

Key Features for the Seventh Edition

Learning Objectives

Each chapter has active learning objectives, posted before addressing the subject matter, that give a clear picture of specifically what readers should know when they finish studying the chapter. In addition, the learning objectives are noted at the place in the chapter in which the information appears.

Learning Objectives

After completing this chapter, you should be able to:

- LO1 Explain why employers might be concerned about ensuring protections for equal opportunity during recruitment, in particular.
- LO2 Describe how the recruitment environment is regulated, by both statutes and common law.
- LO3 Describe the employer's opportunities during the information-gathering process to learn as much as possible about hiring the most effective worker.
- LO4 Explain how the employer might be liable under the theory of negligent hiring.
- LO5 Identify the circumstances under which an employer may be responsible for an employee's compelled self-publication, thus liable for defamation.
- LO6 Explain the difference between testing for eligibility and testing for ineligibility, and provide examples of each.

Opening Scenarios

Based on real cases and situations, chapter-opening scenarios introduce topics and material that illustrate the need for chapter concepts. Scenarios are then revisited throughout the chapter text as material pertinent to the opening scenario is discussed. When you encounter the scenario icon in the chapter body, return to the corresponding opening scenario to see if you can now articulate the correct way to solve the problem.

Opening Scenarios

SCENARIO 1

1 A union has not permitted African-Americans to become a part of its ranks because of opposition from white union members. Black employees win when they sue to join. The court orders appropriate remedies. The union still resists African-Americans as members. Eventually the court orders that the union admit a certain number of African-Americans by a certain time or be held in contempt of court. Is this a permissible remedy under Title VII?

SCENARIO 2

2 An employer is concerned that her workplace has only a few African-Americans. She hires and promotes only white men.

women and minorities. Employer decides to institute a program that will increase the numbers of minorities and women in management and skilled-labor positions. Is this permissible? Do you have all relevant facts needed to decide? Explain.

SCENARIO 3

3 An employer is found by a court to have discriminated. As part of an appropriate remedy, employer is ordered to promote one female for every male that is promoted, until the desired goal is met. Male employees who would have been next in line for promotions under the old system sue the employer, alleging reverse discrimination in that the new promotions are being

Toolkit Icons

Key concepts used in several different chapters have been combined into one chapter to prevent redundancy. That chapter is Chapter 2, The Employment Law Toolkit: Resources for Understanding the Law and Recurring Legal Concepts. Where a toolkit chapter concept arises in a subsequent chapter a notation is made that it can be found in the Toolkit chapter and an icon is placed in the margin.

respondent or responding party. Person alleged to have violated Title VII sues the employer.



Within 10 days of the employee filing a claim with the EEOC, the EEOC serves notice of the charge to the employer (called *respondent* or *responding party*). As discussed in the toolkit chapter, Title VII also includes anti-retaliation provisions. It is a separate offense for an employer to retaliate against an employee for pursuing rights under Title VII. Noting that retaliation claims had doubled since 1991, in 1998 the EEOC issued retaliation guidelines to make clear its view on what constitutes retaliation for pursuing Title VII rights and how seriously it views such claims for employees.²⁷ In fiscal year 2010, at 36.3 percent retaliation claims for the first time were the largest percentage of claims filed under the protective legislation with race at 35.9 percent and gender at 29.1 percent.²⁸

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Mediation

The EEOC's approach to mediation has been very aggressive in the past decade or so. In response to complaints of a tremendous backlog of cases and claims that went on for years, in recent years the EEOC has adopted several important steps to

Cases

Excerpted cases are placed at the end of the chapter rather than throughout so that reading can be accomplished without interruption. There are reference icons in the chapter when a case is discussed. There is a minimum of legalese and only facts relevant to the employment law issues are included. Each digested case has a short introductory paragraph to explain the facts and issues in the case and is followed by three critical thinking questions created to build and strengthen managerial liability-avoidance skills.

Case 3 **Ali v. Mount Sinai Hospital 68 Empl. Prac. Dec. (CCH) 44,188, 1996 U.S. Dist. LEXIS 8079 (S.D.N.Y. 1996)**

An employee sued the employer for racial discrimination in violation of Title VII, for discriminatory enforcement of the employer's dress code. She alleged she was disciplined for violating the code but whites were not. The court found that the employee had offered no evidence of discriminatory enforcement, so the court had no choice but to find in favor of the employer.

Gershon, J.

It is undisputed that, at all relevant times, the Hospital had a detailed three-page dress code for all of its nursing department staff, including unit clerks. It expressly provided that "the style chosen be conservative and in keeping with the professional image in nursing and not look like I [am] . . . going to a disco or belong in a disco or something to that effect." Dr. Shields testified: "I told her about the whole outfit. She had red boots, red dress, in the unit. This is the post open heart unit. People come in after having had their heart. We

Management Tips

These boxes, included near the conclusion of each chapter, encapsulate how key concepts relate to managerial concerns. The authors offer concise tips on how to put chapter material into practice in the real world.

Management Tips

LO9 Since potentially all employees can bind employers by their discriminatory actions, it is important for all employees to understand the law. This not only will greatly aid them in avoiding acts that may cause the employer liability, but it will also go far in creating a work environment in which discrimination is less likely to occur. Through training, make sure that all employees understand:

- What Title VII is.
- What Title VII requires.
- Who Title VII applies to.
- How the employees' actions can bring about liability for the employer.

Key Terms

Key terms are indicated larger, in boldface with alternate color, and defined in the margin during early usage. The terms are also listed in the glossary at the end of the book for quick reference.

The three post-Civil War statutes are now codified as 42 U.S.C. sections 1981, 1983, and 1985. They prohibit discrimination on the basis of race in making and enforcing contracts; prohibit the denial of civil rights on the basis of race by someone behaving as if they are acting on behalf of the government (called **under color of state law**); and prohibit concerted activity to deny someone their rights based on race.

Sections 1981 and 1983 are the laws most frequently used in the employment setting if a claim is not brought using Title VII. Since Title VII is part of a comprehensive statutory scheme to prohibit race and other discrimination, it is the preferred method of enforcing employment discrimination claims. As we have seen, a complete and comprehensive administrative structure has been set up to deal with such claims. The post-Civil War statutes do not offer such a structure. Employees bringing claims under Title VII go to the EEOC to file their claim and do not have to pay. Employees bringing claims under the post-Civil War statutes are on their own and must go to an attorney and must pay. On the other hand, the statute of limitations for the post-Civil War statutes is longer than

under color of state law
Government employee is illegally discriminating against another during performance of his or her official duties.

Exhibits

Numerous exhibits are included throughout the text to reinforce concepts visually and to provide students with essential background information.

| Exhibit 6.1 <i>Classified Ads, 1961</i> | | Exhibit 6.4 <i>Hispanic: Race or National Origin—and Who Is Included?</i> | |
|---|--|--|---|
| <p>The exhibit below, adapted from an actual newspaper classified ad section from 1961, is typical of what ads found in newspapers before Title VII was passed in 1964. For publication purposes, names and phone numbers have been omitted. It now illegal to advertise for males, females, or racial groups.</p> | | <p>Ever wonder where racial categories come from? In this interesting exhibit, you get to see (1) how a court addresses certain groups being left out of a definition of Hispanic (note especially footnote 1) and (2) how the government comes up with racial classifications and how they find their way into the mainstream. The first is an excerpt from a discrimination case; the second is a document from the U.S. Census Bureau about how Asians will be added to the minimum categories and how Hispanics will be classified in the census. While reading the document and noting all the effort and energy given to this issue, ponder the necessity of having such classifications at all.</p> | |
| <p>Male Help Wanted</p> <p>SOUTH ATLANTA PERMANENT position for 2 young men 18-35, must be ambitious, high school graduate, and neat appearing. \$85 week guaranteed, plus bonus. Opportunity to earn in excess of \$100 per week. Must have desire to advance with company. For interview call.</p> <p>ATTN YOUNG MEN</p> | <p>Situations Wanted, Female 24</p> <p>SECRETARY—RECEPTIONIST (experienced). Ex-Spanish teacher desires diversified permanent position. Responsible, personable like people, unencumbered. Can travel.</p> <p>EXPERIENCED executive secretary with college degree, top skills, currently employed—seeks better position with opportunity for advancement.</p> | <p>Situations Wanted, Male, Col. 28</p> <p>YOUNG man wants job. Short order and plain cooking, experienced.</p> | <p>“The purpose of strict scrutiny is to ‘smoke out’ illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool.”</p> <p>But once the government has shown that its decision to resort to explicit racial classifications survives strict scrutiny by being narrowly tailored to achieve a compelling interest, its program is no longer presumptively suspect. We do not think that it is appropriate to apply automatically strict scrutiny a second time in determining whether an otherwise valid affirmative action program is underinclusive for having excluded a particular plaintiff. In order to trigger strict scrutiny, such a</p> |
| | <p>Help Wanted, Female, Col. 29</p> <p>MAID, free to travel with family. \$35 to \$50 week. Free room and board.</p> | | |

Chapter Summaries

Each chapter closes with a summary section, giving students and instructors a tool for checking comprehension. Use this bulleted list as an aide in retaining key chapter points.

Chapter Summary

- Title VII prohibits employers, unions, joint labor-management committees, and employment agencies from discriminating in any aspect of employment on the basis of race, color, religion, gender, or national origin.
- Title VII addresses subtle as well as overt discrimination and discrimination that is intentional as well as unintentional.
- The law allows for compensatory and punitive damages, where appropriate, as well as jury trials.
- The post-Civil War statutes add another area of potential liability for the employer and have a much longer statute of limitations and unlimited compensatory and punitive damages.
- The employer’s best defense is a good offense. A strong, top-down policy of non-discrimination can be effective in setting the right tone and getting the

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Guide to Reading Cases

This guide gives succinct direction on how to get the most out of text cases. Terminology definitions, case citation explanations, and a walkthrough of the trial process are all included to help facilitate student comprehension.

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End of Chapter Material

Included at the end of each chapter is a complete set of questions incorporating chapter concepts. Use these as tools to assess your understanding of chapter material.

Chapter-End Questions

1. In the process of its recruitment of Peters, Security Pacific informed Peters that the company was doing "just fine" and Peters would have "a long tenure" at Security Pacific should he accept the position offered. In doing so, Security Pacific concealed its financial losses and the substantial, known risk that the project on which Peters was hired to work might soon be abandoned and Peters laid off. Peters accepted the position and moved from New Orleans to Denver to begin his new job. Two months later, Peters was laid off as a result of Security Pacific's poor financial condition. Does Peters have a cause of action?
2. A school district performs standard teacher evaluations including unannounced visits to classrooms, and messages are often delivered to the classroom throughout the day. It is discovered that a teacher engaged in intimate sexual contact with a student during the school day. Is the school district liable for negligent hiring? Should the employer have known that this could happen? [*P. L. v. Aubert*, 545 N.W.2d 666 (Minn. 1996).]
3. Can an employer automatically exclude all applicants with criminal conviction records? What if the policy was limited to felony convictions?
4. In 1997, Bobby Randall was hired at Walmart. At the time, Randall was not a convicted felon but had been previously convicted three times on misdemeanor charges for indecent exposure. At the time of his hiring, Walmart did not have a policy in place that required criminal background checks for employees. In September 2000, Randall fondled a 10-year-old girl while on the job in the Walmart store in which he worked.

You Be the Judge Online

You Be the Judge Online video segments include 18 hypothetical business law cases that are based on actual cases. Each case allows you to watch interviews of the plaintiff and defendant before the courtroom argument, see the courtroom proceedings, view relevant evidence, read other actual cases relating to the issues in the case, and then create your own ruling. After your verdict is generated, view what an actual judge ruled (unscripted) in the case and then get the chance to defend or change your ruling. Students can buy access via e-commerce through the book's Web site for \$10. Professors: Ask your McGraw-Hill sales representative how to obtain premium content to accompany *Employment Law for Business* for your course.

Online Learning Center

The Online Learning Center for this text gives a complete overview of its organization, features, and supplements. Students can study chapter objectives, view the Guide to Reading Cases, access the book's Glossary, and assess their learning with quizzes pertaining to every chapter. Instructors using the OLC can view all student materials as well as gain access to exclusive instructor resources, including teaching notes, class discussion starters, PowerPoint presentations, solutions to chapter-end questions, and a comprehensive Test Bank in document and computerized formats. Jump start your learning now by visiting www.mhhe.com/emplaw7e.



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