

## 9.5: Employment Legislation

### Learning Objectives

- Explain the function of the Equal Employment Opportunity Commission
- Summarize key anti-discrimination legislation
- Summarize key labor and safety legislation
- Discuss key laws affecting human resource management



Figure 9.5.1: 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.

Equal opportunity is one of our nation's core values and should be a core company policy. However, as the following examples illustrate, equal opportunity isn't always business practice.

What happens when businesses make decisions that violate laws and regulations designed to protect working Americans? As a Society for Human Resource Management (SHRM) training manual emphasizes: "Discrimination cost 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."

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. companies 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>

Equal employment opportunity isn't just the right thing to do, it's the law. Specifically, it's a series of federal laws and amendments designed to eliminate employment discrimination. Employment discrimination laws and regulations are enforced by the **Equal Employment Opportunity Commission (EEOC)**, an agency established by the Civil Rights Act of 1964 (Title VII). The agency's

mission is to stop and remedy unlawful employment discrimination. Specifically, the EEOC is charged with “enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.”<sup>[6]</sup> Since its creation in 1964, Congress has gradually expanded EEOC powers to include the authority to investigate claims, negotiate settlements and file lawsuits. The agency also conducts outreach and educational programs in an effort to prevent discrimination. Finally, the EEOC provides equal employment opportunity advisory services and technical support to federal agencies.

## Anti-Discrimination Legislation

The intent of U.S. anti-discrimination legislation is to protect workers from unfair treatment. In brief, illegal discrimination is the practice of making employment decisions based on factors unrelated to performance.

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 enforces laws that prohibit discrimination based on seven protected categories including age, disability, genetic information, national origin, pregnancy, race and color and religion and sex. Federal anti-discrimination laws apply to a broad range of employee actions. Specifically, any employment decision – including hiring, compensation, scheduling, performance evaluation, promotion, firing or any other term or condition of employment – that is based on factors unrelated to performance is illegal.

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.



As discussed above, the EEOC is the organization charged with implementing Title VII and related anti-discrimination legislation. There are currently seven categories protected under federal law: age, disability, genetic information, national origin, race and color, religion and sex. The EEOC’s authority includes enforcing the following federal statutes summarized below. Unless

otherwise stated, these laws apply to most employers with at least 15 employees (20 employees for the ADEA), including employment agencies and labor unions.

- **Title VII of the Civil Rights Act of 1964:** Prohibits discrimination on the basis of race, color, religion, sex or national origin. The law also makes it illegal to retaliate against a person who has voiced a grievance, filed a charge of discrimination or participated in an investigation or lawsuit. 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.
- An amendment to Title VII, **The Pregnancy Discrimination Act** prohibits discrimination against a woman based on pregnancy, childbirth or a related condition. As in the original law, it also makes retaliation illegal.
- **The Equal Pay Act of 1963 (EPA):** 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. Since the EPA’s enactment, there has been significant – if slow – progress in achieving pay equity. Although progress has often stalled or reversed, the wage gap has narrowed consistently in recent years. Since 1963, the wage has decreased from 58.9% to 80.5% in 2017. For perspective: at this percentage, a woman would need to work through April 10 of the next year to make what a man in an equivalent role earned the prior year.
- **The Age Discrimination in Employment Act of 1967 (ADEA):** Prohibits employment discrimination against individuals 40 years of age or older based on age. As with other anti-discrimination legislation, the law makes retaliation illegal.
- **Title I of the Americans with Disabilities Act of 1990 (ADA):** Prohibits discriminate against a qualified person with a disability and requires employers to make reasonable accommodations for applicants and employees with known physical or mental limitations who are otherwise qualified unless that accommodation would pose an “undue hardship” or material impact (significant difficulty or expense) on an employer’s business operations. As with other anti-discrimination legislation, the law makes retaliation illegal. This law applies to private sector and state and local government employers only. Disability discrimination protection at the federal level is provided in **Sections 501 and 505 of the Rehabilitation Act of 1973**. There are three kinds of *reasonable accommodations* defined by the EEOC:<sup>[7]</sup>
  - “modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
  - modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
  - modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.”
- **The Genetic Information Nondiscrimination Act of 2008 (GINA):** Prohibits discrimination against applicants or employees based on an individual’s or his or her family’s genetic information or family medical history (for example, a hereditary disease, disorder or medical condition). As with other anti-discrimination legislation, the law makes retaliation illegal.

Despite the public relations and financial risk of discriminatory hiring practices, charges of workplace discrimination are in the tens of thousands annually. Since 1997, the number of charges has ranged from a low of 75,428 in 2005 to a high of 99,947 in 2011. In fiscal year 2017, the EEOC received 84,254 charges of workplace discrimination charges and obtained \$398 million in monetary benefits for victims through a combination of voluntary resolutions and litigation. As was true for the last few years, retaliation was the most frequently filed charge (49%), followed by race (34%), disability (32%), sex (30%) and age (22%). Percentages for the remaining categories range from less than 1% to 10%.

Although retaliation charges are up 3 percentage points from the prior year, 2016 percentages in the remaining top five categories were within a percentage point, with race at 35%, disability at 31%, sex at 29% and age at 23%. Note that percentages add up to more than 100 due to charges alleging multiple bases of discrimination.

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 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 the Press Release announcing the 2017 data, EEOC Acting Chair Victoria A Lipnic stated that results for the fiscal year demonstrate that “the EEOC has remained steadfast in its commitment to its core values and mission: to vigorously enforce our

nation's civil rights laws.”

### ? Practice Questions

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## 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**, which established the Occupational Safety and Health Administration (OSHA), a Department of Labor agency charged with setting and enforcing standards for “safe and healthful working conditions for working men and women”<sup>[8]</sup> and supporting this objective through outreach, training and public education. OSHA’s website—with content available in both English and Spanish—is a resource for both employers and employees. OSHA’s training programs include free on-site consultations for small and medium-sized businesses. An [OSHA landing page for employees](#) emphasizes workers’ right to a safe workplace and advises employees on when and how to file a complaint. As is true with complaints based on discrimination, the act provides protection against retaliation for voicing a concern or submitting a complaint. An employee who believes that he or she has been retaliated against in exercising his/her rights under this law has 30 days (from the alleged retaliation action) to file a whistleblower complaint. Key point: The act does not cover workers who are not employees. For more on how to interpret the employer-employee relationship, refer to Safety School’s “Who is covered (or not) by OSHA.”
- **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 non-citizens. 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.

### ? Practice Question

<https://assessments.lumenlearning.co...essments/14514>

## 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.



You can view the [transcript for “The Top 5 Manager Mistakes that Cause Lawsuits”](#) (opens in new window) or the [text alternative for “The Top 5 Manager Mistakes that Cause Lawsuits”](#) (opens in new window).

### ? Practice Question

<https://assessments.lumenlearning.co...essments/14515>

1. U.S. Equal Employment Opportunity Commission. "America's Largest Drug Store Chain to Pay \$180,000 to Settle EEOC Disability Discrimination Suit." EEOC.gov. January 2, 2014. Accessed June 25, 2019. <https://www.eeoc.gov/eeoc/newsroom/release/7-2-14b.cfm>. ↵
2. U.S. Equal Employment Opportunity Commission. "The U.S. Equal Employment Opportunity Commission: Twenty Years of ADA Enforcement, Twenty Significant Cases." EEOC.gov. Accessed June 25, 2019. [www.eeoc.gov/eeoc/history/45th/ada20/ada\\_cases.cfm](http://www.eeoc.gov/eeoc/history/45th/ada20/ada_cases.cfm). ↵
3. Greenhouse, Steven. "Domino's Delivery Workers Settle Suit for \$1.3 Million." The New York Times. January 31, 2014. Accessed June 25, 2019. <http://www.nytimes.com/2014/02/01/nyregion/dominos-franchise-settles-delivery-workers-lawsuit-for-1-28-million.html>. ↵
4. Comen, Evan, Samuel Stebbins, and Thomas C. Frohlich. "The Worst Companies to Work For." 24/7 Wall St. June 10, 2016. Accessed June 25, 2019. <http://247wallst.com/special-report/2016/06/10/the-worst-companies-to-work-for-2/6/>. ↵
5. Ibid. ↵
6. U.S. Equal Employment Opportunity Commission. "About the EEOC: Overview." EEOC.gov. Accessed June 25, 2019. [www.eeoc.gov/eeoc/](http://www.eeoc.gov/eeoc/). ↵
7. 29 C.F.R. 1630.2(o)(1)(i-iii) (1997) ↵
8. U. S. Department of Labor. "About OSHA." Occupational Safety and Health Administration. Accessed June 25, 2019. <https://www.osha.gov/about.html>. ↵

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