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CHAPTER 2
The Legal Environment

Learning Objectives

After studying this chapter, the student should be able to:

1. Describe the legal context of human resource management.
2. Identify key laws that prohibit discrimination in the workplace and discuss equal employment opportunity.
3. Discuss legal issues in compensation, labor relations, and other areas in human resource management.
4. Discuss the importance to an organization of evaluating its legal compliance.

Chapter Outline

Opening Case: Collective Bargaining or Collective Begging?

A new Wisconsin law limited public-sector unions to bargaining only on the issue of base pay. It also pegged raises to the Consumer Price Index. The overall effect of the new measures was a cut in take-home pay of about 8 percent. The Wisconsin law does not apply to private-sector unions, but today's unionized work force includes a much greater percentage of public employees than it did 35 years ago. Proponents of the new Wisconsin law see it as an efficient means of closing budget deficits faced by the state's financially strapped cities, counties, and school districts. Opponents, however, point out the budgetary problems in states all across the country are among the financial repercussions of the recession. Many critics also see it as a thinly veiled effort to curb or destroy public unions.

Introduction

Managing within the complex legal environment that affects human resource practices requires a full understanding of that legal environment and the ability to ensure that others within the organization understand it as well.

I. The Legal Context of Human Resource Management

The legal context of human resource management is shaped by different forces. The catalyst for modifying or enhancing the legal context may be legislative initiative, social change, or judicial rulings. The regulatory environment itself is quite complex and affects different areas within the

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HRM process.

A. The Regulatory Environment of Human Resource Management

Regulation consists of three steps—creation of the new regulation, enforcement, and implementation in organizations—that are elaborated as follows:

- Regulation can come in the form of new laws or statutes passed by national, state, or, local government bodies; however, most start at the national level.
- Occasionally, the laws themselves provide for enforcement through the creation of special agencies or other forms of regulatory groups.
    - In other situations, enforcement might be assigned to an existing agency such as the Department of Labor.
    - To be effective, an enforcing agency must have an appropriate degree of power.
- Organizations and managers must implement and follow the guidelines that the government has passed and that the courts and regulatory agencies attempt to enforce.

II. Equal Employment Opportunity

Regulations exist in almost every aspect of the employment relationship. As is illustrated in Figure 2.1, equal employment opportunity intended to protect individuals from illegal discrimination and is the most fundamental and far-reaching area of the legal regulation of human resource management. Almost every law and statute governing employment relationships is attempting to ensure equal employment opportunity.

Some managers assume that the legal regulation of HRM is a relatively recent phenomenon. However, concerns about equal opportunity can be traced back to the Thirteenth Amendment passed in 1865 to abolish slavery and the Fourteenth Amendment passed in 1868 to provide equal protection for all citizens of the United States. The Reconstruction Civil Rights Acts of 1866 and 1871 further extended protections offered to people under the Thirteenth and Fourteenth Amendments.

A. Discrimination and Equal Employment Opportunity

It is instructive to note that discrimination per se is not illegal. As long as the basis for this discrimination is purely job-related. **Illegal discrimination** is the result of behaviors or actions by an organization or managers within an organization that cause members of a protected class to be unfairly differentiated from others.

Title VII of the Civil Rights Act of 1964

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The most significant single piece of legislation specifically affecting the legal context for human resource management to date has been **Title VII of the Civil Rights Act of 1964**. Title VII of the act states that it is illegal for an employer to fail or refuse to hire, to discharge any individual, or to discriminate in any other way against any individual with respect to any aspect of the employment relationship on the basis of that individual's race, color, sex, religious beliefs, sex, or national origin. The law applies to all components of the employment relationship, including compensation, employment terms, working conditions, and various other privileges of employment.

Title VII applies to all organizations with fifteen or more employees working 20 or more weeks a year and that are involved in interstate commerce. In addition, it also applies to state and local governments, employment agencies, and labor organizations. Title VII also created the Equal Employment Opportunity Commission (EEOC) to enforce the various provisions of the law. Under Title VII, as interpreted by the courts, several types of illegal discrimination are outlawed.

Disparate Treatment

Disparate treatment discrimination exists when individuals in similar situations are treated differently *and* when the differential treatment is based on the individual's race, color, sex, religion, national origin, age, or disability status. To prove discrimination an individual filing a charge must demonstrate that there was a discriminatory motive; that is, the individual must prove that the organization considered the individual's protected class status when making the decision.

A **bona fide occupational qualification (BFOQ)** states that a condition like race, sex, or other personal characteristic legitimately affects a person's ability to perform the job, and therefore can be used as a legal requirement for selection. To claim a BFOQ exception, the organization must be able to demonstrate that hire on the basis of the characteristic in question is a **business necessity**—a practice that is important for the safe and efficient operation of the business.

Disparate impact

A second form of discrimination is **disparate impact** discrimination that occurs when an apparently neutral employment practice disproportionately excludes a protected group from employment opportunities. This argument is the most common for charges of discrimination brought under the Civil Rights Act.

One of the first instances in which disparate impact was defined involved a landmark legal

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case, *Griggs* v. *Duke Power*. Following the passage of Title VII, Duke Power initiated a new selection system that required new employees to have either a high school education or a minimum cutoff score on two specific personality tests. Griggs, a black male, filed a lawsuit against Duke Power after he was denied employment based on these criteria. The courts ruled that the firm had to change its selection criteria on the basis of disparate impact. If a plaintiff can establish a *prima facie case* of discrimination, the company is considered to be at fault unless it can demonstrate another legal basis for the decision.

The most common approach to establish a prima facie case relies on the so-called **four-fifths rule**. The four-fifths rule suggests that disparate impact exists if a selection criterion (such as a test score) results in a selection rate for a protected class that is less than four-fifths (80 percent) of that for the majority group.

A plaintiff might be able to demonstrate disparate impact by relying on so-called **geographical comparisons**. These involve comparing the characteristics of the potential pool of qualified applicants for a job (focusing on characteristics such as race, ethnicity, and gender) with those same characteristics of current employees in the job.

The **McDonnell-Douglas test**, named for a Supreme Court ruling in *McDonnell-Douglas* v. *Green,* is another basis for establishing a prima facie case. Four steps are part of the McDonnell-Douglas test:

- The applicant is a member of a protected class
- The applicant was qualified for the job for which he or she applied
- The individual was turned down for the job.
- The company continued to seek other applicants with the same qualifications.

Pattern or Practice Discrimination

The third form of discrimination that can be identified is **patterns or practice discrimination**. This form of disparate treatment occurs on a classwide or systemic basis. Section 707 of Title VII states that such a lawsuit can be brought if there is a reasonable cause to believe that an employer is engaging in pattern or practice discrimination.

Retaliation

A final form of discrimination that has become more prevalent in recent years is retaliation. Retaliation refers to an organization taking some action against an employee who has opposed an illegal employment practice or has filed suit against the company for illegal discrimination. Retaliation is expressly forbidden by Title VII of the Civil Rights Act, but several Supreme Court decisions have made it much less clear exactly hoe this protection

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might work.

Employer Defense

The defendant (usually an organization) must be able to prove that decisions were made so that the persons most likely to be selected are those who are most likely to perform best on the job. This situation is also referred to as *validation* of the practice in question.

B. Protected Classes in the Workforce

A **protected class** consists of all individuals who share one or more common characteristics as indicated by that law. The most common characteristics used to define protected classes include race, color, religion, gender, age, national origin, disability status, and status as a military veteran.

C. Affirmative Action and Reverse Discrimination

Affirmative action refers to positive steps taken by an organization to seek qualified employees from underrepresented groups in the workforce. When affirmative action is part of a remedy in a discrimination case, the plan takes on additional urgency and the steps are somewhat clearer. Three elements makes up any affirmative action program, which are as follows:

- **Utilization analysis** is a comparison of the racial, sex, and ethnic composition of the employer's workforce compared to that of the available labor supply. If the percentage in the employer's workforce is considerably less than the percentage in the external labor supply, then that minority group is characterized as underutilized.
- Development of goals and timetables for achieving balance in the workforce concerning those characteristics, especially where underutilization exists.
- Development of a list of action steps, which specify what the organization will do to work toward attaining its goals to reduce underutilization. Common action steps include communication of job openings to underrepresented groups, removing inappropriate barriers to employment, and so on.

Reverse discrimination refers to a practice that has a disparate impact on members of *nonprotected classes.* They typically stem from the belief by white males that they have suffered because of preferential treatment given to other groups. This issue is complicated. Within the space of a few years, the Supreme Court:

- Ruled against an organization giving preferential treatment to minority workers during a layoff
- Ruled in support of temporary preferential hiring and promotion practices as part of a

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settlement of a lawsuit
- Ruled in support of the establishment of quotas as a remedy for past discrimination
- Ruled that any form of affirmative action is inherently discriminatory and could be used only as a temporary measure

The concept of affirmative action is increasingly being called into question. In a more recent case (*Ricci v. Stefano, 2009*), the Supreme Court ruled that the city of New Haven, Connecticut, violated the rights of a group of white firefighters when they decided to discard the results of a recent promotion exam that was shown to have disparate impact. The white firefighters subsequently sued the city for reverse discrimination.

HR in the 21st Century: The Role of Power in Sexual Harassment

In 2012, nearly 13,000 charges of sexual harassment were filed with the U.S. Equal Employment Opportunity Commission (EEOC), 84 percent of them by women. According to researcher Debbie Doughtery, power is the common answer as to why sexual harassment—especially of women—occurs in the workplace.

Researcher Heather McLaughlin states the findings of another study, "provides the strongest evidence to date supporting the theory that sexual harassment is less about sexual desire than about control and domination…Male coworkers… and supervisors seem to be using harassment as an equalizer against women in power." Regardless of the explanation given for why sexual harassment occurs in the workplace, it is a situation that must be handled quickly. Not only can sexual harassment be quite costly to firms through court actions and lawsuits, it can be emotionally devastating to victims of such an offense.

D. Sexual Harassment at Work

Sexual harassment is defined by the EEOC as unwelcome sexual advances in the work environment. If the conduct is indeed unwelcome and occurs with sufficient frequency to create an abusive work environment, the employer is responsible for changing the environment by warning, reprimanding, or perhaps firing the harasser.

One type of sexual harassment is **quid pro quo harassment**, in which the harasser offers to exchange something of value for sexual favors. A more subtle type of sexual harassment is the creation of a **hostile work environment**, stemming from a corporate culture that is punitive toward people of a different gender. This may occur, for example, from the use of off-color language or the display of inappropriate photographs. In *Meritor Savings Bank v. Vinson*, the Supreme Court noted that a hostile work environment constitutes sexual harassment, even if the employee did not suffer any economic penalties or was not threatened

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with any such penalties.

Although most sexual harassment cases involve men harassing women, there are, of course, many other situations of sexual harassment that can be identified. Females can harass men and in the case of *Oncale v. Sundowner* the Supreme Court ruled unanimously that a male oil rigger who claimed to be harassed by his co-workers and supervisor on an offshore oil rig was indeed the victim of sexual harassment. Various cases related to the variety of types of sexual harassment have received court rulings. These cases include *Meritor Savings Bank v. Vinson*, *Harris v. Forklift Systems*, and *Scott v. Sears Roebuck*.

E. Other Equal Employment Opportunity Legislation

The Lilly Ledbetter Fair Pay Act of 2009

The **Equal Pay Act** clearly outlaws differential pay for male and female employees doing essentially the same job. The Lilly Ledbetter Fair Pay Act of 2009 corrected the time aspect and states that the clock for limitation begins with each paycheck—making it easier for employees to bring charges of discrimination. The new law also applies the same time table to cases involving age discrimination or discrimination based on disability.

The Equal Pay Act of 1963

The **Equal Pay Act of 1963** requires that organizations provide the same pay to men and women doing equal work. The law does allow for pay differences when there are legitimate, job-related reasons for pay differences, such as difference in seniority or merit.

The Age Discrimination and Employment Act

The Age Discrimination and Employment Act (ADEA) was passed in 1967 and amended in 1986. The ADEA prohibits discrimination against employees forty years of age and over. The Supreme Court has indicated that an agency or an organization may require mandatory retirement at a given age only if an organization could demonstrate the inability of persons beyond a certain age to perform a given job safely. But, in several decisions, the Court has indicated that it will interpret this BFOQ exception very narrowly.

The Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act of 1978 was passed to protect pregnant women from discrimination in the workplace. The act specifies that a woman cannot be refused a job or promotion, fired, or otherwise discriminated against simply because she is pregnant. She

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also cannot be forced to leave employment with the organization as long as she is physically able to work.

The Civil Rights Act of 1991

The **Civil Rights Act of 1991** was passed as a direct amendment to Title VII of the Civil Rights Act of 1964. It reinforces the illegality of making hiring, firing, or promotion decisions on the basis of race, gender, color, religion, or national origin; it also includes the Glass Ceiling Act, which established a commission to investigate practices that limited the access of protected class members (especially women) to the top levels of management in organizations. For the first time, the act provides the potential payment of compensatory and punitive damages in cases of discrimination under Title VII.

The Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability in all aspects of the employment relationship. The ADA also requires that employers make reasonable accommodations for disabled employees as long as they don't pose an undue burden on the organization.

The ADA defines a *disability* as (1) a mental or physical impairment that limits one or more major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. Included within the domain of the ADA are individuals with disabilities such as blindness, deafness, paralysis, and similar disabilities. In addition, the ADA covers employees with cancer, a history of mental illness, or a history of heart disease. Finally, the act also covers employees regarded as having a disability, such as individuals who are disfigured or who for some other reason an employer feels will prompt a negative reaction from others. On the other hand, individuals with substance-abuse problems, obesity, and similar non-work-related characteristics may not be covered by the ADA. Both AIDS and HIV are considered disabilities under the ADA.

The reasonable accommodation stipulation adds considerable complexity to the job of human resource manager and other executives in organizations. Clearly, for example, organizations must provide ramps and automatic door-opening systems to accommodate individuals confined to a wheelchair. In 1999 the U.S. Supreme Court ruled that individuals who can correct or overcome their disabilities through medication or other means are not protected by the ADA.

In an attempt to return to the original intent of the ADA, in September 2008, President Bush signed into law the new **Americans with Disabilities Amendments Act (ADAAA)**.

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In June 2009, the EEOC finally voted on a set of guidelines to be used with the new law. The new guidelines broaden the definition of disability for the ADA. The new guidelines also include a list of presumptive disabilities that will always meet the definition of disability under the AADA, including blindness, deafness, cancer, multiple sclerosis, limb loss, and HIV and AIDS.

The Family and Medical Leave Act of 1993

The **Family and Medical Leave Act of 1993** was passed in part to remedy weaknesses in the Pregnancy Discrimination Act of 1979. The law requires employers of fifty or more employees to provide as many as twelve weeks of unpaid leave for employees (1) after the birth or adoption of a child; (2) to care for a seriously ill child, spouse, or parent; or (3) if the employee is seriously ill. The organization must also provide the employee with the same or comparable job on the employee's return.

The law also requires the organization to pay the health-care coverage of the employee during the leave. Organizations are also allowed to exclude certain key employees from coverage (specifically defined as the highest paid 10 percent), on the grounds that granting leave to these individuals would grant serious economic harm to the organization. The law also does not apply to employees who have not worked an average of 25 hours a week in the previous 12 months. The FMLA was also amended in 2009 with the passage of the Supporting Military Families Act, which mandates emergency leave for all covered active-duty members.

Regulations for Federal Contractors

All banks and most universities would qualify as federal contractors. **Executive Order 11246** prohibits discrimination based on race, color, religion, sex, or national origin for organizations that are federal contractors and subcontractors, and it requires written affirmative action plans from those organizations with contracts greater than $50,000.

Executive Order 11478 required the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered. The **Vocational Rehabilitation Act of 1973** requires that executive agencies and subcontractors and contractors of the federal government receiving more than $2,500 a year from the government engage in affirmative action for disabled individuals.

The **Vietnam Era Veterans' Readjustment Act of 1974** requires that federal contractors and subcontractors take affirmative action toward employing Vietnam-era veterans.

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Vietnam-era veterans are specifically defined as those serving as members of the U.S. armed forces between August 5, 1964, and May 7, 1975.

Discrimination on the Basis of Sexual Orientation

Sexual orientation discrimination refers to being treated differently because of one's real or perceived sexual orientation—whether gay, lesbian, bisexual, or heterosexual. There is no federal law that prohibits discrimination on the basis of sexual orientation. Although federal employees are protected against such discrimination, any attempt to pass a law regarding all employees has failed.

Defense of Marriage Act (DOMA), signed into law in 1996 by Bill Clinton, states that, for the purposes of deciding who receives federal benefits, marriage is defined as only between a man and a woman. The Supreme Court in a 5-4 decision ruled that DOMA placed an unfair burden on same-sex married couples and made a subset of state-sanctioned marriages unequal. The decision ensured that same-sex couples married in states where this is legal would be entitled to all the federal benefits that opposite-sex couples are afforded.

F. Enforcing Equal Employment Opportunity

The Equal Employment Opportunity Commission (EEOC) was created by Title VII of the 1964 Civil Rights Act and today is given specific responsibility for enforcing Title VII, the Equal Pay Act, and the Americans with Disabilities Act. The EEOC has following three major functions:

- Investigating and resolving complaints about alleged discrimination
- Gathering information regarding employment patterns and trends in U.S. businesses
- Issuing information about new employment guidelines as they become relevant

The first function is illustrated in Figure 2.3, which depicts the basic steps that an individual who thinks she has been discriminated against in a promotion decision might follow to get her complaint addressed. If the EEOC believes that discrimination has occurred, then its representative will first try to negotiate a reconciliation between the two parties without taking the case to court. Occasionally, the EEOC may enter into a consent decree with the discriminating organization.

If the EEOC cannot reach an agreement with the organization, then two courses of action may be pursued. First, the EEOC can issue a right-to-sue letter to the victim. The second important function of the EEOC is to monitor the hiring practices of organizations. The third function of the EEOC is to develop and issue guidelines that help organizations determine whether their

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decisions are violations of the law enforced by the EEOC. The OFCCP conducts yearly audits of government contractors to ensure that they have been actively pursuing their affirmative action goals. If the OFCCP finds that its contractors or subcontractors are not complying with the relevant executive orders, then it may notify the EEOC, advise the Department of Justice to institute criminal proceedings, or request that the labor secretary cancel or suspend contracts with that organization.

III. Other Areas of Human Resource Regulation

A. Legal Perspectives on Compensation and Benefits

The **Fair Labor Standards Act (FLSA)**, passed in 1938, established a minimum hourly wage for jobs. The first minimum wage was $0.25 per hour. The FSLA also established the workweek in the United States as forty hours per week. It further specified that all full-time employees must be paid at a rate of one and a half times their normal hourly rate for each hour of work beyond 40 hours in a week. The FLSA also includes child labor provisions, which provide protection for persons eighteen years of age and younger. These protections include keeping minors from working on extremely dangerous jobs and limiting the number of hours that persons younger than sixteen can work.

Another important piece of legislation that affects compensation is the **Employee Retirement Income Security Act of 1974 (ERISA)**. This law was passed to protect employee investments in their pensions and to ensure that employees would be able to receive at least some pension benefits at the time of retirement or even termination. ERISA does not mean that an employee *must* receive a pension; it is meant only to protect any pension benefits to which the employee is entitled. Two other emerging legal perspectives on compensation and benefits involve minimum benefits coverage and executive compensation.

B. Legal Perspectives on Labor Relations

The **National Labor Relations Act**, or **Wagner Act**, was passed in 1935 in an effort to control and legislate collective bargaining between organizations and labor unions, granting significant rights to workers and unions. The **Labor Management Relations Act (Taft-Hartley Act)** of 1947 and the **Landrum-Griffin Act** in 1959. Both these acts regulate union actions and their internal affairs in a way that puts them on an equal footing with management and organizations. The Taft-Hartley Act also created the National Labor Relations Board (NLRB), which was charged with enforcement of the act.

It is worth noting that the **Employee Free Choice Act**, also known as the Union Relief Act of 2009, would change the way in which unions become certified as bargaining agents in

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companies, eliminating the secret ballot vote that now exists. The National Labor Relations Board did approve new election guidelines that would streamline the union certification process.

C. Employee Safety and Health

The basic premise of the Occupational Safety and Health Act of 1970 (OSHA), also known as the *general duty clause*, is that each employer has an obligation to furnish each employee with a place of employment that is free from hazards that can cause death or physical harm. OSHA is generally enforced through inspections of the workplace by OSHA inspectors, and fines can be imposed on violators.

D. Drugs in the Workplace

The **Drug-Free Workplace Act of 1988** was passed to reduce the use of illegal drugs in the workplace. This law applies primarily to government employees and federal contractors, but it also extends to organizations regulated by the Department of Transportation and the Nuclear Regulatory Commission. Thus, long truck drivers and workers at most nuclear reactors are subject to these regulations.

Drug testing is becoming quite widespread, even though there is little hard evidence addressing the effectiveness of these programs. The issue for the current discussion is whether these testing programs constitute an invasion of employee privacy.

E. Plant Closings and Employee Rights

The **Worker Adjustment and Retraining Notification (WARN) Act of 1988** stipulates that an organization with at least 100 employees must provide notice at least 60 days in advance of plans to close a facility or lay off 50 or more employees. The penalty for failing to comply is equal to 1 day's pay (plus benefits) for each employee for each day that notice should have been given. The act also provides for warnings about pending reductions in work hours but generally applies only to private employers. There are exceptions to the WARN requirements. The events of September 11, 2001, represent one such exception to this law.

F. Privacy Issues at Work

The **Privacy Act of 1974**, applies directly to federal employees only, but it has served as the impetus for several state laws. This legislation allows employees to review their personnel files periodically to ensure that the information contained in them is accurate. The larger concerns with privacy these days relate to potential invasions of employee privacy by

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organizations. For example, organizations generally reserve the right to monitor the email correspondence of employees.

The **Genetic Information Nondiscrimination Act (GINA)** prohibits employers from collecting any genetic information about their employees, including information about family history of disease. The **PATRIOT Act** was passed shortly after the terrorist attacks on September 11, 2001, to help the United States more effectively battle terrorism worldwide. Many of the act's provisions expand the rights of the government or law enforcement agencies to collect information about and pursue potential terrorists.

IV. Evaluating Legal Compliance

The assurance of compliance with the law can best be achieved through a three-step process, which are as follows:

- To ensure that managers clearly understand the laws that govern every aspect of human resource management
- Managers should rely on their own legal and human resource staff to answer questions and review procedures periodically
- Organizations should occasionally engage in external legal audits of their human resource management procedures

Closing Case: Managers in Name Only?

Case Summary

Although the Fair Labor Standards Act requires employers to pay time and a half to workers who work more than forty hours a week, salaried managers, administration, and professionals are exempt from the rule. RadioShack, the Chicago Police Department, and Verizon all have faced accusations of requiring employees/managers to work very long hours(up to sixty-five hour workweeks) without overtime pay, claiming those employees are exempt. Workers of these and other companies have filed lawsuits demanding payment for work performed.

The court system has rendered favorable verdicts for such workers as the $29.9 million settlement involving RadioShack indicates. As the nature of work changes and as jobs shift from manufacturing to service, the lines between different kinds of work have become blurred. Today it is no longer entirely clear who is a manager or what their specific duties entail.

Case Questions

1.

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Discussion Questions

1. *Describe the process through which the legal context of human resource management is created.*

   The legal context of human resource management is shaped by a variety of forces. Congress identifies an area of employment relationship that could be improved by legislation. It passes a statute and often creates an agency to enforce the statute. The agency issues regulations further defining the statute and federal courts apply the body of law to actual circumstances.

2. *Summarize the role of the Thirteenth and Fourteenth Amendments to the U.S. Constitution in equal employment opportunity.*

   The Thirteenth Amendment, abolishing slavery, was the beginning of the long road toward equal employment opportunity for African-American citizens of the United States. The Fourteenth Amendment passed in 1868, making it illegal for government to take the life, liberty, or property of individuals without due process of law, specifically prohibits a state from denying equal protection to its residents. The Reconstruction Civil Rights Acts of 1866 and 1871 granted all persons the same property rights, as well as the right to sue in federal courts if they are deprived of their civil rights. These laws, enacted in the nineteenth century, are the basis for federal court actions that have resulted in new major

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laws and related regulations passed by Congress in the twentieth century. Today equal employment opportunities are granted, by law, to all U.S. citizens regardless of their race, color, religion, gender, age, national origin, disability status, or status as a military veteran.

3. *What is illegal discrimination? What is legal discrimination?*

Discrimination is the failure to treat people equally. The law requires that employers treat people equally with respect to certain factors such as race, color, religion, gender, national origin, age, and disability. Obviously, the law cannot require that employers treat everyone equally because differences between workers may affect their productivity. Employers can legally discriminate in employment decisions with respect to education, skill level, appearance, experience, sexual orientation (in many states), and ability as long as such factors are not used indirectly to discriminate on forbidden factors.

4. *Identify and summarize the various forms of illegal discrimination.*

Disparate treatment is intentionally treating employees or applicants differently because of their race, color, sex, religion, national origin, age, or disability status. Bona fide occupational qualifications are rare exceptions when sex, religion, age, or national origin can be used as a qualification for employment. A job qualification is said to have a disparate impact when the passing rate of members of protected groups is less than four-fifths of the majority group's. Griggs v. Duke Power Company is a landmark case that prohibited this type of discrimination which had been overlooked by Congress. Intent is not a required element of the prima facie case of disparate impact. Once the prima facie case of disparate impact has been demonstrated by the claimant, the burden shifts to the employer to prove the business necessity of the qualification.

Pattern or practice discrimination is discrimination against all members of a protected class. It is illegal for an employer to retaliate against employees for either opposing a perceived illegal employment practice or participating in a proceeding that is related to an alleged employment practice.

5. *Identify and summarize five major laws that deal with equal employment opportunity.*

Title VII of the Civil Rights Act of 1964 prohibits discrimination in a broad range of employment actions on the basis of race, color, sex, religion, or national origin. Executive Order 11246 requires federal contractors receiving $10,000 or more to have affirmative action plans to increase the employment of protected groups. Executive Order 11478 requires the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be

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considered.

The Equal Pay Act of 1963 requires that men and women receive equal pay for equal work. The Age Discrimination in Employment Act prohibits discrimination on the basis of age against applicants and employees who are forty and over. The Vocational Rehabilitation Act of 1973 requires federal contractors receiving more than $2,500 a year to engage in affirmative action for disabled individuals. The Vietnam Era Veterans' Readjustment Act of 1974 requires federal contractors to have an affirmative action program for those serving in the armed forces between 1964 and 1975. The Pregnancy Discrimination Act of 1978 gives pregnant women protection against discrimination based solely on their pregnancy. The Civil Rights Act of 1991 makes disparate impact cases easier to prove; it also provides for punitive damages in cases of intentional discrimination and for jury trials when compensatory or punitive damages are sought. The Americans with Disabilities Act of 1990 defines those who are considered disabled and protects them from a wide range of employment discrimination. It requires that employers make reasonable accommodations for disabilities except when the accommodation imposes an undue hardship on the employer. The Family and Medical Leave Act of 1993 requires employers of fifty or more employees to provide up to twelve weeks of unpaid leave per year for certain family emergencies.

6. *Why is most employment regulation passed at the national level, as opposed to the state or local level?*

States and localities compete with each other in attracting businesses. Laws and regulations that restrict the freedom of employers may be viewed as undesirable and result in a competitive disadvantage. Hence, it is unlikely all localities would voluntarily choose to pass such laws. If employment laws are passed at the federal level, they are applied evenly throughout all jurisdictions, so they do not affect competition among domestic businesses. However, excessive regulations at the federal level could affect the ability of domestic companies to compete with less regulated foreign competitors.

7. *Which equal employment opportunity laws will likely affect you most directly when you finish school and begin to look for employment?*

If one is a member of a protected group, one may be encouraged by the fact that employers must treat one with a blind eye toward his or her race, color, sex, religion, national origin, or disability. Executive Order 11246 may provide an opportunity with a federal contractor through affirmative action. If one is a white male without a disability, one may find a few less opportunities because of preferential treatment by employers with legally permissible affirmative action programs.

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8. *Which equal employment opportunity law do you think is most critical? Which do you think is least critical today?*

   Students will answer this question from their own perspective. It would be interesting if age discrimination were listed as the least critical, since for most students it is probably the farthest factor from their minds.

9. *Which equal employment opportunity law do you think is the most difficult to obey? Which do you think is easiest to obey?*

   The laws that are the most difficult to obey are the ones that are the least clear. The Americans with Disabilities Act has been in effect for only about ten years, so the law is still evolving. Federal courts are still defining "disability" and what accommodations employers must reasonably make. Although courts occasionally change the burdens of proof, Title VII and the Age Discrimination in Employment Act have been around for over thirty years and have been interpreted fairly consistently by courts. Conversely, the laws that are easiest to obey are those that are most clear, such as the minimum wage law or child labor regulations.

10. *In the case of a conflict between a legal and an ethical consequence of a human resource decision, which do you think should take precedence?*

    A person cannot justify breaking the law by reference to ethical behavior. However, it is rare that an act that is ethical is illegal, so it is not a matter of a choice of whether to break the law or to act ethically. The more likely scenario is when the law permits certain behavior that is otherwise unethical. Since the law changes frequently but the rules of ethical behavior do not, consistency dictates that a code of ethics be established and followed.

Ethical Dilemmas in HR Management

Scenario summary

Assume that one overhears that an OSHA inspector will inspect his or her place of employment within the next week. Both the employee and the plant manager are aware of a safety hazard at the plant. For financial reasons, the hazard will not be fixed before the inspection, but the employer does plan to reduce employee exposure to the problem.

Questions

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1. *What are the ethical issues in this situation?*

   One issue is whether the plant manager should spend the extra resources to fix the hazard immediately or wait until it is less expensive to do so. There is room for disagreement as to whether the risk of injury justifies the extra expense of fixing the problem immediately. The law requires the employer to eliminate only those recognized hazards that are likely to cause death or serious injury. As a practical matter, the employer cannot afford to eliminate all hazards immediately. A second issue is whether one should tell the plant manager what one heard. Not only might it be illegal to warn the plant manager of the inspection, but also it may be that the manager would not do anything differently if she or he knew the inspector was coming. One should have warned the manager of the condition. Let the manager explain her- or himself to the OSHA inspector.

2. *What are the pros and cons for keeping this information to yourself versus telling your plant manager what you heard?*

   It may be illegal to warn the plant manager about the inspection, regardless of how one acquired the information. For OSHA inspections to provide the proper incentive for employers to provide a safe workplace, they must be unannounced. Otherwise, employers will comply only in preparation for inspections. If one does not tell the manager, not only will one be obeying the law but one will also be doing what is right from society's perspective.

3. *What do you think most managers would do? What would you do?*

   Students' answers will vary. This makes an interesting class discussion.

Assignment

Purpose: Affirmative action was created as a way of directly and proactively attracting more qualified members of protected classes into the workforce. Although most people believe that affirmative action has served a useful function, some people now believe that it is no longer needed. Specifically, they argue that companies today recognize the importance of hiring the best people possible and will continue to seek those individuals on their own without the pressure of formal affirmative action. Others, however, believe that affirmative action is still necessary to meet its original objectives. The purpose of this exercise is to give the students additional insight into the arguments surrounding affirmative action.

Step 1: The instructor should ask the students to form groups of seven members each. Using a

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random procedure, divide the group into two subgroups of three members each and a moderator.

Step 2: One subgroup will work together to develop a set of arguments about why affirmative action is still a necessary and important component of equal opportunity employment. The other group will work together to develop a set of arguments about why affirmative action is no longer a necessary and important component of equal employment opportunity.

Step 3: Reconvene as a group of seven. The moderator will randomly select one side to present its case first. That group will have 3 minutes to make its case. The second group will then have take 3 minutes to make its case and an additional minute to rebut the first group. Finally, the first group will have 1 minute to rebut the arguments made by the second group.

Step 4: The moderator will then summarize the relative persuasiveness of each group regarding the affirmative action issue. In addition, the moderator should feel free to add whether or not either group did not bring up any additional thoughts he or she had about the issue.

Step 5: Develop a brief summary of the arguments made by both groups. Using whatever format is suggested by the instructor, share these arguments with the rest of the class.

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