

## Chapter 17 - Employment Discrimination

### Title VII of the Civil Rights Act

- Title VII prohibits discrimination in employment on the basis of race, color, national origin, religion, or gender.
- Applies to employers or unions with 15+ employees/members
  
- The Equal Employment Opportunity Commission (EEOC)
  - Monitors compliance with Title VII
  - EEOC investigates “priority cases”
  - 2011 U.S. Supreme Court limited the rights of employees to bring discrimination claims against their employer as a group
  
- Intentional and Unintentional Discrimination
  - Intentional discrimination
    - Known as **disparate-treatment discrimination** – a form of employment discrimination that results when an employer intentionally discriminates against employees who are members of protected classes
    - *Prima facie* case
  - Unintentional discrimination
    - **Disparate-impact discrimination** – results from certain employer practices that have a discriminatory effect
  
- Discrimination Based on Race, Color, and National Origin
  - Title VII prohibits employment policies or intentional/ negligent discrimination on basis of race, color, or national origin.
  - Policies that discriminate are illegal, unless (except for race) they have a substantial demonstrable relationship to realistic qualifications for job.
  
  - Reverse Discrimination
    - Discrimination against “majority” individuals
  - Potential “Section 1981” Claims
    - Enacted in 1866 to protect the rights of freed slaves
    - Prohibits discrimination on the basis of race or ethnicity in the formation or enforcement of contracts
  
- Discrimination Based on Religion
  - Reasonable accommodation
    - An employer must “reasonably accommodate” the religious practices of its employees unless it causes undue hardship to the business
  - Undue hardship
  
- Discrimination Based on Gender
  - Employers are prohibited from classifying jobs based on gender, *unless* employer can prove gender is essential to the job.
  - Gender must be a determining factor
  - Wage discrimination
    - Equal Pay Act – requires equal pay for male and female employees at the same

- business
- Lilly Ledbetter Fair Pay Act – made discriminatory wages actionable under federal law
  
- Constructive Discharge
  - Employer causes working conditions to be so intolerable that reasonable person would feel compelled to quit.
  - Proving constructive discharge
    - Objective proof of intolerable working conditions which employer knew about.
    - Employee's resignation must be a foreseeable result of working conditions.
  - Applies to all Title VII discrimination
  
- Sexual Harassment
  - *Quid pro quo* harassment
  - Hostile-environment harassment
  - Harassment by supervisors
    - Tangible employment action
  - The *Ellerth/Faragher* affirmative defense
    - 1998 United States Supreme Court ruling
  - Retaliation by employers
  
- Harassment by co-workers and nonemployees
  - Employer may still be held liable
- Same-gender harassment
  - Title VII extends to individuals sexually harassed by members of same gender
- Sexual orientation harassment
  - Federal law does not prohibit discrimination or harassment based on a person's sexual orientation
  - Some states have passed laws that prohibit sexual orientation discrimination
  
- Online Harassment
  - Hostile work environment created using company chat, blogs, e-mail
  - Employers may avoid liability with prompt remedial action.
  - Employees may be discharged for using company computers to distribute offensive material to coworkers.
  
- Remedies under Title VII
  - Employer liability may be extensive.
  - Plaintiff may receive
    - Reinstatement
    - Back pay
    - Retroactive promotions
    - Damages
  - Statute limits total amount of compensatory and punitive damages depending on size of employer.

### **Discrimination Based on Age**

- Age Discrimination in Employment Act (ADEA)
  - Protects individuals over the age of 40 from workplace discrimination that favors younger workers
  - Prohibits mandatory retirement for nonmanagerial workers
  - Protects federal government employees
- Procedures under the ADEA
  - 2009 United States Supreme Court changed burden of proof
  - *Prima facie* case
    - Member of the protected age group
    - Qualified for the position discharged from
    - Discharged because of age discrimination
  - Pretext
- State Employees Not Covered by the ADEA
  - State immunity under the Eleventh Amendment
  - State employers are immune from private suits brought by employees under the ADEA

### **Discrimination Based on Disability**

- Americans with Disability Act (ADA)
  - Prohibits disability-based discrimination in workplaces with 15+ workers
- Procedures under the ADA
  - Has a disability
  - Is otherwise qualified for job in question
  - Was excluded from the job solely because of the disability
- What Is a Disability?
  - A physical or mental impairment that substantially limits one or more of an individual's major life activities
  - A record of such impairment
  - Being regarded as having such an impairment
- Reasonable Accommodation
  - Undue hardship
    - Significantly difficult or expensive for employer
  - Job applications and preemployment physical exams
  - Substance abusers
    - Former drug addiction is a disability under the ADA.
  - Health-insurance plans

### **Defenses to Employment Discrimination**

- Possible justifications
  - Result of a business necessity
  - Bona fide occupational qualification
  - Seniority system

- Lack of motive
- After-acquired evidence of employee misconduct
  
- Business Necessity
  - A defense to alleged employment discrimination in which the employer demonstrates that an employment practice that discriminates against members of a protected class is related to job performance
  
- Bona Fide Occupational Qualification (BFOQ)
  - Identifiable characteristics reasonably necessary to the normal operation of a particular business.
  - Characteristics can include gender, national origin, and religion, but not race.
  
- Seniority Systems
  - A system in which those who have worked longest for an employer are first in line for promotions, salary increases, and other benefits, and are last to be laid off if the workforce must be reduced
  
- A Lack of Motive
  - Burden of proof shifts if plaintiff can show the employer was motivated by unlawful discrimination
  
- After-Acquired Evidence of Employee Misconduct
  - Refers to evidence of misconduct, committed by an employee who is suing an employer for employment discrimination.
  - Not an absolute defense for employer.

#### **Affirmative Action**

- Job-hiring policies that give special consideration to members of protected classes in an effort to overcome present effects of past discrimination
- Title VII neither requires nor prohibits affirmative action
  
- Equal Protection Issues
  - Affirmative action programs may violate equal protection clause of 14<sup>th</sup> Amendment
- States Can Prohibit
  - Some states enacted laws that prohibit affirmative action programs
  - 2014 U.S. Supreme Court recognized that states have the power to enact such bans