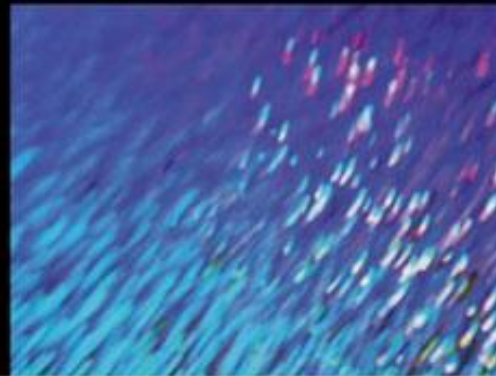


SOLUTIONS MANUAL

Gatewood • Feild • Barrick

HUMAN RESOURCE SELECTION

SIXTH EDITION



Chapter 2 Legal Issues in Selection

Key Points (PPT 2-2)

- The basic principles of federal regulation of human resource activities
- An overview of the specific laws and executive orders appropriate to selection
- The types of evidence used in deciding when discrimination has occurred
- The types and characteristics of affirmative action programs
- Major court cases in selection
- The most important legal issues to consider in developing and implementing a selection program

I. Federal Regulation

A. Regulatory model (Figure 2.1, PPT 2-3)

1. Laws and executive orders related to equal employment opportunity (EEO) that state general principles of and empower regulatory agencies
2. Court decisions that interpret these general principles in specific situations

B. EEO laws and executive orders (PPT 2-4)

1. Title VII of the Civil Rights Act of 1964
 - a. Prohibits discrimination on basis of sex, race, color, religion, national origin
 - b. Amendment in 1972 strengthened enforcement powers
 - c. Amendment in 1978 prohibits discrimination based on pregnancy, childbirth or related conditions
 - d. Excluded from Title VII: private clubs, religious organizations and places of employment associated with Native American (Indian) reservations
 - e. Equal Employment Opportunity Commission (EEOC)—the enforcement agency for Title VII
 - i. Complaint process (PPT 2-5)
2. Civil Rights Act of 1991
 - a. Amends the Civil Rights Act of 1964
 - b. Significantly increased the plaintiff's burden of proof
 - c. Allows victims of discrimination to sue for compensatory and punitive damages
 - d. Outlawed adjusting or using different cutoff scores, and race norming

3. Executive Order 11246
 - a. Requires government contractors to develop affirmative action plans
 - b. Office of Federal Contract Compliance (OFCCP) enforces act.
 4. Age Discrimination in Employment Act of 1967 (ADEA)
 - a. Prohibits discrimination against individuals 40 years and older
 5. The Rehabilitation Act of 1973
 - a. Precursor to ADA; largely replaced by the ADA
 6. Americans with Disabilities Act of 1990 (ADA)
 - a. Definition of disability (PPT 2-6)
 - b. ADA's impact on selection
 - c. Reasonable accommodation (PPT 2-7)
 - i. Essential job functions (PPT 2-8)
 7. Immigration Reform and Control Act of 1986
 - a. Documentation requirements for employment eligibility
 8. Constitutional amendments and Civil Rights Acts of 1866 and 1871
- II. Employment Discrimination (PPT 2-9)**
- A. Discrimination defined
 1. Disparate treatment
 - a. Different standards applied to various groups of individuals even though there may not be an explicit statement of intentional prejudice
 2. Disparate impact
 - a. Uniform standard applied to all groups, but net result is to produce differences in the selection of various groups
 - B. Evidence required
 1. Disparate treatment cases (PPT 2-10)
 2. Disparate (Adverse) impact cases (PPT 2-11)
 3. Presentation of evidence (Table 2.2, PPT 2-12)
 - C. The use of statistics
 1. Stock statistics (PPT 2-13)
 2. EEO-1 form (Fig. 2.2, PPT 2-14)
 3. Relevant labor market (PPT 2-15)
 4. Flow statistics (TBL. 2.3, PPT 2-16, 2-17, 2-18)
 - D. Definition of an internet applicant (PPT 2-19)

III. The Uniform Guidelines on Employee Selection Procedures (1978)

(PPT 2-20, 2-21)

- A. Determination of adverse impact
- B. Selection methods covered
- C. Defense of selection program
- D. Selection requirements
- E. Job performance measures
- F. Record keeping

IV. Affirmative Action Programs (AAP) (PPT 2-22)

- A. Federal contractor (PPT 2-23)
 - 1. Office of Federal Contract Compliance Programs (OFCCP)
 - 2. Three main activities:
 - a. Utilization analysis
 - b. Determining goals that company should strive to achieve
 - c. Actual steps to be taken

B. Court orders and consent decree

C. Voluntary AAP

V. Selection Court Cases (PPT 2-24, 2-25)

- A. Griggs v. Duke Power (1971)
- B. United States v. Georgia Power (1973)
- C. Spurllock v. United Airlines (1972)
- D. Connecticut v. Teal (1982)
- E. Watson v. Ft. Worth Bank & Trust (1988)
- F. OFFCP v. Ozark Air Lines (1986)
- G. Auto Workers v. Johnson Controls (1991)
- H. Rudder v. District of Columbia (1995)

VI. EEO Summary

- A. Basis of discrimination
- B. Evidence of discrimination
- C. Options of the organization

VII. Legal Issues in Small Business

- A. Businesses with fewer than 15 employees are exempt from many EEO directives

- B. Many businesses with fewer than 100 employees are exempt from a large majority of reporting requirements associated with EEO directives
- C. Reasonable steps can be taken to estimate whether disparate treatment/impact may occur and build a case for validity of selection instruments

Key Terms and Concepts (PPT 2-26)

True/False Questions

1. The federal agency that regulates personnel activities and discrimination in the workplace covered by Title VII is the Department of Labor.
2. Title VII of the Civil Rights Act of 1964 prohibits, among other things, discrimination on the basis of marital status in the workplace.
3. Title VII of the Civil Rights Act of 1964 requires federal contractors to develop an affirmative action plan
4. Sexual preference discrimination is covered under Title VII of the Civil Rights Act of 1964.
5. The Civil Rights Act of 1991 allows victims of intentional discrimination, including sexual harassment, to sue only for compensatory damages.
6. Race norming is the practice of ranking test scores of minorities higher than nonminorities in order to achieve EEO quotas.
7. Race norming is considered an acceptable practice according to the Civil Rights Act of 1991.
8. Executive Order 11246 prohibits discriminatory acts and is directed only toward contractors doing business with the federal government.
9. OFCCP (Office of Federal Contract Compliance) is responsible for the enforcement of the Age Discrimination in Employment Act of 1967.
10. The "glass ceiling effect" refers to an employer's effort to intentionally create barriers that impede the advancement of women and minorities to higher positions.
11. ADEA stands for Anti-Discrimination in Employment Act.
12. The Age Discrimination in Employment Act (ADEA) provides for trials by jury.
13. Kleptomania is considered a disability according to the Americans with Disabilities Act.
14. The Americans with Disabilities Act does not consider mental retardation and specific learning disabilities "mental impairments".
15. Rehabilitated drug users are protected by the Americans with Disabilities Act.
16. A "qualified individual with a disability" refers to an individual with a disability that with or without reasonable accommodation can perform the "essential functions" of the job.
17. The Americans with Disabilities Act protects active alcoholics who cannot perform their job duties from employment discrimination.

18. The Americans with Disabilities Act prohibits pre-employment inquiries about a person's disability.
19. It is the responsibility of the employer to question job applicants to determine if they have disabilities that must be accommodated.
20. Employers may ask that individuals with disabilities request in advance any accommodations necessary to take employment tests.
21. Generally, the disabled person is responsible for informing the employer that accommodation is needed.
22. Pre-employment medical examinations can be given to applicants before a job offer is made
23. The Americans with Disabilities Act considers drug testing a medical examination.
24. An employer is required to create a job for a disabled job applicant.
25. "Reasonable accommodation" does not require preferences be awarded to persons with disabilities.
26. An employer may be required to hire a "shadow" employee, someone who actually performs the majority of the essential functions of the disabled employee's position.
27. The Immigration Reform and Control Act of 1986 makes employers liable for knowingly and unknowingly employing any alien not authorized to work in the United States.
28. It is an unfair employment practice to prefer to select, recruit, etc., an individual who is a noncitizen if the two individuals are equally qualified.
29. Sexual, religious, and other forms of discrimination not covered by Title VII of the Civil Rights Act of 1964 are covered by the Civil Rights Act of 1866 and 1871.
30. To establish a *prima facie* case, a person needs only to show that he/she belongs to a racial minority and that he/she was rejected for the job.
31. The burden of proof is initially on the plaintiff in either a disparate treatment or a disparate impact discrimination case.
32. The legal burdens for both plaintiffs and defendants are the same regardless of whether the case is heard as a disparate impact or a disparate treatment case.
33. Lack of discrimination intent is sufficient defense in a court case of disparate treatment discrimination in selection.
34. Statistical data are a major part of disparate treatment cases.
35. Demonstrating that not using the selection requirement would result in great cost or loss of business to the firm has generally been found adequate for establishing "business necessity."

36. Stock statistics compare groups at one point in time.
37. The *Uniform Guidelines on Employee Selection Procedures* are summaries of court decisions related to employment discrimination.
38. The *Uniform Guidelines on Employee Selection Procedures* are legally binding on employers.
39. Only scored selection tests are addressed in the *Uniform Guidelines on Employee Selection Procedures*.
40. The *Uniform Guidelines* are not concerned, except with respect to record keeping, with selection programs that do not demonstrate adverse impact.
41. All organizations are required to keep information about the demographic characteristics of applicants and hires.
42. Federal contractors with contracts of at least \$10,000 must have affirmative action plans.
43. The Office of Federal Contract Compliance Programs (OFCCP) is responsible for conducting utilization analyses of relevant job markets for federal contractors.
44. An affirmative action goal must be met under a court order and consent decree.
45. An affirmative action quota must be met.
46. There is a legal requirement to hire unqualified applicants to increase the "numbers" of specific groups.
47. Small businesses are exempt from many of the EEO laws and directives.
48. One option for an organization accused of illegal discrimination is to simply abandon the current procedures.

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Multiple Choice Questions

1. How does federal regulation of recent years differ from traditional regulation?
 - a. It is specific to one industry.
 - b. It protects only minorities and women from illegal discrimination.
 - c. It is not specific to any industry, but rather applies to many.
 - d. Fines can be levied against violators.

2. According to the regulatory model of EEO, what begins the regulation process?
 - a. societal problems
 - b. management responses
 - c. regulatory agencies
 - d. laws and executive orders

3. What is the regulatory agency in charge of the enforcement of Title VII?
 - a. Personnel Fair Contract Compliance Program (PFCCP)
 - b. Equal Employment Opportunity Commission (EEOC)
 - c. Interstate Commerce Commission (ICC)
 - d. Federal Fair Employment Commission (FFEC)

4. Which of the following is not prohibited by Title VII of the Civil Rights Act of 1964?
 - a. discrimination on the basis of sex
 - b. discrimination on the basis of religion
 - c. discrimination on the basis of marital status
 - d. discrimination on the basis of race

5. A charge of discrimination must be filed how soon after an alleged act?
 - a. 80 days
 - b. 100 days
 - c. 180 days
 - d. 240 days

6. What is an executive order?
 - a. a type of federal law issued by the President
 - b. a statement made by the executive branch of the government aimed at eliminating discrimination in organizations that do business with the federal government
 - c. a statement made by the executive branch of the government aimed at eliminating discrimination in organizations that do business with the federal and state governments
 - d. a statement issued by the executive of a federal agency regarding how statutes will be interpreted

7. Which of the following organizations is not covered by Title VII of the Civil Rights Act of 1964?
 - a. employment agencies
 - b. unions
 - c. private employers
 - d. religious organizations

8. What is the first response by the EEOC after a charge of discrimination has been filed?
 - a. attempt conciliation between the two parties
 - b. investigation
 - c. no-fault settlement attempt
 - d. issue a right-to-sue notice to the charging party

9. An affirmative action program is a requirement of which of the following?
 - a. Title VII of the Civil Rights Act of 1964
 - b. the Rehabilitation Act of 1973
 - c. Executive Order 11246
 - d. the Age Discrimination in Employment Act of 1967

10. The Department of Labor is responsible for the enforcement of which of the following?
 - a. Title VII of the Civil Rights Act of 1964
 - b. Executive Order 11246
 - c. the Age Discrimination in Employment Act
 - d. the Immigration Reform and Control Act of 1986

11. The Age Discrimination in Employment Act (ADEA) prohibits discrimination against which of the following?
 - a. individuals 20 and over
 - b. individuals 40 and over
 - c. individuals 55 and over
 - d. individuals 62 and over

12. The Americans with Disabilities Act covers which of the following employers?
 - a. all employers
 - b. those with 4 or more employees
 - c. those with 25 or more employees
 - d. d. those with 50 or more employees

13. Which of the following is TRUE about the definitions of "reasonable accommodation" and "undue hardship?"
 - a. The nature and cost of the accommodation as well as the size, type, and finances of the specific facility and those of the parent employer are considered.
 - b. The Rehabilitation Act of 1973 specifically defines these terms.
 - c. The executive order that gives enforcement power to the Department of Labor details such a requirement.
 - d. Legislative intent outlined in the Federal Register makes clear what is meant by these terms.

14. "Qualified individual with a disability" refers to which of the following?
 - a. individuals with a disability who, with reasonable accommodation, can perform the essential functions of the job
 - b. individuals with a disability, who, without reasonable accommodation, can perform the essential functions of the job
 - c. individuals with a disability, who, with or without reasonable accommodation, can perform the essential functions of the job
 - d. individuals with a disability who, with reasonable accommodation, can perform all of the functions of the job

15. What agency administers executive orders?
 - a. Equal Employment Opportunity Commission
 - b. Office of Federal Contract Compliance Programs
 - c. Department of Defense
 - d. Veterans Administration

16. A lawsuit charging illegal discrimination against homosexuals could be filed under which of the following:
- Gay and Lesbian Antidiscrimination Act of 2002
 - Executive Order 11246
 - the Fifth or Fourteenth Amendments to the Constitution
 - Civil Rights Act of 1991
17. The Civil Rights Act of 1866 covers which of the following employers:
- all employers
 - those who employ 15 or more
 - those who employ 25 or more
 - those who employ 50 or more
18. Which of the following is TRUE about the *Uniform Guidelines on Employee Selection Procedures*?
- They are laws enacted by Congress.
 - They are given great deference by the courts when considering discrimination cases.
 - They are only general guidelines and as such carry little weight in discrimination cases.
 - They provide guidelines for designing fair selection procedures and are based upon the cumulative findings of discrimination cases.
19. What is disparate impact?
- Selection standards are applied uniformly to all groups, but the net result is to produce differences in the selection of various groups
 - Certain groups are treated negatively because of race, religion, color, sex, etc.
 - Different standards are applied to various groups even though there may not be an explicit statement of discrimination.
 - Certain groups are treated negatively because of job-related factors.
20. Which of the following is an example of adverse impact discrimination?
- not hiring women with young children while hiring men with such children
 - hiring minority group members for cleaning jobs while similarly qualified Whites are hired as cashiers or waiters
 - a high school diploma requirement for entry-level positions when 7th grade education is all that is necessary
 - intentionally not hiring qualified women for management positions
21. An intention to discriminate must be shown to provide evidence for which kind of discrimination?
- unfair treatment
 - indirect impact
 - adverse impact
 - disparate treatment
22. What are the three options an employer has for defense in an adverse impact discrimination case?
- BFOQ (bona fide occupational qualification), reliability, customer preference
 - business necessity, BFOQ (business-related occupational qualification), business necessity
 - BFOQ (business firm order quantity), customer preference, business necessity
 - business necessity, validity, BFOQ (bona fide occupational qualification)

23. Which of the following criteria can be used for framing a BFOQ (bona fide occupational qualification) defense?
- a. race
 - b. color
 - c. sex
 - d. all of these
24. What determines the relevant labor market for an organization?
- a. SMSA (standard metropolitan statistical area), license requirements
 - b. geographical location, skill level
 - c. education, job interest
 - d. public transportation, organization size
25. What is the major difference between stock and flow statistics?
- a. timing of comparisons
 - b. location of comparisons
 - c. relevant labor market
 - d. types of applicants
26. Which of the following is the rule-of-thumb used by the EEOC to determine discrimination?
- a. the three-fourths rule
 - b. the four-fifths rule
 - c. the standard determination rule
 - d. the proportional differences test
27. If 60 percent of White applicants are selected, then the selection proportion of any minority group should be at least ___ percent.
- a. 48
 - b. 62
 - c. 31
 - d. 50
28. A utilization analysis step in the development of an affirmative action program is conceptually similar to which of the following?
- a. performance assessment
 - b. job analysis
 - c. flow statistical analysis
 - d. stock statistical analysis
29. The commonly accepted limit of difference for the "standard deviation rule" is that the number of minorities (or women) selected should be within a range specified by how many standard deviation units from the expected number selected?
- a. ± 1
 - b. ± 2
 - c. ± 3
 - d. ± 4
30. Disparate impact may be indicated even if the four-fifths rule is satisfied. This would be due to which of the following?
- a. significance level
 - b. industry type
 - c. sample size
 - d. applicant characteristics
31. Which of the following is considered acceptable according to the *Uniform Guidelines on Employee Selection Procedures*?
- a. using skills and abilities that are easily learned during a brief training program as selection requirements
 - b. using requirements drawn from higher-level jobs if the majority of individuals move to the higher-level job within a reasonable period of time
 - c. using a cutoff score that individually ranks all applicants even if the use of such method results in adverse impact
 - d. using high cutoff scores to ensure fair selection rather than validating lower cutoff scores

32. Requirements drawn from higher-level jobs are permissible only if it can be documented that a majority of individuals move to higher-level jobs within a reasonable time period. What do the *Uniform Guidelines on Employee Selection Procedures* define as a reasonable time period?
- a. no more than 2 years
 - b. no more than 3 years
 - c. no more than 4 years
 - d. no more than 5 years
33. The *Uniform Guidelines on Employee Selection Procedures* requires organizations to keep information about the demographic characteristics of applicants and hires. These records must be kept for which groups?
- a. all groups
 - b. only those groups that constitute at least 1% of the relevant labor market
 - c. only those groups that constitute at least 2% of the relevant labor market
 - d. only those groups that constitute at least 3% of the relevant labor market
34. Most of the EEO laws and executive orders dealing with federal contractors contain the requirement of affirmative action for those with contracts of at least:
- a. \$10,000
 - b. \$25,000
 - c. \$50,000
 - d. \$100,000
35. What is the current status of voluntary affirmative action programs?
- a. Organizations are not restricted in how they implement these programs.
 - b. Organizations must meet specific criteria in order to establish these programs.
 - c. These programs have been found illegal in all circumstances due to reverse discrimination.
 - d. These programs have been abandoned in favor of consent decrees.
36. Which type of validation strategy is especially appropriate for a small business?
- a. construct validation
 - b. criterion validation
 - c. content validation
 - d. cross-validation

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4.	c	32	14.	c	38	24.	b	46	34.	a	54
5.	c	33	15.	b	35	25.	a	48	35.	b	55
6.	b	30	16.	c	40	26.	b	48	36.	c	67
7.	d	32	17.	a	40	27.	a	48			
8.	c	33	18.	b	41	28.	c	54			
9.	c	35	19.	a	42	29.	b	49			
10.	b	35	20.	c	41	30.	c	51			

Matching Question

Match the key issues to the major selection court cases.

- a. Company must insure that all parts of a multiple-step selection program have no disparate impact
- b. Company's burden of proof against adverse impact diminishes as human risk increases
- c. Selection test must be job-related if disparate impact results
- d. Validation must reflect selection decision practices
- e. In disability cases, organization must prove that individual cannot perform job
- f. Company's moral concerns about health of future children is not sufficient to bar women from employment
- g. Cases focusing on subjective selection devices (e.g., interviews and judgments) could be heard as disparate impact cases

- 1. Griggs v. Duke Power (1971)..... c
- 2. Spurlock v. United Airlines (1972)..... b
- 3. Connecticut v. Teal (1982)..... a
- 4. U.S. v. Georgia Power (1973)..... d
- 5. Watson v. Ft. Worth Bank & Trust (1988) g
- 6. Auto Workers v. Johnson Controls (1991) f
- 7. OFCCP v. Ozark Air Lines (1986)..... e

Essay Questions

1. What basic principles should an organization follow to develop a selection program that is both legally defensible and ensures hiring the most qualified applicants?
2. Should an organization keep detailed records of its human resource management practices (selection procedures, performance appraisal procedures, etc.) if they have not been validated? Discuss the trade-offs involved.
3. How do you measure the effectiveness of an affirmative action program? When can an organization discontinue its affirmative action program?
4. An organization has been accused of disparate impact discrimination through the use of a statistical argument. Provide two alternative explanations for a statistically unbalanced work force that are not due to illegal discrimination.
5. Describe specific actions that an organization can take using the regulatory model to anticipate potential EEO issues.