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### Employment Law for BUSINESS sixth edition

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McGraw-Hill Irwin

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	<h2>Statutory Basis</h2>
	<p>a. It shall be an unlawful employment practice for an employer —</p> <ol style="list-style-type: none"> <li>1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or</li> <li>2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. sec. 2000e et seq., sec. 703(a)</li> </ol>

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	<h2>A Historic Rights Act</h2>
<p>L01</p> <p>L02</p>	<ul style="list-style-type: none"> <li>• The Civil Rights Act of 1964 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.</li> <li>• Title VII of the Civil Rights Act of 1964 is the employment section of the act.</li> <li>• State and local governments passed laws paralleling Title VII and the other protective legislation.</li> </ul>

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## Title VII of the Civil Rights Act of 1964

- Affects on employers
  - Prohibitions
  - Regulations
- Amendments to the Act
  - Equal Employment Opportunity Act
  - Pregnancy Discrimination Act
  - Civil Rights Act of 1991
- EEOC
  - Job discrimination
  - Employment discrimination

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## Title VII Provisions

L03

- An employer cannot discriminate on the basis of:
  - Race
  - Color
  - Gender
  - Religion
  - National origin
- In making decisions regarding:
  - Hiring
  - Firing
  - Training
  - Discipline
  - Compensation
  - Benefits
  - Classification
  - Or other terms or conditions of employment

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## Who Must Comply with Title VII

L04

- Employers
- Unions
- Joint labor and management committees making admission, referral, training, and other decisions
- Employment agencies and other similar hiring entities making referrals for employment
- All private employers employing 15 or more employees
- Federal, state, and local governments

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### Who is Covered by Title VII

- Public (governmental) employees
- Private (non-governmental) employees
- Undocumented workers
  - Undocumented workers may not be eligible for certain forms of relief, such as reinstatement and back pay

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### Employees Who Are Not Covered by Title VII

- Employees of employers having less than 15 employees
- Employees whose employers are not engaged in interstate commerce
- Non-U.S. citizens employed outside the United States
- Employees of religious institutions, associations, or corporations hired to perform work connected with carrying on religious activities

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### Employees Who Are Not Covered by Title VII (continued)

- Members of Communist organizations
- Employers employing Native Americans living in or around Native American reservations
- Employers who are engaged in interstate commerce but do not employ 15 or more employees for each of 20 or more calendar weeks in the current or preceding calendar year

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## Filing Claims under Title VII

L04

- Who: Employees who feel they have experienced employment discrimination.
- What: 75,768 charges filed with the EEOC in fiscal year 2006.
- When: Generally within 180 days of the discriminatory event for nonfederal employees.
  - Within 45 days for federal employees.
- Where: the nearest EEOC office.

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## State Law Interface in the Filing Process

- 706 agency
- Work-sharing agreement with the EEOC
- Conciliation
- Expanded filing time

**Conciliation**  
 Attempting to reach agreement on a claim through discussion, without resort to litigation.

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## Proceeding Through the EEOC

- Within 10 days of the claim, the EEOC serves notice of the charge to the employer.
- Antiretaliation provisions
- EEOC claims in 2006:
  - 35.9% – race
  - 30.7% – gender
  - 25.8% – **retaliation**

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## Mediation

- Attempt to streamline the EEOC case handling process
- Alternative to a full-blown EEOC investigation
- “Referral-back” program
- Universal mediation agreements
- 60 to 70 percent of incoming cases are offered mediation
- Agreements reached are binding

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## EEOC Investigation

- EEOC’s determination of reasonable cause
- No-reasonable-cause finding
  - Dismissal and notice of rights (right-to-sue letter)
- Reasonable-cause finding
  - Meeting with EEO investigator

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## Judicial Review

- Court review of an agency’s decision
- De novo review
- Mandatory arbitration agreements
- Federal Arbitration Act
- Mediation provides an alternative between litigation and mandatory arbitration

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## Remedies Under Title VII

- Back pay
- Front pay
- Reinstatement
- Seniority
- Retroactive seniority
- Injunctive relief
- Compensatory damages
- Punitive damages
- Attorney fees
- Medical costs

**Jury trials**  
 Jury trials are permitted under Title VII at the request of either party when compensatory and punitive damages are sought.

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## Theoretical Basis for Title VII Lawsuits

L06

- Disparate treatment
  - Intentional discrimination
  - Legitimate, nondiscriminatory reason defense
  - The BFOQ defense

L07

- Disparate impact
  - What constitutes disparate impact?
  - Disparate impact and subjective criteria
  - Disparate impact of preemployment interviews and employment applications
  - The business necessity defense
  - Other defenses to Title VII claims

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## Disparate Impact Screening Devices

- Credit status – gender, race
- Arrest record – race
- Unwed pregnancy – gender, race
- Height and weight requirements – gender, national origin
- Education requirements – race
- Marital status – gender
- Conviction of crime unrelated to job performance – race

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## An Important Note

- Discrimination claims under Title VII and other employment discrimination legislation must be proved just as any other lawsuit.
- The employee must offer evidence to support any claims.
- Employers do not have to fear being sued if they consistently treat employees in a protected class just they would those of any other similarly situated employee.
- Title VII is not a job guarantee for women and minorities.

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## Management Tips

LOE

- Make sure that all employees understand:
- What Title VII is
  - What Title VII requires
  - Who Title VII applies to
  - How the employees' actions can bring about liability for the employer
  - What kinds of actions will be looked at in a Title VII proceeding
  - That the employer will not allow Title VII to be violated
  - That all employees have a right to a workplace free of illegal discrimination

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## Summary

- Title VII prohibits employers, unions, joint labor-management committees, and employment agencies from discriminating in any aspect of employment on the basis of race, color, religion, gender, or national origin.
- Title VII addresses subtle as well as overt discrimination.
- The law allows for compensatory and punitive damages, where appropriate, as well as jury trials.
- The employer's best defense is a good offense.
- Strong policies, consistently and appropriately enforced, as well as periodic training and updating as issues emerge, are most helpful.
- Unlawful employment discrimination can be costly to the employer.

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