

Introduction

Equal Employment Opportunity (EEO) laws are a fact of life. They play an important role in the day-to-day activities and decisions made by managers and supervisors. In order for managers and supervisors to be successful in preventing and handling EEO issues, they must have a basic working knowledge of the many different EEO laws and regulations. Knowledge of these laws puts them in a better position to protect themselves, the organization, and employees from violations of the law and unpleasant working conditions. Following EEO laws and guidelines makes good management sense. It fosters a respectful workplace that provides fair opportunity to all employees.

In this unit, you will learn about:

- What discrimination means.
- The equal employment opportunity laws that protect individuals from discrimination in the workplace.
- The role of FEMA's Office of Equal Rights.
- The role of the Equal Employment Opportunity Commission (EEOC).
- Affirmative employment and FEMA's Affirmative Employment Plan (AEP).

A Few Words About Discrimination



Equal employment laws were developed to prevent discrimination in the workplace. Discrimination as it applies to EEO law is called unlawful discrimination. Unlawful discrimination is the intentional or unintentional process of denying a person his or her equal opportunity for employment or advancement because of race, color, sex, religion, national origin, age, or physical/mental disability.

Note that this definition places emphasis on unintentional as well as intentional discrimination. Few managers or supervisors would knowingly or willfully treat people unfairly. However, unintentional acts can still be illegal. Whether a manager or supervisor intended to discriminate against an employee makes no difference under the law. Good intentions seldom change the findings of an EEO investigation or court case.

A Brief Look at the EEO Laws

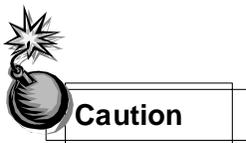


The four major EEO laws that protect Federal employees, and that FEMA subscribes to and implements, are:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin. Harassment based on these criteria (i.e., sexual harassment, racial harassment, etc.) is also prohibited by Title VII.
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older from employment discrimination.
- The Rehabilitation Act of 1973 (Rehabilitation Act) and the Americans with Disabilities Act of 1990 (ADA). Section 501 of the Rehabilitation Act prohibits employment discrimination against Federal employees with disabilities. The Rehabilitation Act, as amended, requires Federal agencies to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. It also incorporates the requirements of the ADA, which prohibits employment discrimination on the basis of disability in both the public and private sector.

Discriminatory Practices

It is illegal to discriminate in any aspect of employment, including:



Hiring	Management Practices	Discharging
<ul style="list-style-type: none"> ▪ Recruiting ▪ Interviewing ▪ Testing ▪ Selecting 	<ul style="list-style-type: none"> ▪ Training ▪ Reassigning ▪ Evaluating Performance ▪ Disciplining ▪ Promotions ▪ Pay, retirement, and leave 	<ul style="list-style-type: none"> ▪ Firing ▪ Downsizing ▪ Releasing

Discriminatory Practices (Continued)



Caution

Discriminatory practices also include:

- 4 Harassment on the basis of race, color, religion, sex, national origin, disability, or age.
- 4 Retaliation or reprisal against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices.
- 4 Employment decisions based on stereotypes or assumptions about the abilities or performance of individuals of a certain sex, race, age, religion, ethnic group, or individuals with disabilities.

Two Types of Discrimination



Definitions

The courts recognize disparate treatment and disparate impact as two kinds of discrimination.

- **Disparate treatment.** This type of discrimination occurs when an employee or employees are treated differently from other employees of a different race, color, sex, religion, national origin, age, or physical/mental ability. An example of this is when an employee who is disciplined claims that he or she received harsher discipline for the misconduct than other employees engaging in similar behavior did.
- **Disparate impact.** This type of discrimination occurs when a decision, action, policy, or practice (i.e., hiring and promotion policy or procedures, training, etc.) has an adverse impact on an employee or group of employees. Disparate impact discrimination is often unintentional; however, it has unequal consequences for one or more groups over others. For example, an organization requires that all job applicants take and pass an aptitude test written in English. On the surface, this seems nondiscriminatory because everyone is required to take the test. However, the failure rate for the test is consistently higher for one group (e.g., Hispanics) than it is for other groups (e.g., non-Hispanics).



Activity

Activity: Is This Legal?

Purpose: The purpose of this activity is to test your understanding thus far of what is and is not legal when it comes to EEO laws.

Instructions: Read each of the situations below and indicate if it is legal by checking "YES" or "NO."

1. A manager prevents a 60-year-old local hire from working in harsh weather conditions, because he is concerned about the local hire's health. Is this legal?

Yes or No

2. A supervisor is working at a site that is known to be particularly dangerous. The supervisor does not allow women to go out alone in the field. However, the supervisor does allow men to go in the field alone. Is this legal?

Yes or No

3. During an interview of a local hire, a manager informs the interviewee that many of the disaster applicants speak Spanish. The manager asks the applicant if she speaks Spanish. Is this legal?

Yes or No

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Answer Key: Is This Legal?

1. **Answer:** No. The manager has violated the ADEA because he or she is using the employee's age as a reason for making a personnel decision, and this is not a legitimate factor for deciding on job assignments. Also, the manager is making a generalization about an entire group, in this case elderly people.

Learning Point: Do not make assumptions about a group of people that would disqualify them from an employment opportunity that others will have. Do check out your concerns with all employees (not just the elderly person) if you have them. For example: It's really hot out there today; does anyone feel that they cannot work under these conditions?

2. **Answer:** No. The supervisor has violated Title VII of the Civil Rights Act. The supervisor is using the employee's sex as a reason for his or her decision and is making assumptions about one group of individuals (women) over another (men). If an employment practice operates to exclude one group of people over another, the practice is prohibited.

Learning Point: Apply rules uniformly to all employees. If the area is not safe for a woman, it is not safe for a man.

3. **Answer:** Yes. For this particular situation, having an employee who speaks Spanish would be an important qualification. It would, however, be illegal if you asked the applicant if she were Hispanic.

Learning Point: Be clear on the qualifications of the job and keep your questions job-related. Do not make assumptions or ask questions about a person's racial or ethnic background. Ask the same questions of all applicants.

The Office of Equal Rights

The Office of Equal Rights is located at FEMA headquarters. The Office of Equal Rights oversees the activities and functions of each Equal Rights Office. An Equal Rights Office is established at each DFO. All formal EEO complaints are filed with the Director, Office of Equal Rights at FEMA Headquarters.

The Role of the Equal Employment Opportunity Commission (EEOC)

The EEOC is an independent Federal agency that enforces Equal Employment Opportunity laws. The EEOC also:

- Issues regulatory and other forms of guidance interpreting the laws it enforces.
- Is responsible for the Federal sector employment discrimination program.
- Provides funding and support to State and local fair employment practices agencies (FEPAs).
- Conducts broad-based outreach and technical assistance programs.

More detailed information about the EEOC and the laws it enforces can be found at the following Internet address: <http://www.eeoc.gov>.

Affirmative Employment—Going a Step Further

Affirmative employment is an organization's systematic plan and goals to balance the workforce in all job categories to reflect the same proportion as the general labor market. Affirmative employment, however, does not mean the hiring of unqualified persons. Hiring unqualified persons could result in a type of discrimination, which could lead to other claims or charges, a reverse discrimination charge for example. (If you hire an unqualified person, all others who applied but were unqualified have a valid complaint if they weren't similarly treated.)

FEMA's Affirmative Employment Plan (AEP) is a mechanism for analyzing and reporting on areas of diversity in organization and resources, workforce, discrimination complaints, recruitment and hiring, employment development programs, promotions, separations, and program evaluation. Examples of affirmative employment efforts include:

- Recruiting qualified persons from under-represented groups.
- Promoting qualified persons from under-represented groups.
- Removing discriminatory obstacles.

Director's Policies

Appendix A contains the following Director's Policies that address EEO in FEMA:

- Equal Opportunity and Affirmative Employment (no. 3-93).
- Sexual Harassment (no. 3-97).
- Access to Agency Programs by Persons with Disabilities (no. 2-93).

Summary and Transition



In this unit, you reviewed a definition of unlawful discrimination. You also learned about EEO laws and affirmative employment. In the next unit, you will review strategies for preventing and minimizing EEO problems or potential problems in the field.

Before proceeding to the next unit, take a few minutes to complete the Knowledge Check on the next page.



Check

Knowledge Check

Carefully read each question and all of the possible answers before selecting the most appropriate response for each test item. Circle the letter corresponding to the answer you have chosen. Complete all the questions without looking at the course materials.

1. An employee who is offended by racial or ethnic jokes has legitimate grounds for filing a discrimination complaint.
 - a. True
 - b. False

2. Which of the following is not protected under Title VII?
 - a. Race
 - b. Color
 - c. National origin
 - d. Age

3. _____ is illegal under Title VII.
 - a. Discrimination based on age.
 - b. Discrimination based on disability.
 - c. Sexual harassment.
 - d. Sex-based wage discrimination.

4. This type of discrimination is often unintentional and occurs when a decision, action, policy, or practice has an adverse consequence on an employee or group of employees.
 - a. Disparate impact
 - b. Disparate treatment
 - c. Retaliation
 - d. Reprisal

5. Which of the following is not a role of the EEOC?
 - a. Issuing guidelines and regulatory requirements.
 - b. Mediating EEO disputes between agencies and complainants.
 - c. Providing interpretations of EEO laws.
 - d. Providing technical guidance and assistance.

Turn to page B-1 for the correct answers.