3

Equal Employment Opportunity, Affirmative Action, and Workforce Diversity

CHAPTER OBJECTIVES

After completing this chapter, students should be able t

1. Explain the concept of equal employment opportunity.
2. Identify the federal laws affecting equal employment opportunity.
3. Discuss who is responsible for ensuring equal employment opportunity.
4. Define and operationalize types of employment discrimination.
5. Define and discuss affirmative action.
6. Explain the *Uniform Guidelines* related to sexual harassment, national origin, religion, and caregiver (family responsibility) discrimination.
7. Describe sexual harassment in the global environment.
8. Describe the concept of diversity.
9. Discuss diversity management.
10. Explain the various elements of a diverse workforce.

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Equal Employment Opportunity (EEO)
The set of laws and policies that requires all individuals' rights to equal opportunity in the workplace, regardless of race, color, sex, religion, national origin, age, or disability.

Affirmative Action
Stipulated by Executive Order 11246, it requires employers to take positive steps to ensure that employment of applicants and treatment of employees during employment are without regard to race, creed, color, or national origin.

diversity
Any perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, geographic origin, lifestyle, tenure with the organization or position, and any other perceived difference.

The workforce of today has become truly diverse. But this was not the case in the early 1960s; in fact, little of the workforce of those days remotely resembled that of today. Then, few mainstream opportunities were available to women, minorities, and those with disabilities. The Civil Rights Movement in the 1960s during which time blacks sought equality in employment and other areas of society led to a series of laws and executive orders, starting with Equal Employment Opportunity laws passed by the U.S. federal government. **Equal Employment Opportunity (EEO)** refers to the set of laws and policies that requires all individuals' rights to equal opportunity in the workplace, regardless of race, color, sex, religion, national origin, age, or disability. Additional requirements, known as Affirmative Action, were established. **Affirmative Action** creates the expectation and program requirements that companies make a positive effort to recruit, hire, train, and promote employees from groups who are underrepresented in the labor force.

Since the Civil Rights movement and the passage of EEO laws, most companies have chosen to embrace the idea of promoting diversity in the workplace. **Diversity** refers to *any* actual or perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, gender identity, geographic origin, lifestyle, tenure with the organization or position, and any other perceived difference, including values and nontraditional work experiences. As you can see, characteristics of diversity go well beyond protected classes such as race in EEO law. Unlike EEO and Affirmative Action, promoting a diverse workforce is not required by law. Companies choose to embrace workforce diversity as a strategic choice. Capitalizing on a diverse workforce may be seen as contributing to a company's objectives such as profit, productivity, and morale. Diversity is inclusive, encompassing everyone in the workplace. Diversity management is aimed at creating a workplace in which every employee fits, feels accepted, has value, and contributes.

The purpose of this chapter is to explore EEO and Affirmative Action requirements. Then, we will take up the subject of workplace diversity.

OBJECTIVE 3.1

Explain the concept of equal employment opportunity.

Equal Employment Opportunity: An Overview

Legislation (federal, state, and local), Supreme Court decisions, and executive orders have required both public and private organizations to tap the abilities of a workforce that was largely underused before the mid-1960s. The concept of EEO has undergone much modification and fine-tuning since the passage of the Equal Pay Act of 1963, the Civil Rights Act of 1964, and the Age Discrimination in Employment Act of 1967.

Numerous amendments to these acts have been passed, as well as other acts in response to oversights in the initial legislation. Major Supreme Court decisions interpreting the provisions of the acts have also been handed down. A presidential executive order was signed into law that provided for affirmative action. Five decades have passed since the introduction of the first legislation, and EEO has become an integral part of the workplace.

Although EEO has come a long way since the early 1960s, continuing efforts are required because some problems still exist. Although perfection is elusive, the majority of businesses today do attempt to make employment decisions based on who is the best qualified, as opposed to whether an individual is of a certain gender, race, religion, color, national origin, or age or is disabled. Hiring standards to avoid will be identified based on some of the laws and executive orders that have had a major impact in creating this diverse workforce.

OBJECTIVE 3.2

Identify the federal laws affecting equal employment opportunity.

Federal Laws Affecting Equal Employment Opportunity

Numerous federal laws have been passed that have had an impact on EEO. The passage of these laws reflects society's attitude toward the changes that should be made to give everyone an equal opportunity for employment. The most significant of these laws will be described in the following sections after clarifying the sources of legislation based on the unit of government—federal government, state government, and local government The federal government enacts and passes laws that apply throughout the entire United States, and the set of federal laws pertaining to EEO are our focus in this chapter. However, we will briefly consider the role of state and local governments later as well. State government (for example, the states of Illinois and Louisiana) enacts legislation that applies throughout its jurisdiction within the state border. Local government may oversee the activities of a county or municipality within the state (for example, Suffolk County in Massachusetts or New York City in New York). Our main focus will be on federal laws, and we will make reference to state and local laws as necessary.

Constitutional Amendments and the Civil Rights Act of 1866

The oldest federal legislation affecting staffing is the Civil Rights Act of 1866, which is based on the Thirteenth Amendment to the U.S. Constitution. The Thirteenth Amendment abolished slavery in the United States and provides that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The Civil Rights Act of 1866 granted citizenship and the same rights enjoyed by white citizens to all male persons in the United States "without distinction of race or color, or previous condition of slavery or involuntary servitude." Subsequently, the Fourteenth Amendment to the U.S. Constitution was enacted to ensure that the Civil Rights Act passed in 1866 would remain valid ensuring that "all persons born in the United States…excluding Indians not taxed…." were citizens and were to be given "full and equal benefit of all laws."

Title VII of the Civil Rights Act of 1964, Amended in 1972

The statute that has had the greatest impact on EEO is Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Act of 1972. Under Title VII, it is illegal for an employer to discriminate in hiring, firing, promoting, compensating, or in terms, conditions, or privileges of employment on the basis of race, color, sex, religion, or national origin. The act also forbids retaliation against an employee who has participated in an investigation, proceeding, or hearing.

Title VII covers employers engaged in or affecting interstate commerce who have 15 or more employees for each working day in each of 20 calendar weeks in the current or preceding

calendar year. Also included in the definition of employers are state and local governments, schools, colleges, unions, and private employment agencies with 15 or more employees. All private employers who are subject to the Civil Rights Act of 1964 as amended with 100 employees or more must annually submit an EEO-1 (see Figure 3-1).

Three notable exceptions to discrimination as covered by Title VII are bona fide occupational qualifications (BFOQs), seniority and merit systems, and testing and educational requirements. According to the act it is not an unlawful employment practice for an employer to hire and employ employees on the basis of his or her religion, sex, or national origin in those certain instances where religion, sex, or national origin is a BFOQ reasonably necessary to the normal operation of the particular business or enterprise. For example, religious institutions, such as churches or synagogues, may legally refuse to hire teachers whose religious conviction is different from that of the hiring institution. Likewise, a maximum-security correctional institution housing only male inmates may decline to hire females as security guards. The concept of BFOQ was designed to be narrowly, not

FIGURE 3-1
Equal Employment Opportunity Employer Information Report

Joint Reporting Committee
- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs (Labor)

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO—1

Standard Form 100
(Rev. 4–92)
O.M.B. No. 3046–0007
EXPIRES 12/31/93
100-213

Section A—TYPE OF REPORT
Refer to instructions for number and types of reports to be filed.

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX)

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:
(2) ☐ Consolidated Report (Required)
(3) ☐ Headquarters Unit Report (Required)
(4) ☐ Individual Establishment Report (submit one for each establishment with 50 or more employees)
(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only) ______

Section B—COMPANY IDENTIFICATION (*To be answered by all employers*) — OFFICE USE ONLY

1. Parent Company
   a. Name of parent company (owns or controls establishment in item 2) omit if same as label — a.

Address (Number and street) — b.

City or town | State | ZIP code — c.

2. Establishment for which this report is filed. (Omit if same as label)
   a. Name of establishment — d.

Address (Number and street) | City or town | County | State | ZIP code — e.

   b. Employer identification No. (IRS 9-DIGIT TAX NUMBER) — f.

Was an EEO–1 report filed for this establishment last year? ☐ Yes ☐ No

Section C—EMPLOYERS WHO ARE REQUIRED TO FILE (*To be answered by all employers*)

☐ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

☐ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entitles in an enterprise with a total employment of 100 or more?

☐ Yes ☐ No 3. Does the company or any of its establishments (1) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60–1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to $50,000 or more, or (2) serves as a depository for Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

If the response to question C–3 is yes, please enter your Dun and Bradstreet Identification number (if you have one):

NOTE: If the answer is yes to questions 1, 2, or 3, complete the entire form, otherwise skip to Section G.

NSN 7540-00-180-6384

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Section D—EMPLOYMENT DATA

Employment at this establishment—Report all permanent full- and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	Number of Employees (Report employees in only one category)														
	Race/Ethnicity														Total Col A - N
	Hispanic or Latino		Not-Hispanic or Latino												
			Male						Female						
	Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Executive/Senior Level Officials and Managers 1.1															
First/Mid-Level Officials and Managers 1.2															
Professionals 2															
Technicians 3															
Sales Workers 4															
Administrative Support Workers 5															
Craft Workers 6															
Operatives 7															
Laborers and Helpers 8															
Service Workers 9															
TOTAL 10															
PREVIOUS YEAR TOTAL 11															

1. Date(s) of payroll period used: ____________ (Omit on the Consolidated Report.)

O.M.B. No. 3046-0007
Revised 01/2006
Expires 1/2009

FIGURE 3-1
Continued

broadly, interpreted and has been so interpreted by the courts in a number of cases. For instance, historically women sales representative were barred from working in a male clothing store because it was thought that men would not purchase from them. This stereotype has certainly been overcome because men regularly see female salespersons working in men's clothing stores. The burden of proving the necessity for a BFOQ rests entirely on the employer.

The second exception to discrimination under Title VII is a bona fide seniority system such as the type normally contained in a union contract. Differences in employment conditions among workers are permitted, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin. Even if a bona fide seniority system has an adverse impact on those individuals protected by Title VII (i.e., it affects a class or group), the system can be invalidated only by evidence that the actual motives of the parties to the agreement were to discriminate.

Finally, in the matter of testing and educational requirements, Title VII states that it is not "an unlawful employment practice for an employer to give, and to act upon, the results of any professionally developed ability test provided that such test, its administration, or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin." Employment testing and educational requirements must be job related, and when adverse impact is shown, the burden of proof is on the employer to establish that a demonstrable relationship exists between actual job performance and the test or educational requirement.

The Civil Rights Act of 1964 also created the Equal Employment Opportunity Commission (EEOC) and assigned enforcement of Title VII to this agency. Consisting of five members appointed by the president, the EEOC is empowered to investigate, conciliate, and litigate charges of discrimination arising under provisions of Title VII. In addition, the commission has the responsibility of issuing procedural regulations and interpretations of Title VII and the other

statutes it enforces. The most significant regulation issued by EEOC is the *Uniform Guidelines on Employee Selection Procedures*. The EEOC enforces other EEO laws, with exceptions noted when those laws are discussed next.

Equal Pay Act of 1963, Amended in 1972

Passed as an amendment to the Fair Labor Standards Act, the Equal Pay Act (EPA) of 1963 prohibits an employer from paying an employee of one sex less money than an employee of the opposite sex, if both employees do work that is substantially the same. The EPA was passed largely to overcome the outdated belief that a man should be paid more than a woman because he was the primary breadwinner. The EPA covers work within the same physical place of business. For example, an employer could pay a female more in San Francisco than a male working in the same position in Slippery Rock, Pennsylvania, even if the jobs were substantially the same, because of the cost-of-living difference. A key point to remember is that the pay difference must be substantial and that small pay differences might be acceptable. Four exceptions that permit unequal pay for equal work include:

- Seniority system
- Merit system
- System that measures earnings by quantity or quality of production
- Any other factor other than sex

The EEOC enforces the EPA. The EEOC possesses the authority to investigate and reconcile charges of illegal discrimination. Title VII protects employees who work for all private sector employers; local, state, and federal governments; and educational institutions that employ 15 or more individuals. Title VII also applies to private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training. It should be noted that the remaining laws that follow are also enforced by the EEOC.

Lilly Ledbetter Fair Pay Act of 2009

Lilly Ledbetter worked as a supervisor for Goodyear Tire from 1979 until 1998. Just before retirement, she received information that compared her salary with salaries of male coworkers. She was earning $3,727 monthly compared with 15 male coworkers who earned between $4,286 and $5,236. She sued, claiming pay discrimination under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963.[1] In the 2007 Supreme Court case of *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, the Court said that discrimination charges must be filed within 180 days after the allegedly discriminatory pay decision. Lilly Ledbetter had worked for Goodyear for many years but she did not realize until she was close to retirement that she was being discriminated against because of pay. Because she did not file a discrimination charge within 180 days of her employment, the Supreme Court ruled against her. To reverse the Ledbetter decision, the Lilly Ledbetter Fair Pay Act was passed by Congress and signed into law in 2009. The law creates a rolling or open time frame for filing wage discrimination claims. Each paycheck that unfairly pays a worker less than it should is a discriminatory act. The act gives the worker a fresh 180-day period (300 days in some states) to file a charge of discrimination with the EEOC.

Pregnancy Discrimination Act of 1978

Passed as an amendment to Title VII of the Civil Rights Act, the Pregnancy Discrimination Act prohibits discrimination in employment based on pregnancy, childbirth, or related medical conditions. Questions regarding a woman's family and childbearing plans should not be asked. Similarly, questions relating to family plans, birth control techniques, and the like may be viewed as discriminatory because they are not asked of men. The basic principle of the act is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired or refused a job or promotion merely because she is pregnant or has had an abortion. She usually cannot be forced to take a leave of absence as long as she can work. If other employees on disability leave are entitled to return to their jobs when they are able to work again, so too are women who have been unable to work because of pregnancy. Also, limiting job advancement opportunities while a woman is pregnant may be a violation of the act.

The same principle applies in the benefits area, including disability benefits, sick leave, and health insurance. A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions.

Civil Rights Act of 1991

During 1988–1989, the Supreme Court rendered six employment discrimination decisions of such magnitude that a congressional response was required to overturn these decisions. The result was passage of the Civil Rights Act of 1991. The act amended five statutes: (1) the Civil Rights Act of 1866; (2) Title VII of the Civil Rights Act of 1964, as Amended; (3) the Age Discrimination in Employment Act of 1967, as Amended; (4) the Rehabilitation Act of 1973; and (5) the Americans with Disabilities Act of 1990.

The Civil Rights Act of 1991 had the following purposes:

- To provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace.
- To codify the concepts of *business necessity* and *job-relatedness* pronounced by the Supreme Court in *Griggs v. Duke Power Company*.
- To confirm statutory authority and provide statutory guidelines for the adjudication of disparate impacts under Title VII of the Civil Rights Act of 1964. Disparate impact occurs when certain actions in the employment process work to the disadvantage of members of protected groups. Disparate impact will be discussed under the heading, "Adverse Impact."
- To respond to decisions of the Supreme Court by expanding the scope of relevant civil rights statutes to provide adequate protection to victims of discrimination.

Under this act, a complaining party may recover punitive damages if the complaining party demonstrates that the company engaged in a discriminatory practice with malice or with reckless indifference to the law. However, the following limits, based on the number of people employed by the company, were placed on the amount of the award:

- Between 15 and 100 employees—$50,000
- Between 101 and 200 employees—$100,000
- Between 201 and 500 employees—$200,000
- More than 500 employees—$300,000

In each case, aggrieved employees must be with the firm for 20 or more calendar weeks in the current or preceding calendar year.

With regard to burden of proof, a complaining party must show that a particular employment practice causes a disparate impact on the basis of race, color, religion, sex, or national origin. It must also be shown that the company is unable to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity. The act also extends the coverage of the Civil Rights Act of 1964 to extraterritorial employment. However, the act does not apply to U.S. companies operating in other countries if compliance "would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located."[2] The act also extends the nondiscrimination principles to Congress and other government agencies, such as the General Accounting Office and the Government Printing Office.

Age Discrimination in Employment Act of 1967, Amended in 1978 and 1986

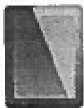
As originally enacted, the Age Discrimination in Employment Act (ADEA) prohibited employers from discriminating against individuals who were 40 to 65 years old. The 1978 amendment provided protection for individuals who were at least 40, but less than 70 years old. In a 1986 amendment, employer discrimination against anyone age 40 or older is illegal. Questions asked about an applicant's age or date of birth may be ill-advised. Also, assuming that only younger applicants are more eager and ready to learn new technology may bring an age discrimination suit because people of any age may possess these qualities. However, a firm may ask for age information to comply with the child labor law. For example, the question could be asked, "Are you under the age of 18?" Nonetheless, questions about the ages of children, if any,

could be potentially discriminatory because a close approximation of the applicant's age often is obtained through knowledge of the ages of the applicant's children. The EEOC is responsible for administering this act. The ADEA pertains to employers who have 20 or more employees for 20 or more calendar weeks (either in the current or preceding calendar year); unions with 25 or more members; employment agencies; and federal, state, and local government subunits.

Enforcement begins when a charge is filed, but the EEOC can review compliance even if no charge is filed. The ADEA differs from Title VII of the Civil Rights Act because it provides for a trial by jury and carries possible criminal penalty for violation of the act. The trial-by-jury provision is important because juries are thought to have great sympathy for older people who may have been discriminated against. The criminal penalty provision means that a person may receive more than lost wages if discrimination is proved. Further, an employer found to have wilfully violated the ADEA can be liable to the victimized person for "liquidated damages" or double damages.[3] The 1978 amendment also makes class action suits possible.

Age Can Actually Be a Bona Fide Occupational Qualification

Age can actually be a BFOQ when it is reasonably necessary to the essence of the business, and the employer has a rational or factual basis for believing that all, or substantially all, people within an age class would not be able to perform satisfactorily. Courts have continued to rule that the Federal Aviation Administration adequately explained its long-standing rule that it can force commercial pilots to retire at age 60. The age 60 rule was first imposed in 1959 and was long controversial. However, in 2007, the retirement age for commercial pilots was raised to 65.



HR Web Wisdom

Office of Contract Compliance Programs

http://www.dol.gov/ofccp/

Home page for the OFCCP, the agency responsible for ensuring that employers doing business with the federal government comply with the laws and regulations requiring nondiscrimination and affirmative action.

This ruling supported the 1974 Seventh Circuit Court decision that Greyhound did not violate the ADEA when it refused to hire persons 35 years of age or older as intercity bus drivers. Again, the likelihood of risk or harm to its passengers was involved. Greyhound presented evidence concerning degenerative physical and sensory changes that humans undergo at about age 35 that have a detrimental effect on driving skills, and that the changes are not detectable by physical tests. These skills would gradually deteriorate with increased age.

Rehabilitation Act of 1973

The Rehabilitation Act prohibits discrimination against disabled workers who are employed by certain government contractors and subcontractors and organizations that receive federal grants in excess of $2,500. Individuals are considered disabled if they have a physical or mental impairment that substantially limits one or more major life activities or if they have a record of such impairment. Protected under the act are diseases and conditions such as epilepsy, cancer, cardiovascular disorders, AIDS, blindness, deafness, mental retardation, emotional disorders, and dyslexia.

There are two primary levels of the act. All federal contractors or subcontractors exceeding the $2,500 base are required to post notices that they agree to take affirmative action to recruit, employ, and promote qualified disabled individuals. If the contract or subcontract exceeds $50,000, or if the contractor has 50 or more employees, the employer must prepare a written affirmative action plan for review by the Office of Federal Contract Compliance Programs (OFCCP), which administers the act. In it, the contractor must specify that reasonable steps are being taken to hire and promote disabled persons.

In an interpretation of Section 8 of the Rehabilitation Act, federal technology buyers are forced to think about people who are blind, deaf, paralyzed, or have other disabilities before they buy software, computers, printers, copiers, fax machines, kiosks, telecommunications devices, or video and multimedia products. Federal employees with disabilities must have access to and use of information and data that is comparable to the access and use by federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

Vietnam Era Veteran's Readjustment Assistance Act of 1974

The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) requires covered federal government contractors and subcontractors to take affirmative action to employ and advance in employment specified categories of veterans protected by the act and prohibits discrimination against such veterans. In addition, VEVRAA requires contractors and subcontractors to

list their employment openings with the appropriate employment service delivery system and that covered veterans receive priority in referral to such openings. Further, VEVRAA requires federal contractors and subcontractors to compile and submit annually a report on the number of current employees who are covered veterans. The affirmative action and mandatory job-listing provisions of VEVRAA are enforced by the Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor (DOL). DOL's Veterans' Employment and Training Service (VETS) administers the veterans' employment reporting requirement.

Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended

Under VEVRAA, federal contractors and subcontractors are required to take affirmative action in hiring covered veterans. VEVRAA prohibits federal contractors from discriminating against specified categories of veterans and requires them to take affirmative action to recruit, employ, and promote protected veterans. Contractors with 50 or more employees (and $100,000 in federal contracts made on or after December 1, 2003) must maintain a written affirmative action plan.[4] As originally passed, only covered honorably discharged persons who served more than 18 days on active duty between August 5, 1964, and May 7, 1975. Now the definition of "protected" or "covered" veteran has been expanded to include those who have served in a campaign or expedition for which a campaign badge was issued.[5] This includes campaigns such as current engagements in the Middle East.

Recently, there have been rather significant changes in the OFCCP requirement regarding the Rehabilitation Act and the VEVRAA. The final regulations require contractors to establish a nationwide 7 percent utilization goal for disabled individuals and veterans in each job group of their workforce. If a contractor has less than 100 employees, the final rule requires the 7 percent goal to be applied to the entire workforce. In addition, OFCCP's final rules provide two methods for contractors to establish hiring benchmarks for disabled individuals and veterans based on either the current national percentage of veterans in the workforce, which currently stands at 8 percent, or their own benchmark based on the best available data. The OFCCP stresses that goal is not a rigid and inflexible quota which must be met.

Americans with Disabilities Act of 1990

According to the U.S. Census Bureau, about 56.7 million people in the United States had some type of diagnosed disability in 2010 and more than 40 percent of them were of working age.[6] The Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities. The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoffs, leaves, benefits, and all other employment-related activities. The employment provisions apply to private employers, state and local governments, employment agencies, and labor unions. Persons discriminated against because they have a known association or relationship with a disabled individual are also protected. Employers with 15 or more employees are covered. The ADA defines an individual with a disability as a person who has, or is regarded as having, a physical or mental impairment that *substantially limits* one or more major life activities and has a record of such an impairment or is regarded as having such an impairment.

Americans with Disabilities Act Amendments Act of 2008

The Americans with Disabilities Act Amendments Act (ADAAA) brings millions more people within the ADA's protection. The ADAAA expands the definition of "disability," so that many more applicants and employees are eligible for reasonable accommodations.[7] The ADAAA broadened the ADA's definition of disability by expanding the term "major life activities," doing away with the "substantially limited" requirement (previously mentioned) for those regarded as having a disability, and overturning two U.S. Supreme Court decisions that interpreted the ADA's definition of disability narrowly.

According to the EEOC, one of the purposes of the ADAAA is the reinstatement of a broad scope of protection by expanding the definition of the term *disability*. Congress found that persons with many types of impairments—including epilepsy, diabetes, multiple sclerosis, major depression,

and bipolar disorder—had been unable to bring ADA claims because they were found not to meet the ADA's definition of disability. The ADA still covers only qualified individuals with disabilities and provides that to be disabled, an individual must have "a physical or mental impairment that substantially limits one or more major life activities," must have a record of such an impairment, or must be regarded as having such an impairment. The ADAAA also defines and vastly expands the term *major life activities* as including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The amendment states that major life activities include the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The only exception to this rule is that if a person's vision can be corrected with eyeglasses or contact lenses, he or she will not be considered disabled.

Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act (IRCA) makes it illegal for certain employers to fire or refuse to hire a person on the basis of that person's national origin or citizenship. This law also makes it illegal for an employer to request employment verification only from people of a certain national origin or only from people who appear to be from a foreign country. An employer who has citizenship requirements or gives preference to U.S. citizens also may violate IRCA.

Uniformed Services Employment and Reemployment Rights Act of 1994

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides protection to Reserve and National Guard members. Under the USERRA, those workers are entitled to return to their civilian employment after completing their military service. The USERRA is intended to eliminate or minimize employment disadvantages to civilian careers that can result from service in the uniformed services. The USERRA was enacted to protect the reemployment benefits and nondiscrimination rights of individuals who voluntarily or involuntarily take a leave of absence from employment to serve in the military. As a general rule, a returning employee is entitled to reemployment in the same job or position that he or she would have attained with reasonable certainty if not for the absence to serve in the military. Known as the *escalator principle*, this requirement is designed to ensure that a returning employee is not penalized (by losing a pay raise, promotion, etc.) for the time spent on active duty, not exceeding five years. To accomplish this, organizations should track factors ranging from compensation to promotions that employees would have received had they not been on military leave.[8] There are no special rights under USERRA for temporary workers or the new hires taking over the Reserve or National Guide members' jobs.

The Veterans Opportunity to Work (VOW) Act passed in 2011 amended the USERRA. It is now easier for employees to sue employers based on hostile work environment claims related to an employee's military status. Estimates are that USERRA cases will increase based on the new law and the projected budget reduction at the Department of Defense.[9] USERRA is administered by the U.S. Department of Labor.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act (GINA) of 2008 protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information by making unlawful the misuse of genetic information to discriminate in health insurance and employment. GINA contains two titles.

Title I of GINA applies to employer-sponsored group health plans. This title generally prohibits discrimination in group premiums based on genetic information and the use of genetic information as a basis for determining eligibility or setting health insurance premiums. Title I also places limitations on genetic testing and the collection of genetic information.

Title II of GINA prohibits the use of genetic information in the employment setting for making employment decisions such as hiring decisions, compensation, training, and termination. GINA further restricts the deliberate acquisition of genetic information by employers and others covered by Title II and strictly limits disclosing genetic information.

State and Local Laws

Numerous state and local laws also affect EEO. A number of states and some cities have pass fair employment practice laws prohibiting discrimination on the basis of race, color, religion, se or national origin. Even prior to federal legislation, several states had antidiscrimination legisl tion relating to age and gender. For instance, New York protected individuals between the ag of 18 and 65 prior to the passing of the ADEA, and California had no upper limit on protect age. San Francisco has voted to ban weight discrimination. The Board of Supervisors adde body size to city laws that already bar discrimination based on race, color, religion, age, ancestr sex, sexual orientation, disability, place of birth, or gender identity. The state of California has law that requires sexual harassment prevention training. Recently, New York City passed a la designed to protect unemployed job seekers from discrimination by employers.[10] When EEO regulations conflict with state or local civil rights regulations, the legislation more favorable t women and minorities applies. Recently state laws have addressed drug and alcohol testing EEO, human trafficking, immigration, time off, wages paid, and worker privacy.[11]

OBJECTIVE 3.3

Discuss who is responsible for ensuring equal employment opportunity.

Who's Responsible for Ensuring Equal Employment Opportunity?

The main groups that take responsibility for establishing and supporting EEO include the government (EEOC and OFCCP) and employers.

Equal Employment Opportunity Commission

Title VII of the Civil Rights Act, as amended, created the EEOC, which is charged with administering most of the aforementioned laws. Under Title VII, filing a discrimination charge initiates EEOC action. The EEOC continually receives complaints. According to the EEOC, employees filed 99,412 workplace discrimination charges in 2012. The most common claims focused on discrimination on the basis of race (33.7 percent), sex (30.5 percent), and age (23.0 percent).[12] In 2012, the EEOC obtained approximately $365.4 million in monetary relief for thousands of discrimination victims as well as significant nonmonetary remedies from employers.[13]

Charges may be filed by one of the presidentially appointed EEOC commissioners, by any aggrieved person, or by anyone acting on behalf of an aggrieved person. Charges must be filed within 180 days of the alleged act; however, the time is extended to 300 days if a state or local agency is involved in the case.

Notice in Figure 3-2 that when a charge is filed, the EEOC first attempts a no-fault settlement. Essentially, the organization charged with the violation is invited to settle the case with no admission of guilt. Most charges are settled at this stage. Failing settlement, the EEOC investigates the charges. Once the employer is notified that an investigation will take place, no records relating to the charge may be destroyed. During the investigative process, the employer is permitted to present a position statement. After the investigation has been completed, the district director of the EEOC will issue a probable cause or a no probable cause statement.

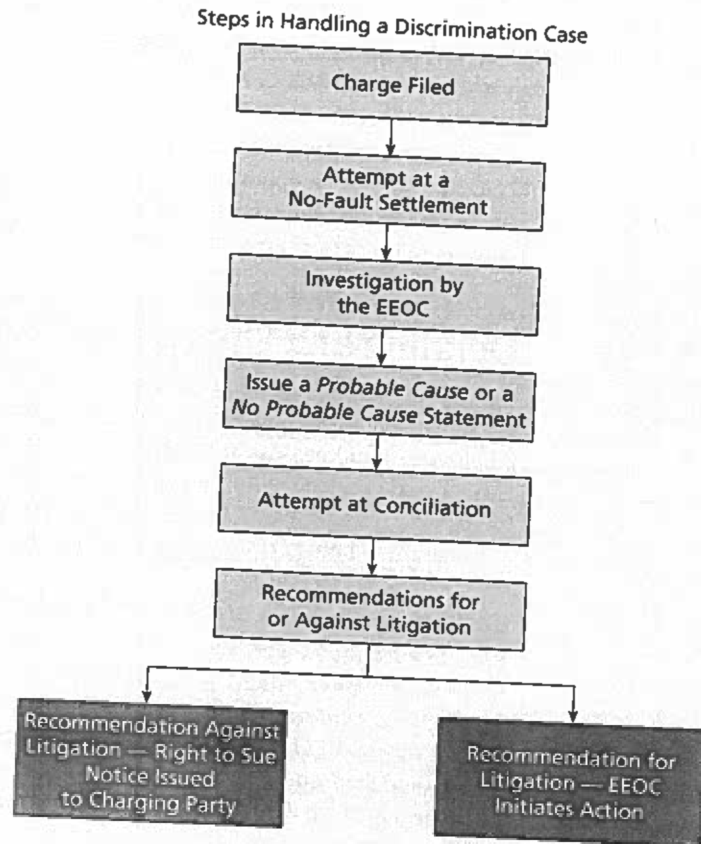
In the event of a probable cause statement, the next step involves attempted conciliation. In the event this effort fails, the case will be reviewed for litigation potential. Some of the factors that determine whether the EEOC will pursue litigation are (1) the number of people affected by the alleged practice; (2) the amount of money involved in the charge; (3) other charges against the employer; and (4) the type of charge. Recommendations for litigation are then passed on to the general counsel of the EEOC. If the recommendation is against litigation, a right-to-sue notice will be issued to the charging party.

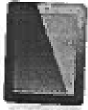
Office of Federal Contract Compliance Programs

The purpose of the OFCCP is to enforce the requirements of affirmative action and EEO required of those who do business with the federal government. The OFCCP is an agency within the U.S. DOL. According to the U.S. DOL, the OFCCP uses the following enforcement procedures:[14]

- Offers technical assistance to federal contractors and subcontractors to help them understand the regulatory requirements and review process.
- Conducts compliance evaluations and complaint investigations of federal contractors and subcontractors personnel policies and procedures.

FIGURE 3-2
EEOC Procedure Once a Charge Is Filed





HR Web Wisdom
EEOC
http://www.eeoc.gov
The home page for the Equal Employment Opportunity Commission.

- Obtains conciliation agreements from contractors and subcontractors who are in violation of regulatory requirements. When a compliance review discloses problems, OFCCP attempts to work with the contractor, often entering into a conciliation agreement. A conciliation agreement may include back pay, job offers, seniority credit, promotions or other forms of relief for victims of discrimination. It may also involve new training programs, special recruitment efforts, or other affirmative action measures
- Monitors contractors and subcontractors progress in fulfilling the terms of their agreements through periodic compliance reports.
- Forms linkage agreements between contractors and DOL job training programs to help employers identify and recruit qualified workers.
- Recommends enforcement actions to the Solicitor of Labor.
- The ultimate sanction for violations is debarment—the loss of a company's federal contracts. Other forms of relief to victims of discrimination may also be available, including back pay for lost wages.

Employers

Much has occurred since the first piece of EEO legislation was enacted approximately 50 years ago, and the basic hiring standards to avoid are largely understood by those in the workforce. In a perfect world, discrimination, retaliation, and harassment would not exist. However, despite a company's best efforts to treat employees fairly, suits are still brought and won because of mistakes in adherence to these standards.[15] Perhaps, it was only a temporary lapse where a manager knowingly decides to hire a less-qualified friend over a qualified member of a protected group. Or the manager may sincerely believe that he or she has the best intention of abiding by the law but still makes a mistake perhaps because of some complexity in the law.

To limit the prospect of an EEO lawsuit, an organization can do a few things. First, and foremost, it must have and enforce a strong EEO policy against discrimination. This policy must begin with top management and filter down to everyone in the organization. This policy should clearly spell out what standards are to be avoided. It should also conspicuously

describe the complaint procedure and the various avenues that can be followed if the per in charge is the cause of the complaint. Certainly, the policy should provide a strong a retaliation clause. Workers need to believe that a complaint will result in immediate a appropriate action.

Even with a policy such as the one described, there may still be breakdowns. When they occur, it becomes an opportunity to train employers how to handle an employee-relations pro lem better the next time. By taking the high road in the solution of a suit, it provides a means reinforcing the seriousness of the nondiscrimination policy.[16]

OBJECTIVE 3.4
Define and operationalize the types of employment discrimination.

Defining and Operationalizing Illegal Discrimination

Unfortunately, we hear about *illegal discrimination* in the workplace all too often in the new through friends or family who may have been victims, or personally. At minimum, eve employee should possess an awareness of how the law defines illegal workplace discriminatio Even a basic understanding may help employers and employees to minimize the prevalence o illegal discriminatory acts through self-monitoring or reporting concerns of possible illegal di crimination to human resource management professionals.

Uniform Guidelines on Employee Selection Procedures

Prior to 1978, employers were faced with complying with several different selection guidelines In 1978, the EEOC, the Civil Service Commission, the Department of Justice, and the DOI adopted the *Uniform Guidelines on Employee Selection Procedures*. These guidelines cove several federal EEO statutes and executive orders, including Title VII of the Civil Rights Act, EO 11246, and the Equal Pay Act.

Uniform Guidelines
Provide a single set of principles that were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with federal prohibitions against employment practices that discriminate on the basis of race, color, religion, sex, and national origin.

The **Uniform Guidelines** provide a single set of principles that were designed to assis employers, labor organizations, employment agencies, and licensing and certification boards in complying with federal prohibitions against employment practices that discriminate on the basis of race, color, religion, sex, and national origin. The *Uniform Guidelines* provide a framework for making legal employment decisions about hiring, promotion, demotion, referral, retention, licensing and certification, the proper use of tests, and other selection procedures. Under the *Uniform Guidelines*, recruiting procedures are not considered selection procedures and therefore are not covered.

Regarding selection procedures, the *Uniform Guidelines* state that a test is any measure, combination of measures, or procedures used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper-and-pencil tests, performance tests, testing programs or probationary periods, and physical, education, and work experience requirement through informal or casual interviews and unscored application forms.

Using this definition, virtually any instrument or procedure used in the selection decision is considered a test.

Concept of Disparate Treatment

disparate treatment
Employer treats some people less favorably than others because of race, religion, color, sex, national origin, or age.

Unlawful employment discrimination, as established through various Supreme Court decisions, can be divided into two broad categories: disparate treatment and adverse impact. **Disparate treatment** means that an employer treats some employees less favorably than others because of race, religion, color, sex, national origin, or age. It is the most easily understood form of discrimination.

For example, males are treated differently from females; Caucasians are treated differently from blacks. The crux of disparate treatment is different treatment on the basis of some nonallowable criterion. It may be thought of as direct discrimination. Common forms of disparate treatment include selection rules with a racial, sexual, or other premise; prejudicial action; unequal treatment on an individual basis; and different hiring standards for different groups. *McDonald v. Santa Fe Trail Transportation Company* offers an example of disparate treatment. Three of the company's employees, two whites and one black, had allegedly misappropriated 60 gallons of antifreeze. Santa Fe took disciplinary action against the workers by terminating the two whites, but not the black employee. The discharged white workers filed suit against the company, charging that their

termination violated both Title VII and the Civil Rights Act of 1866. The Supreme Court agreed with the plaintiffs that they had been the recipients of unequal treatment on the basis of their race. Central to disparate treatment is the matter of proof. The plaintiff must first be able to establish a prima facie case (that is, the appearance of possible illegal discrimination), and second, be able to establish that the employer was acting on the basis of a discriminatory motive.

Concept of Adverse Impact

Before the issuance of the *Uniform Guidelines*, the only way to prove job-relatedness was to validate each test. The *Uniform Guidelines* do not require validation in all cases. Essentially, it is required only in instances in which the test or other selection device produces an adverse impact on a minority group. **Adverse impact**, a concept established by the *Uniform Guidelines*, occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.

adverse impact
Concept established by the *Uniform Guidelines*; it occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.

Under the *Uniform Guidelines*, adverse impact has been described in terms of selection rates, the selection rate being the number of qualified applicants hired or promoted, divided by the total number of qualified applicants. This has also been called the four-fifths rule, which is actually a guideline subject to interpretation by the EEOC. The groups identified for analysis under the guidelines are (1) blacks, (2) American Indians (including Alaskan natives), (3) Asians, (4) Hispanics, (5) women, and (6) men.

The following formula is used to compute adverse impact for hiring:

$$\frac{\text{Success rate for least-achieving group of applicants}}{\text{Success rate for best-achieving group of applicants}} = \text{Determination of adverse impact}$$

The success rate for the least-achieving group (often women and minority applicants) is determined by dividing the number of members of a specific group employed in a period by the number of qualified applicants in a period. The success rate of best-achieving group applicants is determined by dividing the number of people in the best-achieving group employed by the number of the best-achieving group applicants in a period.

Using the formula, let us determine whether there has been adverse impact in the following case. During 2014, 400 people were hired for a particular job. Of the total, 300 were white and 100 were black. There were 1,500 qualified applicants for these jobs, of whom 1,000 were white and 500 were black. Blacks were determined to be the least-achieving group because 100/500 = 0.2. Whites were determined to be the best-achieving group because 300/1000 = 0.3. Using the adverse formula, you have:

$$\frac{100/500}{300/1000} = \frac{0.2}{0.3} = 66.67\%$$

Thus, adverse impact exists.

Evidence of adverse impact involves more than the total number of minority workers employed. Also considered is the total number of qualified applicants. For instance, assume that 300 blacks and 300 whites were hired. But there were 1,500 qualified black applicants and 1,000 qualified white applicants. Blacks were determined to be the least-achieving group because 300/1500 = 0.2. Whites were determined to be the best-achieving group because 300/1000 = 0.3. Putting these figures into the adverse impact formula, it can be concluded that adverse impact still exists.

$$\frac{300/1500}{300/1000} = \frac{0.2}{0.3} = 66.67\%$$

Therefore, it is clear that firms must monitor their recruitment efforts carefully. Obviously, firms should attempt to recruit qualified individuals because once in the applicant pool, they will be used in computing whether adverse impact is evident.

Assuming that adverse impact is shown, employers have two avenues available to them if they still desire to use a particular selection standard. First, the employer may validate a selection device by showing that it is indeed a predictor of success. For instance, the employer may be able to show a strong relationship between the selection device and job performance, and that if it

did not use this procedure, the firm's training costs would become prohibitive. If the device has proved to be a predictor of job performance, business necessity has been established.

The second avenue available to employers should adverse impact be shown is the BFOQ defense. The BFOQ defense means that only one group is capable of performing the job successfully. Courts have narrowly interpreted this defense because it almost always relates to sex discrimination. For instance, courts have rejected the concept that because most women cannot lift 100 pounds, all women should be eliminated from consideration for a job requiring heavy lifting.

The *Uniform Guidelines* adopted the bottom-line approach in assessing whether a firm's employment practices are discriminatory. For example, if a number of separate procedures are used in making a selection decision, the enforcement agencies will focus on the end result of these procedures to determine whether adverse impact has occurred. Essentially, the EEOC is more concerned with what is occurring than how it occurs. It admits that discriminatory employment practices that cannot be validated may exist; however, the net effect, or the bottom line, of the selection procedures is the focus of the EEOC attention.

OBJECTIVE 3.5

Define and discuss affirmative action.

Affirmative Action

executive order (EO)

Directive issued by the president that has the force and effect of law enacted by Congress as it applies to federal agencies and federal contractors.

An **executive order (EO)** is a directive issued by the president and has the force and effect of a law enacted by Congress because it applies to federal agencies and federal contractors. An example of a contractor is a company that provides carpentry work in federal government buildings. In 1965, President Lyndon B. Johnson established EO 11246 has two provisions. First, it prohibits federal contractors and subcontractors from engaging in illegal employment discrimination on the basis of race, color, religion, sex, or national origin. This requirement applies to contractors and subcontractors whose contracts with the federal government exceed $10,000. Second, contractors and contractors are required to take affirmative action to hire individuals from underrepresented groups. Contractors and subcontractors must prepare written affirmative action when their contracts exceed $50,000. The OFCCP is responsible for enforcing EO 11246. In 1968, EO 11375 changed the word *creed* to *religion* and added sex discrimination to the other prohibited items.

President Richard M. Nixon issued EO 11478 in 1969. It covers the federal civilian workforce. This EO prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, handicap, and age. And it requires all federal government departments and agencies to take affirmative steps to promote employment opportunities for those classes it covered. In 1998, President Bill Clinton amended EO 11478 with EO 13087, which adds sexual orientation to the list of protected classes. These EOs are enforced by the DOL through the OFCCP. Recently the VEVRAA and the Rehabilitation Act have received additional attention from the OFCCP.[17]

Affirmative action, stipulated by EO 11246, requires covered employers to take positive steps to ensure that employment of applicants and treatment of employees during employment are without regard to race, creed, color, or national origin.

Covered human resource practices relate to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Employers are required to post notices explaining these requirements in conspicuous places in the workplace. In the event of contractor noncompliance, contracts can be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for future government contracts.

affirmative action program (AAP)

Approach developed by organizations with government contracts to demonstrate that workers are employed in proportion to their representation in the firm's relevant labor market.

An **affirmative action program (AAP)** is an approach developed by organizations with government contracts to demonstrate that workers are employed in proportion to their representation in the firm's relevant labor market.

An AAP may be voluntarily implemented by an organization. In such an event, goals are established and actions taken to hire and move minorities and women up in the organization. In other situations, an AAP may be mandated by the OFCCP. The degree of control the OFCCP will impose depends on the size of the contract, with contracts of $10,000 or less not covered. The first level of control involves contracts that exceed $10,000 but are less than $50,000. The second level of control occurs if the contractor (1) has 50 or more employees; (2) has a contract

of $50,000 or more; (3) has contracts that, in any 12-month period, total $50,000 or more or reasonably may be expected to total $50,000 or more; or (4) is a financial institution that serves as a depository for government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to federal deposit or share insurance. Contractors meeting these criteria must develop a written AAP for each of their establishments and file an annual EEO-1 report. Note that the threshold is 50 employees here, but it is 100 with regard to those covered by the Civil Rights Act of 1964.

The third level of control on contractors is in effect when contracts exceed $1 million. All previously stated requirements must be met, and in addition, the OFCCP is authorized to conduct pre-award compliance reviews. In determining whether to conduct a pre-award review, the OFCCP may consider, for example, the items presented in Table 3-1. Alcoa Mill Products Inc. paid $484,656.19 in back wages to 37 Hispanics and blacks as well as $35,516.88 to two women who were rejected for job positions at the company's plant in Lancaster, Pennsylvania. The OFCCP determined that the company had violated EO 11246 by failing to meet its obligations as a federal contractor. Alcoa holds contracts with the U.S. Army in excess of $50 million.

Recently every 25th supply and service federal contractor selected for a compliance evaluation by the OFCCP is subjected to a full compliance review that includes on-site visits by compliance officers, even though there are no indicators of potential discrimination or other violations. The "active case enforcement" directive also provides that the OFCCP will perform a full desk audit in every compliance evaluation to comprehensively analyze a contractor's written AAPs.[18] Before this decision, only 25 compliance reviews were made per year.[19]

If an investigation indicates a violation, the OFCCP first tries to secure compliance through persuasion. If persuasion fails to resolve the issue, the OFCCP serves a notice to show cause or a notice of violation. A show cause notice contains a list of the violations, a statement of how the OFCCP proposes that corrections be made, a request for a written response to the findings, and a suggested date for a conciliation conference. The firm usually has 30 days to respond. Successful conciliation results in a written contract between the OFCCP and the contractor. In a conciliation agreement, the contractor agrees to take specific steps to remedy noncompliance with an EO. Firms that do not correct violations can be passed over in the awarding of future contracts. The procedures for developing AAPs were published in the *Federal Register* of December 4, 1974. These regulations are referred to as Revised Order No. 4. Revised Order No. 4 is quite specific with regard to dissemination of a firm's EEO policy, both internally and externally. An executive should be appointed to manage the firm's EEO program. This person should be given the necessary support by top management to accomplish the assignment. Revised Order No. 4 specifies the minimum level of responsibility associated with the task of EEO manager. The OFCCP guide for compliance officers, outlining what to cover in a compliance review, is known as Order No. 14.

The OFCCP is specific about what should be included in an AAP. A policy statement has to be developed that reflects the CEO's attitude regarding EEO, assigns overall responsibility for preparing and implementing the AAP, and provides for reporting and monitoring procedures. The policy should state that the firm intends to recruit, hire, train, and promote persons in all job

TABLE 3-1

Factors That the OFCCP May Consider in Conducting a Pre-award Review

1. The past EEO performance of the contractor, including its current EEO profile and indications of underutilization.
2. The volume and nature of complaints filed by employees or applicants against the contractor.
3. Whether the contractor is in a growth industry.
4. The level of employment or promotional opportunities resulting from the expansion of, or turnover in, the contractor's workforce.
5. The employment opportunities likely to result from the contract in issue.
6. Whether resources are available to conduct the review.

titles without regard to race, color, religion, gender, or national origin, except where gender is a BFOQ. Recently protected military veterans and individuals with disabilities have been included in affirmative action. The policy should guarantee that all human resource actions involving areas such as compensation, benefits, transfers, layoffs, return from layoffs, company-sponsored training, education, tuition assistance, and social and recreational programs will be administered without regard to race, color, religion, gender, or national origin.

An acceptable AAP must include an analysis of deficiencies in the utilization of minority groups and women. The first step in conducting a utilization analysis is to make a workforce analysis. The second step involves an analysis of all major job groups. An explanation of the situation is required if members of protected groups are currently being underutilized. A *job group* is defined as one or more jobs having similar content, wage rates, and opportunities.

Underutilization is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. The utilization analysis is important because the calculations determine whether underutilization exists. For example, if the utilization analysis shows that the availability of blacks for a certain job group is 30 percent, the organization should have at least 30 percent black employment in that group. If actual employment is less than 30 percent, underutilization exists, and the firm should set a goal of 30 percent black employment for that job group. The goal of affirmative action is for a contractor's workforce to generally reflect the gender, racial, and ethnic profile of the labor pools from which the contractor recruits and selects.

The primary focus of any AAP is on goals and timetables, with the issue being how many and by when. Goals and timetables developed by the firm should cover its entire AAP, including correction of deficiencies. These goals and timetables should be attainable; that is, they should be based on results that the firm, making good-faith efforts, could reasonably expect to achieve. Goals should be significant and measurable, as well as attainable. Two types of goals must be established regarding underutilization: annual and ultimate. The annual goal is to move toward elimination of underutilization, whereas the ultimate goal is to correct all underutilization. Goals should be specific in terms of planned results, with timetables for completion. However, goals should not establish inflexible quotas that must be met. Rather, they should be targets that are reasonably attainable. Some techniques that can be used to improve recruitment and increase the flow of minority and women applicants are shown in Table 3-2.

TABLE 3-2

Techniques to Improve Recruitment of Minorities and Women

- Identify referral organizations for minorities and women.
- Hold formal briefing sessions with representatives of referral organizations.
- Encourage minority and women employees to refer applicants to the firm.
- Include minorities and women on the personnel relations staff.
- Permit minorities and women to participate in career days, youth motivation programs, and related activities in their community.
- Actively participate in job fairs and give company representatives the authority to make on-the-spot commitments.
- Actively recruit at schools having predominant minority or female enrollments.
- Use special efforts to reach minorities and women during school recruitment drives.
- Undertake special employment programs whenever possible for women and minorities. These might include technical and nontechnical co-op programs, after-school or work-study jobs, summer jobs for underprivileged individuals, summer work-study programs, and motivation, training, and employment programs for the hardcore unemployed.
- Pictorially present minorities and women in recruiting brochures.
- Include the minority news media and women's interest media when expending help wanted advertising.

Source: Federal Register, 45, no. 251 (Tuesday December 30, 2008): 86243.

OBJECTIVE 3.6

Explain the *Uniform Guidelines* related to illegal employment discrimination.

Uniform Guidelines on Preventing Specific Illegal Employment Discrimination

Since the *Uniform Guidelines* were published in 1978, they have been modified several times. Some of these changes reflect Supreme Court decisions; others clarify implementation procedures. The five major changes discussed are the Guidelines on Sexual Harassment, Guidelines on Discrimination Because of National Origin, Guidelines on Discrimination Because of Religion, Guidelines on Caregiver (Family Responsibility) Discrimination, and Discrimination Because of Disability.

Guidelines on Sexual Harassment

As previously mentioned, Title VII of the Civil Rights Act generally prohibits discrimination in employment on the basis of gender. The EEOC has also issued guidelines that state that employers have a duty to maintain a workplace that is free from sexual harassment. The OFCCP has issued similar guidelines. Managers in both for-profit and not-for-profit organizations must be particularly alert to the issue of sexual harassment. The EEOC issued the guidelines because of the belief that sexual harassment was a widespread problem. Table 3-3 contains the EEOC's definition of sexual harassment. As you see, there are two distinct types of sexual harassment: (1) where a hostile work environment is created, and (2) when there is a quid pro quo, for example, an offer of promotion or pay raise in exchange for sex.

According to these guidelines, employers are totally liable for the acts of their supervisors, regardless of whether the employer is aware of the sexual harassment act. In *Faragher v. City of Boca Raton* and *Burlington Industries, Inc. v. Ellerth*, the Supreme Court held that an employer is strictly liable, meaning that it has absolutely no defense, when sexual harassment by a supervisor involves a tangible employment action. Courts expect employers to carefully train supervisors so they do not engage in any type of behavior that could be construed as sexual harassment. In addition, all employees should be trained so as to understand their rights and responsibilities.[20]

As with the Civil Rights Act of 1964, retaliation is forbidden against an employee who has participated in an investigation, proceeding, or hearing. Recently Blockbuster, Inc. entered into a consent judgment requiring it to pay more than $2 million to settle an employment discrimination lawsuit filed by EEOC. The EEOC had charged Blockbuster with subjecting female temporary employees to sexual harassment, retaliating against them for resisting sexual advances and complaining, and subjecting Hispanic temporary employees to national origin and race harassment and other discrimination. "This case should act as a warning to all employers who use staffing agency personnel," said EEOC Philadelphia Regional Attorney Debra M. Lawrence, whose jurisdiction includes Maryland. "Employers who are customers of staffing agencies have a responsibility to protect their temporary workers from unlawful discrimination. Too frequently, such employers fail to create systems to prevent and detect abuse of temporary workers and fail to respond forcefully to it. Those employers do so at their peril."[21]

TABLE 3-3

EEOC Definition of Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature that occur under any of the following situations:

1. When submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
2. When submission to or rejection of such contact by an individual is used as the basis for employment decisions affecting such individual.
3. When such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Where coworkers are concerned, the employer is responsible for such acts if the employer knew, or should have known, about them. The employer is not responsible when it can show that it took immediate and appropriate corrective action on learning of the problem. Another important aspect of these guidelines is that employers may be liable for acts committed by nonemployees in the workplace if the employer knew, or should have known, of the conduct and failed to take appropriate action.

Firms are responsible for developing programs and policies to prevent sexual harassment in the workplace. Managers must be trained to know what to do when there is a complaint. They must investigate all formal and informal complaints alleging sexual harassment.[22] Failure to do so constitutes a violation of Title VII, as interpreted by the EEOC. To prevail in court, companies must have clear procedures for handling sexual harassment complaints. If the sexual harassment complaint appears legitimate, the company must take immediate and appropriate action.[23] However, this does not mean that everyone who is guilty of sexual harassment must be fired. A single incident does not mean that sexual harassment exists unless the employer ignores the incident and lets the situation worsen.[24]

The first sexual harassment case to reach the U.S. Supreme Court was the case of *Meritor Savings Bank v. Vinson* in 1986. In the *Vinson* decision, the Supreme Court recognized for the first time that Title VII could be used for offensive-environment claims. According to the EEOC, specific actions that could create a hostile workplace include a pattern of threatening, intimidating, or hostile acts and remarks, negative sexual stereotyping, or the display of written or graphic materials considered degrading. The 1993 Supreme Court decision in *Harris v. Forklift Systems, Inc.* expanded the hostile-workplace concept and made it easier to win sexual harassment claims. In a unanimous decision, the Supreme Court held that "to be accountable as abusive work environment harassment, conduct need not seriously affect … the psychological well-being or lead the plaintiff to suffer injury." No longer does severe psychological injury have to be proved. Under this ruling, the plaintiff only needs to show that his or her employer allowed a hostile-to-abusive work environment to exist.

Duane Reade, the New York/New Jersey drug store chain, agreed to settle an EEOC lawsuit for $240,000 for allowing the work environment at one of its New York stores to become hostile. The store manager frequently made vulgar remarks about women's anatomy, sexually propositioned female employees, made lewd comments about them during pregnancies, assigned pregnant women the least desirable store tasks, and sometimes grabbed female employees' buttocks while they worked.[25] Unchecked sexual harassment can be financially crippling. In a recent case, a jury awarded the plaintiff $95 million, including $80 million in punitive damages.[26]

Males are not precluded from sexual harassment. From 1990 to 2009, the percentage of sexual harassment claims filed by male employees increased from 11.6 to 136.3 percent.[27] Recently, the Ninth U.S. Circuit Court of Appeals held that a female coworker's "relentless" pursuit of a male employee could form the basis of a sexually hostile environment claim, even without any physical conduct of a sexual nature. The Ninth Circuit pointed out that under Title VII of the Civil Rights Act of 1964, "[b]oth sexes are protected from discrimination."[28]

For a long time, an unresolved question in employment law has been whether same-sex harassment (for example, males harassing males) is unlawful under Title VII of the Civil Rights Act of 1964. The Supreme Court, in the case of *Oncale v. Sundowner Offshore Services*, held that same-sex sexual harassment may be unlawful under Title VII. The Supreme Court decided that a plaintiff could make a claim for sexual harassment as long as the harassing conduct was because of sex. The Court emphasized that Title VII does not prohibit all verbal or physical harassment in the workplace, only that which constitutes discrimination because of sex.

Guidelines on Discrimination Because of National Origin

Both EEOC and the courts have interpreted national origin protection under Title VII as extending far beyond discrimination against individuals who came from, or whose forebears came from, a particular country. National origin protection also covers (1) marriage or association with a person of a specific national origin; (2) membership in, or association with, an organization identified with, or seeking to promote the interests of national groups; (3) attendance at, or participation in, schools, churches, temples, or mosques generally used by persons of a national

TABLE 3-4

Selection Procedures That May Be Discriminatory with Regard to National Origin

1. Fluency in English requirements: One questionable practice involves denying employment opportunities because of an individual's foreign accent or inability to communicate well in English. When this practice is continually followed, the EEOC will presume that such a rule violates Title VII and will study it closely. However, a firm may require that employees speak only in English at certain times if business necessity can be shown.
2. Training or education requirements: Denying employment opportunities to an individual because of his or her foreign training or education, or practices that require an individual to be foreign trained or educated may be discriminatory.

origin group; and (4) use of an individual's or spouse's name that is associated with a national origin group. As Table 3-4 shows, the EEOC has identified certain selection procedures that may be discriminatory.

Harassment on the basis of national origin is a violation of Title VII. Employers have a duty to maintain a working environment free from such harassment. Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunity.

Of interest with regard to national origin is the English-only rule. Courts have generally ruled in the employer's favor if the rule would promote safety and product quality and stop harassment. For example, suppose a company has a rule that only English must be spoken except during breaks. That rule must be justified by a compelling business necessity. In *Garcia v. Spun Steak,* the Ninth Circuit Court of Appeals (the Supreme Court refused to review) concluded that the rule did not necessarily violate Title VII. Spun Steak's management implemented the policy after some workers complained they were being harassed and insulted in a language they could not understand. The rule allowed workers to speak Spanish during breaks and lunch periods. A recent ruling supported the job-related aspect of the English-only rule. In *Montes v. Vail Clinic, Inc.*, the Tenth Circuit Court agreed with the English-only rule prohibiting housekeepers from speaking Spanish while working in the operating room. However, English-only policies that are not job related have been challenged and eliminated. The EEOC settled a Title VII lawsuit against a company that enforced an English-only rule solely against Hispanics. "What was strange was that the rule was only targeted at Hispanics. Tagalog, a Spanish language spoken in the Philippines, was openly spoken," said Anna Park, the EEOC's regional attorney in Los Angeles. "This was very troublesome."[29]

Guidelines on Discrimination Because of Religion

The number of religion-related discrimination complaints filed with the EEOC continues to increase. According to the Supreme Court's decision in *TWA v. Hardison*, employers have an obligation to accommodate sincerely held religious practices as long as the requested accommodation does not create more than a minimum cost to the employer.[30] Courts generally do not require employers to hire additional employees just to cover for another employee who needs a religious accommodation. Consideration is given to identifiable costs in relation to the size and operating costs of the employer and the number of individuals who actually need the accommodation. These guidelines recognize that regular payment of premium wages constitutes undue hardship, whereas these payments on an infrequent or temporary basis do not. Undue hardship would also exist if an accommodation required a firm to vary from its bona fide seniority system.

The most common claims filed under the religious accommodation provisions involve employees objecting to either Sabbath employment or membership in or financial support of labor unions. These guidelines identify several means of accommodating religious practices that

prohibit working on certain days. Some of the methods suggested included voluntary substitutes, flexible scheduling, lateral transfer, and change of job assignments. Basically, employers that refuse to accommodate an employee's religious practice may need to provide evidence that doing so would constitute an undue burden.[31] However, if making an accommodation places a true hardship on the company, the accommodation does not have to be given.[32] Some collective bargaining agreements include a provision that each employee must join the union or pay the union a sum equivalent to dues. When an employee's religious beliefs prevent compliance, the union should accommodate the employee by permitting that person to make an equivalent donation to a charitable organization.

Guidelines on Caregiver (Family Responsibility) Discrimination

caregiver (family responsibility) discrimination Discrimination against employees based on their obligations to care for family members.

Caregiver (family responsibility) discrimination is discrimination against employees based on their obligations to care for family members. The EEOC has issued a technical assistance document titled "Employer Best Practices for Workers with Caregiving Responsibilities" on how employers of workers with caregiving responsibilities can avoid violations of Title VII of the 1964 Civil Rights Act and other fair employment laws and reduce the likelihood of discrimination complaints. This form of discrimination makes an assumption based on what a person assumes to be true about a group, including people with family responsibilities.

According to the EEOC, the guidance is not binding on employers but rather offers best practices that are proactive measures that go beyond federal nondiscrimination requirements. Federal law does not prohibit discrimination on the basis of "caregiver status," but rather it is concerned when workers with caregiving responsibilities are treated differently based on a characteristic that is protected by laws, such as gender, race, or association with an individual with a disability.

Caregiver discrimination has become the new battleground in employment claims.[33] Examples of possible caregiver discrimination violations include treating male caregivers more favorably than female caregivers; reassigning a woman to less desirable projects based on the assumption that, as a new mother, she will be less committed to her job; or lowering subjective evaluations of a female employee's work performance after she becomes the primary caregiver of her grandchildren, despite the absence of an actual decline in work performance.[34]

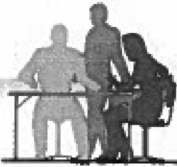
In recent years, employees have begun filing more and more caregiver discrimination lawsuits. Most cases share a common element—the employee alleges that the caregiving responsibilities cause the alleged discriminatory action by the employer. In EEO-related suits, plaintiffs win in only about 20 percent of cases alleging race, sex, or other more familiar types of discrimination. However, with caregiver discrimination, the win rate is twice that.[35] The challenge for employers is to develop the right mix of flexibility and fairness in work scheduling, leave policies, dependent-care assistance, and benefits. This will promote positive employee relations, recruit and retain a diverse and well-qualified workforce, address and resolve job-related issues, and defend against claims of unfair or unlawful conduct.

Discrimination Because of Disability

The ADA prohibits discrimination in employment as a result of one's disability and requires that employers provide an employee or job applicant with a reasonable accommodation unless doing so would cause significant difficulty or expense for the employer. In 2011, UPS Supply Chain Solutions agreed to pay $95,000 to settle a disability discrimination lawsuit filed by the EEOC. The EEOC had charged that UPS unlawfully denied a reasonable accommodation to a deaf employee.

The EEOC guidelines on pre-employment inquiries and tests regarding disabilities prohibit inquiries and medical examinations intended to gain information about applicants' disabilities before a conditional job offer. In the Supreme Court case of *Leonel v. American Airlines*, the Court ruled that the airline violated the ADA's required sequence for prehire medical inquiries/examinations by making medical inquiries and requiring individuals to take medical examinations before completing and making its hiring decisions.

The guiding principle is to ask only about potential employees' ability to do the job, and not about their disabilities. Lawful inquiries include those regarding performance of specific functions or possession of training appropriate to the job, whereas illegal inquiries include those that ask about previous medical conditions or extent of prior drug use. The ADA does not protect



ETHICAL DILEMMA

What Was the Real Message?

You were recently hired as information technology manager, and one of your first tasks was to prescreen candidates for an IT position with a subsidiary. After interviewing 20 candidates, you recommend to upper management a minority person as the most qualified, and he should be invited for a second interview. A day later, you are taken aside by a friend who suggested that you should not waste management's time by sending certain types for an interview. The intent of the message was clear: if you want to be accepted as a team player with this company, you had better get with the program.

1. What would you do?
2. What factor(s) in this ethical dilemma might influence a person to make a less-than-ethical decision?

people currently using illegal drugs. It does protect those in rehabilitation programs who are not currently using illegal drugs, those who have been rehabilitated, and those erroneously labeled as drug users. Coverage under the ADA continues to evolve as evidenced with the passing of the American with Disabilities Act Amendments Act of 2008.

OBJECTIVE 3.7

Describe sexual harassment in the global environment.

Global Sexual Harassment

Sexual harassment was discussed in this chapter only as it pertained to the United States, but it is also a global issue. When individuals from two different cultures interact, there is a potential for sexual harassment problems. Some behaviors that violate U.S. cultural norms may not be perceived as a problem in another culture. In many Mediterranean and Latin countries, physical contact and sensuality are a common part of socializing. The famous Cirque du Soleil, headquartered in Montreal, Canada, has had to adapt to the U.S. definition of sexual harassment when performing in the United States. While kissing good friends and coworkers on both cheeks is common in Montreal, such behavior could be considered a form of sexual harassment in the United States. Also, there are the seminude photos of Cirque performers hanging on the walls of the company's Montreal headquarters.[36] These would likely never be seen in the United States.

The level of enforcement against workplace sexual harassment varies considerably from country to country. Although 117 countries outlaw sexual harassment in the workplace, 311 million working-age women continue to live and work in countries without this legal protection.[37] In a recent study, 26 percent of the workers surveyed in India said they had been sexually harassed, whereas only 1 percent of Sweden's employees said that they had been sexually harassed. Chinese workers had the second-highest rate of sexual harassment victimization (18 percent), followed by Saudi Arabia (16 percent).[38] Sexual harassment remains a significant problem in Pakistan, and women must constantly be alert to protect themselves from problem situations. Lara Arif, 32, who sells fabric for women's dresses from her home in Karachi, avoids taxis when she visits clients. Instead, she favors crowded buses or rickshaws, which have no doors, making escape easier. "You have to be very reserved and remain alert all the time," Arif says.[39]

Australia, Canada, the Netherlands, Sweden, United States, and the United Kingdom have laws specifying prohibited conduct and allowing employees to seek individual remedies. Italy, the Philippines, Taiwan, and Venezuela define sexual harassment as a criminal offense, and penalties and remedies are provided in special statutory penal codes. In Germany, Spain, and Thailand, sexual discrimination laws allow employees to terminate their employment relationships because of discrimination or harassment. Employers are required to pay employees a substantial sum if the cause of their termination is the result of discrimination or harassment.[40]

France considers quid pro quo as the only form of sexual harassment claims. The country does not recognize claims of a sexually hostile work environment. However, France considers the request for sexual favors for a job or promotion to be a criminal matter with the possibility of prison.

In Thailand, quid pro quo is not recognized as sexual harassment because getting a work benefit such as promotion for having sexual relations is considered mutually beneficial. Sexual harassment is mainly defined as some type of sexual assault of a serious nature under criminal law.[41]

In Burma women do not really have an outlet to complain about sexual harassment, and only recently emerged from a 63-year regime that did not allow women some basic freedoms such as freedom of speech. France considers quid pro quo as the only form of sexual harassment claims. The country does not recognize claims of a sexually hostile work environment. However, France considers the request for sexual favors for a job or promotion to be a criminal matter with the possibility of prison. In Thailand, quid pro quo is not recognized as sexual harassment because getting a work benefit such as promotion for having sexual relations is considered mutually beneficial. Sexual harassment is mainly defined as some type of sexual assault of a serious nature under criminal law.

OBJECTIVE 3.8

Describe the concept of diversity.

Diversity

Twenty-five years ago, diversity was primarily concerned with race and gender.[42] Today, the definition is quite different. As we defined in the chapter introduction, diversity refers to *any* actual or perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, gender identity, geographic origin, lifestyle, tenure with the organization or position, and any other perceived difference. Further, as companies have become more global, the work group itself has become more diverse.[43] The challenge for managers is to recognize that people with characteristics that are common but are different from those in the mainstream, often think, act, learn, and communicate differently. Diversity is more than equal employment and affirmative action; the actual definition is constantly changing and expanding.

OBJECTIVE 3.9

Discuss diversity management.

diversity management
Ensuring that factors are in place to provide for and encourage the continued development of a diverse workforce by melding actual and perceived differences among workers to achieve maximum productivity.

Diversity Management

Diversity management is ensuring that factors are in place to provide for and encourage the continued development of a diverse workforce by combining these actual and perceived differences among workers to achieve maximum productivity. Because every person, culture, and business situation is unique, there are no simple rules for managing diversity; but diversity experts say that employers need to develop patience, open-mindedness, acceptance, and cultural awareness. Diversity management focuses on the principle that all workers regardless of any factor are entitled to the same privileges and opportunities.[44] According to R. Roosevelt Thomas Jr., former president of the American Institute for Managing Diversity, "diversity and diversity management are about managing and engaging people who are different and similar, all for the benefit of the organization and its goals."[45] In his book, *The Future and the Work Ahead of Us*, Harris Sussman writes, "Diversity is about our relatedness, our connectedness, our interactions, where the lines cross."[46]

If organizations want to remain competitive in the marketplace, diversity has to be a part of the strategic goal. New York–based accounting giant KPMG employs more than 23,000 people in the United States. It has a complex diversity program that includes a diversity advisory board, diversity networks, diversity recruiting, accountability mechanisms, scorecards, mandatory training, and a diversity officer. Kathy Hannan, national managing partner for diversity and corporate social responsibility with KPMG, reports directly to the CEO.[47] Programs that highlight a firm's diversity management program can be used to help attract desirable recruits.[48] The following Watch It video captures workers' concerns about the minimum wage level and the collective response of restaurant owners to their concerns. In a diverse workplace, where employees come from a variety of backgrounds and ethnicities, there is always the possibility of harassment between employees. The value of diversity sensitivity training is discussed in its capacity to help prevent incidence of employee harassment.

Watch It 1

If your instructor has assigned this, go to MyManagementLab to watch a video titled UPS: Equal Opportunity Employment and to respond to questions.

You will realize as you read the remainder of this chapter that diversity management and EEO are different. EEO focuses on laws, court decisions, and EOs. Diversity management is about pursuing an inclusive corporate culture in which newcomers feel welcome, and everyone sees the value of his or her job. It involves creating a supportive culture where all employees can be effective. In creating this culture, top management must strongly support workplace diversity as a company goal and include diversity initiatives in their companies' business strategies. It has grown out of the need for organizations to recognize the changing workforce and other social pressures that often result. Achieving diversity is more than being politically correct; it is about fostering a culture that values individuals and their wide array of needs and contributions.

Try It !

If your instructor has assigned this, go to MyManagementLab to complete the HR and Diversity simulation and test your application of these concepts when faced with real-world decisions.

OBJECTIVE 3.10

Explain the various elements of a diverse workforce.

Elements of the Diverse Workforce

Elements that combine to make up the diverse workforce will be discussed next.

Single Parents and Working Mothers

The number of single-parent households in the United States is growing. Although the divorce rate peaked in the early 1980s, the percentage of marriages ending in divorce remains around 50 percent. Often, children are involved. Of course, there are always widows and widowers who have children, and there are some men and women who choose to raise children outside of wedlock.

Managers need to be sensitive to the needs of working parents. Many women who formerly remained at home to care for children and the household now need and want to work outside the home. In fact, according to the U.S. Bureau of Labor Statistics data, just more than 70 percent of U.S. women with school-age children work.[49] If this valuable segment of the workforce is to be effectively used, organizations must fully recognize the importance of addressing work–family issues. Businesses are seeing that providing child-care services and workplace flexibility may influence workers' choice of employers. Companies that were chosen in *Working Mother* magazine's 100 best companies to work for placed greater emphasis on work–life balance, telecommuting, and flextime. The number of single-parent men has also increased, thus making the same work friendly issues important. According to the Pew Research Center, in 2011 single fathers headed 8 percent of households with minor children, up from 1 percent in 1960.[50]

Women in Business

Numerous factors have contributed to the growth and development of the U.S. labor force. However, nothing has been more prominent than the rise in the number of women in the labor force. More and more women are entering the labor force in high-paying, professional jobs and women dominate the health-care sector, which is one of the fastest-growing categories. In 2010, for the first time ever, women made up the majority of the U.S. workforce. Women-owned businesses now account for nearly one-third of all enterprises in the market today. The American Express Open State of Women-Owned Businesses Report shows the number of women-owned firms from 1997 to 2011 increased by 50 percent.[51]

Professional women are entering the workforce at the same rates as men. However, many opt out of the corporate life. Perhaps this is one of the reasons that women hold only 23 of the 500 CEO positions in Fortune's 2013 list of the largest U.S. companies.[52] But this does not mean that they are opting out of business careers. Instead, they are making their own career paths that allow them to combine work and life on their own terms. As a result, organizations

are losing talented employees in whom they have made substantial investments. Numerous companies are working diligently keep professional women in the workforce·although more work needs to be done.[53]

Women who chose to pursue advancement within corporations find it difficult to advance to the highest executive level positions. According to a key finding in Calvert Investments' "Examining the Cracks in the Ceiling: A Survey of Corporate Diversity Practices of the S&P 100," women were underrepresented on corporate boards and in C-level positions. Of the companies surveyed, less than 10 percent of women were found to be highly paid officials, and less than 20 percent were listed as board members.[54]

glass ceiling
Invisible barrier in organizations that impedes women and minorities from career advancement.

This phenomenon is often referred to as the glass ceiling. The **glass ceiling** is the invisible barrier in organizations that impedes women and minorities from career advancement. This act established a Glass Ceiling Commission to study the manner in which businesses fill management and decision-making positions, the developmental and skill-enhancing practices used to foster the necessary qualifications for advancement to such positions, and the compensation programs and reward structures currently used in the workplace. It was also to study the limited progress made by minorities and women. As you will learn in the following Watch It video, the challenges women face are particularly noteworthy in male-dominated professions.

Watch It 2
If your instructor has assigned this, go to MyManagementLab to watch a video titled Woman on Track to Become First NFL Rep and to respond to questions.

Mothers Returning to the Workforce (on Ramping)

Today, many recruiters are focusing on educated women who have taken career breaks as a significant source of potential talent (on ramping).[55] To get them to return, companies are going beyond federal law and giving mothers a year or more for maternity leave. Other businesses are specifically trying to recruit them to return to the labor force.

Although some companies are recruiting these women, other employers have programs that help their employees leave and later return. IBM has a program that allows employees to take up to three years off. Typically, working mothers who use the program take a year or more off, and then they use the remainder of their leave to re-enter work on a part-time basis. After the three years are up, they have the option of returning either full- or part-time. IBM surveyed employees who had taken the leave and found that 59 percent would have left the company if the program had not been available. "We didn't want a situation where women had to opt out," says Maria Ferris, manager of work–life and women's initiatives at IBM. "We've invested in them, trained them. We want to retain them."[56]

A concept called *returnships* is being used to let organizations try-out professionals who are resuming their careers. It provides a vehicle for relaunching a career after a break (most often for full-time parenting). Essentially it is an internship for experienced workers who have been out of work for a while whose résumés might scare recruiters away.[57]

Dual-Career Families

dual-career family
A situation in which both husband and wife have jobs and family responsibilities.

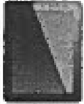
The increasing number of **dual-career families**—in which both husband and wife have jobs and family responsibilities—presents both challenges and opportunities for organizations. The majority of children growing up today have both parents working outside the home. Households consisting of male breadwinner married to a housewife were a majority in the United States in the 1950s, but in the twenty-first century the proportion of U.S. households with only a male wage earner is less than 20 percent.[58]

Today, employees have turned down relocations because of spouses' jobs and concerns about their children. Of the top three reasons employees turn down assignments, family or spouse's career is cited almost twice as often as concern with the employee's career or compensation.[59] As a result, firms are developing polices to assist the spouse of an employee who

is transferred. Some are offering assistance in finding a position for the spouse of a transferred employee. However, companies may need to learn more about how to handle dual-career couples in a global environment. If companies make the willingness to locate globally a requirement for promotion, many in this group will reject the offer, thereby reducing the size of the labor pool.

Ethnicity and Race

According to the U.S. Bureau of Labor Statistics, the percentage of the U.S. labor force made up of whites will decline while growth is expected for other racial groups.[60] These include Hispanics, blacks, and Asians. Unfortunately, at times, these individuals may be subject to stereotyping. They may encounter misunderstandings and expectations based on ethnic or cultural differences. Members of ethnic or racial groups are socialized within their particular culture. People's attitudes are influenced by the ancestral and cultural experiences of their childhood. Many are socialized as members of two cultural groups—the dominant culture and their racial or ethnic culture. Ella Bell refers to this dual membership as *biculturalism*. In her study of black women, Bell identifies the stress of coping with membership in two cultures simultaneously as bicultural stress. She indicates that role conflict (competing roles from two cultures) and role overload (too many expectations to comfortably fulfill) are common characteristics of bicultural stress. Although these issues can be applied to other minority groups, they are particularly intense for women of color because this group experiences dynamics affecting both minorities and women.[61]



HR Web Wisdom
Bureau of Labor Statistics
http://www.bls.gov/
Principal fact-finding agency for the federal government in the broad field of labor economics and statistics.

Socialization in one's culture of origin can lead to misunderstandings in the workplace. This is particularly true when the manager relies solely on the cultural norms of the majority group. According to norms within U.S. culture it is acceptable, even considered positive, to publicly praise an individual for a job well done. However, in cultures that place primary value on group harmony and collective achievement, this method of rewarding an employee may cause emotional discomfort. Some employees feel that, if praised publicly, they will lose face within their group.

Try It 2
If your instructor has assigned this, go to MyManagementLab to complete the Diversity simulation and test your application of these concepts when faced with real-world decisions.

Older Workers

Today, employees age 50 and older represent almost a third of the U.S. workforce.[62] In 2011, the first baby boomers turned 65, and approximately 10,000 more will continue to do so every day for the next 20 years. In recent years, many boomers deferred retirement because of a faltering economy and concerns about the viability of the Social Security retirement program.[63] As the economy improves, plans must be in place to handle a rapid departure of boomers from the workforce. Even so, many boomers will resist retirement, some because they feel healthy enough to continue work and others because their retirement income was hit hard by the economy. The U.S. Bureau of Labor Statistics estimates that about 11 million workers 65 and older will be working in 2022, up from about 6 million today.[64]

Despite massive layoffs resulting from the recent recession, many companies try to keep the worker older than 55. This may be as a result, in part, of legal concerns based on the ADEA, discussed previously in this chapter, which protects workers 40 and older against discrimination. However, a large part of this movement is the desire to keep the experienced workers on board. "Seniority matters," says Marcie Pitt-Catsouphes, director of the Sloan Center on Aging & Work at Boston College.[65]

People with Disabilities

According to the U.S. Bureau of Labor Statistics, approximately 20 percent of the labor force possesses one or more disabilities.[66] Common disabilities include limited hearing or sight, limited mobility, mental or emotional deficiencies and various nerve disorders. Such

disabilities limit the amount or kind of work a person can do or make its achievement unusually difficult. In jobs for which they are qualified, however, disabled workers do as well as unimpaired workers in terms of productivity, attendance, and average tenure. In fact, in certain high-turnover occupations, disabled workers have lower turnover rates. A DOL survey found that a majority of large businesses are hiring people with disabilities and discovering that costs for accommodations differ very little from those for the general employee population. In fact, the typical one-time expenditure is about $500, according the U.S. DOL's Office of Disability Employment Policy.[67] Further, once an employer hires one person with a disability, it is much more likely to hire other people with disabilities. Walgreens opened its second state-of-the-art distribution center in Windsor, Connecticut, designed specifically to employ people with disabilities. Its goal is to fill at least one-third of the available jobs with individuals with disabilities.[68] The goal may have a business sense because in a recent survey, 92 percent of respondents viewed companies that hire people with disabilities more favorably than they viewed companies that do not.[69]

Immigrants

Large numbers of immigrants from Asia and Latin America have settled in many parts of the United States. Some are highly skilled and well educated and others are only minimally qualified and have little education. They have one thing in common: an eagerness to work. They have brought with them attitudes, values, and mores particular to their home country cultures.

After the end of hostilities in Vietnam, Vietnamese immigrants settled along the Mississippi and Texas Gulf Coast. At about the same time, thousands of Thais fleeing the upheaval in Thailand came to the Boston area to work and live. New York's Puerto Rican community has long been an economic and political force there. Cubans who fled Castro's regime congregated in southern Florida, especially Miami. A flood of Mexicans and other Hispanics continues across the southern border of the United States. The Irish, the Polish, the Italians, and others who came here in past decades have long since assimilated into, and indeed became, the culture. Newer immigrants require time to adapt. Meanwhile, they generally take low-paying and menial jobs, live in substandard housing, and form enclaves where they cling to some semblance of the cultures they left.

Wherever they settle, members of these ethnic groups soon begin to become part of the regular workforce in certain occupations and break out of their isolation. They begin to adopt the English language and U.S. customs. They learn new skills and adapt old skills to their new country. Managers can place these individuals in jobs appropriate to their skills, with excellent results for the organization. As corporations employ more foreign nationals in this country, managers must work to understand the different cultures of their employees.

Foreign Workers

The H-1B employment visa brings in approximately 135,000 skilled foreign workers annually, including some 30,000 researchers and academicians not subject to the annual visa cap set by Congress. Of those 135,000, the majority are distributed to employers through a lottery system each April held by U.S. Citizenship and Immigration Services, an arm of the U.S. Department of Homeland Security. However, the exact number of H-1B visa holders is difficult to determine. A three-year initial visa can be renewed for another three years, and if a worker is on track for a green card, H-1B status can be renewed annually.

Until the recent recession, demand far outpaced supply, and companies constantly encouraged Congress to raise the cap. Many employers say the H-1B visa program provided the only practical avenue for finding high-tech workers with cutting-edge skills. Others do not agree, and there continues to be a debate regarding the hiring of foreign workers. Still, U.S. employers at both ends of the skills spectrum say they have no choice.

Young Persons, Some with Limited Education or Skills

A lower labor force participation rate for young people is being experienced for all those younger than 24 years of age and not merely young persons with limited education and skills, as was so often the case in the past. The recent recession denied many young workers the opportunity

of entering the workforce, so a large number decided to gain additional education to be more competitive.[70]

The downturn was especially harsh for 16- to 24-year olds when the unemployment rate was the highest recorded since the government began monitoring it in the 1940s. Even so, each year, thousands of young, unskilled workers are hired, especially during peak periods, such as holiday buying seasons. These workers generally have limited education, sometimes even less than a high school diploma. Those who have completed high school often find that their education hardly fits the work they are expected to do. Many of these young adults and teenagers have poor work habits; they tend to be tardy or absent more often than experienced or better-educated workers.

Although the negative attributes of these workers at times seem to outweigh the positive ones, they are a permanent part of the workforce. Certainly, when teenagers are hired, an organization is not hiring maturity or experience; but young people possess many qualities, such as energy, enthusiasm, excitement, and eagerness to prove themselves. There are many jobs they can do well. More jobs can be de-skilled, making it possible for lower-skilled workers to do them. A well-known example of de-skilling is McDonald's use of pictures on its cash register keys. Managers should also look for ways to train unskilled workers and to further their formal education.

Baby Boomers, Gen X, Gen Y, and Gen Z

Never in the history of the United States has so many different generations with such different views and attitudes been asked to work together. There have been tremendous changes since the boomers first entered the workplace. Each generation has its unique culture that has shaped its nature. Although generalizations about a group are risky, the following discussion may provide additional insight into each group. The discussion begins with baby boomers fully realizing that there remain some members of the *Silent Generation* in the workforce, those born during the Great Depression and World War II.[71]

baby boomers
People born just after World War II through the mid-1960s.

BABY BOOMERS **Baby boomers** were born just after World War II through the mid-1960s. Corporate downsizing in the 1980s and 1990s cast aside millions of baby boomers. Companies now want to keep the boomers. Employers seek out boomers because they bring a wealth of skills and experience to the workplace, as well as have low turnover rates and high engagement levels. Companies today place considerable value on their skill, experience, and a strong work ethic, characteristics that many boomers possess.[72]

HR BLOOPERS

Affirmative Action and Workforce Diversity

Anne Johnson is a newly hired human resources (HR) associate for Capitol Manufacturing Company. Her first assignment was to develop and propose a plan to increase the diversity of the company's workforce. Anne spent two weeks preparing her ideas and creating a presentation for the company's HR leadership team and department managers throughout the company. She started her presentation by saying that she is not a fan of jargon because it creates confusion. To that end, Anne told the audience "Diversity is just Affirmative Action with a new coat of paint." And she made a similar statement about the relationship between diversity and EEO. About workforce diversity and affirmative action, Anne claimed that both are enforced by the Fair Labor Standards Board. She went on to state that affirmative action, equal opportunity, and workforce diversity are numbers oriented and have little to do with the company's culture. All are simply aimed at changing the demographic composition of the workforce. Anne continued by telling the audience that ensuring EEO is nothing more than a marketing ploy. Finally, she concluded her presentation by saying that only the leadership of the HR and marketing departments within the company is responsible for promoting diversity, affirmative action, and EEO.

If your professor has assigned this, go to **mymanagementlab.com** to complete the HR Bloopers exercise and test your application of these concepts when faced with real-world decisions.

Generation X
Label affixed to the 40 million U.S. workers born between the mid-1960s and late 1970s.

GENERATION X **Generation X** is the label affixed to the approximately 41 million U.S. workers born between the mid-1960s and late 1970s. Many organizations have a growing cadre of Generation X employees who possess lots of energy and promise. Ranjan Dutta, a director at PwC Saratoga said, "Gen X workers will be the largest part of the workforce for years to come, and increasingly make up senior leadership ranks in organizations."[73] They are one of the most widely misunderstood phenomena facing management today. Generation Xers differ from previous generations in some significant ways, including their natural affinity for technology and their entrepreneurial spirit. Job instability and the breakdown of traditional employer–employee relationships brought a realization to Generation Xers that it is necessary to approach the world of work differently from past generations.

Generation Xers recognize that their careers cannot be founded securely on a relationship with any one employer. They are skeptical, particularly when it comes to the business world and job security. They worry about their jobs being outsourced and how they are going to pay for their children's education. They think of themselves more as free agents in a mobile workforce and expect to build career security, not job security, by acquiring marketable skills and expertise. Gen Xers are focused on gaining transferrable skills so that they can be ready should they no longer have a job.[74] They are not afraid of changing jobs quite often. The surest way to gain Gen Xers' loyalty is to help them develop career security. When a company helps them expand their knowledge and skills, it is preparing them for the job market. Gen Xers will often want to stay on board to learn those very skills.

Generation Y
Comprises people born between the late 1970s and mid-1990s.

GENERATION Y **Generation Y** comprises people born between the late 1970s and mid-1990s. Estimates are that by 2016 Gen Yers (or Millennials) will account for nearly half of all employees worldwide.[75] They have never wound a watch, dialed a rotary phone, or plunked the keys of a manual typewriter. But without a thought, they download music from the Internet and insert pictures of events on Facebook. Kevin C. Carlson, CEO of Brill Street + Company said, "They may not have lots of experience in the traditional sense, but they've grown up with technology and social media, which are skills many companies look for today."[76] They cannot imagine how the world ever got along without computers. These individuals are the leading edge of a generation that promises to be the richest, smartest, and savviest ever. They are well educated, well versed in technology, and bursting with confidence.[77] Generation Yers—often referred to as the echo boomers, Millennials, and Nexters—are the coddled, confident offspring of post–World War II baby boomers. Generation Y individuals are a most privileged generation, who came of age during the hottest domestic economy in memory.

Gen Yers tend to have a strong sense of morality and civic-mindedness. They are more ethnically diverse than previous generations, and nearly one-third of them have been raised in single-parent households. They want a workplace that is both fun and rewarding. They want jobs where there is a balance between work and family. They want jobs that conform to their interests and do not accept the way things have been done in the past. Generation Y employees want flexible working hours, which is a benefit that they are very enthusiastic about. They also tend to have more of a sense of entitlement not found in other generation of workers. However, Gen Yers' childhoods have been short-lived because they have been exposed to some of the worst things in life: schoolyard shootings, drug use, terrorism, sex scandals, and war.

Generation Z or Digital Natives
Internet-assimilated children born between 1995 and 2009.

GENERATION Z OR DIGITAL NATIVES After Generation Y came **Generation Z or Digital Natives**, the Internet-assimilated children born between 1995 and 2009. Gen Zers are more worldly, high-tech, and confident in their ability to multitask; they tend to have short attention spans and desire speed over accuracy; and they enjoy media that provides live social interaction.[78] They tend to use social networks to avoid the complications of dealing with face-to-face situations. In a recent survey, almost 25 percent of respondents found their relationship with their significant other was over by first seeing it on Facebook.[79] Digital Natives do not trust politicians, social institutions, the media, or corporations. Rather, they rely largely on themselves and their peers to decide what to think, what to do, and what to buy. The main thrust of the book *2018: Digital Natives Grow Up and Rule the World* was that "Digital natives are protagonists for massive technology adoption and a consequent adaption of human

behavior."[80] Two Gen Zer children sitting in the back seat of the family car may now be texting each other instead of speaking with each other.

GENERATION ALPHA Some have suggested that the next generation, born from 2010 forward, will be called Generation Alpha. Although Generation Z is often referred to as the twenty-first-century generation, Generation Alpha will be the first true millennial generation, as they will be the first born into the twenty-first century.

Multigenerational Diversity

Four generations are now participating in the workforce and each has different defining characteristics and nicknames. The concept of generational differences as a legitimate workplace diversity issue has gained increasing recognition. Baby boomers are remaining on the job longer because of the economy and often find themselves working with Generation Y employees. Traditionally, discussions of workplace diversity tended to focus on topics of race, ethnicity, gender, sexual orientation, and disability. Shirley A. Davis, SHRM's director of diversity and inclusion initiatives, said, "In all parts of the world, there is another category of diversity that cannot be overlooked: multigenerational diversity."[81] Today, there are greater numbers of workers from each segment that bring both new opportunities and challenges. At time there are significant differences in communication style which has the potential to harm communication. Dana Brownlee, president of corporate training firm Professionalism Matters in Atlanta, Georgia said, "Typically the older generations prefer talking face-to-face or on the phone, and the younger generations tend toward text-based messages like email and instant message."[82] If organizations want to thrive in this competitive environment of global talent management, they need employees and managers who are aware of and skilled in dealing with the different generations that make up the workforce.

Lesbian, Gay, Bisexual, and Transgender Employees

There has been an increased focus in the political and workforce arena with regard to lesbian, gay, bisexual, and transgender (LGBT) employees. In addressing the United Nations General Assembly, President Barack Obama said, "No country should deny people their rights to freedom of speech and freedom of religion, but also no country should deny people their rights because of who they love, which is why we must stand up for the rights of gays and lesbians everywhere."[83] President Obama also decided that the 1996 Defense of Marriage Act that bars federal recognition of same-sex marriages was unconstitutional and told the Justice Department to stop defending the law in court, bringing harsh criticism from many congressional members.[84] This became a moot point because in 2013, the Supreme Court in its landmark decision voted 5–4 to strike down Section 3 of the act, which prohibited federal recognition of state-sanctioned, same-sex marriages.[85]

Nearly 90 percent of Americans favor equality of opportunity in the workplace. But the public remains virtually evenly divided on same-sex marriage. To date, 17 states have legalized same-sex marriage. Twenty-one states have passed some form of nondiscrimination law protecting gay and lesbian workers from sexual-orientation bias.[86] Houston's mayor signed an executive order protecting LGBT city employees "at every level of municipal government" from discrimination and harassment based on their sexual orientation.[87]

Many companies have policies supporting LGBT employees perhaps because of legal requirements. Other firms have policies to recruit and retain qualified employees no matter their sexual orientation.[88] Over the last decade, corporations have increasingly created a more-welcoming environment for LGBT employees. An estimated 86 percent of *Fortune 500* firms now ban discrimination on the basis of sexual orientation, up from 61 percent in 2002, and approximately 50 percent also ban discrimination against transsexuals, compared with 3 percent in 2002.[89] Nonetheless, surveys show that many LGBT employees still view their sexual orientation as a hindrance on the job, and approximately 48 percent of those surveyed remain "closeted" at work.[90] However, by 2013, 59 percent of gay workers reported they were "out" at work, a 7 percentage point increase from the previous year.[91]

Summary

1. ***Explain the concept of equal employment opportunity.*** Equal employment opportunity (EEO) refers to the principles and the set of laws and policies that requires all individuals' rights to equal opportunity in the workplace, regardless of race, color, sex, religion, national origin, age, or disability.
2. ***Identify the federal laws affecting equal employment opportunity.*** Major laws include the Civil Rights Act of 1866; Equal Pay Act (EPA) of 1963, amended in 1972; Lilly Ledbetter Fair Pay Act of 2009; Title VII of the Civil Rights Act of 1964, amended in 1972; Pregnancy Discrimination Act of 1978; Civil Rights Act of 1991; Age Discrimination in Employment Act (ADEA) of 1967, amended in 1978 and 1986; Rehabilitation Act of 1973; Americans with Disabilities Act (ADA) of 1990; Americans with Disabilities Act Amendments Act (ADAAA) of 2008; Immigration Reform and Control Act (IRCA) of 1986; the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994; the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, as amended, and the Genetic Information Nondiscrimination Act (GINA) of 2008.
3. ***Discuss who is responsible for ensuring equal employment opportunity.*** The government and employers are responsible for ensuring EEO in the workplace. Two government agencies are charged with this responsibility: Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP).
4. ***Define and operationalize the types of employment discrimination.*** With *disparate treatment*, an employer treats some people less favorably than others because of race, religion, sex, national origin, or age.

   Adverse impact occurs if women and minorities are not hired at the rate of at least 80 percent of the best-achieving group.
5. ***Define and discuss affirmative action.*** *Affirmative Action* creates the expectation and program requirements that companies make a positive effort to recruit, hire, train, and promote employees from groups who are underrepresented in the labor force. An *affirmative action program* is an approach that an organization with government contracts develops to demonstrate that women or minorities are employed in proportion to their representation in the firm's relevant labor market.
6. ***Explain the Uniform Guidelines related to illegal employment discrimination.*** The *Uniform Guidelines* adopted a single set of principles that were designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of federal law prohibiting employment practices that discriminated on the basis of race, color, religion, sex, and national origin. Employers have an affirmative duty to maintain a workplace free from sexual harassment. Discrimination on the basis of national origin is the denial of EEO because of an individual's ancestors or place of birth or because an individual has the physical, cultural, or linguistic characteristics of a national origin group. Employers have an obligation to accommodate religious practices unless they can demonstrate a resulting hardship. Caregiver (family responsibility) discrimination is discrimination against employees based on their obligations to care for family members.
7. ***Describe sexual harassment in the global environment.*** Sexual harassment was discussed in this chapter only as it pertained to the United States, but it is also a global problem. When individuals from two different cultures interact, there is a potential for sexual harassment problems. Some behaviors that violate U.S. cultural norms may not be perceived as a problem in another culture.
8. ***Describe the concept of diversity.*** *Diversity* refers to any perceived difference among people: age, race, religion, functional specialty, profession, sexual orientation, geographic origin, lifestyle, tenure with the organization, or position, and any other perceived difference.
9. ***Discuss the concept of diversity management.*** *Diversity management* is ensuring that factors are in place to provide for and encourage the continued development of a diverse workforce by melding these actual and perceived differences among workers to achieve maximum productivity.
10. ***Explain the elements of a diverse workforce.*** The workforce may include single parents and working mothers, women in business, mothers returning to the workforce, dual-career families, workers of color, older workers, people with disabilities, immigrants, foreign workers, young persons (some with limited education or skills), and multigenerational workers.

Key Terms

equal employment opportunity (EEO) 43
Affirmative Action 43
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executive order (EO) 56
affirmative action program (AAP) 56
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glass ceiling 66

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Exercises

✪ **3-1.** Many laws, court decisions, and EOs have had a profound effect on the composition of the workforce. It is highly likely that our economy would have ground to a halt without these additional workers. How might the demographic composition of your classroom be different if it was not for these laws, court decisions, and EOs?

3-2. During 2013, 400 people were hired for a particular job. Of the total, 300 were white and 100 were black. There were 1,200 qualified applicants for these jobs, of whom 800 were white and 400 were black. Does adverse impact exist? If adverse impact exists, what does this mean?

3-3. You are a HR manager with a large manufacturing firm that does a large portion of its business with the federal government with sales more than $1,000,000. Your application form asks the following questions: Marital Status, Height and Weight, Age, Sex, Occupation of Spouse, Education, Criminal Convictions, Plans to Have Children (if you are female), Handicaps, and Work Experience. Are any of these factors employment standards to avoid? Why? Discuss as appropriate.

3-4. You are the HR manager for a company that has recently received a federal contract in excess of $1 million. In conducting utilization analysis on your present workforce of operators you find that 10 percent of your workforce is black, whereas 30 percent of the workforce in the relevant labor market is black. According to Affirmative Action guidelines, what must be done to correct this difference?

Questions for Review

✪ **3-5.** What are the components that combine to make up the present diverse workforce? Briefly describe each.

3-6. Briefly describe the following laws:

(a) Civil Rights Act of 1866
(b) Equal Pay Act of 1963
(c) Lilly Ledbetter Fair Pay Act of 2009
(d) Title VII of the Civil Rights Act of 1964, as amended in 1972
(e) Pregnancy Discrimination Act of 1978
(f) Civil Rights Act of 1991
(g) Age Discrimination in Employment Act of 1967, as amended in 1978 and 1986
(h) Rehabilitation Act of 1973
(i) Americans with Disabilities Act of 1990
(j) Americans with Disabilities Act Amendments Act of 2008
(k) Immigration Reform and Control Act of 1986

(l) Uniformed Services Employment and Reemployment Rights Act of 1994
(m) Vietnam Era Veterans' Readjustment Assistance Act of 1974
(n) Genetic Information Nondiscrimination Act of 2008

3-7. Why have employee retaliation charges experienced a dramatic increase?

3-8. What are the significant U.S. Supreme Court decisions that have had an impact on EEO? On Affirmative Action?

3-9. What are the steps that the EEOC uses once a charge is filed?

3-10. What is the purpose of the *Uniform Guidelines on Employee Selection Procedures?*

3-11. What is the difference between disparate treatment and adverse impact?

3-12. How does the EEOC define sexual harassment?

3-13. How does the EEOC interpret the national origin guidelines?

3-14. What are some guidelines to follow with regard to religion-related discrimination?

3-15. What is meant by the term *caregiver discrimination?*

3-16. What is the purpose of the OFCCP?

3-17. What is an affirmative action program?

3-18. How do countries other than the United States view sexual harassment?

3-19. Define *diversity* and *diversity management.*

INCIDENT 1 I Feel Great

Les Partain, manager of the training and development department for Gazelle Corporation, was 64 years old and had been with the firm for more than 30 years. For the past 12 years he had served as Gazelle's training and development manager and felt that he had been doing a good job. This belief was supported by the fact that during the past five years he had received excellent performance reports from his boss, LaConya Caesar, HR director.

Six months before Les's birthday, he and LaConya were enjoying a cup of coffee together. "Les," said LaConya, "I know that you're pleased with the progress our T&D section has made under your leadership. We're really going to miss you when you retire this year. You'll certainly live the good life because you'll receive the maximum retirement benefits. If I can be of any assistance to you in developing the paperwork for your retirement, please let me know."

"Gee, LaConya," said Les. "I really appreciate the good words, but I've never felt better in my life, and although our retirement plan is excellent, I figure that I have at least five more good years. There are many other things I would like to do for the department before I retire. I have some excellent employees, and we can get many things done within the next five years."

After finishing their coffee, both returned to their work. As LaConya left, she was thinking, "My gosh, I had no idea that character intended to hang on. The only reason I gave him those good performance appraisals was to make him feel better before he retired. He was actually only an average worker, and I was anxious to move a more aggressive person into that key job. We stand to lose several good people in that department if Les doesn't leave. From what they tell me, he's not doing too much of a job."

Questions

3-20. From a legal viewpoint, what do you believe LaConya can do regarding this situation? Discuss.

3-21. What actions should LaConya have taken in the past to avoid her current predicament?

3-22. What might occur if LaConya begins to evaluate Les in the manner she should likely have been doing all along?

INCIDENT 2 So, What's Affirmative Action?

Supreme Construction Company began as a small commercial builder located in Baytown, Texas. Until the early 2000s, Alex Boyd, Supreme's founder, concentrated his efforts on small, freestanding shops and offices. Up to that time, Alex had never employed more than 15 people.

In 2008, Alex's son Michael graduated from college with a degree in construction management and immediately joined the company full-time. Michael had worked on a variety of Supreme jobs while in school, and Alex felt his son was really cut out for the construction business. Michael was given increasing responsibility, and the company continued its success, although with a few more projects and a few more employees than before. In 2012, Michael approached his father with a proposition: "Let's get into some of the bigger projects now. We have the capital to expand and I really believe we can do it." Alex approved, and Supreme began doing small shopping centers and multistory office buildings in addition to work in its traditional area of specialization. Soon, the number of employees had grown to 75.

In 2013, the National Aeronautics and Space Administration (NASA) released construction specifications for two aircraft hangars to be built southeast of Houston. Although Supreme had never done any construction work for the government, Michael and Alex considered the job within the company's capabilities. Michael worked up the $1,982,000 bid and submitted it to the NASA procurement office.

Several weeks later the bids were opened. Supreme had the low bid. However, the acceptance letter was contingent on submission of a satisfactory affirmative action program.

Questions

3-23. Explain why Supreme must submit an affirmative action program.

3-24. Generally, what should the program be designed to accomplish?

3-25. In conducting a utilization analysis, Michael discovers that although 30 percent of the general population of construction workers is black, only 10 percent of Supreme's employees are black. According to affirmative action, what is Supreme Construction required to do?