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Employment Discrimination: Overview

Since the Civil Rights Movement of the 1960s, federal and state governments have enacted a number of laws that bar an employer from discriminating against employees on almost any grounds, aside from the quality of the employee's work or the nature of his or her personality. Following is an introduction to the law of discrimination in employment.

Race, National Origin, Gender, and Religion

The best known of employment anti-discrimination laws, Title VII of the Civil Rights Act of 1964, prohibits an employer with fifteen or more employees from discriminating on the basis of race, national origin, gender, or religion. Under Title VII, it is illegal for an employer to take any of the following actions against an employee based upon his or her race, national origin, gender, or religion:

- Refuse to hire;
- Discipline;
- Fire;
- Deny training;
- Fail to promote;
- Pay less or demote; or
- Harass.

In addition, it is illegal for an employer to adopt a policy or practice that has a "disparate impact" on a protected class, such as by adopting hiring criteria that tend to screen out women or minority group members, or by instituting a required test for promotion on which a particular class tends to score badly. Such a policy or test, like a specific policy that only men or women can have certain jobs, is legal only if it can be deemed a "bona fide occupational qualification." An example is a strength test that tends to screen out women, but is a necessary test for fire fighters who must be able to carry victims down tall ladders.

Other Types of Discrimination Under Title VII

The bar against discrimination on the basis of gender includes discrimination on the basis of pregnancy. Contrary to popular belief, however, Title VII does not just bar discrimination against women and minority group members, but also bars discrimination against male or white employees or applicants. Such discrimination is popularly known as "reverse discrimination," and may be caused, for example, by an over-ambitious affirmative action program.

Equal Pay Discrimination

The federal Equal Pay Act requires any employer that is already subject to the Fair Labor Standards Act (the federal wage and hour law) to provide equal pay to men and women who perform "equal work," unless the difference in pay is caused by differences in seniority, merit or some other factor that is not based upon sex.

Age Discrimination

The Age Discrimination in Employment Act (ADEA) bars discrimination against employees or applicants who are over the age of forty, by any employer with twenty or more employees. An employee may often state a claim under the ADEA if he or she is fired or forced to retire, and is then replaced by a younger employee. Unlike in Title VII cases, however, many courts have held that the ADEA does not prohibit practices that have a "disparate impact" on older employees. Instead, the ADEA only bars deliberate discrimination against older workers.

Disability Discrimination

The Americans With Disabilities Act (ADA) and the Rehabilitation Act bar discrimination against those who are disabled. The ADA bars discrimination by private employers with more than fifteen employees, and the Rehabilitation Act applies to all government entities and federal contractors. Unlike other civil rights laws which protect easily-identifiable classes such as race or gender, in order to be protected by the ADA or the Rehabilitation Act, an employee or applicant must show that he or she is, in fact, disabled, has a history of being disabled, or was regarded by the employer as being disabled. Once the employee or applicant makes this showing, however, he or she is not only protected from discrimination, but is also entitled to "reasonable accommodation" for the disability if necessary. Reasonable accommodation may include a modified work schedule or work duties, unpaid time off, or special devices that will help the employee in the performance of his or her job duties.

National Origin Discrimination

The Immigration Reform and Control Act bars any employer with more than three employees from discriminating against a U.S. citizen, or an "intended citizen" (such as one who may work legally but is not yet a citizen) on the basis of his or her national origin. The law was enacted at the same time that the government strengthened its penalties against employers who hire illegal aliens, and was intended to prevent employers from overreacting to the new laws by refusing to hire anyone who appears foreign.

Discrimination Claims: the EEOC and "Administrative Remedies"

With the exception of the Equal Pay Act and the Immigration Reform and Control Act, each of the anti-discrimination laws discussed above requires anyone (whether employee or applicant) who believes that he or she has been discriminated against to exhaust "administrative remedies" prior to bringing a lawsuit. This means that anyone who wants to file suit under Title VII, the ADEA, the ADA, or the Rehabilitation Act must first bring his or her claim to the Equal Employment Opportunity Commission (EEOC) or an affiliated state agency, which may investigate the claim and take action on it, or may advise the employee to seek his or her own attorney and proceed him- or herself. In addition, the deadline for bringing such a claim is short, often no more than 180 days. Thus, if an employee or job applicant does not bring his or her claim to an administrative agency such as the EEOC quickly, it may be forever barred.

State and Local Laws

Many states, counties, and municipalities have also enacted anti-discrimination laws that often apply to every employer, no matter how small. Many of these statutes create additional protected classes, such as gays and lesbians, those who have received welfare, those who are married, the unmarried, and those who have children.

Legal Help with a Discrimination Claim

If you believe that you have been discriminated against by a potential or current employer -- as a job applicant or current employee-- to best protect your legal rights it is important that you discuss your situation with an experienced [employment law attorney](#) . Especially in light of the EEOC filing deadlines discussed above, meeting with an attorney sooner rather than later will ensure that your right to a legal remedy is not lost.

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