M. Selected Court Decisions Regarding Equal Employment Opportunity

1. *Griggs v. Duke Power Company*
 - a. Discrimination on the part of the employer need not be overt or intentional.
 - b. An employment practice must be shown to be job related if it has an unequal impact on members of a protected class.
2. *Albemarle Paper Company v. Moody*
 - a. A screening tool must be job related or valid.
 - b. The performance standards for employees on the job should be clear and unambiguous.
 - c. Affirmed the EEOC (now federal) guidelines on validation.

N. The Civil Rights Act of 1991

- 1. Burden of Proof
- 2. Easier to sue for money damages
- 3. Coverage of U.S. citizens employed in a foreign county by a U.S. company.

O. The Americans with Disabilities Act

- 1. What is the ADA?
- 2. Reasonable accommodations
- 3. The ADA in practice
- 4. Legal obligations
- 5. Implications for managers
 - a. Employers may not make reemployment inquiries about a person’s disability, although employers may ask questions about the person’s ability to perform specific job functions.
 - b. Employers should review job application forms, interview procedures, job descriptions, and in particular identify the essential functions of the jobs in question.
 - c. Employers must make a reasonable accommodation unless doing so would result in an undue hardship.
- 6. Improving productivity through HRIS: Accommodating disabled employees

P. State and Local Equal Employment Opportunity Laws

Q. Summary (Table 2.1)

➤	NOTES	Educational Materials to Use
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II. Defenses against Discrimination Allegations

A. What Is Adverse Impact?

- 1. “Refers to the total employment process that results in a significantly higher percentage of a protected group in the candidate population being rejected for employment, placement, or promotion.”
- 2. Bringing a case of discrimination: Summary

- B. Bona Fide Occupational Qualification (BFOQ)
“...Where religion, sex, or national origin is a bona fide occupation qualification reasonably necessary to the normal operation of that particular business or enterprise.”
- C. Business Necessity
“...An overriding legitimate business purpose such that the practice is necessary to the sage and efficient operation of a business....”

▶ NOTES	Educational Materials to Use
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III. Illustrative Discriminatory Employment Practices

- A. A Note on What You Cannot Do
- B. Recruitment
 - 1. Word of mouth
 - 2. Misleading information
 - 3. Help-wanted ads
- C. Selection Standards
 - 1. Educational requirements
 - 2. Tests
 - 3. Preference to relatives
 - 4. Height, weight, and physical characteristics
 - 5. Health Questions
 - 6. Arrest records
 - 7. Application forms
- D. Sample Discriminatory Promotion, Transfer, and Layoff Procedures
 - 1. Applied differently to different classes of persons
 - 2. Have the effect of adversely affecting members of a protected group
 - 3. Cannot be shown to be required as a BFOQ or business necessity

- 4. Discriminatory uniforms or suggestive attire violate Title VII in many cases

➤	NOTES	Educational Materials to Use
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IV. The EEOC Enforcement Process (Figure 2.2)

A. Processing a Charge

- 1. File claim
- 2. Voluntary mediation

B. How to Respond to Employment Discrimination Charges

- 1. Be methodical
- 2. Remember EEOC investigators are not judges.
- 3. Meet with the employee to determine all relevant issues.
- 4. Give the EEOC a position statement.
- 5. Provide a detailed statement describing the firm's defense.
- 6. Limit the information to the issues raised in the complaint.
- 7. Seek information about the charging party's claim.
- 8. Prepare for the fact-finding conferences.

C. Strategy and HR – Walgreen's

➤	NOTES	Educational Materials to Use
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V. Diversity Management and Affirmative Action Programs

A. Managing Diversity

- 1. Provide strong leadership.
- 2. Assess the situation.

3. Provide diversity training and education.
4. Change culture and management systems.
5. Evaluate the diversity management program.

B. Boosting Workforce Diversity

The Strategy & HR section outlines a successful use of diversity in strategy

C. Equal Employment Opportunity versus Affirmative Action

1. EEO aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age, has equal chance for jobs based on qualifications.
2. Affirmative action requires employers to make an extra effort to hire and promote those in a protected group.

D. Steps in an Affirmative Action Program

1. Eight steps
2. Affirmative action today
3. Voluntary programs
4. Improving productivity through HRIS



KEY TERMS

Equal Pay Act of 1963	The act requiring equal pay for equal work, regardless of sex.
Title VII of the 1964 Civil Rights Act	The section of the act that says an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.
EEOC	The commission, created by Title VII, is empowered to investigate job discrimination complaints and sue on behalf of complainants.
affirmative action	Steps that are taken for the purpose of eliminating the present effects of past discrimination.
OFCCP	This office is responsible for implementing the executive orders and ensuring compliance of federal contractors.
Age Discrimination in	The act prohibiting arbitrary age discrimination and specifically

Employment Act of 1967	protecting individuals over 40 years old.
Voc. Rehab. Act of 1973	The act requiring certain federal contractors to take affirmative action for disabled persons.
Pregnancy Discrimination Act (PDA)	An amendment to Title VII of the Civil Rights Act that prohibits sex discrimination based on “pregnancy, childbirth, or related medical conditions.”
federal agency guidelines	Guidelines issued by federal agencies charged with ensuring compliance with federal equal employment legislation explaining recommended employer procedures in detail.
sexual harassment	Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment.
gender harassment	A form of hostile environment harassment that appears to be motivated by hostility toward individuals who violate gender ideals.
Federal Violence Against Women Act of 1994	This act provides that a person who commits a crime of violence motivated by gender and thus deprives another of her rights shall be liable to the party injured.
<i>Griggs v. Duke Power</i>	Case heard by the Supreme Court in which the plaintiff argued that his employer’s requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related.
protected class	Persons such as minorities and women protected by equal opportunity laws including Title VII.
<i>Albermarle Paper Co. v. Moody</i>	Supreme Court case in which it was ruled that the validity of job tests must be documented and that employee performance standards must be unambiguous.
Civil Rights Act of 1991	This act places the burden of proof back on employers and permits compensatory and punitive damages.
disparate impact	an employer engages in an employment practice or policy that has a greater adverse impact [effect] on the members of a protected group under Title VII than on other employees, regardless of intent.
disparate treatment	intentional discrimination
Americans with Disabilities Act	The act requiring employers to make reasonable accommodation for disabled employees. It prohibits discrimination against disabled persons.

adverse impact	The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion.
BFOQ	Bona Fide Occupational Qualification. Requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act.
business necessity	Justification for an otherwise discriminatory employment practice, provided there is an overriding legitimate business purpose.

DISCUSSION QUESTIONS

- 1. What is Title VII? What does it say?** The section of the act that says an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.
- 2. What important precedents were set by the *Griggs v. Duke Power Company* case?**
Case heard by the Supreme Court in which the plaintiff argued that his employer's requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related.

The *Albermarle v. Moody* case? Supreme Court case in which it was ruled that the validity of job tests must be documented and that employee performance standards must be unambiguous.
- 3. What is adverse impact? How can it be proven?** The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion. The complainant need only establish a prima facie case: showing that the employer's selection procedures did have an adverse impact on a protected minority group. This is done by one of four basic approaches: disparate rejection rates; the restricted policy approach; population comparisons; the *McDonnell-Douglas* Test.
- 4. Assume you are a supervisor on an assembly line; you are responsible for hiring subordinates, supervising them, and recommending them for promotion. Compile a list of discriminatory management practices you should avoid.** Word-of-mouth hiring, hiring preferences to relatives, hiring by referrals of employees only, discriminatory language, non-job-related questions in interviews, vague or unclear performance expectations and evaluation measures, misleading information, etc.
- 5. Explain the defenses and exceptions to discriminatory practice allegations.** There are two basic defenses where a prima facie case has been shown: (1) BFOQ—if the employer can show that religion, sex, or national origin is a necessary requirement to do the job; or

(2) business necessity—there is an overriding business purpose for the practice or that the tests are valid predictors of performance.

6. **What is the difference between affirmative action and equal employment opportunity? Explain how you would set up an affirmative action program.** Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age has an equal chance for a job based on his or her qualifications. Affirmative action requires the employer to make an extra effort to hire and promote those in protected groups and includes specific actions designed to eliminate the present effects of past discrimination.
7. **Explain how you would set up an affirmative action program.** Look to see that students include the steps described on page 49 under “Steps in an Affirmative Action Program.”

APPLICATION EXERCISES

Case Incident: A Case of Racial Discrimination?

1. **What do you think of the way Chapman handled the accusations from Peters and his conversation with Anderson? How would you have handled them?** First, it was not appropriate for Chapman to step in right away. He should have first advised Peters to personally let Anderson know that the communication was not welcome. Then, if the activities continued, he should have reported it to the human resources department for them to handle and follow up. It is probably not appropriate for the chief administrator to handle these situations, and it is risky to do so without the advice of the hospital's counsel.
2. **Do you think Peters had the basis for a sexual harassment claim against Anderson? Why or why not?** Based on the evidence presented here, it is difficult to tell and is actually unlikely that there was any basis for a sexual harassment claim. First, the nature of the cards and phone calls was not properly investigated. Many coworkers exchange cards and engage in similar activities on a friendship level. Without seeing the cards and notes, it is not possible to clearly evaluate this accusation. Additionally, until the person on the receiving end of such communication clearly communicates to the sender that the messages are unwelcome, it would not be considered harassment.
3. **What would you do now if you were Chapman to avoid further incidents of this type?** It is clear that Chapman only has “a number of rudimentary steps to guard against blatant violations” in place. He needs to put in place policies and procedures that clearly outline acceptable and unacceptable behavior and how complaints will be handled.

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1. **Our company is in New York City. Given the fact that we now have only about five employees, and are only planning on hiring about three or four more, is our company in fact even covered by equal rights legislation?** LearnInMotion.com is probably not covered by most of the federal equal rights legislation. The following is a list of the sizes of employers covered by the more prominent laws:

- Title VII: 15 or more employees
- Age Discrimination in Employment Act of 1967: 20 or more employees
- Americans with Disabilities Act of 1990: 15 or more employees
- Equal Pay Act of 1963: most employers with one or more employees

However, it is important to note that many cities like New York have local laws regarding equal rights. To be sure, one should check with a local attorney.

2. **Were we within our legal rights to ask the possibly age-related and substance-abuse-related questions? Why or why not?** Because the company is small enough to not be covered by the federal legislation, they may have been legally able to ask the questions. However, they still risk the legal expenses of being sued and having to prove that in court. It is also likely that there are local laws that apply to them. It is most advisable to not ask questions that are not job related and which you do not ask all candidates.
3. **Did Dan and Alex create a hostile environment for Ruth? Why or why not? How should we have handled this matter?** They probably did create a hostile environment, but only Ruth can actually answer that question. When Jennifer saw Ruth's reaction, she should have (privately) asked Ruth if the behavior of Dan and Alex made her uncomfortable. If it did, they needed to direct Dan and Alex to change their behavior. It is important that this directive not be made relative to Ruth's discomfort, but should reflect their position that this behavior is unprofessional and inappropriate in the workplace at all.
4. **What have we been doing wrong up to now with respect to EEO-related matters, and how do you suggest we rectify the situation in the future?** Students should have answers that reflect the principles described in this chapter. Some may choose to itemize specific actions and problems, while others may well focus on the broader issues such as policies and training. Either way, the answers should demonstrate clear and thoughtful analysis of the HR needs of LearnInMotion.com.

Experiential Exercise: Too Informal?

- 2(a). **How could the EEOC prove adverse impact?** This could be proven fairly easily by showing that none of the 20 non-Hispanic candidates from the state employment office were hired whereas Hispanic candidates were. Additionally, they may want to find non-Hispanic candidates who tried to apply but were turned away because the company does not accept walk-in applicants.
- (b). **Cite specific discriminatory personnel practices at Dan Jones' company.** By using the "old-boy network" method of recruiting (seeking referrals from current employees), the company prevented non-Hispanics from applying. There was a strong disparate impact.
- (c). **How could Jones' company defend itself against the allegations of discriminatory practice?** Maybe they could plead ignorance? Jones' best defense may actually be to recognize the deficiency of his company's practices and aggressively seek to formalize its procedures.
3. **Would it make sense for this company to try to defend itself against the discrimination allegations?** It actually may not make sense to try to defend itself. The EEOC is more interested in compliance than in sanctions or punishment. Seeking to change the process to reach compliance may be the best defense against fines or lawsuits.