

# Chapter 2

## **Title VII—The Foundation of Workplace Discrimination Law**

# Examples of Federal Workplace Discrimination Laws

- **Title VII of the Civil Rights Act of 1964** prohibits discrimination based on race, color, religion, sex, national origin, and genetics
- **Equal Pay Act of 1963 (EPA)** prohibits unequal compensation for men and women who perform substantially equal work in the same establishment
- **Age Discrimination in Employment Act of 1967 (ADEA)** prohibits discrimination against individuals who are 40 years old or older
- **Americans with Disabilities Act of 1990 (ADA)** prohibits discrimination against qualified individuals with disabilities

# Title VII

- The most comprehensive federal law that governs employment discrimination is Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, color, religion, sex, national origin, and generics
- The law became effective on July 2, 1965, and has been amended a number of times.
- Title VII makes it illegal for employers to discriminate in all aspects of employment. This prohibition attaches at the early stages of the hiring process, imposing obligations on employers as they advertise for a position and start to recruit and to interview applicants.

# Who Is Covered by Title VII?

- Statute's applicability limited to public- and private-sector employers who employ at least 15 employees.
- Today, however, most states have passed laws that prohibit workplace discrimination and that apply to employers of all sizes.

# Introduction to Key Terms

**Protected Classes Under Title VII:** race, color religion, sex (includes pregnancy and sexual harassment), national origin and genetics

**Adverse Action:** a decision that has a negative impact on the working conditions of an individual and cannot be imposed based on an individual's membership in a protected class

**Equal Employment Opportunity Commission (EEOC):** federal agency responsible for the enforcement of Title VII and a number of other federal anti-discrimination laws

**Disparate Treatment Claim:** employment discrimination claim alleging that an employer engaged in intentional discrimination

**Disparate Impact Claim:** employment discrimination claim alleging that an employer implemented a practice or policy that was neutral on its face but that resulted in an adverse impact on members of a protected class

**Title VII prohibits workplace  
discriminate based on  
certain protected classes as  
it relates to all terms and  
conditions of employment.**

# What is a Protected Class?

- A protected class is a group of people who share a common characteristic(s) that entitles them to protection from discriminatory or harassing conduct
- The prohibition of workplace conduct based on protected class membership relates to:
  - membership in a protected class
  - stereotypes associated with a protected class
  - an individual's marriage to or association with someone who is a member of a protected class.

# **What Are the Protected Classes under Title VII?**

**Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on race, color, religion, sex, national origin, and genetics.**



**Discrimination Relates to Membership in a  
Protected Class**

**AND**

**Traits Associated with Membership in a  
Particular Class**

Note: This course focuses on protected classes under federal law but many states have laws that offer additional protection (i.e. marital status, employment status, sexual orientation etc.)

# Employment Discrimination Relates to All Terms and Conditions of Employment

- Hiring;
- Firing;
- Compensation;
- Work assignments;
- Classification of employees;
- Transfers, promotions, layoffs, or recalls;
- Job postings;
- Recruiting;
- Testing;
- Use of company facilities;
- Training and apprenticeship programs;
- Allocation of fringe benefits;
- Retirement benefits;
- Disability leave; and
- All other terms and conditions of employment.

# Filing a Claim under Title VII

## Equal Employment Opportunity Commission (EEOC)

### Statute of Limitations

- One Hundred and Eighty (180) Days
- Triggering Event for Compensation Claims Under the Ledbetter Fair Pay Act of 2009

### EEOC Response to the Filing of a Claim

**REMEMBER:**

**Discrimination May Be Intentional  
(Disparate Treatment)**

**Or**

**Discrimination May Be Unintentional  
(Disparate Impact)**

# Types of Evidence

## **Direct Evidence**

information that is clear proof that particular conduct occurred that proved discrimination had occurred

## **Circumstantial Evidence**

information that suggests particular conduct occurred but that does not prove it definitively

# Framework for Disparate Treatment Claim (Intentional Discrimination)

*Established by McDonnell Douglas*

1. *Prima Facie* Case
2. Employer Must Articulate a Legitimate, Nondiscriminatory Reason for its decision
3. Employee (or Candidate) Must Show the Reason is a Pretext (aka not true)

# Disparate Treatment Claims (Intentional Discrimination)

## *Prima Facie Case*

1. Membership in a Protected Class
2. Qualified for the Position
3. Adverse Action
4. Candidates with Comparable Qualifications Continue to Be Considered

# Legitimate Non-Discriminatory Basis for Adverse Decision

- Inability to perform the work;
- Inability to work the schedule needed by the employer;
- Injuring a co-worker;
- Falsifying time sheets or other documentation;
- Failure to meet production requirements;
- Insubordination;
- Reduction in workforce (provided the reduction is not based on discriminatory means); and
- Refusal to follow the managerial directives.
- BFOQ (Bona fide occupational qualification)



# Bona Fide Occupational Qualification (BFOQ)

- Defense to a discrimination claim that illustrates the business necessity of considering an individual's protected class status
- Race and color are never a BFOQ.
- Customer preference is not a BFOQ
- Narrowly applied:
  - Safety
  - Privacy
  - Religion (maybe as priest – but not as bookstore clerk)

# Pretext

Once an employer presents its reason for the adverse decision, the burden of proof shifts back to the individual asserting that claim to show that the provided reason is actually a **pretext** (a cover-up) for the employer's true discriminatory motives

# Mixed-Motive Claims

- Refers to a decision based on both legitimate and discriminatory factors.
- The issue is whether an employer would have reached the same conclusion absent consideration of the discriminatory factor.
- Mixed-motives do not impact liability, but can impact the amount of a damage award.

# Disparate Impact (Unintentional Discrimination)

## *Established by Griggs vs. Duke Power*

1. Prima Facie Case (simplified)

Some specific employment practice, policy, or test has a disproportionate adverse impact on a protected class.

2. Employer Must Present a Showing of Business Necessity

3. Employee (or Applicant) Must Show a Less Discriminatory Alternative

# Retaliation

## Imposition of Adverse Action in Response to Assertion of a Legal Right

### Types of Retaliation Claims

- Protected Activity
- Opposition Claims
- Participation Claims

# Types of Damages

- **back pay** (wages lost as a result of the unlawful conduct);
- **front pay** (future wages from the time of a judgment until reinstatement, or until a certain date if the reinstatement is not possible)
- hiring, reinstatement, or promotion of an individual;
- the providing of a reasonable accommodation; or
- other actions that would make the individual whole, meaning that the individual would be placed in the same position she would have been in had the discriminatory conduct not occurred.

# Damages (continued)

**compensatory damages:** damages awarded to an individual in recompense for actual losses suffered based on a finding of intentional discrimination

**punitive damages:**

damages awarded to an individual that are designed to punish an employer for inappropriate conduct

## **STATUTORY CAPS ON DAMAGES UNDER TITLE VII**

- \$50,000 for employers with 15 to 100 employees;
- \$100,000 for employers with 101 to 200 employees;
- \$200,000 for employers with 201 to 500 employees; and
- \$300,000 for employers with more than 500 employees

# Considerations that May Impact a Damage Award

## Employer's Obligation to Mitigate Damages

## Legitimate, Nondiscriminatory Reason for the Adverse Decision

- Mixed Motive
- After-Acquired Evidence Rule

## Employer Exerts Reasonable Efforts to Comply with the Law