Legal Issues in Staffing

Two major concepts to understand concerning U.S. employment law:

1) Equal Employment Opportunity
2) Affirmative Action

Types of Federal Regulation
There are two primary types of federal government regulations:
A. Equal Employment Legislation
   e.g., Title VII, 1964 Civil Rights Act
B. Contract Compliance Procedures
   e.g., Executive Order 11246

Equal Employment Legislation

1. Title VII, 1964 Civil Rights Act
2. Age Discrimination in Employment Act (as amended)
3. Americans with Disabilities Act of 1990
   http://www.eeoc.gov/

1. Title VII, Section 703 (a):
   “It shall be unlawful … for an employer… to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin.”

Title VII also established a regulatory agency, the Equal Employment Opportunity Commission (EEOC), to monitor all organizations with 15 or more employees, who work 20 or more weeks per year.

Any exceptions to Title VII coverage? Yes!
- Bona Fide Occupational Qualification (BFOQ)
- Seniority Systems
- Preemployment Inquiry
- Veteran’s Preference Rights
- National Security

2. Age Discrimination in Employment Act

- No employment discrimination against individuals who are 40 years of age or older.
- Exceptions for pilots, CEOs, certain hazardous duty occupations
3. **Americans with Disabilities Act (ADA)**

- The A.D.A. prohibits discrimination against the “disabled,” i.e., those who can perform the “essential functions” of the job – with or without reasonable accommodations.
- How do you determine the essential functions of the job? Job Analysis
- What are “reasonable” accommodations?
  An accommodation is unreasonable only if it places an undue hardship on the employer.
- This law has very little in the way of clear guidelines (e.g., what is undue hardship).

4. **Civil Rights Act of 1991**

- made compensatory and punitive damages available for discrimination based on gender, religion, or disability.
- established that employers must prove business justification for their employment practices (in disparate impact cases).
- restricted employees’ rights to challenge a *court-ordered* affirmative action plan.
- established that U.S. employment laws cover U.S. citizens employed by U.S. employers in other countries.

**Contract Compliance Laws/Orders**

1. **Rehabilitation Act of 1973**

   - prohibits discrimination against the disabled (by federal contractors).

2. **Executive Order 11246**

   - similar to Title VII, it prohibits discrimination based on race, color, religion, gender, or national origin.
   - requires federal contractors to have written affirmative action plans.
   - established the Office of Federal Contract Compliance Programs (OFCCP).

**Comparing Title VII and E.O. 11246**

**Title VII**

- enforced by EEOC
- primary focus is on *adverse impact*
- encourages *voluntary* affirmative action

**E.O. 11246**

- enforced by OFCCP
- primary focus is *underutilization*
- affirmative action *required* (goals & timetables)
Types of Illegal Discrimination Cases
1) Disparate Treatment
2) Disparate (Adverse) Impact

How does one measure adverse impact?
- four-fifth’s rule
- standard deviation analysis

The 4/5th’s Rule of Thumb:
A selection rate for any race, sex, or ethnic group which is less than 4/5ths (80%) of the selection rate for the group with the highest rate of selection will generally be regarded as evidence of adverse impact against the former group.

Example - 4/5th’s Rule Calculation:

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of applicants:</td>
<td>25</td>
<td>20</td>
</tr>
<tr>
<td>Number hired:</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Selection rate:</td>
<td>15/25</td>
<td>5/20</td>
</tr>
<tr>
<td>(60%)</td>
<td>(25%)</td>
<td></td>
</tr>
</tbody>
</table>

Calculation using *multiplication*:

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selection rate:</td>
<td>.60</td>
<td>.25</td>
</tr>
</tbody>
</table>

Is there adverse impact here?
Yes! \( .80 \times .60 = .48 \)
Since \( .25 < .48 \), adverse impact is shown against females

Calculation using *division*:

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selection rate:</td>
<td>.60</td>
<td>.25</td>
</tr>
</tbody>
</table>

Is there adverse impact here?
Yes! \( .25 / .60 = .417 \)
Since \( .417 < .80 \), adverse impact is shown against females

Standard Deviation Analysis:
- compares how many people from each protected group an organization would expect to hire (based upon their availability in the applicant pool) to how many they actually hired.
- turns this number into a Z-score (a standardized score that typically ranges between -3.00 and +3.00).
- if this Z-score exceeds 2.00 (in either direction), this is viewed as statistically significant (p < .05).
- the assumption is made that this did not happen by accident, and therefore, this provides statistical evidence of adverse impact.
Most Important U.S. Supreme Court Decisions:

- Albermarle Paper Co. v. Moody (1975)
- Watson v. Fort Worth Bank (1988)

- Duke Power had openly discriminated against blacks in the past.
- In order to be hired into any department other than labor, the Co. required a high school diploma or a passing score on two tests:
  - the Wonderlic Personnel Test - a measure of intelligence
  - the Bennett Mechanical Comprehension Test
- The Supreme Court found that these tests were unrelated to performance of the specific job in question.

**Albermarle Paper Company v. J. Moody**
- Clarified requirements for using and validating tests in selection
- Job relatedness defined in terms of the technical adequacy of the validation study
- Validation = Job Analysis = Employment for I/O Psychologists

**Watson v. Fort Worth Bank**
- A black employee at Fort Worth Bank & Trust was rejected four times for promotion to supervisory positions in favor of white applicants.
- In assessing her candidacy, the bank used interviews, rating scales, and experience requirements which had not been subjected to validation procedures.
- Employee was unsuccessful in her attempt to use adverse impact until she made it to the Supreme Court.
- Bottom Line: all instruments must be validated!

**Wards Cove Packing v. Atonio**
- Reversed much hard-won ground by plaintiffs
- “wrong numbers” is not enough to show disparate impact
- plaintiff has to show there are other more fair selection procedures available
- employer required only to prove “business justification” (not “necessity”)
- CORRECTED by CRA 1991

**Further points about discrimination lawsuits**
- Most complaints never make it to court (settlement procedures).
- Most of the cases that do make it to court are claiming *disparate treatment*.
- Statistical evidence is most important in *adverse impact* cases.
- Organizations need to be more proactive concerning potential discrimination issues. Lawsuits are very expensive, even when you win.
• In the U.S., anyone can file a lawsuit on whomever they choose. So, when someone asks can they sue me for that, the answer is always yes. However, that does not mean that the suit will make it to court.