

SOLUTIONS MANUAL



CHAPTER 2

The Legal Environment

LEARNING OBJECTIVES

After studying this chapter, the student should be able to:

1. Describe the legal context of human resource management.
2. Identify key laws that prohibit discrimination in the workplace and discuss equal employment opportunity.
3. Discuss legal issues in compensation, labor relations, and other areas in human resource management.
4. Discuss the importance to an organization of evaluating its legal compliance.

CHAPTER OUTLINE

Opening Vignette: Managers in Name Only?

Although the Fair Labor Standards Act requires employers to pay time and a half to workers to work more than forty hours a week, salaried managers and professionals are exempt from the rule. RadioShack is accused of asking store managers to work very long hours, up to sixty-five-hour workweeks, without overtime pay, claiming those employees are exempt. The workers have filed a class action lawsuit to recover lost overtime pay, claiming they were managers in name only, with no decision-making power or autonomy. RadioShack is not alone; Starbucks, Pacific Bell, Wal-Mart, and Eckerd Drugs are all facing or have settled similar suits. As the nature of work changes, as jobs shift from manufacturing to service, it's no longer entirely clear who is a manager.

INTRODUCTION

This chapter is devoted to the legal environment of human resource management. Managing within the complex legal environment that affects human resource practices requires a full understanding of that legal environment and the ability to ensure that others within the organization understand it as well.

I. **The Legal Context of Human Resource Management**

The legal context of human resource management is affected by laws passed by legislative bodies, by social change, and by judicial rulings that interpret the laws.

A. **The Regulatory Environment of Human Resource Management**

Regulation consists of three steps: creation of the requirement, enforcement, and implementation in organizations.

1. Regulation can come in the form of new laws or statutes enacted at the local, state, or federal level, but most start at the national level.
2. Enforcement of regulations is conducted by an assigned agency such as the Department of Labor or an agency created by the statute itself.

3. Organizations and managers must implement and follow the guidelines that the government has passed, which can be confusing, complex, and time consuming.

II. Equal Employment Opportunity

All areas of the employment relationship are regulated, from hiring to appraisal to termination or retirement. Virtually every law and statute governing employment relationships is attempting to ensure equal employment opportunity in some way.

Legal regulation of human resource management began with the Thirteenth and Fourteenth Amendments to the U.S. Constitution, which abolish slavery and require states to provide equal protection to all of their residents. The Reconstruction Civil Rights Acts of 1866 and 1871 extended these protections. In recent times, civil rights protection has been extended to whites also, to combat reverse discrimination.

A. Discrimination and Equal Employment Opportunity

It is important to note that discrimination per se is legal, as long as it is based on job-related differences between workers. **Illegal discrimination** results from behavior that causes members of a protected class to be unfairly differentiated from others.

1. Title VII of the Civil Rights Act of 1964

- a) This act prohibits discrimination in a broad range of employment actions when it is based on race, color, sex, religion, or national origin. The law applies to every aspect of the employment relationship, including hiring, compensation, employment terms, working conditions, and opportunities for advancement.
- b) Employers which have fifteen or more workers working twenty or more weeks a year and which participate in interstate commerce are covered by Title VII. Also covered are state and local governments, employment agencies, and labor organizations.
- c) Another provision of Title VII created the Equal Employment Opportunity Commission (EEOC) to enforce the act.

2. Disparate treatment is an act prohibited by Title VII. It occurs when organizations intentionally treat employees or applicants differently because of their race, color, sex, religion, national origin, age, or disability status.

- a) To prove discrimination, the worker must demonstrate that the organization considered the individual's status in making an employment-related decision.
- b) **Bona fide occupational qualification (BFOQ)** is the rare exception when sex, religion, age, and national origin affect job performance and therefore can be used as a qualification for employment. To claim a BFOQ exemption, the organization must show that the differential treatment is not just a preference but is a **business necessity**—a practice that is important for the safe and efficient operation of the business. This means that a BFOQ based on customer or client preference cannot be used in hiring practices.

3. Disparate impact is another act outlawed by Title VII. It occurs when the use of a supposedly neutral employment practice excludes a protected group from employment opportunities.

- a) *Griggs v. Duke Power Company* is a landmark case that prohibited this type of discrimination, previously overlooked by Congress.
- b) Intent is not a required element of a prima facie case of disparate impact. All the employee must do is show disparate impact and then the burden shifts to the employer to prove the business necessity of the qualification.
- c) The **four-fifths rule** suggests that disparate impact exists if a selection criterion results in a selection rate for a protected class that is less than 80 percent of the majority group's.

- d) One method for demonstrating disparate impact is **geographical comparisons** in which the presence of protected class employees in a company's workforce is compared with the presence of qualified members of that protected class in the geographical area from which the company draws applicants. Choice of an appropriate geographical area depends on the position itself.
 - e) Another method of determining disparate impact is the **McDonnell-Douglas test**, named for a Supreme Court ruling in *McDonnell-Douglas v. Green*. Disparate impact is assumed to occur when the following four tests are met: applicant is a member of a protected class, applicant is qualified, applicant was turned down for a job, and the company sought other applicants with the same qualifications.
4. **Pattern or practice discrimination** is also outlawed by Title VII. It consists of discrimination against all members of a protected class, rather than discrimination against just one member of the class.
 5. **Retaliation** against employees for either opposing or participating in a perceived illegal employment practice is also illegal under Title VII.
 6. Employers can best defend themselves against charges of illegal acts by showing that the person who did receive the employment opportunity is the person who was best qualified or most likely to perform best on the job.
- B. **Protected Classes in the Workforce**
The most common characteristics used to define a **protected class** include race, color, religion, gender, age, national origin, disability status, and status as a military veteran.
- C. **Affirmative Action and Reverse Discrimination**
1. **Affirmative action** refers to positive steps taken by an organization to seek qualified employees from underrepresented groups in the workforce. Affirmative action can be undertaken voluntarily by an organization or it can be a court-ordered remedy to counteract the effects of past discrimination.
 - a) The first element of an affirmative action program is the **utilization analysis**, which compares the race, sex, and ethnic composition of the employer's workforce with that of the available labor supply. When the percentages vary considerably, then a group is underutilized.
 - b) Next, an organization develops goals and a timetable for balancing the workforce. A goal is more flexible than a quota, but overall the goal should be to reduce discrimination over time.
 - c) Finally, an organization develops specific action steps to reduce underutilization, such as communicating job openings to underrepresented classes, removing barriers to opportunity for underrepresented classes, and so on.
 2. **Reverse discrimination** refers to any practice that has a disparate impact on members of nonprotected classes, typically on white males.
 - a) This area of employment law is complex, and Supreme Court rulings have both outlawed reverse discrimination and supported the rights of employers to use reasonable means to undo the effects of past discrimination.
 - b) As the Supreme Court appears to be moving toward the right politically, it seems likely that its rulings will more often support the rights of members of nonprotected classes.

HR in the 21st Century: Trends in the Affirmative Action Debate

Affirmative action programs are being questioned more often in business, and recent changes in the Supreme Court suggest that such efforts might be placed further under a microscope. Some policy makers believe that attempts to rectify past discrimination through affirmative action may prompt further racism in society and organizations because various demographic factors are used to make selection decisions. Discussion over these issues will likely continue.

D. Sexual Harassment at Work

Sexual harassment is defined by the EEOC as unwelcome sexual advances in the work environment. The employer is responsible for changing the environment by warning, reprimanding, or perhaps firing the harasser.

1. One type of sexual harassment is quid pro quo harassment, in which the harasser offers to exchange something of value for sexual favors.
2. A more subtle type of sexual harassment is the creation of a hostile work environment, stemming from a corporate culture that is punitive toward people of a different gender. This may occur, for example, from the use of off-color language or the display of inappropriate photographs.
3. Sexual harassment occurs even if an employee does not complain and is not threatened with or does not experience any economic penalties.
4. Sexual harassment is most often reported as males harassing females, but can occur as females harassing males or between two persons of the same sex.

E. Other Equal Employment Opportunity Legislation

1. The **Equal Pay Act of 1963** requires that men and women receive equal pay for equal work. Differences in pay can occur if the reasons for the differences are job related, such as longer work experience.
2. The **Age Discrimination and Employment Act (ADEA)** prohibits discrimination on the basis of age against applicants and employees who are forty and over. Employers were giving preference to younger workers, who could be paid less and would be expected to have a longer career history with the organization. This act has outlawed most mandatory retirements. The number of lawsuits under this act has declined in recent years.
3. The **Pregnancy Discrimination Act of 1978** gives pregnant women protection against discrimination based solely on their pregnancy. Pregnant women have the right to keep their jobs as long as they are able to work and to return to their jobs if the employer allows workers to return after other types of leave.
4. The **Civil Rights Act of 1991** amends the act of 1964 by making disparate impact cases easier to prove. It also provides for punitive damages in cases of intentional discrimination and for jury trials when punitive damages are sought. Employees of U.S. companies who are working overseas are also protected by this act.
5. The **Americans with Disabilities Act of 1990 (ADA)** defines those who are considered disabled and protects them from a wide range of employment discrimination. It requires that employers make reasonable accommodations for disabilities except when the accommodation imposes an undue hardship on the employer.
 - a) Disabilities include blindness, deafness, paralysis, loss of a limb, cancer and other diseases such as HIV and AIDS, mental or emotional illnesses, mental retardation, and learning disabilities. The Supreme Court has ruled that substance abuse problems, dental problems, obesity, allergies, and other non-work-related characteristics are not covered by the ADA.

- b) Reasonable accommodation might include the choice of job assignments, the redesign of job tasks, or the use of special equipment, such as large-type computer displays for the visually impaired or the installation of ramps for individuals who use wheelchairs.
 - c) If the disability can be corrected or overcome by medication or other means, then the employer does not have to provide accommodation.
 - d) Determination of who is disabled, what types of accommodation would benefit the worker, how to implement the changes, and who should bear the cost are complex issues that require a great deal of expertise from human resource managers.
6. The **Family and Medical Leave Act of 1993** requires employers of fifty or more employees to provide up to twelve weeks of unpaid leave per year for certain family emergencies and to provide the employee with the same or a comparable position when they return to work.
- a) Employers must continue health insurance while the employee is on leave, provided the employee does in fact return to work.
 - b) One exception to this act is that organizations can identify key employees, whose jobs are so critical that granting leave would cause serious harm to the company.
 - c) Another exception is employees who have not worked an average of at least twenty-five hours per week for the previous twelve months.
7. There are a variety of laws that impact federal contractors, which include both banking institutions and universities.
- a) **Executive Order 11246** requires federal contractors receiving \$50,000 or more to have affirmative action plans to increase the employment of protected groups.
 - b) **Executive Order 11478** requires the federal government and all of its contractors doing \$10,000 or more of business with the government to base all employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered.
 - c) The **Vocational Rehabilitation Act of 1973** requires federal contractors receiving \$2,500 or more to engage in affirmative action for disabled individuals.
 - d) The **Vietnam Era Veterans' Readjustment Act of 1974** requires contractors to have an affirmative action program for those serving in the armed forces between 1964 and 1975.

F. Enforcing Equal Employment Opportunity

1. The Equal Employment Opportunity Commission (EEOC) was created to enforce certain civil-rights-related employment legislation. It provides the following three services:
- a) The EEOC receives complaints from alleged victims of discrimination, investigates the complaints, and attempts to resolve them.
 - (1) If the EEOC finds that discrimination has not occurred or that there is not enough evidence to pursue a suit, the individual is free to sue the employer in federal court.
 - (2) If the EEOC finds that discrimination has occurred, it first attempts a mutually satisfactory resolution to the problem, called a *consent decree*. If it cannot reach consent with the employer, it can either sue the company itself or aid the complaining individual in pursuing a lawsuit.
 - (3) The EEOC gives high priority to claims that appear to have merit and even higher priority to claims that have merit and may involve many individual claimants.
 - b) The EEOC monitors the hiring practices of all U.S. businesses with more than 100 workers and watches for patterns of discrimination against protected groups.

- c) The EEOC develops and issues guidelines to assist employers in complying with the law.
2. The Office of Federal Contract Compliance Procedures (OFCCP) has the responsibility for overseeing federal government contracts with private vendors who have more than \$50,000 worth of federal contracts. The OFCCP conducts yearly audits of contractors and notifies the EEOC of any violations.

III. Other Areas of Human Resource Regulation

A. Legal Perspectives on Compensation and Benefits

1. **The Fair Labor Standards Act (FLSA)**, passed in 1938, is a comprehensive act that regulates minimum wages, overtime, and child labor. The first minimum wage was \$.25 per hour.
2. The FLSA allows firms to hire workers less than twenty years of age at 85 percent of the minimum wage for up to ninety days, to encourage the hiring of young trainees.
3. The FLSA defines the workweek in the United States as forty hours per week. Overtime must be paid at time and a half pay.
4. The FLSA covers workers who are nonexempt, or paid on an hourly basis. Exempt employees are salaried professionals who are not covered by the FLSA.
5. Child labor laws covered in the FLSA limit the number of hours that persons under sixteen can work and restrict them from most work destined for interstate commerce. Persons between sixteen and eighteen cannot be employed in certain types of hazardous occupations, such as mining.
6. The **Employee Retirement Income Security Act of 1974 (ERISA)** does not require that employers provide retirement benefits for employees, but it protects the benefits to which they are entitled.

B. Legal Perspectives on Labor Relations

1. **The National Labor Relations Act, or Wagner Act**, was passed in 1935 to control and legislate collective bargaining between organizations and labor unions, granting significant rights to workers and unions.
2. The **Taft-Hartley Act** of 1947 and the **Landrum-Griffin Act** of 1959 regulate union actions and their internal affairs in a way that puts them on an equal footing with management and organizations. The Taft-Hartley Act also created the National Labor Relations Board.
3. Collective bargaining is the process used to negotiate a labor contract between a union and management.
4. It is an unfair labor practice for either labor or management to refuse to bargain collectively in good faith.
5. The proposed **Employee Free Choice Act** (also known as the Union Relief Act of 2009) would drop the secret ballot vote required to certify unions as bargaining units within organizations.

C. Employee Safety and Health

1. The **Occupational Safety and Health Act of 1970 (OSHA)** requires employers directly affecting interstate commerce to provide a workplace free of recognized hazards that are likely to cause death or serious harm.
2. OSHA is enforced by the Department of Labor, which conducts surprise inspections and issues citations for serious violations of the act.

D. Drugs in the Workplace

1. The **Drug-Free Workplace Act of 1988** was passed to reduce the use of illegal drugs in the workplace, especially for government employees and contractors, truck drivers, and workers at nuclear reactors.

2. Drug testing is quite widespread, although there is no evidence that it is effective in reducing drug use on the job.
3. Moreover, drug testing raises privacy concerns for employees. Companies often test all employees, not just those with suspected substance abuse problems. Also, do companies have the right to monitor employee behavior while not at work (as drug testing would imply)?
4. Furthermore, drug testing is very unreliable, with a large number of false positive results.

E. **Plant Closings and Employee Rights**

1. The **Worker Adjustment and Retraining Notification (WARN) Act of 1988** requires employers with more than 100 employees to provide at least sixty days' notice of intent to lay off 50 or more workers or close a facility.
2. The penalty is one day's pay plus benefits for each laid-off employee for each day that notice should have been given. However, exceptional circumstances are taken into account; employers were not penalized in the days following September 11, 2001, for example.

F. **Privacy Issues at Work**

1. The **Privacy Act of 1974** applies only to federal employees, but has affected the writing of several states' laws. It allows workers to review their employment files for accuracy.
2. Today, new privacy issues include monitoring of employee email and more.
3. The Genetic Information Nondiscrimination Act (GINA) prohibits companies from compiling genetic-based information about individual workers (i.e., history of family diseases).
3. The **Patriot Act** has given the government additional latitude to track terrorist activities, which has caused more concern over the invasion of individual privacy.

IV. **Evaluating Legal Compliance**

The assurance of compliance with the law can best be achieved through a three-step process.

- A. Managers must have a clear understanding of the laws that govern every aspect of human resource management.
- B. Organizations should rely on their own legal and human resource staffs to answer questions and to periodically review procedures.
- C. Organizations should engage in external legal audits of their human resource management procedures.

CLOSING CASE:

SEINFELD AND SEXUAL HARASSMENT

Case Summary

Mr. MacKenzie, a ten-year executive with Miller Brewing Company, continued to engage his secretary in a conversation regarding the female body part that was the subject of a recent *Seinfeld* episode after she indicated she did not wish to discuss it further. MacKenzie subsequently copied a page from a dictionary containing the name of the body part and gave it to the secretary; in addition to other prior behavior, she interpreted this as sexual harassment. His employer terminated him because of this incident and other alleged incidents of poor judgment. In a suit for wrongful termination, MacKenzie won a large compensatory damage award plus punitive damages against the company and his secretary.

Case Questions

1. *Do you think Mr. MacKenzie's actions constituted sexual harassment? Why or why not?*

For behavior to constitute hostile work environment sexual harassment, the behavior must be offensive to a reasonable person. It must also be sufficiently severe and pervasive as to affect the working conditions of the victim. From the facts given, it is difficult to believe that this one act would constitute hostile work environment sexual harassment.

2. *Do you think Miller Brewing Company's termination of Mr. MacKenzie was justified? Why or why not?*

Employers are often held liable for sexual harassment committed by their employees. Although the acts by MacKenzie probably did not constitute sexual harassment, the employer's concern over future liability may be justified, particularly if Mr. MacKenzie's judgment had been called into question by this and other decisions.

3. *What is your opinion of the jury's decision?*

The members of the jury were present during the testimony of the parties and could evaluate the demeanor of the witnesses for themselves. Obviously, they felt very strongly about their decision, given the size of their punitive award.

The following items appear on the in-text Instructor Prep Cards. These notes and suggested talking points should help you conduct these exercises with your students.

DISCUSSION QUESTIONS

1. *Describe the process through which the legal context of human resource management is created.*

The legal context of human resource management is shaped by a variety of forces. Congress identifies an area of employment relationship that could be improved by legislation. It passes a statute and often creates an agency to enforce the statute. The agency issues regulations further defining the statute, and federal courts apply the body of law to actual circumstances.

2. *Summarize the role of the Thirteenth and Fourteenth Amendments to the U.S. Constitution in terms of equal employment opportunity.*

The Thirteenth Amendment, abolishing slavery, was the beginning of the long road toward equal employment opportunity for African-American citizens of the United States. The Fourteenth Amendment passed in 1868, making it illegal for government to take the life, liberty, or property of individuals without due process of law, specifically prohibits a state from denying equal protection to its residents. The Reconstruction Civil Rights Acts of 1866 and 1871 granted all persons the same property rights, as well as the right to sue in federal courts if they are deprived of their civil rights. These laws, enacted in the nineteenth century, are the basis for federal court actions that have resulted in new major laws and related regulations passed by Congress in the twentieth century. Today equal employment opportunities are granted, by law, to all U.S. citizens regardless of their race, color, religion, gender, age, national origin, disability status, or status as a military veteran.

3. *What is illegal discrimination? What is legal discrimination?*

Discrimination is the failure to treat people equally. The law requires that employers treat people equally with respect to certain factors such as race, color, religion, gender, national origin, age, and disability. Obviously, the law cannot require that employers treat everyone equally because

differences between workers may affect their productivity. Employers can legally discriminate in employment decisions with respect to education, skill level, appearance, experience, sexual orientation (in many states), and ability as long as such factors are not used indirectly to discriminate on forbidden factors.

4. *Identify and summarize the various forms of illegal discrimination.*

Disparate treatment is intentionally treating employees or applicants differently because of their race, color, sex, religion, national origin, age, or disability status. Bona fide occupational qualifications are rare exceptions when sex, religion, age, or national origin can be used as a qualification for employment.

A job qualification is said to have a disparate impact when the passing rate of members of protected groups is less than four-fifths of the majority group's. *Griggs v. Duke Power Company* is a landmark case that prohibited this type of discrimination which had been overlooked by Congress. Intent is not a required element of the prima facie case of disparate impact. Once the prima facie case of disparate impact has been demonstrated by the claimant, the burden shifts to the employer to prove the business necessity of the qualification.

Pattern or practice discrimination is discrimination against all members of a protected class.

It is illegal for an employer to retaliate against employees for either opposing a perceived illegal employment practice or participating in a proceeding that is related to an alleged employment practice.

5. *Identify and summarize five major laws that deal with equal employment opportunity.*

Title VII of the Civil Rights Act of 1964 prohibits discrimination in a broad range of employment actions on the basis of race, color, sex, religion, or national origin.

Executive Order 11246 requires federal contractors receiving \$10,000 or more to have affirmative action plans to increase the employment of protected groups.

Executive Order 11478 requires the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered.

The Equal Pay Act of 1963 requires that men and women receive equal pay for equal work.

The Age Discrimination in Employment Act prohibits discrimination on the basis of age against applicants and employees who are forty and over.

The Vocational Rehabilitation Act of 1973 requires federal contractors receiving more than \$2,500 a year to engage in affirmative action for disabled individuals.

The Vietnam Era Veterans' Readjustment Act of 1974 requires federal contractors to have an affirmative action program for those serving in the armed forces between 1964 and 1975.

The Pregnancy Discrimination Act of 1978 gives pregnant women protection against discrimination based solely on their pregnancy.

The Civil Rights Act of 1991 makes disparate impact cases easier to prove; it also provides for punitive damages in cases of intentional discrimination and for jury trials when compensatory or punitive damages are sought.

The Americans with Disabilities Act of 1990 defines those who are considered disabled and protects them from a wide range of employment discrimination. It requires that employers make reasonable accommodations for disabilities except when the accommodation imposes an undue hardship on the employer.

The Family and Medical Leave Act of 1993 requires employers of fifty or more employees to provide up to twelve weeks of unpaid leave per year for certain family emergencies.

6. *Why is most employment regulation passed at the national level, as opposed to the state or local level?*

States and localities compete with each other in attracting businesses. Laws and regulations that restrict the freedom of employers may be viewed as undesirable and result in a competitive disadvantage. Hence, it is unlikely all localities would voluntarily choose to pass such laws. If employment laws are passed at the federal level, they are applied evenly throughout all jurisdictions, so they do not affect competition among domestic businesses. However, excessive regulations at the federal level could affect the ability of domestic companies to compete with less regulated foreign competitors.

7. *Which equal employment opportunity laws will likely affect you most directly when you finish school and begin to look for employment?*

If you are a member of a protected group, you may be encouraged by the fact that employers must treat you with a blind eye toward your race, color, sex, religion, national origin, or disability. Executive Order 11246 may provide an opportunity with a federal contractor through affirmative action. If you are a white male without a disability, you may find a few less opportunities because of preferential treatment by employers with legally permissible affirmative action programs.

8. *Which equal employment opportunity law do you think is most critical? Which do you think is least critical?*

Students will answer this question from their own perspective. It would be interesting if age discrimination were listed as the least critical, since for most students it is probably the farthest factor from their minds.

9. *Which equal employment opportunity law do you think is the most difficult to obey? Which do you think is easiest to obey?*

The laws that are the most difficult to obey are the ones that are the least clear. The Americans with Disabilities Act has been in effect for only about ten years, so the law is still evolving. Federal courts are still defining “disability” and what accommodations employers must reasonably make. Although courts occasionally change the burdens of proof, Title VII and the Age Discrimination in Employment Act have been around for over thirty years and have been interpreted fairly consistently by courts. Conversely, the laws that are easiest to obey are those that are most clear, such as the minimum wage law or child labor regulations.

10. *In the case of a conflict between a legal and an ethical consequence of a human resource decision, which do you think should take precedence?*

A person cannot justify breaking the law by reference to ethical behavior. However, it is rare that an act that is ethical is illegal, so it is not a matter of a choice of whether to break the law or to act ethically. The more likely scenario is when the law permits certain behavior that is otherwise unethical. Since the law changes frequently but the rules of ethical behavior do not, consistency dictates that a code of ethics be established and followed.

ETHICAL DILEMMAS IN HR MANAGEMENT

Scenario summary

You overhear that an OSHA inspector will inspect your place of employment within the next week. Both you and the plant manager are aware of a safety hazard at the plant. For financial reasons, the

hazard will not be fixed before the inspection, but the employer does plan to reduce employee exposure to the problem.

Questions

1. *What are the ethical issues in this situation?*

One issue is whether the plant manager should spend the extra resources to fix the hazard immediately or wait until it is less expensive to do so. There is room for disagreement as to whether the risk of injury justifies the extra expense of fixing the problem immediately. The law requires the employer to eliminate only those recognized hazards that are likely to cause death or serious injury. As a practical matter, the employer cannot afford to eliminate all hazards immediately. A second issue is whether you should tell the plant manager what you heard. Not only might it be illegal to warn the plant manager of the inspection, but also it may be that the manager would not do anything differently if she or he knew the inspector was coming. You have warned the manager of the condition. Let the manager explain her- or himself to the OSHA inspector.

2. *What are the pros and cons for keeping this information to yourself versus telling your plant manager what you heard?*

It may be illegal to warn the plant manager about the inspection, regardless of how you acquired the information. For OSHA inspections to provide the proper incentive for employers to provide a safe workplace, they must be unannounced. Otherwise, employers will comply only in preparation for inspections. If you do not tell the manager, not only will you be obeying the law but you will also be doing what is right from society's perspective.

3. *What do you think most managers would do? What would you do?*

This makes an interesting class discussion.

ASSIGNMENT

This exercise is designed to allow students to see both sides of the argument regarding affirmative action. It will take approximately 45 to 65 minutes, depending on the time available in class.

Step 1 (5 minutes): Divide the class into groups of seven members each. (If there are extra students remaining after the class has been formed into teams, you may assign an additional moderator to some groups or may form smaller groups of five.) You should stress that a random process should then be used to divide each group into two subgroups of three members each, with one person as a moderator.

Step 2 (10 to 15 minutes): Within each group, one subgroup should develop a set of arguments for affirmative action while the other subgroup should develop a set of arguments against affirmative action. Encourage the students to come up with concrete and succinct arguments supporting their side.

Step 3 (10 minutes): The moderator within each group will then guide the group. One side will be randomly selected and will have 3 minutes to present its case. The second group will then have 3 minutes to present its side, as well as 1 minute of rebuttal to the first group. The first group will have a final minute of rebuttal. Urge the moderator to strictly observe the time limits, so that no one subgroup has an edge.

Step 4 (5 minutes): The moderator will then provide feedback to the group as to the persuasiveness of each subgroup's arguments. The moderator may provide any additional thoughts or insights.

Step 5 (15 to 30 minutes): Depending on the amount of class time remaining, allow each group to summarize its arguments. You may suggest a format such as a 1-minute presentation by each subgroup

or a designated representative of each subgroup or a summary by the moderator. Time permitting, the class could discuss the basic arguments for and against the continued use of affirmative action programs.