

5.14: Bias and Protections in Hiring

Learning Objective

- Describe the laws designed to prevent bias and discrimination in hiring.

Equal opportunity is one of our nation's core values and should be a core company policy. Seeking out diverse candidates is a Human Resource best practice. Having a policy of recruiting diverse candidates reflects an awareness of demographic and socio-cultural trends as well as allowing your company to tap into the broadest range of expertise, skills, and global and cultural insight—factors that drive growth and innovation.

However, we still live in a society where individuals that belong to a majority group often benefit from a system that places minority groups at a disadvantage. There are several laws in place that seek to deter this type of discrimination.

As an SHRM article emphasizes: "Discrimination costs employers millions of dollars every year, not to mention the countless hours of lost work time, employee stress and the negative public image that goes along with a discrimination lawsuit." Equal employment opportunity isn't just the right thing to do, it's the law. Specifically, it's a series of federal laws and Executive Orders designed to eliminate employment discrimination. Illegal discrimination is the practice of making employment decisions such as hiring, compensation, scheduling, performance evaluation, promotion, and firing based on factors unrelated to performance. There are currently seven categories protected under federal law: age, disability, genetic information, national origin, pregnancy, race and color, religion and sex.

Some hiring criteria may be related to a particular group an applicant belongs to and not individual abilities. Unless membership in that group directly affects potential job performance, a decision based on group membership is discriminatory (Figure 1). For instance, some jobs may require the employee to perform a physical task, such as lifting and carrying heavy objects; in such cases the physical capabilities of applicants may be considered. However, most office jobs do not have such physical requirements, so it is discriminatory to ask about physical capabilities.

To combat hiring discrimination, in the United States there are numerous city, state, and federal laws that prevent hiring (or not hiring) based on various group-membership criteria. For example, did you know it is illegal for a potential employer to ask your age in an interview? Did you know that an employer cannot ask you whether you are married, a U.S. citizen, have disabilities, or what your race or religion is? They cannot even ask questions that might shed some light on these attributes, such as where you were born or who you live with. These are only a few of the restrictions that are in place to prevent discrimination in hiring. In the United States, federal anti-discrimination laws are administered by the U.S. Equal Employment Opportunity Commission (EEOC).

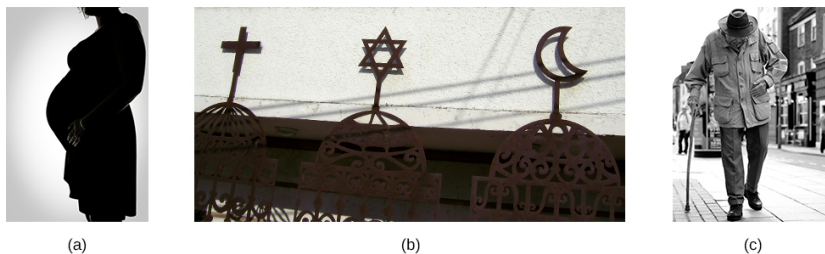


Figure 1. (a) Pregnancy, (b) religion, and (c) age are some of the criteria on which hiring decisions cannot legally be made. (credit a: modification of work by Sean McGrath; credit b: modification of work by Ze'ev Barkan; credit c: modification of work by David Hodgson)

The EEOC's mission is to stop and remedy unlawful employment discrimination. Specifically, the EEOC is charged with "enforcing protections against employment discrimination on the bases of race, color, national origin, religion, and sex." Congress has expanded the agency's jurisdiction over the years and the EEOC is now responsible for enforcing the Equal Pay Act of 1963 (APA), the Age Discrimination in Employment Act of 1967 (ADEA), Section 501 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). In 1972, Congress expanded Title VII protections to include federal government employees and granted the EEOC authority to pursue independent litigation against private employers under Title VII.

Note that state and local laws may provide broader discrimination protections. If in doubt, contact your state department of labor for clarification. Note as well that laws are subject to interpretation. For example, an EEOC notice^[1] emphasizes that their interpretation of the Title VII reference to "sex" is broadly applicable to gender, gender identity, and sexual orientation. And, further, that "these protections apply regardless of any contrary state or local laws."

In summary, avoiding discrimination is not only the right thing to do, it's the best thing to do from a Human Resource and risk prevention standpoint. Complying with the law reduces a company's legal risk and an equal opportunity environment may increase employee productivity, retention and morale. Businesses may also be eligible for tax benefits associated with making your business accessible to or hiring individuals with disabilities. For additional information, refer to Appendix A of the EEOC's "ADA Primer for Small Business."

More Resources Online

- EEOC's Digest of Equal Employment Opportunity Law:** This publication includes feature articles on timely issues in equal employment opportunity law, as well as summaries of recent Commission decisions and federal court cases, as they affect Federal government employees.
- EEOC Publications, Including discrimination fact sheets**

1. https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm ←

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