

# HUMAN RESOURCES LEGAL ISSUES

*A 50,000 feet high fly-by!*

# Abbreviations and Acronyms

- EE – Employer
- ee – employee
- HR – Human Resources
- MRM – Human Resource Management

# Learning Objectives

- Awareness Level of the Topics:
  - Civil Rights laws
  - Discrimination analysis (2 types)
  - Landmark cases
  - Sexual harassment (2 types)
  - Age, disability discrimination
  - FMLA, affirmative action
  - HRM implications
  - Implications of you as an administrator

## Title VII of the Civil Rights Act of 1964

- It is unlawful for an employer to discriminate in hiring, firing, compensation, promotions, transfers, training, or in any way affect the status of an employee based on race, color, religion, national origin, or sex.
- 1978 amendment – prohibits discrimination based on pregnancy, childbirth, or related conditions

# Equal Employment Opportunity Commission (EEOC)

- Established to regulate compliance with Title VII
- EEOC processes complaints
- Determines if “reasonable cause”
- Has power to sue
- Issues written regulations (Uniform Guidelines on Employee Selection)

## Example

- If John was intentionally not hired because of his race, he is a victim of:
  - a. Prejudice
  - b. disparate treatment
  - c. disparate impact
  - d. poor management practice

## Disparate Treatment (individual)

- ee burden: prima facie case – show were intentionally treated less favorably than others; McDonnell Douglas criteria (applied, qualified, protected, rejected).
- E burden: legitimate/non-discriminatory reason.
- ee burden: prove pretext

## Disparate Treatment (group)

- Pattern & practice model
- ee burden: show intentionally treated less favorably than another group (e.g., corp. policy of not hiring women to sell appliances). Use statistics (e.g., % men/women in target job vs. labor market)
- E burden: BFOQ



## Example

- Tim is not hired for a job as a locker room attendant at Curves. What is Curve's best defense?
  - business necessity
  - BFOQ
  - statistics
  - Pretext

# Business Necessity

- Not easy to prove
- Overriding business purpose
- “must not only directly foster safety and efficiency but also be essential to these goals
  - # of flight hours
  - Curves

## BFOQ

- Bona Fide Occupational Qualification
- FAA requires airline pilots to retire at 65
- Explicitly not allowed for race or color discrimination

# Disparate Impact (Adverse Impact)

- Def: \_\_\_\_\_
- Facially neutral practice has adverse effect on a protected group.
- Unintentional form of discrimination
- ee burden: statistics (e.g., 4/5's Rule)
- E burden: business necessity of practice
- E/ee burden: find alternative w/ less impact.

# Applicant Flow Statistic

- Compare selection rates for different groups (4/5's Rule)
- 1. Determine selection rate for each group
  - selection = #selected      SRW =  $48/80=.60$
  - rate      #applied      SRM =  $12/40=.30$
- 2. Divide smaller SR by larger SR
  - $.30 / .60 = .50$
- If result less than .80, then there is
  - adverse impact (disparate impact)

# Employee Screening Criteria Challenged Because of Disparate Impact

- Educational requirements
- Paper and pencil tests
- Experience requirements
- Height and weight requirements
- Physical ability tests
- Exclusion of applicants with arrest or conviction records
- Credit record requirements
- Exclusion of unwed parents
- Exclusion of applicants with less than honorable discharges from military service
- Preference for applicants with honorable discharge
- Preference for relatives of present employees
- Use of walk-in or word-of-mouth recruiting
- Reference checks
- Promotion based on supervisory recommendations

Note: these are not always illegal.

## Landmark Cases

- Griggs vs. Duke Power – 1971
  - Duke Power required a high school diploma and satisfactory scores on two aptitude tests. This caused disparate impact for blacks, and established legal precedent (1) unintentional discrimination is illegal, (2) business necessity (job relatedness) is required when disparate impact exists.

## Landmark Cases (cont.)

- Albemarle Paper Co. vs. Moody (1975)
  - -selection process flawed based on EEOC guidelines:
  - -tests validated on all white sample
  - -subjective performance ratings used as criterion
- Connecticut vs. Teal (1984)
  - -All steps in a selection process must be evaluated for adverse impact



## Landmark Cases – Community Colleges

- La Fleur v. Wallace State Community college (1996)
  - Demonstrated that assertion that adverse employment decision was based upon academic credentials was only a pretext
- Lewis v. Chattahoochee Valley Community College (2001)
  - Financial considerations are legitimate
  - Plaintiff must demonstrate that nondiscriminatory reasons proffered by employer only a pretext

# Defenses Against Adverse Impact

- BFOQ
  - Bona Fide Occupational Qualification
- Business Necessity

# Civil Rights Act of 1991

- Reason - Ward's Cove vs Atonio (1989)
- Amends Title VII
  - Allows victims of intentional discrimination to sue for both compensatory and punitive damages
  - Jury trials
  - Overseas employment – ee's of U.S. co's
  - Race norming unlawful

## Example

- Sue's boss keeps asking her out and she feels too anxious to go to work. She is a victim of
  - a. quid pro quo
  - b. hostile environment harassment
  - c. adverse impact harassment
  - d. poor management style

# Sexual Harassment

- Clarified by CRA (1991)-gender disc.
- Def: unwanted sexual advances:
- Quid pro quo harassment
- Hostile environment harassment

## Recent Developments

- Same sex harassment.
- Supervisor threatens harassing actions and backs down; constitutes a hostile environment.
- E may be liable even if unaware of offending behavior if lacks a strong policy against harassment.

# What should management do to curb sexual harassment?

- Obey the laws
- Strong policies and enforcement
- Training, training, training
- Take all accusations seriously, but investigate without prior judgement
- Document and follow-up

# Age Discrimination in Employment Act - 1967

- Protects people over the age of 40 from discrimination in employment.
- Who's covered? Applies to employers with 20 or more employees; employment agencies
- Employer defense –BFOQ, RIF
- Recent developments



# Disabilities Discrimination

- Americans with Disabilities Act of 1990 – covers all private employers with 15+ employees
- Disability?
- “Qualified”?
- Reasonable accommodation?
- Undue hardship?
- Excludes certain disabilities (e.g., current alcoholic)

# Disability Law

- Very complex
- Really an entire course on its own
- Includes
  - *ADA, Americans With Disabilities Act*
  - *FEHA, Fair Employment and House Act*
  - *FERPA,*
  - *Others*

# FEHA – Fair Employment and Housing Act

- Protects individuals who:
  - Have a physical or mental disorder or condition which “limits” a major life activity.
  - Have a record or history of such a condition.
  - Are regarded or treated as having or having had a physical or mental condition that “limits” a major life activity.
  - Are regarded or treated as having a physical or mental condition that has no present disabling effect but that may become a physical or mental disability.

## Family Medical Leave Act (1993)

- Covers E's w/ 50+ ees w/l 75 miles.
- 12 weeks unpaid leave w/l 1 year.
- Reasons: child birth, illness, etc.
- Requirements: employed 1 year/1250 hrs. in past year.
- Ee guaranteed current/equal job.
- “key” ee may be denied leave

# Affirmative Action

- In California , no “Affirmative Action”
- Equal Employment Opportunity
- This subject could fill an entire day!

# Impact of EEO on H.R. Management

- Job design – accommodate disabled
- Identify Essential Functions of the Job for all positions
- Identify & recruit underrepresented groups
- Selection – seek to reduce disparate impact
- Training – provide equal access
- Pay – eliminate pay disparity for women – issue in CCs?
- Benefits – cannot treat women differently (pregnancy-related conditions, live longer), disabled employees have equal access to benefits
- Training – regular compliance training of all employees

## Impact of EEO on YOU

- Job design and description
  - Accommodate disabled
  - Identify and enforce Essential Functions of the Job!
- Performance appraisals
  - DO THEM!!!
  - No surprises
  - Progressive counseling & discipline

## Final Thoughts

- Most community college top level administrators seem to agree that at least 80% of their time and energy is expended on human resource issues
- Address potential H.R. situations early – don't evade
- Involve the H.R. department as early as possible
- Communicate with your employees and employ “the one hat solution”



The End

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