CHAPTER FOUR: TITLE VII: THE BEGINNING OF THE EMPLOYMENT RELATIONSHIP

I. MANAGEMENT CONCERNS IN RECRUITMENT
   a. The distinction between “discrimination” and “illegal discrimination” in recruitment and selection
   b. Consider recruitment as the beginning of the employment relationship in creating “best practices” to avoid illegal discrimination
   c. Recruitment followed by information-gathering
      i. Application forms/resumes
      ii. Interviews
      iii. References
      iv. testing

II. RECRUITMENT
   a. FEDERAL STATUTORY REGULATION OF RECRUITMENT
      i. [Note: In Exhibit 4.2 on p. 117, the authors have given a “preview” of statutes to be studied later in the course. While this information is helpful, you will only be responsible for the provisions relating to Title VII at this point in the course, such as the “advertising provisions” below in II d]
   b. STATE EMPLOYMENT LAW REGULATION
      i. DFEH Guidelines: See Exhibit 4.4 p. 139
         1. examples of valid and invalid pre-employment inquiries
            a. pre-offer vs. post-offer inquiries
   c. COMMON LAW
      i. Intentional Misrepresentation by Employer
         1. California (9th Circuit Court of Appeals): claim may be brought by spouse of employee
      ii. Fraud in recruitment (rare)
   d. ADVERTISEMENTS
      i. “Best practices” for wording
      ii. “Best practices” for posting
   e. “WORD-OF-MOUTH” RECRUITING
      i. “Do’s & Don’ts”
      ii. Disparate Treatment and Disparate Impact
1. **EEOC v. Chicago Miniature Lamp Works** (p. 122)

2. **EEOC v. Consolidated Service System** (p. 125)

f. NEPOTISM  
   i. “Do’s & Don’ts”

g. (HOW TO) PROMOTE FROM WITHING

h. RESUME COLLECTION

III. PREFERENTIAL TREATMENT  
   a. Difference between affirmative action and preferential treatment
   b. *McGarry* (p. 133)

IV. INFORMATION GATHERING AND SELECTION  
   a. Application process
      i. Post-hiring discovery of misstatements on application
         1. see “after-acquired evidence” defense (p. 142)
   b. “Best Practices” to assure valid interviews
   c. Background or Reference Check, Negligent Hiring
   d. Providing Reference Checks: Potential Liability
      i. Negligent misrepresentation in references
      ii. Defamation, intentional interference with prospective economic advantage
      iii. “No-comment” policies
      iv. California’s “qualified immunity”
      v. Written releases from employees

V. DOCUMENTATION OF FAILURE TO HIRE

VI. ADMINISTRATION  
   a. EEO-1 form
   b. [lecture: EEOC’s new “Management Directive”]

VII. MANAGEMENT TIPS  
   a. Exhibit 4.9 (p. 147)