



## Employment Relationships

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## AGENCY RELATIONSHIPS

- In a *principal-agent* relationship, an agent acts on behalf of and *instead of the principal*, using a certain degree of his or her own discretion.
- An employee who *deals with third parties* is normally an agent.

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## Employer-Employee Relationships

- An employee is one whose *physical conduct is controlled*, or subject to control, by an employer.
- Key feature - employer has the right to control the employee in the performance of tasks involved in the employment.
- *Employee can be an agent* if the employee has an **appointment or contract** for hire with **authority to represent** the employer.

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## Employer-Independent Contractor Relationships

- An **independent contractor** is not an employee, and the employer has no control over the details of physical performance.
- The independent contractor is not usually an agent.

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### Inside the Legal Environment

## Who Owns “Works for Hire”?

- The U.S. Supreme Court set out factors that should be considered in determining a *worker’s status* as an *independent contractor* or an *employee*.
  - Amount of control employer exercises over details of work.
  - Is worker engaged in occupation or business other than that of the employer?
  - Is work done without employer’s supervision?
  - Does employer supply tools?
  - For how long is the person employed?
  - What is the method of payment? (By week, month, draw against % of total, or by total contract at completion)?
  - What degree of skill is required of worker?

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## Case 16.1 Scott v. Massachusetts Mutual Life Insurance Co.

- James Blatt hired Marilyn Scott to sell insurance. Their contract stated, “Nothing in this contract shall be construed as creating the relationship of employer and employee.”
- Scott financed her own office and staff, was paid according to performance and had no taxes withheld.
- When Blatt terminated her contract, Scott sued claiming discrimination.
- The defendants filed a claim for summary judgment claiming Scott was not an employee but an independent contractor.
- Which factor seems to have most influenced the court to rule that Scott was an independent contractor?
- Scott was responsible for financing her own office and staff, was paid by performance not salary, did not have state or federal taxes withheld, could sell competitors’ products, and had agreed by contract to operate as an independent contractor.

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## WAGE -HOUR LAWS

- Davis-Bacon Act (1931)
  - Requires the payment of “prevailing wages” to employees of contractors and subcontractors working on government construction projects.
- Walsh-Healey Act (1936)
  - Requires that a minimum wage and overtime pay be paid to employees to firms that contract with federal agencies .
- Fair Labor Standards Act (1938)
  - Extended wage-hour requirements to cover all employers whose activities affect interstate commerce.
  - The act has specific requirement in regard to child labor, maximum hours , and minimum wages .
  - Today Minimum wage is \$5.15/hour (Bill in Congress to increase it to \$6.15/hour).

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## WORKER HEALTH AND SAFETY

- The **Occupational Safety and Health Act** of 1970 requires employers to meet *specific safety and health standards* that are established and enforced by the Occupational Safety and Health Administration (OSHA enforces act, makes inspections and hears appeals).
- Act also established the National Institute for Occupational Safety and Health and the Occupational Safety and Health Review Commission.
- **State workers’ compensation laws** establish an *administrative procedure* for compensating workers who are injured in accidents that occur on the job, regardless of fault.

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## INCOME SECURITY

- Federal and State Governments participate in insurance programs designed to protect employees and their families by covering the financial impact of retirement, disability, death, hospitalization, and unemployment.

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## Social Security and Medicare

- The Social Security Act of 1935 provides for *old age, survivors, and disability insurance*.
- Both employers and employees must make contributions under the Federal Insurance Contributions Act (FICA) to help pay for the employees' loss of income on retirement.
- The Social Security Administration administers Medicare, a health-insurance program for older (65 years old) or disabled persons (under age 65).
- Medicaid provides for indigent care.

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## Private Pension Plans

- The federal Employee Retirement Income Security Act (ERISA) of 1974 establishes standards for the management of employer-provided pension plans.

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## Unemployment Insurance

- The Federal Unemployment Tax Act of 1935 created a system that provides unemployment compensation to eligible individuals.
- Covered employers are taxed to help cover the costs of unemployment compensation.

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## COBRA

- The **Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985** requires employers to give employees, *on termination of employment*, the option of continuing their medical, optical, or dental insurance coverage for a certain period.

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## FAMILY AND MEDICAL LEAVE

- The **Family and Medical Leave Act (FMLA) of 1993** requires employers with *fifty or more employees* to provide their employees (except for key employees) with up to **twelve weeks** of unpaid family or medical leave during any twelve-month period.



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## Equal Employment Opportunities

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## Chapter Objectives

1. Indicate what types of discrimination are prohibited by federal laws.
2. List and describe the three major federal statutes that prohibit employment discrimination.
3. Distinguish between disparate-treatment discrimination and disparate-impact discrimination.
4. Summarize the remedies available to victims of employment discrimination.
5. Discuss how employers can defend against claims of employment discrimination.

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## TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- Title VII *prohibits employment discrimination* based on race, color, national origin, religion, or gender.
- Procedures under Title VII
  - Employees must file a claim with the EEOC. The EEOC *may sue* the employer on the employee's behalf; if not, the *employee may sue the employer directly*.

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## Intentional vs. Unintentional Discrimination

- Title VII *prohibits* both intentional and unintentional discrimination.
- **Disparate-treatment** discrimination is a form of employment discrimination that results when an employer intentionally discriminates against employees who are members of protected classes.
- **Disparate-impact** discrimination occurs when an employer's practice, such as hiring only persons with a certain level of education, has the effect of discriminating against a class of persons protected by Title VII.

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## Discrimination Based on Race, Color, and National Origin

- If a company's standards or policies for selecting or promoting employees have the effect of discriminating against employees or job applicants on the basis of race, color, or national origin, *they are illegal*--unless (except for race) they have a *substantial, demonstrable relationship* to realistic qualifications for the job in question.

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Ethical  
Perspective

## Disparate-Impact Discrimination

- Generally the courts have held that employers have a right to establish and enforce dress and grooming requirements.
- What if these policies result in a disparate-impact discrimination?
- *How do dress codes affect employees' free speech (expression) rights under the First Amendment to the Constitution?*

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## Discrimination Based on Religion

- An employer must "reasonably accommodate" the *religious practices of its employees*, unless to do so would cause undue hardship to the employer's business.

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## Discrimination Based on Gender

- Employers are prohibited from classifying jobs as male or female and *from advertising in help-wanted columns that are designated male or female* and *from advertising in help-wanted columns that are designated male or female* unless the employer can prove that the *gender of the applicant is essential to the job*.
- The Pregnancy Discrimination Act of 1978 expanded Title VII's definition of gender discrimination to include discrimination based on pregnancy.

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## Sexual Harassment

- *Qui pro quo* harassment - when job opportunities, promotions, and the like are doled out on the basis of sexual favors (If case involves supervisor, employer is strictly liable).
- The following types of verbal or physical conduct constitute **hostile-environment harassment** (sexual comments, jokes, or physical contact):
  - Conduct that has the purpose or effect of *creating an intimidating; hostile, or offensive* working environment.
  - Conduct that has the purpose or effect of *unreasonably interfering* with an individual's work performance.
  - Conduct that otherwise *adversely affects* an individual's employment opportunities.

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### Inside the Legal Environment Harassment Policies May Shield Employers from Liability

- Employers that provide specific guidelines for their employees on sexual harassment - guidelines that indicate how to report incidents of harassment - may not be held liable if employees fail to complain of the harassment through the "proper channels."
- *In what circumstances might a court not allow an employer to avoid liability for harassment simply because the employee failed to complain through the "proper channels"?*

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## Remedies under Title VII

- If a plaintiff proves that unlawful discrimination occurred;
  - he or she may be awarded reinstatement;
  - back pay, and
  - retroactive promotions.
- *Damages* may be awarded for intentional discrimination.

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## EQUAL PAY ACT OF 1963

- The act *prohibits gender-based discrimination* in the **wages paid for equal work** on jobs when their performance *requires equal skill, effort, and responsibility* under similar conditions.
- A **wage differential** for equal work is justified if it is shown to be because of :
  - seniority,
  - merit,
  - a system that pays according to quality or quantity of production, or
  - any factor other than gender.

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## DISCRIMINATION BASED ON AGE

- The **Age Discrimination in Employment Act (ADEA) of 1967** prohibits employment discrimination on the basis of age against individuals *forty years of age or older*.
- Procedures for bring a case under the ADEA are similar to those for bringing a case under Title VII.

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### Case 17.3 *Rhodes v. Guiberson Oil Tools*

- When Rhodes was discharged by Guiberson Oil Tools at the age of fifty-six, he was told the discharge was part of a reduction in work force. Within six weeks, Guiberson hired a forty-two-year-old person to do the same job.
- Rhodes filed a suit against Guiberson under the Age Discrimination in Employment Act.
- *If age is not the sole reason for an adverse employment decision, how significant a factor do you think it should be to support a finding of discrimination?*

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### DISCRIMINATION BASED ON DISABILITY

- The **ADA of 1990** prohibits employment discrimination against persons with disabilities who are otherwise qualified to perform the essential functions of the jobs for which they apply.
- Procedures and remedies
  - To prevail on a claim under the ADA, the plaintiff must show that he or she has a disability, is otherwise qualified for the employment in question, and was excluded from the employment solely because of the disability.
  - Procedures under the ADA are similar to those required in Title VII cases; remedies are also similar to those under Title VII.

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### What is a Disability?

- The ADA defines the term *disability* as a physical or mental impairment that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment.



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## Reasonable Accommodation

- Employers are required to **reasonably accommodate** the needs of persons with disabilities.
- Reasonable accommodations may include *altering job-application procedures, modifying the physical work environment, and permitting more flexible work schedules.*
- Employers are **not required** to accommodate the needs of all workers with disabilities.
- For example, employers need not accommodate workers who pose a *definite threat to health and safety in the workplace* or those who are not otherwise qualified for their jobs.

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## Case 17.4 *Mauro v. Borgess Medical Center*

- When Borgess suspected Mauro (surgical tech) was infected with HIV, they asked him to be tested. He refused. He also refused to accept a job outside the operating room and so was laid off.
- Mauro filed suit against Borgess who filed a motion for summary judgment.
- *Some people believe that AIDS is as contagious as an influenza virus. Are employers justified in taking such fears into account in making employment-related decisions?*

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## DEFENSES TO EMPLOYMENT DISCRIMINATION

- If a plaintiff proves that employment discrimination occurred, employers may avoid liability by successfully asserting certain defenses.
- Employers may assert that the *discrimination was required*
  - for reasons of business necessity,
  - to meet a bona fide occupational qualification, or
  - to maintain a legitimate seniority system.
- Evidence of prior employee misconduct acquired after the employee has been fired is *not a defense* to discrimination.

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## AFFIRMATIVE ACTION

- Affirmative action programs attempt to “make up” for past patterns of discrimination by giving members of protected classes preferential treatment in *hiring or promotion*.
- Increasingly, such programs are being *strictly scrutinized by the courts*.

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## STATE STATUTES

- Generally, the kinds of discrimination prohibited by federal statutes are also prohibited by state laws.
- However, state laws may provide for more extensive protection and remedies than federal laws. (Example; protected rights for gays, not protected under Title VII).

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## For Review

1. Generally, what kind of conduct is prohibited by Title VII of the Civil Rights Act of 1964, as amended?
2. What is the difference between disparate-treatment discrimination and disparate-impact discrimination?
3. What remedies are available under Title VII of the 1964 Civil Rights Act, as amended?
4. What federal acts prohibit discrimination based on age and discrimination based on disability?
5. Name three defenses to claims of employment discrimination.

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