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Civil Rights Act of 1964

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Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunities Act of 1972 and the CIVIL RIGHTS ACT OF 1991, forbids employer and union DISCRIMINATION based on race, color, religion, sex, or national origin. Title VII specifically forbids any employer to fail to hire, to discharge, to classify employees, or to discriminate with respect to compensation, terms, conditions, or privileges of employment opportunity due to race, color, religion, sex, or national origin. Title VII also prohibits retaliation against persons who file charges or participate in EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) investigations.

Title VII covers private employers, state and local governments, and educational institutions that have 15 or more employees. The federal government, private and public employment agencies, labor organizations, and joint labor–management committees for apprenticeship and training must also abide by the law.

Theories of Discrimination

There are two primary legal theories under which a plaintiff may prove a case of unlawful discrimination: DISPARATE TREATMENT and DISPARATE IMPACT. A disparate treatment claim exists where an employer treats some individuals less favorably than others because of their race, color, religion, sex, or national origin. Proof of the employer's discriminatory motive is critical in a disparate treatment case.

A disparate impact claim exists where an employer's facially neutral employment practices, such as hiring or PROMOTION examinations, though neutrally applied and making no adverse reference to race, color, religion, sex, or national origin, have a significantly adverse disparate impact on a protected group, and the employment practice in question is not shown to be job-related (*see* JOB-RELATEDNESS) and consistent with BUSINESS NECESSITY by the employer. Under the disparate impact theory it is not a defense for an employer to demonstrate that the employer did not intend to discriminate. The EEOC itself in unusual situations may bring a "pattern or practice" case on behalf of a class of affected employees in disparate treatment cases.

Filing Procedures

The EEOC is a five-member commission appointed by the president to establish equal employment opportunity policy under the law it administers. The EEOC supervises the conciliation and enforcement efforts of the agency.

The time limitation for filing charges with the EEOC is 180 days after the occurrence of the discriminatory act. After the conclusion of the proceedings before the EEOC, an individual claiming a violation of Title VII has 90 days after receipt of a right-to-sue letter from the EEOC to file a civil lawsuit in a federal district court. If an aggrieved individual does not meet the time limit of Title VII, the individual may well lose the right to seek relief under the Act.

Protected Classes

The legislative history of Title VII of the Civil Rights Act demonstrates that a primary purpose of the Act is to provide fair employment opportunities for black Americans. The protections of the Act are applied to blacks based on race or color. The word race, as used in the Act, is applied to all members of the four major racial groupings: white, black, native American, and Asian-Pacific. Native Americans can file charges and receive the protection of the Act on the basis of national origin, race, or in some instances color. Individuals of Asian-Pacific origin may file discrimination charges based on race, color, or in some instances national origin. Whites are also protected against discrimination because of race and color.

Title VII requires employers to accommodate their employees' or prospective employees' religious practices. Most cases involving allegations of religious discrimination revolve around the determination of whether an employer has made reasonable efforts to accommodate religious beliefs (see *Trans World Airlines* v. *Hardison*, 432 US 63, 1977).

Title VII permits religious societies to grant hiring preferences in favor of members of their religion. It also provides an exemption for educational institutions to hire employees of a particular religion if the institution is owned, controlled, or managed by a particular religious

society. The exemption is a broad one and is not restricted to the religious activities of the institution.

Employers that discriminate against female or male employees because of their sex are held to be in violation of Title VII. The EEOC and the courts have determined that the word sex, as used in Title VII, means a person's gender and not the person's SEXUAL ORIENTATION. State and local legislation, however, may provide specific protection against discrimination based on sexual orientation. An employer must be able to show that criteria used to make an employment decision that has a disparate impact on women, such as minimum height and weight requirements, are in fact job-related. All candidates for a position requiring physical strength must be given an opportunity to demonstrate their capability to perform the work. Title VII was amended by the PREGNANCY DISCRIMINATION ACT OF 1978 (section 701 (k)). The amendment prevents employers from treating pregnancy, childbirth, or other related medical conditions in a manner different than the treatment of other disabilities. Thus, women disabled due to pregnancy, childbirth, or other related medical conditions must be provided with the same BENEFITS as other disabled workers. An employer who does not provide disability benefits or paid sick leave to other employees is not required to provide them for pregnant workers.

Quid pro quo tangible employment action SEXUAL HARASSMENT involves supervisors seeking sexual favors from their subordinates in return for job benefits such as continued employment, promotion, a raise, or a favorable performance evaluation. In such a case, where a supervisor's actions affect job benefits, the employer is liable to the employee for the loss of benefits plus punitive damages because of the supervisor's misconduct. A second form of sexual harassment is hostile working environment harassment. With this type of harassment, an employee's economic benefits have not been affected by the supervisor's misconduct, but the supervisor's sexually harassing conduct has nevertheless caused anxiety and "poisoned" the work environment. An injunction against such conduct can be obtained and attorneys' fees awarded. Where no tangible employment action is taken, the employer may raise an affirmative defense to liability for damages by proving (1) it exercised reasonable care to prevent and promptly correct any sexually harassing behavior at its workplace and (2) the plaintiff employee unreasonably failed to take advantage of corrective opportunities provided by the employer (see *Burlington Industries, Inc.* v. *Ellerth*, 524 US 742, 1998).

Title VII protects members of all nationalities from discrimination. The judicial principles that have emerged from cases involving race, color, and gender employment discrimination are generally applicable to cases involving allegations of national origin discrimination. Thus, physical standards such as minimum height requirements, which tend to exclude persons of a particular national origin because of the physical stature of the group, have been unlawful when these standards cannot be justified by business necessity.

Adverse employment based on an individual's lack of English-language skills violates Title VII when the language requirement bears no demonstrable relationship to the successful performance of the job to which it is applied.

TITLE VII EXCEPTIONS

Section 703 of Title VII exempts several key practices from the scope of Title VII enforcement. It is not an unlawful employment practice for an employer to hire employees on the basis of religion, sex, or national origin in those certain instances where religion, sex, or national origin is a BONA FIDE OCCUPATIONAL QUALIFICATION (BFOQ) reasonably necessary to the normal operation of a particular enterprise. Section 703 (h) of the Act authorizes the use of "any professionally-developed ability test [that is not] designed, intended, or used to discriminate."

Employment testing and educational requirements must be "job-related"; that is, the employers must prove that the tests and educational requirements bear a relationship to JOB PERFORMANCE.

Section 703 (h) provides that differences in employment terms based on a BONA FIDE SENIORITY SYSTEM are sanctioned as long as the differences do not stem from an intention to discriminate.

Affirmative Action

Employers, under AFFIRMATIVE ACTION plans (AAPs), may undertake special RECRUITING and other efforts to hire and train minorities and women and help them advance within the company. Such plans have resulted in numerous lawsuits contending that Title VII, the Fourteenth Amendment, or COLLECTIVE BARGAINING contracts have been violated.

Following the US Supreme Court's *Adarand Constructors, Inc.* v. *Pena* decision, 515 US 200 (1995), the EEOC issued a statement of guidance on affirmative action plans as follows:

> Affirmative action is lawful only when it is designed to respond to a demonstrated and serious imbalance in the work force, is flexible, time-limited, applies only to qualified workers, and respects the rights of nonminorities and men.

When an employer's AAP is not shown to be justified, or "unnecessarily trammels" the interest of nonminority employees, it is often called REVERSE DISCRIMINATION. For example, a city's decision to rescore police promotional tests in order to achieve specific racial and gender percentages unnecessarily trammeled the interests of nonminority police officers (see *San Francisco Police Officers' Association* v. *San Francisco*, 812 F2d 1125, CA 9, 1987).