# CHAPTER 02
# Equal Employment Opportunity: The Legal Environment

## Chapter Learning Objectives

1. Define equal employment opportunity.
2. Describe the intent of the Equal Pay Act of 1963.
3. Describe the intent of Title VII of the Civil Rights Act of 1964.
4. Define disparate treatment and disparate impact.
5. Discuss the purpose of the Age Discrimination in Employment Act of 1967.
6. Discuss the purpose of the Rehabilitation Act of 1973.
7. Describe the intent of the Vietnam-Era Veterans Readjustment Assistance Act of 1974.
8. Discuss the purpose of the Pregnancy Discrimination Act of 1978.
9. Describe the intent of the Immigration Reform and Control Act of 1986.
10. Describe the purpose of the Americans with Disabilities Act of 1990.
11. Explain the purpose of the Older Workers Benefit Protection Act of 1990.
12. Discuss the intent of the Civil Rights Act of 1991.
13. Explain the intent of the Family and Medical Leave Act of 1993.
14. Describe the intent of the Americans with Disabilities Act Amendment Act of 2008.
15. Describe the purpose of the Lily Ledbetter Act of 2009.
16. Discuss the purposes of Executive Orders 11246, 11375, and 11478.
17. Describe the significance of the following Supreme Court decisions: *Griggs v. Duke Power, McDonnell Douglas v. Green, Albemarle Paper v. Moody, University of California Regents v. Bakke, United Steelworkers of America v. Weber, Connecticut v. Teal, Memphis Firefighters, Local 1784 v. Stotts, City of Richmond v. J. A. Crosan Company, Wards Cove v. Atonio, Martin v. Wilks, Adarand Contractors v. Peña, State of Texas v. Hopwood*, and University of Michigan's admissions procedures.
18. Name the federal agencies that have primary responsibility for enforcing equal employment opportunity.

## Chapter Outline

### I. Equal Employment Opportunity Laws

**Equal employment opportunity** refers to the right of all people to work and to advance on the basis of merit, ability, and potential.

### A. Equal Pay Act (1963)

The **Equal Pay Act of 1963** prohibits sex-based discrimination in rates of pay for men and women working on the same or similar jobs. The act permits differences in wages if the payment is based on seniority, merit, quantity and quality of production, or a differential due to any factor other than sex. The act also prohibits an employer from attaining compliance with the act by reducing the wage rate of any employee.

### B. Title VII, Civil Rights Act (1964)

**Title VII of the Civil Rights Act of 1964** is the keystone federal legislation in equal employment opportunity.

Section 703 of this act covers two basic areas of discrimination—disparate treatment and disparate impact. **Disparate treatment**, Section 703(a)(1), refers to intentional discrimination and involves treating one class of employees differently from other employees. **Disparate impact**, Section 703(a)(2), refers to unintentional discrimination and involves employment practices that appear to be neutral but adversely affect a protected class of people.

### C. Age Discrimination in Employment Act (1967)

The **Age Discrimination in Employment Act (ADEA)**, passed in 1967, prohibits discrimination in employment against individuals aged 40 through 69. The prohibited employment practices of ADEA include failure to hire, discharge, denial of employment, and discrimination with respect to terms or conditions of employment because of an individual's age within the protected age group.

### D. Rehabilitation Act (1973)

The **Rehabilitation Act of 1973**, as amended, contains the following general provisions. It:

- Prohibits discrimination against handicapped individuals by employers with federal contracts and subcontracts in excess of $2,500.
- Requires written affirmative action plans (AAPs) from employers of 50 or more employees and federal contracts of $50,000 or more.

- Prohibits discrimination against handicapped individuals by federal agencies.
- Requires affirmative action by federal agencies to provide employment opportunities for handicapped persons.
- Requires federal buildings to be accessible to handicapped persons.
- Prohibits discrimination against handicapped individuals by recipients of federal financial assistance.

Section 7(7)(B) of the Rehabilitation Act defines a **handicapped individual** as *any person who:*

*i. has a physical or mental impairment which substantially limits one or more of such person's major life activities,*
*ii. has a record of such an impairment, or*
*iii. is regarded as having such an impairment … Such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.*

**E. Vietnam-Era Veterans Readjustment Assistance Act (1974)**

The **Vietnam-Era Veterans Readjustment Assistance Act of 1974** prohibits federal government contractors and subcontractors with federal government contracts of $10,000 or more from discriminating in hiring and promoting Vietnam and disabled veterans. Furthermore, the act requires employers with 50 or more employees and contracts that exceed $50,000 to have written affirmative action programs with regard to the people protected by this act.

**F. Pregnancy Discrimination Act (1978)**

In an effort to protect the rights of pregnant workers, Congress passed the **Pregnancy Discrimination Act (PDA)** as an amendment to the Civil Rights Act in 1978. The PDA, formally referenced as Section 701(K) of Title VII, states the following:

Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

**G. Immigration Reform and Control Act (1986)**

Recent years have seen an increasing influx of illegal aliens into the United States. When these people are unskilled or do not speak English, employment abuses may result. Thus, in 1986, the **Immigration Reform and Control Act** was passed, making it illegal for anyone to hire, recruit, or refer for employment in the United States a person known to be an unauthorized alien.

### H. Americans with Disabilities Act (1990)

In May 1990, Congress approved the **Americans with Disabilities Act (ADA)**, which gives people with disabilities sharply increased access to services and jobs. Under this law, employers may not:

- Discriminate, in hiring and firing, against disabled persons who are qualified for a job.
- Inquire whether an applicant has a disability, although employers may ask about his or her ability to perform a job.
- Limit advancement opportunity for disabled employees.
- Use tests or job requirements that tend to screen out disabled applicants.
- Participate in contractual arrangements that discriminate against disabled persons.

### I. Older Workers Benefit Protection Act (1990)

**The Older Workers Benefit Protection Act of 1990** provides protection for employees over 40 years of age in regard to fringe benefits and gives employees time to consider an early retirement offer. Under the Older Workers Benefit Protection Act, employers may integrate disability and pension pay by paying the retiree the higher of the two; integrate retiree health insurance and severance pay by deducting the former from the latter; and, in cases of plant closings or mass layoffs, integrate pension and severance pay by deducting from severance pay the amount added to the pension.

### J. Civil Rights Act (1991)

The **Civil Rights Act of 1991** permits women, persons with disabilities, and persons who are religious minorities to have a jury trial and sue for punitive damages of up to $300,000 if they can prove they are victims of intentional hiring or workplace discrimination. The law covers all employers with 15 or more employees.

A second aspect of this act concerns the burden of proof for companies with regard to intentional discrimination lawsuits. In a series of Supreme Court decisions beginning in 1989, the Court began to ease the burden-of-proof requirements on companies.

### K. Family and Medical Leave Act (1993)

The **Family and Medical Leave Act (FMLA)** was enacted on February 5, 1993, to enable qualified employees to take prolonged unpaid leave for family- and health-related reasons without fear of losing their jobs. Under the law, employees can use this leave if they are seriously ill, if an immediate family member is ill, or in the event of the birth, adoption, or placement for foster care of a child.

### L. Americans with Disabilities Act Amendment Act (2008)

**The Americans with Disabilities Act Amendment Act (ADAAA) of 2008** expanded the definition of what constitutes a disability. It overturned a series of Supreme Court decisions that interpreted the Americans with Disabilities Act of 1990 in a way that made it difficult to prove that an impairment is a "disability." The ADAAA made significant changes to the ADA's definition of "disability" that broadens the scope of coverage and the rights of employees with physical or mental impairments.

### M. Lilly Ledbetter Fair Pay Act (2009)

**The Lily Ledbetter Act of 2009** states that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action, not the date the employee received his or her first discriminatory paycheck. Before this Act was passed, the U.S. Supreme Court had ruled that the statute of limitations for presenting an equal-pay lawsuit begins on the date that the employer makes the initial discriminatory wage decision, not at the date of the most recent paycheck.

### N. Executive Orders 11246, 11375, and 11478

**Executive orders** are issued by the president of the United States to give direction to governmental agencies. Executive Order 11246, issued in 1965, requires every nonexempt federal contractor and subcontractor not to discriminate against employees and applicants because of race, sex, color, religion, or national origin.

Executive Order 11246 requires the contractor or subcontractor to agree to do the following:

- Comply with the provisions of the executive order.
- Comply with those rules, regulations, and orders of the secretary of labor that are issued under the order.

- Permit access to its books and records for purposes of investigation by the secretary of labor.
- Include the equal employment clause in every subcontract or purchase order so that such provisions will be binding on each subcontractor or vendor.

Executive Order 11246 also requires employers with 50 or more employees and contracts and subcontracts that exceed $50,000 to have a written affirmative action program (AAP). Part of the AAP is called the **utilization evaluation**, which contains analyses of minority group representation in all job categories; present and past hiring practices; and upgrading, promotions, and transfers.

In 1967, Executive Order 11375 amended Executive Order 11246 and prohibited sex-based wage discrimination for government contractors. Finally, in 1969 the OPM issued Executive Order 11478, which in part suspended Executive Order 11246, along with revised regulations.

### O. State and Local Government Equal Employment Laws

Many state and local governments have passed equal employment laws. However, at this point it is important to note the Supremacy Clause of the U.S. Constitution, which states the following:

The laws of the United States dealing with matters within its jurisdiction are supreme, and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

No federal laws prohibit states from passing laws against discrimination in areas not covered by the federal law as long as the law does not require or permit an act that is unlawful under federal legislation.

## II. Landmark Court Cases

### A. *Griggs v. Duke Power Company*

The *Griggs* case concerned the promotion and transfer policies of the Duke Power company at its Dan River Steam Station. Duke permitted incumbent employees who lacked a high school education to transfer from an “outside” job to an “inside” job by passing two tests. In a class action suit, African American employees argued that these practices violated Title VII, since neither having a high school education nor passing the tests was necessary for successful performance on the jobs in question.

In 1971, the Supreme Court ruled in favor of the African American employees. The decision established several significant points concerning equal employment opportunity:

- The consequences of employment practices, not simply the intent or motivation of the employer, are the thrust of Title VII in that practices that discriminate against one group more than another or continue past patterns of discrimination are illegal regardless of the nondiscriminatory intent of the employer
- The **disparate impact doctrine** provides that when the plaintiff shows that an employment practice disproportionately excludes groups protected by Title VII, the burden of proof shifts to the defendant to prove that the standard reasonably relates to job performance
- The EEOC's guidelines that permitted the use of only job-related tests are appropriate.

### B. *McDonnell Douglas v. Green*

Percy Green, an African American man who had been employed by McDonnell Douglas, was laid off as a result of a reduction in McDonnell's workforce. After the layoff, Green participated in a protest against alleged racial discrimination by McDonnell in its employment practices. The protest included a "stall-in," whereby Green and others stopped their cars along roads leading to the plant to block access during the morning rush hour. At a later date, McDonnell advertised for mechanics. Green applied for reemployment and was rejected by the company on the grounds of his participation in the stall-in, which the company argued was unlawful conduct. On technical grounds, the Supreme Court remanded the case back to the district court, but at the same time its ruling set forth standards for the burden of proof in discrimination cases. These standards were as follows:

- The complainant in a Title VII case carries the initial burden of proof in establishing a *prima facie* (at first sight or before closer inspection) case of discrimination.
- If the complainant establishes a *prima facie* case, the burden shifts to the employer to provide some legitimate, nondiscriminatory reason for the employer's rejection.
- The burden then shifts to the employee to prove that the employer's allegedly legitimate reason was pretextual.

### C. *Albemarle Paper v. Moody*

In the *Albemarle Paper* v. *Moody* case, the company required applicants for hire into various skilled lines of progression to take the Beta examination, and the Wonderlic test. The company made no attempt to determine the job-relatedness of the tests and simply adopted the national norm score as a cutoff for new job applicants.

The company allowed African American workers to transfer to the skilled lines if they could pass the Beta and Wonderlic tests, but few succeeded. Incumbents in the skilled lines, some of whom had been hired before the adoption of the tests, were not required to pass them to retain their jobs or their promotion rights.

Four months before the case went to trial, Albemarle engaged an expert in industrial psychology to validate the relatedness of its testing program. This study showed the tests to be job related. However, in June 1975, the Supreme Court found Albemarle's validation study to be materially defective. The Court's decision was based on the fact that Albemarle's study failed to comply with EEOC guidelines for validating employment tests. The Court held that if an employer establishes that a test is job related, it is the plaintiff's burden to demonstrate the existence of other tests that could comparably serve the employer's legitimate interests with a lesser impact on a protected group.

### D. *University of California Regents v. Bakke*

The medical school of the University of California at Davis opened in 1968 with an entering class of 50 students. No African American, Hispanic, or Native American students were in this class. Allan Bakke, a white male, was denied admission to the medical school in 1973 and 1974. Contending that minority students with lower grade averages and test scores were admitted under the special program, Bakke brought suit. He alleged that the medical school's special two-track admissions system violated the Civil Rights Act of 1964. Thus, the Bakke case raised the issue of **reverse discrimination**, alleged preferential treatment of one group (minority or female) over another group rather than equal opportunity.

On June 28, 1978, the Supreme Court ruled in a five-to-four decision that Allan Bakke should be admitted to the medical school of the University of California at Davis and found the school's two-track admissions system to be illegal. However, by another five-to-four vote, the Court held that at least some forms of race-conscious admissions procedures are constitutional.

### E. *United Steelworkers of America v. Weber*

In 1974, the Kaiser Aluminum and Chemical Corporation and the United Steelworkers of America signed a collective bargaining agreement that contained an affirmative action plan designed to reduce racial imbalances in Kaiser's then almost exclusively white workforce. The plan reserved 50 percent of the openings in the training programs for African Americans.

At Kaiser's Gramercy, Louisiana, plant, Brian F. Weber, a white male, filed a class action suit against the company because African American employees were accepted into the company's in-plant craft-training program before white employees with more seniority. In its 1979 decision on this case, the Supreme Court ruled that the voluntarily agreed-on plan between Kaiser and the steelworkers was permissible. The Court stated that the Title VII prohibition against racial discrimination did not condemn all private, voluntary, race-conscious affirmative action programs.

### F. *Connecticut v. Teal*

A Connecticut agency promoted several African American employees to supervisory positions contingent on their passing a written examination. When they later failed the exam, the agency refused to consider them as permanent candidates for the positions. These employees alleged that Connecticut violated Title VII by requiring as an absolute condition for consideration for promotion that applicants pass a written test that disproportionately excluded African Americans and was not job related.

The district court ruled that the bottom line percentages, which were more favorable to African Americans than whites, precluded a Title VII violation. The **bottom line concept** is based on the view that the government should generally not concern itself with individual components of the selection process if the overall effect of that process is nondiscriminatory.

### G. *Memphis Firefighters, Local 1784 v. Stotts*

The *Stotts* case concerned a conflict between a seniority system and certain affirmative action measures taken by the city of Memphis. In 1980, the Memphis Fire Department entered into a consent decree under which the department would attempt to ensure that 20 percent of the promotions in each job classification would be granted to African Americans. The decree was silent on the issues of layoffs, demotions, or seniority.

In May 1981, budget deficits made layoffs of personnel in the fire department necessary. The layoffs were to be based on seniority. The district court issued an

injunction ordering the city to refrain from applying the seniority system because it would decrease the percentage of African American employees in certain jobs.

The city then used a modified plan to protect African American employees. The Memphis Firefighters Local 1784 filed a lawsuit objecting to this modified plan. In 1984, the Supreme Court ruled that the district court had exceeded its powers in issuing the injunction requiring white employees to be laid off when the normal seniority system would have required laying off African American employees with less seniority. This decision did not ban the use of affirmative action programs, but it does indicate that a seniority system may limit the use of certain affirmative action measures.

**H. *City of Richmond v. J. A. Crosan Company***

In 1983, the Richmond city council adopted, in an ordinance, a minority business utilization "set-aside" plan, which required nonminority-owned prime contractors awarded city construction contracts to subcontract at least 30 percent of the dollar amount of the contract to one or more minority business enterprises.

After the adoption of the ordinance, the city issued an invitation to bid on a project for the provision and installation of plumbing fixtures at the city jail. The only bidder, the J. A. Crosan Company, submitted a proposal that did not include minority subcontracting sufficient to satisfy the ordinance. The company asked for a waiver of the set-aside requirement, but the request was denied and the company was informed that the project was to be rebid. The company filed suit claiming that the ordinance was unconstitutional under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

In January 1989, the Supreme Court ruled that the city of Richmond's plan was unconstitutional. The Court stated that state and local governments must avoid racial quotas and must take affirmative action steps only to correct well-documented examples of past discrimination. The Court went on to say that the Fourteenth Amendment to the U.S. Constitution, which guarantees equal protection of the laws, requires that government affirmative action programs that put whites at a disadvantage should be viewed with the same legal skepticism that has been applied to many state and local laws discriminating against minorities.

**I. *Wards Cove v. Atonio***

In June 1989, the Supreme Court, in a close decision (five to four), made it easier for employers to rebut claims of racial bias based on statistical evidence. The case developed from discrimination charges against Wards Cove Packaging Company, Inc., of Seattle and Castle & Cooke, Inc., of Astoria, Oregon. The companies operate salmon canneries in remote areas of Alaska during the summer salmon run.

Minorities alleged that while they held nearly half the jobs at the canneries, the jobs were racially stratified, with whites dominating higher-paying jobs such as machinists, carpenters, and administrators. The company argued that statistics showing that minorities held most of the lower-paying seasonal jobs and fewer better positions did not prove discrimination by the company.

The Supreme Court's decision said that when minorities allege that statistics show they are victims of discrimination, employers only have the burden of producing evidence that there is a legitimate reason for its business practices. It ruled that an absence of minorities in skilled jobs is not evidence of discrimination if the absence reflects a dearth of qualified minority applicants for reasons that are not the employer's fault. The Civil Rights Act of 1991 in effect reversed this Supreme Court decision.

### J. *Martin v. Wilks*

A group of white firefighters sued the city of Birmingham, Alabama, and the Jefferson County Personnel Board, alleging they were being denied promotions in favor of less qualified African American firefighters. Prior to the filing of the suit, the city had entered into two consent decrees that included goals for hiring and promoting African American firefighters. In filing their suit, the white firefighters claimed that the city was making promotion decisions on the basis of race in reliance on the consent decrees and that these decisions constituted racial discrimination in violation of the Constitution and federal statutes. The district court held that the white firefighters were precluded from challenging employment decisions taken pursuant to the decrees. However, on June 12, 1989, the Supreme Court ruled that the white firefighters could challenge the promotion decisions made pursuant to the consent decrees. Thus, the Court ruled that white firefighters could bring reverse discrimination claims against court-approved affirmative action plans.

### K. *Adarand Contractors v. Peña*

Adarand Contractors, a guardrail contracting firm, sued the U.S. government for allegedly applying race-based standards in granting public works contracts in

Colorado. The lawsuit stemmed from a subcontract for guardrail work that Adarand lost in 1990 despite submitting the lowest bid. The subcontract was given to Gonzales Construction, a minority-owned business, by the main contractor because the Central Federal Lands Highway Division gave cash bonuses to prime contractors that hired minority-owned businesses. In a five-to-four decision, the Supreme Court questioned the constitutionality of government measures designed to help minorities obtain contracts, jobs, or education. The decision did not scrap outright the federal programs that for decades have given some minority-owned businesses a competitive edge over majority-owned businesses.

### L. *State of Texas v. Hopwood*

On March 18, 1996, the U.S. District Court of Appeals, 5th Circuit, rendered a decision concerning the affirmative action program at the School of Law of the University of Texas. This affirmative action program gave preferences to African Americans and Mexican Americans in the admissions program to the School of Law. This program was initiated in response to a history of discrimination against African Americans and Mexican Americans in the state of Texas. The district court concluded that the law school may not use race as a factor in law school admissions. On June 25, 2001, the Supreme Court turned down an appeal by the School of Law of The University of Texas.

### M. University of Michigan's Admission Procedures

In June 2003, the Supreme Court issued two decisions dealing with the affirmative action measures the University of Michigan used in its undergraduate and law school programs. Both cases were brought by white applicants who had been rejected for admission to the university. In the law school case (*Grutter v. Bollinger*) the court approved the use of a holistic approach that considered race as one tool in the admission process to achieve a diverse student body. However, in the undergraduate program case (*Gratz v. Bollinger*) the court rejected the point-based process that gave an automatic boost to African Americans, Hispanics, or Native Americans. The court said that schools cannot maintain quotas or separate admissions tracks for racial groups and that diversity cannot be defined solely on the basis of race. These two decisions are viewed as a victory for affirmative action.

## III. Enforcement Agencies

Two federal agencies have the primary responsibility for enforcing equal employment opportunity legislation.

### A. Equal Employment Opportunity Commission

The Civil Rights Act created the **Equal Employment Opportunity Commission (EEOC)** to administer Title VII of the act. Originally, the EEOC was responsible for investigating discrimination based on race, color, religion, sex, or national origin. Now it is also responsible for investigating equal pay violations, age discrimination, and discrimination against disabled persons. The EEOC has the authority not only to investigate charges and complaints in these areas but also to intervene through the general counsel in a civil action on the behalf of an aggrieved party.

### B. Office of Federal Contract Compliance Programs

Unlike the EEOC, which is an independent agency within the federal government, the **Office of Federal Contract Compliance Programs (OFCCP)** is within the U.S. Department of Labor. It was established by Executive Order 11246 to ensure that federal contractors and subcontractors follow nondiscriminatory employment practices.

## Presentation Suggestion

Examine a particular case from the chapter with more complete consideration of the events occurring within the same year.

## Key Terms with Definitions

- **Age Discrimination in Employment Act (ADEA)**: Prohibits discrimination against employees over 40 years of age by all companies employing 20 or more people in the private sector.

- **Americans with Disabilities Act (ADA)**: Gives disabled persons sharply increased access to services and jobs.

- **The Americans with Disabilities Act Amendment Act (ADAAA) of 2008**: Expands the definition of what constitutes a disability and creates a greater responsibility for employers to provide reasonable accommodation.

- **Bottom line concept**: When the overall selection process does not have an adverse impact, the government will usually not examine the individual components of that process for adverse impact or evidence of validity.

- **Civil Rights Act (1991)**: Permits women, persons with disabilities, and persons who are religious minorities to have a jury trial and sue for punitive damages if they can prove intentional hiring and workplace discrimination. Also requires companies to provide evidence that the business practice that led to the discrimination was not discriminatory but was job related for the position in question and consistent with business necessity.

- **Disparate impact**: Unintentional discrimination involving employment practices that appear to be neutral but adversely affect a protected class of people.

- **Disparate impact doctrine**: States that when the plaintiff shows that an employment practice disproportionately excludes groups protected by Title VII, the burden of proof shifts to the defendant to prove that the standard reasonably relates to job performance.

- **Disparate treatment**: Intentional discrimination; treatment of one class of employees differently from other employees.

- **Equal employment opportunity**: The right of all people to work and to advance on the basis of merit, ability, and potential.

- **Equal Employment Opportunity Commission (EEOC)**: Federal agency created under the Civil Rights Act of 1964 to administer Title VII of the act and to ensure equal employment opportunity; its powers were expanded in 1979.

- **Equal Pay Act**: Prohibits sex-based discrimination in rates of pay for men and women working on the same or similar jobs.

- **Executive orders**: Orders issued by the President of the United States for managing and operating federal government agencies.

- **Family and Medical Leave Act (FMLA)**: Enables qualified employees to take prolonged unpaid leave for family- and health-related reasons without fear of losing their jobs.

- **Handicapped individual**: Person who has a physical or mental impairment that substantially limits one or more of major life activities, has a record of such impairment, or is regarded as having such an impairment.

- **Immigration Reform and Control Act**: 1986 act making it illegal to hire, recruit, or refer for U.S. employment anyone known to be an unauthorized alien.

- **The Lily Ledbetter Act of 2009**: Employees who claim discrimination can sue up to 180 days after receiving any discriminatory paycheck.

- **Office of Federal Contract Compliance Programs (OFCCP)**: Office within the U.S. Department of Labor that is responsible for ensuring equal employment opportunity by federal contractors and subcontractors.

- **Older Workers Benefit Protection Act of 1990**: Provides protection for employees over 40 years of age in regard to fringe benefits and gives employees time to consider an early retirement offer.

- **Pregnancy Discrimination Act (PDA)**: Requires employers to treat pregnancy just like any other medical condition with regard to fringe benefits and leave policies.

- **Rehabilitation Act of 1973**: Prohibits discrimination against handicapped individuals.

- **Reverse discrimination**: Condition under which there is alleged preferential treatment of one group (minority or women) over another group rather than equal opportunity.

- **Title VII of the Civil Rights Act of 1964**: Keystone federal legislation that covers disparate treatment and disparate impact discrimination; created the Equal Employment Opportunity Commission.

- **Utilization evaluation**: Part of the affirmative action plan that analyzes minority group representation in all job categories; past and present hiring practices; and upgrades, promotions, and transfers.

- **Vietnam-Era Veterans Readjustment Assistance Act of 1974**: Prohibits federal government contractors and subcontractors with federal government contracts of $10,000 or more from discriminating in hiring and promoting Vietnam and disabled veterans.

## Review Questions and Answers

1. What is equal employment opportunity?

Equal employment opportunity refers to the right of all people to work and to advance on the basis of merit, ability, and potential.

2. Outline the intent and coverage of each of the following laws:
   a. Equal Pay Act.
   b. Title VII, Civil Rights Act.
   c. Age Discrimination in Employment Act.
   d. Rehabilitation Act.
   e. Vietnam-Era Veterans Readjustment Assistance Act.
   f. Pregnancy Discrimination Act.
   g. Immigration Reform and Control Act.
   h. Americans with Disabilities Act.
   i. Older Workers Benefit Protection Act.
   j. Civil Rights Act of 1991.
   k. Executive Order 11246.
   l. Executive Order 11375.
   m. Executive Order 11478.
   n. Americans with Disabilities Act Amendment Act.
   o. Lilly Ledbetter Fair Pay Act.

   a. Equal Pay Act
   - Prohibits sex-based discrimination in rates of pay for men and women working on the same or similar jobs.
   - Part of minimum wage section of Fair Labor Standards Act.

   b. Title VII, Civil Rights Act
   - Outlaws discrimination on the basis of race, color, religion, sex, or national origin in hiring, employment, compensation, or conditions of employment.
   - Title VII, as amended by the Equal Employment Act of 1972, covers the following:
     - All private employers of 15 or more people who are employed 20 or more weeks per year.
     - All public and private educational institutions.
     - State and local governments.
     - Public and private employment agencies.
     - Labor unions that maintain and operate a hiring hall or hiring office or of 15 or more members.
     - Joint labor-management committees for apprenticeship and training.

c. Age Discrimination in Employment Act

- Prohibits discrimination against individuals aged 40 through 69.
- Enforceable by the Equal Employment Opportunity Commission.

d. Rehabilitation Act (1973)

- Prohibits discrimination against handicapped individuals by employers with federal contracts or subcontracts of $2,500 or more.
- Defines a handicapped individual.

e. Vietnam-Era Veterans Readjustment Assistance Act

- Protected class consists of disabled veterans with a 30 percent or more disability rating or veterans discharged or released for a service-related disability and those on active duty during the time between August 5, 1964, and May 7, 1975.
- Enforced by the Office of Federal Contract Compliance Programs.

f. Pregnancy Discrimination Act

- Employers must treat pregnancy just like any other medical condition with regard to fringe benefits and leave policies.
- It is an amendment to the Civil Rights Act.

g. Immigration Reform and Control Act

- Makes it illegal to hire, recruit or refer for employment anyone known to be an unauthorized alien.
- A company must attest that it has verified that the individual is not an unauthorized alien.

h. Americans with Disabilities Act

- Under this law, employers may not:
    - Discriminate against disabled persons qualified for a job, in hiring and firing.
    - Inquire whether an individual has a disability.
    - Limit advancement opportunity for disabled employees.
    - Use tests or job requirements that screen out disabled applicants.
    - Participate in contractual arrangements that discriminate against disabled persons.
- In 1997, EEOC issued new guidelines:
    - Psychiatric disabilities are protected.
    - Entitled to reasonable accommodation.

i. Older Workers Benefit Protection Act

- Provides protection for employees over 40 regarding fringe benefits.
- Gives employees time to consider an early retirement option.

j. Civil Rights Act (1991)

- Permits women, persons with disabilities, and persons who are religious minorities to have a jury trial and sue for punitive damages.
- Companies assume the burden of proof that their policies are nondiscriminatory and for business necessity.

k. Executive Order 11246

- Requires every nonexempt federal contractor and subcontractor not to discriminate against employees and applicants because of race, sex, color, religion, or national origin.
- The primary exemption from the order is for contracts and subcontracts that do not exceed $10,000.

l. Executive Order 11375

- Amended Executive Order 11246 and prohibits sex-based wage discrimination for government contractors.

m. Executive Order 11478

- In part suspended Executive order 11246 along with revised regulations.

n. Americans with Disabilities Act Amendment Act

- Expanded the definition of what constitutes a disability.
- Made significant changes to the ADA's definition of "disability" that broadens the scope of coverage and the rights of employees with physical or mental impairments.

o. Lilly Ledbetter Fair Pay Act

- States that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action.

3. Define *disparate treatment* and *disparate impact*

Disparate treatment is intentional discrimination and treating one class of employees differently from other employees. Disparate impact is unintentional discrimination involving employment practices that appear to be neutral but

adversely affect a protected class of people.

4. Describe the impact of the following Supreme Court decisions.

a. *Griggs v. Duke Power Company*

- The effects of an employment practice—not simply the intent—is the test of unlawful discrimination.
- Disparate impact doctrine
- EEOC's guidelines permitting the use of only job-related tests are appropriate.

b. *McDonnell Douglas v. Green*

- Set standards for the burden of proof in discrimination cases.

c. *Albemarle Paper v. Moody*

- Reaffirmed that tests used in employment decisions must be job related
- Reaffirmed the use of EEOC guidelines for validating tests.
- Held that if an employer establishes that a test is job related, it is the plaintiff's burden to demonstrate the existence of other tests.

d. *University of California Regents v. Bakke*

- Raised the issue of reverse discrimination
- Held that at least some forms of race-conscious admissions procedures are constitutional.
- The somewhat nebulous decisions in the Bakke case provided an environment for further court tests of the legal status of reverse discrimination.

e. *United Steelworkers of America v. Weber*

- Racial discrimination issue
- Affirmative action plan was permissible partly because it:
  - Was designed to break-down old patterns of segregation
  - Was a temporary measure to eliminate discrimination
- The decision provided important guidelines for determining the legality of an affirmative action plan.

f. *Connecticut v. Teal*

- Bottom line results of an employer's selection process do not preclude employees from establishing a *prima facie* case of discrimination and do not provide the employer with a defense in such a case.
- The EEOC or a court will look at each test to determine whether it by itself

has a disparate impact on a protected group.

g. *Memphis Firefighters, Local 1784 v. Stotts*

- A seniority system may limit the use of certain affirmative action measures.

h. *City of Richmond v. J. A. Crosan Company*

- The impact this decision will have on affirmative action plans for private companies is yet to be determined, but its implications may be wide-ranging.

i. *Wards Cove v. Atonio*

- Employees must prove that there was no legitimate business reason for a firm's discriminatory acts.

j. *Martin v. Wilks*

- Reverse discrimination claims may be brought by whites against court-approved affirmative action plans.

k. *Adarand Constructors v. Peña*

- Lower courts are required to apply strict scrutiny to minority set-aside programs in order to limit their use to victims of past discrimination.

l. *State of Texas v. Hopwood*

- Race was not an appropriate factor in law school admissions.

m. University of Michigan's admission procedures

- The decisions in the *Grutter* v. *Bollinger* and the *Gratz* v. *Bollinger* cases are viewed as a victory for affirmative action.

5. Discuss the bottom line concept.

   The bottom line concept is based on the view that the government should generally not concern itself with individual components of individual components of the selection process if the overall effect of that process nondiscriminatory.

6. What two federal agencies have primary responsibility for enforcing equal employment opportunity legislation?

   The Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission are the federal enforcement agencies for EEO.

## Discussion Question Responses

1. What area of human resource management is most affected by equal employment opportunity legislation? Discuss.

   The initial impact would appear to be greater in the area of selecting employees. However, issues abound in other HR functions that include planning, development, compensation, and employee relations.

2. Do you believe most organizations meet the requirements of equal employment opportunity? Why or why not?

   Students' answers may vary. Some legal requirements are of a nature such that compliance must occur within a stated time frame. Others are in the form of recommended standards that are to be used as benchmarks; not all entail strict legal definitions but are nonetheless open to scrutiny and challenge. Thus, the later and spirit of compliances may be divergent.

3. What problems do you believe have resulted from equal employment opportunity legislation?

   Problems may include those inherent in imposing regulatory requirements that may be inappropriate for—or that fail to appreciate—the unique situations that various organizations find themselves in. There has been considerable debate in national, state, and judicial circles concerning the extent to which mandates toward achieving fair and equitable work opportunities are constitutional, including the issue of reverse discrimination. This has resulted in considerable modifications in legislation over recent decades.

4. Do you think misconceptions exist about equal employment opportunity? Discuss.

   Both those who see EEO as a purely bureaucratic encumbrance and those who embrace it as a panacea for most social and workforce ills may be overzealous in their polarized views. It is not necessary to ignore the inherent problems of EEO initiatives in order to work successfully within its provisions. Similarly, one may be critical of certain aspects and voice areas of needed change while respecting the benefits of EEO.

## Incident Responses

## 2.1 Debate over Retirement Age

1. Should all pilots have to retire at the age of 60 or 65?

   Some might argue that improvements in healthcare and better lifestyle choices are now enabling many individuals to prolong their careers well past the traditional retirement age. In that case, it may not be reasonable to force all pilots to retire at age 60. The retirement decision could be made contingent on the results of comprehensive health check-ups and cognitive tests for individual pilots. However, others may argue that cognition and overall health does continue to decline with age, albeit at a slower rate, today, and that it is not advisable to take chances with aviation safety. Students' answers are likely to vary. They should explain the reasoning behind the responses.

2. How would you study this issue?

   Extensive studies of physiological reactions to the job's demands, and the extent to which age tends to affect such reactions, would be beneficial. A gradual phase-in of 60-plus active pilots could require close scrutiny prior to permanent revision of the law.

## 2.2 Accept Things As They Are

1. What options does Jane have?

   Jane could rationalize the inequity and accept it, although the narrative indicates that it is unlikely that she would be likely to remain satisfied. The admitted flaw in this scenario on the part of management could be of little comfort. She could resign. She could also bring legal action on the basis of unequal pay for work of comparable value if she can establish "comparable value". Otherwise, rather than starting a lengthy legal squabble whose outcome is dubious and which would create hard feelings, a smart, capable employee like Jane would do better to find another organization to work for—perhaps one more enlightened and less subject to political pressure.

2. What influence, if any, would the federal government have in this case?

   Jane could take recourse to the Equal Pay Act of 1963 which prohibits sex-based discrimination in rates of pay for men and women working on the same or similar jobs. Jane is also protected by the Title VII of the Civil Rights Act of 1964, the

keystone federal legislation in equal employment opportunity, which states that it shall be an unlawful employment practice for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. Further, the Civil Rights Act of 1991 permits women to have a jury trial and sue for punitive damages of up to $300,000 if they can prove they are victims of intentional hiring or workplace discrimination.

## Exercises

### 2.1 Discrimination because of Sex, Religion, or National Origin

This is an opportunity for students to cut through the esoteric veneer of EEO-related court cases. Further, it reveals to them enough background concerning a given case to better appreciate the apparent contradictions among judgments, as well as whether and why particular ones become precedent-setting. Most importantly for prospective human resource managers, the exercise provides a prompt for vigilance in legal environmental scanning as a vital element in compliance and responsiveness for equal employment opportunity matters.

### 2.2 Discrimination because of Age, Religion, National Origin, or Disability

This exercise gives students an opportunity to delve deeper into cases that involve discrimination because of age, religion, national origin, or disability. All of these factors are mostly unlikely to be the fault of the individual(s) being discriminated against.

### 2.3 Sex Role Stereotypes

This exercise gives students an opportunity to discuss about the different points of view regarding sex role stereotypes.