



Margaret Arnold | Regina Glover | Cheryl Beeler

# Human Resource Management in Recreation, Sport, and Leisure Services



**HUMAN RESOURCE MANAGEMENT  
IN RECREATION, SPORT, AND  
LEISURE SERVICES**



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**BY  
MARGARET ARNOLD, REGINA GLOVER,  
AND CHERYL BEELER**



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**DEDICATION**

**TO OUR STUDENTS**



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## PREFACE

David Culkin and Sondra Kirsch wrote in the preface of their book, *Managing Human Resources in Recreation, Parks, and Leisure Services* (1986), “The problem is simple. Most park, recreation, and leisure services professionals require a considerable understanding of the principles and practices needed to manage full-time, part-time, and seasonal personnel and volunteers. Unfortunately, most professionals have not had sufficient training and development in this area.” Here we are some 25 years later and we can make this same argument today.

Regina Glover, Cheryl Beeler, and I have taught many years in the area of recreation administration with particular emphasis on human resource management. We have often shared our frustration about searching for the perfect textbook. The three of us have been known to create reading packets for students that contained a collection of information from various textbooks, journals, agencies, and magazines. During a conversation at an NRPA conference, Regina and I both admitted to still using portions of the Culkin and Kirsch book despite the 1986 publication date. We agreed their book still had useful information and felt the topics, design, and layout of the book had not been obsolesced by its relative age. Furthermore, our students liked the practicality of it and found it easy to read and absorb. It was during that conversation at an NRPA conference that we committed to writing a book based largely on the previous work by David Culkin and Sondra Kirsch’s *Managing Human Resources in Recreation, Parks, and Leisure Services*. We secured copyright permission from the authors, who graciously agreed to pass the torch along to us. Knowing the magnitude of this project we immediately asked Cheryl to be a co-author. We also invited Mary Tomaselli, an expert in employee and organizational development, to contribute a chapter on training and development.

Like Culkin and Kirsch, while writing the book we constantly asked the question, “What do our students, and ultimately our practitioners, need to know in order to manage their human resources effectively?” Hopefully, the result is a book that is substantive and practical but easy to understand and absorb. Obviously, we could not cover everything, but the student should certainly receive a solid foundation on which to build upon.

*Margaret Arnold, Ph.D.*



## ACKNOWLEDGMENTS

The authors wish to acknowledge the efforts of several individuals who contributed to the development of this book. Without their support, insight, and professional competence, this textbook would not have been possible. Therefore, we must begin by thanking David Culkin and Sondra Kirch. If not for their book, *Managing Human Resources in Recreation, Parks, and Leisure Services*, the groundwork would not have been laid to develop this book. David and Sondra provided us with full copyright permission and encouraged us to continue where they left off. Thanks to their good work we feel as though this book had done them justice. We are thankful for all of your contributions—both past and present. In addition, we wish to thank Venture Publishing, Inc., under the leadership of Drs. Frank Guadagnolo and Geof Godbey, for their support and encouragement. Thank you to Dan Threet, Richard Yocum, and Kay Whiteside.

Margaret Arnold would like to thank those who were willing to share their time, expertise, and resources in order to make this book relevant and meaningful to students. A special thank you to Liz Vance, Deputy Director of the Ithaca Youth Bureau; Andrea Dutcher, Campus Recreation at Cornell University; the entire Office of Human Resources at Greek Peak Ski Resort; Lana Morse, Administrative Assistant for the Department of Recreation and Leisure Studies at Ithaca College; Laura Lefebvre and Julia Melrose, two precocious student workers; and Mary Tomaselli, Director of Employee and Organizational Development at Ithaca College, who contributed an outstanding chapter on training and development. And finally, a personal thank you to Peggy and David Williams who provided constant encouragement and support, and a peaceful venue for me to write.

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## INTRODUCTION

Managers of recreation, sport, and leisure services perform a variety of activities. Perhaps the most essential of these activities is the management of human resources. Every person associated with an organization, directly or indirectly, is a resource. These people might be recreation directors, event planners, sport managers, park supervisors, therapeutic recreation specialists, or outdoor leaders. They might have full-time, part-time, seasonal, or voluntary status. It is a mistake to assume that these individuals will automatically fit together into a cohesive, coordinated team. Furthermore, it is an error to assume that people will automatically perform the appropriate tasks and perform those tasks in the most desirable manner. An effective team effort is essential to the operation of any organization, and it is the responsibility of the manager to make this happen.

Most professionals require considerable understanding of the principles and practices needed to manage full-time, part-time, and seasonal personnel and volunteers. Unfortunately, many professionals in our field have not had sufficient training and development in this area, which is known as human resource management (HRM). Although some organizations may have a full-time HRM specialist, the majority do not and therefore must rely on the recreation and sport manager to have the necessary knowledge, skills, and abilities.

Recently, a group of experienced recreation and sport managers were asked if they would hire a female to coach a soccer team knowing that she is pregnant. Half of the managers said they would not hire her because she would not be able to fulfill her coaching responsibilities, yet the other half indicated they had to hire her if she was the most qualified. Plus, they admitted to fearing a potential lawsuit. No one in the room knew for sure what the law states in this situation. Another example lends itself to college students. An increasing number of students are claiming that unlawful questions are being asked of them during internship and job interviews. That is, professionals in our field are asking non-job-related questions that are not only inappropriate but also *illegal* during the interview. Regardless of these anecdotal examples, the authors believe we need to better prepare our students, who are our future professionals, in managing human resources. Thus, *Human Resource Management in Recreation, Sport, and Leisure Services* is intended for students who are being exposed to human resource management for the first time. Topics covered in this book include the legal environment, supervision, planning and staffing, recruitment, selection, motivation, performance appraisals, compensation, grievances, ethics, and employee well-being. Throughout the chapters we attempt to provide basic information, principles, and case studies that have application to a wide variety of operations. Whatever recreation or sport organizations students choose to go into—private or public, for-profit or nonprofit—they should be able to relate to the material presented in this book.

It should be noted that we use the terms ‘supervisor’ and ‘manager’ interchangeably throughout the book. The term ‘supervisor’ is usually associated with the lowest level of management. In the early days of the Industrial Revolution, the supervisor’s primary responsibility was to watch the workers carefully and make sure that they did their jobs. Today, most people working at the lowest level of management do not have their jobs defined so narrowly. For example, they may also be asked to make decisions in the areas of technology, finance, resource allocation, policy development, and public relations. Also, the need for understanding the management of human resources is not confined to the lowest level of management. Every manager, including the top manager, is responsible for the supervision of people lower in the organization. Every manager, from top manager to supervisor, needs to have a basic understanding of the principles of managing personnel. Therefore, we use the terms ‘manager’ and ‘supervisor’ interchangeably.

In summary, this textbook prepares students—whether they intend to work in commercial recreation, therapeutic recreation, outdoor recreation, governmental recreation, youth services, sports management, or event planning—with a solid foundation for human resource management. Theory and practice are combined to assist students in gaining a greater understanding of the many complexities they will encounter in the workplace.

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# LEGAL ENVIRONMENT: EQUAL EMPLOYMENT OPPORTUNITY

The legal complexities involved with managing human resources can seem daunting. The law changes daily, the law is vague, and sometimes the law is inconsistent. Regardless, laws, regulations, and court decisions dictate what a recreation and sport supervisor can and cannot do. In a spirited effort to correct some of the serious social problems in American society, a significant amount of our nation's legal activity has focused on employment practices. Although the laws that attempt to correct unfair employment practices have not always achieved their objectives, they are reflected in a significant part of recreation and sport organization's policies and procedures.

All of us, concerned about the people we work with as well as the people we serve, have both a moral and a legal obligation to carry out fair employment practices. To function otherwise places ourselves and our organizations outside the law and enhances the risk of facing investigation or litigation by some federal or state regulatory agency. In addition, unfair employment practices frequently foster resentment, anger, and frustration in our work force and do nothing to promote the worth and dignity of each individual human being. As a result, many recreation and sport organizations are committed to reducing and eliminating discriminatory practices by requiring multicultural and diversity training programs.

Unfortunately, it is very difficult to keep track of our legal obligations. Even the well-intended person may violate the law because he or she is unaware of exactly what the law requires. But, as we all know, ignorance of the law is no excuse. Hence, the purpose of this chapter is to provide the recreation and sport professional with a broad overview of the most important legal aspects of managing human resources.

If legal problems arise, most recreation and sport managers will have access to the expertise of lawyers and human resource management specialists. It is to our advantage, however, to prevent legal problems from arising in the first place, and we cannot expect

lawyers and human resource (HR) specialists to constantly monitor our day-to-day activities. We need at least a basic knowledge of the legal aspects of managing personnel. An understanding of this chapter is a good starting point, but ultimately supervisors should (1) continue to read and keep current with changing laws, and (2) develop a good working relationship with their legal counsel and HR specialists in order to anticipate and eliminate potential problems.

## INTRODUCTION TO THE CHAPTER

We opened this chapter by referring to laws, regulations, and court decisions. All three taken together make up the legal environment. Laws are usually written in broad terms, and an agency under the executive branch of government is assigned the task of writing the special regulations that put the new law into action. The agency assigned to this task is either a new agency created by the law or an already existing agency. Court decisions also come into play in that they assess the constitutionality of laws and interpret their meaning.

The reader will soon understand why this chapter is presented in the beginning of this book. On numerous occasions we will refer back to this chapter. Compliance with the law will frequently dictate what we do and how we do it in the area of human resource management.

## UNDERSTANDING EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Equal employment opportunity (EEO) refers to the responsibility of organizations and managers to keep the work environment free from discrimination. EEO is a broad concept holding that individuals should have equal treatment in all employment-related actions. Everyone has the right to obtain work, earn fair wages, and receive fair treatment in



all areas on the basis of ability, work performance, and potential to learn on the job. One persistent stumbling block in accomplishing the objectives of EEO is the existence of prejudices. In order that the reader may better understand how prejudices can lead to employment discrimination and why the United States government has produced so much legislation pertaining to discrimination in the past, a brief discussion of the history of employment discrimination in the U.S. is presented.

## U.S. History of Employment Discrimination

Following the Civil War, the Fourteenth Amendment to the Constitution was passed to guarantee everyone the right to equal protection of the law. Initially, however, this amendment was neither obeyed nor enforced. During the middle decades of the twentieth century, antidiscrimination orders were issued by Presidents Roosevelt, Truman, and Eisenhower, and 31 northern states passed antidiscrimination laws. On occasion, even the judicial branch of government addressed discrimination. In the 1940s, the Supreme Court banned several state laws that discriminated against minorities. Nevertheless, these legal actions did not curb the flow of pervasive discrimination in housing, education, recreation, and employment because government did not seek to enforce the laws.

Frequently, employment practices were discriminatory. Too often, recruitment for new employees was conducted primarily by word of mouth, or it was aimed at specific schools or newspapers that did not represent minorities. Although discrimination was not always the intent of these practices, the recruitment results eliminated most minorities from knowing about position openings.

If prospective minority applicants did learn about job vacancies, they were confronted with complicated application blanks which too often asked unfair questions, making the applicant appear inferior. For example, some application questions inquired about the heritage and education achievements of the parents. A question about the length of time at present residence inferred that something might be wrong with a person who had moved frequently. Those questions referring to home ownership focused on the poor economic status of many minority members. Similarly, questions concerning years of education and degrees earned were often intimidating to those having little education. Columns of questions concerning political memberships and drinking habits required the applicant to acknowledge personal lifestyles.

The criteria used to screen applicants were equally discriminatory. Unskilled jobs often required high school degrees, thus eliminating culturally and economically disadvantaged candidates. Tests were frequently used which might ask applicants to solve algebraic problems when only simple math would be required on the job. An applicant who could verbalize in English and follow spoken instructions might not be able to read or write English well enough to pass the test.

Traditionally, therefore, only the backbreaking, dirty jobs were available and sought by minorities and immigrants: jobs such as collecting trash, cleaning streets, working in blast furnaces, or cleaning homes. Educated minorities took jobs for which they were overqualified. Learning that certain organizations and certain jobs were closed to them, minorities confined job hunting to low-status occupations.

Similar standards existed for training and promotion practices. Many minorities and immigrants were excluded from apprenticeships in the building trades because those trades required a high degree and the passing of examinations. In the South, two seniority rosters were frequently kept: one for white employees and one for black employees. Blacks could not seek white positions and whites could not seek black positions. White jobs were better paid, however, and offered better working conditions (Strauss & Sayles, 1980).

Many African Americans and women, once they were hired, often faced dead-end jobs. Agencies and companies could show compliance to equal-employment-opportunity legislation by calling attention to their minority representatives in personnel departments or public relation offices. If women or African Americans were promoted to supervisory or management positions, complaints from subordinates, requests for transfers, or resignations frequently resulted.

It took the courageous actions of individual African American leaders and the civil rights movement to draw serious attention to the problems of discrimination in this country. As early as 1945, one young black Air Force officer challenged segregation regulations at Duke Field, Kentucky. Later he faced charges of mutiny when he and a fellow black officer tried to integrate the officer's club. The charges were eventually dropped, and Daniel (Chappie) James, Jr. went on to become the first African American four-star general in the history of this country. The late Thurgood Marshall, the attorney for young "Chappie," became the first African American Supreme Court

justice, and William Coleman, the law student who assisted Marshall, became U.S. Secretary of Transportation in the Ford administration (Calvert, 1979). It was not until 1963, when hundreds of thousands of civil rights' supporters demonstrated in Washington, D.C., before a television audience of millions, that the federal government sought to right past wrongs. That was the turning point, particularly for African Americans. President Kennedy and then President Johnson pushed for civil rights legislation, and the Civil Rights Act was passed in July 1964.

Today, the legal spotlight continues to focus on women, and racial and ethnic minorities in its search for discrimination. But other minority groups have emerged in demanding attention and an end to bias in hiring and personnel practices. The “**protected class**” are individuals within a group who are identified for protection under equal-employment laws and regulations. These groups include individuals with disabilities, women, individuals 40 years of age and older, veterans, and in some states, marital status and sexual orientation. Despite legal action towards an end to prejudice and discrimination, race, sex, ethnicity, sexual orientation, age, and religion have had a history of inciting prejudicial behavior.

## Prejudice and Discrimination Defined

The U.S. history of employment discrimination is riddled with prejudice and discriminatory acts of behavior. Therefore, it is paramount that we understand these two concepts before we introduce the Equal Employment Opportunity (EEO) laws and concepts.

### *Prejudice*

According to Webster’s dictionary (2012), prejudice is “preconceived judgment or opinion”; “an adverse opinion or leaning formed without just grounds or . . . sufficient knowledge”; and “an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.”

Prejudices do not necessarily lead to acts of discrimination. A recreation or sport manager who prejudges another person but allows that other person to move about and live as he or she wishes, is not discriminating. In our society, personal beliefs are highly valued, as long as those beliefs do not infringe on the rights of others. Consequently, *laws to change the acts of discrimination should not begin by trying to change personal beliefs*. It was evident from the discussion of past employment practices that prejudices were not legislated away because of constitutional amendment,

presidential orders, or state legislation. Only the acts of discrimination can be made illegal—specific acts toward specific protected-class members.

An awareness of one’s prejudices sometimes prevents acts of discrimination. Putting oneself into the shoes of a minority person, even for a short while, can lead to better understanding of the frustrations and problems of minority-group members. The classic example is the role-shift study conducted by sociologist John Howard Griffin. Griffin darkened his skin in order to pass himself off as a southern African American man. He learned that constant rejection eventually leads to self-image and behavioral changes, and he eventually became fearful, clumsy, and self-rejecting in his role as a black man. In his book, *Black Like Me*, Griffin concluded that those characteristics which whites assign to blacks are not the result of differences in races, but rather the result of differences in environmental factors. Examples of prejudices are common in the field of sport and recreation; the owner of a professional sport team may have a bias against hiring a woman as the general manager; or the fitness club manager may have a bias against the qualified candidate who happens to use a wheelchair; or the staff member who refuses to work alongside an openly gay coworker.

### *Discrimination*

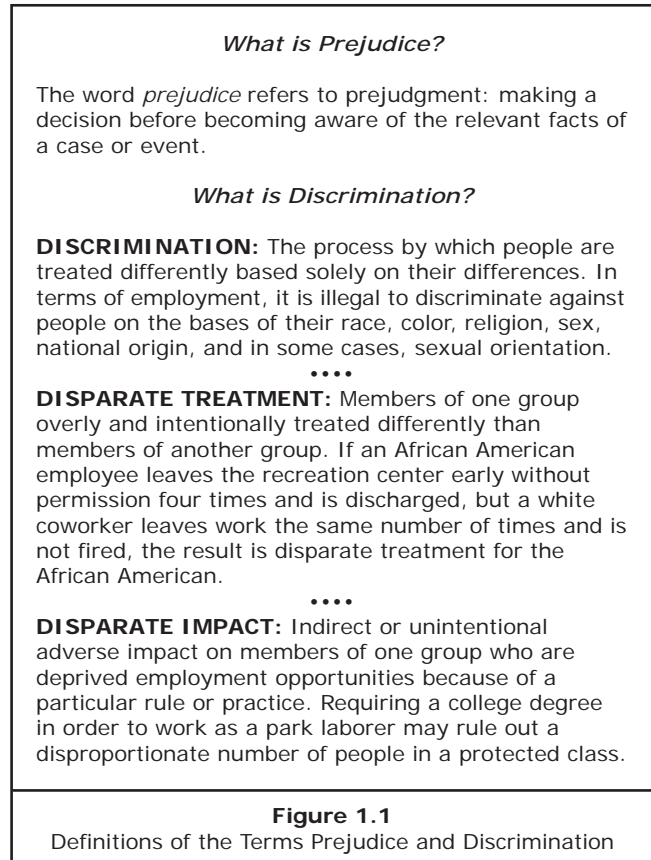
Holding unreasonable, preconceived convictions and acting upon them when making employment decisions is the difference between the terms “prejudice” and “illegal discrimination.” Simply put, illegal discrimination occurs when the supervisor or manager allow their personal prejudices to influence employment decisions.

The definition of discrimination has evolved over the years and has undergone three distinct changes worth mentioning:

1. The courts initially defined discrimination as “committing harmful acts against a person because the person belongs to a group that is disliked.” The emphasis was on the word “because,” which implied that the intent was to treat someone differently based on his or her group membership.
2. When it became difficult to prove that someone intended to harm another person, the courts defined discrimination as “unusual treatment” or treating persons differently because of their race, color,

gender, religion, or national origin (Jain & Sloane, 1981). The emphasis shifted from the “prejudicial intent to harm” to the actual treatment of employees. Different treatment was the commonly accepted definition, referred to as “disparate treatment.” It was assumed that the inequalities would be eliminated by removing different treatment based on race, color, and sexual orientation of staff and supervisors. Thus the same standard of employment was applied to all applicants and all employees. But this definition led to unequal results. When equal standards, such as requiring a high school diploma, were applied to everyone, it resulted in unequal effects on certain minority groups.

3. The terms “disparate treatment” and “disparate impact” emerged to differentiate forms of discrimination. Disparate treatment (intentional discrimination) refers to treating protected-class members differently during the hiring process. For example, if a female applicant is asked certain questions that are not asked of male applicants, then disparate treatment may be occurring. The term “disparate impact” emerged from the famous Supreme Court case, *Griggs v. Duke Power Co.* (1971). Duke Power used what was believed to be a neutral, color-blind technique in determining promotions. Every applicant was treated the same, blacks and whites. Everyone had to pass two nationally recognized tests. A passing score was considered the national median score for high school graduates. This equal treatment, however, resulted in unequal impact on African Americans, who were less likely to have a high school education and consequently, less likely to pass the tests. The Duke Power Company had evidently interpreted the Civil Rights Act to mean that the use of any test from a reputable publisher of psychological tests was permitted by law.



Disparate impact (unintentional discrimination) occurs when substantial underrepresentation of protected-class members results from employment decisions that work to their disadvantage. The Supreme Court addressed the definition of disparate impact when it interpreted Congress’s intent to eliminate not only disparate treatment over discrimination, but also those practices that, while appearing to be equal, lead to unequal consequences for different groups. Although Duke’s tests were not intended to discriminate, the Court ruled that the tests operated to exclude African Americans. Good intentions, therefore, are not sufficient reasons to excuse employers from violating the law. Congress was directing the law to the *consequences* of employment practices, as well as intent. Thus, disparate treatment and disparate impact are both illegal discriminatory practices (see Figure 1.1).

### Introducing Equal Employment Opportunity (EEO) Laws and Concepts

The legal implications of Equal Employment Opportunity (EEO) laws have changed the role of supervisors and managers in recreation, park, and leisure organizations. Therefore it is useful to review those EEO laws, regulatory directives, and court decisions (Table 1.1) that attempted to rectify

<b>Table 1.1</b> Major Equal Employment Opportunity Laws and Regulations	
ACT	SUMMARY OF PURPOSE
Equal Pay Act (1963)	Requires equal pay for men and women performing similar work
Title VII, Civil Rights Act of 1964 (Amended in 1972)	Prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin
Age Discrimination in Employment (1967) (Amended in 1978 and 1986)	Prohibits discrimination against persons who are over age 40 and restricts mandatory retirement requirements, except where age is a bona fide occupational qualification
Executive Orders 11246 (1965) and 11375 (1967)	Requires federal contractors and subcontractors to eliminate employment discrimination through affirmative action
Executive Order 11478 (1969)	Prohibits discrimination in the U.S. Postal Service and in various government agencies on the basis of race, color, religion, sex, national origin, handicap, or age
Vocational Rehabilitation Act (1973) (Amended in 1974)	Prohibits discrimination against persons with disabilities and requires affirmative action to provide employment opportunity for persons with disabilities
Americans with Disabilities Act (1990)	Requires employer accommodations for individuals with disabilities
Vietnam Era Veterans' Readjustment Assistance Act (1974)	Prohibits discrimination against veterans by federal contractors and the U.S. government and requires affirmative action
Pregnancy Discrimination Act (1978) with regard to benefits and leave policies	Requires that pregnancy be treated as any other medical condition
Immigration Reform and Control Act (1986) (Revised in 1990, 1996)	Establishes penalties for employers who knowingly hire illegal aliens and prohibits employment discrimination on the basis of national origin or citizenship
Older Workers Benefit Protection Act (1990)	Prohibits age discrimination in early retirement and other benefit plans
Civil Rights Act (1991)	Overtures many past Supreme Court decisions and changes damage claims provisions
Family and Medical Leave Act (1993)	Grants to qualified employees the right to unpaid leave for specific family or health-related reasons without fear of losing their jobs



past employment injustices. It is important to understand that EEO is a broad concept holding that all individuals should have equal treatment in all employment-related actions. Thus, recreation and sport supervisors and managers must be familiar with EEO laws and regulations and ensure that their practices are nondiscriminatory. It is equally important to understand that there are certain individuals who are covered under the equal-employment laws and are therefore protected from illegal discrimination. As previously mentioned, these individuals who fall within a group identified for protection are known as the protected class. Essentially, protected class members are certain individuals who are protected from employment discrimination by law. The federal law protects employees from discrimination or harassment based on sex, race, age (age 40 and over), disability, color, creed, national origin, or religion. Some states extend protected class to include marital status and sexual orientation. Every U.S. citizen is a member of some protected class and is entitled to the benefits of EEO law. However, the EEO laws were passed to correct a history of unfavorable treatment of women and minority group members.

## TITLE VII, CIVIL RIGHTS ACT OF 1964 AS AMENDED BY THE EEO ACT OF 1972

The Civil Rights Act of 1964, especially Title VII, Sec. 703, provides the cornerstone for EEO employment. This law makes it unlawful for employers to hire, refuse to hire, discharge, or discriminate in employment practices against anyone because of race, color, religion, sex, or national origin. The law also prohibits employers from retaliating against the employee who files a charge of discrimination, participates in a discrimination investigation, or opposes an unlawful employment practice. In other words, acts of discrimination, whether deliberately planned or accidentally executed, are illegal.

### What This Means for Recreation and Sport Supervisors

Title VII prohibits discrimination in various employment practices that include job recruitment, the job application process, the employee selection process, promotion, demoting, discharging, compensating, assigning work, scheduling time-off, providing job training and development opportunities,

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*A female maintenance worker with a high school diploma worked for a city park for seven years, receiving good performance evaluations. She was never offered an opportunity to attend training programs, nor was she ever notified about vacancies in better-paying positions. After witnessing the third promotion of male employees with less seniority and noting that their expenses had been paid to attend a maintenance workshop prior to each of their promotions, the female complained to her supervisor. The response was, "Aren't you happy in your present job? I didn't think you wanted extra training or a promotion."*

*Was the supervisor guilty of unfair equal employment opportunity practices under the law?*

performance appraisals, and any other terms, conditions, and privileges of employment. Title VII covers most employers in the United States. If a recreation or sport organization meets any one of the following criteria, then it is subject to rules and regulations based upon this act:

- All private employers of 15 or more persons who are employed 20 or more weeks per year
- All educational institutions, public or private
- State and local governments
- Public and private employment agencies
- Labor unions with 15 or more members
- Joint labor/management committees for apprenticeships and training

### Exemptions to Title VII

Title VII offers three exceptions in which preferential hiring is permitted. Court decisions have interpreted these exceptions very narrowly. If an employer can demonstrate that religion, sex, or national origin is necessary to do the job, the employer may "discriminate" on the basis of these three factors. A bona fide occupational qualification (BFOQ) is a legal exception to an otherwise discriminatory hiring practice that is reasonably necessary to the normal operation of a particular business. The BFOQ may be requested if the essence of the business operation would be undermined if the business eliminated its discriminatory policy. For example, recruiting female models for women's clothing line or hiring a male as

the men's locker room attendant would be permitted. Race and color are not permissible exceptions in the law. It is important to note that *with a BFOQ the burden of proof always lies with the employer*. Figure 1.2 provides more details of BFOQs as they relate to race, religion, gender, and age.

## Sexual Harassment Guidelines, Title VII

*"Sabrina, I'll be happy to pay for your conference registration fee and give you administrative leave to go, if you want to share my room for the five days while we are in San Antonio." Sabrina filed a complaint against her boss, Tom.*

*Will anyone take her complaint seriously?*

This supervisor is demonstrating an overt act of sexual harassment. He is requesting implied sexual favors as a prerequisite condition to granting approval and financial support for professional development opportunities. Sexual harassment is a form of discrimination in violation of Title VII of the Civil Rights Act of 1964. Guidelines issued later in 1980 by the Equal Employment Opportunity Commission (which is discussed later in this chapter) place the responsibility on the employing agency, as well as the supervisor, to provide a work environment free from unwelcome sexual advances. Furthermore, several Supreme Court cases have illustrated that sexual harassment is intolerable and is considered a form of sexual discrimination and victims or survivors are entitled to legal assistance. Therefore, Sabrina has a valid complaint against both her boss and the organization for which she works. Figure 1.3 (see p. 8) identifies other examples of where sexual harassment may occur.

As previously mentioned, Title VII covers all employers who hire 15 or more employees who work 20 or more weeks per year at the federal, state, and local levels of government, as well as public and private educational institutions. According to the Equal Employment Opportunity Commission (EEOC), the group that interprets and enforces the sexual harassment guidelines, the definition of sexual harassment is:

*Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.*

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**RACE:** The law specifically states that it is unlawful to discriminate on the basis of religion, gender, or national origin, except where any of these factors is "a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." Race can never be a bona fide occupational qualification.

♦♦♦♦

**RELIGION:** Religion could be considered a bona fide occupational qualification when membership in a certain religion is reasonably necessary to the performance of a job. For example, a religious sport camp might be allowed to insist on hiring staff of the particular religion represented by the camp. But the organization who sponsors the summer camp could not refuse to hire a maintenance worker because of his or her religion, as it would not be "reasonably necessary" to the operation of the business.

♦♦♦♦

**GENDER:** The gender as a bona fide occupational qualification causes more difficulty than any of the other provisions of this section of the law. Various state laws limiting the jobs women are allowed to do and regulating their wages and hours are now largely invalidated because they were based, in large part, on the traditional separation of "man's work and woman's work." On several occasions, the Equal Employment Opportunity Commission has said it will take a very narrow view of this exemption.

♦♦♦♦

**AGE:** The Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating against workers who are 40 years of age or older. The purpose of the Act is to promote the employment of older workers based on their ability rather than their age, to prohibit arbitrary age discrimination in employment, and to help employers and workers find ways of resolving problems arising from the impact of age on employment.

**Figure 1.2**  
BFOQs as They Relate to Race, Religion, Gender, and Age

Prevention is the best tool to eliminate sexual harassment in the workplace. Recreation and sport managers should clearly communicate to employees that sexual harassment will not be tolerated. The message of zero tolerance may occur by providing sexual harassment training, by establishing an effective complaint or grievance process, and by taking immediate and appropriate action when an employee complains. It is important to note that it is unlawful to retaliate against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

## Equal Employment Opportunity Commission (EEOC)

To administer and enforce the Civil Rights Act of 1964, Title VII, an independent federal organization was created, the Equal Employment Opportunity Commission. The United States Equal Employment Opportunity Commission (EEOC) is a federal agency charged with ending employment discrimination.

1. The sexual harasser may be male or female. The victim does not have to be of the opposite sex.
2. The harasser can be the victim's supervisor, a supervisor in another area, a coworker, or a non-employee.
  - The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
  - The harasser's conduct must be unwelcome.
  - Some examples of specific sexual behaviors that have been found in violation of sexual harassment in recreation and sport organizations include
    - Sending sexually explicit, offensive e-mails to coworkers
    - Unnecessary and unwanted patting or pinching of an employee
    - Making sexual requests for favors
    - Sharing sex-related stories or jokes that are unwanted and offensive
    - Making unwanted remarks about clothing, body, or sexual activities

**Figure 1.**  
Circumstances of Sexual Harassment

The EEOC investigates discrimination complaints based on an individual's race, color, national origin, religion, sex, age, disability and also investigates allegations of retaliation (e.g., demotion, termination, discipline, harassment) for reporting a discriminatory practice.

Originally, EEOC only investigated complaints of alleged discrimination and, through conciliation, persuasion, and negotiation, tried to resolve charges. When these methods failed, EEOC lacked authority to take cases to court. This lack of authority was the major weakness of the 1964 Civil Rights Act. Employers often ignored the Civil Rights Act and EEOC, hoping that wronged individuals would not have the knowledge or financial resources to pursue their complaints through litigation. The Equal Employment Opportunity Act of 1972 addressed these weaknesses and extended the authority of the EEOC, enabling it to take organizations directly to federal district courts.

According to the EEOC's website (<http://www.eeoc.gov>), the Charge Processing Procedures are summarized:

The employer is notified that the charge has been filed. From this point there are a number of ways a charge may be handled:

- A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is less strong, the charge may be assigned for follow-up investigation to determine whether it is likely that a violation has occurred.
- EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer express an interest in doing so. If settlement efforts are not successful, the investigation continues.
- In investigating a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred. When the investigation is complete, EEOC will discuss the evidence with the charging party or employer, as appropriate.
- The charge may be selected for EEOC's mediation program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation.
- A charge may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law. A charge may be dismissed at the time it is filed, if an initial in-depth interview does not produce evidence to support the claim. When a charge is dismissed, a notice is issued in accordance with the law which gives the charging party 90 days in which to file a lawsuit on his or her own behalf.

#### *How Does EEOC Resolve Discrimination Charges?*

- If the evidence obtained in an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf.



- If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. EEOC will then attempt conciliation with the employer to develop a remedy for the discrimination.
- If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored.
- If EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf.

### *What Remedies Are Available When Discrimination Is Found?*

The “relief” or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include:

- back pay,
- hiring,
- promotion,
- reinstatement,
- front pay,
- reasonable accommodation, or
- other actions that will make an individual “whole” (in the condition s/he would have been but for the discrimination).

Remedies also may include payment of:

- attorneys’ fees,
- expert witness fees, and
- court costs.

(Taken directly from EEOC website on January 13, 2012)

### **Civil Rights Act of 1991**

The Civil Rights Act of 1991, like the Civil Rights Act of 1964, states that employers are required to show they use job-related employment practices. The act clarifies that the individual who is bringing the discrimination charges must identify the intentional hiring practice or workplace discrimination and must show only that protected-class status played some factor.

Two provisions of the Civil Rights Act of 1991 are worth noting here—*compensation/punitive damages and jury trials*, and *race norming*. The first provision clarifies that protected-class members who feel they have been discriminated against are allowed to have a jury trial and to sue for punitive damages if they can prove intentional hiring and workplace discrimination. Compensatory damages usually include payments for emotional pain, mental anguish, loss of enjoyment of life, or inconvenience. Nongovernmental entities, if found guilty, may be required to pay “punitive” damages if deemed by the court. All attorney fees and court costs are paid by the organization if found in violation of the law. The second important provision prohibits discriminatory use of employment tests and test scores. Race norming is the practice of giving every applicant for employment the same skills test, but then grading the test differently depending on the applicant’s race or gender. This provision addresses the concern of using different passing or cutoff scores for protected-class members than those individuals who are not considered to be in protected classes.

The Glass Ceiling Commission also evolved from the Civil Rights Act of 1991. For years, women’s groups have claimed that discriminatory practices have prevented women and other protected-class members from advancing to upper-level management positions in recreation and sport organizations. The “glass ceiling” is a term used to describe the invisible barrier that impedes women and minorities from career advancement. The Glass Ceiling Commission is comprised of a 21-member body and was appointed by President Bush and Congressional leaders. Its mandate was to identify the glass ceiling barriers that have blocked the advancement of minorities and women, as well as the successful practices and policies that have led to the advancement of minority men and all women. It is important to note that the commission examines opportunities for women and minorities, and it also addresses the preparation they receive to be qualified for upper-level management.

Many recreation and sport organizations are committed to breaking the “glass ceiling” since many



1. Establishing formal mentoring programs for women and racial ethnic individuals.
2. Allow for job-sharing, job-rotation, and flex-time schedules to help balance the work family responsibilities.
  - . Provide job and career rotation opportunities within the organization.
  - . Increase visibility of women and minorities on boards and membership affiliations.
  - . Develop clear retention programs for protected-class members and hold supervisors accountable for implementing and achieving the intended goals of the program.

Figure 1.  
Innovative Programs to Eliminate the Glass Ceiling Barrier

of these agencies continue to be severely underrepresented with regard to women and minorities in the highest management positions. Some innovative programs attempting to shatter the glass ceiling are found in Figure 1.4.

## Equal Pay Act of 1963

*A female sport director was promoted to facilities manager after the male manager resigned. The three-step increase in salary was not made at the time of her promotion, although the duties and responsibilities remained the same for the facilities manager position. When she sought to correct this oversight, she was told, "We have decided to reclassify this position down three steps from what it had been previously. Consequently, you are not entitled to any salary increase."*

*Did this action violate EEO laws?*

The sport facility that acted to pay the female three steps less in salary than the former male manager was in conflict with the Equal Pay Act. The female held the same position and performed the same responsibilities as her predecessor; therefore, she was entitled to the same salary.

The Equal Pay Act of 1963 and the Equal Opportunity Acts of 1972 and 1977 were all amendments to the Fair Labor Standards Act of 1938. To avoid confusion over the different titles of the same law, we will refer to the law as the Equal Pay Act.

This act provides even broader coverage than the Civil Rights Act of 1964. It covers all state and local governments and public agencies, schools, hospitals, and businesses with sales in excess of \$362,500. *Under the Equal Pay Act, all employers are required to pay equal wages to men and women performing similar work.* The work does not have to be identical to be considered similar work. The law defines similar work as: Equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production.

The issue is not always one of exact duties in exactly the same environment, but whether or not any differences in duties are significant enough to warrant different wages. Should a male community center director be paid more than a female community center director because his center has 5,000 more square feet, offers different facilities, and requires an extra person to assist in operating the center? Probably not, because all major job functions, levels of responsibility, and required education and experience remain the same for both centers. However, an employee could pay a female sport director more in San Francisco than a male working in the same position in Portland, Maine, even if the jobs were the same, because of the cost-of-living difference.

### *Exceptions to the Equal Pay Act*

The Equal Pay Act permits employers to pay differential wages when wages are based on established seniority or merit systems. If a male sport director had been a director several years longer than the female sport director, the agency can pay him a high salary, as a result of legitimate longevity pay increases. Similarly, if two sport directors were hired at the same time, but the male employee performed in an outstanding manner the first year while the female employee only performed her duties satisfactorily, the agency with an established merit system could reward the male employee with a greater salary increase.

Another important aspect of the Equal Pay Act relates to differential pay according to the risk of bodily harm on the job. Some organizations provide greater remuneration to the employee facing possible danger. This may or may not be considered legal. For example, one agency requires park rangers to assign camp sites, collect fees, patrol park areas, present

interpretive programs, and perform related duties. Male rangers in that agency are more frequently scheduled to patrol isolated park sites late at night, and occasionally encounter disorderly park patrons breaking park regulations. Although both male and female rangers are charged to patrol park areas, the likelihood of the male ranger finding himself in a potentially confrontational situation late at night is greater. The courts generally have been unsympathetic to situations such as the one just cited, where male employees have been paid higher wages than females based on the possibility that the males are exposing themselves to greater danger. A number of court cases have resulted in back-pay awards to women who were targets of unequal pay discrimination. A listing of factors that permit pay distinctions are found below:

Equal Pay Act permits pay distinction based upon

- Unequal responsibility
- Differences due to seniority
- Dissimilar work conditions
- Differences resulting from merit pay systems
- Differences based on production

In January 2009, President Barack Obama signed a gender pay equity law referred to as the Lilly Ledbetter Fair Pay Act that makes it easier for workers to sue organizations for pay discrimination. The bill amends the Civil Rights Act of 1964 stating that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new discriminatory paycheck.

The reason for the Equal Pay Act is because of the continuing disparity between the earnings of men and women. According to Dolliver (2004), in 2003 the median weekly earnings for female workers were 80% of their male counterparts, which is up from 65% in 1979. Other more recent studies show that when differences between work experience, education, and length of employment of men and women are analyzed, female workers earn approximately 90% of what comparable male workers earn.

## Age Discrimination in Employment Act of 1967, as Amended in 1978 and 1986

*“Shane, don’t be angry about not being considered for the golf superintendent’s job. Carl is fifteen years younger than you and has more energy. Besides, a guy at age 56 doesn’t need all that added stress and responsibility.”*

*How does this statement violate the law?*

The Age Discrimination in Employment Act of 1967 (ADEA) originally prohibited job discrimination against workers between the ages of 40 and 65. The 1978 amendment provided protection for workers between the ages of 40–70, and the 1986 amendment prohibits job discrimination against workers who are 40 years of age or older. The ADEA applies to employers with 20 or more employees for 20 or more weeks per year, unions with 25 or more members, and federal, state, and local governments. The EEOC is the investigating and enforcement agency for this act, and not surprisingly age discrimination is the leading category of discrimination files charged. Over 16,000 claims have been filed costing organizations more than \$75 million. It is unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The Age Discrimination in Employment Act protection applies to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his or her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. Questions asked about an applicant’s age or birth should be avoided unless there is concern for child labor laws. For example, an applicant applying for a camp counselor position may be asked “Are you under the age of 18?”

## Presidential Executive Orders 11141, 11246, 11375, and 11478

Presidential executive orders (PEO) are directives issued by U.S. presidents that have the force of law, even though Congress did not enact them. Some of these orders pertain to EEO and federal contracts with

private organizations. Local and state governments who receive federal monies are also covered.

In 1941, President Franklin D. Roosevelt was the first president to try to prohibit employment discrimination nationally. Through executive order, he created a Fair Employment Practices Committee which investigated complaints of discrimination in defense industries that held federal contracts. The committee settled thousands of cases by conciliation, but it lacked the authority to enforce the executive order. Those presidents who followed Roosevelt established similar committees, but it was not until President Kennedy took office that an investigating committee was given the authority to cancel government contracts or to penalize contractors who chose to continue to discriminate in employment practices (Beach, 1980).

Presidential executive orders prohibit discrimination in employment by agencies with federal contracts or subcontracts valued at \$10,500. These employers are not allowed to discriminate based on age (PEO 11141), race, color, religion, or national origin (PEO 11246), sex (PEO 11375), or political affiliation, marital status, or disability (PEO 11478). In addition, PEOs also require all employers whose government contracts exceed \$10,500 to implement affirmative action plans.

It is important to note that PEOs apply to state and local governments with 15 or more fulltime employees. Recreation and sport agencies receiving federal monies from any federal agency are responsible for those private contractors who contract for facility development, operations, maintenance, or programming. If a private contractor discriminates in any employment practice and a violation is reported, the recreation and sport agency could be investigated, become involved in a formal hearing or lawsuit, and possibly lose federal financial support.

### **Affirmative Action: Presidential Executive Order 11246, as Amended by Executive Order 11375**

As we have now learned, the Presidential Executive Order 11246 was established to provide equal opportunity in federal employment for all qualified individuals regardless of race, color, religion (formerly referred to as creed), or national origin. A major revision to PEO 11246 requires employers to abide by this non-discriminatory policy should they received federal financial assistance (e.g., loans, grants, contracts). *Affirmative Action*, which was stipulated by PEO 11246, provides organizations with an opportunity to remedy past discrimination by taking

positive steps to ensure that an applicant or an existing employee receives fair treatment with regard to race, creed, color, or national origin. According to Mathis and Jackson (2008), "Through affirmative action employers are urged to hire groups of people based on their race, age, gender, or national origin to make up for historical discrimination" (p. 147). This includes such areas as recruitment and selection, training and development, and promotion. To not abide by the affirmative action policy could mean severe penalties. If, for example, a federal contractor is found in violation of affirmative action, the contract can be terminated or suspended. In addition, it is highly probable that the contractor maybe found ineligible to receive future government contracts.

The cruel disease of discrimination knows no sectional or state boundaries. The continuing attack on this problem must be equally broad. It must be both private and public—it must be conducted at national, state, and local levels—and it must include both legislative and executive action.

**John F. Kennedy**  
**February 28, 1963**

### ***Affirmative Action Landmarks***

The need for affirmative action is a subject for debate throughout the United States. Proponents of affirmative action claim it helps to overcome past injustices while opponents of affirmative action believe it penalizes certain individuals such as white males. Some recreation and sport organizations have instituted affirmative action voluntarily, while others are simply required to do so. Nevertheless, by the late 1970s, flaws in the policy began to show up amid its good intentions. Reverse discrimination became an issue, epitomized by the famous *Bakke v. Regents of the University of California* (1978). Allan Bakke, a white male, had been rejected two years in a row by a medical school that had accepted less qualified minority applicants—the school had a separate admissions policy for minorities and reserved 16 out of 100 places for minority students. The Supreme Court outlawed inflexible quota systems in affirmative action programs, which in this case had unfairly discriminated against a white applicant. But a later landmark ruling on affirmative action involved the *University of Michigan*. In short, two cases were tried in federal courts in 2000 and 2001—one involving the undergraduate program (*Gratz v. Bollinger*)



and the other its law school (*Grutter v. Bollinger*). The Supreme Court (5-4) upheld the University of Michigan Law School's policy, ruling that race can be one of many factors considered by colleges when selecting their students. The Supreme Court, however, ruled (6-3) that the more formulaic approach of the University of Michigan's undergraduate admissions program, which uses a point system that rated students and awarded additional points to minorities, had to be modified. In these two cases, the Supreme Court ruled that although affirmative action was no longer justified as a way of redressing past oppression and injustice, it promoted a compelling state interest in diversity at all levels of society. As Sandra Day O'Connor wrote for the majority, "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

### *Affirmative Action Compliance*

Affirmative action plans (AAP) are required by government contractors to ensure that protected-class members are represented in their organization. An affirmative action plan is a formal report that organizations submit to enforcement agencies. Usually contractors with at least 50 employees and \$50,000 in government contracts annually must supply these plans to appropriate agencies. It is important to note that some recreation and sport organizations voluntarily have AAPs, but employers who have government contractors must have such a plan. AAPs are discussed in more detail later in this book.

### *The Debate Rages on About Affirmative Action*

Affirmative action is an opportunity for recreation and sport organizations to help remedy past discrimination. The debate continues to rage on as supporters of affirmative action argue that without it, women, minorities, and members of other protected groups will continue to be discriminated against. Opponents of affirmative action argue that preferential treatment or selection for protected-class members over other individuals who are equally qualified is unfair.

Research shows the majority of Americans feel that affirmative action has been good for minorities and is still necessary to achieve diversity at work. Regardless of whether or not one supports or opposes affirmative action programs, it is clear that affirmative action is a controversial subject that will likely be debated for years to come.

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## Vocational Rehabilitation Act of 1973 (as Amended by the Rehabilitation Act of 1974) and the Americans with Disabilities Act (ADA) of 1990

*A young college graduate with a degree in outdoor adventure leadership with a certification in wilderness first responder (WFR) applied for a seasonal position as a back-country ranger. The response to his inquiry about why he was not considered for the position was, "You are a diabetic and we can't take a chance that you might endanger yourself or others out in the 'brush' if you should require medical care."*

*Was the agency justified, legally, in offering this reason for not hiring the applicant?*

In the case of the diabetic applicant who was not considered for the position of back-country ranger, the agency could be courting a lawsuit for discrimination. The agency had the right to ask the applicant if he had any medical conditions that might impair his ability to perform his duties, but not until after the agency had decided that the applicant did or did not meet all the necessary requirements for the position. If the applicant was not considered for the position solely because of his diabetic condition, he could claim discrimination because he was not able to demonstrate that a diabetic in the "brush" is not a medical risk, nor that it requires reasonable accommodation on the part of the agency.

For individuals with disabilities, the Vocational Rehabilitation Act of 1973 (amended by the Rehabilitation Act of 1974) and the Americans with Disabilities Act (ADA) of 1990, is their counterpart of Title VII in prohibiting employment discrimination. Too often recreation and sport managers incorrectly overlook qualified individuals who happen to have disabilities. This occurs due to the lack of knowledge most managers have regarding specific disabilities. In an attempt to protect persons with physical and mental disabilities against employment discrimination, the Vocational Rehabilitation Act (VRA) legislation passed to covered federal agencies and government contractors.

- Section 503, as amended in 1974, required employers with contracts or subcontracts over \$2,500 to include affirmative action clauses in the contracts. If the contract was \$50,000 or more and the employer had

at least 50 people on the payroll, the employer had to submit an affirmative action plan for hiring the person with a disability.

Although the rehabilitation legislation passed during this time is considered by many to be the civil rights law for persons with disabilities, the laws often were limited in scope in that they only applied to organizations receiving federal financial assistance.

The Americans with Disabilities Act (ADA) passed by Congress in 1990 sought to broaden coverage and expanded employment regulations to further protect people with varying degrees of disabilities. Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA affects employers with 15 or more employees working 200 or more weeks during the calendar year including part-time employees. The act applies to private employers, employment agencies, and labor unions. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

The basic provision of the ADA prohibits organizations from discriminating against qualified person with disabilities who can perform the essential functions of a job. Therefore, it is essential that recreation and sport managers clearly identify the "essential" job functions of each position and identify other functions that are nonessential as "desirable."

According to the U.S. Equal Employment Opportunity Commission, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an undue hardship on the operation of the employer's business. "Undue hardship" is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Title I of the ADA also covers:

- *Medical Examinations and Inquiries.* Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.
- *Drug and Alcohol Abuse.* Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

## Veterans' Employee Rights: Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act of 1994

*A female applied for a position at a coastal state park and was told she was one of five top candidates and would be called soon for an interview. When she was never notified, she contacted the park superintendent and learned that two veterans had "bumped" her from the interview list.*

*Did the state park system violate federal law?*

The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974 parallels the Vocational Rehabilitation Act. According to the U.S. Department of Labor, the VEVRAA prohibits employment discrimination and requires federal contractors to take affirmative action to hire and promote Vietnam-era veterans. More specifically, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, states that contractors and subcontractors with a federal contract or subcontract in the amount of \$100,000 or more, entered into on or after December 1, 2003, for the purchase, sale, or use of personal property or non-personal services (including construction), take affirmative action to employ and advance in employment qualified covered veterans. In addition, VEVRAA requires contractors and subcontractors to list their employment openings and requires affirmative action protocol.

The employment rights of military veterans and reservists are also included in the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994. This act states that employees must notify their employer of military service obligations. Employees serving in the military must be provided leaves of absences and have reemployment rights for up to five years. However, this does not mean that an employer is required to compensate the employee while he or she is on active military leave. Most often the employee is reinstated in the same job position that he or she had prior to leaving for military serve obligations.

The state park system, therefore, did not violate federal legislation when it followed its state veterans' preference law and placed two qualified veterans on the list ahead of the female. Whenever veteran applicants meet minimum job qualifications, they may be given a point advantage, even if such practice appears

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to discriminate against women and those male non-veterans who may have been disqualified from military service because of some disability. The example given did violate good recruiting and selection personnel practices. An applicant should not be kept anticipating a promised call for a job interview. She should have been notified when her position changed on the list of applicants.

## Pregnancy Discrimination Act of 1978

*A female sports information director for a private agency took all her vacation and sick leave to have her second child. Because the agency's insurance policy did not include pregnancy disability benefits, which would have paid her a percentage of her salary while she was out having the child, she planned to return to work immediately after childbirth. However, medical complications ensued, and when she finally planned to return to work two months later, she learned the sport agency had hired someone else in her position.*

*Was this action fair? Was it legal?*

Legislation passed in 1978 amends Title VII of the Civil Rights Act of 1964 and attempts to eliminate employment discrimination against employees who are pregnant. The Pregnancy Discrimination Act (PDA) requires that employers treat maternity leave the same as other personal or medical leaves. Thus, the recreation or sport manager may not engage in discriminatory employment practices against an employee who is affected by pregnancy, childbirth, or any related medical condition (including abortion and adoption). The PDA relates a great deal to employee benefit plans and requires that women who are affected by pregnancy, childbirth, or any subsequently related medical conditions will receive the same benefits as any other disability in the fringe benefit program of the employer. Although pregnant women are not disabled because they are pregnant, there is a period of disability associated with every childbirth. Medical insurance must now cover pregnancy as fully as it covers other medical disability conditions. In summary, the Pregnancy Discrimination Act states that women who are affected by pregnancy, childbirth, or abortion must be treated the same as all other employees (or applicants) on the basis of their ability or inability to work. This law protects all females, single and married.



In the case of the female sports information director, the agency *prior to PDA* would have been within their legal rights not to provide pregnancy disability benefits in their insurance coverage. The Supreme Court in *General Electric v. Gilbert* (1976) struck down an EEOC guideline, Sex Discrimination—Part 1604. This guideline stated that pregnancies were temporary disabilities and should be covered under any health plan. The Court ruled that such guidelines were in conflict with interpretations of the Equal Pay Act, and that difference in benefit plans between men and women were legal. However, with the passage of PDA two years later in 1978, Congress mandated that pregnancy be treated like any other disability in health insurance plans.

Therefore, if the sport agency provided 60 percent salary benefits for 60 days for any disability, the female sports information director would be entitled to those same benefits during the two months she experienced medical complications following childbirth. Furthermore, the agency could not discharge her from her position during that time period, even if she had used all sick and vacation leave. Explanations of the guidelines can become complex and will not be explained in detail here. Each case should be considered independently with EEOC prior to any discharge decision, to avoid future complaint or lawsuit.

### **Immigration Reform and Control Act of 1986, as revised in 1990 and 1996**

The Immigration Reform and Control Act (IRCA) prohibits employers from hiring individuals who are not legally authorized to work in the United States and requires employers to verify the eligibility of all new employees. That is, any new employee must provide documentation to prove they are eligible to work in the U.S. by completing and signing an I-9 form to certify their eligibility. One intention of IRCA is to prevent discrimination when hiring and discharging individuals based upon their national origin and citizen status. Further, IRCA prevents discrimination against foreign-looking or foreign-sounding job applicants.

### **Family and Medical Leave Act of 1993**

The Family and Medical Leave Act (FMLA) applies to all government employees regardless of their number and to private employers with 50 or more employees who live within 75 miles of the workplace. The FMLA

enables qualified employees to take up to 12 weeks a year of unpaid leave during a 12-month period for family and health reasons.

The law is intended to help employees balance work demands without hindering their ability to attend to personal and family needs. Employees may be full-time, part-time, or those already on leave. Only employees who have worked at least 12 months and 1,250 hours in the previous year are eligible for leave under the FMLA. An employee's health insurance coverage is maintained during the leave and the employee has the right to return to the same or an equivalent position after the leave. It is important to understand that both male and female employees are eligible for unpaid leave for:

- for the birth and care of the newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Note: In January 2008 the President made an amendment to permit a spouse, son, daughter, parent, or next of kin to take up to 26 workweeks of leave to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

### **Serious Health Condition**

The FMLA protects employees who need to care for themselves or a family member due to a serious health condition. Recreation and sport organizations have the right to require employees to provide medical certification or verification should they choose to request a leave under FMLA. In this context, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves the following:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a healthcare provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
- any absences to receive multiple treatments by, or on referral by, a healthcare provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

## SUMMARY

1. The primary purpose of EEO legislation is to ensure that every person has the right to fair treatment as a job seeker and as an employee.
2. Employment practices shall be based on a person's ability, work performance, and potential to learn the job rather than on his or her age, sex, race, religion, color, national origin, or disability.
3. An employment practice is discriminatory if it (a) treats people differently, or (b) leads to unequal consequences for different groups.
4. The Civil Rights Act of 1964 outlawed discriminatory acts regardless of whether they are deliberately planned or accidentally executed.
5. Protected class refers to individuals within a group who are identified for protection under equal employment laws and regulations. These groups include individual with disabilities, women, individuals 40 years of age and older, veterans, and in some states, marital status, and sexual orientation.
6. The EEOC, established by the 1964 Civil Rights Act, has responsibility for (a) issuing the regulations that ensure compliance with the Act, and (b) processing complaints of discrimination.
7. Under the Equal Pay Act, employers are required to pay equal wages to men and women performing similar work requiring similar skill, effort, and responsibility. The Lilly Ledbetter Fair Pay Act (2009) makes it easier for workers to sue organizations for pay discrimination.
8. Employers may pay differential wages when those wages are based on an established seniority or merit system.
9. Whereas both the Civil Rights Act and the Age Discrimination Act provide for exemptions from the law or "bona fide occupational qualifications" (BFOQs), employers and supervisors should exercise caution in taking advantage of these permissible exceptions. Remember, race and color are not permissible BFOQs.
10. Affirmative Action urges employers to hire groups of people based on their race, age, gender, or national origin to make up for historical discrimination.
11. Recreation and sport organizations should not award contracts to contractors who cannot provide evidence of obeying presidential executive orders which serve to eliminate employment discrimination. Ignorance of discriminatory practices is not excusable under the law. Affirmative Action Plans should be used.
12. According to the Americans with Disabilities Act (ADA), employers are expected to make reasonable accommodations for people with disabilities, unless an undue financial hardship would be imposed on the hiring organization. The laws do not expect the employers to jeopardize the safety or health of employees



and the public in order to hire a person with a disabling condition.

13. State and federal veterans' preference laws were passed to compensate those who spent time in active military service. These laws have been upheld as legal by the Supreme Court and the Civil Rights Act.
14. Organizations that provide employee disability health insurance benefits must provide the same benefits for pregnant employees who may be absent from work due to pregnancy- or child-related medical problems.
15. Employers should develop written policies and grievances and disciplinary procedures concerning sexual harassment. These must be communicated to all employees. Knowledge of sexual harassment without taking measures to eradicate it places the employer in violation of the law.
16. The Family and Medical Leave Act enables qualified employees to take up to 12 weeks a year of unpaid leave during a 12 month period for family and health reasons.

### DISCUSSION TOPICS

1. Why should recreation and sport organizations comply with EEO laws and regulations?
2. What is the difference between disparate treatment and disparate impact?
3. What is meant by "job relatedness" and "business necessity"? How might these concepts apply to organizations? What impact does ADA have on these issues?
4. Under what conditions would "good-natured fun" constitute sexual harassment?
5. Under what conditions can an employer be held responsible for sexual harassment of its employees?
6. Where do you stand on the debate of affirmative action?
7. When could employees make a case for reverse discrimination?
8. Should government impose a mandatory retirement age? Provide an argument against such an act.
9. What is the difference between prejudice and discrimination?
10. Assume that you are the manager of a county athletic program. You are responsible for hiring, training, supervising, and evaluating a staff of full-time and part-time personnel. List a number of discriminatory practices that you should avoid.

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