

EXERCISE 3.2: GOEBEL ET AL. V. FRANK CLOTHIERS

Overview

Many Title VII cases involve the presentation of statistical evidence that is alleged to indicate illegal discrimination. The purpose of this exercise is to review the statistical evidence presented and to assess the implications of the data for the organization.

Learning Objectives

After completing this exercise, you should be able to

1. Calculate adverse impact for a selection procedure.
2. Provide recommendations for a plaintiff filing a race discrimination case and for the employer in defending EEO practices.
3. Understand the burden of proof issues related to Title VII cases.

Procedure

Part A: Individual Analysis

- Step 1. Read the attached background material on *Goebel et al. v. Frank Clothiers* provided in Exhibit 3.2.1.

- Step 2. Assume the role of the HR director and respond to the issues described below. Please prepare concise, written responses for the legal division of Frank Clothiers. Answer the questions presented on Form 3.2.1.

Part B: Group Analysis

- Step 3. In groups of about six, members should attempt to reach consensus on issue #1. A rationale for the position should be developed that includes relevant court citations.
- Step 4. Designate one member from your group to present the group position and rationale.

Exhibit 3.2.1

Goebel et al. vs. Frank Clothiers

A division of Frank Clothiers had 36 openings for assistant store manager last year (see Exhibit 3.2.2 for the job description). Frank Clothiers filled the vacancies with 16 Black/African Americans, 10 Hispanic/Latinos, and 10 Whites. The selection process was a multiple-hurdle approach that began with an application form and a test of basic verbal and math skills called the **Wonderlic Personnel Test** (WPT; for sample items from the test, go to: <http://espn.go.com/page2/s/closer/020228test.html>; for more information, go to www.wonderlic.com). Frank has maintained a voluntary affirmative action program for 5 years. Applicants who scored 25 (out of 50) or higher on the test were then given an interview by the store managers. Based on the interview performances, the vacancies were filled. The race/ethnicity of those who took the Wonderlic were as follows:

	Black or African American	Hispanic or Latino	White
Test Scores			
Number scoring 25 or higher	25	28	74
Number scoring less than 25	26	20	29
Totals	51	48	103

Dennis Goebel, one of the African American applicants who scored 19 on the test, filed suit on behalf of all Black/African American applicants who scored less than 25. Mr. Goebel claimed race discrimination based on Title VII of the Civil Rights Act of 1964. Frank Clothiers has argued that more African Americans (i.e., 16) were actually hired than any other racial/ethnic category. Thus, the company asserts, there is obviously no racial discrimination in the selection process.

Assistant Manager Job Description (Frank Clothiers)

Exhibit 3.2.2

SUMMARY

Under general direction from the store manager, provides some administrative and functional supervision of a store unit, including inventory control, sales and returns, vendor relations, cash management, and related reporting. May supervise regular and/or temporary customer service and stock management staff.

Duties and Responsibilities:

1. Assists in managing the operation of a store unit, including purchasing of supplies and books, special orders, receiving and shipping, and return of overstocked or defective merchandise.
2. Supervises personnel, which typically includes recommendations for hiring, firing, performance evaluation, training, work allocation, and problem resolution.
3. Prepares drafts of purchase requisitions and related paperwork, including annual budgets and accounts payable; monitors expenditures and revenue; makes periodic scheduled and ad hoc reports of store activity.
4. Through the store manager, helps to develop and control department budgets; researches and compiles administrative reports for personnel, payroll, and trade organization surveys for cost estimation and budget review.
5. Helps to coordinate some department marketing activities.
6. Assists in year-end inventory, utilizing computer to check for theft and shrinkage.
7. May oversee or manage the operation of auxiliary services such as vending machines or student service areas.
8. Uses systems and processes to establish and maintain records for the operating unit.
9. Assists with the implementation of policies and procedures consistent with those of the organization to ensure efficient and safe operation of the unit.
10. Performs miscellaneous job-related duties as assigned.

Minimum Job Requirements:

High school diploma or GED.

Knowledge, Skills, and Abilities Required:

- Ability to gather data, compile information, and prepare reports.
- Skill in the use of personal computers and related software applications.
- Ability to prepare routine administrative paperwork.
- Ability to communicate effectively, both orally and in writing.
- Ability to supervise and train employees, to include organizing, prioritizing, and scheduling work assignments.
- Skill in examining and re-engineering operations and procedures, formulating policy, and developing and implementing new strategies and procedures.
- Ability to receive, stock, and/or deliver goods.
- Employee development and performance management skills.
- Skill in the use of computers, preferably in a PC, Windows-based operating environment.
- Skill in budget preparation and fiscal management.
- Ability to foster a cooperative work environment.
- Knowledge of procurement rules and regulations.
- Knowledge of retail advertising, sales promotion, and/or visual merchandising techniques.
- Strong interpersonal and communication skills and the ability to work effectively with a wide range of constituencies in a diverse community.
- Ability to develop and maintain recordkeeping systems and procedures.
- Knowledge of retail floor merchandising and stock control procedures.

Working Conditions and Physical Effort:

- Work is normally performed in a typical interior/office work environment.
- No or very limited physical effort required.
- No or very limited exposure to physical risk.

Name _____

Group _____

FORM 3.2.1

3. If disparate impact is evident, what steps should the defendant take next? Provide specific recommendations.

FORM 3.2.1 (Continued)

Name _____ Group _____

4. An associate of the personnel department proposes that Frank should continue to use the Wonderlic but that the test scores should be interpreted by the racial/ethnic classification of the test taker. For example, raw scores on the Wonderlic would be converted to percentages *within ethnic classification*. With such a procedure, African Americans taking the test who receive the exact raw score as whites would receive a higher percentage score on the exam because of the "within-ethnic" interpretation. He argues that this procedure would enable Frank to continue using a valid and useful test while avoiding adverse impact. (Mr. Goebel would have advanced to the interview with this approach.) Take a position on this recommendation.
5. Gordon Howe, a white male, scored 48 on the WPT and was interviewed but not selected. Does Mr. Howe have a possible Title VII lawsuit? Could whites who were interviewed but not hired file a Title VII class-action lawsuit?
6. Can "disparate impact" theory be used in cases involving subjective selection processes like interviews? What Supreme Court case supports your position?