

Equal Employment Opportunity 2

Strategic Objective

The Civil Rights Act of 1964 was a landmark piece of legislation; it was workers' first substantial legal protection from discrimination in the workplace. Prior to the Civil Rights Act, it was legal for employers to discriminate in hiring, promotion, pay, access to training programs, and any other employment decision. The Civil Rights Act of 1964 makes it illegal to discriminate on the basis of race, color, religion, sex, or national origin. The Equal Pay Act of 1963 requires men and women doing the same job to be paid the same, except for differences resulting from a seniority system, merit pay, or incentive programs. The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age for workers over 40 years old. The Pregnancy Discrimination Act of 1978 makes it illegal to discriminate on the basis of pregnancy, childbirth, or related medical conditions. The Americans with Disabilities Act of 1990 prohibits discrimination against qualified people with disabilities.

At first glance, discrimination in employment seems to make no sense. The rational employer hires applicants only based on their ability to do the job, not on their race, color, religion, sex, or national origin, all of which are unrelated to their ability to do the job. Why would there need to be a law to require employers to hire fairly, when hiring unfairly would put them at a competitive disadvantage compared to other organizations that do hire fairly? In 1946, there were no Black players in Major League Baseball (MLB), despite a substantial pool of talent in the Negro Leagues. Yet even 5 years after Jackie Robinson broke the color line in 1947, less than half of the MLB teams had been desegregated. Gwartney and Haworth (1974) tested the theory that employers who discriminate are at a competitive

disadvantage compared to firms that follow a less discriminatory policy using MLB data from the 1940s and 1950s, and found that teams employing Black players did have a competitive advantage; they won more games, acquired quality players at a lower cost, and increased annual revenue from admissions.

The most recent federal equal employment opportunity law is the Americans with Disabilities Act. When the law was passed, the unemployment rate among people with disabilities was about 70% (Wells, 2001). Supporters of the law pointed out that working is a major life activity that many people with disabilities are missing, and it would benefit both people with disabilities and taxpayers generally if more people with disabilities are employed and paying taxes than unemployed and collecting welfare benefits. Unfortunately, despite the Americans with Disability Act, the unemployment rate for people with disabilities has remained at about the same level (Acemoglu & Angrist, 2001; Altman, 2005; Dutton, 2000; Kruse & Schur, 2003; Stein, 2000). Do organizations that are more willing to hire qualified applicants with disabilities have a competitive advantage?

Although equal employment opportunity laws are often referred to as compliance issues, they may also be strategic issues. Attracting qualified employees is challenging and will get more difficult. Bureau of Labor Statistics projections indicate a substantial reduction in labor force growth rates through 2020, down from 1.6% per year during 1950-2000, to 0.4% between 2010 and 2020 (Horrigan, 2004). According to a 1997 study by the Families and Work Institute, “the quality of workers’ jobs and the supportiveness of their workplaces are the most powerful predictors of productivity, job satisfaction, commitment to their employers, and retention” (Bond, Galinsky, & Swanberg, 1998, p. 1). A company’s reputation with consumers, current and prospective employees, and other stakeholders can have a profound effect on its ability to succeed, and employers increasingly see the need to establish inclusive policies as part of an effort to compete for employees who may choose employers based on their progressive workplace policies (Human Rights Campaign Foundation, 2004).

Strategic Issues in HRM

THE UNAVOIDABLE LAWSUIT?

In *Griggs v. Duke Power* (1971), the Duke Power company instituted a new promotion policy. To qualify for placement in a position in any other department but Labor required a passing score on the Wonderlic Personnel Test and the Bennett Mechanical Comprehension Test and a high school diploma (incumbent employees who lacked a high school

education could qualify for transfer from Labor or Coal Handling to an inside job by passing the two tests). A passing score was defined as the national median for high school graduates. The Supreme Court ruled that these three tests had an adverse impact, noting in footnote 6 that “In North Carolina, 1960 census statistics show that, while 34% of white males had completed high school, only 12% of Negro males had done so. Similarly, with respect to standardized tests, the EEOC in one case found that use of a battery of tests, including the Wonderlic and Bennett tests used by the Company in the instant case, resulted in 58% of whites passing the tests, as compared with only 6% of the blacks.” The Civil Rights Act of 1964 makes it illegal for an employer to use a test that disqualifies minority applicants at a substantially higher rate than White applicants (i.e., adverse impact) when these tests had not been shown to be significantly related to successful job performance (i.e., a valid test).

In *Albemarle Paper Company v. Moody* (1975), the Albemarle Paper company required applicants for positions in the skilled lines of progression to have a high school diploma and to pass two tests, the Revised Beta Examination and the Wonderlic Personnel Test. Perhaps anticipating that a high school diploma and two general cognitive skills tests might have adverse impact, just before the trial began, the company conducted a validation study. The results showed statistically significant correlations between test scores and supervisor ratings of job performance in 3 of 10 job groupings for the Beta, 7 for the Wonderlic, and 2 for the Beta and Wonderlic together. The Supreme Court ruled that the employer’s testing program—as measured by the U.S. Equal Employment Opportunity Commission’s (EEOC) Guidelines for employers seeking to determine, through professional validation studies, whether their employment tests were job related—was not proven to be job related.

In *University of California Regents v. Bakke* (1978), the medical school maintained two tracks for admission, regular for most applicants and special for disadvantaged applicants. Bakke applied for admission twice and was not admitted, although he had a better admission score than some applicants who were admitted under the special track. The Supreme Court ruled that the special admissions program was a racial classification (not a racial preference system) and therefore illegal, because White applicants could compete for only 84 openings whereas minority candidates could compete for all 100, and that the Court has never approved preferential classifications without evidence of past discrimination. Affirmative Action Plans are a remedy for past or current discrimination, so if the special admissions track was an Affirmative Action Plan, then there needed to be evidence of past discrimination in admissions for the Affirmative Action Plan to remedy.

In *United Steelworkers v. Weber* (1979), Kaiser Aluminum and United Steelworkers agreed to a contract with an Affirmative Action Plan to increase

the number of minorities in the craft workforce. The Affirmative Action Plan set a goal to equal the percentage of Blacks in the local labor market and created a training program for unskilled production workers to become craft workers, with 50% of the openings reserved for Black employees. At Weber's plant, 13 were selected for the training program, 7 Blacks and 6 Whites. The most junior Black had less seniority than several Whites not selected, including Weber. The Supreme Court ruled that the prohibition against racial discrimination does not apply to private voluntary race-conscious Affirmative Action Plans and Kaiser's 50% plan was a legal Affirmative Action Plan to reduce or eliminate conspicuous racial imbalances in traditionally segregated jobs such as crafts (i.e., where there is evidence of past discrimination).

In *Johnson v. Transportation Agency, Santa Clara County, California* (1987), the county had developed a voluntary Affirmative Action Plan to improve performance in the hiring, training, and promotion of minorities and women throughout the agency in all major job classifications where they were underrepresented. When a vacancy for a road dispatcher (skilled craft job) was announced in 1979, 12 county employees applied and 9 were deemed qualified and interviewed. Based on the initial interview, 7 of these 9 (8 males, 1 female) were given a second interview. Paul Johnson was given an interview score of 75 (the second highest), and Diane Joyce was given 73 (fourth highest). A panel of agency supervisors unanimously recommended that Johnson be given the job. The agency director consulted with the county coordinator for Affirmative Action and made the final decision to hire Joyce. Johnson then sued, claiming that he had been denied the promotion based on gender. The Supreme Court ruled that the Agency's Plan represented a moderate, flexible, case-by-case approach to effecting a gradual improvement in the representation of minorities and women in the agency's workforce. The plan was consistent with Title VII, because the agency had voluntarily adopted an Affirmative Action Plan, which provided that within traditionally segregated job classifications in which women were significantly underrepresented, gender could be considered as one factor in judging among qualified applicants.

Moore and Hass (1990) provide additional details on the *Johnson v. Transportation Agency, Santa Clara County, California* case. The road dispatcher job was designated a skilled craft position by the agency and required candidates to have a minimum of 4 years of dispatch or road maintenance work experience for Santa Clara County. Joyce worked as a road maintenance worker for Santa Clara County from 1975 to 1979; Johnson worked as road maintenance worker for Santa Clara County from 1977 to 1979. Joyce had applied for a road dispatcher position in 1974 but was considered ineligible because she had not worked as a road maintenance worker for 4 years.

Strategic Questions

1. Both Duke Power and Albemarle Paper companies were using tests that had not been validated. Why would they use these tests when they did not know whether they predicted job performance?
2. Why did the medical school at the University of California at Davis have an Affirmative Action Plan? Was there past discrimination to remedy? Does the university have a legitimate interest in a more diverse pool of students than would be obtained by selecting top-down by admission test scores?
3. What is the difference between Kaiser Aluminum's (*United Steelworkers v. Weber*) Affirmative Action Plan and the University of California at Davis' (*University of California Regents v. Bakke*) admissions program?
4. What could Duke Power have done to win the case? What could Duke Power have done to avoid the lawsuit?
5. What could Albemarle Paper Company have done to win the case? What could Albemarle Paper Company have done to avoid the lawsuit?
6. What could the Transportation Agency, Santa Clara County, have done to avoid the lawsuit by Johnson?
7. In *Johnson v. Transportation Agency*, who got the highest score on the interview? Why wasn't this person hired for the road dispatcher job?
8. Have there been any recent Supreme Court cases with implications for the practice of HRM?

Resources

Albemarle Paper Co. v. Moody, 422 U.S. 405 (Supreme Court of the United States, 1975).
Griggs v. Duke Power, 401 U.S. 424 (Supreme Court of the United States, 1971).
Grutter v. Bollinger, 539 U.S. 306 (Supreme Court of the United States, 2003).
Johnson v. Transportation Agency, Santa Clara County, California, 480 U.S. 616 (Supreme Court of the United States, 1987).
Moore, D. P., & Hass, M. (1990). When affirmative action cloaks management bias in selection and promotion decisions. *Academy of Management Executive*, 4(1), 84-90.
Regents of University of California. v. Bakke, 438 U.S. 265 (Supreme Court of the United States, 1978).
Wonderlic Personnel Test. *Wonderlic Personnel Test*. <http://www.wonderlic.com/products/selection/wpt/>

SEXUAL HARASSMENT IN THE WORKPLACE

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment; unreasonably interferes with an individual's work performance; or creates an

intimidating, hostile, or offensive work environment. Sexual harassment is not just male harassers and female victims. Harassers may be male or female, and victims may be male or female. According to the EEOC (2008) enforcement statistics, the total number of charge receipts filed and resolved under Title VII alleging sexual harassment discrimination as an issue in 2007 was 12,510, down from 15,889 in 1997.

There are two types of sexual harassment, distinguished by the consequences to the victim. If there are tangible employment consequences (didn't get hired, was fired, didn't get promoted, etc.) it is *quid pro quo* sexual harassment. In *quid pro quo* sexual harassment cases, the harasser is the victim's supervisor or other employee who controls the tangible employment consequences. If there are no tangible employment consequences, it is hostile work environment sexual harassment. In this type of sexual harassment, the harasser could be a supervisor, a coworker, or even a nonemployee, anyone who poisons the work environment with sexually related comments, jokes, offensive touching, offensive pictures, and so forth. Even if victims of sexual harassment are unable to prove their claims, they may still win a retaliation claim if the victim was retaliated against for having complained about sexual harassment (Wendt & Slonaker, 2002). According to Wendt and Slonaker's analysis of sexual harassment claims closed by the Ohio Civil Rights Commission, nearly half of all women who complained of sexual harassment also experienced retaliation, and in 61% of the cases, the retaliation was termination.

Sexual harassment can occur in any kind of organization, with similar outcomes for victims (Kastl & Kleiner, 2001; Munson, Hulin, & Drasgow, 2000; Richman, Flaherty, & Johnson, 1999; Schneider, Swan, & Fitzgerald, 1997). Many educational institutions have sexual harassment policies prohibiting sexual harassment of employees and students. Although some students may be employees of the university and suffer tangible employment consequences or experience a hostile work environment, students may also be sexually harassed by another student or by an instructor, with tangible educational consequences.

Employers may be reluctant to deal with or even raise the issue of sexual harassment (Frierson, 1989; Peirce, Smolinski, & Rosen, 1998). The assumption is that by sensitizing employees to the issue of sexual harassment and showing how to make a complaint if they think they have been sexually harassed, more complaints will be made to the organization or to the EEOC than if the issue is never mentioned. But this policy of ignoring sexual harassment and hoping that it will go away is shortsighted, because victims of sexual harassment are not required to exhaust or even use the organization's grievance procedure before making a sexual harassment complaint to a state equal employment opportunity agency or the EEOC. A proactive approach to sexual harassment raises the subject, trains all employees in what is acceptable and not acceptable behavior, and clearly

states the organizational consequences for violation of the organization's policy on sexual harassment. It can be highly damaging to an organization's reputation to have a highly publicized case of sexual harassment in the state or federal courts, with possible long-term consequences for recruitment and retention. In highly publicized cases, Del Laboratories paid more than \$1 million to settle sexual harassment complaints, Chevron paid \$2.2 million to four women for corporate retaliation for filing sexual harassment complaints, and Mitsubishi agreed to pay \$34 million to several hundred women over claims of sexual harassment (Peirce et al., 1998). If employees see the organization is serious about not tolerating sexual harassment in the workplace and an effective grievance procedure is in place to handle complaints, it is far more likely that incidents of possible sexual harassment can be handled internally, rather than in the courts and the media.

The Guidelines on Sexual Harassment (Code of Federal Regulations, 1980) suggest that a proactive approach to sexual harassment will be the most effective:

Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. (Sec. 1604.11, f)

The key elements of a proactive approach to dealing with sexual harassment are a statement of prohibited conduct (physical assaults; unwanted sexual advances, propositions, or other sexual comments; sexual or discriminatory displays or publications; and retaliation for sexual harassment complaints); penalties for violations of the policy; procedures for making, investigating, and resolving sexual harassment and retaliation complaints; and procedures and rules for education and training (Colquitt & Kleiner, 1996; Pearson, 1997; Stringer, Remick, Salisbury, & Ginorio, 1990). All of these elements can be found in *Robinson v. Jacksonville Shipyards, Inc.* (1991).

Strategic Questions

1. What are the personal costs for a victim of sexual harassment? What are the organizational costs of sexual harassment?
2. What tangible educational consequences might there be for a college or university student who is sexually harassed by another student or by his or her instructor?

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3. Sexual harassment cases are not always a male supervisor and a female subordinate; what other possible cases of sexual harassment are there?
4. In what other types of organizations (other than colleges and universities) could a member (not an employee) be sexually harassed?
5. Who are the most likely victims of sexual harassment (by sex, age, job, industry, etc.)? Why are teen employees at high risk for sexual harassment?
6. In the organization's sexual harassment policy, who should not be the contact person for making the initial complaint?
7. What is the most effective approach for an organization to deal with sexual harassment?
8. What sexual harassment training issues are there in a global organization—for international assignments that bring employees to the United States and for international assignments that send U.S. employees to other countries?

Resources

- Berta, D. (2007). EEOC: Industry sued most in claims of teen harassment. *Nation's Restaurant News*, 41(6), 1, 49.
- Code of Federal Regulations. (1980). *Guidelines on sexual harassment*. 29 C.F.R Part 1604.11. http://edocket.access.gpo.gov/cfr_2008/julqtr/29cfr1604.11.htm
- Colquitt, B., & Kleiner, B. H. (1996). How the best companies are preventing sexual harassment in the workplace. *Equal Opportunities International*, 15(3), 12-20.
- Eaton, D. E. (2004). Beyond room service: Legal consequences of sexual harassment of staff by hotel guests. *Cornell Hotel and Restaurant Administration Quarterly*, 15(4), 347-361.
- Faley, R. H., Knapp, D. E., Kustis, G. A., & Dubois, C. L. Z. (1999). Estimating the organizational costs of sexual harassment: The case of the U.S. Army. *Journal of Business and Psychology*, 13(4), 461-484.
- Frierson, J. G. (1989). Reduce the costs of sexual harassment. *Personnel Journal*, 68(11), 79-85.
- Greenwald, J. (2006). Companies face increased risks when employing teens. *Business Insurance*, 40(46), 4-5.
- Kastl, M. A., & Kleiner, B. H. (2001). New developments concerning discrimination and harassment in universities. *International Journal of Sociology and Social Policy*, 21(8-10), 156-164.
- Munson, L. J., Hulin, C., & Drasgow, F. (2000). Longitudinal analysis of dispositional influences and sexual harassment: Effects on job and psychological outcomes. *Personnel Psychology*, 53(1), 21-46.
- Pearson, J. I. (1997). Harassment: Risk management tools. *Risk Management*, 44(1), 25-28.
- Peirce, E. R. (1999). Sexual harassment: Why brokers trade in it, and what can be done to stop it. *Business and Society Review*, 104(1), 42-52.
- Peirce, E. R., Smolinski, C. A., & Rosen, B. (1998). Why sexual harassment complaints fall on deaf ears. *Academy of Management Executive*, 12(3), 41-54.
- Reese, L. A., & Lindenberg, K. E. (2002). Assessing local government sexual harassment policies. *American Review of Public Administration*, 32(3), 295-311.
- Richman, J. A., Flaherty, J. A., & Johnson, T. P. (1999). Sexual harassment and generalized workplace abuse among university employees: Prevalence and mental health correlates. *American Journal of Public Health*, 89(3), 358-363.

- Robinson v. Jacksonville Shipyards, Inc., 760 F.Supp 1486 (U.S. District Court for the Middle District of Florida, Jacksonville Division, 1991).
- Rospenda, K. M., Richman, J. A., Ehmke, J. L. Z., & Zlatoper, K. W. (2005). Is workplace harassment hazardous to your health? *Journal of Business and Psychology*, 20(1), 95-110.
- Stedham, Y., & Mitchell, M. C. (1998). Sexual harassment in casinos: Effects on employee attitudes and behavior. *Journal of Gambling Studies*, 14 (4), 381-400.
- Stringer, D. M., Remick, H., Salisbury, J., & Ginorio, A. B. (1990). The power and reasons behind sexual harassment: An employer's guide to solutions. *Public Personnel Management*, 19(1), 43-52.
- Takeyama, D., & Kleiner, B. H. (1998). How to prevent sexual harassment in the workplace. *Equal Opportunities International*, 17(6), 6-12.
- U.S. Equal Employment Opportunity Commission. (1990, March). *Policy guidance on current issues of sexual harassment*. <http://www.eeoc.gov/policy/docs/currentissues.html>
- U.S. Equal Employment Opportunity Commission (2007, May 17). *Sexual harassment*. http://www.eeoc.gov/types/sexual_harassment.html
- U.S. Equal Employment Opportunity Commission. (2008). *Sexual harassment charges EEOC & FEPAs Combined: FY 1997–FY 2007*. <http://www.eeoc.gov/stats/harass.html>
- Wendt, A. C., & Slonaker, W. M. (2002). Sexual harassment and retaliation: A double-edged sword. *S.A.M. Advanced Management Journal*, 67(4), 49-57.
- York, K. M., Barclay, L. A., & Zajack, A. B. (1997). Preventing sexual harassment: The effect of multiple training methods. *Employee Responsibilities and Rights Journal*, 10(4), 277-289.

AGE DISCRIMINATION, RETIREMENT, AND BRIDGE EMPLOYMENT

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination on the basis of age for workers over 40 years of age. Specifically, it is unlawful for an employer

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age . . . (2) to limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age . . . or (3) to reduce the wage rate of any employee in order to comply with this chapter. (Sec. 623)

Between 1997 and 2003, age discrimination in employment plaintiffs recovered more money from jury verdicts than from any other protected group (Segal, 2006).

The original ADEA law protected individuals 40 to 65 years old, but the law was amended in 1986, and the upper age limit was eliminated.

Therefore, mandatory retirement programs are illegal, with the exception of employees who for the 2-year period immediately before retirement have been employed in a bona fide executive or high policy-making position, if the executive is entitled to an immediate, nonforfeitable, annual aggregate retirement benefit of at least \$44,000 from any combination of employer sponsored retirement plans. Two other exemptions to mandatory retirement had allowed universities to have mandatory retirement for tenured college and university professors, and for law enforcement officers and firefighters, but these exemptions ended in 1994. Typically, public safety officers were required to retire between age 50 and 65, regardless of their ability to perform their duties (Pynes, 1995). Based on a sample of 16,000 faculty members at 104 colleges and universities, eliminating mandatory retirement for university faculty resulted in retirement rates for faculty over 70 years old falling to rates similar to 69-year-olds, suggesting that colleges and universities will experience a rise in the number of older faculty (Ashenfelter & Card, 2002).

The average retirement age (i.e., the youngest age at which half of the population is out of the labor force), has declined significantly over time, from 74 years old in 1910, to 70 in 1950, 65 in 1970, and 62 in 1985, and has appeared to remain stable since then (Cahill, Giandrea, & Quinn, 2006). Although the average retirement age may have recently resumed its long-run decline after leveling off for 10 to 15 years, the decline has been attributed to a rise in the labor force participation rate of older workers (Gendell, 2001). There are a number of factors that might explain why the long-term decline in average retirement age has leveled off, including the end of mandatory retirement, the shift away from defined benefit pension plans toward defined contribution pension plans, improvements in health and longevity, and changes in the physical nature of jobs.

Instead of a traditional retirement, many workers are now making the transition from a full-time career job to full-time retirement by taking a bridge job, a kind of partial retirement. Based on 10 years of data in the U.S. Bureau of Labor Statistics Health and Retirement Study, about half of the people studied with full-time career jobs had taken a bridge job rather than moving directly out of the labor force (Cahill et al., 2006). For the organization, bridge employment may be a solution to staffing problems, by providing an incentive for older workers to retire early, and by employing a better trained and more readily available alternative to temporary workers (Kim & Feldman, 2000). For some workers, bridge jobs are a financial necessity; for others, it brings three benefits: continued activity and daily structure, less work and less job-related stress, and a better sense of self-worth from providing valuable information and guidance to the next generation. Bridge employment is strongly related to retirement satisfaction and overall life satisfaction (Kim & Feldman, 2000).

Another trend in the labor market is postretirement employment, especially work after early retirement. Instead of permanent retirement, some people return to work after retirement and are referred to as working retirees (Herz, 1995). According to a survey conducted by the American Association of Retired Persons (2004), 79% of baby boomers plan to work in some capacity during their retirement years. A cost-effective strategy for the organization to deal with labor shortages is to encourage bridge employment to retain older workers beyond the normal retirement age or recruit them after they retire (Rau & Adams, 2005).

Strategic Questions

1. Public safety officers were a group of workers for whom organizations could have mandatory retirement, until the ADEA exemption expired. What made these jobs different, that mandatory retirement had been allowed for them?
2. Tenured university professors were another group of workers for whom organizations could have mandatory retirement, until the ADEA exemption expired. What made this job different, that mandatory retirement had been allowed for it?
3. What benefits would an organization gain by actively working with preretirement employees to develop a career plan, including a bridge job as their transition to retirement?
4. What benefits might an employee gain by taking a bridge job?
5. How can an organization effectively recruit for bridge jobs? What aspects of bridge jobs would be attractive to workers? What aspects of the organization would be attractive to workers looking for bridge jobs?
6. For what kinds of jobs would hiring bridge employees or postretirement employees be more effective than hiring temporary employees?

Resources

- Adams, G., & Rau, B. (2004). Job seeking among retirees seeking bridge employment. *Personnel Psychology, 57*(3), 719-744.
- Age Discrimination in Employment Act of 1967. <http://www.eeoc.gov/policy/adea.html>; especially see 1625.9: Prohibition of involuntary retirement; and 1625.12: Exemption for bona fide executive or high policymaking employees, http://www.access.gpo.gov/nara/cfr/waisidx_06/29cfr1625_06.html
- American Association of Retired Persons. (2004). *Baby Boomers envision retirement II: Survey of Baby Boomers' expectations for retirement*. Washington, DC: Author.
- Ashenfelter, O., & Card, D. (2002). Did the elimination of mandatory retirement affect faculty retirement? *American Economic Review, 92*(4), 957-980.
- Cahill, K. E., Giandrea, M. D., & Quinn, J. F. (2006). Are traditional retirements a thing of the past? New evidence on retirement patterns and bridge jobs. *Business Perspectives, 18*(2), 26-37.

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- Chen, Y., & Scott, J. C. (2003). Gradual retirement: An additional option in work and retirement. *North American Actuarial Journal*, 7 (3), 62-74.
- Feldman, D. C. (1994). The decision to retire early: A review and conceptualization. *Academy of Management Review*, 19(2), 285-311.
- Feldman, D. C., & Kim, S. (2000). Bridge employment during retirement: A field study of individual and organizational experiences with post-retirement employment. *Human Resource Planning*, 23(1), 14-25.
- Gendell, M. (2001). Retirement age declines again in 1990s. *Monthly Labor Review*, 124(10), 12-21.
- Herz, D. E. (1995). Work after early retirement: An increasing trend among men. *Monthly Labor Review*, 118(4), 13-20.
- Honig, M., & Hanoch, G. (1985). Partial retirement as a separate mode of retirement behavior. *Journal of Human Resources*, 20(1), 21-46.
- Kim, S., & Feldman, D. C. (2000). Working in retirement: The antecedents of bridge employment and its consequences for quality of life in retirement. *Academy of Management Journal*, 43(6), 1195-1210.
- Krashinsky, M. (1988). The case for eliminating mandatory retirement: Why economics and human rights need not conflict. *Canadian Public Policy*, 14(1), 40-51.
- Lazear, E. P. (1979). Why is there mandatory retirement? *Journal of Political Economy*, 87(6), 1261-1284.
- O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308 (Supreme Court of the United States, 1996).
- Pynes, J. E. (1995). The ADEA and its exemptions on the mandatory retirement provisions for firefighters. *Public Personnel Administration*, 15(2), 34-45.
- Rau, B. L., & Adams, G. A. (2005). Attracting retirees to apply: Desired organizational characteristics of bridge employment. *Journal of Organizational Behavior*, 26(6), 649-660.
- Ruhm, C. J. (1990). Bridge jobs and partial retirement. *Journal of Labor Economics*, 8(4), 482-501.
- Saba, T., & Guerin, G. (2005). Extending employment beyond retirement age: The case of health care managers in Quebec. *Public Personnel Management*, 34(2), 195-214.
- Segal, J. A. (2006). Time is on their side. *HR Magazine*, 51(2), 129-133.
- Ulrich, L. B., & Brott, P. E. (2005). Older workers and bridge employment: Redefining retirement. *Journal of Employment Counseling*, 42(4), 159-170.
- Weckerle, J. R., & Shultz, K. S. (1999). Influences on the bridge employment decision among older USA workers. *Journal of Occupational and Organizational Psychology*, 72(3), 317-329.

CHECKING REFERENCES AND GIVING REFERENCES

The dean of admissions at the Massachusetts Institute of Technology resigned after the school confirmed an anonymous tip that she had lied about having a bachelor's and master's degree from Rensselaer Polytechnic Institute. The dean was an outspoken advocate of reducing the stress of college admissions, because too many students were puffing up their credentials (Winstein & Golden, 2007). A city manager for 15 years was fired after he admitted that he lied about having degrees from the University of Michigan-Flint, Washtenaw Community College, and Franklin University in Columbus, Ohio (Wouk & Cardenas, 2003). Three years previously, the manager told a local university that he had a bachelor's degree, and they hired him to teach a course on ethics, using the city's code of ethics as a teaching tool, according to a student who took the class (Manolatos & Schultz, 2003).

On one hand, prospective employers want to check references to be sure that they are hiring the person they think they are hiring. Reference checking has long been part of the selection process (Best, 1977; Messmer, 2000). Employers want to verify with the applicants' previous employers the information that the applicant has provided about themselves and their work history. Claims made by applicants may be true, exaggerated, or entirely fictional; between 10% and 30% of all job applicants distort the truth or lie on their resume (Crockett, 1999). Employers have a duty to protect their employees, customers, clients, and visitors from injury caused by employees that the employer knows—or should have known—pose a risk to others (Woska, 2007). If the organization does not do an effective job of reference checking and fails to uncover an applicant's incompetence or unfitness by a diligent search of references, the organization might be sued for negligent hiring (Edwards & Kleiner, 2002; Fenton & Lawrimore, 1992), defamation, infliction of emotional distress, and interference with a contractual relationship (Tahan & Kleiner, 2001). For example, a medical center hired a registered nurse, who later confessed to killing up to 40 other patients while employed at 10 different medical centers (Roberts, 2004).

On the other hand, past employers are often reluctant to share negative information, fearing a defamation suit. This has led to many organizations adopting a "name, rank, and serial number" policy concerning reference checks on former employees, doing no more than verifying job titles, dates of employment, and sometimes pay information (Little & Sipes, 2000; McConnell, 2000; Peck, 2007). But even this policy can fail to protect an organization from legal liability, because an employer who knowingly withholds negative information regarding the former employee may be liable for negligent referral (Cadrain, 2004; Little & Sipes, 2000; Tahan & Kleiner, 2001).

This leaves employers in a quandary: They want to provide as little information as possible on current or past employees because of the possibility of a lawsuit, but they want to obtain as much information as possible about potential hires from other employers who are following the same policy of providing as little information as possible.

Strategic Questions

1. Did the city and the universities do an inadequate job of reference checking?
2. Is "job title and dates of employment only" the best policy for an organization to take when other organizations make reference checks about current or past employees?
3. Which is the greater risk of lawsuit, for negligent hiring or for defamation? What can the organization do to reduce the risk?
4. How can an organization obtain useful information about an applicant if the former employer refuses to give information beyond "job title and dates of employment"?

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5. Who should conduct reference checks on applicants? What skills, training, or experience should they have?
6. Who should respond to reference inquiries about former employees? What skills, training, or experience should they have?

Resources

- Best, R. B. (1977). Don't forget those reference checks! *Public Personnel Management*, 6(6), 422-426.
- Cadrain, D. (2004). HR professionals stymied by vanishing job references. *HR Magazine*, 49(11), 31, 40.
- Edwards, R. M., & Kleiner, B. H. (2002). Conducting effective and legally safe background and reference checks. *Managerial Law*, 44(1-2), 136-150.
- Fenton, J. W., Jr., & Lawrimore, K. W. (1992). Employment reference checking, firm size, and defamation liability. *Journal of Small Business Management*, 30(4), 88-95.
- Little, B. L., & Sipes, D. (2000). Betwixt and between: The dilemma of employee references. *Employee Responsibilities and Rights Journal*, 12(1), 1-8.
- Manolatos, T., & Schultz, M. (2003, October 24). Duchane also lied on application to teach; OU says he claimed degree when he taught two-credit course on ethics for \$1000. *Detroit News*.
- McConnell, C. R. (2000). Employment references: Walking scared between the minefield of defamation and the specter of negligent hiring. *The Health Care Manager*, 19(2), 78-90.
- Messmer, M. (2000). Reference checking: A crucial step in the hiring process. *National Public Accountant*, 45(3), 28-29.
- Peck, D. (2007). High-yield reference checking: Adding new value to the hiring equation. *Employment Relations Today*, 33(4), 51-57.
- Pruitt v. Pavelin, 131 Ariz. 195 (Court of Appeals of Arizona, 1984).
- Randi W v. Muroc Joint Unified School District, 14 Cal 4th 1066 (Supreme Court of California, 1997).
- Roberts, S. (2004). Patient deaths prompt close look at hospital employment practices. *Business Insurance*, 38(3), 3-5.
- Tahan, S., & Kleiner, B. H. (2001). New developments concerning giving employment references. *Management Research News*, 24(3/4), 94-96.
- Weissman v. Sri Lanka Curry House, Inc., 469 N.W.2d 471 (Court of Appeals of Minnesota, 1991).
- Winstein, K. J., & Golden, D. (2007, April 27). MIT admissions dean lied on resume in 1979, quits. *Wall Street Journal*, p. B1.
- Woska, W. J. (2007). Legal issues for HR professionals: Reference checking/background investigations. *Public Personnel Management*, 36(1), 79-89.
- Wouk, M., & Cardenas, E. L. (2003, October 14). Resume claims ensnare Duchane; Politicians demand resignation of Sterling Heights manager who cited nonexistent U-M degree. *Detroit News*.

Applications

COMPLETING THE EEO-1 REPORT

The EEOC collects workforce data from employers with more than 100 employees (lower thresholds apply to federal contractors) through the

EEO-1 Report. Employers that meet the reporting requirements are legally required to provide the data; it is not voluntary. The record-keeping requirements come from the Civil Rights Act of 1964:

Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder.

All employers with 100 or more employees, and all federal government contractors and first-tier subcontractors with 50 or more employees and a contract amounting to \$50,000 or more are required to file an EEO-1 Report by September 30 of each year. The data collected using the EEO-1 Report are used for enforcement, self-assessment by employers, and research. Although the data are confidential, aggregated data are available to the public. In 2007, the EEO-1 report was modified. The major changes involved subdividing the job category of “Officials and Managers” and revising the race and ethnic categories (EEOC, 2006a). There is a new race category of “Two or more races (Not Hispanic or Latino),” “Asian or Pacific Islander” is divided into two separate categories, and Black is renamed “Black or African American.” Also, the “Officials and Managers” category has been divided into two subcategories: Executive/Senior Level Officials and Managers and First/Middle Level Officials and Managers.

The preferred method for completing the EEO-1 Survey is the EEOC’s Web-based filing system. Online filing requires no special software installation, because the online form is Web based, information entered in previous years is prefilled from the previous year to speed data entry, the data are encrypted to ensure privacy, and historical data are maintained for up to 10 years.

To Do

Use the data from the EEO-1 Aggregate report for your metropolitan statistical area to complete the EEO-1 Report (EEOC, 2006a). Go to the U.S. Census Bureau Web site, and use the state-based Metropolitan and Micropolitan Statistical Areas (MSA) Maps to find your MSA. For “state-based (page size) maps of metropolitan and micropolitan statistical areas,” select the most recent year; then from the list of states, select your state. Use the map to identify your MSA. Omit the “Executive/Senior-Level Officials and Managers” and “First/Middle-Level Officials and Managers” job categories.

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Resources

- U. S. Census Bureau. (2004, November). *State-based metropolitan and micropolitan statistical areas maps*. http://www.census.gov/geo/www/maps/stcbsa_pg/stBased_200411_nov.htm
- U.S. Equal Employment Opportunity Commission. (2005). *2005 PMSA aggregate report*. <http://www.eeoc.gov/stats/jobpat/2005/msa/index.html>
- U.S. Equal Employment Opportunity Commission. (2006a, November 7). *EEO-1 report, section D*. http://www.eeoc.gov/eo1/eo1_2007_d.pdf
- U.S. Equal Employment Opportunity Commission. (2006b, January). *EEO-1 report, instruction booklet*. http://www.eeoc.gov/eo1/instruction_rev_2006.pdf
- U.S. Equal Employment Opportunity Commission. (2006c, December 19). *EEO surveys*. <http://www.eeoc.gov/employers/surveys.html>
- U.S. Equal Employment Opportunity Commission. (2006d). *Job classification guide*. <http://www.eeoc.gov/eo1/jobclassguide.pdf>

DETERMINING THE ADVERSE IMPACT OF A SELECTION PROCEDURE

Discrimination in employment is a legal judgment, made by a judge or a jury. The administrative agencies that enforce the Civil Rights Act of 1964 use an administrative term to describe evidence of discrimination. Adverse impact is “a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group (Uniform Guidelines on Employee Selection Procedures, Sec. 1607.16, B).” To determine whether a selection test has adverse impact, the Four-Fifths Rule is applied to applicant flow data, looking at the outcomes obtained from using the selection test for a particular job (Uniform Guidelines on Employee Selection Procedures, Sec.1607.4, D. Information on impact):

Adverse impact and the Four-Fifths rule. A selection rate for any race, sex, or ethnic group that is less than four fifths (or 80%) of the rate for the group with the highest rate will generally be regarded by the federal enforcement agencies as evidence of adverse impact, whereas a greater than four fifths rate will generally not be regarded by federal enforcement agencies as evidence of adverse impact.

If the sample size is large enough, the chi-square test may be used to test for statistically significant differences in selection ratios. A statistically significant chi-square would indicate that the selection ratio for the minority group is less than the selection ratio for the majority group. The Four-Fifths Rule and the chi-square test will typically lead to the same

conclusion about adverse impact. For smaller sample sizes (less than about 150 cases), the chi-square lacks sufficient statistical power and the Four-Fifths Rule should be used, but at larger sample sizes, the chi-square will detect real differences in selection ratios when the Four-Fifths Rule does not (York, 2002).

In some cases, applicant flow data are not available, either because the organization has lost the data or never collected it. However, like failing to keep required tax documentation, this puts the organization in a difficult position (Uniform Guidelines on Employee Selection Procedures, Sec. 1607.4, D):

Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

Instead of doing an adverse impact calculation based on applicant flow data, a Labor Market Analysis (or Utilization Analysis or Hazelwood Analysis) can be done, comparing the ratio of minority to majority of employees in a particular job in the organization to the ratio of minority to majority of potential applicants in the local labor market (i.e., the Metropolitan Statistical Area as defined by the U.S. Census). Metropolitan and micropolitan statistical areas (metro and micro areas) are geographic entities defined by the U.S. Office of Management and Budget for use by federal statistical agencies in collecting, tabulating, and publishing federal statistics. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The ninth largest Metropolitan/Micropolitan Statistical Area is Code 19820: Detroit-Warren-Livonia, with a population of 4,452,557. The smallest is Code 11380: Andrews, TX with 13,004 people.

In *Hazelwood School District v. U.S.* (1977), the Supreme Court ruled that there was a significant statistical disparity between the percentage of Black teachers employed by the school district and the percentage of Black teachers in the relevant labor market. In St. Louis County and the city of St. Louis, 15.4% of the teachers were Black; but in the 1972-1973 and 1973-1974 school years, only 1.4% and 1.8%, respectively, of Hazelwood's teachers were Black.

To Do

Do a Labor Market Analysis for a hypothetical school district in the nearest Metropolitan Statistical Area to you. Assume that in this hypothetical school district, 13 out of 244 (5.3%) of the secondary school teachers are Black. Determine whether Black teachers are underutilized.

1. Go to the U.S. Census Bureau Web site, and use the state-based Metropolitan and Micropolitan Statistical Areas Maps to find the MSA that your school district is in. For "State-based (page size) maps of metropolitan and micropolitan statistical areas," select the most recent year; then from the list of states, select your state. Use the map to identify your MSA and enter your MSA in the Labor Market Analysis Table.
2. Go to the U.S. Census Bureau Web site, to use the Census 2000 EEO Data Tool. <http://www.census.gov/eo2000/index.html>.
3. For "Choose the Table You Want to Display," select "Employment by Census Occupation Codes." For "Select Geography," select "Residence: Data based on where people live."
4. For "Select one of the following levels of geography," select Metropolitan Areas (MSAs, PMSAs). Click Next.
5. For "Select one or more Metro Areas," select the metropolitan area your school district is in.
6. For "Occupation Sort Order," select "Sort Alphabetically," and click "Sort." In the box "Select one or more occupation categories (or Census Occupation Codes)," scroll down to "Secondary School Teachers," and select "Secondary School Teachers." For "Select Race Categories to Display," select "Show Detailed Race/Ethnicity Categories." For "Output Options," select "Show Total of Selected Geographies and Occupations." Click "Display table."
7. Calculate the Four-Fifths Rule on the data you have collected. Enter the data you have collected into the Labor Market Analysis Table. The adverse impact ratio is the percentage of Black secondary teachers employed by the school district, divided by the percentage of Black secondary teachers in the relevant labor market. If the adverse impact ratio is less than 80%, then there is underutilization.
8. Is there underutilization of Black secondary teachers in the school district?

<i>Labor Market Analysis</i>		MSA:
	<i>Number Employed</i>	<i>Number in Labor Market</i>
Black	13	
Total	244	
Percentage		
Adverse Impact Ratio		

Resources

- Hazelwood School District v. U.S., 433 U.S. 299 (United States Supreme Court, 1977).
- Ironson, G. H., Guion, R. M., & Ostrandet, M. (1982). Adverse impact from a psychometric perspective. *Journal of Applied Psychology*, 67(4), 419-432.
- Jones, G. F. (1981). Usefulness of different statistical techniques for determining adverse impact in small jurisdictions. *Review of Public Personnel Administration*, 2(1), 85-89.
- U.S. Census Bureau. (2000). *2000 EEO data tool*. <http://www.census.gov/eeo2000/index.html>
- U.S. Census Bureau. (2004, November). *State-based metropolitan and micropolitan statistical areas maps*. http://www.census.gov/geo/www/maps/stcbsa_pg/stBased_200411_nov.htm
- U.S. Census Bureau. (2008, August 19). *Metropolitan and micropolitan statistical areas*. <http://www.census.gov/population/www/estimates/metroarea.html>
- Wollack, S. (1994). Confronting adverse impact in cognitive examinations. *Public Personnel Management*, 23(2), 217-224.
- York, K. M. (2002). Disparate results in adverse impact tests: The 4/5ths Rule and the chi square test. *Public Personnel Management*, 31(2), 253-262.

Experiential Exercises

IDENTIFYING BARRIERS TO ACCESS IN THE WORKPLACE

The Americans with Disabilities Act (1990) recognized that “discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.” When the Americans with Disabilities Act was passed, it was estimated that there were 43 million Americans with a disability. The current estimate is 54 million Americans with disabilities (Rimmer, Riley, Wang, & Rauworth, 2005; Wells, 2001), and as the baby boom generation enters middle age, this number is likely to increase, because about 25% of people aged 45 to 64 have a disability (Pointer & Kleiner, 1997).

One of the purposes of the Americans with Disabilities Act was to provide a clear national mandate for the elimination of discrimination against individuals with disabilities. This includes architectural barriers to access, common in buildings and facilities constructed prior to the Americans with Disabilities Act. Entities that receive federal funds, such as hospitals, colleges, universities, and state and local governments, are required by law to complete a Self-Evaluation and Transition Plan to achieve accessibility and eliminate discriminatory practices (Hanks, 2004). Pointer and Kleiner (1997) list four common physical barriers to buildings: doorways wide enough to accommodate a wheelchair, elevator or other access to the

second or third floor, accessible restroom, and accessible office space. Many buildings have access control systems, which must be accessible to people with disabilities (e.g., an entrance requiring entry of a code number must not depend only on visual or auditory cues; McPherson, 2001).

To Do

Conduct a barrier survey of the facilities of a local business in one of industries listed below. The barriers could apply to customers or employees. Identify physical obstacles or architectural barriers that limit the accessibility to the facility or to activities within the facility, for someone with a disability covered under the Americans with Disabilities Act. Consider access for someone with disabilities in hearing, vision, mobility, or any other physical disability. Then describe in detail the nature of the barrier and what needs to be done to make the facilities accessible.

Airport limo service	Library	Salon
Bank/ATM	Movie theater	Sports arena
College/University	Public transit	Travel/Guided tours company
Health club	Restaurant	Urgent care
Hotel/Motel	Retail store	

Resources

- Americans with Disabilities Act. (1990). <http://www.eeoc.gov/policy/ada.html>
- Blanck, P. D. (1996). *Communicating the Americans with Disabilities Act, transcending compliance: 1996 follow-up report on Sears, Roebuck and Co.* Iowa City, IA: Annenberg Program.
- Cavinato, J. L. (1992). Transportation and tourism for the disabled: An assessment. *Transportation Journal*, 31(3), 46-53.
- Code of Federal Regulations, 28 CFR, Part 35—Nondiscrimination on the basis of disability in state and local government services; especially see Section 105: *Self-evaluation*; and Section 150, *Existing facilities*, http://www.access.gpo.gov/nara/cfr/waisidx_06/28cfr35_06.html
- East Bay Regional Park District. (2006, May). *ADA self-evaluation and transition plan*. http://www.ebparks.org/resources/pdf/district/EBRPD_ADA_SETP_2006.pdf
- Easter Seals Project ACTION. (2004). *Toolkit for the assessment of bus stop accessibility and safety*. http://projectaction.easterseals.com/site/DocServer/06BSTK_Complete_Toolkit.pdf?docID=21443
- Hanks, D. (2004). ADA compliance: It's more than 'removing barriers.' *Nursing Homes*, 53(6), 70-71.
- McPherson, R. (2001). ADA integration. *Buildings*, 95(9), 26.
- Pointer, T. A., & Kleiner, B. H. (1997). Developments concerning accommodation of wheelchair users within the workplace in accordance to the Americans with Disabilities Act. *Equal Opportunities International*, 16(6/7), 44-49.
- Rimmer, J. H., Riley, B., Wang, E., & Rauworth, A. (2005). Accessibility of health clubs for people with mobility disabilities and visual impairments. *American Journal of Public Health*, 95(11), 2022-2028.
- University of Montana–Western. (2005, June). *ADA self-evaluation and transition plan*. <http://www.umwestern.edu/studentlife/disabilities/SETP.pdf>
- Wells, S. J. (2001). Is the ADA working? *HR Magazine*, 46(4), 38-46.
- Wilson, M. (2001). ADA unclear on merchandise access. *Chain Store Age*, 77(7), 124.

INTERNET APPLICATIONS AND ILLEGAL PRE-EMPLOYMENT INQUIRIES

An applicant is any person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be shown by completing the application form or even orally indicating an interest in a job, depending on the employer. The use of company Web sites has made recruitment one of the most successful applications of the Internet for business purposes (Cober, Brown, & Levy, 2004). In the Internet age, e-mail, Web sites such as third-party job or resume banks and employment Web pages, electronic scanning technology, applicant tracking systems, and internal databases of job seekers has broadened the definition of who is an applicant. The state of Washington, for example, uses an Internet application system for on-line application, screening, testing, and notification, processing 100,000 employment applicants each year (Bingham, Ilg, & Davidson, 2002). In this context, an individual is an applicant when (a) the employer has acted to fill a particular position, (b) the individual has followed the employer's standard procedures for submitting applications, and (c) the individual has indicated an interest in the particular position.

Employers are limited in what pre-employment inquiries they can ask applicants. Employers should not inquire about matters that may disproportionately exclude members of protected groups, unless the inquiry concerns a legitimate attribute for the job (i.e., the employer can show that the requirement is job related and consistent with business necessity). Although there are some specific exceptions, some examples of pre-employment inquiries that normally should be avoided include as follows (Bland & Stalcup, 1999; Burrington, 1982; EEOC, 2006; Frierson & Jolly, 1988; Koen, 1995; Letizia, 2004; Munchus, 1985):

- Marital status, and if married, date of marriage. Number of dependents, including the applicant.
- Have you been convicted of a crime in the past 10 years, excluding misdemeanors and summary offenses, which has not been annulled, expunged, or sealed by a court?
- State names of relatives and friends working for this organization, other than your spouse.
- What is your ancestry?
- What is your date of birth?
- What is your race?
- What are the names and relationships of those with whom you live?
- When did you graduate?
- Does your husband support your decision to work?
- Have you ever been treated by a psychiatrist or psychologist?
- Have you had any prior worker's compensation claims?

- What religion are you?
- What language do you speak at home?
- What medications are you currently taking?
- What organizations, clubs, societies, and lodges do you belong to?
- Are you a U.S. citizen?
- Are you married, divorced, or single?
- Are you pregnant? Are you planning to have children?
- Do you have any children? How old are they? What are your child care arrangements?
- What is your gender?
- Do you have any handicaps?
- What is your financial status?
- Are you a member of any union?
- Do you own a car?
- Have you filed for bankruptcy?
- What is the minimum salary you are willing to accept?

Burrington (1982) collected application forms from the central state personnel agencies of all 50 states and found that all of the application forms contained at least one inappropriate request for information, and one contained 19, with an average of 7.7 inappropriate items on each application. Camden and Wallace collected 94 application forms from companies in a large metropolitan area, from retail stores, service industries, industrial manufacturing companies, corporate headquarters for *Fortune 1000* firms, and civic institutions, and found that 73% of the forms contained one or more illegal pre-employment inquiries. Vodanovich and Lowe (1992) examined a cross-section of 88 organizations in the service industry and found that all of the organizations' application blanks contained inadvisable items, with an average of 7.4 inadvisable items per form. Wallace, Tye, and Vodanovich (2000) found at least one inadvisable question on 97.5% of Internet-based state application forms from 41 states. Fine and Schupp (2002) collected 59 employment applications from retail outlets and found that 37 (63%) of them created discriminatory legal liability for the employers using them. Kethley and Terpstra (2005) analyzed more than 300 federal court cases involving the use of the application form and found that more than 50% of the cases involved charges related to the applicant's sex and age, and another 15% were related to the applicant's race.

To Do

Search company Web pages to find online applications for five companies. The companies can be small local businesses, multinational organizations, or state, local, or federal government. Using the form here or any piece of paper, identify on each organization's application any pre-employment inquiries that should be avoided on an application.

Inappropriate Pre-employment Inquiries	
<i>Company</i>	<i>Inappropriate Pre-employment Inquiries</i>
1.	
2.	
3.	
4.	
5.	

(Continued)

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Resources

- Bingham, B., Ilg, S., & Davidson, N. (2002). Great candidates fast: On-line job application and electronic processing. *Public Personnel Management*, 31(1), 53-64.
- Bland, T. S., & Stalcup, S. S. (1999). Build a legal employment application. *HR Magazine*, 44(3), 129-133.
- Burrington, D. D. (1982). A review of state government employment application forms for suspect inquiries. *Public Personnel Management Journal*, 11(1), 55-60.
- Camden, C., & Wallace, B. (1983). Job application forms: A hazardous employment practice. *Personnel Administrator*, 28(3), 31-32, 64.
- Cober, R. T., Brown, D. J., Blumental, D. J., Doverspike, D., & Paul Lev, P. (2000). The quest for the qualified job surfer: It's time the public sector catches the wave. *Public Personnel Management*, 29(4), 479-496.
- Cober, R. T., Brown, D. J., & Levy, P. E. (2004). Form, content, and function: An evaluative methodology for corporate employment web sites. *Human Resource Management*, 43(2/3), 201-218.
- Fine, C. R., & Schupp, R. W. (2002). Liability exposure trends in recruitment: An assessment and analysis of retail employment applications. *Employee Responsibilities and Rights Journal*, 14(4), 135-143.
- Fortune 500. (2007). *Annual ranking of America's largest corporations*. http://money.cnn.com/magazines/fortune/fortune500/2007/full_list/index.html
- Fortune 500. (2007). *Fortune 100 Best companies to work for*. <http://money.cnn.com/magazines/fortune/bestcompanies/2007/>
- Frierson, J. G., & Jolly, J. P. (1988). Problems in employment application forms. *Employment Relations Today*, 15(3), 205-217.
- Kethley, R. B., & Terpstra, D. E. (2005). An analysis of litigation associated with the use of the application form in the selection process. *Public Personnel Management*, 34(4), 357-375.
- Letizia, J. M. (2004). How to avoid a wrongful discharge suit. *Home Health Care Management & Practice*, 16(2), 138-140.
- Munchus, G., III. (1985). The status of pre-employment enquiry restrictions on the employment and hiring function. *Employee Relations*, 7(3), 20-26.
- U.S. Equal Employment Opportunity Commission. (2006, May 9). *Title VII/ADEA pre-employment inquiries*. http://www.eeoc.gov/foia/letters/2006/titlevii_adea_preemployment_inquiries.html
- Vodanovich, S. J., & Lowe, R. H. (1992). They ought to know better: The incidence and correlates of inappropriate application blank inquiries. *Public Personnel Management*, 21(3), 363-370.
- Wallace, J. C., Tye, M. G., & Vodanovich, S. J. (2000). Applying for jobs online: Examining the legality of Internet-based application forms. *Public Personnel Management*, 29(4), 497-504.

Creative Exercises

MAKING REASONABLE ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job

training, and other terms, conditions, and privileges of employment. An individual with a disability is a person who

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources, and the nature and structure of its operation. An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids (EEOC, 2007).

There are different kinds of accommodations that an employer might make (EEOC, 1999). The employer might restructure a job by shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability or alter when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place. Some reasonable accommodations may include a modified or part-time schedule, adjusting arrival or departure times, periodic breaks, or change of time when certain job tasks are performed. Accommodations might also require purchase of equipment or revision of training material (Drach, 1992).

The U.S. General Accounting Office’s (1990) study on the cost of accommodations under Americans with Disabilities Act reported that 51% cost nothing, another 30% cost less than \$500, and only 8% of the

workers received accommodations costing more than \$2,000. Blanck's (1996) study of Americans with Disabilities Act accommodations at Sears from January 1, 1993, to December 31, 1995, found that the average cost at Sears of providing workplace accommodations to employees with disabilities was \$45, and of more than 70 workplace accommodations, almost all (99%) required little or no cost.

To Do

Choose a local business (even a college or university), contact the human resources manager, and find out what accommodations have recently been made for an employee with a disability. Also, estimate the cost of the accommodations. Using the form here or your own paper, write a short report detailing your findings: job title and job description, the essential job functions for which the employee needed accommodation, a description of the accommodations that were made, and an estimate of the cost of the accommodation. For example, if a recently hired individual required that a desk be raised on blocks to allow clearance for a wheelchair, how much did the blocks and labor cost? If an employee required frequent breaks, what was the cost to the organization of making changes in the work schedule?

Disabilities Accommodation

<i>The Job</i>	<i>The Accommodation</i>
Job title: Job description:	Accommodations made:
Essential functions for which the employee needed accommodation:	Cost estimate:

Resources

- Americans with Disabilities Act of 1990. <http://www.eeoc.gov/policy/ada.html>
- Blanck, P. D. (1996). *Communicating the Americans with Disabilities Act, transcending compliance: 1996 follow-up report on Sears, Roebuck and Co.* Iowa City, IA: Annenberg Program.
- Drach, R. L. (1992). Making reasonable accommodations under the ADA. *Employment Relations Today*, 19(2), 167-169.
- Dykhhoorn, H. J., & Sinning, K. E. (1993). Complying with the Americans with Disabilities Act: Costs and tax treatment. *National Public Accountant*, 38(6), 32-37.
- Harlan, S. L., & Robert, P. M. (1998). The social construction of disability in organizations: Why employers resist reasonable accommodations. *Work and Occupations*, 25(4), 397-435.
- Hirschman, C. (1997). Reasonable accommodations at a reasonable cost. *HR Magazine*, 42(9), 106-114.
- Hollwitz, J., Goodman, D. F., & Bolte, D. (1995). Complying with the Americans with Disabilities Act: Assessing the costs of reasonable accommodation. *Public Personnel Management*, 24(2), 149-157.
- Job Accommodation Network. <http://www.jan.wvu.edu/>
- Lerner, C. S. (2004). "Accommodations" for the learning disabled: A level playing field or Affirmative Action for elites? *Vanderbilt Law Review*, 57(3), 1041-1124.
- Nelson, J., & Kleiner, B. H. (2001). How to accommodate common disabilities in organisations. *Equal Opportunities International*, 20(5-7), 146-151.
- U.S. Equal Employment Opportunity Commission. (1999, March 1). *Small employers and reasonable accommodation*. <http://www.eeoc.gov/facts/accommodation.html>
- U.S. Equal Employment Opportunity Commission. (2007, May 17). *Disability discrimination*. <http://www.eeoc.gov/types/ada.html>
- U.S. General Accounting Office. (1990, January). *Persons with disabilities: Reports on costs of accommodations*. GAO/IIIRD-9044BR. <http://archive.gao.gov/d27t7/140318.pdf>

CREATING A SEXUAL HARASSMENT PREVENTION PROGRAM

According to the EEOC's Guidelines on Sexual Harassment (Code of Federal Regulations, 1980, Section F):

Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

A sexual harassment prevention program, therefore, contains two key parts. The organization must develop a sexual harassment policy and make sure that all employees are made aware of the policy and how to make a complaint if they experience sexual harassment.

An effective sexual harassment policy should clearly define both sexual harassment and retaliation and explain how retaliation can take the form

of subtle reprisals such as being excluded from a training lunch (Henneman, 2006). The policy should also make it clear to employees that if a lawsuit is filed against them for sexual harassment, they may be personally liable for monetary damages (Doan & Kleiner, 1999). But having an organizational policy on sexual harassment in place is not enough. When experiencing sexual harassment, only about half of women say they would report it; instead, they choose to remove themselves from the situation or ignore the harassment (Berryman-Fink, 2001). Therefore, other ways of monitoring the organizational climate and other processes for encouraging and supporting employees in using the formal reporting procedure are needed, just as a restaurant relying only on customer complaints will have an impoverished understanding of the general level of customer satisfaction and likelihood of return business.

The second key part of a sexual harassment prevention program is training to sensitize all employees to the issue of sexual harassment. This is necessary, because sometimes harassers do not believe they are sexually harassing others (Frierson, 1989). A variety of training methods have been developed, including role playing, case studies, and videos (Moore, Gatlin-Watts, & Cangelosi, 1998). Using Merit Systems Protection Board survey data from 1987 to 1994, it was found that sexual harassment training had sensitized federal employees to sexual harassment; employees were more likely to view both hostile work environment behavior and quid pro quo behavior as sexual harassment (Pickerill, Jackson, & Newman, 2006).

Sexual harassment training is required by law for employees in California, Connecticut, New Jersey, Massachusetts, and Maine (Gottwals, 2006), as well as public employees in Illinois, Tennessee, and Utah (Befus, 2006). The California law requires that all supervisory employees receive at least 2 hours of sexual harassment training every 2 years, covering sexual harassment prevention and retaliation.

To Do

Create a set of materials for a sexual harassment prevention training program. The packet of materials should include (a) the Guidelines on Sexual Harassment; (b) the organization's sexual harassment policy; (c) EEOC and state equal employment opportunity agency charge statistics for sexual harassment; (d) a set of scenarios of possible sexual harassment, including quid pro quo and hostile work environment sexual harassment; sexual harassment by a supervisor, coworker, or nonemployee; retaliation against an employee making a sexual harassment complaint; and a successfully resolved incident of sexual harassment; (e) a set of common questions and answers about sexual harassment; (f) supplemental materials, such as cases of sexual harassment in the news involving local organizations or *Fortune 500* companies, books and videos on sexual harassment, Web sites on preventing sexual harassment, and so forth.

Resources

- Befus, E. F. (2006). New sexual harassment prevention measures. *National Real Estate Investor*, 48(1), 50.
- Berryman-Fink, C. (2001). Women's responses to sexual harassment at work: Organizational policy versus employee practice. *Employment Relations Today*, 27(4), 57-64.
- Bingham, S. G., & Sherer, L. L. (2001). The unexpected effects of a sexual harassment educational program. *Journal of Applied Behavioral Science*, 37(2), 125-153.
- Burlington Northern & Santa Fe Railway v. White, 126 S.Ct. 2406 (Supreme Court of the United States, 2006).
- Caro, N. (Director). (2005). *North country* [Motion picture]. United States: Warner Home Video.
- Code of Federal Regulations. (1980). *Guidelines on sexual harassment*. 29 C.F.R Part 1604.11. http://edocket.access.gpo.gov/cfr_2008/julqtr/29cfr1604.11.htm
- Doan, H., & Kleiner, B. H. (1999). How to conduct sexual harassment training effectively. *Equal Opportunities International*, 18(5/6), 27-31.
- Frierson, J. G. (1989). Reduce the costs of sexual harassment. *Personnel Journal*, 68(11), 79-85.
- Henneman, T. (2006). After high court ruling, firms may want to take long look at anti-harassment strategies. *Workforce Management*, 85(14), 33-35.
- Meritor Savings Bank v. Vinson, 477 U.S. 57 (Supreme Court of the United States, 1986).
- Moore, H. L., & Bradley, D. B., III. (1997). Sexual harassment in manufacturing: Seven strategies successful companies use to curb it. *Industrial Management*, 39(6), 14-18.
- Moore, H. L., Gatlin-Watts, R. W., & Cangelosi, J. (1998). Eight steps to a sexual-harassment-free workplace. *Training & Development*, 52(4), 12-13.
- Pickerill, J. M., Jackson, R. A., & Newman, M. A. (2006). Changing perceptions of sexual harassment in the federal workforce, 1987-1994. *Law & Policy*, 28(3), 368-394.
- Reese, L. A., & Lindenberg, K. E. (2004). Employee satisfaction with sexual harassment policies: The training connection. *Public Personnel Management*, 33(1), 99-119.
- Robinson v. Jacksonville Shipyards, Inc., 760 F.Supp 1486 (United States District Court for the Middle District of Florida, Jacksonville Division, 1991).
- U.S. Equal Employment Opportunity Commission. *Sexual harassment charges EEOC & FEPAs Combined: FY 1997–FY 2007*. <http://www.eeoc.gov/stats/harass.html>
- York, K. M., Barclay, L. A., & Zajack, A. B. (1997). Preventing sexual harassment: The effect of multiple training methods. *Employee Responsibilities and Rights Journal*, 10(4), 277-289.