



# Chapter 5 Race and Color Discrimination

Employment Law for **BUSINESS** sixth edition

Dawn D. BENNETT-ALEXANDER and Laura P. HARTMAN

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	<h2>Statutory Basis</h2>
	<p>It shall be an unlawful employment practice for an employer—</p> <p>(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 . . . or</p> <p>(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 . . . Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-2(a).</p>

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	<h2>Surprised?</h2>
L01	<ul style="list-style-type: none"> <li>• Race is the first of the prohibited categories in Title VII.</li> <li>• A 2004 Gallup poll found that:             <ul style="list-style-type: none"> <li>– 76 percent of whites, <i>including 9 out of 10 under 30</i>, thought blacks were now being treated fairly or somewhat fairly</li> <li>– Only 38 percent of blacks thought so</li> </ul> </li> <li>• Race discrimination claims, part of Title VII, have risen every decade since the law was passed.</li> </ul>
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## Race Inequalities

- Until recently, race has been almost exclusively about African Americans and whites with regard to Title VII
- Race vs. national origin
- E-RACE
- The “new racism”

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## Race Discrimination Progress

- Workplace discrimination against African Americans is still the worst of all groups, however progress is being made
- Example: Eastman Kodak proactive pay raises
- Awareness and knowledge of past history are key

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## EEOC’s Revised Race Guidance

- Ancestry
- Physical characteristics
- Race-linked illness
- Culture
- Perception
- Association
- Subgroup or “race plus”
- “Reverse” race discrimination

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## Background

- History and its present-day effects account for much of the race discrimination we see manifested today
- Slavery as an integral part of American life lasted for well over 200 years, until after the Civil War ended in 1865
- Black Codes
- Jim Crow laws
- “Slave Codes”

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## Background (continued)

- After Reconstruction, as during slavery, every facet of the life of blacks was regulated
- Segregated public schools were outlawed by the U.S. Supreme Court in *Brown v. Board of Education* in 1954
  - Blacks were not admitted into many schools until much later
- Department of Labor Glass Ceiling Studies
  - Employer workplace analysis and monitoring could uncover much race discrimination before it progresses to the litigation stage

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## General Considerations

- Title VII was enacted primarily in response to discrimination against blacks in the country, but the act applies equally to *all*.
- There are times when it *appears* the law does not equally protect rights of nonminorities.
- Race discrimination may occur against any group and is equally prohibited under Title VII.

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## Recognizing Race Discrimination

- The latest EEOC statistics for FY 2006 indicated that race remains the most frequent type of claim filed with the agency.
  - Of the total charges filed, 36 percent of them were based on race.
- Often employers do not realize their treatment of a particular race is building a case of race discrimination for which they could ultimately be liable.
- **Intent** may be established by direct evidence of discrimination by the employer even when an employer may discriminate for what it considers to be justifiable reasons.

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## Recognizing Race Discrimination (continued)

- An employer who has not considered the issue of race may well develop and implement policies that have a racially discriminatory impact, without ever intending to do so.
  - The “no-beard” case is an example
- As a manager, make sure you try to consider all angles before making a decision.
  - It is especially important to consider the realities of those who belong to groups with whom you may not be familiar.

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## Racial Harassment

- To hold an employer liable for racial harassment, the employee must show that the harassment was:
  - Unwelcome
  - Based on race
  - So severe or pervasive that it altered the conditions of employment and created an abusive environment
  - There is a basis for imposing liability on the employer

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## Racial Harassment (continued)

- Racial harassment may also have as its basis the employer imposing on the harassed employee **different terms or conditions of employment** based on **race**.
- An employer’s prompt response to harassment is important.

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## A Word About Color

- **Color** is one of the five categories included in Title VII as a prohibited basis for discrimination.
  - Few cases have been brought using color as a basis for discrimination.
- Color discrimination can exist between two people of the same race.
- Miss America

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## The Reconstruction Civil Rights Act

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- The three main pre-Title VII laws are know collectively as the **post-Civil War statutes**, or the **Reconstruction Civil Rights Acts**
- “Under color of state law”
- The post-Civil War statutes provided little relief to blacks facing employment discrimination

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### 42 U.S.C. Section 1981

- Equal rights under the law
- *Patterson v. McLean Credit Union*
- Section 1981 does not permit actions for racial discrimination during the **performance** of the contract, but only in **making** or **enforcing** the contract
- The Civil Rights Act of 1991 now permits recovery of compensatory and punitive damages

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### 42 U.S.C. Section 1983

- Civil action for deprivation of rights
- Protects citizens from deprivation of their legal and constitutional rights, privileges, and immunities, under color of state law
- Neither the 14<sup>th</sup> Amendment nor section 1983 may be used for discrimination by private employers
- *Jett v. Dallas Independent School District*

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### 42 U.S.C. Section 1985

- Conspiracy to interfere with Civil Rights—Preventing officer from performing duties
- Known as the “Ku Klux Klan Act”
- Addresses conspiracies to interfere with or deprive the civil rights of others
- *Mississippi Burning case*

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## Management Tips

- Believe that race discrimination occurs and be willing to acknowledge it when it is alleged.
- Make sure there is a top-down message that the workplace will not tolerate race discrimination in any form.
- Don't shy away from discussing race when the issues arises.
- Provide a positive, non-threatening, constructive forum for the discussion of racial issues.
- Be aware of cultural differences that may be connected, at least in part, on race, when doing things as simple as deciding how to celebrate special events in the workplace.

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## Management Tips (continued)

- When an employee reports race discrimination, don't tell the employee he or she must be mistaken.
- Be willing to treat the matter as a misunderstanding if it is clear that is what has taken place.
- Offer support groups if there is an expressed need.
- Offer training in racial awareness and sensitivity.
- Constantly monitor workplace hiring, termination, training, promotion, raises, and discipline to ensure that they are fair and even-handed.

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## Summary

- Title VII prohibits discrimination on the basis of **race**.
- The employer must ensure that every employee has an **equal opportunity** for employment and **advancement** in the workplace, regardless of race.
- Employers must be **vigilant** to guard against the more stubborn, subtle manifestations of race discrimination.
- Racial discrimination may be by way of disparate **treatment** or disparate **impact**.

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## Summary (concluded)

- Disparate treatment may be shown by **direct** or **indirect** evidence of discrimination.
- Disparate impact may be more difficult to discern, so employers need to closely **scrutinize** workplace policies and procedures to **prevent** unintended disparate impact leading to liability.
- Race cannot be used as a bona fide occupational qualification.

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