

Employment Law: Anti-discrimination

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Learning Objectives

- Describe the intent of Title VII, who is protected by this law and what exceptions are permitted
- Describe the intent of the ADEA, who is protected, and exceptions permitted
- Describe the intent of the ADA and who is protected

Learning Objectives

- Describe the intent of the Pregnancy Discrimination Act and who is protected
- Given a case, analyze it according to discrimination law

Discrimination in the Workplace

- Recognizing differences or distinctions in people

Lawful Discrimination

- Based on legitimate business needs

Unlawful Discrimination

- Not based on legitimate business needs

Anti-discrimination Laws

- Protect against discrimination based on:
 - Race
 - Religion
 - National Origin
 - Pregnancy
 - Color
 - Sex
 - Age
 - Disability

Major Federal Anti-discrimination Laws

- Title VII of Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1967 (ADEA)
- Pregnancy Discrimination Act of 1978 (PDA)
- Americans with Disabilities Act of 1990 (ADA)

Jurisdiction

- Any business, public or private
- Title VII: with 15+ employees
- ADEA: with 20+ employees
- PDA: with 5+ employees
- ADA: with 15+ employees

EEOC

- Equal Employment Opportunity Commission
- Enforces federal anti-discrimination laws

Enforcement Steps

- Investigate charge
- Negotiated settlement
- Criminal court
- Civil court

Penalties for Violations

- Reinstatement
- Back pay
- Fringe benefits
- Reasonable attorney's fees
- Compensatory damages
- Punitive damages

What If Discrimination Occurs in a Setting Not Covered by the Federal Jurisdiction?

- State fair employment acts
- Local ordinances

- Federal Anti-discrimination Laws
- Analogous State and Local Legislation

Title VII of Civil Rights Act of 1964

- Prohibits discrimination in hiring, firing, compensation, and terms, conditions or privileges of employment on the basis of race, color, religion, sex or national origin

Two Types of Unlawful Behavior by Employers

- Unequal treatment
- Unequal impact

Unequal Treatment

- Applying different standards to different employees within a protected class/category

Caution

- Interview questions should address relevant job criteria

Unequal Impact

- Treating all people the same, does not guarantee the results will be the same

Caution

- Burden of proof is on the employer

Exceptions to Title VII:

- Bona fide occupational qualifications
- Seniority systems
- Preferential treatment systems

Bona Fide Occupational Qualifications (BFOQ)

- Employers are permitted to discriminate if there is a justified business reason
- Customer preference does not constitute a BFOQ

Seniority Systems

- Seniority systems can discriminate if the system was not created to intentionally discriminate

Preferential Treatment Systems

- These set aside a portion of opportunities for minorities and women who have been victims of discrimination previously
- Affirmative action

Age Discrimination in Employment Act of 1967 (ADEA)

- It is unlawful for an employer to fail or refuse to hire, to discharge, or otherwise discriminate because of age against individuals 40 years of age or older with respect to compensation, terms, conditions, or privileges of employment

Age Discrimination in Employment Act of 1967 (ADEA)

- It is unlawful to forcibly retire an employee because of age 40+
- It is unlawful to give preference because of age to one person over another within the protected age group

Exceptions to the ADEA

- Bona fide occupational qualifications (BFOQ)
- Unequal impact on the protected age group
- Seniority systems

BFOQ

- Age as a BFOQ is permitted but extremely rare

Unequal Impact

- Job requirements with an unequal impact on the protected age group are permitted if truly necessary

Seniority Systems

- Within the protected age group (40+), the younger employees are discriminated against

Caution

- Diagnosing age discrimination is very difficult

Pregnancy Discrimination Act of 1978 (PDA)

- Women affected by pregnancy must be treated the same as other applicants and employees on the basis of their ability or inability to work
- Employers could no longer require women to take leaves of absence or resign because of pregnancy

Pregnancy Discrimination Act of 1978 (PDA)

- Health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other conditions
- Specific guidelines for pregnancy leave

PDA Guidelines for Pregnancy Leave

- Employers may NOT:
 - Use any employment practice (hiring, work duties, work schedule, promotion, firing, etc.) that discriminate against applicants or employees because of pregnancy, childbirth, abortion or a planned adoption

PDA Guidelines for Pregnancy Leave

- Employers may NOT:
 - Treat disabilities related to pregnancy or childbirth differently from other types of disabilities or medical conditions

PDA Guidelines for Pregnancy Leave

- Employers may NOT:
 - Apply leave standards for childcare that differ from those for other non-medical leaves

PDA Guidelines for Pregnancy Leave

- Employers may NOT:
 - Withhold any fringe benefits to a woman because of an abortion or planned abortion, except that employer-provided health insurance need not cover the expense of an abortion unless performed to protect the mother's life

When Can Work Parameters Be Changed During Pregnancy?

- If pregnancy renders the employee unable to do the job
- If pregnancy endangers the health and safety of others

Pregnancy Renders Employee Unable to Do the Job

- The skill affected must relate to the central mission of the job
- The employer must treat her the same as temporarily disabled employees

Pregnancy Endangers Health and Safety of Others

- Employee can be reassigned or put on mandatory leave
- Does not apply to safety of employee or fetus - only third parties

Family Medical Leave Act of 1993 (FMLA)

- Requires employers of 50 or more workers to provide up to 12 weeks a year of unpaid, job-protected leave to take care of a newborn or newly adopted child

Family Medical Leave Act of 1993 (FMLA)

- The leave could also be used to take care of a sick child, spouse or parent, or because of the employee's own serious illness

Americans With Disabilities Act of 1990 (ADA)

- Prohibits discrimination against a qualified individual with a disability in any areas of employment, including: hiring, promotion, discharge, and other terms and conditions of employment

Americans With Disabilities Act of 1990 (ADA)

- Restricts use of pre-employment medical exams and inquiries and requires employers to reasonably accommodate individuals who are mentally or physically impaired, have a record of impairment, or are perceived to be impaired

Americans With Disabilities Act of 1990 (ADA)

- Prohibits discrimination in public services (especially transportation), public accommodations, and telecommunication services

Goal of the ADA

- To help disabled persons support themselves by:
 - Removing barriers to employment
 - Improving access to public accommodations

What Is a Disability?

- A disabled person has a physical or mental impairment that substantially limits him/her in a major life activity, e.g., employment
- Includes those who have a record of impairment

What Is a Physical or Mental Impairment?

- Orthopedic disorders, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, HIV
- Infection, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, a past drug addiction, and alcoholism

What About Other Disabilities?

- Major life activity includes employment
- Any physical or mental condition an employer takes into consideration is likely to be considered a protected disability

What About Alcoholics?

- Are protected under ADA (if they can perform essential functions)
- Employer can require they not use alcohol at work or be under the influence at work
- Does not require employers to provide rehabilitation programs

What About Current Drug Abusers?

- Not protected under the ADA regardless of whether it affects ability to perform
- Does not require employers to provide rehabilitation programs
- Past drug abusers are protected (if no longer using and rehabilitated)

Are Smokers Protected Under the ADA?

- No
- Lifestyle discrimination statutes
 - Employers cannot discriminate based on a legal, off-the-job activity, such as smoking

What Other Groups Are Excluded From Coverage Under the ADA?

- Homosexuals, people with sexual disorders, and compulsive gamblers
- Local and state laws may offer protection

Can the Employee or Applicant Perform the Essential Functions of the Job?

- In order to be protected by the ADA, an employee must be able to perform the essential functions of the job when reasonably accommodated by the employer

What Does “Reasonable Accommodation” Mean?

- The ADA provides the following examples: Job restructuring, modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, provision of readers or interpreters

Undue Hardship

- Employers are not required to provide accommodations presenting an undue hardship
- Accommodations causing significant difficulty or expense to the employer are an undue hardship
- EEOC examines case by case

Asking Questions About the Disability

- Cannot ask questions regarding disability in the interview
- Can ask applicant to describe/demonstrate how she/he will perform the essential functions of the job with or without accommodation

What If a Disability Is Claimed but Not Apparent?

- Ask for certification

Can Physical Exams Be Required?

- Yes, post job offer
- But, only if usually required of all candidates

Obligation to Request Accommodation

- The individual with the disability has the obligation to request the accommodation

Supervisor's Responsibilities Regarding Accommodation

- Work with candidate to determine best accommodation
- Seek technical assistance if needed

Supervisor's Responsibilities Regarding Accommodation

- Employer has option to use least \$ accommodation, if sufficient
- If accommodation presents undue hardship, offer the applicant the chance to pay for all or part him/herself or use his/her own equipment

Applicant in Relationship With Disabled

- It is illegal to refuse to hire a qualified applicant because of his/her relationship with a disabled individual