

7.18: Laws Affecting Human Resource Practices

Learning Outcomes

- List the protected employee classes in the United States.
- Summarize the key laws related to employee discrimination.
- Explain what HR managers can do to protect the company against discrimination lawsuits.
- Explain HR's role in workplace safety.
- Explain collective bargaining and the law that governs it.

Protected Classes of Employees



Certain groups of employees are legally protected from discrimination. In other words, if an employee belongs to a protected group and is discriminated against because of his or her status as a member of that group, that employee can take legal action against the employer. But being part of a protected group does not mean an employee can never be disciplined or fired.

For example, imagine a female employee who shows up late, meets few of her goals, and receives a poor evaluation. She applies for promotion but loses out to a white man who has worked hard, met his goals, and received a very positive evaluation. In this case, the woman was not discriminated against because of her gender; rather, she was denied promotion because of poor work performance. As a result, she would not have legal cause for action.

On the other hand, imagine a Latino employee who has a stellar work record. He is laid off, whereas a Caucasian worker with a poor work record is kept on. In this case, there is a good chance the Latino employee could win a legal case against his employer for racial discrimination.

HR managers can protect the company against discrimination lawsuits by understanding discrimination law and putting policies into place to avoid discrimination. Should discrimination occur despite workplace policies against it, HR managers can work with upper management to quickly address individual issues, compensate employees, and discipline managers who discriminate. The Equal Employment Opportunity Commission (EEOC) is responsible for interpreting and enforcing the laws against discrimination in the workplace.

Employers may not discriminate against employees because of:

1. **Race or Color:** This category includes blacks, whites, people of Latino or Asian origin or descent, and indigenous peoples.
2. **National Origin:** This means employers may not discriminate based on the country where a person was born or the country from which his or her ancestors came—unless language or other requirements make it impossible for the individual to do the job effectively. For example, a native Russian speaker with no English language skills could reasonably be denied a job as a lecturer in a U.S. college.
3. **Sex:** This means an employer cannot discriminate against either men or women as a result of their gender. Title VII as it is currently interpreted provides protection based on gender identity or sexual orientation. To quote the EEOC “these protections apply regardless of any contrary state or local laws.”^[1]
4. **Religion:** According to the EEOC, protections “include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.” Employers must “reasonably accommodate to an employee’s or prospective employee’s religious observance or practice” unless doing so would impose an “undue hardship on the conduct of the employer’s business.”

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Key Laws Related to Employee Discrimination

Employee discrimination has been the focus of several important laws. They include the following:

Equal Pay Act of 1963: This law makes it illegal to pay men more than women for the same work.

Civil Rights Act of 1964: This act is intended to protect people who were often discriminated against because of their race, national origin, gender, color, or religion. The Title VII of the act relates specifically to employment. The law, which applies to any company with more than fifteen employees, also makes it illegal to discriminate against an employee because she is pregnant or coping with conditions (such as morning sickness) caused by pregnancy. New rules also provide some protections to transgender individuals. Title VII also created the EEOC to implement the law.

Age Discrimination in Employment Act of 1967: This law, which applies to companies with twenty-plus employees, makes it illegal to discriminate against employees because they are more than forty years old.

Pregnancy Discrimination Act of 1978: This act amended Title VII of the Civil Rights Act to also prohibit discrimination on the basis of pregnancy.

Americans with Disabilities Act of 1990: According to this act, employers must make “reasonable” workplace modifications to accommodate the needs of a person with a disability. Examples include addition of ramps for wheelchairs, adjustments to work schedules, etc.

Family Medical Leave Act of 1993: This law offers job protections to individuals for parental leave and medical leave. For covered employers, a parent may take up to 12 weeks after the birth of a child.

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA): This law offers job protections to individuals when they are called to uniformed service.

Genetic Information Nondiscrimination Act of 2008: According to this act, genetic information cannot be used to make employment or health insurance decisions.

In addition to these laws, there are also several that relate only to federal government employees. These include sections 501 and 505 of the Rehabilitation Act of 1973 and the Civil Service Reform Act of 1978. Individual states also have their own employee protection laws; for example, some states forbid discrimination based on sexual orientation, weight, marital status, etc.

? Practice Questions

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Workplace Safety



Worker safety is the focus of many training activities and initiatives.

There are a number of laws in place in the United States that require employers to provide a safe workplace. These laws are administered by OSHA, but HR must be sure the laws are followed. In some occupations, however, safety can't be guaranteed. For

example, when employees work with hazardous chemicals, large machinery, transportation vehicles, etc., there are risks. Workers have the right to refuse to work in dangerous conditions without risking their jobs.

To lower risk, management and HR can work together to substitute less dangerous procedures or materials when both options can get the job done, isolate dangerous materials or machines from employees who do not need to work with them, ensure that proper safety equipment and ventilation are used in all hazardous situations, put policies in place that decrease risk by taking required safety precautions, and require employees to use appropriate safety equipment such as goggles, gloves, and hard hats. All these positive changes can help the company by keeping employees on the job, thus increasing productivity. Research shows that safety programs more than pay for themselves.^[2]

Collective Bargaining

A 2004 story in the *New York Times* describes how, until recently, workers were locked into a building while working at night for Sam's Club:

Looking back to that night, Michael Rodriguez still has trouble believing the situation he faced when he was stocking shelves on the overnight shift at the Sam's Club in Corpus Christi, Tex.

It was 3 a.m., Mr. Rodriguez recalled, some heavy machinery had just smashed into his ankle, and he had no idea how he would get to the hospital.

The Sam's Club, a Wal-Mart subsidiary, had locked its overnight workers in, as it always did, to keep robbers out and, as some managers say, to prevent employee theft. As usual, there was no manager with a key to let Mr. Rodriguez out. The fire exit, he said, was hardly an option – management had drummed into the overnight workers that if they ever used that exit for anything but a fire, they would lose their jobs.^[3]

How could employees respond to such a terrible situation? Individual employees have few choices: they can stay and cope with the situation, they can complain and face the possibility of being fired, or they can quit. Labor unions—groups of employees acting together—can give employees more leverage. Although one worker had little power to make change, large groups in unions could threaten strikes or slowdowns to force change.

Today, labor unions and employers make agreements through a process called collective bargaining. Collective bargaining is the process by which employers work with union representatives to decide on policies, wages, and benefits. Union representatives are empowered to speak on behalf of the entire union. If the union representative negotiates a raise for its members, all members get more money.

Labor unions gained much of their power through the Wagner Act of 1935. The act made it legal for most workers to organize or join labor unions. It also made it possible for labor unions to negotiate contracts for their members. To help labor unions become more effective, the act set up the National Labor Relations Board (NLRB).

The NLRB oversees the rules and policies related to collective bargaining. According to the NLRB: “If a union is selected as the representative of employees, the employer and union are required to meet at reasonable times to bargain in good faith about wages, hours, and other mandatory subjects. Even after a contract expires, the parties must bargain in good faith for a successor contract, or the termination of the agreement, while terms of the expired contract continue.” The NLRB also provides many specific rules for negotiation, mediation, and arbitration in the case of a disagreement between employer and labor.

? Practice Questions

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<https://assessments.lumenlearning.co...essments/12218>

1. https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm ↵
2. David Machles, “Evaluating the Effectiveness of Safety Training,” June 01, 2003, accessed July 26, 2017, <https://ohsonline.com/Articles/2003/06/Evaluating-the-Effectiveness-of-Safety-Training.aspx>. ↵
3. Steven Greenhouse, “Workers Assail Night Lock-Ins By Wal-Mart,” Jan. 18, 2004, accessed July 26, 2017, <http://www.nytimes.com/2004/01/18/us/workers-assail-night-lock-ins-by-wal-mart.html?mcubz=2>. ↵

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