

PART ONE	INTRODUCTION
CHAPTER	Three
<p style="text-align: center;"><b>The Manager's Role in Strategic Human Resource Management</b></p>	<h1 style="font-size: 48px; margin: 0;">3</h1>
<p><b>Lecture Outline</b></p>	
<p><b>Why Strategic Planning is Important to All Managers</b>                      The Hierarchy of Goals</p> <p><b>Fundamentals of Management Planning</b>                      The Planning Process                      Putting Together the Business Plan                      How Managers Set Objectives</p> <p><b>The Strategic Management Process</b>                      Introduction                      Improving Productivity Through HRIS                      Types of Strategies                      The Top Manager's Role in Strategic Planning                      Departmental Strategic Planning                      Managing the New Workforce</p> <p><b>Strategic Human Resource Management</b>                      Human Resource Strategies and Policies</p> <p><b>Managing HR in Challenging Times</b>                      Strategic HR in Action                      Strategic Human Resource Management Tools                      Translating Strategy into Human Resource Policies and Practices</p> <p><b>Building Your Own High-Performance Work System</b>                      What Are High-Performance Work Systems?                      High-Performance Human Resource Policies and Practices                      The Line Manager's Role in Building a High-Performance Work System</p>	<p><i><b>In Brief:</b></i> This chapter explains how to design and develop an HR system that supports the company's strategic goals. It explains the strategic management process, how to develop a strategic plan, and the HR manager's role in the process of strategy execution and formulation. The chapter explains why metrics are essential for identifying and creating high-performance human resource policies and practices.</p> <p><i><b>Interesting Issues:</b></i> The Human Resource function today continues to play an increasingly visible role in the strategic planning and management process, requiring a new level of skill and competency among HR professionals. HR managers must develop measurable strategies that convincingly showcase HR's impact on business performance. Successful Human Resource managers have adopted a perspective that focuses on how their departments can play a central role in implementing the organization's strategy.</p>

## **I. Why Strategic Planning is Important to all Managers**

A strategic plan is an organization's plan for how it will match its internal strengths and weaknesses with external opportunities and threats in order to maintain a competitive advantage. The HR strategy needs to support the organization's strategic plan. In formulating their HR strategies, HR managers must address three basic challenges: 1) support organizational productivity and performance improvement efforts; 2) employees play an expanded role in employers' performance improvement efforts; 3) HR must be more involved in designing – not just executing – the company's strategic plan.

### **A. The Hierarchy of Goals**

Strategic planning is important because in a well-run organization, the goals from the very top of the organization down should form an unbroken chain or hierarchy of goals. These goals, in turn, should guide everyone in the organization in what they do.

## **II. Fundamentals of Management Planning**

People make plans every day, often without giving it thought. We plan our routes to work, what courses to take, and what to do on a Saturday night. Underlying all those plans, however, is the planning process which entails the following:

- a) Set an objective.
- b) Develop a forecast.
- c) Determine alternatives for getting where you want to be.
- d) Evaluate alternatives.
- e) Implement your plan.

### **A. Business Plan**

The business plan provides a comprehensive view of the firm's situation today and of its company-wide and departmental goals and plans for the next three to five years.

### **B. Marketing Plan**

The marketing plan specifies the nature of the product or service the organization provides. It also shows the approaches the company plans to take with respect to pricing and promoting the product or service.

### **C. Personnel/Human Resource Plan**

Anything the company does, or plans to do, will require managers and other personnel, and therefore a personnel plan.

### **D. Production/Operations Plan**

Implementing the marketing plan will necessitate having productive assets. For example, it takes factories and machines to assemble Dell's PC's.

### **E. Financial Plan**

“What’s the bottom line?” is the first question posed by many managers. The question underscores a truism about business and management. At the end of the day, most managers’ plans, goals, and accomplishments end up expressed in financial terms.

### **III. How Managers Set Objectives**

#### **A. SMART Goals**

Experienced managers use the acronym “SMART” to signify that goals are specific, measurable, attainable, relevant, and timely.

#### **B. Motivational Goals**

Goals are only useful if employees are motivated to achieve them. Research known as the goal-setting studies suggests the following: assign specific goals, assign measurable goals, assign challenging goals, and encourage participation.

#### **C. Management by Objectives**

With Management by Objectives or commonly called MBO, the supervisor and subordinate jointly set goals for the latter and periodically assess progress toward those goals.

#### **D. Management Objectives Grid**

With or without MBO, every manager needs a system for organizing how his or her subordinates’ goals dovetail with those of the company. In Figure 3-4, the *management objectives grid* provides an easy way to do this.

### **IV. The Strategic Management Process**

A strategic plan is the company’s plan for how it will match its internal strengths and weaknesses with external opportunities and threats in order to maintain a competitive advantage. Figure 3-5 sums up the strategic management process in seven steps as follows:

1. Define the current business and mission.
2. Perform external and internal audits.
3. Formulate new business and mission statement.
4. Translate the mission into goals.
5. Formulate strategies to achieve the strategic goal.
6. Implement the strategy.
7. Evaluate performance.

### **V. Improving Productivity through HRIS**

Business planning software packages are available to assist the manager in writing strategic and business plans.

## **A. Types of Strategies—Managers have three types of strategic planning.**

1. Corporate-level strategy – Identifies the portfolio of businesses that comprise the company and the ways in which these businesses are related to each other. Diversification, vertical integration, consolidation and geographic expansion are all examples of corporate-level strategies.
2. Competitive strategy – Managers endeavor to achieve competitive advantages for each of their businesses. Companies try to achieve *competitive advantages* for the business they are in, which allow them to differentiate its product or services from those of its competitors to increase market share. Examples of competitive strategies include cost leadership and differentiation.
3. Functional strategies – Identify the basic course of action that each department will pursue in order to help the business attain its competitive goals.
4. Strategic Fit – Strategic planning experts have different views on fitting capabilities to the opportunities and threats vs. stretching beyond capabilities to take advantage of an opportunity. The “fit” point of view, as purported by Michael Porter, states that all of the firm’s activities must be tailored to or fit its strategy by ensuring that the firm’s functional strategies support its corporate and competitive strategies.

## **VI. The Top Manager’s Role in Strategic Planning**

Devising a strategic plan is top management’s responsibility. Because the consequences of a poor choice can be dire, few top managers would delegate the job of deciding how the company should match its internal strengths and weaknesses with its external opportunities and threats to maintain a competitive advantage.

## **VII. Departmental Manager’s Strategic Planning Roles**

It would be reckless for any top executive to formulate a strategic plan without the input of his or her lower-level manager. Few people know as much about the firm’s competitive pressures, vendor capabilities, and concerns than do the company’s department managers.

## **VIII. Strategic Human Resource Management**

Every company needs its human resource management policies and activities to make sense in terms of its broad strategic aims. Strategic human resource management means formulating and executing human resource policies and practices that produce the employee competencies and behaviors the company needs to achieve its strategic aims. Figure 3-10 demonstrates the relationship between human resource strategy and the company’s strategic plans. The following steps demonstrate linking company-wide and HR strategies:

- a) Evaluate Company’s Competitive Environment
- b) Formulate Business Strategy
- c) Identify Workforce Requirements

- d) Formulate HR Strategic Policies and Activities
- e) Develop Detailed HR Scorecard Measures

#### **A. Human Resources Strategies and Policies**

Managers call the specific human resource management policies and practices they use to support their strategic aims human resource strategies. The Shanghai Portman's human resource strategy was to produce the service-oriented employee behaviors the hotel needed to improve significantly the hotel's level of service. Its HR policies therefore included installing the Ritz-Carlton Company's human resource system, having top management personally interview each candidate, and selecting only employees who cared for and respected others.

### **IX. Strategic HR in Action: Improving Mergers and Acquisitions**

When mergers and acquisitions do fail, it's often not due to financial or technical issues but to personnel-related ones. These may include, for example, employee resistance, mass exits by high-quality employees, and declining morale and productivity. As one study concluded some years ago, mergers and acquisitions often fail due to a lack of adequate preparation of the personnel involved and a failure to provide training which fosters self-awareness, cultural sensitivity, and a spirit of cooperation.

#### **A. Using Human Resource Management**

Until recently, top executives rarely involved their human resource managers in planning the merger or acquisition. Surveys by consultants Towers Perrin found that prior to 2000, human resource executives played limited roles in merger and acquisition (M&A) planning and due diligence. They tended to get involved only when management began integrating the two companies into one. Today, by contrast close to two thirds of the [survey] participants are involved in M&A due diligence now.

#### **B. Due Diligence Stage**

Before finalizing a deal, it is usual for the acquirer (or merger partners) to perform "due diligence" reviews to assure they know what they're getting into. For the human resource teams, due diligence includes reviewing things like organizational culture and structure, employee compensation and benefits, labor relations, pending employee litigation, human resource policies and procedures, and key employees. Employee benefits are one obvious example. For example, do the target firm's health insurance contracts have termination clauses that could eliminate coverage for all employees if you lay too many off after the merger?

#### **C. Integration Stage**

There are critical human resource issues during the first few months of a merger or acquisition. These include choosing the top management team, ensuring top management leadership, communicating changes effectively to employees, retaining key talent, and aligning cultures.

#### **D. Using HR Consultants**

Several global human resource consulting companies, such as Towers Perrin, provide merger-related human resource management services. The services they provide help to illustrate human resource experts' potential role in facilitating mergers and acquisitions.

## X. Strategic HR Management Tools

Managers use several tools to help them translate the company's broad strategic goals into specific human resource management policies and activities. Three important tools include the strategy map, the HR Scorecard, and the digital dashboard.

### A. Strategy Map

The strategy map shows the "big picture" of how each department's performance contributes to achieving the company's overall strategic goals. It helps the manager understand the role his or her department plays in helping to execute the company's strategic plan.

### B. HR Scorecard

Many employers quantify and computerize the map's activities. The HR Scorecard helps them to do so. The HR Scorecard is not a scorecard. It refers to a process for assigning financial and nonfinancial goals or metrics to the human resource management-related chain of activities required for achieving the company's strategic aims and for monitoring results.

### C. Digital Dashboards

A digital dashboard presents the manager with desktop graphics and charts. And so it is a computerized picture of where the company stands on all those metrics from the HR Score card process.

## XI. Building Your Own High-Performance Work System

A high-performance work system is a set of human resource management policies and practices that promote organizational effectiveness.

### A. High-Performance Human Resource Policies and Practices

Studies show that in terms of policies and practices, high-performance work systems do differ from less productive ones. Table 3-1 illustrates this. For example, high-performing companies start with more job candidates, use more selection tests, and spend many more hours training employees.

### B. The Line Manager's Role in Building a High-Performance Work System

Every manager can influence the number of job applicants they receive, the testing they do, the quality training they provide, and the kinds of incentives they offer to their employees.

▶	<i>NOTES</i>	Educational Materials to Use
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## DISCUSSION QUESTIONS

**1. Give an example of hierarchical planning in an organization.**

Top management approves a long-term or strategic plan. Then each department, working with top management, creates its own budgets and other plans to fit and to contribute to the company's long-term plan.

**2. What are the main components of a business plan? Describe each briefly. How would you set motivational goals?**

There are no rigid rules regarding what such a plan should contain. However, they usually include, at a minimum, (1) a description of the business including the ownership and products or services, (2) the marketing plan, (3) the financial plan, and (4) the management and/or personnel plan. The business plan invariably guides every functional department in the firm, from sales and marketing to manufacturing and finance.

Goals are only useful if employees are motivated to achieve them. Research known as the goal-setting studies provides useful insights into setting motivational goals. This research suggests that firms should: assign specific goals, assign measurable goals, assign challenging but doable goals, and encourage participation.

**3. What is the difference between a strategy, a vision, and a mission? Give one example of each.**

A strategy identifies a course of action to get the company from where it is today to where it wants to be tomorrow. One example of a company's strategy given in the text is Dell Computer's strategy to be a "low cost leader" by using the Internet and phone to sell PCs directly to end users at prices competitors cannot match.

A vision is a general statement of the company's intended direction that evokes emotional feelings in employees. It is a "mental image" of a possible and desirable future state for the organization, and articulates a view of a realistic, credible, attractive future of the organization that is better than what now exists. For example, the vision for the California Energy Commission is "for Californians to have energy choices that are affordable, reliable, diverse, safe, and environmentally acceptable."

The mission is a more specific and shorter term statement which lays out what is supposed to be now, communicating "who we are, what we do, and where we're headed." Following the vision for the California Energy Commission, their mission is to "assess and act through public/private partnerships to improve energy systems that promote a strong economy and a healthy environment."

**4. Define and give at least two examples of the cost leadership competitive strategy and the differentiation competitive strategy.**

The cost leadership competitive strategy means that the enterprise aims to become the low-cost leader in an industry. For example, stores such as Staples and Office Max maintain their competitive advantage by selling large quantities of office products at low prices. Airlines such as Southwest offer low fares in addition to quick turnarounds at the gate.

In a differentiation competitive strategy, firms seek to be unique in its industry along dimensions that are widely valued by buyers. For example, Ocean Spray Cranberries charges a premium price for their juices, stressing premium high-quality ingredients. Visa differentiates itself by being accepted as a form of payment universally where other credit cards are not.

5. **Explain how human resources management can be instrumental in helping a company create a competitive advantage.**

Human Resources is regarded in a growing number of organizations as a source of competitive advantage, through recruiting, selecting, retaining, and developing human capital that enables organizations to compete on a number of different levels to be flexible, capable, and responsive, demonstrating creativity and innovation in order to produce products and services of high quality.

6. **What is a high-performance work system? Provide several specific examples of the typical components in a high-performance work system.**

High Performance Work Systems are characterized by high involvement organizational practices, (such as job enrichment and team-based organizations), high-commitment work practices (such as improved employee development, communications, and disciplinary practices), and flexible work assignments. The evidence suggests that companies that employ HPWS practices produce better productivity, quality, sales and financial performance. What makes the HPWS unique is the quality, quantity, and specific features of the HR policies and practices. Each element is designed to maximize the overall quality of human capital throughout the organization. Several characteristics of high performance work organizations include multi-skilled work teams; empowered frontline workers; more training; labor management cooperation; commitment to quality; and customer satisfaction.

7. **Define what an HR Scorecard is, and briefly explain each of the seven steps in the strategic management process.**

The HR Scorecard is a concise measurement system that shows the metrics the firm uses to measure HR activities, measures the employee behaviors resulting from these activities, and measures the strategically relevant organizational outcomes of those employee behaviors. It highlights the causal link between the HR activities, and the emergent employee behaviors, and the resulting firm-wide strategic outcomes and performance.

The ten steps involved in the HR scorecard approach are as follows:

1. **Define the business strategy** – In this step, management translates its broad strategic plans into specific actionable goals.

2. **Outline the company's value chain** – Here the manager identifies the strategically relevant outcomes and required employee behaviors by identifying the value chain, which identifies the primary activities that create value for customers and the related support activities. The value chain is a tool for identifying, isolating, visualizing, and analyzing the firm's strategic activities and strategic costs. This step allows managers to better understand the activities that drive performance in their company.

3. **Outline a Strategy Map** – A summary of the chain of major activities that contribute to a company's success, the strategy map shows the "big picture" of how each department's performance contributes to the achievement of company goals.

4. **Identify the strategically required organizational outcomes** – In order to achieve its strategic goals, every company must produce critical, strategically relevant outcomes. For example, "delivering new services" is an example of an organizational outcome.

5. **Identify the required workforce competencies and behaviors** – Competencies and behaviors such as personal accountability, working proactively, motivation, courteous behavior, and commitment drive organizational performance by producing strategically

relevant

organizational

outcomes.

**6. Identify the required HR system policies and activities** – The question in this step is “what HR system policies and activities will enable us to produce those workforce competencies and behaviors?” The answer might include things like special training programs or changing the compensation plan. These policies and activities are often referred to as “HR enablers,” which create and make possible the HR “performance drivers” – the workforce competencies and behaviors that produce the strategically relevant organizational outcomes. Once these enablers are identified, the next question that follows is “what specific form should these policies and activities take?” How and to what end should systems and processes be changed? The HR system must be aligned with the company’s specific strategic needs. At this point, the HR manager must become precise about the actual form and design of the firm’s HR deliverables.

**7. Create the HR Scorecard** – In this step, the question is how are the organizational outcomes, workforce competencies and behaviors, and HR system policies and activities measured? Just a few sample measures for assessing HR performance drivers could be employee attitude surveys, employee turnover, level of organizational learning, employee productivity, percentage of retention of high performing key employees, number of hours of training employees receive every year, and percentage of the workforce routinely working in a self-managed team. These types of measures allow the company to assess HR’s performance objectively and quantitatively, and also enable the HR manager to build a measurable and persuasive business case for how HR contributes to achieving the company’s strategic financial goals.

**8. Choose HR Scorecard Measures – Find a balance of financial and non-financial goals, with both short and long-term foundations.**

**9. Summarize the Scorecard Measures in a Digital Dashboard** – A digital dashboard usually presents information in a way that grabs management’s attention. It displays a “bird’s eye view” of how the HR function is doing.

**10. Monitor, Predict, Evaluate** – The HR Scorecard’s various measures will not always stay the same, and should be evaluated periodically to ensure they are still valid.

## INDIVIDUAL AND GROUP ACTIVITIES

- 1. With three or four other students, form a strategic management group for your college or university. Your assignment is to develop the outline of a strategic plan for the college or university. This should include such things as mission and vision statements, strategic goals, and corporate, competitive, and functional strategies. In preparing your plan, make sure to show the main strengths, weaknesses, opportunities, and threats the college faces, and which prompted you to develop your particular strategic plans.** Look for students to prepare a well-developed mission and vision statement, making sure that they are clearly differentiated from each other with the vision being future focused, articulating the desired state, with the mission supporting the vision, describing “who we are, what we do, and where we are headed.” Use this exercise as an opportunity to discuss the problems that may be created by not clearly defining the mission, vision, as well as the strengths, weaknesses, opportunities, and threats.
- 2. Using the Internet or library sources, analyze the annual reports of at least five companies. Bring to class examples of how those companies say they are using their HR processes to help the company achieve its strategic goals.** In class, facilitate a discussion on how effective students believe the HR processes at each company appear to be at supporting strategic goals. Challenge students to come up with additional ideas for other approaches for using the HR processes

and how they would go about implementing them, noting the specific challenges of each.

3. **Interview an HR manager and write a short report on the topic: “The strategic roles of the HR manager at XYZ Company.”** Instruct students to follow the model outlined in this chapter for the steps in the strategic management process, and HR’s role in strategy execution and strategy formulation.
4. **Using the Internet or library resources, bring to class and discuss at least two examples of how companies are using an HR Scorecard to help create HR systems that support the company’s strategic aims. Do all managers seem to mean the same thing when they refer to “HR Scorecards”? How do they differ?** For each example, ask students to comment on how effective they believe the measures that were selected by the company are in terms of allowing the company to assess HR’s performance objectively and quantitatively, as well as serving as a tool for the HR manager to build a measurable and persuasive business case for how HR is contributing to achieving the company’s strategic financial goals. Challenge students to critique the scorecard and how it could be improved to measure strategically relevant organizational outcomes, workforce competencies and behaviors, and HR system policies and activities.
5. **It is probably safe to say that your career plan is one of the most important plans you’ll ever create. Unfortunately, most people never lay out such a plan, or they don’t realize they need one until it is too late. Using the concepts and techniques in this chapter, develop an outline of a career plan for yourself, one that has sufficient detail to provide direction for your career decisions over the next five years. Make sure to include an executive assignment action plan and measurable goals and/or milestones.** Career planning consists of activities and actions that an individual would undertake to achieve their desired career goals. An effective career plan should include a self assessment of both the individual’s strengths as well as their weaknesses. The individual should decide what are their career interests, aspirations, and goals on a timeline of one, three, and five years from the current period and develop an action plan to move their career goals forward. In developing the plan, special attention should be paid to the type of additional training or education needed to achieve the targeted goal. If an individual would like to progress within their own organization, then the current supervisor should be involved to help identify on-the-job learning and training opportunities, continued education, and/or avenues for professional development with special focus on developing the above-mentioned weaknesses so they do not present a barrier to career goal success. Lastly, the action plan should include a timeline to accomplish the desired one-, three-, and five -year goals.
6. **The HRCI “Test Specifications” appendix at the end of this book (pages 699-706) lists the things someone studying for the HRCI certification exam needs to know in each area of human resource management (such as in Strategic Management, Workforce Planning, and Human Resource Development). In groups of 4-5 students, do four things: (1) review that appendix now; (2) identify the material in this chapter that relates to the required knowledge the appendix lists; (3) write four multiple-choice exam questions on this material that you believe would be suitable for inclusion in the HRCI exam; and 4) if time permits, have someone from your team post your team’s questions in front of the class, so the students on other teams can take each other’s exam questions.** Material in this chapter that could be covered in the HRCI certification exam include: Under Strategic Management, the formulation of HR strategies to support the company’s overall strategic plan; HR’s role in helping companies to build a competitive advantage, strategic HR management, role in strategy execution and formulation; high performance work system concepts and supporting HR systems/practices; the HR Scorecard and all the steps involved in developing it.

Examples of multiple-choice questions to provide to students follow:

1. Formulating and executing HR systems that produce the employee competencies and behaviors the company needs to achieve its strategic aims is called:
  - a. The HR Scorecard
  - b. Strategic human resource management (**correct answer**)

- c. Strategic control
  - d. Competitive advantage
2. The HR Scorecard does the following:
    - a. defines the company's business and its mission
    - b. shows the causal link between HR activities, emergent employee behaviors, and resulting strategic outcomes and performance (**correct answer**)
    - c. identifies how to build and strengthen the business's long-term competitive position in the marketplace
    - d. ensures that the firm's functional strategies support its corporate and competitive strategies
  3. Strategic HR Activity Metrics could be:
    - a. number of grievances per year
    - b. number of hours of training per employee per year
    - c. turnover costs
    - d. all of the above (**correct answer**)
  4. High Performance Work System practices include:
    - a. structured and hierarchical organizational structure
    - b. flexible work assignments (**correct answer**)
    - c. employees specializing in one job task
    - d. limited opportunities for training

## EXPERIENTIAL EXERCISES & CASES

### Experiential Exercise: Developing an HR Strategy for Starbucks

**Purpose:** The purpose of this exercise is to give students experience in developing an HR scorecard. Students should understand the HR scorecard approach to creating a strategy-oriented HR system, and in particular, the seven steps in the process.

**Instructions:** Set up groups of three to four students for this exercise. Using whatever sources are available, each group should outline an HR scorecard by addressing each of the eight steps in the process, starting with a short definition of the business strategy for the organization.

Ask each group to present their scorecard to the rest of the class. At the end of each presentation, ask the class to provide feedback on the scorecard, commenting on the following:

- a. How effectively does the scorecard measure 1) organizational outcomes, 2) workforce competencies and behaviors, and 3) HR system policies and activities?
- b. Comment on how effective the scorecard is on the following dimensions:
  - 1) assess HR's performance objectively and quantitatively
  - 2) as a tool for the HR manager to build a measurable and persuasive business case for how HR is contributing to achieving the organization's strategic goals

### Application Case: Siemens Builds a Strategy-Oriented HR System

1. Based on the information in this case, provide examples, for Siemens, of at least four strategically required organizational outcomes, and four required workforce competencies and behaviors.

Strategically required organizational outcomes would be the following: 1) An employee selection and

compensation system that attracts and retains the human talent necessary to support global diversification into high-tech products and services 2) A “learning company” in which employees are able to learn on a continuing basis; 3) A culture of global teamwork which will develop and use all the potential of the firm’s human resources; 4) A climate of mutual respect in a global organization. Workforce competencies and behaviors could include: 1) openness to learning; 2) teamwork skills; 3) cross-cultural experience; 4) openness, respect, and appreciation for workforce diversity.

**2. Identify at least four of the strategically relevant HR system policies and activities that Siemens has instituted in order to help HR contribute to achieving Siemens’ strategic goals.**

1) Training and development activities to support continuous learning through a system of combined classroom and hands-on apprenticeship training to support technical learning; 2) Continuing education and management development as developing skills necessary for global teamwork and appreciation for cultural diversity; 3) Enhanced internal selection process which includes prerequisites of cross-border and cross-cultural experiences for career advancement; 4) Organizational development activities aimed at building openness, transparency, fairness, and supporting diversity

**3. Provide a brief illustrative outline of an HR scorecard for Siemens.**

Metrics could include things such as:

1. Level of organizational learning:
  - a. Number of hours of technical training per employee (classroom and hands-on)
  - b. Number of hours of education management development
2. Level of cross-cultural team work
  - a. Number of employees assigned to roles including cross-border and cross-cultural experiences
  - b. Survey results measuring employee climate on dimensions of teamwork, openness, transparency, fairness, diversity
3. Extent to which the employees can describe the company’s core values
4. Effectiveness of selection process for identifying high-quality candidates – number of qualified candidates per position, turnover and retention statistics.

**Continuing Case: The Carter Cleaning Company**

1. **Would you recommend that the Carters expand their quality program? If so, specifically what form should it take?** Most students will agree that there are opportunities to expand the quality program. The employee meeting approach is a good start in terms of utilizing high-involvement organizational practices. There are opportunities to maximize the overall quality of their human capital. For example, training seems to be an obvious area to focus in terms of educating and building awareness about basic standards and procedures.
2. **Assume the Carters want to institute a high performance work system as a test program in one of their stores. Write a one-page outline summarizing what such a program would consist of.** Students should include some of the following ideas in their outline: Identify the types of HR practices they would implement to improve quality, productivity, financial performance; methods for job enrichment; strategies for implementing and leveraging a team-based organization; ways to implement and facilitate high commitment work practices; employee development and skill building to foster increased competency and capability in the workforce; a compensation program which provides incentives (for example, profit sharing, pay for performance) for achieving major goals and financial targets.

## KEY TERMS

**business plan**

Provides a comprehensive view of the firm’s situation today and of its company-wide and departmental goal and plans for the next 3 to 5 years.

<b>management by objectives</b>	Whereby the supervisor and subordinate jointly set goals for the latter and periodically assess progress toward those goals.
<b>strategic plan</b>	The company's plan for how it will match its internal strengths and weaknesses with external opportunities and threats in order to maintain competitive advantage.
<b>strategy</b>	Specific courses of action the company pursues to achieve its aims.
<b>strategic management</b>	The process of identifying and executing the organization's mission, by matching the organization's capabilities with the demands of its environment.
<b>vision statement</b>	A general statement of the firm's intended direction and shows, in broad terms, "what we want to become."
<b>mission statement</b>	A more specific and shorter term statement which communicates for a company who they are, what they do, and where they are headed.
<b>corporate-level strategy</b>	Type of strategy that identifies the portfolio of businesses, that, in total, comprise the company and the ways in which these businesses relate to each other.
<b>competitive strategy</b>	A strategy that identifies how to build and strengthen the business's long-term competitive position in the marketplace.
<b>competitive advantage</b>	Any factors that allow an organization to differentiate its product or service from those of its competitors to increase market share.
<b>functional strategies</b>	Strategy that identifies the broad activities that each department will pursue in order to help the business accomplish its competitive goals.
<b>offshoring</b>	Exporting of jobs from developed countries where labor and costs are lower.
<b>strategic human resource management</b>	Formulating and executing HR systems – policies and activities – that produce the employee competencies and behaviors the company needs to achieve its strategic aims.
<b>strategy map</b>	A diagram that summarizes the chain of major activities that contribute to a company's success.
<b>HR scorecard</b>	A concise measurement system that shows the quantitative standards, or "metrics" the firm uses to measure HR activities, to measure the employee behaviors resulting from these activities, and to measure the strategically relevant organizational outcomes of those employee behaviors.
<b>digital dashboard</b>	Presents the manager with desktop graphs and charts, and so a computerized picture of where the company stands on all those metrics from the HR Scorecard process.
<b>high performance work system</b>	A set of human resource management policies and practices that promote organizational effectiveness.

<b>human resource metric</b>	The quantitative measure of some human resource management yardstick such as employee turnover, hours of training per employee, or qualified applicants per position.
<b>value chain</b>	Identifying the primary activities that create value for customers and the related support activities.
<b>HR audit</b>	An analysis by which an organization measures where it currently stands and determines what it has to accomplish to improve its HR function.

## **TRANSLATING STRATEGY INTO HR POLICIES AND PRACTICES: THE HOTEL PARIS CASE**

### **Questions**

**1. Draw a simple strategy map for the Hotel Paris. Specifically, summarize in your own words an example of the hierarchy of links among the hotel's HR practices, necessary workforce competencies and behaviors, and required organizational outcomes.**

- What overall goals does the Hotel Paris want to achieve?
- What does the Hotel Paris do operationally to achieve its goals?
- What employee attitudes and behaviors will produce the desired operational outcomes?

The above strategy map for the Hotel Paris succinctly lays out the hierarchy of main activities required for the Hotel Paris to succeed. For example, the Hotel Paris could endeavor to improve workforce competencies and behaviors by instituting an improved recruitment process, and measure the latter in terms of the number of qualified applicants per position.

**2. Using Table 3-1 (page 94), list at least five specific metrics the Hotel Paris could use to measure its HR practices.**

- Number of qualified applicants per position
- Percentage of jobs filled from within
- Number of hours of training for each employees
- Percentage of the workforce eligible for incentive pay
- Percentage of the workforce routinely working in a self-managed, cross functional, or project team

## **Chapter 3 Appendix Tools for Evidence-Based Human Resource Management**

Managers should make decisions based on the evidence. We saw that evidence-based human resource management is the use of data, facts, analytics, scientific rigor, critical evaluation, and critically evaluated research/case studies to support human resource management proposals, decisions, practices, and conclusions.

### **EVIDENCE-BASED HR AND THE SCIENTIFIC WAY OF DOING THINGS**

The Ground Rules of Science. In brief, the ground rules of science include objectivity, experimentation, quantification, explanation, prediction, and replication. In gathering his or her evidence, the scientist needs to be objective, or there's no way to trust his or her conclusions.

In conducting his or her experiment, the scientist will typically follow four steps.

- 1) Setting up a hypothesis
- 2) Developing a method for testing the hypothesis

- 3) Gathering the data
- 4) Drawing conclusions based on the findings

### **Why Should a Manager Be Scientific?**

For managers, the key point of being “scientific” is to make sure you maintain a sense of skepticism, by always questioning, and measuring what you hear, read, and do at work. You want to be sure, “What is the cause, and what is the effect?” The problem is that things aren’t always as they appear, and what’s “intuitively obvious” can be misleading.

### **CONDUCTING THE HUMAN RESOURCE MANAGEMENT AUDIT**

What Are HR Audits? Within the human resource management area, numbers-based analyses often start with HR managers conducting human resource audits of all or part of their operations.

Types of HR Audits may include the following:

- 1) Compliance audits —in particular, how well are we complying with relevant laws and regulations?
- 2) Best practices audits —in particular, how do our recruitment practices, hiring practices, and so on compare to those of “best practices” companies?
- 3) Strategic audits —in particular, are our human resource management practices helping us to achieve our strategic goals, by fostering the required employee behaviors?
- 4) Function-specific audits —audits here concentrate on one or more specific human resource management areas, such as compensation, or training and development.

### **The HR Audit Process**

**We can summarize the basic audit process as follows:**

- 1) Decide on the scope of the audit.
- 2) Draft an audit team.
- 3) Compile the checklists and other tools available.
- 4) Know your budget.
- 5) Consider the legalities.
- 6) Get top management support.
- 7) Develop the audit checklist.
- 8) Use the questionnaire to collect data.
- 9) Benchmark findings.
- 10) Provide feedback about the results to senior management.
- 11) Create action plans aimed at improving areas the audit singles out.

### **HR METRICS AND BENCHMARKING**

Whether you are conducting an HR audit or simply gathering evidence to ascertain, say, if your training efforts are paying off, you will probably want to benchmark—compare your results to those of comparable companies.

## Types of Metrics

Metrics are the fundamental financial and nonfinancial measures you will use to assess your unit's status and progress. Employment-related metrics range from broad, overall organizational measures down to ones that focus narrowly on specific human resource management functions and activities.

<b>VIDEO CASE APPENDIX</b>	
	<p><b>Video 1: Showtime</b></p> <p>Showtime Networks operates cable networks and pay-per-view cable channels across the United States and in several countries abroad. As this video illustrates, its HR function supports corporate strategy by helping to determine what kind of employees are needed to keep the company in peak performance, and then by providing the company and its employees with the HR activities that these employees need to do their jobs. For example, you'll see that Showtime offers many development and training programs, as well as personal development types of activities including mentoring programs and career-oriented development activities. The firm's performance management process (which the employees helped develop) focuses specifically on the work activities and results that help achieve departmental and corporate goals. In this video, Matthew, the firm's CEO, emphasizes that it is essential to use human resources as a strategic partner, and the video then goes on to provide something of a summary of the basic human resource management functions.</p> <p><b>Video 2: IQ Solutions</b></p> <p>IQ Solutions is in the business of providing health-care system services. It says one of its aims is lessening the inequality that they say exists in America's healthcare system, and the company uses its very diverse employee base to better serve and attract a broad client base. Employees at IQ Solutions work together in teams to achieve the company's goals. As we see in this video, the company itself is indeed very diverse: for example, employees speak about 18 languages. The company capitalizes on this diversity in many ways. For example, they let their employees share their ethnically unique holidays, and provide special training and other benefits that support diversity.</p> <p>For video discussion questions, please visit the Instructor's Resource Center at: <a href="http://www.pearsonhighered.com/dessler">http://www.pearsonhighered.com/dessler</a></p>

## Equal Opportunity And The Law

# 2

### Lecture Outline

#### Strategic Overview

Equal Opportunity 1964 - 1991  
 Title VII of the 1964 Civil Rights Act  
 Executive Orders  
 Equal Pay Act of 1963  
 Age Discrimination in Employment Act of 1967  
 Vocational Rehabilitation Act of 1973  
 Pregnancy Discrimination Act of 1978  
 Federal Agency Guidelines  
 Early Court Decisions Regarding EEO  
 Equal Employment Opportunity 1990-91 - Present  
 The Civil Rights Act of 1991  
 The Americans with Disabilities Act  
 Genetic Information Nondiscrimination Act  
 State and Local EEO Laws  
 Sexual Harassment  
 Defenses Against Discrimination Allegations  
 The Central Role of Adverse Impact  
 Bona Fide Occupational Qualification  
 Business Necessity  
 Other Considerations in Discriminatory Practice  
 Illustrative Discriminatory Employment Practices  
 A Note on What You Can and Cannot Do  
 Recruitment  
 Selection Standards  
 Sample Discriminatory Promotion  
 What the Supervisor Should keep in Mind  
 The EEOC Enforcement Process  
 Voluntary Mediation  
 Mandatory Arbitration of Discrimination Claims  
 Diversity Management and Affirmative Action  
 Managing Diversity  
 Workforce Diversity in Practice  
 EEO versus Affirmative Action  
 Steps in an Affirmative Action Program  
 Recruiting Minorities Online  
 Reverse Discrimination

***In Brief:*** This chapter gives a history of equal opportunity legislation, outlines defenses against discrimination allegations, gives examples of discriminatory practices, describes the EEOC enforcement process and suggests proactive programs.

***Interesting Issues:*** Affirmative Action programs have come under fire in recent years, even by some members of protected groups. A very critical issue is whether Affirmative Action represents “a leg up” assistance for those who have been historically discriminated against, or if it becomes a “crutch” that hinders their motivation and ability to compete and perform. While this is a delicate and potentially volatile issue, helping students see and understand both sides of the argument will help them understand the depth of these issues.

**I. Equal Opportunity 1964-1991****A. Background**

1. The Fifth Amendment (ratified in 1791) states, “no person shall be deprived of life, liberty, or property, without due process of the law.”
2. The Thirteenth Amendment (ratified in 1868) outlawed slavery, and courts have held it bars racial discrimination.
3. The Fourteenth Amendment (ratified in 1868) makes it illegal for any state to “make or enforce any law which shall abridge the privileges and immunities of citizens of the United States,” and the courts have generally viewed this law as barring discrimination based on sex, national origin, or race.
4. Section 1981 of Title 42 of the U.S. Code, passed as the Civil Rights Act of 1866, gives all persons the same right to make and enforce contracts and to benefit from the laws of the land.

**B. Title VII of the 1964 Civil Rights Act****1. Background**

- a. The act says it is unlawful to fail or refuse to hire or to discharge an individual or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.
- b. The act says it is unlawful to limit, segregate, or classify his/her employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee, because of such individual's race, color, religion, sex, or national origin.

1. Who does Title VII Cover? It covers: a) all public or private employers of 15 or more persons; b) all private and public educational institutions; c) federal, state, and local governments; d) public and private employment agencies; e) labor unions with 15 or more members; and f) joint labor-management committees.
2. The EEOC (Equal Employment Opportunity Commission) was established by Title VII. It consists of five members (serving five-year terms), appointed by the president with the advice and consent of the Senate. The EEOC investigates job discrimination complaints, and may file charges in court.

- A. Executive Orders by various presidents have expanded the effect of equal employment laws in federal agencies. Johnson's administration (1963-1969) issued Executive Orders 11246 and 11375, which required contractors to take affirmative action (steps taken for the purpose of eliminating the present effects of past discrimination) to ensure equal employment opportunity.

- B. Equal Pay Act of 1963 (amended in 1972) made it unlawful to discriminate in pay on the basis of sex when jobs involve equal work, equivalent skills, effort and responsibility, and are performed under similar working conditions.
- E. Age Discrimination in Employment Act (ADEA) of 1967 made it unlawful to discriminate against employees or applicants for employment who are between 40 and 65 years of age.
- F. Vocational Rehabilitation Act of 1973 required employers with federal contracts over \$2500 to take affirmative action for the employment of handicapped persons.
- G. Pregnancy Discrimination Act (PDA) of 1978, an amendment to Title VII of the Civil Rights Act, prohibits sex discrimination based on “pregnancy, childbirth, or related medical conditions.”
- H. Federal Agency Guidelines are uniform guidelines issued by federal agencies charged with ensuring compliance with equal employment federal legislation explaining “highly recommended” employer procedures regarding matters like employee selection, record keeping, pre-employment inquiries, and affirmative action programs.
- I. Early Court Decisions Regarding Equal Employment Opportunity
  - 1. *Griggs v. Duke Power Company*, a case heard by the Supreme Court in which the plaintiff argued that his employer's requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related if it has an unequal impact on members of a protected class.
  - 2. *Albemarle Paper Company v. Moody*, a Supreme Court case in which it was ruled that the validity of job tests must be documented, and that employee performance standards must be unambiguous.

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**II. Equal Employment Opportunity 1990-91 - Present**

- A. The Civil Rights Act (CRA) of 1991 places burden of proof back on employers and permits compensatory and punitive damages.

1. Burden of Proof was shifted back to where it was prior to the 1980s with the passage of CRA 1991; thus, the burden is once again on employers to show that the practice (such as a test) is required as a business necessity. For example, if a rejected applicant demonstrates that an employment practice has a disparate (or “adverse”) impact on a particular group, the employer has the burden of proving that the challenged practice is job related for the position in question.
  2. Money Damages – Section 102 of CRA 1991 provides that an employee who is claiming intentional discrimination (disparate treatment) can ask for 1) compensatory damages and 2) punitive damages, if it can be shown the employer engaged in discrimination “with malice or reckless indifference to the federally protected rights of an aggrieved individual.”
  3. Mixed Motives – CRA 1991 states: “*An unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.*” Employers cannot avoid liability by proving it would have taken the same action – such as terminating someone – even without the discriminatory motive. Plaintiffs in such so-called “mixed motive” cases recently gained an advantage from a U.S. Supreme Court decision in *Desert Palace Inc. vs. Costa*, where the court decided that the plaintiff did not have to provide evidence of explicitly discriminatory conduct, but could provide circumstantial evidence.
- B. The American with Disabilities Act requires employers to make reasonable accommodations for disabled employees, and it prohibits discrimination against disabled persons.
1. AIDS – The EEOC’s position is that the ADA prohibits discriminating against people with HIV/AIDS.
  2. Qualified Individual – The act prohibits discrimination against those who, with or without a reasonable accommodation, can carry out the essential functions of the job.
  3. Reasonable Accommodation – If the individual cannot perform the job as currently structured, the employer is required to make a “reasonable accommodation,” unless doing so would present an “undue hardship.”
  4. Mental Impairments and the ADA – Mental disabilities now account for the greatest number of claims brought under the ADA. “Mental impairment includes any mental or psychological disorder, such as emotional or mental illness.”
  5. The ADA in Practice – ADA complaints are flooding the EEOC and the courts. However, 96% of federal court decisions in a recent year were for the employer.
  6. Ten ADA Employer Guidelines – The ADA imposes certain legal obligations on employers:
    1. An employer must not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job; if the person is otherwise qualified but unable to perform an essential function,

the employer must make a reasonable accommodation unless doing so would result in undue hardship. HIV-positive individuals are generally ADA disabled, whether or not they are showing symptoms.

2. Employers are not required to lower existing performance standards or stop using tests for a job as long as those standards or tests are job related and uniformly applied to all employees and candidates for that job.
  3. Although employers may not make pre-employment inquiries about a person's disability, they may ask questions about the person's ability to perform specific essential job functions.
  4. Employers cannot order current employees to take a medical exam if they have not exhibited any behavior that would suggest performance problems.
  5. Employers should review job application forms, interview procedures, and job descriptions for illegal questions and statements.
  6. The ADA does not *require* employers to have job descriptions, but it's probably advisable to have them. Job descriptions should outline the essential functions of the job.
  7. Courts will tend to define "disabilities" quite narrowly.
  8. Employers do not need to allow misconduct or erratic performance even if the behavior is linked to the disability.
  9. The employer does not have to create a new job or allow the employee light duty indefinitely, unless such a position already exists.
  10. Employers should not treat employees as if they are disabled. If their condition can be controlled, the courts usually won't consider them disabled.
- C. Genetic Information Nondiscrimination Act of 2008 (GINA) – prohibits discrimination by health insurers and employers based on people's genetic information. Specifically, it prohibits the intentional acquisition of genetic information about applicants and employees, and imposes strict confidentiality requirements.
- D. State and Local Equal Employment Opportunity Laws – typically, further restrict employers' treatment of job applicants and employees, especially those not covered by federal legislation. State and local equal employment opportunities agencies play a role in the equal employment compliance process.

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## E. Sexual Harassment

1. Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment is sexual harassment. It includes unwelcome sexual advances, requests for favors and other verbal or physical conduct of a sexual nature that takes place under any of the following conditions:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
  - b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
  - c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
2. Proving Sexual Harassment: There are 3 main ways an employee can prove sexual harassment:
- a. Quid Pro Quo - proves that rejecting a supervisor's advances adversely affected tangible benefits, like raises or promotions.
  - b. Hostile Environment Created by Supervisors - shows that even though there were no direct threats or promises in exchange for sexual advances, advances interfered with performance and created an offensive work environment.
  - c. Hostile Environment Created by Coworkers or Non-employees - An employer is liable for the sexually harassing acts of its employees and in some cases, customers, if the employer knew or should have known of the harassing conduct.
3. Supreme Court Decisions
- a. A tangible job action is not necessary in a quid pro quo case.
  - b. Employer must show that it took "reasonable care" to prevent and promptly correct any sexually harassing behavior.
  - c. Employees must take advantage of any preventative or corrective opportunities provided by the employer.
4. What the Manager/Employer Should Do
- a. Take all complaints about harassment seriously.
  - b. Issue a strong policy statement condemning such behavior.
  - c. Inform all employees about the policy prohibiting sexual harassment and of their rights under the policy.
  - d. Develop a compliant procedure.
  - e. Establish a management response system that includes an immediate reaction and investigation by senior management.
  - f. Begin training supervisors and managers to increase their own awareness of the issues.
  - g. Discipline managers and employees involved in sexual harassment.
  - h. Keep thorough records of complaints, investigations, and actions taken. A form such as in figure 2.2 can facilitate this process.
5. What the Employee Can Do
- a. File a verbal contemporaneous complaint or protest with the harasser and the harasser's boss stating that the unwanted overtures should cease because the conduct is unwelcome.
  - b. Write a letter to the accused.
  - c. If the unwelcome conduct does not cease, file a report regarding the unwelcome conduct and unsuccessful efforts to get it to stop with the harasser's manager and/or to the human resource director.
  - d. If the letters and appeals to the employer do not suffice, the accuser should turn to the local office of the EEOC to file the necessary claim.

- e. The employee can also consult an attorney about suing the harasser for assault and battery, intentional infliction of emotional distress, and injunctive relief and to recover compensatory and punitive damages if the harassment is of a serious nature. The Federal Violence Against Women Act of 1994 provides another avenue women can use to seek relief for violent sexual harassment.

**Managing The New Workforce:** Enforcing Equal Employment Laws with International Employees - The 1991 Civil Rights Act marked a substantial change in the geographic applicability of equal rights legislation. Congressional legislation generally only applies within U.S. territorial borders unless specifically stated otherwise. However, CRA 1991 specifically expanded coverage by amending the definition of employee in Title VII to mean a U.S. citizen employed in a foreign country by a U.S. owned or controlled company. Theoretically, U.S. citizens working overseas for U.S. companies enjoy the same equal employment opportunity protection as those working within U.S. borders. In practice, however, the laws of the country in which the U.S. citizen is working may take precedence. Table 2-3 provides guidelines for applying EEO law internationally.

### III. Defenses Against Discrimination Allegations

- A. The Central Role of Adverse Impact – Employer may not institute an employment practice that causes a disparate impact on a particular class of people unless they can show that the practice job related and necessary.
- B.
  - 1. How can Someone Show Adverse Impact? There are four basic approaches:
    - a. Disparate Rejection Rates - The Four Fifths Rule states that “a selection rate for any racial, ethnic or sex group which is less than 4/5ths or 80% of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than 4/5ths rate will generally not be regarded as evidence of adverse impact. These disparate rejection rates can be demonstrated when there is a discrepancy between rates of rejection of members of a protected group and of others.
    - b. Restricted Policy is an approach that means demonstrating that the employer’s policy intentionally or unintentionally excluded members of a protected group.
    - c. Population Comparisons is an approach that compares 1) the percentage of the protected group and white workers in the organization with 2) the percentage of the corresponding groups in the labor market, where the labor market is usually defined as the U.S. Census data for the Standard Metropolitan Statistical Area.
    - d. *McDonnell-Douglas* Test - When an applicant is qualified but rejected, and the employer continues seeking applicants, the Court has determined that a prima facie case of disparate treatment has been established under these conditions: the person belongs to a protected class; the person applied and was qualified for the job for which the employer was seeking applicants; despite the qualification, the person was rejected; and that after rejection, the position remained open and the employer continued to seek applications from persons with the individual complainant’s qualifications.
- C. Bona Fide Occupational Qualification (BFOQ) – is a defense used to justify an employment practice that may have an adverse impact on members of a

protected class. It is a requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. This is ever more narrowly interpreted by courts.

1. Age as a BFOQ – ADEA does permit disparate treatment in those instances when age is a BFOQ. There is a narrowing of exceptions for BFOQ. FOA (factors other than age) is a defense the employer can use which argues that its actions were “reasonable” based on some factor other than age.
  2. Religion as a BFOQ – is justified in the case of religious organizations or societies that require employees to share their particular religion.
  3. Gender as a BFOQ for positions requiring specific physical characteristics necessarily possessed by one sex.
  4. National Origin as a BFOQ – A person's national origin may be a BFOQ.
- D. Business Necessity – is a defense created by the courts, which requires an employer to show an overriding business purpose for the discriminatory practice and that the practice is therefore acceptable.
- E. Other Considerations in Discriminatory Practice Defenses: 1) good intentions are no excuse; 2) employers cannot count on hiding behind collective bargaining agreements, and 3) employers can react to a charge by agreeing to eliminate the illegal practice and (when required) by compensating the individuals discriminated against.

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#### IV. Illustrative Discriminatory Employment Practices

**A note on what you can and cannot do** – preemployment questions are not inherently legal or illegal. Rather, the impact of the questions is what courts assess in making determinations about discriminatory practice. “Problem questions” are those which screen out members of a protected group. The EEOC approves the use of “testers” posing as applicants to test a firm's procedures. Care should be taken in devising employment practices and in training recruiters.

- A. Recruitment - If the workforce is not truly diverse, relying on word of mouth to spread information about job openings can reduce the likelihood of all protected groups having equal access to job openings. It is unlawful to give false or misleading job information. Help wanted ads should be screened for potential age and gender bias
- B. Selection Standards - Educational requirements and tests that are not job related, or which result in adverse impact can be found to be illegal. Showing preference to relatives may also contribute to a lack of racial diversity; Height, weight, and physical characteristics should be job related. Felony conviction information can be sought, but arrest records negate the presumption of “innocent until proven guilty” and may result in adverse impact against groups with a high incidence of arrests. Application forms should not contain questions which may allow potentially discriminatory information to be gathered. Discharge due to

garnishment may result in adverse impact to minority groups. C. Sample Discriminatory Promotion, Transfer, and Layoff Practices – Fair employment laws protect not just job applicants but also current employees. Employees have filed suits against employers' dress, hair, uniform and appearance codes under Title VII, claiming sex discrimination and sometimes racial discrimination. In some cases, the courts have agreed.

- C. What the Supervisor Should Keep in Mind – Understand the questions you can and cannot ask when interviewing applicants, and know what constitutes sexual harassment, and how equal opportunity law affects all your human resources decision, including those relating to appraisal, compensation, promotions, disciplinary procedures, and employee dismissals.

## **V. The EEOC Enforcement Process**

- A. Processing a Charge – All managers should have a working knowledge of the steps in the EEOC claim process.

1. File Charge – Under CRA 1991, the charge generally must be timely filed in writing and under oath by (or on behalf of) the person claiming to be aggrieved, or by a member of the EEOC who has reasonable cause to believe that a violation occurred.
2. Charge Acceptance - The EEOC can either accept the charge or refer it to the state or local agency.
4. Serve notice - After the charge has been filed, the EEOC has 10 days to serve notice on the employer.
5. Investigation/Fact Finding Conference - The EEOC then has 120 days to investigate the charge to determine whether there is reasonable cause to believe it is true. An informal fact finding conference is held early in the investigation to see if negotiation is possible. The emphasis is on settlement.
5. Cause/No Cause - If charges are dismissed, EEOC must issue the charging party a Notice of Right to Sue. The person has 90 days to file suit on his/her own behalf. If EEOC finds reasonable cause for the charge, it must attempt conciliation.
6. Conciliation - Under Title VII, the EEOC has 30 days to work out a conciliation agreement between the parties before bringing suit. The conciliation agreement is signed by all parties and submitted for EEOC approval
7. Notice to Sue - If the EEOC is unable to obtain an acceptable conciliation agreement, it may sue the employer in federal district court or issue a Notice of Right to Sue to the person who filed the charge.

- B. Voluntary Mediation - A neutral third party may aid the parties in reaching voluntary resolution. The EEOC will ask the employer to participate if the claimant agrees to mediation. Employer options include mediating the charge, making a settlement offer or preparing a position statement for the EEOC.

- C. Mandatory Arbitration of Discrimination Claims - As many courts come to view compulsory arbitration as an acceptable alternative to litigation, the following are suggestions to employers:

- a. Review all employment discrimination suits filed to determine whether they involve an employee subject to any type of arbitration agreement. Decide whether to move to compel arbitration of the claim.
- b. Consider inserting a mandatory arbitration clause in the employment application or employee handbook.
- c. To protect against appeal, institute steps to protect against arbitrator bias; allow the arbitrator to afford a claimant broad relief and allow for a reasonable amount of fact-finding.

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## **VI. Management Guidelines for Addressing Claims**

- A. During the EEOC Investigation – there are key things to keep in mind when dealing with a discrimination charge:
  - 1. Three principles – First, ensure there is information in the EEOC’s file which demonstrates that the charge has lack of merit. Second, limit the information supplied to only the issues raised in the charge itself. Third, get as much information as possible about the charging party’s claim.
  - 2. Meet with the employee – to ask specifics about the who, what, and when of the claim, and whether there are witnesses. Summarize the discussion in a written statement and have the employee sign and date it.
  - 3. EEOC authority – Though they cannot make findings, EEOC investigators can make recommendations. Reasonable cooperation is prudent, since a recommendation is often the determining factor in whether the EEOC finds cause in a discrimination complaint.
  - 4. Submitting documents – It is often in the employer’s best interests to cooperate. However, the EEOC can only legally compel employers to supply documents requested by obtaining a court subpoena.
  - 5. Position statement – A written statement based on HR’s own investigation, which details the employer’s policy against discrimination and provides documents that support the company’s position can be helpful.
- B. During the Fact-Finding Conference – The employer should be aware that: the only official record of the conference is the notes taken by the EEOC investigator; an attorney may be brought to the conference; the conference often occurs before the employer is fully informed of the facts of the charge and the case; and

that witnesses, especially supervisors, should be aware of the long-range legal significance of their statements in the conference.

- C. During the EEOC Determination and Attempted Conciliation – If there is a finding of cause management should review it carefully and point out any inaccuracies in writing to the EEOC. Some experts argue against conciliation because it is viewed by the EEOC as admission of guilt rather than a compromise, and because settlement may occur later, should a suit be filed.

***When You're On Your Own:*** HR and Small Business Dealing with Discrimination Issues and the EEOC: In most companies, employment discrimination issues tend to grow out of actions by individuals supervisors. Generally speaking, the EEOC enforces equal employment compliance issues against all but the very smallest of employers. Therefore, most employers are at risk even from “non-discriminatory” actions which can trigger a discrimination claim and lawsuit.

## VII. Diversity Management and Affirmative Action Programs

- A. Managing Diversity – means taking steps to maximize diversity’s potential advantages while minimizing the potential barriers, such as prejudices and bias that can undermine the functioning of a diverse workforce. One diversity expert concluded that five sets of voluntary organizational activities are at the heart of any diversity management program: 1) provide strong leadership; 2) assess the situation; 3) provide diversity training and education; 4) change culture and management systems; 5) evaluate the diversity management program.
- B. Workforce Diversity in Practice – Employers use various means to manage workforce diversity, including voluntary affirmative action programs, organizing minority employee’s networks and expansion of multicultural markets.. The aim is to voluntarily enhance employment opportunities for women and minorities.
- C. Equal Employment Opportunity Versus Affirmative Action – Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age, has an equal chance for a job based on his/her qualifications. Affirmative action goes beyond equal employment opportunity by requiring the employer to make an extra effort to recruit, hire, promote, and compensate those in protected groups to eliminate the present effects of past discrimination.
- D. Steps in an Affirmative Action Program – Executive Order 11246 requires that a numerical analysis of the workforce be conducted, and that barriers to equal employment be eliminated through a good faith effort strategy. It is vital that current employees see this program as fair. This is accomplished through good communication, program justification and transparent selection procedures. These are the steps in an affirmative action program:
  - 1. Issue a written equal employment policy
  - 2. Appoint a top official with responsibility and authority to direct and implement the program
  - 3. Publicize the equal employment policy and affirmative action commitment
  - 4. Survey present minority and female employment by department and job classification to determine locations where affirmative action programs are especially desirable.

5. Carefully analyze employer HR practices to identify and eliminate hidden barriers.
6. Develop and implement specific programs to achieve these goals (the heart of the plan) and improve utilization of females and minorities.
7. Use focused recruitment to find qualified applicants from the target group(s).
8. Establish an internal audit and reporting system.
9. Develop support for the program both internally and externally

**Improving Productivity through HRIS:** Measuring Diversity - A number of metrics for assessing the efficiency and effectiveness of the organization's EEOC and diversity efforts are at the HR manager's disposal. They include the number of EEOC claims per year; the cost of HR related litigation; percent minority; women promotions; and various measures for analyzing the survival and loss rate among new diverse employee groups. HRIS applications provide several diversity-related software options aimed at boosting the accuracy of information to managers. Through such packages, calculations are available to compute cost per diversity hire; a workforce profile index; the numeric impact of voluntary turnover among diverse employee groups; the effectiveness of the company's supplier diversity initiatives; current diversity measures; and direct and indirect replacement cost per hire.

- E. Recruiting Minorities Online – In practice, many minorities are less likely to be using the Internet, for instance, and less likely to hear about good jobs from their friends. One option is to direct recruiting ads to one or more of the online minority-oriented job markets.
- F. Reverse Discrimination – The courts have been grappling with the use of quotas in hiring, and particularly with claims by white males of reverse discrimination. Many cases addressed these issues, but no consistent answer has emerged.

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## DISCUSSION QUESTIONS

1. **Explain the main features of Title VII, Equal Pay Act, Pregnancy Discrimination Act, Americans with Disabilities Act, Civil Rights Act of 1991.** An explanation of these EEO laws can be found in Table 2-1.
2. **What important precedents were set by the *Griggs v. Duke Power Company* case? The *Albamarle Paper Co. v. Moody*?** For the *Griggs v. Duke Power Company* case, the case was heard by the Supreme Court in which the plaintiff argued that his employer's requirement that coal handlers be high school graduates was unfairly discriminatory. In finding for the plaintiff, the Court ruled that discrimination need not be overt to be illegal, that employment practices must be related to job performance, and that the burden of proof is on the employer to show that hiring standards are job related. For the *Albamarle Paper Co. v. Moody*, the Supreme Court ruled that the validity of job tests must be documented and that employee performance standards must be unambiguous.

3. **What is adverse impact? How can it be proved?** The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion. The complainant need only establish a prima facie case: showing that the employer's selection procedures did have an adverse impact on a protected minority group. This is done by one of four basic approaches: disparate rejection rates; the restricted policy approach; population comparisons; the *McDonnell-Douglas* Test.
4. **What is sexual harassment? How can an employee prove sexual harassment?** Sexual harassment is harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment. An employee can prove sexual harassment in three main ways: 1) quid pro quo – prove that rejecting a supervisor's advances adversely affected tangible benefits; 2) hostile environment created by supervisors; and 3) hostile environment created by co-workers or nonemployees.
5. **What are the two main defenses you can use in the event of a discriminatory practice allegation, and what exactly do they involve?** The two main defenses you can use in the event of a discriminatory practice allegation are bona fide occupational qualification (BFOQ) and business necessity. BFOQ is a requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Business necessity is a justification for an otherwise discriminatory employment practice, provided there is an overriding legitimate business purpose.
6. **What is the difference between disparate treatment and disparate impact?** The main difference is one of intent. Disparate treatment means that there was an intent to treat different groups differently. Disparate impact does not require intent, but merely to show that an action has a greater adverse effect on one group than another.

## INDIVIDUAL AND GROUP ACTIVITIES

1. **Working individually or in groups, respond to these three scenarios based on what you learned in Chapter 2. Under what conditions (if any) do you think the following constitute sexual harassment?(a) A female manager fires a male employee because he refuses her request for sexual favors. (b) a male manager refers to female employees as "sweetie" or "baby." (c) Two male employees are overheard by a third female employee exchanging sexually oriented jokes.** In answering the questions, the students should keep in mind the three main ways sexual harassment can be proved, as well as the steps the employee should take in alerting management.
2. **Working individually or in groups, discuss how you would set up an affirmative action program.** It is important that students reach a decision of whether to use the good faith effort strategy or the quota strategy. Most experts would suggest the good faith effort strategy is the most legally acceptable approach. The following list of six actions should be demonstrated in the student plans: increasing the minority or female applicant flow; demonstrating top management support for the equal opportunity policy; demonstrating the equal opportunity commitment to the local community; keeping employees informed about the specifics of the affirmative action program; broadening the work skills of incumbent employees; and institutionalizing the equal employment policy to encourage supervisors' support of it.
3. **Compare and contrast the issues presented in *Bakke* with more recent court rulings on affirmative action. Working individually or in groups, discuss the current direction of affirmative action.** The basic questions addressed in *Bakke* focused on when preferential treatment becomes discrimination and under what circumstances discrimination will be temporarily permitted. Neither question was fully answered. Subsequent cases have continued to address these issues and

clarify more specifically the scope and intent of affirmative action. For example, in the *Paradise* case, the court ruled that the courts can impose racial quotas to address the most serious cases of racial discrimination. In *Johnson*, the court ruled that the public and private employers may voluntarily adopt hiring and promotion goals to benefit minorities and women. The *Johnson* ruling may limit claims of reverse discrimination by white males.

4. **Working individually or in groups, write a paper entitled “What the manager should know about how the EEOC handles a person’s discrimination charge.”** The students should include the following information in their paper. The EEOC can either accept it or refer it to the state or local agency. After it has been filed, the EEOC has 10 days to serve notice on the employer, and then investigate the charge to determine whether there is reasonable cause to believe it is true within 120 days. If charges are dismissed, EEOC must issue the charging party a Notice of Right to Sue. The person has 90 days to file suit on his/her own behalf. If EEOC finds reasonable cause for the charge, it must attempt a conciliation. If conciliation is not satisfactory, it can bring a civil suit in federal district court, or issue a Notice of Right to Sue to the person who filed the charge. Under Title VII, the EEOC has 30 days to work out a conciliation agreement between the parties before bringing suit. If the EEOC is unable to obtain an acceptable conciliation agreement, it may sue the employer in federal district court.
5. **Explain the difference between affirmative action and equal employment opportunity?** Equal employment opportunity aims to ensure that anyone, regardless of race, color, sex, religion, national origin, or age has an equal chance for a job based on his or her qualifications. Affirmative action requires the employer to make an extra effort to hire and promote those in protected groups and includes specific actions designed to eliminate the present effects of past discrimination.
6. **Assume you are the manager in a small restaurant; you are responsible for hiring employees, supervising them, and recommending them for promotion. Working individually or in groups, compile a list of potentially discriminatory management practices you should avoid.**

Acceptable answers include the following:

Ensure that recruitment practices are non-discriminatory, avoiding word-of-mouth dissemination of information about job opportunities when the workforce is substantially white, or all members of some other class. Avoid giving false or misleading information to members of any group or to fail or refuse to advise them of work opportunities. Avoid advertising classifications that specify gender or age unless it is a bona fide occupational qualification for the job.

Avoid asking pre-employment questions about an applicant’s race, color, religion, sex, or national origin.

Do not deny a job to a disabled individual if the person is qualified and able to perform the essential functions of the job. Make reasonable accommodations for candidates that are otherwise qualified but unable to perform an essential function unless doing so would result in a hardship.

Apply tests and performance standard uniformly to all employees and job candidates. Avoid tests if they disproportionately screen out minorities or women and are not job related.

Do not give preference to relatives of current employees if your current employees are substantially non-minority.

Do not establish requirements for physical characteristics unless you can show they are job related.

Do not make pre-employment inquiries about a person’s disability, but do ask questions about the person’s ability to perform specific essential job functions.

Review job application forms, interview procedures, and job descriptions for illegal questions and statements. Check for questions about health, disabilities, medical histories, or previous workers' compensation claims.

Do not ask applicants whether they have ever been arrested or spent time in jail. However, you can ask about conviction records.

**7. The HRCI "Test Specifications" appendix lists the knowledge someone studying for the HRI certification exam needs to know in each area of human resource management. In groups of 4-5 students, do four things; (1) review that appendix now; (2) identify the material in this chapter that relates to the required knowledge the appendix lists; (3) write four multiple choice exam questions on this material that you believe would be suitable for inclusion in the HRCI exam; and (4) if time permits, have someone from your team post your team's questions in front of the class, so the students in other teams can take each other's exam questions.**

Student responses to question 2 should include the following:

Employment related laws including Title VII, Civil Rights Act of 1991 (CRA 1991), Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967 (ADEA), Americans with Disabilities Act (ADA), Vocational Rehabilitation Act of 1973, Vietnam Veterans Readjustment Assistance Act of 1974, Pregnancy Discrimination Act (PDA), Federal Violence Against Women Act of 1994;

Federal Agency guidelines and regulations such as EEOC uniform guidelines and Executive Orders such as 11246 and 11375, and the Office of Federal Contract Compliance Programs, (OFCCP) which implements orders and ensures compliance.

Below are some suggested multiple choice questions in response to question 3:

1. Which of the following is **not** a discriminatory selection standard?
  - a. Educational requirements
  - b. Tests
  - c. Preference to Relatives
  - d. Conviction records

Answer: d – employers may ask about conviction records, however, they may not ask about arrest records as there is always a presumption of innocence until proven guilty, arrest records in general are not valid for predicting job performance, and police have arrested a higher proportion of minorities than whites.

2. Which law states that an employer cannot discriminate based on race, color, religion, sex or national origin?
  - a. Executive Order 11246
  - b. ADEA
  - c. ADA
  - d. Title VII

Answer: d - Title VII was one of the first laws that barred discrimination in employment practices.

3. A reasonable accommodation under ADA would be:
  - a. Modifying or acquiring equipment to assist the person
  - b. Paying a higher wage to the person
  - c. Lowering performance standards for the person
  - d. Conducting regular physical exams to assess their abilities

Answer: a – modifying or acquiring equipment to assist the person may be a reasonable accommodation as long as it financially does not place undue hardship on the employer. None of the other answers do not meet the definition of “reasonable accommodation”.

4. Under which exception to employment practices may factors such as age, gender, religion or national origin be used as an acceptable selection standard ?
- Adverse Impact
  - Affirmative Action
  - BFOQ
  - ADA

Answer: c – Bona Fide Occupational Qualification (BFOQ)

## EXPERIENTIAL EXERCISES & CASES

### Experiential Exercise: “Space Cadet” or Victim?

- Divide the class into groups of three to five students.
- Each group should develop answers to the following questions:
  - Based on what you read in this chapter, on what legal basis could the 61-year-old California attorney claim he was a victim of discrimination?

Clearly, age discrimination is one of the claims. The ADEA made it unlawful to discriminate against employees who are over 40. Disability discrimination is another potential claim if the claimant relates substandard performance to a disability.

- On what laws and legal concepts did the employer apparently base its termination of this 61-year-old attorney?

Under the legal concept of *management rights*, employers have the right to hire, promote, assign, discipline, and discharge employees. Under management rights is the concept of “*at-will employment*”, a common law rule used by employers to assert their right to end an employment relationship with an employee at any time for any cause. The employer in this case has based its termination on job performance, with documentation of complaints from association members about his advice, subsequent complaints over a two year period from association members, and he was fired for mistreating members and providing inadequate legal advice.

- Based on what laws or legal concepts could you take the position that it is legal to fire someone for poor performance even though there may be a discriminatory aspect to the termination (which is not say that there necessarily was such a discriminatory aspect with this case.)

A person who feels he was discriminated against must prove either that he was subjected to unlawful disparate treatment (intentional discrimination) or that the procedure in question has a disparate impact (unintentional discrimination) upon members of his protected class (in this case, age). The employer here has provided evidence that its decision to terminate was based on legitimate nondiscriminatory reasons (documented job performance issues) which have nothing to do with the prohibited discrimination alleged. This is a basic defense that is accepted by the

courts, and in fact, was in this case.

- d. **If you were the judge called on to make a decision on this case, what would your decision be, and why?**

Most students will probably come to the same conclusion as the judge in this case, that the Association fired the 61 year old lawyer because of performance.

3. **Foster Corporation, a large production company, has had 350 white applicants for open positions 2006. Schlein Enterprises had 400. Foster hired 35 of those applicants in 2006. Schlein hired 40. Foster had only 42 Hispanic applicants in 2006, while Schlein had 65. Foster hired 4 of those applicants in 2006 and Schlein hired 5. Using the 4/5ths rule, is there evidence of adverse impact in selection at Foster? At Schlein? Can there be disparate treatment even if there is no evidence of adverse impact? Justify your answers.**

The first step in determining adverse impact is to calculate the selection ratios of each population. At Foster, the ratio is 35 hired white applicants to 350 applicants, or .10. At Schlein, the ratio is 40 to 400 for white applicants, also .10. The Foster ratio for Hispanics is 4 to 42, or .095, and the Schlein ratio is 5 to 65, or .076. Next, the selection rate for Hispanics must be divided by that for the whites. At Foster, this means .095 divided by .10, or .95; in other words, the selection rate for minorities (Hispanics) is 95% of the rate for whites. The Schlein rate is .076 divided by .10, which is .76, meaning the selection rate for Hispanics is 76% of the white selection rate..

The 4/5ths rule says “a selection rate for any racial, ethnic or sex group which is less than 4/5ths or 80% of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than 4/5ths rate will generally not be regarded as evidence of adverse impact.” Therefore, there is evidence of disparate impact at Schlein, and not at Foster.

Disparate impact is often the result of a policy or procedure that unintentionally allows fewer opportunities for the protected class. Disparate treatment, on the other hand, is overt, and may therefore be present even when disparate impact is not.

### **Application Case: A Case of Racial Discrimination?**

1. **Do you think Ms. Browne Sanders had the basis for sexual harassment suit? Why?** It does appear the Ms Browne Sanders had the basis for a sexual harassment suit. The timing of her termination is quite suspect. Given that Madison Square Garden terminated her employment only one month after she complained to top management about the harassment should raise serious concerns. Also, the reason for her termination that she had “failed to fulfill professional responsibilities” seems vague and generalized. The Garden also did not present credible witnesses to corroborate the reason for their decision.
2. **From what you know of this case, do you think the jury arrived at the correct decision? If not, why not?** The jury did arrive at the appropriate decision given the facts that were presented in this case. The Garden had a responsibility to demonstrate concrete reasons for their termination decision. It does not appear that any specific reasons were shared with the jury.
3. **Based on the few facts that you have, what steps could Garden management have take to protect itself from liability in this matter?** A number of steps could be taken. First, the Garden should have conducted a thorough investigation and documented the results in a written report. Second, the Garden supplied a very generalized response for the termination. Before terminating an employee for performance, an organization should demonstrate that a number of actions were taken to coach and counsel the employee before termination. Finally, the Garden should have a policy/program in place to show how claims of sexual harassment are addresses including a clause that prohibits and type of retaliation.

4. **Given the fact that each of its stores has only a handful of employees, is her company covered by equal rights legislation.** As long as the total employee population of all stores equals or exceeds 15 employees, all staff are protected by equal rights legislation. However, adhering to all employment legislation regarding of employee size makes good business sense and will help promote a working environment where all employees are treated fairly.
5. **And finally, aside from the specific problems, what other personnel management matters (application forms, training, and so on) have to be reviewed given the need to bring them into compliance with equal rights laws?** All employment paperwork including the application, personnel file information, etc. should be reviewed to assure compliance with all employment and equal rights legislation. Also, all documents regarding promotions, transfers, termination, etc. should also be reviewed. All employment forms and documentation could be subpoenaed by a court or other federal, state, or local agency for review when claims of unfair treatment surface.

### **Continuing Case: Carter Cleaning Company**

#### **Questions**

1. **Is it true, as Jack Carter claims, that “we can’t be accused of being discriminatory because we hire mostly women and minorities anyway?”**

This is not true at all. Employers can be accused of discriminatory practices at any time. In this case, female applicants were being asked questions about childcare that males were not being asked; minority applicants were being asked questions about arrest records and credit histories that non-minorities were not. In addition, the reports of sexual advances towards women by a store manager and an older employee’s complaint that he is being paid less than other employees who are younger for performing the same job all raise serious issues in terms of discriminatory employment practices. Potential charges include violation of Title VII, the Equal Pay Act, age discrimination, sexual harassment, and disparate treatment,

2. **How should Jennifer and her company address the sexual harassment charges and problems?**

The first step would be to document the complaint and initiate an investigation, and if the finding of the investigation is that sexual harassment did, in fact, occur, then take the appropriate corrective action which could include discipline up to and including discharge. In addition, the company should develop a strong policy statement and conduct training with all managers.

3. **How should she and her company address the possible problems of age discrimination?**

The company should review the compensation structure and pay rates to determine whether there is discrimination in their pay system with regard to older workers being paid less than younger workers for performing the same work. If there are significant differences, then adjustments should be made to the pay system in order to rectify the problem.

4. **Given the fact that each of its stores has only a handful of employees, is her company in fact covered by equal rights legislation?**

Yes – the EEOC enforces equal employment compliance against all but the very smallest of employers. All employees including part-time and temporary workers, are counted for purposes of determining whether an employer has a sufficient number of employees. State and local laws prohibit discrimination in most cases where federal legislation does not apply.

5. **And finally, aside from the specific problems, what other personnel management matters (application forms, training, and so on) have to be reviewed given the need to bring them into compliance with equal rights laws?**

The company should do several things:

1. Develop an employee handbook which contains policy statements about equal employment opportunity, sexual harassment etc.
2. Develop an employment application which is free from discriminatory questions, as well as a standard interview guide which will ensure consistency of "legal" questions from candidate to candidate.
3. Conduct supervisory/management training to ensure that all managers are educated and aware of their responsibilities under EEO laws and regulations.
4. Develop and implement a complaint procedure and establish a management response system that includes an immediate reaction and investigation by senior management.

## KEY TERMS

<b>Title VII of the 1964 Civil Rights Act</b>	The section of the act that says an employer cannot discriminate on the basis of race, religion, sex, or national origin with respect to employment.
<b>EEOC</b>	The commission, created by Title VII, is empowered to investigate job discrimination complaints and sue on behalf of complainants.
<b>affirmative action</b>	Steps that are taken for the purpose of eliminating the present effects of past discrimination.
<b>OFCCP</b>	This office is responsible for implementing the executive orders and ensuring compliance of federal contractors.
<b>Equal Pay Act of 1963</b>	The act requiring equal pay for equal work, regardless of sex.
<b>Age Discrimination in Employment Act of 1967</b>	The act prohibiting arbitrary age discrimination and specifically protecting individuals over 40 years old.
<b>Voc. Rehab. Act of 1973</b>	The act requiring certain federal contractors to take affirmative action for disabled persons.
<b>Pregnancy Discrimination Act (PDA)</b>	An amendment to Title VII of the Civil Rights Act that prohibits sex discrimination based on "pregnancy, childbirth, or related medical conditions."
<b>uniform guidelines</b>	Guidelines issued by federal agencies charged with ensuring compliance with federal equal employment legislation explaining recommended employer procedures in detail.
<b>protected class</b>	Persons such as minorities and women protected by equal opportunity laws, including Title VII.
<b>Civil Rights Act of 1991 (CRA 1991)</b>	This act places the burden of proof back on employers and permits compensatory and punitive damages.
<b>mixed motive case</b>	A discrimination allegation case in which the employer argues that the employment action taken was motivated by a non-discriminatory reason.
<b>Americans with Disabilities Act (ADA)</b>	The act requiring employers to make reasonable accommodation for disabled employees. It prohibits discrimination against

	disabled persons.
<b>qualified individuals</b>	Under the ADA, those who can carry out the essential functions of the job.
<b>sexual harassment</b>	Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.
<b>Federal Violence Against Women Act of 1994</b>	Provides that a person who commits a crime of violence motivated by gender shall be liable to the party injured.
<b>adverse impact</b>	The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion.
<b>disparate rejection rates</b>	One test for adverse impact in which it can be demonstrated that there is a discrepancy between rates of rejection of members of a protected group and of others.
<b>4/5ths rule</b>	States that "a selection rate for any racial, ethnic or sex group which is less than four fifths or 80% of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact."
<b>restricted policy</b>	Another test for adverse impact, involving demonstration that an employer's hiring practices exclude a protected group, whether intentionally or not.
<b>BFOQ</b>	Bona Fide Occupational Qualification. Allows requirements that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act.
<b>alternative dispute resolution</b>	Grievance procedure that provides for binding arbitration as the last step.
<b>diversity</b>	The variety or multiplicity of demographic features that characterize a company's workforce, particularly in terms of race, sex, culture, national origin, handicap, age, and religion.
<b>managing diversity</b>	Means maximizing diversity's potential benefits (greater cultural awareness, and broader language skills, for instance) while minimizing the potential barriers (such as prejudices and bias) that can undermine the company's performance.
<b>good faith effort strategy</b>	One of two basic affirmative action plan strategies. This emphasizes identifying and eliminating the obstacles to hiring and promoting women and minorities on the assumption that eliminating these obstacles will result in increased utilization of women and minorities.
<b>reverse discrimination</b>	Claim that, due to affirmative action quota systems, white males are discriminated against

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