UNIT 4

CASE STUDIES IN TITLE VII ISSUES

Introduction

As you have learned in previous units, your role as a manager or supervisor is to make decisions and take action without violating the EEO laws. One of the key EEO laws is Title VII of the Civil Rights Act of 1964 (Title VII). A working knowledge of Title VII is particularly valuable because most of the other EEO laws are patterned after Title VII.

In this unit, you will learn about:

- The specifics of Title VII.
- Behaviors that constitute violation of Title VII.
- Key terms and definitions associated with Title VII.
- Appropriate supervisory actions given a series of field-specific Title VII case studies.

The Law in a Nutshell

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin. As you learned in Unit 1, under Title VII it is illegal to discriminate in any aspect of employment (e.g., hiring, firing, downsizing, etc.). Discriminatory behaviors or practices prohibited under Title VII also include:

- Limiting, segregating, or classifying employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or have an adverse effect on their status as employees.
- Harassment on the basis of race, color, religion, sex, or national origin.
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices.
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain race, color, religion, sex, or ethnic group.

Key Definitions

- **Bona Fide Occupational Qualification (BFOQ).** Under Title VII, you cannot discriminate on the basis of a characteristic specific to any protected class, unless the characteristic is a bona fide occupational qualification (BFOQ). A BFOQ is a trait that is integral or essential to the job in question. For example, any hiring or placement restrictions based on sex must be strictly job-related unless sex can be shown to be a BFOQ. You can require a specific sex when hiring male or female actors and actresses or models for photo advertisements. You cannot specify a specific sex based on assumptions of the comparative employment characteristics of one sex over another (e.g., refusing to hire a male receptionist based on the assumption that a female is better suited for the job). Under Title VII, BFOQ applies to race, color, religion, and national origin as well as sex.

- **Religious accommodation.** Under Title VII, an employer is required to accommodate the religious practices of employees and prospective employees unless it would pose an undue hardship on the employer. Employees most frequently request an accommodation because their religious practices conflict with their work schedules. Some methods for providing reasonable accommodation for the religious beliefs and practices of employees include:

  - Assisting with voluntary substitutes or “swaps”
  - Flexible arrival and departure times
  - Floating or optional holidays
  - Flexible work breaks
  - Use of lunch time in exchange for early departure
  - Staggered work hours
  - Permitting the employee to make up time lost due to the observance of religious practices
  - Permitting the employee to wear religious articles of clothing as long as they don’t cause a safety hazard

Case Studies in Title VII

Instructions:

On the following pages are a series of real-world situations that you are likely to encounter on the job. After you complete each case study, review the appropriate answer(s) that follow each case study.

- *If your answer is correct, review the learning points associated with the case study and move on to the next case.*
- *If your answer is wrong, review the relevant material indicated, and try again. In addition, review the Director's Policy on Equal Opportunity and Affirmative Employment (no. 3-93) in Appendix A.*

Case Study

CASE STUDY ONE: POOR INTERVIEWING

The DFO receptionist approaches you and says that a potential local hire left the DFO very upset because Sam, a supervisor, asked the local hire some inappropriate questions during her interview. According to the receptionist (who overheard the conversation), Sam asked the woman if her ring was a wedding band and, if so, did her husband approve of her working. Apparently, Sam also said that in his day, women didn't work and stayed home with the children, but he did realize how tough it was to make ends meet today.

As Sam's supervisor, how should you handle this situation?

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Go to page 4.4

Case Studies in Title VII (Continued)

Answer to Case Study One: Poor Interviewing

Answer

As Sam's supervisor, how should you handle this situation? Your answer is correct if it contains these elements:

- Talk to Sam and inform him that his interview questions were inappropriate and discriminatory.
- Provide Sam with guidance and/or training on appropriate and inappropriate interview questions and techniques.
- Inform the ERO of the incident.
- Review any recruitment decisions Sam has made in the past for any patterns of discrimination.
- Removing Sam from interviewing candidates until he becomes more proficient.
- Participate in several interviews with Sam to ensure the discriminatory behaviors have been eradicated.

If your answers were incorrect, return to pages 2.2 through 2.5, and 4.1 through 4.2 for review.

Learning Points

Learning Points

- Keep all interview questions job-related. Job interview questions that have no relevance to performance on the job or are likely to restrict certain groups or classes of people from a job opportunity are illegal.
- Ask each interviewee for the job the same questions.

Case Studies in Title VII (Continued)

Case Study

CASE STUDY TWO: SOMETHING'S WRONG

A team that you are supervising in the DFO includes three men and one woman. The team leader is a man. You find that all of the team members are very qualified.

You have worked with Marie, the woman on the team, on previous disasters and find her to be very competent. She is confident in her abilities and has strong qualifications.

Interaction between the team members is on the whole cooperative and friendly. However, Marie senses an unintentional, underlying lack of respect for her work. Her suggestions are not sought or are not taken as seriously as those of the other team members. In public meetings, she is not asked to take part in the presentations. The men automatically assume the speaking roles. While working with disaster victims, one of the men on her team tells the disaster victims to "Just ask one of the fellas" if they have any questions.

Marie approaches you and describes the situation. You are caught completely off guard because you are unaware of any problems. She asserts that she is really offended by this treatment and feels the lack of opportunity may hurt her career with FEMA. She wants you to do something about it.

What legal issues may be involved in this situation?

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As the supervisor, how would you handle this situation?

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Go to page 4.6

Case Studies in Title VII (Continued)

Answer to Case Study Two: Something's Wrong

Answer

What legal issues may be involved in this situation? Your answer is correct if it contains these elements:

- Marie is concerned that she is being treated differently by the men because she is a woman, and she is concerned about her career potential because of it. Hence, she is alleging a violation of Title VII and could rightfully file a sex discrimination complaint.

As the supervisor, how would you handle this situation? Your answer is correct if it contains these elements:

- Gather the facts from Marie in a neutral way. Avoid taking sides.
- Ask Marie what she would like you to do as her manager.
- Remind Marie that she is free to contact the ERO.
- Inform Marie of the EEO complaint process.
- Discuss the situation with the ERO to determine the most appropriate course of action even if Marie does not speak with the ERO herself.
- Hold a team meeting and discuss the importance of sharing the workload, etc.
- Intervene when you observe behavior that excludes Marie on the team.
- Model appropriate behavior by showing team members how you value Marie as a team member (ask for her suggestions, assign challenging work, etc.).

If your answers were incorrect, return to pages 2.8 through 2.10, and 4.1 through 4.2 for review.

Learning Points

Learning Points

- Never inhibit or discourage an employee from contacting the ERO or from filing an EEO complaint.
- Be attentive to the interpersonal dynamics of team members, not only to assure productivity, but also to prevent discriminatory conduct.
- Be sensitive to warning signals that could point to the potential for discrimination.

Case Studies in Title VII (Continued)

Case Study

CASE STUDY THREE: WARNING OR RETALIATION?

A DAE who is Hispanic approaches the ERO to complain about his supervisor named John. The DAE alleges that his supervisor is being unusually harsh with him and he thinks it is because on the last disaster, he filed a discrimination complaint against a supervisor who is a good friend of John's. He knows that John is aware of the discrimination complaint.

The DAE claims that John has issued him a letter of warning for attendance problems. He admits that he has been late a few times; however, he knows of other people under John's supervision who have been late yet they have not received any warnings.

Could the DAE have a legitimate EEO complaint against John? Why or why not?

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What can supervisors do to avoid situations like this from occurring?

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Go to page 4.8

Case Studies in Title VII (Continued)

Answer to Case Study Three: Warning or Retaliation?

Answer

Could the DAE have a legitimate complaint against John? Your answer is correct if it contains these elements:

- Yes, the DAE has a legitimate complaint about John, if he is not issuing warnings to other members of his staff who have been late. The DAE can rightfully claim that he is being retaliated against due to a previous discrimination complaint.

What can supervisors do to avoid situations like this from occurring? Your answer is correct if it contains these elements:

- Understand that retaliation against an employee for making an EEO complaint is illegal.
- Document performance and conduct problems.
- Apply the same standards and procedures to all employees.

If your answers were incorrect, return to pages 2.5 and 4.1 through 4.2 for review.

Learning Points

Learning Points

- Treat employees fairly when making decisions or engaging in other management practices.
- An action could be found to be retaliatory if there is a connection between the "protected activity" (any participation in any part of the EEO system) and the personnel action. The closer in time the two events, the more likely a connection will be found.
- State your expectations regarding performance and conduct up front.

Note: This answer assumes that John knew about the DAE's previous complaint. If he did not, then the DAE probably does not have a good claim for unlawful retaliation. The DAE may still have a sex, race, age, or other claim; however, because he appears to be the only employee with tardiness problems, this supervisor chooses to discipline.

Case Studies in Title VII (Continued)

Case Study

CASE STUDY FOUR: A DANGEROUS SITUATION

A DFO has just opened to handle a flooding disaster and you are in the process of assigning your field staff to various sectors in the affected area. Five rural counties have been declared, and your staff has to cover large geographic areas in each sector. The population of the affected counties is approximately 55% black and 45% white.

A local minister informs you that white supremacist groups are active throughout the area. Upon talking to local officials and community leaders, you discover that the information is correct. Several cross-burnings and other racially motivated incidents have occurred during the past year.

One of your staff is an African-American man named David. Although he is highly experienced and qualified, you are concerned about his safety and well-being in the field.

What should you do? (Circle the most appropriate responses below).

a. Assign David to the field just as you would any other field person. Send a security officer in the field with him.

b. Don't say anything to David about the danger in the field. Instead, send a white male.

c. Discuss your concerns with David and ask him what he would like to do.

d. Require David to go out in the field with a white male.

Go to page 4.10

Case Studies in Title VII (Continued)

Answer to Case Study Four: A Dangerous Situation

Answer

- Answer A: Assign him to the field with a security officer. This answer is correct if you are sending a security officer to the field with everyone.
- Answer B: Don't say anything to David about the danger in the field. Instead, send a white male. This answer is incorrect. Not allowing David to go in the field is denying him an employment opportunity.
- Answer C: Discuss your concerns with David and ask him what he would like to do. This answer is somewhat correct as long as David's decision not to go out in the field is completely voluntary. However, if David decides to go in the field, his safety may still be in jeopardy. Hence, you would want to have a security officer accompany him.
- Answer D: Require David to go out in the field with a white male. This answer is incorrect. Requiring David to have a white male partner discriminates against him because of his race.

If your answers were incorrect, return to pages 2.2 and 4.1 through 4.2 for review.

Learning Points

Learning Points

- Your decisions should not be based on your assumption or beliefs about what is in the employee's best interest. Allow employees to make their own decisions whenever possible.
- Being gender- or race-neutral does not require you to avoid facing reality, but you must still assure all employees are given an equal opportunity to succeed.
- The dangerous situation should be discussed with all employees (not just the African-American man), because any employee could potentially be in danger.

Case Studies in Title VII (Continued)

Case Study

CASE STUDY FIVE: PUT IT IN WRITING

A supervisor in the DFO has been having a lot of problems with one of her employees, a woman, who is a DAE. She claims that the DAE's work has not been up to standards. Other employees have approached the supervisor and complained about the DAE's lack of experience and skill. The supervisor wonders how the DAE ever got assigned to this position. The supervisor has repeatedly provided performance counseling to the DAE and is tired of having to deal with her. She is taking steps to have the DAE released.

The supervisor has not documented any of the DAE's performance problems. The DAE has worked for FEMA for 4 years and has never had a poor performance evaluation.

What should the supervisor do? (Circle the most appropriate responses below.)

a. Release the DAE.
b. Offer the DAE a choice of being released or reassigned to another section.
c. Do not release the DAE until her file includes complete and proper documentation of any unsatisfactory performance or behavior.

Go to page 4.12

Case Studies In Title VII (Continued)

Answer To Case Study Five: Put It In Writing

Answer

- Answer A: Release the DAE. This answer is incorrect. The DAE could file a charge of discrimination. The supervisor has not documented the DAE's performance and the DAE has had favorable performance evaluations. Therefore, the supervisor has no grounds for taking a performance-based action.

- Answer B: Offer the DAE the choice of being released or reassigned to another section. This is not a good solution. It doesn't really address the problem you're faced with, and could be viewed as discrimination as in the first answer. And, it potentially passes the problem on to someone else.

- Answer C: Do not release the DAE until her file includes complete and proper documentation of any unsatisfactory performance or behavior. This is the correct answer. Without documentation to substantiate the employee's poor performance, the supervisor is vulnerable to a charge of discrimination.

If your answers were incorrect, return to pages 2.5 and 4.1 through 4.2 for review.

Learning Points

Learning Points

- Document ongoing performance difficulties of any employee.

- Good EEO practice is also good management. Although it can be difficult and time consuming to provide honest feedback and honest performance appraisals to poor performers, it is even more difficult to "carry" a poor performer over the years. Allowing poor performers to remain employed for years damages the productivity and the morale of other employees.

- "Carrying" a poor performer makes it very difficult to take performance-based action against other poor performers, because it would appear discriminatory to treat some poor performers as if they were satisfactory and others more honestly.

Case Studies in Title VII (Continued)

Case Study

CASE STUDY SIX: RELIGIOUS ACCOMMODATION

During the initial stages of a disaster, a manager in the DFO is requiring all employees in her section to work 6 days per week. Every staff member has either Saturday or Sunday off. One employee who is assigned Saturday as her day off, requests to have Sundays off instead for religious observance. The manager denies the employee's request because she hears rumors that the employee really wants Sunday off so she can attend her son's football games.

Should the manager have handled this situation differently? If yes, how?

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Go to page 4.14

Answer to Case Study Six: Religious Accommodation

Answer

Should the manager have handled this situation differently? If yes, how? Your answer is correct if it contains these elements:

- Yes, the manager should have accommodated the employee's request to switch her day off from Saturday to Sunday. By denying the request, the manager is leaving herself vulnerable to a potential complaint of religious discrimination.

If your answer was incorrect, return to page 4.2 for review.

Learning Point

Learning Points

4 Provide religious accommodation to employees when the accommodation is not going to adversely impact the work of the unit.

Summary and Transition

Summary & Transition

In this unit you completed case studies that highlight Title VII discrimination. You were also presented with the correct answers to and learning points drawn from each case study. In the next unit, you will complete sexual harassment case studies.