

CHAPTER TWO

Title VII of the Civil Rights Act of 1964

A Historic Rights Act

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- * Single most important piece of legislation defining employment law rights
- * Prohibits discrimination in housing, education, employment, public accommodations, and the receipt of federal funds on the basis of race, color, gender, national origin, or religion

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- * Subsequently amended several times
 - 1972 – Equal Opportunity Employment Act
 - * Expanded coverage to include government employees
 - * Established Equal Opportunity Employment Commission (EEOC) to enforce the act
 - 1978 – Pregnancy Discrimination Act
 - Civil Rights Act of 1991
 - * Added jury trials, compensatory and punitive damages

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- * Some employers now appreciate the diversity in the workplace
 - * To know and understand the requirements of the law, it is important to look at the larger picture

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The Structure of Title VII

- * What is prohibited?
 - Discrimination in hiring, firing, training, promotion, discipline or other workplace decisions based on race, color, gender, national origin, or religion
 - Who must comply?
 - Employers, unions, and joint labor and management committees, employment agencies, most private employers, federal, state and local governments

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- * Who is covered?
 - Public and private employees, all levels and types of employees
 - U.S. citizens employed outside the U.S. for American employers and non-U.S. citizens working within the U.S.

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- * Who is not covered?
 - Employees of employers with fewer than 15 employees
 - Employees whose employers are not engaged in interstate commerce
 - Employees of religious institutions
 - Members of Communist organizations
 - In addition, businesses operated on or around Native American Indian reservations may give preference to Native Americans

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- * Filing Claims under Title VII
 - Nonfederal employees file with EEOC within 180 days of discriminatory event
 - The person bringing an action is called a claimant or a charging party
 - Federal employees file with their employing agency within 45 days
 - 706 agency – state agency that handles EEOC claims
 - Intent of Title VII is conciliation
 - EEOC notifies employer (respondent) within 10 days

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- Title VII includes antiretaliation provisions
- EEOC offers mediation before investigation
- If no reasonable cause is found for the discrimination, claimant is given a right-to-sue letter
- * Judicial review
 - Courts must give EEOC cases de novo review (complete new look)
 - Many employers now using mandatory arbitration agreements which are not subject to judicial review

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The Structure of Title VII

* Remedies

- Back pay of up to two years
- Front pay for earnings a claimant would have received if not for the illegal discrimination
- Retroactive seniority
- Reinstatement
- Injunctive relief
- Attorney fees
- Compensatory and punitive damages

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- * Jury trials permitted at the request of either party when compensatory and punitive damages are sought

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Theoretical Bases for Title VII Lawsuits

- * Disparate treatment – treating similarly situated employees differently because of prohibited factor
 - Bona fide occupational qualification (BFOQ) – intentional discrimination is reasonably necessary to employer's business

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- * Disparate impact – the result of policies that appear neutral, but have an adverse impact on a protected group
 - Many screening devices have disparate impact
 - Preemployment interviews and employment applications may be basis for claims of disparate impact
 - Business necessity is a defense

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An Important Note

- * Discrimination claims must be proved
- * Employees must produce evidence of discrimination
- * Employers should not avoid discipline for fear of being sued

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Management Considerations

- * Make sure employees understand Title VII
- * Do not tolerate violations to Title VII
- * Remember that all employees have a right to a workplace free of illegal discrimination

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