CHAPTER 3

EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, AND WORKFORCE DIVERSITY

CHAPTER OBJECTIVES

1. Explain the concept of equal employment opportunity.
2. Identify the federal laws affecting equal employment opportunity.
3. Discuss who is responsible for ensuring equal employment opportunity.
4. Define and operationalize types of employment discrimination.
5. Define and discuss affirmative action.
6. Explain the Uniform Guidelines related to sexual harassment, national origin, religion, and caregiver (family responsibility) discrimination.
7. Describe sexual harassment in the global environment.
8. Describe the concept of diversity.
9. Discuss diversity management.
10. Explain the various elements of a diverse workforce.

KEY TERMS

Equal Employment Opportunity (EEO): The set of laws and policies that requires all individuals’ rights to equal opportunity in the workplace, regardless of race, color, sex, religion, national origin, age, or disability.

Affirmative action: Stipulated by Executive Order 11246, it requires employers to take positive steps to ensure employment of applicants and treatment of employees during employment without regard to race, creed, color, or national origin.
Uniform Guidelines: Provide a single set of principles that were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with federal prohibitions against employment practices that discriminate on the basis of race, color, religion, sex, and national origin.

Disparate treatment: Employer treats some people less favorably than others because of race, religion, sex, national origin, or age.

Adverse impact: Concept established by the Uniform Guidelines occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.

Executive order: Directive issued by the president that has the force and effect of law enacted by Congress as it applies to federal agencies and federal contractors.

Affirmative action program (AAP): Approach developed by organizations with government contracts to demonstrate that workers are employed in proportion to their representation in the firm’s relevant labor market.

Caregiver (family responsibility) discrimination: Discrimination against employees based on their obligations to care for family members.

Diversity: Any perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, geographic origin, lifestyle, and tenure with the organization or position, and any other perceived difference.

Diversity management: Ensuring that factors are in place to provide for and encourage the continued development of a diverse workforce by melding these actual and perceived differences among workers to achieve maximum productivity.

Dual-career family: A situation in which both husband and wife have jobs and family responsibilities.

Baby boomers: People born between just after World War II through the mid-1960s.

Generation X: Label affixed to the 40 million American workers born between the mid-1960s and late 1970s.

Generation Y: Comprises people born between the late 1970s and late 1990s.


Glass ceiling: Invisible barrier in organizations that prevents many women and minorities from achieving top-level management positions.

LECTURE OUTLINE

EQUAL EMPLOYMENT OPPORTUNITY: AN OVERVIEW
The concept of equal employment opportunity has undergone much modification and fine-tuning since the passage of the Equal Pay Act of 1963, the Civil Rights Act of 1964, and the Age Discrimination in Employment Act of 1967.

FEDERAL LAWS AFFECTING EQUAL EMPLOYMENT OPPORTUNITY
Numerous federal laws have been passed that have had an impact on equal employment opportunity.

• CONSTITUTIONAL AMENDMENTS AND THE CIVIL RIGHTS ACT OF 1866—The Civil Rights Act of 1866 is the oldest federal legislation affecting
staffing and was based on the Thirteenth Amendment, which abolished slavery. This law with the Fourteenth Amendment would give all citizens full and equal benefit of all laws.

- **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AMENDED 1972**—Prohibits discrimination based on race, color, sex, religion, or national origin. Three notable exceptions to discrimination are bona fide occupational qualifications, bona fide seniority systems, and also testing that have a relationship to job performance.

- **EQUAL PAY ACT OF 1963, AMENDED IN 1972**—Prohibits an employer from paying an employee of one gender less money than an employee of the opposite gender, if both employees do work that is substantially the same.

- **LILLY LEDBETTER FAIR PAY ACT OF 2009**—In order to reverse the Ledbetter Supreme Court decision, the Lilly Ledbetter Fair Pay Act was passed in 2009. The Fair Pay Act amends Title VII of the Civil Rights Act of 1964 by effectively overturning a portion of the Supreme Court’s decision in *Ledbetter v Goodyear Tire and Rubber Company, Inc.*, and thereby modifying the manner in which the time limits are calculated for filing claims of compensation discrimination with the EEOC. The law creates a rolling or open time frame for filing wage discrimination claims.

- **PREGNANCY DISCRIMINATION ACT OF 1978**—Passed as an amendment to Title VII of the Civil Rights Act, the Pregnancy Discrimination Act prohibits discrimination in employment based on pregnancy, childbirth, or related medical conditions.

- **CIVIL RIGHTS ACT OF 1991**—Amended the Civil Rights Act of 1964 and had the following purposes:
  1. To provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace.
  2. To codify the concepts of *business necessity* and *job relatedness* pronounced by the Supreme Court in *Griggs v Duke Power Company*.
  3. To confirm statutory authority and provide statutory guidelines for the adjudication of disparate impacts under Title VII of the Civil Rights Act of 1964.
  4. To respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.
• **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967—AMENDED IN 1978 AND 1986**—Prohibits discrimination against anyone who is age forty and older.

• **AGE CAN ACTUALLY BE A BONA FIDE OCCUPATIONAL QUALIFICATION**—Age can actually be a bona fide occupational qualification where it is reasonably necessary to the essence of the business, and the employer has a rational or factual basis for believing that all, or substantially all, people within the age class would not be able to perform satisfactorily.

• **REHABILITATION ACT OF 1973**—Prohibits discrimination against disabled workers who are employed by certain government contractors and subcontractors and organizations that receive federal grants in excess of $2,500.

• **VIETNAM ERA VETERANS’ READJUSTMENT ASSISTANCE ACT OF 1974**—Relates to government contractors or subcontractors who are covered by the OFCCP. It requires covered federal government contractors and subcontractors to take affirmative action to employ and advance in employment specified categories of veterans protected by the act and prohibits discrimination against such veterans.

• **VIETNAM ERA VETERANS’ READJUSTMENT ASSISTANCE ACT OF 1974, AS AMENDED**—Now the definition of “protected” or “covered” veteran has been expanded to include those who have served in a campaign or expedition for which a campaign badge was issued. This includes campaigns such as the current engagements in the Middle East.

• **AMERICANS WITH DISABILITIES ACT OF 1990**—Prohibits discrimination against qualified individuals with disabilities.

• **AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008**—The ADA Amendments Act expands the definition of “disability” and many more applicants and employees are eligible for reasonable accommodations. The ADAAA broadened the ADA’s definition of disability by expanding the term “major life activities,” doing away with the “substantially limited” requirement (previously mentioned) for those regarded as having a disability, and overturning two U.S. Supreme Court decisions that interpreted the ADA’s definition of disability narrowly.

• **IMMIGRATION REFORM AND CONTROL ACT OF 1986**—Makes it illegal for certain employers to fire or refuse to hire a person on the basis of that person’s national origin or citizenship.

• **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994**—Provides protection to Reservists and National Guard
members. Under this act those workers are entitled to return to their civilian employment after completing their military service.

- **GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008**—Protects from discrimination based on genetic information.

- **STATE AND LOCAL LAWS**—When EEOC regulations conflict with state or local civil rights regulations, the legislation more favorable to women and minorities applies.

**WHO’S RESPONSIBLE FOR ENSURING EQUAL EMPLOYMENT OPPORTUNITY?**
The main groups that establish and support EEO include the government and employers.

- **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**—Created by Title VII, the EEOC enforces most of the above mentioned laws.

- **OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**—The purpose of the OFCCP is to enforce the requirements of affirmative action and EEO required of those who do business with the federal government.

- **EMPLOYERS**—An organization can take steps to protect against EEO lawsuits, including establishing policies and complaint procedures.

**DEFINING AND OPERATIONALIZING ILLEGAL DISCRIMINATION**
Employers should have a basic idea on how the law defines illegal discrimination.

- **UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES**—The *Uniform Guidelines* provide a single set of principles that were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with federal prohibitions against employment practices that discriminate on the basis of race, color, religion, gender, and national origin.

- **CONCEPT OF DISPARATE TREATMENT**—Disparate treatment occurs when an employer treats some people less favorably than others because of race, religion, sex, national origin, or age.

- **CONCEPT OF ADVERSE IMPACT**—Concept established by the *Uniform Guidelines* occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.

**AFFIRMATIVE ACTION**
An Executive Order (EO) is a directive issued by the president and has the force and effect of laws enacted by Congress. Affirmative action was stipulated by EO 11246 and requires employers to take positive steps to ensure employment of applicants and
treatment of employees during employment without regard to race, creed, color, or national origin. EO 11375, which changed the word *creed* to *religion* and added sex discrimination to the other prohibited items, amended EO 11246.

An affirmative action program is an approach that an organization with government contracts develops to demonstrate that workers are employed in proportion to their representation in the firm’s relevant labor market. An acceptable AAP must include an analysis of deficiencies in the utilization of minority groups and women. The first step in conducting a utilization analysis is to make a workforce analysis. The second step involves an analysis of all major job groups. An explanation of the situation is required if minorities or women are currently being underutilized. A job group is defined as one or more jobs having similar content, wage rates, and opportunities. Underutilization is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability.

**UNIFORM GUIDELINES ON PREVENTING SPECIFIC ILLEGAL EMPLOYMENT DISCRIMINATION**

Since the *Uniform Guidelines* were published in 1978, they have been modified several times. Some of these changes reflect Supreme Court decisions; others clarify implementation procedures. The four major changes discussed are the Guidelines on Sexual Harassment, Guidelines on Discrimination because of National Origin, Guidelines on Discrimination because of Religion, and Guidelines on Caregiver (Family Responsibility) Discrimination.

- **GUIDELINES ON SEXUAL HARASSMENT**—The EEOC has issued interpretative guidelines that state that employers have an affirmative duty to maintain a workplace free from sexual harassment. Several court cases led to establishing guidelines.

  - *Faragher v City of Boca Raton and Burlington Industries, Inc.* *v Ellerth*: Supreme Court held that an employer is strictly liable, meaning that it has absolutely no defense, when sexual harassment by a supervisor involves a tangible employment action.

  - *Meritor Savings Bank v Vinson*: First sexual harassment case to reach the U.S. Supreme Court. The Court recognized for the first time that Title VII could be used for offensive environment claims.

  - *Harris v Forklift Systems, Inc.*: Expanded the hostile workplace concept and made it easier to win sexual harassment claims.

  - *Oncale v Sundowner Offshore Services*: Supreme Court held that same-sex sexual harassment *may* be unlawful under Title VII.
• **GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN**—EEOC broadly defined discrimination on the basis of national origin as the denial of equal employment opportunity because of an individual’s ancestors or place of birth; or because an individual has the physical, cultural, or linguistic characteristics of a national origin group.

• **GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION**—Employers have an obligation to accommodate religious practices unless they can demonstrate a resulting hardship.

• **GUIDELINES ON CAREGIVER (FAMILY RESPONSIBILITY) DISCRIMINATION**—Caregiver (family responsibility) discrimination is discrimination against employees based on their obligations to care for family members. Recently, the EEOC issued a technical assistance document on how employers of workers with caregiving responsibilities can avoid violations of Title VII of the 1964 Civil Rights Act and other fair employment laws and reduce the likelihood of discrimination complaints titled “Employer Best Practices for Workers with Caregiving Responsibilities.”

• **DISCRIMINATION BECAUSE OF DISABILITY**—The ADA prohibits discrimination in employment as a result of one’s disability and requires that employers provide an employee or job applicant with a reasonable accommodation unless doing so would cause an undue hardship for the employer. The guidelines prohibit inquiries and medical examinations intended to gain information about applicants’ disabilities before a conditional job offer.

**GLOBAL SEXUAL HARASSMENT**
Sexual harassment was discussed in this chapter only as it pertained to the United States but it is also a global problem. When individuals from two different cultures interact, there is a potential for sexual harassment problems. Some behaviors that violate U.S. cultural norms may not be perceived as a problem in another culture.

**DIVERSITY**
Twenty-five years ago, diversity was primarily concerned with race and gender. Today, the definition is quite different. Diversity is any perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, geographic origin, lifestyle, tenure with the organization or position, and any other perceived difference.

**DIVERSITY MANAGEMENT**
Diversity management involves ensuring factors are in place to provide for and encourage the continued development of a diverse workforce by melding these actual and perceived differences among workers to achieve maximum productivity.

**ELEMENTS OF THE DIVERSE WORKFORCE**
• **SINGLE PARENTS AND WORKING MOTHERS**—Number of nontraditional, single-parent households in the United States is growing.

• **WOMEN IN BUSINESS**—Base of building a diverse workforce rests on an employer’s ability to attract and retain females. The *glass ceiling* is the invisible barrier in organizations that impedes women and minorities from career advancement.

• **MOTHERS RETURNING TO THE WORKFORCE (ON RAMPING)**—Today, more new mothers are leaving the labor force only to return later. To get them to return, many companies are going beyond federal law and giving mothers a year or more for maternity leave.

• **DUAL-CAREER FAMILIES**—Situation in which both husband and wife have jobs and family responsibilities.

• **ETHNICITY AND RACE**—Workers of color often experience stereotypes about their group (Hispanics, African Americans, Asians, etc.).

• **OLDER WORKERS**—Population of the United States is growing older and will have a tremendous impact on workplace issues, because of increasing life longevity and delaying of retirement.

• **PEOPLE WITH DISABILITIES**—A handicap, or disability, limits the amount or kind of work a person can do or makes achievement unusually difficult.

• **IMMIGRANTS**—Large numbers of immigrants have settled in many parts of the United States.

• **FOREIGN WORKERS**—The H-1B employment visa brings in upwards of 115,000 skilled foreign workers annually, including some 30,000 researchers and academics not subject to the annual visa cap set by Congress.

• **YOUNG PERSONS, SOME WITH LIMITED EDUCATION OR SKILLS**—A lower labor force participation rate for young people is being experienced for all young people less than 24 years of age and not merely young persons with limited education and skills as was so often the case in the past. The recent recession delayed many young workers the opportunity of entering the workforce so a large number have decided to gain additional education so as to be more competitive.

• **BABY BOOMERS, GEN X, GEN Y, AND GEN Z**—Never in American history have so many different generations with such different views and attitudes been asked to work together. There have been tremendous changes since the Boomers first entered the workforce. Baby boomers were born just after World
War II through the mid-1960s. Generation X is the label affixed to the approximately 41 million American workers born between the mid-1960s and late 1970s. Generation Y comprises people born between the late 1970s and late 1990s. Generation Z or Digital Natives were born between 1995 and 2009.

- **MULTIGENERATIONAL DIVERSITY**—Four generations are now participating in the workforce with each having its defining characteristics and nicknames. The concept of generational differences as a legitimate workplace diversity issue has gained increasing recognition.

- **LESBIAN, GAY, BISEXUAL, AND TRANSGENDER EMPLOYEES**—There has been an increased focus in the political and workforce arena with regard to lesbian, gay, bisexual, and transgender (LGBT) employees. Polls show the public tends to support equal rights for gay people with the exception of the right to marry.

**ANSWERS TO CHAPTER 3 EXERCISES**

3-1. *Many laws, court decisions, and EO s have had a profound effect on the composition of the workforce. It is highly likely that our economy would have ground to a halt without these additional workers. How might the demographic composition of your classroom be different if it was not for these laws, court decisions, and executive orders?*

The first major piece of equal employment legislation was the Civil Rights Act of 1964. The Act prohibited discrimination because of race, color, sex, religion, or national origin. Shortly after that prohibition against age and disability was passed.

Take the total number of students in your class and deduct those who are of a different race, color, sex, religion, or national origin from the norm. Then deduct those who are over age 40 and those who are disabled. You will likely find that the size of the class will become much smaller, often by 50 percent.

3-2. *During 2013, 400 people were hired for a particular job. Of the total, 300 were white and 100 were black. There were 1,200 qualified applicants for these jobs, of whom 800 were white and 400 were black. Does adverse impact exist? If adverse impact exists, what does this mean?*

Blacks were determined to be the least-achieving group because $100/500 = .2$. Whites were determined to be the best-achieving group because $300/1000 = .3$. Using the adverse formula, you have:

\[
\text{Success rate for least-achieving group of applicants} = \text{Determination of adverse impact} \\
\text{Success rate for best-achieving group of applicants}
\]
Thus, adverse impact exists.

Employers have two avenues available to them if they still desire to use a particular selection standard. First, the employer may validate a selection device by showing that it is indeed a predictor of success. If the device has proved to be a predictor of job performance, business necessity has been established.

The second avenue available to employers should adverse impact be shown is the bona fide occupational qualification (BFOQ) defense. The BFOQ defense means that only one group is capable of performing the job successfully. Courts have narrowly interpreted this defense because it almost always relates to sex discrimination.

3-3. You are a human resource manager with a large manufacturing firm that does a large portion of its business with the federal government with sales over $1,000,000. Your application form asks the following questions: Marital Status, Height and Weight, Age, Sex, Occupation of Spouses, Education, Criminal Convictions, Plans to Have Children (if you are female), Handicaps, and Work Experience. Are any of these factors employment standards to avoid? Why?
Discuss as appropriate.

a. Marital Status—Could be inappropriate under Civil Rights Act of 1964, particularly if you only ask female applicants
b. Height and Weight—Inappropriate under the Civil Rights Act of 1964 as could result in adverse impact
c. Age—Inappropriate under the Age Discrimination in Employment Act
d. Sex—Inappropriate under the Civil Rights Act of 1964
e. Occupation of Spouse—Not related to job and potentially discriminatory under the Civil Rights Act of 1964
f. Education—Must be able to show it is job related as directed by the Griggs v Duke Power Company decision
g. Have you ever been convicted?—Must be able to show it is job related under Griggs v Duke Power Company decision
h. If you are a female, do you plan to have children?—Inappropriate under the Civil Rights Act of 1964
i. Are you handicapped?—Inappropriate under the Americans with Disabilities Act
j. Work experience—Appropriate question

Since the company has business with the federal government with sales over $1,000,000, Executive Order 11246 11375 which prohibits discrimination based on race, religion, sex, color or national origin applies.
3-4. You are the HR manager for a company that has recently received a federal contract in excess of $1 million. In conducting utilization analysis on your present workforce of operators you find that 10 percent of your workforce is black while 30 percent of the workforce in the relevant labor market is black. According to affirmative action guidelines, what must be done to correct this difference?

Underutilization is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. The utilization analysis is important because the calculations determine whether underutilization exists. If the utilization analysis shows that the availability of blacks for a certain job group is 30 percent, the organization should have at least 30 percent black employment in that group. If actual employment is less than 30 percent, which it is in this case, underutilization exists, and the firm should set a goal of 30 percent black employment for that job group. The goal of affirmative action is for a contractor's workforce to generally reflect the gender, racial, and ethnic profile of the labor pools from which the contractor recruits and selects.

ANSWERS TO CHAPTER 3 QUESTIONS FOR REVIEW

3-5. What are the components that combine to make up the present diverse workforce? Briefly describe each.

- **Single parents and working mothers:** Number of nontraditional, single-parent households in the United States is growing.
- **Women in business:** Base of building a diverse workforce rests on an employer’s ability to attract and retain females.
- **Mothers returning to the workforce:** Today, more new mothers are leaving the labor force only to return later. To get them to return, many companies are going beyond federal law and giving mothers a year or more for maternity leave.
- **Dual-career families:** Situation in which both husband and wife have jobs and family responsibilities.
- **Ethnicity and race:** Workers of color often experience stereotypes about their group (Hispanics, African Americans, Asians, etc.).
- **Older workers:** Population of the United States is growing older and will have a tremendous impact on workplace issues, because of increasing life longevity and delaying of retirement.
- **People with disabilities:** A handicap, or disability, limits the amount or kind of work a person can do or makes achievement unusually difficult.
- **Immigrants:** Large numbers of immigrants have settled in many parts of the United States.
- **Foreign workers:** The H-1B employment visa brings in upwards of 115,000 skilled foreign workers annually, including some 30,000 researchers and academics not subject to the annual visa cap set by Congress.
• Young persons, some with limited education or skills: A lower labor force participation rate for young people is being experienced for all young people less than 24 years of age and not merely young persons with limited education and skills as was so often the case in the past.

• Baby boomers, Gen X, Gen Y, and Gen Z: Baby boomers were born just after World War II through the mid-1960s. Generation X is the label affixed to the approximately 41 million American workers born between the mid-1960s and late 1970s. Generation Y comprises people born between the late 1970s and late 1990s. Generation Z or Digital Natives were born between 1995 and 2009.

• Lesbian, gay, bisexual, and transgender employees: There has been an increased focus in the political and workforce arena with regard to lesbian, gay, bisexual, and transgender (LGBT) employees.

3-6. Briefly describe the following laws:
   a. Civil Rights Act of 1866
   b. Equal Pay Act of 1963
   c. Lilly Ledbetter Fair Pay Act of 2009
   d. Title VII of the Civil Rights Act of 1964, as amended in 1972
   e. Pregnancy Discrimination Act of 1978
   f. Civil Rights Act of 1991
   g. Age Discrimination in Employment Act of 1967, as amended in 1978 and 1986
   h. Rehabilitation Act of 1973
   i. Americans with Disabilities Act of 1990
   j. Americans with Disabilities Act Amendments Act (ADAAA) of 2009
   k. Immigration Reform and Control Act (IRCA) of 1986
   l. Illegal Immigration Reform and Immigrant Responsibility Act of 1996
   m. Uniformed Services Employment and Reemployment Rights Act of 1994
   n. Vietnam Era Veterans’ Readjustment Assistance Act of 1974
   o. Genetic Information Nondiscrimination Act of 2008

• Civil Rights Act of 1866: Oldest federal legislation affecting staffing is the Civil Rights Act of 1866, which is based on the Thirteenth Amendment to the U.S. Constitution. Specifically, this act provides that all citizens have the same right “as enjoyed by white citizens . . . to inherit, purchase, . . . hold, and convey . . . property, [and that] all persons . . . shall have the same right to make and enforce contracts . . . as enjoyed by white citizens.” There is no statute of limitations.

• Equal Pay Act of 1963: Prohibits an employer from paying an employee of one gender less money than an employee of the opposite gender, if both employees do work that is substantially the same.

• Lilly Ledbetter Fair Pay Act: In order to reverse the Ledbetter Supreme Court decision, the Lilly Ledbetter Fair Pay Act was passed by Congress and signed into law by the President in 2009. The Fair Pay Act amends Title VII of the Civil Rights Act of 1964 by effectively overturning a portion of the Supreme Court’s decision in Ledbetter v Goodyear Tire and Rubber Company, Inc., and thereby modifying the manner in which the time limits are calculated for filing claims of
compensation discrimination with the EEOC. The law creates a rolling or open
time frame for filing wage discrimination claims.

- **Title VII of the Civil Rights Act of 1964, as Amended in 1972**: Prohibits
discrimination based on race, color, sex, religion, or national origin.

- **Pregnancy Discrimination Act of 1978**: Passed as an amendment to Title VII of
the Civil Rights Act, this act prohibits discrimination in employment based on
pregnancy, childbirth, or related medical conditions.

- **Civil Rights Act of 1991**: This act amended the Civil Rights Act of 1964 and had
the following purposes: 1. To provide appropriate remedies for intentional
discrimination and unlawful harassment in the workplace. 2. To codify the
concepts of *business necessity* and *job related* pronounced by the Supreme Court
in *Griggs v Duke Power Company*. 3. To conform statutory authority and provide
statutory guidelines for the adjudication of disparate impacts under Title VII of
the Civil Rights Act of 1964. 4. To respond to recent decisions of the Supreme
Court by expanding the scope of relevant civil rights statutes in order to provide
adequate protection to victims of discrimination.

- **Age Discrimination in Employment Act of 1967, as Amended in 1978 and
1986**: Prohibits employers from discriminating against individuals who are age 40
and older. The latest amendment not only gives older employees the option to
continue working past age 70, but the health care provision of the amendment also
provides them with an additional incentive to continue to do so.

- **Rehabilitation Act of 1973**: Covers government contracts or subcontractors or
organizations that receive federal grants in excess of $2,500. Under the act,
individuals are considered disabled if they have a physical or mental impairment
that substantially limits one or more major life activities, or have a record of such
impairment.

- **Americans with Disabilities Act of 1990**: Prohibits discrimination against
qualified individuals with disabilities.

- **Americans with Disabilities Act Amendments Act of 2008**: The ADAAA
broadened the ADA’s definition of disability by expanding the term “major life
activities,” doing away with the “substantially limited” requirement (previously
mentioned) for those regarded as having a disability, and overturning two U.S.
Supreme Court decisions that interpreted the ADA’s definition of disability
narrowly.

- **Immigration Reform and Control Act of 1986**: Established criminal and civil
sanctions against employers who knowingly hire an unauthorized alien.

- **Illegal Immigration Reform and Immigrant Responsibility Act of 1996**:
Places severe limitations on persons who have come to the United States and
remain in the country longer than permitted by their visas and/or persons who
have violated their non-immigrant status.

- **Uniformed Services Employment and Reemployment Rights Act of 1994**:
Provides protections to Reservists and National Guard members. Under this act
those workers are entitled to return to their civilian employment after completing
their military service.
• **Vietnam Era Veterans’ Readjustment Assistance Act of 1974**: Relates only to government contractors or subcontractors who are covered by the OFCCP. It covered honorably discharged persons who served more than 18 days on active duty between August 5, 1964 and May 7, 1975. Now the definition of “protected” or “covered” veteran has been expanded to include those who have served in a campaign or expedition for which a medal was issued. This includes campaigns such as Desert Storm and the current engagements in the Middle East.

• **Genetic Information Nondiscrimination Act of 2008**: Prohibits discrimination based on genetic information.

3-7. Why have employee retaliation charges experienced a dramatic increase?

Discussion Question in MyManagementLab. Student responses will vary.

3-8. What are the significant U.S. Supreme Court decisions that have had an impact on EEO? On Affirmative Action?

Discussion Question in MyManagementLab. Student responses will vary.

3-9. What are the steps that the EEOC uses once a charge is filed?

The EEOC first attempts a no-fault settlement. Essentially, the organization charged with the violation is invited to settle the case with no admission of guilt. Most charges are settled at this stage. Failing settlement, the EEOC investigates the charges. Once the employer is notified that an investigation will take place, no records relating to the charge may be destroyed. During the investigative process, the employer is permitted to present a position statement. After the investigation has been completed, the district director of the EEOC will issue a probable cause or a no probable cause statement.

In the event of a probable cause statement, the next step involves attempted conciliation. In the event this effort fails, the case will be reviewed for litigation potential. Some of the factors that determine whether the EEOC will pursue litigation are: (1) the number of people affected by the alleged practice; (2) the amount of money involved in the charge; (3) other charges against the employer; and (4) the type of charge. Recommendations for litigation are then passed on to the general counsel of the EEOC. If the recommendation is against litigation, a right-to-sue notice will be issued to the charging party.

3-10. What is the purpose of the Uniform Guidelines on Employee Selection Procedures?

The Uniform Guidelines provide a single set of principles that were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with federal prohibitions against employment practices that discriminate on the basis of race, color, religion, sex, and national origin. The Uniform Guidelines provide a framework for making legal employment decisions about hiring,
promotion, demotion, referral, retention, licensing and certification, the proper use of tests, and other selection procedures.

3-11. What is the difference between disparate treatment and adverse impact?

**Disparate treatment** means that an employer treats some employees less favorably than others because of race, religion, color, sex, national origin, or age. It is the most easily understood form of discrimination.

**Adverse impact**, a concept established by the *Uniform Guidelines*, occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.

3-12. How does the EEOC define sexual harassment?

The EEOC has defined *sexual harassment* as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that occur under any of the following situations:

- When submission to such contact is made either explicitly or implicitly a term or condition of an individual’s employment.
- When submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- When such conduct has the purpose or effect of unreasonable interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

3-13. How does the EEOC interpret the national origin guidelines?

Both EEOC and the courts have interpreted national origin protection under Title VII as extending far beyond discrimination against individuals who came from, or whose forebears came from, a particular country. National origin protection also covers: (1) marriage or association with a person of a specific national origin; (2) membership in, or association with, an organization identified with, or seeking to promote the interests of national groups; (3) attendance at, or participation in, schools, churches, temples, or mosques generally used by persons of a national origin group; and (4) use of an individual’s or spouse’s name that is associated with a national origin group.

3-14. What are some guidelines to follow with regard to religion-related discrimination?

The guidelines identify several means of accommodating religious practices that prohibit working on certain days. Some of the methods suggested include voluntary substitutes, flexible scheduling, lateral transfer, and change of job assignments. Some collective bargaining agreements include a provision that each employee must join the union or pay
the union a sum equivalent to dues. When an employee’s religious beliefs prevent compliance, the union should accommodate the employee by permitting that person to make an equivalent donation to a charitable organization.

3-15. What is meant by the term caregiver discrimination?

Caregiver (family responsibility) discrimination is discrimination against employees based on their obligations to care for family members. Recently, the EEOC issued a technical assistance document on how employers of workers with caregiving responsibilities can avoid violations of Title VII of the 1964 Civil Rights Act and other fair employment laws and reduce the likelihood of discrimination complaints titled “Employer Best Practices for Workers with Caregiving Responsibilities.”

3-16. What is the purpose of the OFCCP?

The Secretary of Labor established the Office of Federal Contract Compliance Programs (OFCCP) and gave it the power and responsibility for implementing EO 11246. The degree of control the OFCCP will impose depends upon the size of the contract.

3-17. What is an affirmative action program?

An affirmative action program (AAP) is an approach developed by organizations with government contracts to demonstrate that workers are employed in proportion to their representation in the firm’s relevant labor market. An affirmative action program may be voluntarily implemented by an organization. In such an event, goals are established and action is taken to hire and move minorities and women up in the organization. In other situations, an AAP may be mandated by the OFCCP.

3-18. How do countries other than the United States view sexual harassment?

Sexual harassment was discussed in this chapter only as it pertains to the United States but it is also a global problem. When individuals from two different cultures interact, there is a potential for sexual harassment problems. Some behaviors that violate U.S. cultural norms may not be perceived as a problem in another culture.

3-19. Define diversity and diversity management.

Diversity refers to any perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, geographic origin, lifestyle, tenure with the organization or position, and any other perceived difference.

Diversity management is ensuring factors are in place to provide for and encourage the continued development of a diverse workforce by melding these actual and perceived differences among workers to achieve maximum productivity.
DISCUSSION OF CHAPTER 3 INCIDENTS

HRM Incident 1: I Feel Great

Les Partain, manager of the training and development department for Gazelle Corporation, was 64 years old and had been with the firm for over 30 years. For the past 12 years he had served as Gazelle’s training and development manager and felt that he had been doing a good job. This belief was supported by the fact that during the last five years he had received excellent performance reports from his boss, LaConya Caesar, HR director.

Six months before Les’s birthday, he and LaConya were enjoying a cup of coffee together. “Les,” said LaConya, “I know that you’re pleased with the progress our T&D section has made under your leadership. We’re really going to miss you when you retire this year. You’ll certainly live the good life because you’ll receive the maximum retirement benefits. If I can be of any assistance to you in developing the paperwork for your retirement, please let me know.”

“Gee, LaConya,” said Les, “I really appreciate the good words, but I’ve never felt better in my life, and although our retirement plan is excellent, I figure that I have at least five more good years. There are many other things I would like to do for the department before I retire. I have some excellent employees, and we can get many things done within the next five years.”

After finishing their coffee, both returned to their work. As LaConya left, she was thinking, “My gosh, I had no idea that character intended to hang on. The only reason I gave him those good performance appraisals was to make him feel better before he retired. He was actually only an average worker and I was anxious to move a more aggressive person into that key job. We stand to lose several good people in that department if Les doesn’t leave. From what they tell me, he’s not doing too much of a job.”

QUESTIONS

3-20. From a legal viewpoint, what do you believe LaConya can do regarding this situation? Discuss.

Of course, LaConya has the option of firing Les. This would open up promotion opportunities for other workers. The problem LaConya may encounter is that Les may file an age discrimination charge against the company. A jury may view age as the reason for the firing since performance evaluations had been excellent up until now.

3-21. What actions should LaConya have taken in the past to avoid her current predicament?

LaConya should have properly evaluated Les over the years. There is no upper limit to the Age Discrimination in Employment Act so LaConya could not just wait until Les was age 65 or 70 to force a retirement. She may just have to live with her mistakes.
3-22. What might occur if LaConya begins to evaluate Les in the manner she should likely have been doing all along?

This is a situation in which far too many managers have placed themselves. Both verbally and in writing, LaConya has placed herself in a situation where if Les does not leave, some of her best workers may seek employment elsewhere. But, if LaConya begins evaluating Les as she should have all along, Les is sure to believe that she is discriminating against him. If the resulting appraisal results in a loss of pay or even his job, Les may well turn to the courts. LaConya would look quite foolish if outstanding appraisals were written and then Les was fired.

HRM Incident 2: So, What’s Affirmative Action?

Supreme Construction Company began as a small commercial builder located in Baytown, Texas. Until the early 2000s, Alex Boyd, Supreme’s founder, concentrated his efforts on small, freestanding shops and offices. Up to that time, Alex had never employed more than 15 people.

In 2008, Alex’s son Michael graduated from college with a degree in construction management and immediately joined the company full-time. Michael had worked on a variety of Supreme jobs while in school, and Alex felt his son was really cut out for the construction business. Michael was given increasing responsibility, and the company continued its success, although with a few more projects and a few more employees than before. In 2010, Michael approached his father with a proposition: “Let’s get into some of the bigger projects now. We have the capital to expand and I really believe we can do it.” Alex approved, and Supreme began doing small shopping centers and multistory office buildings in addition to work in its traditional area of specialization. Soon, the number of employees had grown to 75.

In 2011, the National Aeronautics and Space Administration (NASA) released construction specifications for two aircraft hangars to be built southeast of Houston. Although Supreme had never done any construction work for the government, Michael and Alex considered the job within the company’s capabilities. Michael worked up the $1,982,000 bid and submitted it to the NASA procurement office.

Several weeks later the bids were opened. Supreme had the low bid. However, the acceptance letter was contingent on submission of a satisfactory affirmative action program.

QUESTIONS

3-23. Explain why Supreme must submit an affirmative action program.

The bid that Michael submitted was for over $1 million. Contractors meeting this criterion must develop a written affirmative action program for each of its establishments and file an annual EEO-1 report and may have a pre-award compliance review. The purpose of a
compliance review is to determine whether the contractor is maintaining nondiscriminatory hiring and employment practices.

3-24. *Generally, what should the program be designed to accomplish?*

The program ensures that the contractor is utilizing affirmative action to guarantee that applicants are employed, placed, trained, upgraded, promoted, terminated, and otherwise treated fairly without regard to race, color, religion, gender, national origin, veteran status, or disability during employment.

3-25. *In conducting a utilization analysis, Michael discovers that although 30 percent of the general population of construction workers is black, only 10 percent of Supremes’ employees are black. According to affirmative action, what is Supreme Construction required to do?*

*Underutilization* is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. The utilization analysis is important because the calculations determine whether underutilization exists. If the utilization analysis shows that the availability of blacks for a certain job group is 30 percent, the organization should have at least 30 percent black employment in that group. If actual employment is less than 30 percent, underutilization exists, and the firm should set a goal of 30 percent black employment for that job group. The goal of affirmative action is for a contractor's workforce to generally reflect the gender, racial, and ethnic profile of the labor pools from which the contractor recruits and selects.

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