

406 Part 3: The Employment Relationship

- take positive steps to make accommodations for disabled workers.
- A disability under the ADA means a limitation of a major life activity, such as walking, breathing, seeing, and hearing. It does not mean an impairment that a

person can adjust to and not suffer a serious limitation on a major activity. The standard for disability is strict; the test is whether the disabled person can do the job in question with reasonable accommodation.

TERMS TO KNOW

You should be able to define the following terms:

Title VII	hostile environment	<i>bona fide</i> seniority program
discrimination	age	merit system
protected classes	genetic information	<i>bona fide</i> occupational
race	right to sue letter	qualification
reverse discrimination	differential standard	back pay
color	harassment	front pay
national origin	constructive discharge	affirmative action
religion	disparate treatment	executive order
reasonable accommodation	<i>prima facie</i> case	workforce analysis
undue hardship	pretext	underutilization analysis
sex	retaliation	disability
sexual harassment	disparate impact	reasonable accommodation
<i>quid pro quo</i>	business necessity	

DISCUSSION QUESTION

Would a dress code that required men to wear three-piece suits but stated only that women had to "look professional" be discriminatory against the male employees? What differences would be considered discriminatory?

CASE QUESTIONS

1. Parr applied for a position as an insurance representative for which he was well qualified. The manager who interviewed Parr told him he would probably be hired and also told him the company did not sell insurance to African Americans. Parr told the employment service that set up the interview of the manager's remarks and that he was married to an African-American woman. The employment service told the insurance company of Parr's marriage, at which point they declined to hire him. Was that a violation of Title VII? [*Parr v. Woodmen of the World Life Insurance*, 791 F.2d 888, 11th Cir. (1986)]
2. Nelson worked for Dr. Knight as a dental assistant for 10 years. There was some sexual banter, but Nelson did not regard it as serious. Knight's wife demanded Nelson be fired because she could be a threat to their marriage, so Knight fired Nelson, who then sued for sex discrimination. Do you think she
3. Friedman applied for employment at a pharmaceutical warehouse. He was offered a position and told that, as a condition of employment, he would have to be vaccinated against the mumps. He refused to be vaccinated because the vaccine is grown in chicken embryos. He said that it would violate his system of beliefs as a vegan, which prohibits the use of any animal-related product. The employment offer was withdrawn; he sued for discrimination based on religion. The district court dismissed the case, holding that veganism is not a religion. Friedman appealed. Does he have a case? [*Friedman v. So. Cal. Permanente Medical Group*, 102 Cal.App.4th 39, Ct. App., Calif. (2002)]
4. Lack sued his former employer, Walmart, and his former supervisor, Bragg, for sexual harassment. He contended that Bragg made "inappropriate and

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502 Part 4: The Regulatory Environment of Business

Manufacturers are given wide latitude in picking dealers and deciding the terms under which they retain them. The producer may not conspire with a dealer against another dealer.

- Tie-in sales, where the sale of one product is tied to the sale of another, are judged under a rule of reason. For such a sale to be illegal, it must be shown that monopoly power in one product existed and was extended to the other product.
- When any organized group at one level of business (such as hardware store owners) gets together to

agree to a joint action (such as refusal to deal) against one or more businesses at another level of business (such as a particular hardware supplier), such action is a boycott, which is usually illegal *per se*.

- The Robinson-Patman Act holds that price discrimination—selling the same product to different buyers at different prices—must be justified by differences in the cost of selling to the different buyers or because the price difference was required to meet competition. This is one of the most troublesome areas of law for producers. The courts are not sympathetic to such cases.

TERMS TO KNOW

You should be able to define the following terms:

antitrust
restraint of trade
monopoly
unfair methods of competition
Parker doctrine
treble damages
cease and desist order
per se rule
rule of reason
merger
horizontal merger
premerger notification

merger guidelines
market power
market share
product market
geographic market
potential competition
failing firm defense
horizontal restraint of trade
cartel
price fixing
territorial allocation
vertical restraint of trade

resale price maintenance
intra-brand competition
inter-brand competition
tying arrangement
tie-in sale
boycott
price discrimination
predatory pricing
cost justification
meeting competition

DISCUSSION QUESTION



Why was the Sherman Act written in such broad language? Is it possible that Congress wrote the legislation in an unclear manner to give the courts broad leeway in attacking monopolistic business practices? Would it have been better for Congress to have specified more of the terms of antitrust violations?

CASE QUESTIONS

1. Many professional engineers belong to the National Society of Professional Engineers, which governs technical aspects of the practice of engineering. The canon of ethics adopted by the Society held that engineers could not bid against one another for a particular job. The Society claimed that this rule was to prevent engineers from engaging in price-cutting to get engineering jobs, which could then give them incentives to cut corners on the quality of work. Such a practice could lead to inferior work that could endanger the public. The Justice Department sued, claiming that this was a violation of Section 1 of the Sherman Act. The government claimed that the

ethical rule reduced price competition and gave an unfair advantage to engineers with well-established reputations. Who wins? [*National Society of Professional Engineers v. United States*, 98 S.Ct. 1355 (1978)]

2. Professional basketball players and their union sued the National Basketball Association (NBA) for various practices, such as the draft of college players and its salary-cap system. They claimed that this violated the antitrust law by restricting opportunities for professional basketball players. Could such practices survive a rule of reason analysis? [*NBA v. Williams*, 45 F.3d 684, 2nd Cir. (1995)]

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