

2.4: Anti-Discrimination Legislation

Learning Objectives

1. Summarize the discrimination protections provided by Title VII of the Civil Rights Act of 1964
2. Summarize the discrimination protections provided by the Civil Rights Act of 1991
3. Identify additional laws & executive orders regarding discrimination

The Civil Rights Act of 1964

History.com notes that “The Civil Rights Act of 1964, which ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin, is considered one of the crowning legislative achievements of the civil rights movement.” Indeed, civil rights leader Martin Luther King, Jr. referred to the Act as a “second emancipation.” The Act was originally proposed by President John F. Kennedy, who stated, “The United States ‘will not be fully free until all of its citizens are free.’” Despite strong opposition from southern Congressional members, including a record 75-day filibuster and a 14-hour speech by former Ku Klux Klan member and West Virginia Senator Robert Byrd, the Act passed and was signed into law by President Kennedy’s successor, Lyndon B. Johnson.

Fundamentals of Human Resource Management authors DeCenzo, et.al. also state that “no single piece of legislation has had a greater effect on reducing employment discrimination than the Civil Rights Act of 1964.” For Human Resource Management purposes, the section or “title” of the Act that’s particularly relevant is Title VII, which, as amended, “protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion.” Title VII makes it unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination but also neutral policies that disproportionately exclude minorities and are not job-related. Title VII is applicable to private sector employers with fifteen or more employees, federal government employers, employment agencies, and labor organizations.

Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Finally, the law requires employers to make reasonable accommodations for applicants’ and employees’ sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer’s business.

Title VII Exceptions

An employer is permitted to take employment actions that would otherwise be held as discriminatory if the decision is based on a bona fide occupational qualification (BFOQ). Workforce states that “Title VII of the Civil Rights Act of 1964 provides that employment decisions may be made on the basis of sex, religion, or national origin (but not race or color) if the sex, religion, or national origin is a BFOQ reasonably necessary to the normal operation of the business. The Age Discrimination in Employment Act of 1967 contains a similar provision for the BFOQ exception in regard to age.”

To be applicable, a BFOQ exception must meet two conditions: (1) A particular religion, sex, national origin or age must be an actual qualification for performing the job; and (2) the requirement must be necessary to the normal operation of the employer’s business. The same exception is allowed for job notices and advertisements, where the position at issue requires a worker of a particular religion, sex, national origin, or age. For example, Civil.laws.com notes that “it would not be a violation of Title VII for a Jewish center to refuse employment to a Catholic individual in a shul or school funded by the congregation if the employment required a statement of adherence to and promulgation of Judaism or the Jewish faith.

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For additional perspective, refer to [Cornell Law School’s discussion of BFOQ](#).

Civil Rights Act of 1991

The Civil Rights Act of 1991 was passed to address a series of decisions by the Supreme Court that undermined discrimination protections. In effect, the law nullified these decisions, re-establishing an employer’s burden of proof and the disparate impact

theory of discrimination. The Act also amended “Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.” Specifically, “the Act provided that where the plaintiff shows that discrimination was a motivating factor for an employment decision, the employer is liable for injunctive relief, attorney’s fees, and costs (but not individual monetary or affirmative relief) even though it proves it would have made the same decision in the absence of a discriminatory motive.”

The Act also extended employment discrimination protection to employees of Congress and Title VII and ADA coverage to include American and American-controlled employers operating abroad.

PRACTICE QUESTIONS

1. You are preparing a briefing on discrimination law for new managers and supervisors. Your specific focus is Title VII of the Civil Rights Act of 1964. Which of the following is best summarizes the protections in the original Act?
 - Title VII of the Civil Rights Act of 1964 re-establishes discrimination protections eroded by a series of Supreme Court decisions.
 - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, religion, or gender.
 - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, gender, and national origin.
 - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, and national origin.
2. Which of the following best summarizes the protections provided in the 1991 version of the Civil Rights Act?
 - The Civil Rights Act of 1991 expanded protected categories to include gender identity and sexual orientation.
 - The Civil Rights Act of 1991 established the ability to file suit and receive compensatory and punitive damage awards in international discrimination cases.
 - The Civil Rights Act of 1991 clarified that employment discrimination protection applies only to employees working in the United States.
 - The Civil Rights Act of 1991 established that employees have the burden of proof in employment discrimination cases.

Answer

1. Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, and national origin.
2. The Civil Rights Act of 1991 established the ability to file suit and receive compensatory and punitive damage awards in international discrimination cases.

The Equal Pay Act (APA) of 1963

The Equal Pay Act (APA) of 1963 makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Age Discrimination in Employment Act (ADEA) of 1976

ADEA protects applicants and employees 40 years or older from discrimination because of age and for retaliation for a discrimination complaint or related action. ADEA applies to private employers with 20 or more employees, state and local governments, employment agencies, labor organizations, and the federal government. As mentioned above, it is generally unlawful to state an age-related preference in job advertisements except when age is demonstrated to be a BFOQ. In a Recruitment & Selection training manual, SHRM recommends cross-referencing state’s discrimination laws, noting that “some states require compliance with age discrimination law for employers of two or more workers, and some states have lowered the age discrimination threshold far below 40 years old.”

The Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act of 1978 is an amendment to Title VII of the Civil Rights Act. The Act makes it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. SHRM notes that “the basic principle is that a woman affected by pregnancy or other related medical condition must be treated the same as any other applicant in the recruitment and selection process.” The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Title I of the Americans with Disabilities Act (ADA) of 1990

Title I makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business. SHRM expands on the EEOC description, stating that "employers are prohibited from using an employment test to disqualify a disabled candidate unless that test is valid for the skills necessary in the job to which they are applying and unless the same test is given to all applicants, not just to those with disabilities." Sections 501 and 505 of the Rehabilitation Act of 1973 extend ADA Title I protections to federal government applicants and employees.

The Genetic Information Nondiscrimination Act (GINA) of 2008

GINA makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Note

SHRM's caution regarding differences in state and local versus federal laws applies across the board, and state/local laws are generally more stringent. HR personnel are advised to contact the relevant state department of labor to confirm the extent of specific employment laws and to develop a process to remain up to date on changes.

Executive Orders

Executive orders generally extend discrimination protections to federal workers, including those working under federal contracts.

- **Executive Order (E.O.) 11246.** Issued by President Lyndon B. Johnson, prohibits federal contractors from discriminating "against any employee or applicant for employment because of race, color, religion, sex, or national origin." Amended by President Obama (E.O. 13672) to extend protection to include sexual orientation or gender identity.
- **E.O. 11478.** Issued by President Nixon, bars discrimination against federal employees on the basis of race, color, religion, sex, national origin, disability, and age. Amended by President Clinton (E.O. 13087) to include sexual orientation as a protected category. Amended by President Obama (E.O. 13672) to extend protection to include gender identity as a protected category.

PRACTICE QUESTION

You are discussing an incident of alleged age discrimination with a manager. The manager states that his employment action can't be considered age discrimination since the affected employee is only 40. How should you respond?

- A person can't be charged with age discrimination if they are older than the affected employee.
- It can be considered age discrimination since the protected age is 50 or older.
- If there is a perception of discrimination, it doesn't matter what the person's age is.
- It can be considered age discrimination since the protected age is 40 or older.

Answer

It can be considered age discrimination since the protected age is 40 or older.

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