TITLE VII OF THE CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972, effective March 24, 1972

The Equal Employment Opportunity Act of 1972 makes very significant amendments to the Civil Rights Act of 1964

Under the 1964 Civil Rights Act, state and local governments and their employees were excluded from Title VII coverage. However, 1972 amendments to Title VII extend coverage to all state and local governments, governmental agencies, political sub-divisions (except for elected officials, their personal assistants and immediate advisors). The exemption for elected officials and their personal assistants and immediate advisors "is intended to be construed very narrowly and is in no way intended to establish an overall narrowing of the expanded coverage of state and local governmental employees."

The Equal Employment Opportunity Commission is charged with administering Title VII of the Civil Rights Act of 1964, Under the Act, EEOC has the authority to investigate and conciliate charges of discrimination because of race, color, religion, sex, or national origin by employers, unions, employment agencies, and joint apprenticeship or training committees. Under the 1972 amendments, EEOC no longer is limited to investigation and conciliation of charges. It can now bring an action through the U.S. Attorney General in a U.S. district court against a non-responsive party.

PROHIBITIONS

Title VII makes it unlawful for an employer to discriminate as to hiring, firing, compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin. It also forbids employers to limit, segregate, or classify employees in any way that tends to deprive any individual of employment opportunities or adversely affects his employment status because of his race, color, religion, sex or national origin in advertisements relating to employment.

In addition, it is unlawful to discriminate on any of these five bases in apprenticeship, training, or retraining programs. It also is illegal to indicate a preference or a discrimination based on race, color, religion, sex or national origin in advertisements relating to employment.

These prohibitions, however, are subject to some exceptions.

EXCEPTIONS

A broad exception to the antidiscrimination prohibitions makes it clear that wage discrimination is permitted when based on merit, seniority, and quantity or quality of production.

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The broadest exception permits discrimination based on religion, sex, or national origin if this is because of a "bona fide occupational qualification." This applies to hiring, employment, referral, training, and advertising. The exception for bona fide occupational qualifications does not extend to discrimination based on race or color.

The law makes exceptions for discrimination resulting from a bona fide occupational qualification, provided it is "reasonably necessary to the normal operation" of the enterprise. This exception, however, is applicable only to discrimination based on religion, sex, or national origin. Title VII does not recognize a "bona fide occupational qualification" based on race or color.

RECRUITING AND HIRING

Essential to a nondiscriminatory employment policy under the federal laws is a basic procedure for recruiting and selecting employees that does not intentionally or inadvertently work to screen out minority group members.

An employer is not required to go out and hire a designated quota of minority group members. But a serious imbalance in the number of such workers in the work force, when compared to the proportion in the area, may suggest to federal officials that something is wrong with hiring policies.

Reliance on "walk-in" applicants and "word-of-mouth" recruiting may not be regarded as enough if the work force is predominantly white.

Quota Hiring

An explicit ban on any requirement of quota hiring is contained in Title VII. It reads:

"Nothing contained in this title shall be interpreted to require any employer....to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may by any employment agency...in comparison with the total number or percentage of persons exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in available work force in any community, State, section, or other area.

Prior Hiring Practices

The extent to which an employer's past hiring practices have resulted in a predominantly white work force may well determine the extent to which the federal agencies will require affirmative acts to recruit from minority group sources. EEOC has taken the position that an employer with a disproportionately low number of minority group members in his work force probably has

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acquired a reputation as a discriminatory employer. In such a case, the mere announcement of a policy of equal employment opportunity may not be regarded as enough to offset the past reputation.

An employer whose past hiring practices have resulted in a good minority group representation among production workers is not necessarily in the clear. A disproportionately low number of minority group members in white-collar, professional, or supervisory jobs suggest that special recruiting efforts are needed in these areas.

Walk-In Applicants

An employer with a predominantly white work force who relies largely on "walk-in" applicants to fill new jobs may not be in compliance with the Act.

Reliance on "word-of-mouth" recruiting will only perpetuate the existing racial make-up of the work force.

Once a good racial mix is achieved in the work force, an employer presumably could rely on walk-in applicants and word-of-mouth recruiting.

Advertising for Applicants

Except in a very rare case when religion, sex, or national origin is a bona fide job qualification, job offers in newspaper ads, posters, and the like must not indicate any limitation as to race, color, religion, sex, or national origin. Color and race can never be a bona fide job qualification.

Hiring Standards

Affirmative recruiting efforts that substantially increase the flow of minority group applicants will not satisfy the law if, because of unreasonably high standards for hire, few of these applicants are hired.

EEOC places considerable emphasis on hiring standards that are not job related, but rather reflect the norm of the white community. Employers must be prepared to demonstrate that their hiring standards do not automatically screen out applicants whose speech, dress, and personal work habits differ from those of the predominant group.

Hiring Standards: Police Records

It is unlawful to discharge or refuse to employ a minority group person because of a conviction record unless the particular circumstances of each case (e.g., the time, nature, and number of the convictions and the employee's immediate past employment record) indicate that

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employment of that particular person for a particular job is shown to be inconsistent with the safe and efficient operation of that job.

Hiring Standards: High School Diplomas

The U.S. Supreme Court has ruled that an employer who uses employment tests or other job screening standards, such as possession of a high school diploma, must be able to show that they are "demonstrably a reasonable measure of job performance." The court left open, however, the question of whether an employer may use tests or other screening requirements that take into account capability for future promotions.

Hiring Restrictions

Although a hiring policy may be "objectively and fairly applied" to applicants of all races, it may still discriminate against one racial group and as such be ruled discriminatory under Title VII.

Height Requirements - EEOC has held that an employer's rigid adherence to a height requirement for purposes of hiring, in the absence of a showing of business necessity, can have a discriminatory effect upon certain groups, a significantly higher percentage of who fall below such a standard, such as women and Spanish-surnamed Americans.

Appearance, Manner of Speech - Rejection of a job applicant because of his appearance and manner of speaking may be regarded as unlawful if the appearance and manner of speaking are peculiar to his race or national origin.

Pre-employment Inquiries, Concerning Race, Color, Religion, or National Origin - These are not, by themselves, a violation of Title VII. But EEOC regards such inquiries as totally irrelevant to an applicant's ability or qualification, except in those rare instances where religion or national origin is a bona fide occupational qualification. Hence, such inquiries, unless otherwise explained, may be regarded as evidence of discrimination.

A requirement that a photograph accompany an employment application also may be regarded as evidence of discrimination.

EMPLOYMENT CONDITIONS

The law against employment discrimination extends to virtually every aspect of the employer-employee relationship including discrimination with respect to "compensation, terms, conditions, or privileges of employment.

Wages

Discrimination with respect to compensation covers a variety of practices, such as:

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Different rates of pay based on race, sex, religion, or national origin to individuals or groups of employees doing similar work.

Different treatment of employees with respect to merit increases if based on race, sex, religion, or national origin.

Disproportionate differences in pay rates for different jobs based on race, sex, religion, or national origin.

Different treatment of employees with respect to overtime pay opportunities, where based on race, sex, religion, or national origin.

Training and Promotion

Employees of similar capabilities must be offered the same opportunities for training, promotion, transfer, and apprenticeship programs.

Discriminatory Environment

A "racially tense situation" may be a particular source of difficulty when a Black is promoted into a formerly all-white job. Such a situation frequently requires extra support and sympathy from management.

Title VII requires an employer to maintain a working environment free of racial intimidation. That requirement includes positive action when necessary to redress or eliminate employee intimidation.

Age Limit on Promotions

When Blacks have been passed over in the past for promotions, it may be regarded as unlawful to disqualify them from current openings because of age.

Where an employer has not employed Blacks in a given job classification in the past and where that employer now continues to refuse to employ in that position a black employee of long and relevant service based upon an age standard, the Commission will find a violation in the absence of a clear and convincing showing that the age standard is reasonably necessary to the normal and efficient operation of the job in question.

Work Assignments

It is unlawful to give minority group employees a disproportionately large share of the dirtier jobs, less favorable hours, dead-end or low skill jobs, etc.

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Recreational Activities

If an employer contributes financial assistance or other support to employee recreational or social activities, Title VII requires that the activity be open on an integrated basis. This includes company Christmas parties and dances, bowling leagues, baseball teams, bridge clubs, etc.

Manner of Address

A violation may be found if supervisors adopt different approaches in addressing employees based on race, religion, sex, or national origin, such as where white employees generally are called, "Mr. or Mrs." but Blacks are called by their first names or are referred to as "boy" or "girl".

Segregated Facilities

Many problems involve segregated facilities such as drinking fountains, locker rooms, employee entrances, infirmaries, segregated housing, etc. Integration of previously segregated facilities frequently is not enough. The employer also may be required to take steps to encourage Blacks to use the desegregated facilities or to prevent whites from intimidating Blacks in the use of such facilities.

No general answer can be given with regard to permitting employees "freedom of choice" to choose lockers or other facilities. But experience has shown that where compulsory segregation is replaced by "freedom of choice," subtle ways often are used to prevent a choice that would disturb the preexisting segregated pattern. Therefore, an employer who maintained segregated facilities in the past should take positive steps to prevent the pattern or segregation from continuing.

Harassment by Employees

If harassment of a minority group employee by his co-workers or supervisor occurs, management has an obligation to attempt to remedy the situation.

The announcement of a policy against racial discrimination is not sufficient when management has reason to believe that racial discrimination is occurring. Management must take steps to insure that the policy is observed at all levels.

Employer Reprisal

An employer may violate Title VII by taking reprisals against employees who initiate Title VII proceedings against it.

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Discharge for Garnishments

Employers also may violate Title VII by discharging minority group employees for incurring a number of wage garnishments or bad debts.

Grooming Rules

An employer's grooming rules should take into consideration racial differences.

EEOC has held that the application of the "line of sight" hair grooming policy to all employees, without regard to their racially different physiological and cultural characteristics, tends to affect Blacks adversely, because they have a texture of hair different from that of Caucasians. Thus Blacks are measured against a standard that assumes non-Black hair characteristics. Caucasian employees wearing beards and long sideburns are not usually reprimanded and the wearing of an “Afro”" has been appropriated as a cultural symbol by members of the Black race so as to make its suppression an automatic badge of racial prejudice.

Seniority Systems

A seniority system must eliminate the forbidden consequences of the old and admittedly discriminatory seniority system, but, at the same time, care should be taken not to bestow preferential treatment upon one race.

The law should be construed to prohibit the future awarding of vacant jobs on the basis of a seniority system that "locks in" prior racial classification. White incumbent workers should not be bumped out of their present positions by Blacks with greater seniority. Seniority consideration should be asserted only with respect to new job openings.

SEX DISCRIMINATION

It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or seniority lists based on sex, where this would adversely affect any employee, unless sex is a bona fide occupational qualification for that job. Additionally, advertising in "male" and "female" help wanted columns is unlawful, unless sex is a bona fide occupational qualification.

Any laws or policy that limit the employment of females in certain occupations; in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits; during certain hours of the night; for more than a specified number of hours per day or per week; or, for certain periods of time before and after childbirth conflict with and are superseded by Title VII. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

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Rules that limit or restrict the employment of married women and are not applicable to married men constitute discrimination based on sex and is a violation of Title VII.

An employer may not discriminate between men and women with regard to "fringe benefits," including medical, hospital, accident, life insurance and retirement benefits, profit sharing, and bonus plans. Additionally, conditioning the benefits available to employees and their spouses on whether the employee is the "head of the household" or "principal wage earner" will be found a prima facie violation of the prohibitions against sex discrimination, since such status bears no relationship to job performance.

It is unlawful for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for husbands and families of female employees; it also is unlawful to make available benefits for the wives of male employees that are not made available to female employees, or to make available benefits for the husbands of female employees that are not available to male employees.

An employment policy that excludes from employment applicants or employees because of pregnancy (married or unwed) is in prima facie violation of Title VII.

Occupational Qualification

An employer is permitted to label certain occupations as "male" jobs or "female" jobs where sex is a bona fide occupational qualification. But exception to the general ban on sex discrimination should be construed narrowly. It would not include as bona fide occupational qualifications in these situations:

> A refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics or women in general. For example, the assumption that women have a higher turnover rate than men.
>
> A refusal to hire based on stereotyped characterizations of the sexes, such as men are less capable of assembling intricate equipment, or women are less capable of aggressive salesmanship.
>
> A refusal to hire because of the preferences of co-workers, the employer, clients, or customers (except where it is necessary for the purpose of authenticity or genuineness, such as the preference for actresses to play female part.)

RELIGIOUS DISCRIMINATION

An employer has the obligation to make "reasonable accommodation" to the religious needs of his employees, where such accommodations do not force undue hardship on the employer.

The employer must prove that such religious accommodations cause undue hardship to his business.

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Because of the "varied religious practices of the American people," the Commission will consider each case of religious discrimination on an individual basis. The 1972 amendments to Title VII added a new section defining "religion" to include all aspects of religious observance, practice, and belief so as to require employers to make reasonable accommodation for employees whose "religion" may include observances, practices, and beliefs such as sabbath observance, that differ from the employer's or the potential employer's requirements regarding standards, schedules, or other business-related conditions.

ADMINISTRATIVE PROCEEDINGS AND ENFORCEMENT

The five-member Equal Employment Opportunity Commission is given the job of administering Title VII of the Civil Rights Act. EEOC initially was given virtually no enforcement powers. Under the 1972 amendments, however, the Commission is authorized to initiate court actions against violators if it is unsuccessful in obtaining voluntary compliance through mediation and conciliation.

Two methods are available for instituting an administrative proceeding before EEOC:

> A charge may be filed in writing and under oath by or on behalf of a person claiming to be aggrieved.
>
> A written charge may be filed by a member of the Commission who has reasonable cause to believe that a violation has occurred.

Procedure

A charge must be filed within 180 days after the occurrence of an alleged unlawful employment practice.

After a charge is filed, the Commission must serve a notice **of the charge** on the respondent within 10 days.

The Commission must then investigate the charge after which it must make a determination whether there is reasonable cause to believe that the charge is true. The Commission must make its determination of reasonable cause as promptly as possible and, so far as practicable, within 120 days.

If it finds no reasonable cause, the Commission must dismiss the charge; if it finds reasonable cause, it will attempt to conciliate the case.

If the Commission is unable to secure a conciliation agreement that is acceptable to the Commission, it may bring a civil action, through the U. S. Attorney General, in an appropriate U. S. district court.

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EEOC CONCILIATION

Title VII places great emphasis on conciliation of charges of discrimination. For this purpose, the law allows 30 days for the Equal Employment Opportunity Commission to work out a conciliation agreement between the parties before a suit may be brought. Nothing said or done during the Commission's attempts to achieve voluntary compliance may be made public or may be used as evidence in a subsequent court suit without the written consent of the parties.

Conciliation Process

After the Commission decides that there is cause to believe that discrimination has occurred, the Director of Compliance notifies the charging party and alleged discriminator that a conciliator will contact them to resolve the dispute. The conciliator first meets with the charging party to determine what remedy would be satisfactory to the charging party. The conciliator then tries to persuade the respondent to accept a remedy that is acceptable to the charging party and the Commission. Upon acceptance by the respondent, the remedy is recorded in a conciliation agreement that is signed by the charging party and the respondent, and then submitted to the Commission for its approval.

Conciliation Agreements

Besides remedying the charging party's individual complaint, the Commission normally attempts to include in the conciliation agreement modification of other employment practices to bring them into compliance with Title VII. Successful conciliation agreements often result in changing policies or practices not mentioned in the original complaint, and may affect any persons in addition to the one who filed the complaint.

JUDICIAL PROCEEDINGS

Prior to the 1972 amendments, court enforcement of the no-discrimination requirements of Title VII was left primarily to private actions by the aggrieved individuals. EEOC's role was confined to the informal methods of conference, conciliation, and persuasion.

Under the 1972 amendments, EEOC, if it is unable to secure an acceptable conciliation agreement within 30 days after the filing of the charge, may bring an action against the respondent. In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. The individual also retains the right to bring a court action if he is dissatisfied with EEOC's handling of the case.

Actions by EEOC

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EEOC's initial efforts are directed at conciliating the case. If the Commission is unable to secure a conciliation agreement satisfactory to the Commission within 30 days after the filing of the charge, it may bring a civil action against the respondent.

Actions by Attorney General

In cases against a state or local government, the U.S. Attorney General, rather than EEOC, is authorized to bring the action. In such cases, EEOC notifies the U. S. Attorney General of the failure of conciliation efforts.

Pattern or Practice Cases

A pattern or practice case would be present only when the denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature. There would be a “pattern or practice" if, for example, a number of companies or persons in the same industry or line of business discriminate, if a chain of motels or restaurants practiced racial discrimination throughout all or a significant part of its system, or if a company repeatedly and regularly engaged in acts prohibited by the statue.

Under the 1964 Civil Rights Act, the Attorney General was given authority to seek an injunction where he had reasonable cause to believe that individuals were engaged in a "pattern or practice of resistance" to the rights protected by Title VII. The 1972 amendments provide for the transfers of this “pattern or practice" jurisdiction to the EEOC two years after the enactment of the law. In the interim, the Commission and the Attorney General have concurrent jurisdiction in this area.

A three-judge court may be requested upon certification that the case is of general importance. Such a case must be assigned for hearing at the earliest practicable date and must be expedited in every way. Appeals from the judgment of such a court may be made directly to the Supreme Court.

If a three-judge court is not requested, the chief judge of the district immediately must designate a judge in the district to hear and determine the case. If no district judge is available, another district judge or circuit judge can be designated. Such a case shall be heard as soon as possible and be expedited in every way.

Actions by Individuals

Where, in the view of the complaining party, EEOC has not pursued his complaint with satisfactory speed or has entered into an agreement that is unsatisfactory to him, he has an opportunity to seek his own court remedy.

If EEOC dismisses a charge, or, if within 180 days of the charge's filing, EEOC has neither issued a complaint nor entered into a conciliation or settlement agreement that is acceptable to

EEOC and the complaining party, it notifies him, and he may bring an action in a U. S. district court on his own within the next 90 days.

In such private actions, the courts are authorized at the complainant's request to appoint an attorney and to commence the action without payment of fees. The U. S. Attorney General is authorized to intervene in these private actions if it is certified that the action is of general public importance.

JUDICIAL RELIEF

If a court finds that a respondent is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful employment practice and grant such affirmative relief as it may deem appropriate including, but not limited to, reinstatement with or without back pay. Back pay is limited under the 1972 amendments to no more than that accrued during the two years prior to the filing of a charge.

In addition to injunctions and affirmative relief, the court may award a reasonable attorney's fee as part of the costs.

An attorney's fee awarded to a charging party may be based upon that portion of the case in which he and those in his class prevailed.

RECORDS AND REPORTS

Every employer subject to Title VII is required (1) to make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed and (2) to preserve such records for such periods as the Equal Employment Opportunity Commission prescribes by regulation or order. It also requires employers that control apprenticeship or training programs to maintain detailed records on applicants and how they are selected.

Employer Records - Regulations

Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later.

In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 **years from the date of** termination.

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Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under Title VII, the respondent political jurisdiction shall preserve all personnel records relevant to the charge **or action until final disposition of the** charge or **the action.** The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected.

The above requirements **shall not** apply to application forms and other preemployment records of applicants for positions known to applicants to be of a temporary or seasonal nature.

Title VII gives the Commission access to, and the right to copy, any “evidence” of a person being proceeded against or investigated. The right to copy, however, is limited to evidence that relates to unfair employment practices and that is relevant to a charge under investigation by the Commission.

It is unlawful for EEOC to make public any information obtained from the records that are required to be kept.

Apprenticeship or Training Program Records

Employers that control apprenticeship or training programs are required to maintain a list of applicants who wish to participate in such programs. Persons covered by the law, but not subject to filing Apprenticeship Information Reports, must keep the list for two years. All persons required to file an Apprenticeship Report must keep the list for two years or the period of a successful applicant's apprenticeship, whichever is longer.

The list must be kept in the chronological order in which the applications are received, and must include the address of each applicant, a notation of his or her sex, and identification, as Blacks, "Spanish American,” "Oriental," "American Indian," or "Other.” In addition to the chronological list, employers must keep any other records such as test papers completed by the applicants and records of interviews with applicants for a period of two years.

BASIC REPORTING REQUIREMENTS

EEO-4 Employer Report

The Equal Employment Opportunity Commission requires that a "State and Local Government Information Report, Form EEO-4,” shall be filed with the Commission on or before July 30th each year. This information, on employees subject to the Personnel Act, is furnished to the Commission by the Office of State Human Resources, using a computerized system which is updated on the basis of daily personnel transactions processed through the Office of State

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Human Resources. In accordance with EEOC requirements, the EE0-4 report submitted by the State does not include employees subject to the State Human Resources Act in the institutions of higher education, or employees in local government such as Health, Social Services, etc.

Each of the major State departments are furnished a report containing the information included in the EEO-4 report as pertains to their department.

POSTING OF PRESCRIBED NOTICE

The Equal Employment Opportunity Commission is authorized to require the posting of a prescribed notice setting forth excerpts of summaries of pertinent provisions of the Act and information pertinent to the filing of a complaint. The notice is required to be posted by every employer or employment agency.

Such notices must be posted in a conspicuous place where notices to employees and applicants for employment are posted customarily. Willful violation of the posting requirement is punishable by a **fine of not more than** $100 for each separate offense.

Effective March 24, 1972