

Human Resource Management

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Chapter 3: Diversity and Multiculturalism

Hiring Multicultural

On a Tuesday afternoon, as you are getting ready to go to lunch, you receive an e-mail from your human resources (HR) manager about the need to hire a new project manager, and there is a \$500 bonus for referring a friend who successfully joins the company. Immediately, you e-mail your friend Daniel, because you know he would be great for the job. Daniel is eventually hired for the position, and a few months later a new e-mail goes out asking for friend recommendations for a new position. You and Daniel both recommend someone, and eventually that person gets hired. Over the next year, hiring notices are not advertised externally as the organization has had good luck with this hiring practice. Seems like a great way to recruit new people, doesn't it? It can be, but it also can be a detriment to the diversity and multiculturalism of the workplace. How, you might wonder?

While not true across the board, people have a tendency to spend time with people who are like themselves, in race, income level, and other aspects of diversity such as sexual orientation. In fact, according to the National Institute of Child Health and Human Development and a study published in the *American Journal of Sociology*, it is much more likely that someone will name a person in their own race as a friend than someone of a different race (Moody, 2001). Likewise, even from a young age, people tend to choose friends who are of the same race. As a result, when you recommend Daniel for a position, it is highly likely that Daniel is similar, from a diversity perspective, to you. Then, when Daniel recommends someone for a job, it is highly likely that he, too, is recommending someone with similar characteristics as you both. This obviously creates a lack of multicultural diversity in the workplace, which can mean lost profits for companies.

HRM and Multiculturalism

[\(click to see video\)](#)

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3.1 Diversity and Multiculturalism

Learning Objectives

1. Define, explain, and identify your own power and privilege.
2. Provide reasoning as to why diversity is important to maintain profitability.

Many people use the terms *diversity* and *multiculturalism* interchangeably, when in fact, there are major differences between the two. **Diversity** is defined as the differences between people. These differences can include race, gender, sexual orientation, religion, background, socioeconomic status, and much more. Diversity, when talking about it from the human resource management (HRM) perspective, tends to focus more on a set of policies to meet compliance standards. The Equal Employment Opportunity Commission (EEOC) oversees complaints in this area. We discuss the EEOC in [Section 3.3.1 “Equal Employment Opportunity Commission \(EEOC\)”](#) and in greater detail in [Chapter 4 “Recruitment”](#) and [Chapter 5 “Selection”](#).

Multiculturalism goes deeper than diversity by focusing on inclusiveness, understanding, and respect, and also by looking at unequal power in society. In a report called “The 2007 State of Workplace Diversity Management Report¹,” most HR managers said that diversity in the workplace is

1. not well defined or understood at work,
2. focuses too much on compliance, and
3. places too much emphasis on gender and ethnicity.

This chapter focuses on the advantages of a diverse workplace and discusses multiculturalism at work and the compliance aspect of diversity.

Power and Privilege

As defined in this chapter, diversity focuses on the “otherness” or differences between individuals and has a goal of making sure, through policies, that everyone is treated the same. While this is the legal and the right thing to do, multiculturalism looks at a system of advantages based on race, gender, and sexual orientation called **power and**

privilege. In this system, the advantages are based on a system in which one race, gender, and sexual orientation is predominant in setting societal rules and norms.

The interesting thing about power and privilege is that if you have it, you may not initially recognize it, which is why we can call it invisible privilege. Here are some examples:

1. **Race privilege.** Let's say you (a Caucasian) and your friend (an African American) are having dinner together, and when the bill comes, the server gives the check to you. While this may not seem like a big issue, it assumes you (being Caucasian) are the person paying for the meal. This type of invisible privilege may not seem to matter if you have that privilege, but if you don't, it can be infuriating.
2. **Social class privilege.** When Hurricane Katrina hit New Orleans in 2005, many people from outside the storm area wondered why so many people stayed in the city, not even thinking about the fact that some people couldn't afford the gas to put in their car to leave the city.
3. **Gender privilege.** This refers to privileges one gender has over another—for example, the assumption that a female will change her name to her husband's when they get married.
4. **Sexual orientation privilege.** If I am heterosexual, I can put a picture of my partner on my desk without worrying about what others think. I can talk about our vacations together or experiences we've had without worrying what someone might think about my relationship. This is not the case for many gay, lesbian, and transgendered people and their partners.

Oftentimes the privilege we have is considered invisible, because it can be hard to recognize one's own privilege based on race, gender, or social class. Many people utilize the color-blind approach, which says, "I treat everyone the same" or "I don't see people's skin color." In this case, the person is showing invisible privilege and thus ignoring the privileges he or she receives because of race, gender, or social class. While it appears this approach would value all people equally, it doesn't, because people's different needs, assets, and perspectives are disregarded by not acknowledging differences (Plaut, et. al., 2009).

Another important aspect of power and privilege is the fact that we may have privilege in one area and not another. For example, I am a Caucasian female, which certainly gives me race privilege but not gender privilege. Important to note here is that the idea of power and privilege is not about "white male bashing" but understanding our own stereotypes and systems of advantage so we can be more inclusive with our coworkers, employees, and managers.

So what does this all mean in relation to HRM? It means we can combine the understanding of certain systems that allow for power and privilege, and by understanding we may be able to eliminate or at least minimize these issues. Besides this, one of the best things we can do for our organizations is to have a diverse workforce, with people from a variety of perspectives. This diversity leads to profitability and the ability to better serve customers. We discuss the advantages of diversity in [Section 3.1.2 "Why Diversity and Multiculturalism?"](#).

Human Resource Recall

Take this week to examine your own power and privilege as a result of gender, race, or social class. Notice how people treat you because of your skin color, gender, or how you dress and talk.

Stereotypes and the Effect on Privilege

This video discusses some racial stereotypes and white privilege through “on the street” interviews.

Please view this video at <http://www.youtube.com/watch?v=Q1wztUJ4VVE>.

Why Diversity and Multiculturalism?

Figure 3.1



While there may be no “money fairy,” diversity has proven to result in higher profits for companies.

Just Another Shot – [Fairies!!](#) – CC BY-NC-ND 2.0; [Wikimedia Commons](#) – public domain.

When many people look at diversity and multiculturalism, they think that someone’s gender, skin color, or social class shouldn’t matter. So diversity can help us with policies to prevent discrimination, while multiculturalism can help us gain a deeper understanding of the differences between people. Hopefully, over time, rather than look at diversity as attaining numerical goals or complying with the law, we can combine the concepts to create better workplaces. Although many books discuss laws relating to diversity, not many actually describe why diversity is necessary in the workplace. Here are a few main reasons:

1. It is the law.
2. We can better serve customers by offering a broader range of services, such as being able to speak a

variety of languages and understanding other cultures.

3. We can better communicate with one another (saving time and money) and customers.
4. With a multicultural perspective, we can create better ideas and solutions.

Fortune 500 Focus

Hilton is one of the most recognized names in the hotel industry. Hilton employs 130,000 people in 3,750 hotels in 84 countries. The hotel chain, with some locations franchised, focuses on diversity and inclusion as part of its operations. First, it has a director of global diversity and inclusion, who plays a key role in executing the Hilton global diversity and inclusion efforts, which are focused on culture, talent, workplace, and marketplace diversity strategies. Each Hilton brand must establish its own diversity performance goals and initiatives, which are monitored by the diversity council. The diversity council is made up of the company board of directors, the CEO, and vice president of human resources. At any given time, Hilton has thirty or more diversity initiatives in place (Forsythe, 2005), which are managed by the diversity council.

Hilton has created several diversity programs within the communities in which the hotels operate. For example, Hilton was one of the first hotel chains to develop an outreach program to educate minority and female entrepreneurs for franchise investments. One part of the program includes invitation-only seminars that discuss what it takes to be a successful hotel owner. Hilton says its diversity seminars are driven by the fact that it wants employees to reflect the diversity of the customers.

In addition to the outreach program, Hilton partners with historically black colleges and universities for recruiting, which creates an effective tie to jobs once students graduate. It has developed a supplier tracking system, so it knows the total number of supplier payments made and how many of those suppliers are female or minorities. William A. Holland, the vice president for workforce planning and analysis says, “It takes leadership to make diversity work, and our diversity initiative comes from the highest levels of our organization” (Forsythe, 2005).

Promoting a multicultural work environment isn’t just the law. Through a diverse work environment and multicultural understanding, organizations can attain greater profitability. A study by Cedric Herring called *Does Diversity Pay?* (Herring, 2006) reveals that diversity does, in fact, pay. The study found those businesses with greater racial diversity reported higher sales revenues, more customers, larger market shares, and greater relative profits than those with more homogeneous workforces. Other research on the topic by Scott Page, the author of *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Page, 2007) ended up with similar results. Page found that people from varied backgrounds are more effective at working together than those who are from similar backgrounds, because they offer different approaches and perspectives in the development of solutions. Often people believe that diversity is about checking a box or only providing window dressing to gain more customers, but this isn’t the case. As put by Eric Foss, chairperson and CEO of Pepsi Beverages Company, “It’s not a fad. It’s not an idea of the month. It’s central and it’s linked very directly to business strategy” (Holstein, 2009). A study by the late Roy Adler of Pepperdine University shows similar results. His 19-year study of 215 *Fortune* 500 companies shows a strong correlation between female executives and high profitability (Adler). Another study, conducted by Project Equality, found that companies that rated low on equal opportunity issues earned 7.9 percent profit, while those who rated highest with more equal opportunities resulted

in 18.3 percent profit (Lauber, 2011). These numbers show that diversity and multiculturalism certainly is not a fad, but a way of doing business that better serves customers and results in higher profits.

As managers, we need to recognize this and develop policies that recognize not only the importance of diversity but the importance of nurturing multicultural understanding in the workplace. Many employees, however, may be resistant to a discussion on diversity and multiculturalism. Much of this may have to do with their own power and privilege, but some resistance may be related to the discomfort people may feel when faced with the realization that change is a necessity and the cultural makeup of the workplace is changing. Some people may feel “We’ve always done it this way” and are less willing to change to the new ways of doing things.

Perhaps one of the best diversity statements by a *Fortune* 500 company was made by Jose Manuel Souto, the CFO for Visa in Latin America. He says, “A diverse workforce is critical to providing the best service to our global clients, supporting our business initiatives, and creating a workplace environment that promotes respect and fairness².”

Now that you have an understanding of the meaning of diversity, power, and privilege, as well as the importance of diversity, we will discuss specific diversity strategies in [Section 3.2 “Diversity Plans”](#).

Key Takeaways

- *Diversity* is the real or perceived differences between individuals. This can include race, gender, sexual orientation, size, cultural background, and much more.
- *Multiculturalism* is a term that is similar to diversity, but it focuses on development of a greater understanding of how power in society can be unequal due to race, gender, sexual orientation, power, and privilege.
- *Power and privilege* is a system of advantages based on one’s race, gender, and sexual orientation. This system can often be invisible (to those who have it), which results in one race or gender having unequal power in the workplace. Of course, this unequal power results in unfairness, which may be of legal concern.
- *Diversity* is important to the success of organizations. Many studies have shown a direct link between the amount of diversity in a workplace and the company’s success.

Exercises

1. Perform an Internet search to find a specific diversity policy for an organization. What is the policy? From what you know of the organization, do you believe they follow this policy in reality?
2. Visit the website <http://www.diversityinc.com> and find their latest “top 50 list.” What criteria are used to appear on this list? What are the top five companies for the current year?

¹Society for Human Resource Management, *The 2007 State of Workplace Diversity Management Report*, March

2008, accessed August 3, 2011, <http://www.shrm.org/Publications/HRNews/Pages/DiversityBusinessImperative.aspx>.

²National Latina Business Women Association, “Women and Minorities on Corporate Boards Still Lags Far Behind National Population,” accessed August 24, 2011, <http://nlbwa.org/component/content/article/64-nationalnews/137-procon-and-asian-global-sourcing-conference>.

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3.2 Diversity Plans

Learning Objectives

1. Be able to apply strategies to create a multicultural work environment and diversity plans.
2. Be able to create an HR plan with diversity considerations.

While state and federal laws must be followed to ensure multiculturalism, the culture of the company and the way the organization operates can contribute to the nurturing of a multicultural environment (or not). Most companies have a formalized and written antidiscrimination and harassment policy. For example, Zappos's policy states, "The diversity of Zappos' employees is a tremendous asset. We are firmly committed to providing equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment. Examples of such behavior include derogatory comments based on racial or ethnic characteristics and unwelcome sexual advances. Please refer to the applicable sections of the Employee Handbook for further guidance¹."

Implementing a policy is an excellent first step, but what is important is how the company acts on those formalized processes and written policies. Let's say, for example, an organization has a published policy on inclusion of those with physical disabilities, but much "schmoozing" and relationship development with managers takes place on the golf course on Friday afternoons. While the policy states the company doesn't discriminate, their actions and "traditions" show otherwise and do discriminate against those with disabilities. If this is where the informal work and relationship building take place, an entire group could be left out of this process, likely resulting in lower pay and promotion rates. Likewise, organizations that have a "beer Friday" environment may discriminate against those whose religions do not condone drinking alcohol. While none of these situations are examples of blatant discrimination, a company's culture can contribute to an environment that is exclusive rather than inclusive.

Many organizations have developed diversity management plans that are tied to the written diversity policy of the organization. In fact, in many larger organizations, such as Hilton, manager- or director-level positions have been created to specifically manage diversity plans and programs. Josh Greenberg, a researcher in the area of workplace diversity, contends that organizations with specific diversity plans tend to be able to facilitate changes more quickly than companies without diversity plans (Greenberg, 2004). He says there are three main steps to creating diversity plans:

1. **Assessment of diversity.** Employee satisfaction surveys, discussions, and open forums that can provide

insight into the challenges and obstacles to diversity. Inclusion of all workers for input is necessary to create a useful plan.

2. Development of the diversity plan. Based on step 1, a series of attainable and measurable goals should be developed regarding workplace diversity.

3. Implementation of the plan. The commitment of executives and management is necessary. Formulating action plans based on the goals developed in step 2 and assignment of implementation and measurement of those plans must follow. The action plan should be the responsibility of the entire organization, not just the director of diversity or human resources.

In [Section 3.2.1 “Recruitment and Selection”](#), we discuss some of the HR plan considerations in company culture and “our way of doing things” that are worth considering when creating a diversity plan.

Recruitment and Selection

As you saw in the opening of [Chapter 3 “Diversity and Multiculturalism”](#), sometimes organizations do not mean to be exclusive or discriminatory, but their practices are discriminatory and illegal. For example, the Equal Employment Opportunity Commission (EEOC) says it is illegal to publish a job advertisement that shows a preference for a particular type of person or discourages someone from applying for a job. For example, a Facebook post that says “recent college graduates wanted” might be inclusive to a younger group and discouraging to a diverse (older) workforce, not making the post multicultural. Another example might be the reliance on word-of-mouth advertisement for job openings. Suppose you have a mostly Hispanic workforce and use word of mouth for recruitment. It is likely that most new hires will also be Hispanic. This is also illegal, but perhaps a consideration is the lack of diversity you will have in your workplace with these recruitment methods.

Make sure that job announcements aren’t posted only for your Facebook friends to see; post them in a variety of places to gain the largest and most diverse response.

We address discrimination in the selection process in [Chapter 5 “Selection”](#). However, a mention of the four-fifths rule here is important to determine how we can quantitatively evaluate discrimination in our selection practices. One way to calculate possible discrimination is by using the [four-fifths rule](#), or 80 percent rule. The rule states that a selection rate for any race, sex, or ethnic group that is less than four-fifths of the rate for the group with the highest rate could be regarded as adverse impact. [Adverse impact](#) refers to employment practices that may appear to be neutral but have a discriminatory effect on a protected group. For example, let’s assume 100 women and 500 men applied to be firefighters. Let’s say 20 of those women were hired and 250 men were hired. To determine adverse impact based on the four-fifths rule, calculate the following:

- Selection rate for women: 20 percent
- Selection rate for men: 50 percent
- Then divide the highest selection rate: $.20/.50 = .4$

Because .4, or 40 percent, is less than four-fifths, there may be adverse impact in the selection process for firefighters.

Testing

If employment tests are required, a test must be in direct relation to the job. For example, an organization that uses a personality test in hiring must be able to show that the personality test results are nondiscriminatory and do not exclude a population.

In addition, if a reasonable accommodation is needed, such as an interpreter, and it does not cause financial difficulty for the organization, this should be granted.

Also consider the type of test and how it might exclude a certain group of people, such as those who don't speak English as a first language. We will discuss multiculturalism and testing further in [Chapter 5 “Selection”](#).

Pay and Promotion

Development of policies related to pay and promotion is key to fairness in a multicultural situation. It is widely published that women make about 77 percent of what men earn for similar jobs². Many studies have tried to determine a cause for this pay inequity, and here are some of the possible reasons studied and researched:

1. **Hours worked.** Studies have said that women tend to work fewer hours because of child-care and housework expectations.
2. **Occupational choice.** A study performed by Anne York at Meredith College (York, 2008) found that women tend to choose careers that pay less because they are worried about balancing family and career. In addition, numerous studies show that women choose careers on the basis of gender stereotypes (e.g., nurse, teacher) and that this leads to lower pay.
3. **Stereotypes.** The concept of male bias is a possibility. In many studies, people were more likely to choose male doctors over female doctors, even when experience and education were the same (Hekman, et al., 2010). There appears to be a perception that men may be more competent in certain types of jobs.
4. **Maternity and family leave.** Women leaving the workforce for a short or extended period of time may affect the perception of promotability in the workplace.
5. **Salary negotiation**(Bowles & Babcock, 2008). A study performed by Bowles and Babcock showed that men were eight times more likely to negotiate salary than women. In addition, when women did negotiate, they received lower monetary returns. Consider a study performed by Cornell University, which found that women were often negatively affected in their job when they negotiated salary, as compared to men not being viewed negatively after negotiations.

Whatever the reason for pay difference, all managers should be aware of these differences when hiring and promoting. Allowing managers to determine the pay for their employees can also bring out negative stereotypes—and lead to breaking of the law. Determining a set pay schedule for all new and promoted employees can help remedy this situation.

A factor in promotions can also be the mentor-mentee relationship. Most individuals in organizations will have an informal mentor who helps them “through the ranks.” Traditionally, this informal mentor relationship results in someone “pairing up” with another who has similar physical characteristics, is the same gender, or has a

similar mind-set. As a result, if the organization has, for example, mostly men, it is likely the female will not be informally mentored, which can result in lack of promotion. Likewise, if the workforce consists of mostly Caucasian females, it is likely the African American male may not develop an informal mentor relationship with his female counterparts. Development of a formal mentorship program to ensure that everyone has a mentor is one way to alleviate this situation. Mentorship programs are discussed in [Chapter 8 “Training and Development”](#).

Now What?

Now that you have an awareness of the aspects of HR that could be affected by multiculturalism, you may consider what steps you can take to create a more multicultural workplace. The first step would be to create a diversity plan, as discussed earlier in this section. The second step would be to look at the operation of the HR department and to figure out what departmental measures can be taken to promote diversity.

HR, for example, can provide a training series on power and privilege and how it relates to the workplace. Awareness is the first step to creating a truly multicultural environment. Once employees recognize their own power and privilege, the training could be developed to include laws related to diversity, and discussions on bias can take place. Then discussions can be held on how to improve HR plans such as job analysis, recruitment, and selection to create a multicultural work environment. Rather than thinking about this training as one of many objectives that must be accomplished, think about the training from the conversation perspective. Getting the conversation started is the first step in this personal and professional development process for employees.

Figure 3.2



Checking your own perceptions on multiculturalism can be a good first step to creating a more multicultural and diverse workplace.

Paul Townsend – [relics of a bygone age – sounds you’ll probably never hear again!](#) – CC BY-ND 2.0.

Some of the aspects to creating a training focused on multiculturalism might include the following:

1. Build a cultural knowledge about customs, religions, and histories.
2. Discuss treatment of people based on them as individuals, rather than as part of a “group,” which can result in stereotyping.
3. Teach employees to listen actively, which can help raise cultural awareness.
4. Train employees to rethink current policies and how those policies might be exclusive to a certain group.
5. Work on resistance to change. Many employees think, “This is the way we have always done it, and now we have to change it because we have a group of ____ working here now.”
6. Does your leadership team have a multiculturalism perspective? Are many ethnic backgrounds and other multicultural traits represented?

While these suggestions may not eliminate power and privilege, the ability to talk about differences and expectations can be a key ingredient to creating a more inclusive environment. Sometimes this type of training can help people evaluate their perceptions. For example, suppose a complaint came through that a woman was making derogatory sexual comments to only one group of men in an organization. When talked to about it, she said she made comments to the “techies” because she thought the comments would provide them a needed confidence boost, but she generally wouldn’t make those types of comments. This is an example of her perception (“techies” need confidence boosts from women) followed by her action (the comments) on this perception. When we assume our perceptions are correct, we are usually wrong. Training can get people to consider their emotions, stereotypes, and expectations. Besides training, asking ourselves a series of important questions can be the start to making diversity and multiculturalism work. The University of California, San Francisco human resource department lists some of these questions, which are shown in the sidebar.

Things to Consider When Creating a Multicultural and Diverse Work Environment

- Do you test your assumptions before acting on them?
- Do you believe there is only one right way of doing things, or that there are a number of valid ways that accomplish the same goal? Do you convey that to staff?
- Do you have honest relationships with each staff member you supervise? Are you comfortable with each of them? Do you know what motivates them, what their goals are, and how they like to be recognized?
- Are you able to give negative feedback to someone who is culturally different from you?
- When you have open positions, do you insist on a diverse screening committee and make additional outreach efforts to ensure that a diverse pool of candidates has applied?
- When you hire a new employee, do you not only explain job responsibilities and expectations clearly but orient the person to the campus and department culture and unwritten rules?
- Do you rigorously examine your unit’s existing policies, practices, and procedures to ensure that they do not differentially impact different groups? When they do, do you change them?

- Are you willing to listen to constructive feedback from your staff about ways to improve the work environment? Do you implement staff suggestions and acknowledge their contribution?
- Do you take immediate action with people you supervise when they behave in ways that show disrespect for others in the workplace, such as inappropriate jokes and offensive terms?
- Do you make good faith efforts to meet your affirmative action goals?
- Do you have a good understanding of institutional isms such as racism and sexism and how they manifest themselves in the workplace?
- Do you ensure that assignments and opportunities for advancement are accessible to everyone?
- What policies, practices, and ways of thinking have differential impact on different groups?
- What organizational changes should be made to meet the needs of a diverse workforce?

Source: University of California, San Francisco, “Managing Diversity in the Workplace,” chap. 12 in *Guide to Managing Human Resources*, accessed July 11, 2011, <http://ucsfhr.ucsf.edu/index.php/pubs/hrguidearticle/chapter-12-managing-diversity-in-the-workplace/#684>.

Human Resource Recall

Why is multiculturalism important in the workplace? What is your role, as an employee in your organization, to ensure a diverse workforce?

How Would You Handle This?

Refer a Friend

Your manager is very concerned about the cost of hiring the three new people you need. As a result, she doesn’t want to post the advertisement in a variety of places; she thinks it’s best to just use a “refer a friend” recruitment strategy. When she moves forward with this strategy, ten people turn in résumés. Upon looking further, it appears all applicants went to the same private religious college and graduated around the same time. You are concerned that this method of recruitment lacks diversity. How would you handle this with your manager?

How Would You Handle This?

<https://api.wistia.com/v1/medias/1371393/embed>

The author discusses the How Would You Handle This situation in this chapter at: <https://api.wistia.com/v1/medias/1371393/embed>.

Key Takeaways

- Oftentimes there are cultural aspects to an organization that make it resistant to an inclusive environment. These are often not obvious, but it is important to be aware of how your own company culture impacts multiculturalism.
 - One way to begin the discussion within your organization is to create diversity action plans, for which the entire company is responsible and for which HR is the change agent. In addition to companywide initiatives, HR can also look within its own HR plans to see where it may be able to change.
 - In recruitment, awareness of how and where you post announcements is crucial.
 - Testing should be fair and unbiased and shouldn't negatively impact someone based on race, national origin, gender, social class, or educational level.
 - There are many reasons for differences in pay. Development of a set pay scale can alleviate some of the issues surrounding unfair pay, especially between men and women.
 - Formal mentorship programs can create multicultural understanding and can ensure people do not stick with their own race or gender when helping someone move up the ranks in an organization.

Exercises

1. What are some things we can do, personally, to be more multiculturally efficient?
2. What are the advantages of having a set pay scale? What are the disadvantages?

¹Zappos.com, accessed August 25, 2011, <http://about.zappos.com/our-unique-culture/zappos-core-values/build-open-and-honest-relationships-communication>.

²National Committee on Pay Equity, accessed August 25, 2011, <http://www.iwpr.org/initiatives/pay-equity-and-discrimination/#publications>.

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3.3 Multiculturalism and the Law

Learning Objectives

1. Define the role of the Equal Employment Opportunity Commission (EEOC).
2. Explain the various types of laws covered by the EEOC.

As we already know, it is in an organization's best interest to hire and promote a multicultural and diverse workforce. Sometimes though, people are still discriminated against at work. As a result, a federal agency has been established to ensure employees have a place to file complaints should they feel discriminated against. This is the topic of [Section 3.1 “Diversity and Multiculturalism”](#). However, please note that each of these topics is discussed in [Chapter 4 “Recruitment”](#) as well, but they are also worth mentioning here.

Equal Employment Opportunity Commission (EEOC)

The [Equal Employment Opportunity Commission \(EEOC\)](#) is a federal agency charged with the task of enforcing federal employment discrimination laws. The laws include those that protect people from discrimination in all areas of employment, such as discrimination based on race, color, religion, sex, national origin, age, and disability. People who have filed a discrimination charge are also protected against discrimination under the EEOC. Employers with at least fifteen employees (twenty for age discrimination) are covered under the EEOC. This agency covers not only discrimination in hiring but also discrimination in all types of work situations such as firing, promotions, harassment, training, wages, and benefits. The EEOC has the authority to investigate charges of discrimination against employers. The agency investigates the claims, makes a finding, and then tries to settle the charge. If they are unsuccessful in settling the charge, the EEOC has the right to file a lawsuit on behalf of the complainants. The EEOC has headquarters in Washington, DC, with fifty-three field offices throughout the United States.

If a company has more than one hundred employees, a form called the EEO-1 must be filled out yearly. This form confirms the demographics of an organization based on different job categories¹. An organization that employs more than fifty people and works for the federal government must also file an EEO-1 yearly, with the deadline normally in September. In addition, organizations must post the EEOC notice, which you have probably seen

before, perhaps in the company break room. Finally, organizations should keep on file records such as hiring statistics in the event of an EEOC investigation.

It is necessary to mention here that while there is a legal compliance concern, as discussed before, it is in the company's best interest to hire a diverse workforce. So while we can discuss the legal aspects, remember that the purpose of having a diverse workforce is not just to meet EEOC requirements but to create a better, more profitable workplace that better serves customers.

Table 3.1 How the EEOC Process Works and Requirements for Employers

Requirements by EEOC
Post Federal and State EEOC notices
File yearly report called EEO-1
Keep copies of documents on file
Process for Investigation
1. The EEOC complaint is filed.
2. The EEOC notifies the organization of the charges.
3. The EEOC acts as a mediator between the employee and the employer to find a solution.
4. If step 3 is unsuccessful, the EEOC will initiate an investigation.
5. The EEOC makes a determination, and then the employer has the option of remedying the situation or face a potential lawsuit.

EEOC Federal Legislation

While the EEOC is the larger governing body, many pieces of legislation relating to multicultural practices are part of the EEOC family of laws. Many of these laws began with [Title VII of the Civil Rights Act](#) in 1964. This act, enforced by the EEOC, covers several areas in which discrimination was rampant. However, a [bona fide occupational qualification \(BFOQ\)](#) is a quality or attribute employers are allowed to consider when making decisions during the selection process. Examples of BFOQs are a maximum age limit for airline pilots for safety reasons and a Christian college's requirement that the president of the college be Christian.

EEOC laws relate specifically to the following and are discussed in detail in [Chapter 4 “Recruitment”](#) and [Chapter 5 “Selection”](#):

1. Age
2. Disability
3. Equal pay
4. Genetic information
5. National origin
6. Pregnancy
7. Race/color
8. Religion

9. Retaliation

10. Sex

11. Sexual harassment

Age

Age discrimination involves treating someone less favorably because of his or her age. Created in 1967, the [Age Discrimination in Employment Act \(ADEA\)](#) is enforced by the EEOC. This law covers people who are age forty or older. It does not cover favoring an older worker over a younger worker, if the older worker is forty years or older. The law covers any aspect of employment such as hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other condition or term of employment.

The law also goes deeper by forbidding harassment of someone based on age. While simple teasing or offhand comments are not covered, more serious offensive remarks about age are covered by this EEOC law.

Disability

The [Americans with Disabilities Act \(ADA\)](#) prohibits discrimination against those with disabilities and is enforced by the EEOC. Discrimination based on disability means treating a qualified person unfavorably because of a disability. For example, if someone has AIDS that is controlled, the employee cannot be treated unfavorably. The law requires an employer to provide [reasonable accommodation](#) to an employee or applicant with a disability, unless this accommodation would cause significant difficulty or expense for the employer. A reasonable accommodation is defined by the EEOC as any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. A reasonable accommodation might include making the workplace accessible for wheelchair use or providing equipment for someone who is hearing or vision impaired.

This law does not mean that organizations are required to hire unqualified people. The law specifically states the person must be qualified for the job and have a disability defined by the law. A disability defined by the law can include the following:

1. Physical or mental condition that limits a major life activity (walking, talking, seeing, hearing, or learning)
2. History of a disability (e.g., cancer that is in remission)
3. Physical or mental impairment that is not transitory (lasting or expected to last less than six months)

The law places limits on employers when it comes to asking job applicants questions about medical history or asking a person to take a medical exam.

Equal Pay/Compensation

The basis of this law is that people are paid the same for the same type of work, and the law specifically addresses gender pay differences. Rather than job title, job content is used to determine if the job is the same work. In

addition to covering salary, it deals with overtime pay, bonus, stock options, profit sharing, and other types of bonus plans such as vacation and holiday pay. If inequality in pay is found, the employer cannot reduce the wages of either sex to equalize the pay.

An employee who files an equal pay charge has the option to go directly to court rather than the EEOC.

Genetic Information

This law is one of the newer EEOC laws, which took effect in November 2009. The EEOC's definition of genetic information includes family medical information or information about the manifestation of a disease or disorder in an individual's family. For example, an employer cannot discriminate against an employee whose family has a history of diabetes or cancer. This information could be used to discriminate against an employee who has an increased risk of getting a disease and may make health-care costs more expensive for the organization.

In addition, the employer is not allowed to seek out genetic information by requesting, requiring, or purchasing this information. However, there are some situations in which receiving this information would not be illegal:

1. A manager or supervisor overhears an employee talking about a family member's illness.
2. Information is received based on wellness programs offered on a voluntary basis.
3. If the information is required as documentation to receive benefits for the Family and Medical Leave Act (FMLA). FMLA is discussed in [Section 3 "Pregnancy"](#).
4. If the information is commercial, such as the appearance of information in a newspaper, as long as the employer is not specifically searching those sources for the purpose of finding genetic information.
5. If genetic information is required through a monitoring program that looks at the biological effects of toxic substances in the workplace.
6. For those professions that require DNA testing, such as law enforcement agencies. In this case, the genetic information may only be used for analysis in relation to the specific case at hand.

This law also covers how information about genetics should be kept. For example, genetic information must be kept separate from an employee's regular file.

National Origin

It is illegal to treat people unfavorably because they are from a particular country or part of the world, because of their accent, or because they appear to be of a particular descent (even if they are not). The law protecting employees based on national origin refers to all aspects of employment: hiring, firing, pay, job assignments, promotions, layoffs, training, and fringe benefits. An employer can require an employee to speak English only if it is necessary to perform the job effectively. An English-only policy is allowed only if it is needed to ensure the safe or efficient operations of the employer's business. An employer may not base an employment decision on a foreign accent, unless the accent seriously interferes with job performance.

Pregnancy

This section of the EEOC refers to the unfavorable treatment of a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The Pregnancy Discrimination Act of 1978, added to the Civil Rights Act of 1964, is enforced by the EEOC. The female who is unable to perform her job owing to pregnancy must be treated the same as other temporarily disabled employees. For example, modified tasks or alternative assignments should be offered. This law refers not only to hiring but also to firing, pay, job assignments, promotions, layoffs, training, and fringe benefits. In addition to this law against discrimination of pregnant women, the [Family and Medical Leave Act \(FMLA\)](#) is enforced by the US Department of Labor². The FMLA requires companies with fifty or more employees to provide twelve weeks of unpaid leave for the following:

1. Birth and care of a newborn child
2. Care of an adopted child
3. Care for immediate family members (spouse, child, or parent) with a serious health condition
4. Medical leave for the employee who is unable to work because of a serious health condition

In addition to the company size requirement, the employee must have worked at least 1,250 hours over the past 12 months.

Race/Color

This type of discrimination refers to treating someone unfavorably because he or she is of a certain race or because of certain characteristics associated with race. These characteristics might include hair texture, skin color, or facial features. Discrimination can occur when the person discriminating is the same race or color of the person who is being discriminated against. EEOC law also protects people who are married to or associated with someone of a certain race or color. As with the other types of antidiscrimination laws we have discussed, this law refers not only to the initial hiring but also to firing, pay, job assignments, promotions, layoffs, training, and fringe benefits.

Religion

This part of the EEOC refers to treating a person unfavorably because of their religious beliefs. This law requires a company to reasonably accommodate an employee's religious beliefs or practices, unless doing so would burden the organization's operations. For example, allowing flexible scheduling during certain religious periods of time might be considered a reasonable accommodation. This law also covers accommodations in dress and grooming, such as a headscarf, religious dress, or uncut hair and a beard in the case of a Sikh. Ideally, the employee or applicant would notify the employer that he or she needs such an accommodation for religious reasons, and then a discussion of the request would occur. If it wouldn't pose hardship, the employer should honor the request. If the request might cause a safety issue, decrease efficiency, or infringe on the rights of other employees, it may not be honored.

Sex and Sexual Harassment

Sex discrimination involves treating someone unfavorably because of their sex. As with all EEOC laws, this relates to hiring, firing, pay, job assignments, promotions, layoffs, training, and fringe benefits. This law directly ties into sexual harassment laws, which include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. The victim can be male or female, and sexual harassment can occur female to female, female to male, male to female, and male to male. We discuss more details of harassment in [Chapter 10 “Managing Employee Performance”](#).

Harassment at Yale?

[\(click to see video\)](#)

This 2011 video outlines a sexual harassment lawsuit at Yale University. The video shows that the lawsuit blamed Yale not for the harassment but for not taking a harder stand on this type of harassment.

Retaliation

In all the laws mentioned, the EEOC set of laws makes it illegal to fire, demote, harass, or retaliate against people because they filed a charge of discrimination, complained about discrimination, or participated in employment discrimination proceedings. Perhaps one of the most high-profile sexual harassment and retaliation cases was that of *Sanders v. Thomas*. Isiah Thomas, then coach of the New York Knicks, fired Anucha Browne Sanders because she hired an attorney to file sexual harassment claims charges. The jury awarded Browne Sanders \$11.6 million in punitive damages because of the hostile work environment Thomas created and another \$5.6 million because Browne Sanders was fired for complaining (Schmidt, 2007). A portion of the lawsuit was to be paid by Madison Square Garden and James Dolan, chairman of Cablevision, the parent company of Madison Square Garden and the Knicks. Browne Sanders’s lawyers successfully argued that the inner workings of Madison Square Garden were hostile and lewd, and that the former marketing executive of the organization subjected her to hostility and sexual advances. Thomas left the organization as coach and president in 2008. As in this case, there are large financial and public relations penalties not only for sexual harassment but for retaliation after a harassment suit has been filed.

All types of discrimination and laws affecting multiculturalism are a key aspect for HR managers and managers to understand. These types of discrimination are discussed in [Chapter 4 “Recruitment”](#), specifically, how they pertain to recruiting and hiring.

Military Service

The Uniformed Services Employment and Reemployment Rights Act (USERR) protects people who serve or have served in the armed forces, Reserves, National Guard, or other uniformed services. The act ensures these individuals are not disadvantaged in their civilian careers because of their service. It also requires they be reemployed in their civilian jobs upon return to service and prohibits discrimination based on past, present, or future military service.

Human Resource Recall

Figure 3.3



An accommodation for religion, such as allowing turbans, would be considered a reasonable accommodation in work dress.

Vit Hassan – [Turban](#) – CC BY-NC 2.0.

What types of discrimination (under the EEOC) do you think are the most common and why? Have you ever experienced discrimination in the workplace, at school, or in extracurricular activities? Explain.

Key Takeaways

- The *Equal Employment Opportunity Commission (EEOC)* is a federal agency charged with the development and enforcement of laws relating to multiculturalism and diversity in the workplace.
- The EEOC covers discrimination based on several areas. Companies cannot discriminate based on

age; EEOC law covers people who are forty years or older.

- Employers cannot discriminate against people with disabilities and must provide reasonable accommodations, such as the addition of a wheelchair ramp to accommodate those with disabilities.
- Equal pay refers to the fact people should legally be paid the same amount for performing the same type of work, even if the job title is different.
- The newest addition to EEOC law prohibits discrimination based on genetic information, such as a history of cancer in a family.
- Unfavorable treatment of people because they are from a particular country or part of the world or have an accent is covered by the EEOC. An organization cannot require people to speak English, unless it is a requirement for the job or needed for safety and efficient operation of the organization.
- Women can't be discriminated against because they are pregnant. The inability to perform certain tasks due to pregnancy should be treated as a temporary disability; accommodation can be in the form of modified tasks or alternative assignments.
- The EEOC protects people from discrimination based on their race or color.
- Religion is also an aspect of the EEOC family of laws. The protection of religion doesn't allow for discrimination; accommodations include modifications of work schedules or dress to be made for religious reasons.
- Discrimination on the basis of sex is illegal and covered by the EEOC. Sexual harassment is also covered by the EEOC and states that all people, regardless of sex, should work in a harassment-free environment.
- Retaliation is also illegal. An organization cannot retaliate against anyone who has filed a complaint with the EEOC or a discrimination lawsuit.
- The US Department of Labor oversees some aspects of EEOC laws, such as the *Family and Medical Leave Act (FMLA)*. This act requires organizations to give twelve weeks of unpaid leave in the event of an adoption, a birth, or a need to provide care to sick family members.

Exercises

1. Visit the EEOC website at <http://www.eeoc.gov> and explain the methods an employee can use in filing a complaint with the EEOC.
2. If an employer is found to have discriminated, what are some “remedies” listed on the EEOC website?

¹Equal Opportunity Employment Commission, *2011 EEO-1 Survey*, accessed December 20, 2010, <http://www.eeoc.gov/employers/eo1survey>.

²US Department of Labor, *Leave Benefits: Family and Medical Leave*, US Department of Labor, accessed December 20, 2010, <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>.

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