

## 8.1: Human Resources and Law

### What you'll learn to do: summarize and discuss key laws affecting human resource management

Federal and state legislation have a big impact on businesses. There is an important body of anti-discrimination and labor laws that have a particular effect on human resource management. You'll learn about those laws here.

#### Learning Objectives

- Summarize key anti-discrimination legislation
- Discuss key laws affecting human resource management

### Employment Legislation

*President Lyndon Johnson shakes hands with Martin Luther King Jr. after presenting him with one of the pens used to sign the Civil Rights Act of 1964.*

What happens when businesses make decisions that violate laws and regulations designed to protect working Americans? In some cases it costs businesses a great deal of money. Consider the following headlines:

- South San Francisco Walgreens fired longtime employee with diabetes over a \$1.39 bag of chips, federal agency charged.<sup>[1]</sup> The cost to Walgreens? \$180,000.
- United Airlines pays \$850,000 to a class of current and former employees with disabilities who were denied employment opportunities at San Francisco International Airport.<sup>[2]</sup>
- A Domino's franchisee agreed to pay 61 delivery employees \$1.28 million to settle a wage-and-hour lawsuit.<sup>[3]</sup>



In other cases, the monetary damage may be minimal, but the reputation of the business as a “great place to work” becomes tarnished, and HR professionals have a difficult time recruiting and retaining quality employees. Businesses that disregard worker protections may find themselves on a list of “worst places to work.” Such is the case with the retail clothing store Forever 21.

24/7 Wall St., a financial news service, analyzed thousands of employee reviews from jobs-and-career Web site Glassdoor. Based on employee reviews of more than 540,000 companies, the worst U.S. company were Family Dollar Stores, Express Scripts, and Forever 21.<sup>[4]</sup>

Regarding Forever 21, this year's report found the following:

*"Over the years, the store has been hit with several high-profile lawsuits, including several filed by employees. In 2012, five Forever 21 employees filed a class-action lawsuit against the company. The plaintiffs claimed that they and their coworkers were routinely detained in the store during lunch breaks and after their shifts without overtime pay so managers could search their bags for stolen merchandise—a part of the company's former loss-prevention policy. Indeed, many employees on Glassdoor complain of not getting to leave the store until 2:00 a.m. or later, hours after the stores close, often receiving no overtime pay for the extra hours."<sup>[5]</sup>*

### Anti-Discrimination Legislation

Protecting workers against unfair treatment is at the heart of U.S. anti-discrimination legislation. In 1964, the United States Congress passed the first Civil Rights Act. In 1963 when the legislation was introduced, the act **only** forbade discrimination on the basis of sex and race in hiring, promoting, and firing. However, by the time the legislation was finally passed on July 2, 1964, Section 703 (a) made it unlawful for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin.”

Over the years, amendments to the original act have expanded the scope of the law, and today the Equal Employment Opportunity Commission (discussed below) enforces laws that prohibit discrimination based on an *expanded* list of protected classes that

includes disability, veteran status, citizenship, familial status, and age. Anti-discrimination laws today apply not only to hiring, promoting, and firing but also to wage setting, testing, training, apprenticeships, and any other terms or conditions of employment.

While the Civil Rights Act of 1964 did not mention the words *affirmative action*, it did authorize the bureaucracy to make rules to help end discrimination. **Affirmative action** “refers to both mandatory and voluntary programs intended to affirm the civil rights of designated classes of individuals by taking positive action to protect them” from discrimination. The first federal policy of race-conscious affirmative action emerged in 1967 and required government contractors to set “goals and timetables” for integrating and diversifying their workforce. Similar policies began to emerge through a mix of voluntary practices and federal and state policies in employment and education. These include government-mandated, government-sanctioned, and voluntary private programs that tend to focus on access to education and employment, specifically granting special consideration to historically excluded groups such as racial minorities or women. The impetus toward affirmative action is redressing the disadvantages associated with past and present discrimination. A further impetus is the desire to ensure that public institutions, such as universities, hospitals, and police forces, are more representative of the populations they serve.

In the United States, affirmative action tends to emphasize not specific quotas but rather “targeted goals” to address past discrimination in a particular institution or in broader society through “good-faith efforts . . . to identify, select, and train potentially qualified minorities and women.” For example, many higher education institutions have voluntarily adopted policies that seek to increase recruitment of racial minorities. Another example is executive orders requiring some government contractors and subcontractors to adopt equal opportunity employment measures, such as outreach campaigns, targeted recruitment, employee and management development, and employee support programs.

Title VII of the act created the **Equal Employment Opportunity Commission (EEOC)** to implement the law and subsequent legislation has expanded the role of the EEOC. The EEOC, as an independent regulatory body, plays a major role in dealing with the issue of employment discrimination. Since its creation in 1964, Congress has gradually extended EEOC powers to include investigatory authority, creating conciliation programs, filing lawsuits, and conducting voluntary assistance programs.

Today the regulatory authority of the EEOC includes enforcing a range of federal statutes prohibiting employment discrimination, including the following:



- **Civil Rights Act of 1964**, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. The prohibition against **sexual harassment** falls under Title VII of this act. As defined by the EEOC, “It is unlawful to harass a person (an applicant or employee) because of that person’s sex.” Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- **Age Discrimination in Employment Act (ADEA) of 1967**, and its amendments, which prohibits employment discrimination against individuals 40 years of age or older. The ADEA’s protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. The ADEA permits employers to favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older.
- **Equal Pay Act (EPA) of 1963**, which prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions. In essence, men and women doing equal jobs must receive the same pay. According to the Bureau of Labor Statistics, women’s salaries vis-à-vis men’s have risen dramatically since the EPA’s enactment, from 62 percent of men’s earnings in 1970 to 83 percent in 2014. Nonetheless, the EPA’s equal pay for equal work goals have not been completely achieved.
- **Americans with Disabilities Act (ADA) of 1990**, which prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government. The ADA also requires covered employers to provide reasonable accommodations to employees with disabilities and imposes accessibility requirements on public accommodations. “A reasonable accommodation” is defined by the U.S. Department of Justice as “any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions.
- **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)**, which protects the civilian employment of active and reserve military personnel in the United States called to active duty. The law applies to all United States uniformed services and their respective reserve components.

These laws were enacted to protect the average working citizen, but the existence of laws doesn't guarantee that employers will follow them. EEOC acts as a watchdog organization and steps in to assist employees who believe they have suffered workplace discrimination. Just how often do employees turn to the EEOC?

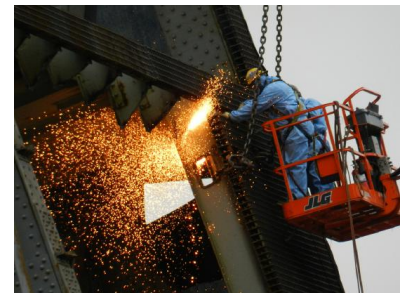
In fiscal year 2014, the EEOC received 88,778 charges of workplace discrimination. During that time, the percentage of charges alleging retaliation reached the highest level ever: 42.8 percent. The percentage of charges alleging race discrimination—the second most common allegation—has remained steady at approximately 35 percent. In fiscal year 2014, the EEOC collected \$296.1 million in total monetary relief through its enforcement program prior to filing lawsuits. The number of lawsuits filed by the EEOC's Office of General Counsel throughout the nation was 133, up slightly from the previous two fiscal years. Monetary relief from cases litigated, including settlements, totaled \$22.5 million.

"Behind these numbers are individuals who turned to the EEOC because they believe that they have suffered unlawful discrimination," said EEOC Chair Jenny R. Yang. "The EEOC remains committed to meaningful resolution of charges and strategic enforcement to eliminate barriers to equal employment opportunity."<sup>[6]</sup>

### Labor and Safety Legislation

There are many other laws designed to regulate the employer-employee relationship. Several are described below:

- **National Labor Relations Act of 1935**, which created collective bargaining in labor-management relations and limited the rights of management interference in the right of employees to have a collective bargaining agent. In essence, this act both legitimated and helped regulate labor union activities.
- **Fair Labor Standards Act of 1938**, which established a national minimum wage, forbade "oppressive" child labor, and provided for overtime pay in designated occupations. It declared the goal of assuring "a minimum standard of living necessary for the health, efficiency, and general well-being of workers." Today these standards affect more than 130 million workers, both full-time and part-time, in the private and public sectors.
- **Occupational Safety and Health Act of 1970 (OSHA)**, which requires employers to maintain workplace conditions or adopt practices reasonably necessary to protect workers on the job; to be familiar with and comply with standards applicable to their establishments; and ensure that employees have and use personal protective equipment when required for safety and health. The major areas covered by OSHA standards are toxic substances, harmful physical agents, electrical hazards, fall hazards, hazards associated with trenches and digging, hazardous waste, infectious disease, fire and explosion dangers, dangerous atmospheres, machine hazards, and confined spaces.
- **Immigration Reform and Control Act of 1986**, which requires employers to verify the identity and employment authorization of all new hires, whether they are citizens or noncitizens. Employers must do this by ensuring proper completion of Form I-9 for each individual they hire for employment in the United States.
- **Family and Medical Leave Act of 1993**, which requires businesses with fifty or more employees to provide up to twelve weeks of unpaid leave per year upon the birth or adoption of an employee's child or in the event of serious illness to a parent, spouse, or child.



### The Top Five Manager Mistakes That Cause Lawsuits

There has been an explosion in the number of employee lawsuits in the U.S. during the past few years. According to the EEOC, employee lawsuits have risen 425 percent since 1995, and the trend does not appear to be diminishing. Sadly, many of these lawsuits can be avoided because manager mistakes are at the center of many of them. That's why it's important to know at least the basics of employment law. In the following video, Business Management Daily's editorial director Pat DiDomenico describes the top five manager mistakes that cause lawsuits.



1. <https://www.eeoc.gov/eeoc/newsroom/release/7-2-14b.cfm> ↵
2. [www.eeoc.gov/eeoc/history/45th/ada20/ada\\_cases.cfm](http://www.eeoc.gov/eeoc/history/45th/ada20/ada_cases.cfm) ↵
3. [http://www.nytimes.com/2014/02/01/nyregion/dominos-franchise-settles-delivery-workers-lawsuit-for-1-28-million.html?\\_r=1](http://www.nytimes.com/2014/02/01/nyregion/dominos-franchise-settles-delivery-workers-lawsuit-for-1-28-million.html?_r=1) ↵
4. <http://247wallst.com/special-report/2016/06/10/the-worst-companies-to-work-for-2/6/> ↵
5. <http://247wallst.com/special-report/2016/06/10/the-worst-companies-to-work-for-2/6/> ↵
6. <https://www.eeoc.gov/eeoc/newsroom/release/2-4-15.cfm> ↵

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