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Chapter 2
The Legal Environment

Learning Objectives

After studying this chapter, students should be able to accomplish the objectives given below.

1. Describe the legal context of human resource management
2. Identify key laws that prohibit discrimination in the workplace and discuss equal employment opportunity
3. Discuss legal issues in compensation, labor relations, and other areas in human resource management
4. Discuss the importance to an organization of evaluating its legal compliance

Chapter Outline

Introduction

Managing within the complex legal environment that affects human resource (HR) practices requires a full understanding of that legal environment and the ability to ensure that others within the organization also understand it.

I. The Legal Context of Human Resource Management

The legal context of human resource management is shaped by different forces. The catalyst for modifying or enhancing the legal context may be legislative initiative, social change, or judicial rulings. Thus, the regulatory environment itself is quite complex and affects different areas within the HRM process.

A. The Regulatory Environment of Human Resource Management

The legal and regulatory environment of human resource management in the United States emerges as a result of a three-step process. First is the actual creation of new regulation. This regulation can come in the form of new laws or statutes passed by national, state, or local government bodies; however, most start at the national level. The second step in the regulation process is the enforcement of these regulations. Occasionally, the laws themselves provide for enforcement through the creation of special agencies or other forms of regulatory groups. In other situations, enforcement might be assigned to an existing agency such as the Department of Labor. To be effective, an enforcing agency must have an appropriate degree

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of power. The third step in the regulation process is the actual practice and implementation of those regulations in organizations. In other words, organizations and managers must implement and follow the guidelines that the government has passed and that the courts and regulatory agencies attempt to enforce.

II. Equal Employment Opportunity

Regulations exist in almost every aspect of the employment relationship. As is illustrated in Figure 2.1 of the text, equal employment opportunity intended to protect individuals from illegal discrimination and is the most fundamental and far-reaching area of the legal regulation of human resource management. Indeed, in one way or another, almost every law and statute governing employment relationships is essentially attempting to ensure equal employment opportunity.

Some managers assume that the legal regulation of HRM is a relatively recent phenomenon. In reality, however, concerns about equal opportunity can be traced back to the Thirteenth Amendment passed in 1865 to abolish slavery and the Fourteenth Amendment passed in 1868 to provide equal protection for all citizens of the United States. The Reconstruction Civil Rights Acts of 1866 and 1871 further extended protections offered to people under the Thirteenth and Fourteenth Amendments, and together with those amendments, these laws still form the basis for present-day federal court actions that involve the payment of compensatory and punitive damages.

A. Discrimination and Equal Employment Opportunity

The basic goal of all equal employment opportunity regulation is to protect people from unfair or inappropriate discrimination in the workplace. It is also instructive to note that discrimination per se is not illegal. As long as the basis for this discrimination is purely job-related, however, such an action is legal and appropriate when based on performance or seniority and applied objectively and consistently. **Illegal discrimination** is the result of behaviors or actions by an organization or managers within an organization that cause members of a protected class to be unfairly differentiated from others.

Title VII of the Civil Rights Act of 1964

The most significant single piece of legislation specifically affecting the legal context for human resource management to date has been **Title VII of the Civil Rights Act of 1964**. Title VII of the act states that it is illegal for an employer to fail or refuse to hire, to discharge any individual, or to discriminate in any other way against any individual with respect to any aspect of the employment relationship on the basis of that individual's race,

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color, sex, religious beliefs, sex, or national origin. The law applies to all components of the employment relationship, including compensation, employment terms, working conditions, and various other privileges of employment.

Title VII applies to all organizations with fifteen or more employees working 20 or more weeks a year and that are involved in interstate commerce. In addition, it also applies to state and local governments, employment agencies, and labor organizations. Title VII also created the Equal Employment Opportunity Commission (EEOC) to enforce the various provisions of the law. Under Title VII, as interpreted by the courts, several types of illegal discrimination are outlawed.

Disparate Treatment

Disparate treatment discrimination exists when individuals in similar situations are treated differently *and* when the differential treatment is based on the individual's race, color, religion, sex, national origin, age, or disability status. To prove discrimination in this situation, an individual filing a charge must demonstrate that there was a discriminatory motive; that is, the individual must prove that the organization considered the individual's protected class status when making the decision.

One circumstance in which organizations can legitimately treat members of different groups differently is when there exists a **bona fide occupational qualification (BFOQ)** for performing a particular job. This means that some personal characteristic such as age legitimately affects a person's ability to perform the job. To claim a BFOQ exception, the organization must be able to demonstrate that hiring on the basis of the characteristic in question (e.g., age) is a **business necessity**; that is, the organization must be able to prove that the practice is important for the safe and efficient operation of the business.

Disparate Impact

A second form of discrimination is **disparate impact** discrimination that occurs when an apparently neutral employment practice disproportionately excludes a protected group from employment opportunities. This argument is the most common for charges of discrimination brought under the Civil Rights Act.

One of the first instances in which disparate impact was defined involved a landmark legal case, *Griggs* v. *Duke Power.* Following the passage of Title VII, Duke Power initiated a new selection system that required new employees to have either a high school education or a minimum cutoff score on two specific personality tests. Griggs, a black male, filed a lawsuit against Duke Power after he was denied employment based on these criteria. After

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his attorneys demonstrated that those criteria disproportionately affected blacks and that the company had no documentation to support the validity of the criteria, the courts ruled that the firm had to change its selection criteria on the basis of disparate impact. If a plaintiff can establish a *prima facie case* of discrimination, the company is considered to be at fault unless it can demonstrate another legal basis for the decision.

Several avenues can be used to establish a prima facie case, but the most common approach relies on the so-called **four-fifths rule**. Specifically, the courts have ruled that disparate impact exists if a selection criterion (such as a test score) results in a selection rate for a protected class that is less than four-fifths (80 percent) than that for the majority group.

A plaintiff might be able to demonstrate disparate impact by relying on so-called **geographical comparisons**. These involve comparing the characteristics of the potential pool of qualified applicants for a job (focusing on characteristics such as race, ethnicity, and gender) with those same characteristics of current employees in the job.

Finally, the **McDonnell-Douglas test**, named for a Supreme Court ruling in *McDonnell-Douglas* v. *Green,* is another basis for establishing a prima facie case. Four steps are part of the McDonnell-Douglas test:

1. The applicant is a member of a protected class.
2. The applicant was qualified for the job for which he or she applied.
3. The individual was turned down for the job.
4. The company continued to seek other applicants with the same qualifications.

Pattern or Practice Discrimination

The third kind of discrimination that can be identified is **pattern or practice discrimination**. This form of disparate treatment occurs on a classwide or systemic basis. Specifically, Section 707 of Title VII states that such a lawsuit can be brought if there is reasonable cause to believe that an employer is engaging in pattern or practice discrimination.

Retaliation

A final form of discrimination that has become more prevalent in recent years is retaliation. Retaliation refers to an organization taking some action against an employee who has opposed an illegal employment practice or has filed suit against the company for illegal discrimination. Retaliation is expressly forbidden by Title VII of the Civil Rights Act, but several Supreme Court decisions have made it much less clear exactly how this protection

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might work.

Employer Defense

The defendant (usually an organization) must be able to prove that decisions were made so that the persons most likely to be selected (or promoted or to receive a pay raise) are those who are most likely to perform best on the job (or who have already performed best on the job). This situation is also referred to as *validation* of the practice in question.

B. Protected Classes in the Workforce

Although it varies from law to law, a **protected class** consists of all individuals who share one or more common characteristics as indicated by that law. The most common characteristics used to define protected classes include race, color, religion, gender, age, national origin, disability status, and status as a military veteran.

C. Affirmative Action and Reverse Discrimination

Affirmative action refers to positive steps taken by an organization to seek qualified employees from underrepresented groups in the workforce. When affirmative action is part of a remedy in a discrimination case, the plan takes on additional urgency and the steps are somewhat clearer. Three elements make up any affirmative action program.

- The first element is called the **utilization analysis** and is a comparison of the racial, sex, and ethnic composition of the employer's workforce compared to that of the available labor supply. If the percentage in the employer's workforce is considerably less than the percentage in the external labor supply, then that minority group is characterized as underutilized.
- The second part of an affirmative action plan is the development of goals and timetables for achieving balance in the workforce concerning those characteristics, especially where underutilization exists.
- The third part of the affirmative action program is the development of a list of action steps. These steps specify what the organization will do to work toward attaining its goals to reduce underutilization. Common action steps include increased communication of job openings to underrepresented groups, recruiting at schools that predominantly cater to a particular protected class, participating in programs designed to improve employment opportunities for underemployed groups, and taking all steps to remove inappropriate barriers to employment.

Reverse discrimination refers to a practice that has a disparate impact on members of *nonprotected classes.* Thus, charges of reverse discrimination typically stem from the belief

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by white males that they have suffered because of preferential treatment given to other groups. The text discusses two most famous court cases in this area to illustrate how complicated this issue can be. Within the space of a few years, the Supreme Court passed the following judgments.

- Ruled against an organization giving preferential treatment to minority workers during a layoff
- Ruled in support of temporary preferential hiring and promotion practices as part of a settlement of a lawsuit
- Ruled in support of the establishment of quotas as a remedy for past discrimination
- Ruled that any form of affirmative action is inherently discriminatory and could be used only as a temporary measure

The concept of affirmative action is increasingly being called into question. In a more recent case (*Ricci v. Stefano, 2009*), the Supreme Court ruled that the city of New Haven, Connecticut, violated the rights of a group of white firefighters when they decided to discard the results of a recent promotion exam that was shown to have disparate impact. The white firefighters subsequently sued the city for reverse discrimination.

D. Sexual Harassment at Work

Sexual harassment is defined by the EEOC as unwelcome sexual advances in the work environment. If the conduct is indeed unwelcome and occurs with sufficient frequency to create an abusive work environment, the employer is responsible for changing the environment by warning, reprimanding, or perhaps firing the harasser.

One type of sexual harassment is **quid pro quo harassment**. In this case, the harasser offers to exchange something of value for sexual favors. But a more subtle (and probably more common) type of sexual harassment is the creation of a **hostile work environment**, and this situation is not always so easy to define. For example, a group of male employees who continually make off-color jokes and lewd comments and perhaps decorate the work environment with inappropriate photographs may create a hostile work environment for a female colleague to the point where she is uncomfortable working in that job setting. In *Meritor Savings Bank v. Vinson*, the Supreme Court noted that a hostile work environment constitutes sexual harassment, even if the employee did not suffer any economic penalties or was not threatened with any such penalties.

It is also worth noting that the courts have indicated that a firm has differential liability for sexual harassment depending on the relationship between the parties involved. Basically, the firm's level of liability increases significantly if the harassing employee is a supervisor—if harassing employee is a co-worker, the employer is only liable if it was negligent in

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controlling working conditions.

This responsibility is further complicated by the fact that, although most sexual harassment cases involve men harassing women, there are, of course, many other situations of sexual harassment that can be identified. Females can harass men and in the case of *Oncale v. Sundowner* the Supreme Court ruled unanimously that a male oil rigger who claimed to be harassed by his co-workers and supervisor on an offshore oil rig was indeed the victim of sexual harassment. Several recent cases involving same-sex harassment have focused new attention on this form of sexual harassment. Regardless of the pattern, however, the same rules apply: Sexual harassment is illegal, and it is the organization's responsibility to control it.

Contemporary Challenges in HR: Working for Free?

The Fair Labor Standards Act specifically exempts those in executive, administrative, or professional jobs from overtime payments. But because so many jobs have shifted from manufacturing setting to service settings, and because the nature of so many jobs has changed, the lines between different kinds of work have blurred. Service jobs, though, often have more subjective "boundaries" and may require more start-up time.

E. Other Equal Employment Opportunity Legislation

In addition to the Civil Rights Act of 1964, a large body of supporting legal regulation has also been created in an effort to provide equal employment opportunity for various protected classes of individuals.

The Lilly Ledbetter Fair Pay Act of 2009

The **Equal Pay Act** clearly outlaws differential pay for male and female employees doing essentially the same job. The Lilly Ledbetter Fair Pay Act of 2009 corrected the time aspect and states that the clock for limitation begins with each paycheck—making it easier for employees to bring charges of discrimination. The new law also applies the same time table to cases involving age discrimination or discrimination based on disability.

The Equal Pay Act of 1963

The **Equal Pay Act of 1963** requires that organizations provide the same pay to men and women doing equal work. The law does allow for pay differences when there are legitimate, job-related reasons for pay differences such as difference in seniority or merit.

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The Age Discrimination and Employment Act

The Age Discrimination and Employment Act (ADEA) was passed in 1967 and amended in 1986. The ADEA prohibits discrimination against employees 40 years of age and older. The ADEA is similar to Title VII of the 1964 Civil Rights Act in terms of both its major provisions and the procedures that are followed in pursuing a case of discrimination. Like Title VII, enforcement of the ADEA is the responsibility of the Equal Employment Opportunity Commission. The Supreme Court has indicated that an agency or an organization may require mandatory retirement at a given age only if an organization could demonstrate the inability of persons beyond a certain age to perform a given job safely. But, in several decisions, the Court has indicated that it will interpret this BFOQ exception very narrowly.

The Pregnancy Discrimination Act of 1979

As its name suggests, the **Pregnancy Discrimination Act of 1979** was passed to protect pregnant women from discrimination in the workplace. The law requires that the pregnant woman be treated like any other employee in the workplace. Therefore, the act specifies that a woman cannot be refused a job or promotion, fired, or otherwise discriminated against simply because she is pregnant (or has had an abortion). She also cannot be forced to leave employment with the organization as long as she is physically able to work.

The Civil Rights Act of 1991

The **Civil Rights Act of 1991** was passed as a direct amendment to Title VII of the Civil Rights Act of 1964. It also reinforces the illegality of making hiring, firing, or promotion decisions on the basis of race, gender, color, religion, or national origin; it also includes the Glass Ceiling Act, which established a commission to investigate practices that limited the access of protected class members (especially women) to the top levels of management in organizations. For the first time, the act provides the potential payment of compensatory and punitive damages in cases of discrimination under Title VII.

The Americans with Disabilities Act of 1990

The **Americans with Disabilities Act of 1990 (ADA)** is another piece of equal employment legislation that has greatly affected human resource management. Specifically, the ADA prohibits discrimination based on disability in all aspects of the employment relationship such as job application procedures, hiring, firing, promotion, compensation, and training, as well as other employment activities such as advertising, recruiting, tenure, layoffs, leave, and benefits. In addition, the ADA also requires that

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organizations make reasonable accommodations for disabled employees as long as they do not pose an undue burden on the organization.

The ADA defines a *disability* as (1) a mental or physical impairment that limits one or more major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. Clearly included within the domain of the ADA are individuals with disabilities such as blindness, deafness, paralysis, and similar disabilities. In addition, the ADA covers employees with cancer, a history of mental illness, or a history of heart disease. Finally, the act also covers employees regarded as having a disability, such as individuals who are disfigured or who for some other reason an employer feels will prompt a negative reaction from others. On the other hand, individuals with substance-abuse problems, obesity, and similar non-work-related characteristics may not be covered by the ADA. Both AIDS and HIV are considered disabilities under the ADA, and employers cannot legally require an HIV test or any other medical examination as a condition for making an offer of employment.

In addition, the reasonable accommodation stipulation adds considerable complexity to the job of human resource manager and other executives in organizations. Clearly, for example, organizations must provide ramps and automatic door-opening systems to accommodate individuals confined to a wheelchair. A series of court decisions have worked to actually narrow the protection offered by the ADA. For example, in 1999 the U.S. Supreme Court ruled that individuals who can correct or overcome their disabilities through medication or other means are not protected by the ADA.

In an attempt to return to the original intent of the ADA, in September 2008, President Bush signed into law the new **Americans with Disabilities Amendments Act (ADAAA)**. In June 2009, the EEOC finally voted on a set of guidelines to be used with the new law. The new guidelines broaden the definition of disability for the ADA, countering recent court decisions that have tended to narrow the definition of disability for cases brought forward (which was the original impetus for the law). The new guidelines also include a list of presumptive disabilities that will always meet the definition of disability under the AADA, including blindness, deafness, cancer, multiple sclerosis, limb loss, and HIV and AIDS.

The Family and Medical Leave Act of 1993

The **Family and Medical Leave Act of 1993** was passed in part to remedy weaknesses in the Pregnancy Discrimination Act of 1979. The law requires employers with more than fifty employees to provide as many as 12 weeks of unpaid leave for employees (1) after the birth or adoption of a child; (2) to care for a seriously ill child, spouse, or parent; or (3) if

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the employee is seriously ill. The organization must also provide the employee with the same or comparable job on the employee's return.

The law also requires the organization to pay the health-care coverage of the employee during the leave. Organizations are also allowed to exclude certain key employees from coverage (specifically defined as the highest paid 10 percent), on the grounds that granting leave to these individuals would grant serious economic harm to the organization. The law also does not apply to employees who have not worked an average of 25 hours a week in the previous 12 months. The FMLA was also amended in 2009 with the passage of the Supporting Military Families Act, which mandates emergency leave for all covered active-duty members.

Regulations for Federal Contractors

In addition to the various laws described above, numerous other regulations apply only to federal contractors. For instance, all banks (that participate in the U.S. Federal Reserve system) and most universities (that have federal research grants or that accept federal loans for their students) would qualify as federal contractors. **Executive Order 11246** mirrors the Civil Rights Act in terms of outlawing discrimination, but also requires federal contractors and subcontractors, with contracts great than $50,000, to file written affirmative action plans.

Executive Order 11478 required the federal government to base all employment policies and decision on merit and fitness, specifying that race, color, sex, national origin, and religion should not be considered. **Vocational Rehabilitation Act of 1973** requires that all federal agencies, as well as federal contractors and subcontractors receiving $2500 a year or more from the federal government, are required to engage in affirmative action for persons with disabilities.

Discrimination on the Basis of Sexual Orientation

Sexual orientation discrimination refers to being treated differently because of one's real or perceived sexual orientation—whether gay, lesbian, bisexual, or heterosexual. There is no federal law that prohibits discrimination on the basis of sexual orientation. Although federal employees are protected against such discrimination, any attempt to pass a law regarding all employees has failed.

Defense of Marriage Act (DOMA), signed into law in 1996 by Bill Clinton, states that, for the purposes of deciding who receives federal benefits, marriage is defined as only between a man and a woman. The Supreme Court in a 5-4 decision ruled that DOMA

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placed an unfair burden on same-sex married couples and made a subset of state-sanctioned marriages unequal. This decision did not make same-sex marriages legal in all states, but did ensure that same-sex couples were entitled to all federal benefits (including tax benefits, pensions and insurance benefits) afforded traditional couples.

F. Enforcing Equal Employment Opportunity

The enforcement of equal opportunity legislation generally is handled by two agencies. One agency is the Equal Employment Opportunity Commission, and the other is the Office of Federal Contract Compliance Procedures. The Equal Employment Opportunity Commission (EEOC) is a division of the Department of Justice. It was created by Title VII of the 1964 Civil Rights Act and today is given specific responsibility for enforcing Title VII, the Equal Pay Act, and the Americans with Disabilities Act. The EEOC has the following three major functions.

1. Investigating and resolving complaints about alleged discrimination
2. Gathering information regarding employment patterns and trends in U.S. businesses
3. Issuing information about new employment guidelines as they become relevant

The first function is illustrated in Figure 2.3 of the text, which depicts the basic steps that an individual who thinks she has been discriminated against in a promotion decision might follow to get her complaint addressed. If the EEOC believes that discrimination has occurred, then its representative will first try to negotiate a reconciliation between the two parties without taking the case to court. Occasionally, the EEOC may enter into a consent decree with the discriminating organization.

On the other hand, if the EEOC cannot reach an agreement with the organization, then two courses of action may be pursued. First, the EEOC can issue a right-to-sue letter to the victim. The second important function of the EEOC is to monitor the hiring practices of organizations. The third function of the EEOC is to develop and issue guidelines that help organizations determine whether their decisions are violations of the law enforced by the EEOC.

The OFCCP conducts yearly audits of government contractors to ensure that they have been actively pursuing their affirmative action goals. If the OFCCP finds that its contractors or subcontractors are not complying with the relevant executive orders, then it may notify the EEOC, advise the Department of Justice to institute criminal proceedings, or request that the labor secretary cancel or suspend contracts with that organization.

III. Other Areas of Human Resource Regulation

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A. Legal Perspectives on Compensation and Benefits

The **Fair Labor Standards Act (FLSA)**, passed in 1938, established a minimum hourly wage for jobs. The first minimum wage was $0.25 an hour but, the minimum wage has been raised many times in the decades since as the law has been amended. The FSLA also established the workweek in the United States as 40 hours per week. It further specified that all full-time employees must be paid at a rate of one and a half times their normal hourly rate for each hour of work beyond 40 hours in a week. Finally, the FLSA also includes child labor provisions, which provide protection for persons 18 years of age and younger. These protections include keeping minors from working on extremely dangerous jobs and limiting the number of hours that persons younger than 16 can work.

Another important piece of legislation that affects compensation is the **Employee Retirement Income Security Act of 1974 (ERISA)**. This law was passed to protect employee investments in their pensions and to ensure that employees would be able to receive at least some pension benefits at the time of retirement or even termination. ERISA does not mean that an employee *must* receive a pension; it is meant only to protect any pension benefits to which the employee is entitled. Two other emerging legal perspectives on compensation and benefits involve minimum benefits coverage and executive compensation. The Securities and Exchange Commission (SEC) is also developing new guidelines that will require companies to divulge more complete and detailed information about their executive-compensation packages.

B. Legal Perspectives on Labor Relations

The **National Labor Relations Act**, or **Wagner Act**, was passed in 1935 in an effort to control and legislate collective bargaining between organizations and labor unions. The Wagner Act was passed in an effort to provide some sense of balance in the power relationship between organizations and unions. Following a series of crippling strikes, however, the U.S. government concluded that the Wagner Act had actually shifted too much power to labor unions. To correct this imbalance, Congress subsequently passed the **Labor Management Relations Act (Taft-Hartley Act)** in 1947 and the **Landrum-Griffin Act** in 1959. Both of these acts regulate union actions and their internal affairs in a way that puts them on an equal footing with management and organizations. The Taft-Hartley Act also created the National Labor Relations Board (NLRB), which was charged with enforcement of the act.

The **Employee Free Choice Act**, also known as the Union Relief Act, was first proposed in 2009. Finally, NLRB ruled, in August of 2015, in the case of Browning-Ferris Industries of California case, that firms employing contractors to perform various HR functions are liable

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for any violations committed by those contractors.

C. Employee Safety and Health

The basic premise of the Occupational Safety and Health Act of 1970 (OSHA) is that each employer has an obligation to furnish each employee with a place of employment that is free from hazards that can cause death or physical harm. It is also known as the *general duty clause.* OSHA is generally enforced through inspections of the workplace by OSHA inspectors, and fines can be imposed on violators.

D. Drugs in the Workplace

The **Drug-Free Workplace Act of 1988** was passed to reduce the use of illegal drugs in the workplace. This law applies primarily to government employees and federal contractors, but it also extends to organizations regulated by the Department of Transportation and the Nuclear Regulatory Commission. Thus, long-haul truck drivers and workers at most nuclear reactors are subject to these regulations.

In fact, drug testing is becoming quite widespread, even though there is little hard evidence addressing the effectiveness of these programs. The issue for the current discussion is whether these testing programs constitute an invasion of employee privacy.

E. Plant Closings and Employee Rights

The **Worker Adjustment and Retraining Notification (WARN) Act of 1988** stipulates that an organization with at least 100 employees must provide notice at least 60 days in advance of plans to close a facility or lay off 50 or more employees. The penalty for failing to comply is equal to 1 day's pay (plus benefits) for each employee for each day that notice should have been given. The act also provides for warnings about pending reductions in work hours but generally applies only to private employers. There are exceptions to the WARN requirements. The events of September 11, 2001, represent one such exception to this law.

F. Privacy Issues at Work

The **Privacy Act of 1974**, applies directly to federal employees only, but it has served as the impetus for several state laws. Basically, this legislation allows employees to review their personnel files periodically to ensure that the information contained in them is accurate. But the larger concerns with privacy these days relate to potential invasions of employee privacy by organizations. For example, organizations generally reserve the right to monitor the email correspondence of employees.

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The **Genetic Information Nondiscrimination Act (GINA)** prohibits employers from collecting any genetic information about their employees, including information about family history of disease. The **PATRIOT Act** was passed shortly after the terrorist attacks on September 11, 2001, to help the United States more effectively battle terrorism worldwide. Many of the act's provisions expand the rights of the government or law enforcement agencies to collect information about and pursue potential terrorists.

IV. Evaluating Legal Compliance

The assurance of compliance with the laws and regulations can best be done through a three-step process. The first step is to ensure that managers clearly understand the laws that govern every aspect of human resource management. Second, managers should rely on their own legal and human resource staff to answer questions and review procedures periodically. And third, organizations may also find it useful to engage occasionally in external legal audits of their human resource management procedures

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Chapter 2
The Legal Environment

Discussion Questions

1. *Describe the process through which the legal context of human resource management is created.*

   The legal context of human resource management is shaped by a variety of forces. Congress identifies an area of employment relationship that could be improved by legislation. Then, it passes a statute and often creates an agency to enforce the statute. The agency issues regulations that further define the statute, and the federal courts apply the body of law to actual circumstances.

2. *Summarize the role of the Thirteenth and Fourteenth Amendments to the U.S. Constitution in equal employment opportunity.*

   The Thirteenth Amendment, which abolished slavery, was the beginning of the long road toward equal employment opportunity for African American citizens of the United States. The Fourteenth Amendment that was passed in 1868 had made it illegal for the U.S. government to take the life, liberty, or property of individuals without the due process of law, and it also specifically prohibits a state from denying equal protection to its residents. The Reconstruction Civil Rights Acts of 1866 and 1871 granted all people the same property rights as well as the right to sue in federal courts if they are deprived of their civil rights. These laws, which were enacted in the nineteenth century, are the basis for federal court actions that have resulted in new major laws and related regulations passed by Congress in the twentieth century. Today equal employment opportunities are granted, by law, to all U.S. citizens regardless of their race, color, religion, gender, age, national origin, disability status, or status as a military veteran.

3. *What is illegal discrimination? What is legal discrimination?*

   Discrimination is the failure to treat people equally. The law requires that employers treat their employees equally regardless of their race, color, religion, gender, national origin, age, and disability. Obviously, the law cannot require that employers treat everyone equally because differences between workers may affect their productivity. Employers can legally discriminate in employment decisions by considering the job applicant's education, skill level, appearance, experience, sexual-orientation (in many states), and ability as long

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as such factors are not used indirectly to discriminate on forbidden factors.

4. *Identify and summarize the various forms of illegal discrimination.*

Students' answers will vary. Disparate treatment involves treating employees or applicants differently because of their race, color, sex, religion, national origin, age, or disability status. Bona fide occupational qualifications are rare exceptions when sex, religion, age, or national origin can be used as a qualification for employment. A job qualification is said to have a disparate impact when the passing rate of the members of protected groups is less than four-fifths of the members of majority groups. Griggs v. Duke Power Company is a landmark case that prohibited this type of discrimination which had been overlooked by Congress. Intent is not a required element of the prima facie case of disparate impact. Once the prima facie case of disparate impact has been demonstrated by the claimant, the burden of proving the business necessity of the qualification falls on the employer.

Pattern or practice discrimination is discrimination against all members of a protected class. It is illegal for an employer to retaliate against employees for either opposing a perceived illegal employment practice or participating in a proceeding that is related to an alleged employment practice.

5. *Identify and summarize five major laws that deal with equal employment opportunity.*

Students' answers will vary. Title VII of the Civil Rights Act of 1964 prohibits discrimination in a broad range of employment actions on the basis of race, color, sex, religion, or national origin. Executive Order 11246 requires federal contractors who receive $10,000 or more to have affirmative action plans to increase the employment of protected groups. Executive Order 11478 requires the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered.

The Equal Pay Act of 1963 requires that men and women receive equal pay for equal work. The Age Discrimination in Employment Act prohibits discrimination on the basis of age against applicants and employees of age forty and above. The Vocational Rehabilitation Act of 1973 requires federal contractors who receive more than $2,500 a year to engage in affirmative action for disabled individuals. The Vietnam Era Veterans' Readjustment Act of 1974 requires federal contractors to have an affirmative action program for those serving in the armed forces between 1964 and 1975. The Pregnancy Discrimination Act of 1978 gives pregnant women protection against discrimination based solely on their pregnancy. The Civil Rights Act of 1991 makes disparate impact cases easier to prove; it also provides for punitive damages in cases of intentional discrimination and for jury trials when

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compensatory or punitive damages are sought. The Americans with Disabilities Act of 1990 defines those who are considered disabled and protects them from a wide range of employment discrimination. It requires employers to make reasonable accommodations for people with disabilities except when the accommodation imposes an undue hardship on the employer. The Family and Medical Leave Act of 1993 requires employers who have fifty employees or more to provide up to twelve weeks of unpaid leave per year for certain family emergencies.

6. *Why is most employment regulation passed at the national level, as opposed to the state or local level?*

   Most employment regulation is passed at the national level as opposed to the state or local level because states and local level government agencies compete with each other in attracting businesses. Laws and regulations that restrict the freedom of employers may be viewed undesirable resulting in a competitive disadvantage. Hence, it is unlikely that all local government agencies would voluntarily choose to pass such laws. If employment laws are passed at the federal level, they are applied evenly throughout all jurisdictions, so they do not affect competition among domestic businesses. However, excessive regulations at the federal level could affect the ability of domestic companies to compete with less regulated foreign competitors.

7. *Which equal employment opportunity laws will likely affect you most directly when you finish school and begin to look for employment?*

   Students' answers will vary. If one is a member of a protected group, one may be encouraged by the fact that employers must treat one with a blind eye toward his or her race, color, sex, religion, national origin, or disability. Executive Order 11246 may provide an opportunity with a federal contractor through affirmative action. If one is a white male without a disability, one may find a few less opportunities because of preferential treatment by employers with legally permissible affirmative action programs.

8. *Which equal employment opportunity law do you think is most critical? Which do you think is least critical today?*

   Students' answers will vary based on their perspectives. It would be interesting if age discrimination were listed as the least critical, since for most students it is probably the farthest factor from their minds.

9. *Which equal employment opportunity law do you think is the most difficult to obey? Which do you think is easiest to obey?*

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Students' answers will vary. The laws that are the most difficult to obey are the ones that are the least clear. The Americans with Disabilities Act has been in effect for only about ten years, so the laws are still evolving. Federal courts are still defining "disability" and what accommodations employers must reasonably make. Although courts occasionally change the burdens of proof, Title VII and the Age Discrimination in Employment Act have been around for over thirty years and have been interpreted fairly consistently by courts. Conversely, the laws that are easiest to obey are those that are most clear, such as the minimum wage law or child labor regulations.

10. *In the case of a conflict between a legal and an ethical consequence of a human resource decision, which do you think should take precedence?*

    Students' answers will vary. A person cannot justify breaking the law by reference to ethical behavior. However, it is rare that an act that is ethical is illegal, so it is not a matter of a choice of whether to break the law or to act ethically. The more likely scenario is when the law permits certain behavior that is otherwise unethical. Since the law changes frequently but the rules of ethical behavior do not, consistency dictates that a code of ethics be established and followed.

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Chapter 2
The Legal Environment

Additional Resource

The Supreme Court's Decision on Affirmative Action in Fisher v. University of Texas, No. 14-981
https://www.supremecourt.gov/opinions/15pdf/14-981_4g15.pdf

On June 23, 2016, the Supreme Court had rejected Abigail Fisher's claims about her admission being denied by the University of Texas because of her race. This decision evoked a lot of responses from around the nation. Although the minority populations were pleased, the decision was hailed as a landmark by the supporters of affirmative action. Ask students to read the entire case and write a paper on whether or not they support the Supreme Court's decision and why.

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Chapter 2
The Legal Environment

Opening Case: Unequal Pay for Equal Work?

Case Summary

Men and women with comparable credentials, comparable experience, and comparable performance ratings performing the same tasks should make comparable pay, right? But while it may seem logical, in reality men tend to make more than women even when there are no obvious reasons for the discrepancy. Nor is this pattern new. Indeed, Title VII of the Civil Rights Act of 1964 broadly outlawed discrimination on the basis of gender in any aspect of the employment relationship (which would obviously include pay) and the Equal Pay Act of 1963 specifically stipulates that organizations must pay the same wages to men and women who are doing equal work.

For years experts attributed the problem to two things. First, some organizations have continued to practice outright discrimination. Some managers, for instance, either intentionally or unconsciously, may tend to reward men more if they are seen as the family "breadwinner" and reward women less if they are seen as providing only "secondary income." Another long-standing explanation is the so-called "mommy track" phenomenon. The premise here is that even if women and men start out the same many women step away from their careers for periods ranging from a few months to as long as several years in order to have children.

Recently, however, experts have also come to believe that several other factors also play a role in the income gap. For one thing, men are often more aggressive when they are first negotiating for a job. As a result their initial salaries may be higher than their women counterparts. For another, this aggressiveness continues as men tend to ask for larger and more frequent salary adjustments than do their women peers. Hence, men may tend to start at a higher salary and then see their salaries grow faster than is the case for women.

Extending these ideas to a broader context, there is some evidence that suggests that people tend to see aggressiveness and assertiveness positively in men but negatively in women. None of these explanations make it all right for a man to earn more than a woman, of course, but they do point to the need for complex and in-depth solutions.

Think It Over

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1. *Suppose you offer a woman a job for $80,000 and she accepts it. You then offer a similar job to a man for $80,000. He demands $85,000, and you agree to pay him that amount. Should you now go back and adjust the woman's salary? Why, or why not?*

   Students should state that they would go back and adjust the woman's salary. They should pay both individuals the same amount as they are offered similar jobs. If a recruiter does not pay these individuals equally, then he or she is practising discrimination against women.

2. *Richard Branson's Virgin Hotels Group has a policy that half of all management positions must be filled by women. Do you agree or disagree with this kind of policy? Why?*

   Students' answers will vary. Some students may agree with such kind of policy because it promotes gender equality in an organization. It would also help women to rise above the glass ceiling and climb the corporate ladder. Others might state that such kind of policy could seem unfair to men who might have been a better fit for the organization due to their experience, education, knowledge, skills, or abilities.

Closing Case: Power Plays at Work

Case Summary

In 2012 (the last year for which there are complete data), nearly 13,000 charges of sexual harassment were filed with the U.S. Equal Employment Opportunity Commission (EEOC), 84 percent of them by women. Why does sexual harassment (mostly of women) occur in the workplace? "Power," says researcher Debbie Dougherty, who conducted a study in conjunction with a large Midwestern health-care organization. According to Dougherty, gender differences in the perception of power may account, at least in part, for gender differences in perceptions of behavior.

The findings of another recent study tend to support Dougherty's conclusions. Researchers from the University of Minnesota discovered that women in supervisory positions were 137 percent more likely to be harassed than women in non-supervisory roles. "This study," says researcher Heather McLaughlin, "provides the strongest evidence to date supporting the theory that sexual harassment is less about sexual desire than about control and domination . . . Male coworkers . . . and supervisors seem to be using harassment as an equalizer against women in power."

Case Questions

1. *In light of the research discussed in this case, in your opinion how should sexual*

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harassment be punished?

Students' answers will vary. Students might suggest enforcing the laws relating to harassment such as the Civil Rights Act. They might also suggest that organizations should enforce rules and regulations that prohibit sexual harassment in the workplace. Organizations should also take strict action against employees who have violated such rules and regulations.

2. *What laws relate most closely to sexual harassment?*

   Students' answers will vary. The Civil Rights Act relates most closely to sexual harassment. Students can check for any new amendments made to the existing laws on sexual harassment. Instructors can discuss various lawsuits that involved sexual harassment in workplaces and identify the law against which the lawsuit was filed.

3. *What legal protection, if any, should exist to protect an innocent individual from false charges of sexual harassment?*

   Students' answers will vary. Students might suggest that there should be amendments to protect the rights of the innocent. They might state that innocent individuals should be given the benefit of the doubt until they are proven guilty.

4. *How might sexual harassment relate to bullying?*

   Students' answers will vary. Sexual harassment and bullying are both forms of power play. They are two different forms of using power to gain control over people. The victim of sexual harassment or bullying has every right to file a sexual harassment or harassment lawsuit against their victimizer.

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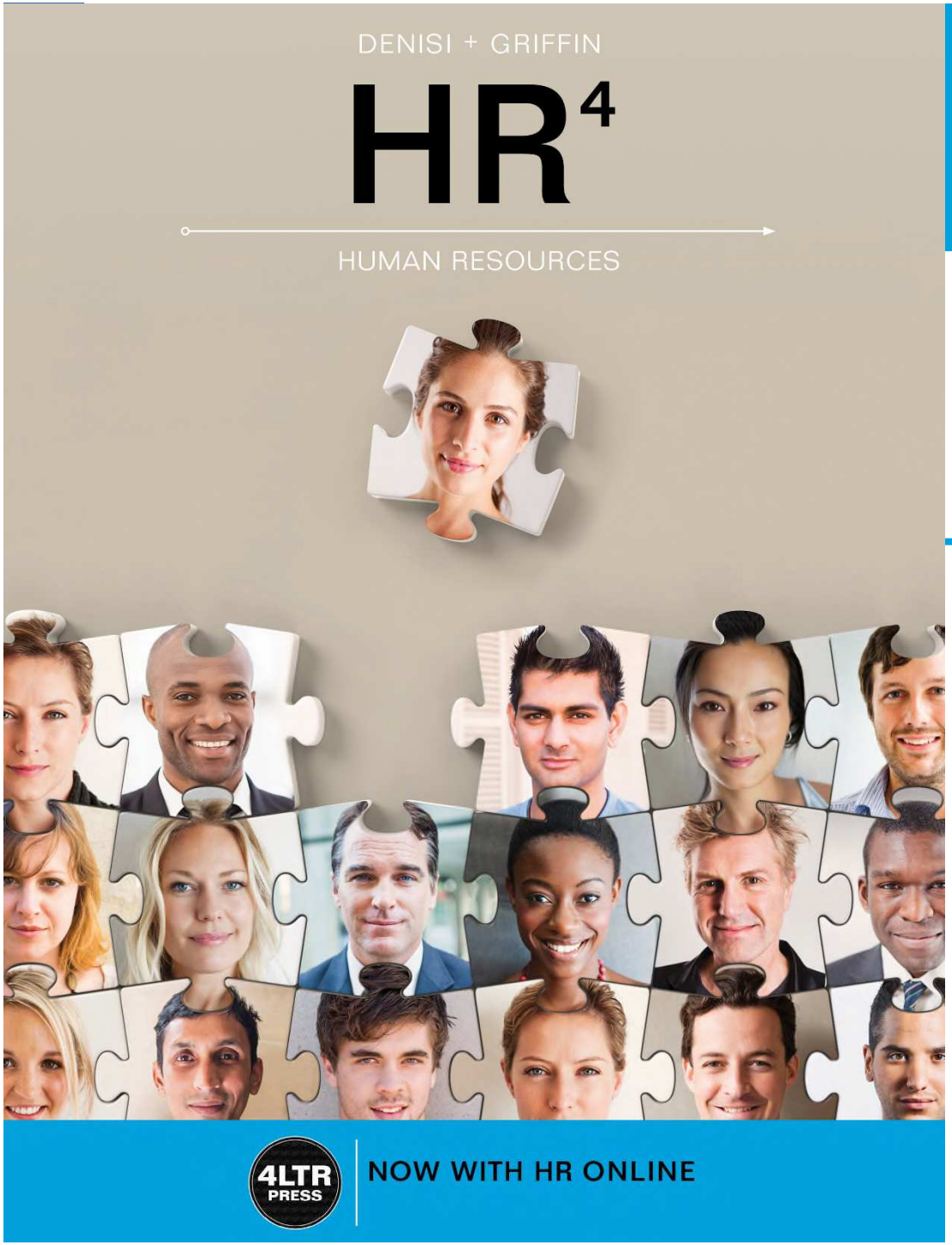

2

The Legal Environment

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LEARNING OUTCOMES

1. Describe the legal context of human resource management
2. Identify key laws that prohibit discrimination in the workplace and discuss equal employment opportunity
3. Discuss legal issues in compensation, labor relations, and other areas in human resource management
4. Discuss the importance to an organization of evaluating its legal compliance

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Legal Context of Human Resource Management (HRM)

LO 1

- Catalysts for modifying or enhancing the legal context include:
  - *Legislative initiatives*
  - *Social change*
  - *Judicial rulings*

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LO 1

Regulatory Environment of HRM

- Process
  - *Actual creation of new regulations*
    - Court decisions set precedence
  - *Enforcement of regulations*
  - *Practice and implementation of regulations in organizations*

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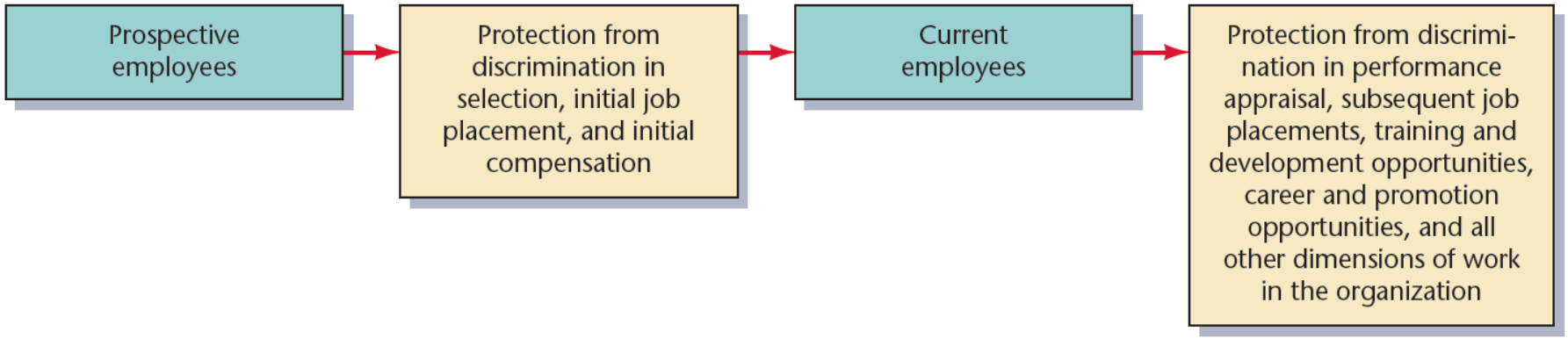
LO 2

Figure 2.1 Legal Regulation of Human Resource Management



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LO 2

Equal Employment Opportunity

- Title VII of the Civil Rights Act of 1964
  - ***Illegal discrimination****: Behaviors or actions that cause members of a protected class to be unfairly differentiated from others*
  - *Ensures that equal opportunities are available to everyone*
  - *Illegalizes employment or discrimination based on race, color, religious beliefs, sex, or national origin*

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LO 2

Figure 2.2 Forms of Illegal Discrimination

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LO 2

Disparate Treatment

- Exists when individuals in similar situations are treated differently based on their:
  - *Race or color*
  - *Religion*
  - *Sex*
  - *National origin*
  - *Age or disability status*

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Disparate Treatment (Continued)

- Legal requirement for differential selection
  - ***Bona fide occupational qualification (BFOQ)****: States that a condition like race, sex, or other personal characteristic legitimately affects a person's ability to perform the job*
  - *Firms are required to demonstrate that hiring based on a characteristic is a* ***business necessity***

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LO 2

Disparate Impact

- Occurs when neutral employment practice disproportionately excludes a protected group from employment opportunities
- Common approach to establish a prima facie case relies on the four-fifths rule
  - ***Four-fifths rule****: Disparate impact exists if a selection criterion results in selection rate for a protected class that is less than four-fifths of that for the majority group*

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Disparate Impact (Continued)

- Demonstrated by relying on geographical comparisons
  - ***Geographical comparisons****: Comparing the characteristics of the potential pool of qualified applicants for a job with those same characteristics of the present employees in the job*
- **McDonnell-Douglas test**
  - *Used as basis for establishing a prima facie case of disparate impact discrimination*

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LO 2

Other Forms of Discrimination

- **Pattern or practice discrimination**: Similar to disparate treatment but occurs on a classwide or systemic basis
- Retaliation
  - *Action taken by an organization against an employee who has:*
    - Opposed an illegal employment practice
    - Filed suit for illegal discrimination

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LO 2

Protected Class and Affirmative Action

Protected class

- *Consists of all individuals who share one or more common characteristics as indicated by that law*

Affirmative action

- *Represents a set of steps taken by an organization to actively seek qualified applicants from groups underrepresented in the workforce*

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LO 2

Affirmative Action and Reverse Discrimination

- Elements of an affirmative action program
  - ***Utilization analysis****: Comparison of racial, sex, and ethnic composition of the employer's workforce to that of the available labor supply*
  - *Development of goals and timetables for achieving balance in the workforce*
  - *Development of a list of action steps*
- Reverse discrimination
  - *Practice that has a disparate impact on members of nonprotected classes*

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LO 2

Types of Sexual Harassment at Work

Quid pro quo harassment

- *Sexual harassment in which the harasser offers to exchange something of value for sexual favors*

Hostile work environment

- *One that produces sexual harassment because of a climate or culture that is punitive toward people of a different gender*

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Other Equal Employment Opportunity Legislation

LO 2

The Lilly Ledbetter Fair Pay Act of 2009
The Equal Pay Act of 1963
The Age Discrimination and Employment Act
The Pregnancy Discrimination Act of 1979
The Civil Rights Act of 1991
The Americans with Disabilities Act of 1990
The Family and Medical Leave Act of 1993
Executive Order 11246 and Executive Order 11478
Prohibition of discrimination on the basis of sexual orientation

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Agencies That Enforce Equal Employment Opportunity

LO 2

- Equal Employment Opportunity Commission (EEOC)
  - *Investigating and resolving complaints about alleged discrimination*
  - *Gathering information regarding employment patterns and trends in U.S. businesses*
  - *Issuing information about new employment guidelines as they become relevant*

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Agencies That Enforce Equal Employment Opportunity (Continued)

LO 2

- Office of Federal Contract Compliance Procedures (OFCCP)
  - *Responsible for enforcing executive orders*
  - *Conducts yearly audits of government contractors*

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LO 3

Other Areas of Human Resource Regulation

- Legal perspectives on compensation and benefits
  - *Fair Labor Standards Act (FLSA), 1938*
  - *Employee Retirement Income Security Act of 1974 (ERISA)*
- Legal perspectives on labor relations
  - *National Labor Relations Act or Wagner Act, 1935*
  - *Labor Management Relations Act (Taft-Hartley Act) and the Landrum-Griffin Act of 1959*

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Other Areas of Human Resource Regulation (Continued 1)

LO 3

- Employee safety and health
  - *Occupational Safety and Health Act (OSHA), 1970*
- Drugs in the workplace
  - *Drug-Free Workplace Act of 1988*
- Plant closings and employee rights
  - *Worker Adjustment and Retraining Notification (WARN) Act of 1988*

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Other Areas of Human Resource Regulation (Continued 2)

LO 3

- Privacy issues at work
  - *Privacy Act of 1974*
  - *The Genetic Information Nondiscrimination Act (GINA), 2009*
  - *PATRIOT Act, which was passed shortly after the September 11, 2001 attacks*

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LO 4

Evaluating Legal Compliance

- Ensure managers understand the laws that govern human resource management
- Managers should rely on their own legal and human resource staff to:
  - *Answer questions*
  - *Review procedures periodically*
- Organizations find it useful to engage in external legal audits of human resource management procedures

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KEY TERMS

- Affirmative action
- Bona fide occupational qualification (BFOQ)
- Business necessity
- Disparate impact
- Disparate treatment
- Four-fifths rule
- Geographical comparisons
- Hostile work environment
- Illegal discrimination
- McDonnell-Douglas test
- Pattern or practice discrimination
- Protected class
- Quid pro quo harassment
- Utilization analysis

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SUMMARY

- Catalysts for modifying or enhancing the legal context
  - *Legislative initiative*
  - *Social change*
  - *Judicial rulings*
- Forms of illegal discrimination
  - *Disparate impact*
  - *Disparate treatment*
  - *Pattern or practice discrimination*
  - *Retaliation*

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