CLASS SIX-OVERVIEW OF DISCRIMINATION IN EMPLOYMENT LAW
PROVING A TITLE VII EMPLOYMENT CASE

Theories set forth under Title VII include:

1) Disparate treatment – Intentional discrimination based on a person’s race, color religion, sex, national origin, age and disability  
   - Accomplished through a shifting “burden of proof”  
   - Individual disparate treatment – Whether employer deliberately treated an individual differently from other employees based on membership in one of the above categories  

2) Systemic disparate treatment – Pattern of discrimination against one generally protected group rather than an isolated case of discrimination against individual employee
BURDEN OF PROOF STANDARD IN EMPLOYMENT CASES

Step 1 – Plaintiff must establish prima facie case of discrimination: an adverse event such as a demotion or termination
Step 2 – If prima facie case can be shown, burden shifts to defendant to establish a legitimate, non-discriminatory rationale for the adverse action
Step 3 – If defendant meets its burden, burden shifts back to plaintiff to prove that the articulated rationale is a pretext for discrimination.

The foregoing is known as the McDonnell Douglas test.
DISPARATE IMPACT IN EMPLOYMENT

Employment practices that appear neutral on their face but in actuality, affect one group more heavily (systemic disparate Impact)
• Cannot be justified for business reasons
• Also known as adverse impact theory

Once a plaintiff has demonstrated disparate impact, burden transferred to defendant
   - defendant must persuade court that the “challenged practice” is for a business related reason

NOTE: Nothing in Title VII precludes use of testing but it cannot be used as the sole reason for termination in an employment discrimination case, unless it is used to measure job performance.
Prima facie case of retaliation under 704(a)
Title VII can be established if the plaintiff can show:
1) Statutorily protected expression
2) Adverse employment action
3) A causal link between the protected expression and the adverse action.
Retaliation Under Title VII-Slide 2

- A wide variety of adverse employment actions can be found to constitute retaliation. The most obvious examples are discharge, denial of promotions, and demotions.
- However, in Burlington Northern & Santa Fe Ry. Co. v. White, 548 US 53, 126 S.Ct. 2405 (2006), the court found that any potential employer action that could dissuade a reasonable employee from making a discrimination claim could constitute retaliation. Thus, reassignment of an employee, even without loss of pay or benefits, could be retaliation.
REMEDIES AND DAMAGES FOR EMPLOYMENT DISCRIMINATION UNDER TITLE VII

1) Court injunction – to stop unlawful conduct and correct discriminatory practices

2) Return the individual who had been fired from or denied a job for discriminatory reasons to that position

3) Monetary rewards
   • Front pay
   • Punitive damages
   • Liquidated damages – lost wages, benefits

NOTE: Plaintiff has a duty to mitigate damages by using reasonable diligence by seeking other employment opportunities which are “substantially equivalent” to his/her previous position.
Punitive Damages

- Punitive damages are available in Title VII and Americans with Disabilities cases.
- In cases under the Age Discrimination in Employment Act, punitive damages are not awardable. However, a successful age discrimination plaintiff can recover liquidated damages in the amount of twice the actual damages.
- In all cases, punitive damages are awarded only for willful violations of the law. They are potentially awardable in disparate treatment cases, but are much less likely to be awarded in disparate impact cases.
Mixed Motive Cases

• In Price Waterhouse v. Hopkins, 490 US 228, the court held that where the employer was motivated by both lawful and unlawful (discriminatory) motives, the employer can avoid liability if it proves that it would have made the same decision even if the unlawful motive had not played a role.

• In Desert Palace v. Costa, 539 US 910 (2003), the court held that in a mixed motives case, the plaintiff simply needs to prove that the illegal motive played a role, and need not prove that the legitimate motive played no role.
Protections for those who Protest Discrimination Against Other Persons

• The victim of a discrimination claim does not necessarily have to be a member of the protected group.
• For example, a white person who alleges discrimination by reason of his marriage to an African-American person has a cause of action. See Holcomb v. Iona College, 2008 US Lexis 6897 (US Ct of Appeals).
• In a New York case based on a statute similar to the ADA, a dentist was found to have a cause of action when his landlord allegedly tried to evict him because he treated patients with AIDS.