Chapter 3 – The Legal Environment: Equal Employment Opportunity and Safety

Students do not always find laws the most riveting of topics, so instructors should be aware that the material may seem dense as it discusses important topics students should know. As an introduction, instructors may wish to explain the legal environment as part of the external environment. This approach may help connect the topic to previous conversations, as well as demonstrate the understanding as important to both business and HR professionals. The need to stay apprised of developments and changes within the legal landscape may also be a point of emphasis when connecting the material.

The beginning of the chapter covers the components of the government (LO 3-1) and may be a review for those who have studied government in United States; however, it may be new information to international students or those not educated within the United States. It is also of interest to mention the number of students who may have forgotten this information if previously studied. Table 3.1 provides a very strong overview and reference for students as they read through the rest of the chapter (LO3-2). It also lists the enforcement agency (LO3-3). Instructors may wish to introduce the chapter material using this table first to provide students with a broad overview prior to reading deeper into the material.

It is important to develop awareness of the existence of these laws and how they impact personnel decisions and the organization’s viability. This may help frame LO3-4, which is outlined in Table 3.3. Here, some students may find it difficult to understand the concepts and so instructors should be prepared to explain each further. LO3-5 may also be introduced within this context.

Discussion of cases and examples can greatly improve student understanding as well as application of the material, and instructors may wish to punctuate classroom instruction through this approach.

Learning Objectives

LO 3-1: Identify the three branches of government and the role each plays in influencing the legal environment of human resource management.

LO 3-2: List the major federal laws that require equal employment opportunity and the protections provided by each of these laws.

LO 3-3: Discuss the roles, responsibilities, and requirements of the federal agencies responsible for enforcing equal employment opportunity laws.

LO 3-4: Identify the three theories of discrimination under Title VII of the Civil Rights Act and apply these theories to different discrimination situations.

LO 3-5: Identify behavior that constitutes sexual harassment, and list things that an organization can do to eliminate or minimize it.

LO 3-6: Discuss the legal issues involved with preferential treatment programs.

LO 3-7: Identify the major provisions of the Occupational Safety and Health Act (1970) and the rights of employees that are guaranteed by this act.

Society for Human Resource Management *Body of Competency & Knowledge*

This chapter contains content which may be identified within the following content areas in HR Expertise:

* Talent Acquisition
* Employee & Labor Relations
* HR in the Global Context
* Diversity & Inclusion
* Risk Management
* U.S. Employment Law & Regulations

Human Resource Certification Institute’s *A Guide to the HR Body of Knowledge*

This chapter contains content which may be identified within the following content areas:

* Business Management & Strategy
* Workforce Planning and Employment
* Human Resource Development
* Compensation and Benefits
* Employee and Labor Relations
* Risk Management

Guidance to Discussion Questions and End of Chapter Sections

**Discussion Question 1**: Disparate impact theory was originally created by the court in the Griggs case before finally being codified by Congress 20 years later in the Civil Rights Act of 1991. Given the system of law in the United States, from what branch of government should theories of discrimination develop?

In answering this question, students may correctly identify how the executive branch may propose laws and has the authority to enforce the laws, the legislative branch creates and passes laws, and the courts interpret them.

**Discussion Question 2:** Disparate impact analysis (the four-fifths rule, standard deviation analysis) is used in employment discrimination cases. The National Assessment of Education Progress conducted by the U.S. Department of Education found that among those aged 21 to 25, (1) 60% of whites, 40% of Hispanics, and 25% of blacks could locate information in a news article or almanac; (2) 25% of whites, 7% of Hispanics, and 3% of blacks could decipher a bus schedule; and (3) 44% of whites, 20% of Hispanics, and 8% of blacks could correctly determine the change they were due from the purchase of a two-item restaurant meal. Do these tasks (locating information in a news article, deciphering a bus schedule, and determining correct change) have adverse impact? What are the implications?

Yes, but students may need review of adverse impact. Students should be able to link recruitment and selection practices to the inadvertent result of disparate impact. For instance, advertisements for jobs in news articles read predominately by Caucasians could lead to disparate impact. Other selection processes, which are not requirements of a job could also lead to disparate impact (requiring ability to count change when that is not a specific job requirement).

**Discussion Question 3:** Many companies have dress codes that require men to wear suits and women to wear dresses. Is this discriminatory according to disparate treatment theory? Why or why not?

Yes, and the example within the section titled “Mixed-Motive Cases” discusses feminine dress, behavior and may help to further illustrate. Students should be able to demonstrate understanding of how dress codes may be enforced, however, cannot violate any EEO laws. Further, the dress required may need to be necessary for the job. Students may then demonstrate how professional dress code may be appropriate, but how a code along gender stereotypes may not be legal.

**Discussion Question 4:** Cognitive ability tests seem to be the most valid selection devices available for hiring employees, yet they also have adverse impact against blacks and Hispanics. Given the validity and adverse impact, and considering that race norming is illegal under the Civil Rights Act of 1991, what would you say in response to a recommendation that such tests be used for hiring?

The section titled “Plaintiff’s Rebuttal” reviews cognitive ability as a selection assessment. Using it alone could lead to disparate impact, and so to mitigate, selection of an instrument that has demonstrated to show less adverse impact is advisable. In addition, a series of assessments including the cognitive ability assessment could be used to minimize this issue.

**Discussion Question 5:** How might the ADA’s reasonable accommodation requirement affect workers such as law enforcement officers and firefighters?

Students should be able to accurately define the ADA and what constitutes a reasonable accommodation. Students should also be able to demonstrate how reasonable accommodation would focus on access to facilities, elimination of marginal tasks, reassignment to a job they can complete, usage of technology, as well as employees using their own accommodations. In terms of law enforcement and firefighters, discussion should focus on the essential tasks of the job and whether the disability prevents the individual from completing it. The section titled “Reasonable Accommodation” can help illustrate, or students may be directed to the section when responding to this question.

**Discussion Question 6:** The reasonable woman standard recognizes that women have different ideas than men of what constitutes appropriate behavior. What are the implications of this distinction? Do you think it is a good or bad idea to make this distinction?

Students may demonstrate the difficulties of drawing this distinction when discussing women of different ethnic, religious, and cultural backgrounds, including differences based on U.S. states. The standard may assume all women are the same.

**Discussion Question 7:** Employers’ major complaint about the ADA is that the costs of making reasonable accommodations will reduce their ability to compete with businesses (especially foreign ones) that do not face these requirements. Is this a legitimate concern? How should employers and society weigh the costs and benefits of the ADA?

Students should focus on how costs do not need to be significant to achieve this result. Further, students may demonstrate the benefit of employed and productive individuals against the alternative of substandard living conditions and/or government support funded by taxes.

**Discussion Question 8:** Many people have suggested that OSHA penalties are too weak and misdirected (aimed at employers rather than employees) to have any significant impact on employee safety. Do you think that OSHA-related sanctions need to be strengthened, or are existing penalties sufficient? Defend your answer.

Student rationale should demonstrate understanding of OSHA, and then connect the current penalties with whether or not they are effective and decreasing sanctions. This could be supported through deaths/accident and/or sanction statistics. Students may then wish to focus on HRM practices that protect and ensure safety of employees and may be above the OSHA requirements.

**Exercising Strategy**

Discrimination at Oracle?

1. Do you think that Oracle is discriminating? Why or why not?

Responses will vary based on students' opinions.

1. What type of data would tell you whether or not Oracle is discriminating?

Historical data on Oracle's hiring and pay would be required. Also, access to the governments' statistics and comparisons to similar companies would be helpful.

**Managing People**

Uber Life after Kalanick

1. Do you think CEOs should be fired for not having a good leadership style, even if the company seems to be performing well? Why or why not?

Responses will vary, but students should identify how poor leadership is still sub-performance, and may impact individual and collective employees. Further, without intervention, such as coaching, poor leadership may eventually harm the organization. Therefore, either a short-term intervention, or the eventual termination should be identified within student responses.

1. Given the large number of problems facing Uber, what should the focus be on solving first, second, and third?

Responses will vary, but students should demonstrate understanding of how to implement change and a methodology through HR practices.

**HR in Small Business**

Company Fails Fair-Employment Test

1. Why do you think “parental discrimination” was the grounds for this complaint instead of a federally protected class? Could you make a case for discrimination on the basis of sex? Why or why not?

Students may identify how women without families were not necessarily penalized, necessitating the need to claim parental discrimination. Students may argue that there was an inability to make the case based on sex/gender, as other women were not discriminated against.

1. How could Professional Neurological Services have avoided this problem?

Students should be able to focus on several HRM practices, including training of employees, culture of organization, as well as standardized pay rates.

1. Imagine that the company has called you in to help it hold down human resources costs, including costs of lawsuits such as this one. What advice would you give? How can the company avoid discrimination and still build an effi­cient workforce?

Students would best connect the responses from #2 to this question. Further, students may discuss how selection and support of productive employees is what is important, and that any decision based on discrimination is suboptimal for building an efficient workforce.

Guidance to Chapter Cases

**A Look Back**

Discrimination at Harvard?

Instructors should note that at the end of Chapter 3 there is a “Look Back” section, which revisits the opening Harvard case. While there are no associated questions, instructors may desire to facilitate a dialogue focused on how the president and their administration sets legislative and executive priorities, thus greatly impacting how laws are enforced.

**Competing through Environmental, Social, and Governance Practices**

A Cultural Challenge at Nike

1. What additional steps do you think Nike needs to do to eliminate the negative aspects of its culture while maintaining the positive aspects?

Responses will vary. Nike could institute training for its executives and middle managers. It could encourage open communication from the bottom up.

1. What things do you think an organization needs to do to eliminate sexual harassment?

An organization needs to have a consistent policy, training for all managers, and an avenue for employees to report sexual harassment without fear of retaliation.

**Integrity in Action**

Retaliation as an Indicator of Culture

1. How can firms seek to create a culture that protects employees from sexual harassment?

They need to have a consistent policy, training for all managers, and an avenue for employees to report sexual harassment without fear of retaliation.

1. What should firms do when victims allege retaliation for reporting sexual harassment?

A victim should feel protected when reporting sexual harassment and retaliation. If retaliation occurs, there should be a policy for handling it quickly and without negative consequences to the reporter.

**Competing through Globalization**

*#MeToo Goes Global*

1) Do you think that the #MeToo movement is just a temporary fad or is it a lasting change in society?

Responses will vary based on students' opinions.

2) What things do you think an organization needs to do to eliminate sexual harassment?

An organization needs to have a consistent policy, training for all managers, and an avenue for employees to report sexual harassment without fear of retaliation.

**Competing through Technology**

Iron Man in the Workplace

1. Do you think firms should do this for business (i.e., higher productivity) or ethical reasons (safety and health of employees)?

The safety and health of employees directly impact the business, so both are reasons to do this.

1. What other areas or kinds of jobs do you think might be targets for exoskeletons?

Responses will vary, depending on the students' work experiences.

Other Classroom Materials: CONNECT

There are CONNECT exercises available through McGraw-Hill, which can greatly assist student preparation for class and understanding of chapter concepts. Instructors may wish to structure the class, where students must complete the CONNECT exercises prior to class, thus, further reinforcing material and allowing instructors to expand and challenge student understanding during class time. CONNECT exercises may be set-up to be time-based, requiring students to practice chapter materials for a specific timeframe. It is the instructors’ discretion how they desire to include this into the course grade, but a low-stakes grading system based on completion is suggested to help encourage student usage, while minimizing penalties for mistakes during completion.

The following activities are available in Connect for this chapter:

**Determining Discrimination**

*Case Analysis*

This activity reviews the steps the U.S. legal system has made to limit and prevent discrimination in the workplace.

LO: 03-04 Identify the three theories of discrimination under Title VII of the Civil Rights Act and apply these theories to different discrimination situations.

Difficulty: 1 Easy; 2 Medium; 3 Hard

Blooms: Remember; Understand

AACSB: Ethics; Analytical Thinking

Topic: Adverse Impact and Disparate Treatment

**Equal Employment Opportunity**

*Case Analysis*

This activity deals with equal employment opportunity, and specifically, reverse discrimination.

LO: 03-06 Discuss the legal issues involved with preferential treatment programs.

Difficulty: 2 Medium; 3 Hard

Blooms: Apply; Analyze

AACSB: Ethics; Diversity; Analytical Thinking

Topic: Equal Employment Opportunity; Affirmative Action; The Role of Human Resource Managers

**Securing Safety**

*Case Analysis*

This activity presents a case about worker safety and what employees should do when reporting a safety issue to OSHA.

LO: 03-07 Identify the major provisions of the Occupational Safety and Health Act (1970) and the rights of employees that are guaranteed by this act.

Difficulty: 2 Medium

Blooms: Remember; Apply

AACSB: Knowledge Application; Analytical Thinking

Topic: Workplace Health Hazards

**Identifying Sexual Harassment**

*Click & Drag*

This activity presents various workplace situations and asks students to determine whether they constitute sexual harassment and if so, what type: hostile working environment or quid pro quo.

LO: 03-04 Identify the three theories of discrimination under Title VII of the Civil Rights Act and apply these theories to different discrimination situations.

03-05 Identify behavior that constitutes sexual harassment, and list things that an organization can do to eliminate or minimize it.

Difficulty: 2 Medium

Blooms: Apply

AACSB: Reflective Thinking; Analytical Thinking; Ethics

Topic: Sexual Harassment

**U.S. Legal System**

*Click & Drag*

This activity presents various HR issues and asks students to determine which branch of government regulates each issue.

LO: 03-01 Identify the three branches of government and the role each plays in influencing the legal environment of human resource management.

Difficulty: 2 Medium; 3 Hard

Blooms: Remember

AACSB: Analytical Thinking

Topic: Regulation of Human Resource Management; The Legal System in the United States

**Shocking Event at Suprima Bottling Company**

*Click & Drag*

This activity has students determine the order of activities that would take place in an OSHA inspection.

LO: 03-07 Identify the major provisions of the Occupational Safety and Health Act (1970) and the rights of employees that are guaranteed by this act.

Difficulty: 1 Easy

Blooms: Remember; Understand

AACSB: Analytical Thinking

Topic: Workplace Health Hazards

**Manager's Hot Seat: Groping for Answers**

*Video Case*

This activity reviews how a manager might deal with a workplace relationship that turns into a sexual harassment claim.

LO: 03-02 List the major federal laws that require equal employment opportunity and the protections provided by each of these laws.

03-04 Identify the three theories of discrimination under Title VII of the Civil Rights Act and apply these theories to different discrimination situations.

03-05 Identify behavior that constitutes sexual harassment, and list things that an organization can do to eliminate or minimize it.

Difficulty: 2 Medium; 3 Hard

Blooms: Remember; Understand

AACSB: Analytical Thinking

Topic: Sexual Harassment

**Manager's Hot Seat: Whistleblowing**

*Video Case*

This activity reviews the guidelines around what constitutes legal and ethical behavior by a company and how employees and managers should react to unethical behavior.

LO: 03-07 Identify the major provisions of the Occupational Safety and Health Act (1970) and the rights of employees that are guaranteed by this act.

Difficulty: 2 Medium

Blooms: Remember; Apply

AACSB: Ethics; Reflective Thinking

Topic: The Role of Ethics in Human Resource Management; Safety and Health Concerns; How Management Can Influence Ethical Behavior at Work; Federal Laws Affecting Human Resource Management

**Manager's Hot Seat: Diversity**

*Video Case*

This activity reviews the best practices for how managers should handle discrimination in the workplace.

LO: 03-02 List the major federal laws that require equal employment opportunity and the protections provided by each of these laws.

03-04 Identify the three theories of discrimination under Title VII of the Civil Rights Act and apply these theories to different discrimination situations.

Difficulty: 1 Easy; 2 Medium; 3 Hard

Blooms: Remember; Understand

AACSB: Analytical Thinking; Diversity

Topic: Diversity Management; Federal Laws Affecting Human Resource Management

**Manager's Hot Seat: Personal Disclosure**

*Video Case*

This activity reviews the fine line between firing for cause and firing for discrimination.

LO: 03-02 List the major federal laws that require equal employment opportunity and the protections provided by each of these laws.

Difficulty: 2 Medium; 3 Hard

Blooms: Remember; Apply

AACSB: Knowledge Application

Topic: Legal Aspects to Performance Appraisal; Issues and Procedures Related to Employee Termination

**Manager's Hot Seat: Workplace Aggression**

*Video Case*

This activity shows how managers can best deal with aggressive and threatening behavior in the workplace.

LO: 03-05 Identify behavior that constitutes sexual harassment, and list things that an organization can do to eliminate or minimize it.

Difficulty: 1 Easy; 2 Medium

Blooms: Remember; Apply

AACSB: Knowledge Application

Topic: Sexual Harassment; Title VII and the Civil Rights Act; Equal Employment Opportunity

**EEOC Process of Investigating and Resolving Discrimination**

*Case Analysis*

This activity describes how to prove discrimination is happening in the workplace and what steps an employee should take to report it to the EEOC.

LO: 03-03 Discuss the roles, responsibilities, and requirements of the federal agencies responsible for enforcing equal employment opportunity laws.

Difficulty: 2 Medium

Blooms: Remember; Apply

AACSB: Knowledge Application

Topic: Equal Employment Opportunity