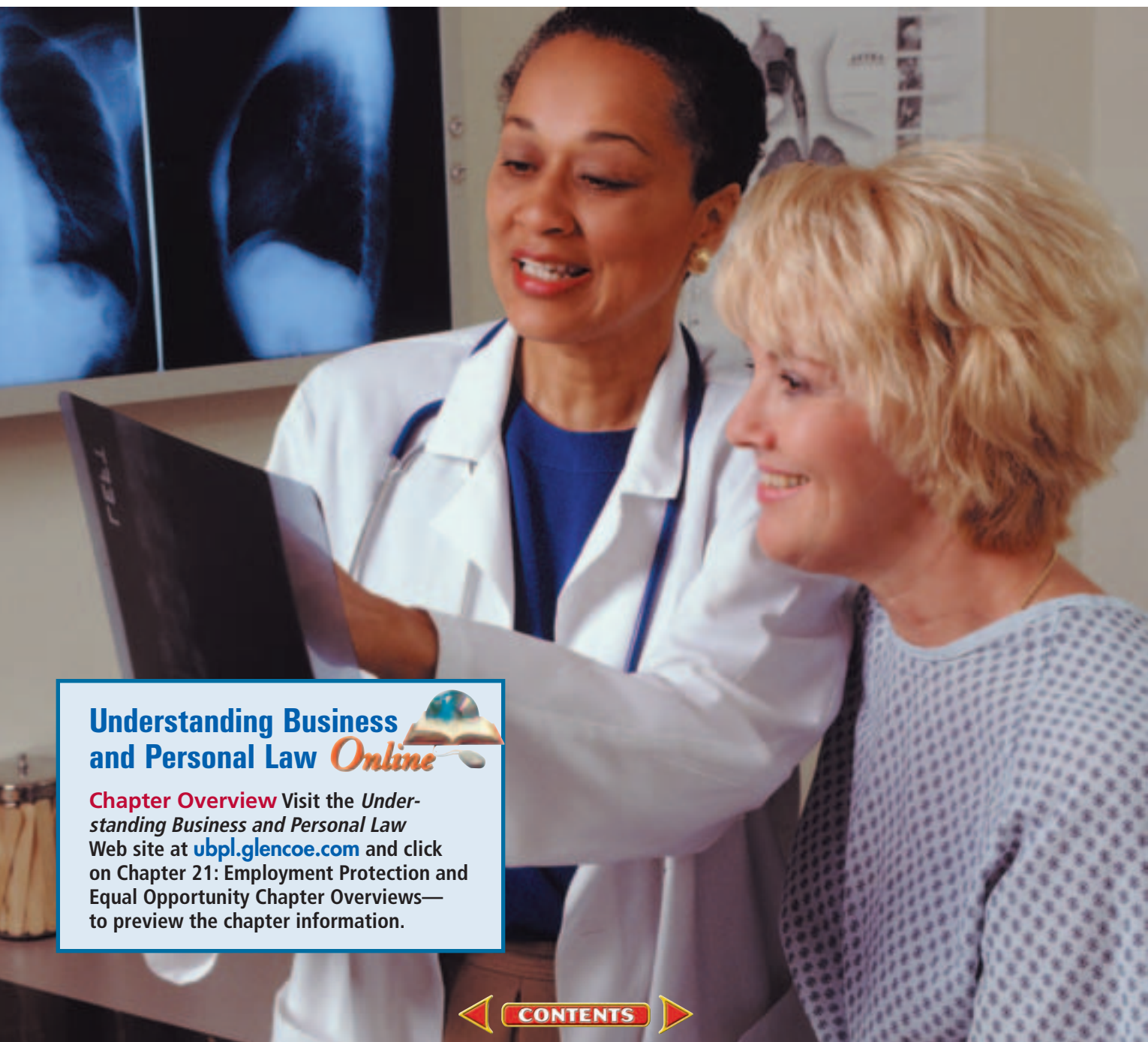


# Employment Protection and Equal Opportunity



## Understanding Business and Personal Law *Online*



**Chapter Overview** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 21: Employment Protection and Equal Opportunity Chapter Overviews—to preview the chapter information.

## The Opening Scene

Caterina is sitting on the front steps of the porch, reading a newspaper. Her brother, Lazzaro, and his friend, Dylan, have just arrived at home. They have spent the afternoon at a baseball game.

### Paper Chase

**CATERINA:** It's about time you got home. Where have you been?

**LAZZARO:** Why should I tell you? It's none of your business.

**DYLAN:** We were downtown at a ball game. What's in the paper?

**LAZZARO:** She's looking for another job. She got fired from her last job. I'm sure that you heard about it at school.

**CATERINA:** Shut up.

**DYLAN:** Are you getting unemployment compensation?

**CATERINA:** What's that?

**DYLAN:** I'm not sure exactly, but every time my Aunt Caitlin gets laid off, she gets unemployment compensation.

**CATERINA:** She gets money for not working? That sounds too good to be true.

**DYLAN:** That's right. She gets money for not working, no strings attached.

**LAZZARO:** That's right up your alley.

**CATERINA:** Shut up. Where can I find out about that unemployment compensation stuff? I'm definitely interested.

**DYLAN:** There's an office downtown. You could stop by one day after school.

**LAZZARO:** Did you find any job prospects in the paper?

**CATERINA:** Nothing I can do.

**LAZZARO:** No surprise there.

**CATERINA:** Shut up.

*(Dylan picks up the paper and looks at the want ads. His eyes rest on one ad.)*



**DYLAN:** What about this ad for a Gal Friday? Maybe you could do that.

**CATERINA:** Gal Friday? What's that?

**DYLAN:** I have no clue.

**CATERINA:** Maybe I should just try to get some of that unemployment compensation. Did you say the office is downtown?

**DYLAN:** On Euclid Avenue where it crosses Ninth Street.

**CATERINA:** I have one more question. Will I need a social security number?

**DYLAN:** Probably.

**CATERINA:** Then I better go to the Social Security Office first.

**LAZZARO:** You mean you never got a social security card?

**CATERINA:** That's right. It didn't matter. Mr. Pellis paid me in cash.

**LAZZARO:** Maybe it's a good thing that you got fired after all.

### What Are the Legal Issues?

1. What is the Occupational Safety and Health Administration?
2. What rights do employees have regarding wages, hours, and benefits?
3. What privacy rights do employees have?
4. What classes are protected from unlawful discrimination in employment matters?
5. What rights do employees have in relation to equal employment opportunities?

# Laws Relating to Employment Conditions and Benefits

## What You'll Learn

- How to recognize the role that OSHA plays in ensuring workplace safety
- How to identify employers' legal requirements with regard to wages and hours
- How to identify the statutes designed to protect employee privacy rights
- How to distinguish between unemployment compensation and workers' compensation

## Why It's Important

Understanding the rights that are legally due to employees will help you determine your rights.

## Legal Terms

- Occupational Safety and Health Administration (OSHA)
- equal pay rule
- pension plan
- social security
- unemployment compensation
- workers' compensation

## Employment Conditions

In the early days of the Industrial Revolution, employers demanded a great deal from workers and often gave little in return. Some employers had little regard for their workers' safety and quality of life. The government eventually passed laws regulating employment conditions. Workers were provided with a variety of benefits and a guarantee that they would have equal employment opportunities. Today there are many federal and state laws that deal with labor conditions and worker benefits.

Employment conditions can be divided into three areas: health and safety, right to fair wages and benefits, and privacy rights. To guarantee these rights, the government has created a variety of laws to protect employees.

## Health and Safety

The federal Occupational Safety and Health Act of 1970 was enacted by Congress to ensure that employees are protected in the workplace. The act established the **Occupational Safety and Health Administration (OSHA)**, the agency within the federal government that sets safety and health standards for many companies within the United States. Businesses with 11 or more employees that engage in interstate commerce must meet OSHA's health and safety standards. Figure 21.1 shows the type of safety and health standards that employers must post for all employers to see.

OSHA uses two approaches to accomplish its mission. First, it imposes upon employers the affirmative duty to maintain a safe and healthy work environment. Second, OSHA creates rules that outline the safety steps that businesses must maintain. These rules are enforced by inspections and fines.

## Inspections

To make certain that employers adhere to OSHA regulations, the agency randomly inspects workplaces. OSHA also endeavors to inspect

Figure 21.1

## SAFETY AND HEALTH PROTECTION ON THE JOB



Chapter 88-Code of Iowa provides job safety and health protection for workers throughout the State of Iowa.

The Iowa Division of Labor Services has the responsibility for administering this Chapter. The Division of Labor adopts federal occupational safety and health standards as State of Iowa standards. Employers and employees are required to comply with these standards.

### SAFETY ON THE JOB IS EVERYBODY'S RESPONSIBILITY!

**EMPLOYERS:** Chapter 88 requires that all employers must furnish to employees employment and a place of employment free from recognized hazards which cause or are likely to cause death or serious physical harm to employees and comply with occupational safety and health standards adopted under this Chapter.

**EMPLOYEES:** Chapter 88 requires that each employee comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Chapter that are applicable to the employees own actions and conduct.

### COMPLIANCE WITH SAFETY AND HEALTH REQUIREMENTS

To ensure compliance with safety and health requirements, the Iowa Division of Labor conducts periodic inspections of places of employment. Inspections are conducted by trained compliance safety and health officers. Chapter 88 requires that an authorized representative employer and a representative authorized by the employees be given an opportunity to accompany the inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the compliance safety and health officers will consult with a reasonable number of employees concerning safety and health conditions in the workplace.

For assistance and information, including copies of Chapter 88 and of specific safety and health standards, contact:

**Iowa Division of Labor**  
**1000 East Grand Avenue**  
**Des Moines, Iowa 50319-0209**  
**Telephone(515) 281-3606**

### COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION

Any interested person or representative of such a group of persons or group of persons may submit a complaint to the Federal government concerning the operation or administration of any aspect the Iowa Division of Labor's occupational safety and health activities pursuant to Chapter 88-Code of Iowa.

Complaints may be submitted orally or in writing to:

**Assistant Regional Administrator**  
**U.S. Department of Labor**  
**Occupational Safety & Health Administration**  
**911 Walnut, Room 496**  
**Kansas City, Missouri 64106**  
**Phone: (816) 426-5861**

Any such complaint should describe the grounds for the complaint and specify the aspect or aspects of the administration or operation of Iowa's program that is believed to be inadequate.

If upon receipt of the complaint, the Assistant Regional Administrator (ARA) determines that reasonable grounds exist to believe that an investigation should be made, the ARA shall cause such investigation, including any workplace inspection, to be made as soon as possible.

a business when a death or a disaster has occurred, or when an employee files a complaint. Such complaints must be in writing and must be filed at the nearest OSHA office by the employee or someone representing the employee. The law protects employees who file such complaints from being discharged from the job. Employers may be fined for each violation reported by an employee or discovered during an OSHA inspection.

**Example 1.** Talia L'sar worked on the loading dock for Chamberlain Industries. She discovered that Chamberlain was storing dangerous chemicals in the garage area of the loading dock. When she reported this to her supervisor, her complaint was ignored. Accordingly, she filed a complaint with the local OSHA office, which then scheduled an inspection. Should Chamberlain take retaliatory action against Talia, that action would be illegal.

### STATE REQUIREMENTS

In addition to federal OSHA requirements, the states often mandate their own OSHA standards. *To what does this poster alert workers?*



## Wages, Hours, and Benefits

The government's interest in regulating employment extends to the conditions under which employees perform their jobs. In the 1930s, the government responded to many of the hardships suffered by workers during the Great Depression by regulating wages, hours, and benefits of workers by passing several laws that set standards for employment in American businesses.

### Fair Labor Standards Act

The federal Fair Labor Standards Act, also known as the Wage and Hour Law, requires certain employers to pay their workers a legal minimum hourly wage rate, plus time-and-a-half for all work over 40 hours per week. The Fair Labor Standards Act also regulates the employment of minors. The act covers employees who produce goods for transport in interstate commerce and workers such as certain hospital, retail, restaurant, and school employees. Professional employees, administrators, and executives are not covered by this act.

### Equal Pay Act

In 1963, Congress passed the Equal Pay Act as an amendment to the Fair Labor Standards Act. The amendment established the equal pay rule, which states that employers engaged in interstate commerce must pay women the same rate of pay as men holding the same type of job. The **equal pay rule** covers hourly workers, executives, administrators, professional employees, and outside salespeople who receive salaries and/or commission.

### Employment Retirement Income Security Act

A **pension plan** is a program established by an employer or a union that is designed to provide income to employees after they retire. A pension's amount is typically based on an employee's salary and length of service with a company. Previously, funds in some employee pension plans were poorly invested, or the funds deposited in retirement accounts were used for other business expenses. These practices resulted in losses of retirement benefits to workers and severe economic hardship to them and their families.

The Employment Retirement Income Security Act (ERISA) was passed to prevent such abuse. One requirement of the act is that employers must place employee contributions to pension plans in a trust fund that is independent of the employer's control. Another ERISA requirement imposes a duty of good faith on those who manage pension plans. Other ERISA requirements include informing employees of their retirement benefits and submitting reports on the plan to the Secretary of Labor.





## *A Global Perspective:* **Laws Around the World**

### **U.S. Citizens Working in Other Countries**

Today, thousands of Americans and their families live and work abroad. Typically, a U.S. citizen must obtain a work permit and a resident visa before being allowed to work in a foreign country. In most cases, these requirements must be satisfied before entering the country to work. The easiest way to meet these requirements is to have an employment contract with a company that will obtain the necessary permissions and documents for you.

Americans who live in foreign countries retain their U.S. citizenship and continue to pay federal income taxes, even on income earned in a foreign country. A child born to two U.S. citizens while in a foreign country is automatically granted U.S. citizenship. The child may also be granted citizenship in the foreign country, resulting in dual citizenship.

U.S. citizens living in other countries are subject to the laws of the host country, which may differ substantially from those of the United States. Legal procedures in other countries may also provide fewer protections than the Constitutional rights available to persons residing in this country. Americans imprisoned in foreign countries may request aid from the U.S. Department of State, as well as the U.S. Embassies and Consulates in those countries. Although these entities advocate for the fair treatment of Americans, they cannot change the laws of the foreign country or force the country to release an American prisoner.

In a volatile international environment, Americans working abroad may obtain information about different countries from consular information sheets furnished by the U.S. Department of State. If conditions in a particular country threaten the safety of Americans, the U.S. Department issues a travel warning for that country. Consular information sheets and travel warnings may be accessed at the State Department's Web site.

**Critical Thinking Question** Do you think it's fair for Americans working abroad to be subject to regulations that may be contrary to the laws of the United States? For more information on the rights of Americans working in foreign countries, visit [ubpl.glencoe.com](http://ubpl.glencoe.com).

## Family and Medical Leave Act

Under the Family and Medical Leave Act, an employee of a company with at least 50 employees is entitled to 12 weeks of leave during any 12-month period because of the birth or adoption of a child, or to care for a spouse, child, or parent who has a serious medical condition. After the leave, the employee is entitled to return to his or her previous position with the same or equivalent pay and benefits. To be eligible for such leave, the employee must work for at least one year and accumulate sufficient service time.

## Employee Privacy Rights

In recent years, the subject of employee privacy rights has become of central concern in the workplace. Three areas of primary concern include: privacy for governmental employees, testing employees for drug use, and using polygraph (lie detector) test results in the hiring and firing of employees.

### LAWS in Your Life

#### It's Your Right

Asserting your rights in the workplace can be intimidating. When you feel you have been unlawfully discriminated against at work, you are entitled to take certain steps to remedy the situation, and you should be able to do so without fear of reprisal from your employer.

A talk with your manager or your manager's manager is the first place to start. A frank discussion at this point can often resolve the problem and avoid further legal hassles. Before approaching your employer, try to become familiar with your legal rights. Also try to be as objective as possible, stick to the facts, and avoid being overly emotional in making your point.

Conclude the conversation by asking what steps will be taken next. Your manager might conduct a formal investigation, or he or she might simply want to speak with other employees about the problem. Be sure to schedule a follow-up meeting to monitor progress. It's also a good idea to document your side of the story by taking notes of conversations and gathering information to support your claim.

**Research** Go to the library or visit the Internet. What is the law in your state regarding the time limit (statute of limitations) for filing a lawsuit for workplace discrimination?

## Federal Privacy Act

Because of our general aversion to governmental interference in personal rights, the privacy of government employees is often given greater emphasis than the privacy of employees in the private sector. For instance, the Federal Privacy Act directly addresses the privacy of government employees. Under this act, government employees are given the right to restrict inspection of their employment files, be informed of their employment files, be informed of the contents of those files, and fix any mistake that they might find in those files.

## Drug-Free Workplace Act

The Drug-Free Workplace Act, which applies to companies that have contracts with the federal government, aims to create a drug-free work environment. Under the act, firms must initiate a plan to make sure that employees do not use drugs on the job. The statute does not, however, order companies to include drug testing in their plans. If a drug test is performed improperly, it can violate the Fourth Amendment to the United States Constitution, which prohibits unreasonable search and seizure.

The Supreme Court has provided a guideline for such a situation. The Court has held that, when drug tests do not involve criminal activity, the employee's privacy rights must be balanced with the government's duty to protect the public.

**Example 2.** Rachel Goetz applied for a position as a security guard for the Jackson Biological Product Company. All security officers for Jackson were required to carry firearms. Consequently, Goetz was obligated to undergo a drug test. In this case, Goetz should understand that the public's need to be protected from armed guards who might be under the influence of drugs would outweigh her right to privacy.

Some states have passed statutes that regulate drug testing in the private sector. The guidelines often include making certain that employees or applicants are notified of the testing procedures. Companies are also required to keep the results of such tests confidential. They must communicate the results to the employees or applicants and initiate a backup test when the initial test proves positive. Finally, they must give the applicant or employee a chance to challenge the test results.

## Employee Polygraph Protection Act

As with drug testing, polygraph or lie detector testing can violate the privacy rights of employees. Congress passed the Employee Polygraph Protection Act to regulate such testing procedures. The act prohibits



### Affirmative Action

Employers that have discriminated in the past are often required by the courts to submit an affirmative action plan. Such plans are also frequently required of firms that contract with the government, and many private companies and institutions also implement affirmative action plans. *What are the goals of these plans, and how do they address the problem of unlawful discrimination?*



## Legal Briefs

Recent studies suggest that it is increasingly difficult for low and moderate income families to afford housing. According to Nicolas P. Retsinas, director of Harvard University's Joint Center for Housing Studies, "there is no state in which full-time minimum wage work is enough to afford, at 30 percent of income, a two-bedroom apartment at the federal fair-market rent."

employers from using lie detector tests either for screening of employment applicants or for random testing of employees.

There are several exceptions to the rules prohibiting such tests. For example, the statute does not apply to businesses involved in security or the handling of controlled substances. Thus, drug firms and private investigation companies would be permitted to use polygraph tests.

## Laws Providing Worker Benefits

As industrial society developed, people recognized an increasing need to protect workers and their families. Hitherto, workers who relied on the common law, such as negligence suits against employers in case of injury, were not often successful. As a result, legislatures began to pass laws that protect workers who have left their job because of retirement, injury, disability, or layoffs. Social security, unemployment insurance, unemployment compensation, and workers' compensation are all government initiatives to protect workers.

### Social Security Act

**Social security** is a government program that provides continuing but limited income to workers and their dependents. It provides benefits to employees and their families when their earnings stop or are reduced because of retirement, disability, or death. The Social Security Act of 1935 and its amendments set up a social insurance program funded by contributions from both employers and employees. Employers must automatically deduct a certain amount from employees' paychecks, contribute an equal amount, and send both contributions to the Internal Revenue Service. Congress sets the amount of the employee's contribution as a percentage of annual wages.

People become eligible to receive social security benefits by working for a certain time period in a job or jobs covered by the program or by being a dependent of a person who meets that requirement. When earnings stop or are reduced because the worker retires, dies, or becomes disabled, monthly cash benefits are paid from these funds to replace part of the lost income.

You have one social security number to use throughout your life. The Social Security Administration, the Internal Revenue Service, and certain other federal organizations use social security numbers in their programs. Social security records, which contain a lifetime account of a person's earnings, are confidential.

### Unemployment Compensation Laws

When people are out of work, they cannot buy goods. When goods go unsold, the factories that make the goods and the retail stores that sell the goods lay off workers. These workers cannot buy goods, so more workers are laid off, and the cycle continues. To lessen the effects of

unemployment, and to provide for the families of out-of-work workers, the government has set up a means of protecting unemployed workers.

**Unemployment compensation** is a system of government payments to people who are out of work and looking for a job. Payments are made from an unemployment insurance fund financed by payroll taxes on employers or unemployment insurance premiums paid by employers.

A section of the Social Security Act provides for a joint federal-state system of unemployment compensation. According to the Federal Unemployment Tax Act, each state operates its own unemployment compensation system, subject to certain conditions imposed by the federal government. The states determine the tax rate each employer must pay to fund the unemployment benefits.

Benefits vary among the states, as do minimum and maximum payments, length of work requirements for coverage, and maximum benefit periods. Generally, unemployed workers apply at state employment offices for benefits and for suitable work. Workers may be disqualified for benefits for a limited period if their unemployment arises out of a strike or a lockout. Each state determines the period of the worker's disqualification. Workers are also disqualified if they refuse suitable work without cause, have been discharged for misconduct, or have quit their jobs without "good cause."

**Example 3.** In The Opening Scene, Dylan tells Caterina that unemployment compensation is paid by the government "with no strings attached" to workers who have been fired or who have quit their jobs. This interpretation is not accurate. Workers are not eligible for benefits if they have been discharged for misconduct or have quit their jobs without "good cause."

Employees who believe they have been denied unemployment compensation for an unjust reason may appeal the decision. Most appeals are resolved at the local level.

## Workers' Compensation Laws

Loss of income due to accidents, illness, or death on the job became a serious problem with the introduction of machines to industry. Faced with this situation, several state legislatures passed laws in the early 1900s creating workers' compensation programs. By 1959, all 50 states



### WORKERS' BENEFITS

The federal and state governments have passed laws that benefit workers. *How do workers qualify for such benefits?*

had programs in place. **Workers' compensation** is an insurance program that provides income for workers who are injured or develop a disability or disease as a result of their job (see Figure 21.2). In Texas, workers' compensation law was first enacted in 1913 and the Texas Workers' Compensation Program evolved over time to address a variety of workplace needs. The Texas Workers' Compensation Act of 1989 was adopted to consolidate and strengthen workplace health and safety programs, improve benefits and benefits delivery, assist in resolving claim disputes, ensure compliance with workers' compensation laws, and develop medical fee and treatment guidelines to help control medical costs. Texas has also established the Texas Workforce Commission (TWC), the state agency that provides workforce development services to employers and job seekers in Texas. Employers are offered recruiting, retention, training, and outplacement services, as well as labor market statistics. Job seekers are provided with access to job search tools, training programs, and career development information, among other job-related resources.

Employers bear the cost of workers' compensation. In most states, employers must pay a tax on their payrolls to fund the state's workers' compensation insurance fund. In some states, employers have the option of contributing to a state fund or purchasing such insurance from a private insurer. In other states, all employers must purchase workers' compensation insurance from private insurers. As a result, state workers' compensation laws vary.

### Work Opportunity Laws

In 1996, Congress responded to problems within the government system for providing assistance to poor Americans with dependent

## Virtual Law

### Bias in the Workplace

Recently, Microsoft Corporation was hit with a \$5 billion lawsuit for discrimination. Several present and former African-American employees claimed the company discriminated against them in employee evaluations and pay. These workers also claimed wrongful termination in some cases. The suit asserts that the company does little to hire and promote African Americans and that there is a "glass ceiling" at Microsoft for African Americans. The company denied these claims, but the lawsuit underscores the importance of encouraging diversity in the workplace. (Source: *TechWeb News*, January 3, 2001)

**Connect** Read more about bias claims by visiting the Web site of the U.S. Department of Justice, Office of Civil Rights.

**Figure 21.2**

**WORKERS' COMPENSATION ACT**

**State of New Mexico**

**WORKERS' COMPENSATION ADMINISTRATION**

Each employer who is subject to the Workers' Compensation Act must conspicuously display this poster wherever notices to employees and applicants for employment are customarily posted, pursuant to Chapter 52, NMSA 1978, Section 52-1-29.

Each employer and employee enjoys certain rights under the provisions of the New Mexico Workers' Compensation Act. Generally, each employer of three or more workers is required to provide workers' compensation insurance. However, certain categories of employers and employees are exempt under the act; farm and ranch laborers, private domestic servants, and real estate salespersons are not required to be covered by Workers' Compensation insurance. Employers of these categories may file with the Director an election to be subject to the Workers' Compensation Act.

A worker injured on the job is entitled to medical care. Either the worker or the employer may choose the health-care provider for the initial sixty (60) day period. The party who did not choose the initial healthcare provider may select the healthcare provider for the remaining medical benefit period. Either may challenge the healthcare choice of the other by notifying the director, in writing. A Workers' Compensation Administration Judge will hear the challenge and render a final decision within seven (7) days.

Wage disability benefits are not paid for an injury that results in seven (7) or less days of disability. If an on-the-job injury results in more than seven (7) days of disability, benefits are paid at the rate of sixty-six and two-thirds (66 & 2/3) percent of the average weekly wage at the time of the accident, not to exceed the maximum specified by law, or \$297.19 for 1991. For information about prior-year maximum-wage benefits, contact the Workers' Compensation Administration at the address or phone number listed below. The first wage disability benefit payment or notice of denial is due to the claimant fourteen (14) days after the Employer's First Report of Accident (WCAE1.1) is filed. If you believe a payment is due to you and you have not received it, contact a Workers' Compensation Administration Ombudsman through one of the telephone numbers listed below.

**NOTICE OF ACCIDENT**

A worker claiming entitlement to workers' compensation benefits must file a NOTICE OF ACCIDENT with their employer. However, this is not necessary.

**ACTA DE COMPENSACIÓN DE LOS TRABAJADORES**

**Estado de Nuevo México**

**ADMINISTRACIÓN DE COMPENSACIÓN DE LOS TRABAJADORES**

Cada empleador que está bajo el Acta de Compensación de los Trabajadores debe mostrar este cartel en forma visible donde que se acostumbra poner las notificaciones para los empleados y las personas que solicitan trabajo, según el Capítulo 52, NMSA 1978, Sección 52-1-29.

Cada empleador y cada empleado goza de ciertos derechos bajo las disposiciones del Acta de Compensación de los Trabajadores de Nuevo México. En general, cada empleador de tres empleados o más debe ofrecer el seguro de compensación de los trabajadores. Sin embargo, ciertas categorías de empleadores y de empleados están exentas bajo el acta: no se exige que los obreros agrícolas, sirvientes domésticos o agentes inmobiliarios recibir el seguro de compensación de los trabajadores. Los empleadores de estas categorías pueden dar notificación al Director que ellos van a proveer seguro bajo el Acta de Compensación de los Trabajadores.

Un trabajador lastimado en el trabajo tiene derecho a cuidado médico. El trabajador o el empleador puede elegir el proveedor de cuidado médico para el periodo inicial de sesenta (60) días. El que no eligió el proveedor de cuidado médico para el resto del periodo de beneficios médicos. Cualquiera de los dos puede protestar la elección de cuidado médico del otro notificando al Director por escrito. Un Juez de la Administración de Compensación de los Trabajadores considerará la protesta y pronunciará una decisión final dentro de siete (7) días.

No se pagan beneficios sobre el salario debido a incapacidad por una lesión que resulta en siete (7) días o menos de incapacidad. Si una lastimadura producida en el trabajo resulta en más de siete (7) días de incapacidad, se pagan los beneficios a razón del sesenta y seis y dos tercios (66 & 2/3) por ciento del salario semanal promedio en el momento del accidente, sin exceder la cifra máxima especificada por ley, o sea \$297.19 para 1991. Para información acerca de los beneficios salariales máximos de años anteriores, póngase en contacto con la Administración de Compensación de los Trabajadores en la dirección o número de teléfono abajo mencionado. El primer pago salarial por incapacidad o la notificación de denegación debe llegar al reclamante dentro de los catorce (14) días después de que se presenta el Primer Aviso de Accidente del Empleador (WCA E1.1). Si usted cree que se le debe un pago y no lo ha recibido, póngase en contacto con un.

**WORKERS' COMPENSATION**

Workers' compensation laws vary widely, and in some states, must be posted in a second language. *Who bears the cost of workers' compensation?*



children. This system, known as welfare, was criticized for many reasons. One criticism was that the welfare system deterred people from looking for employment because the system penalized people who found work by lessening their welfare payments if they made money at a job.

Congress acknowledged this criticism, as well as several others, by enacting the Personal Responsibility and Work Opportunity Act of 1996. This novel act instituted a new program entitled Temporary Assistance to Needy Families (TANF). Under TANF, a majority of all recipients must hold a job, enter career programs, or face a loss of payments. This requirement becomes effective after a recipient has received benefits during a two-year period. The new system also has a fund that provides payments for child care.

The new system includes many restrictions. For instance, to be eligible for benefits, minors who are parents must maintain their education or be enrolled in a career program. Such minors must also reside in a home that is managed by an adult. In addition, TANF does not provide funds for immigrants, regardless of their legal status as residents of the United States. There is a limit of five years to receive benefits under the act.

## Section 21.1 Assessment

### Reviewing What You Learned

1. Using the Internet, library, or other resource, identify current legislation that insures employee safety in the workplace.
2. What legal requirements are placed upon employers with regard to wages and hours?
3. What federal statutes are designed to protect employee privacy rights?
4. What is the difference between unemployment compensation and workers' compensation?

### Critical Thinking Activity

**Right to Privacy** What justification can be given for the fact that the privacy rights of government workers are often given more attention than the privacy rights of employees in the private sector?

### Legal Skills in Action

**Workplace Health and Safety** While working on a summer job at a local manufacturing firm, you learn that one of your fellow employees has made a complaint to OSHA about certain unsafe practices at the plant. You overhear a discussion in the lunchroom that reveals that the worker who filed the complaint will likely be discharged. Organize a role-playing session in which one participant is the worker who filed the complaint and another person represents a coworker. In the course of the discussion, explain the nature of OSHA and the safeguards given to employees who file complaints. Also explain the consequences that result if a violation of an OSHA regulation is discovered at the plant.

# Laws Regulating Employment Discrimination

## Discrimination

In the second half of the twentieth century, the federal government took steps to make the law as fair as possible in the area of employment opportunities. Title VII of the Civil Rights Act was an important step in this direction. Other steps include the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Pregnancy Discrimination Act (see Figure 21.3). Many of these laws and regulations were the result of unethical practices. We will examine how these acts regulate employment opportunities to discourage **discrimination**, which is the unequal treatment of individuals based on sex, age, race, nationality, or religion.

## The Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, religion, sex, or national origin (see Figure 21.4). These five categories, along with age, are often referred to as protected classes. Discrimination occurs when employment related decisions are made based upon any combination of these protected characteristics. Employees who believe they have been

### EQUAL EMPLOYMENT OPPORTUNITIES

The federal and state governments have passed laws that attempt to make employment opportunities as open as possible for all people. *What types of employment opportunities have been opened for people because of the Civil Rights Act of 1964?*



## What You'll Learn

- How to define discrimination
- How to identify the objective of the Civil Rights Act
- How to identify the goal of the Age Discrimination in Employment Act
- How to explain the mission of the Americans with Disabilities Act

## Why It's Important

You need to know the laws that outlaw employment discrimination to be able to identify instances of discrimination.

## Legal Terms

- discrimination
- disparate treatment
- *bona fide* occupational qualification (BFOQ)
- disparate impact
- business necessity
- *quid pro quo* harassment
- hostile work environment
- disability

**Figure 21.3****Federal Laws Against Employment Discrimination**

Law	Protection
Civil Rights Act (Title VII) 1964 (amended 1972, 1991)*	Forbids discrimination based on sex, race, color, national origin, or religion.
Age Discrimination Employment Act (ADEA) 1967 (amended 1978)*	Forbids discrimination against any person aged 40 or older in hiring, firing, promotion, or other aspects of employment.
Older Workers' Benefit Protection Plan (OWBPA) 1990*	Forbids discrimination against older workers in handling their employee benefit and retirement plans; amended ADEA above.
Americans with Disabilities Act (ADA) 1990*	Forbids discrimination on the basis of a physical or mental disability if disabled individual can perform "essential function of the job despite the disability."
Vietnam Era Veterans Readjustment Act (VEVRA) 1972**	Encourages employment of veterans of armed forces who served in Vietnam between 1965 and 1975; also covers reservists called up for active duty; applies to federal contracts only.
Immigration Reform and Control Act (IRCA) 1986*	Prohibits private employers from recruiting and hiring aliens who are ineligible for employment in the United States; also prohibits employment agencies from referring ineligible aliens.

\* Administered by Equal Employment Opportunity Commission  
 \*\* Administered by Veteran's Employment Service

### FEDERAL LAWS AGAINST EMPLOYMENT DISCRIMINATION

Federal laws establish protected groups of people who may not be discriminated against in employment. *What federal agency administers most of these laws?*

discriminated against can file their complaints with the Equal Employment Opportunity Commission (EEOC). The EEOC has the power to stop unfair employment practices by seeking a court injunction or by suing the employer for damages. Should the EEOC elect not to pursue a case, the complaining party may seek a private remedy in court.

**Disparate Treatment** Discrimination can take place in a number of ways, most prominently through disparate treatment and disparate impact. The most obvious and direct way to discriminate is through disparate treatment. Under **disparate treatment**, the employer intentionally discriminates against an individual or a group of individuals belonging to one of the protected classes. For instance, an employer who holds a general policy that declares, "We do not hire female engineers" or, "We do not hire male nurses" would be practicing this type of discrimination.

**Example 4.** Walther Maggitti owns a large auto repair shop in a suburb of a major midwestern city. Having been a mechanic for most of his life, Walther has firm opinions about how to run a business in the automobile industry. When Linda Fitzgerald

Figure 21.4

## EQUAL PROTECTION IN EMPLOYMENT

The federal government has taken many steps to make the law as fair as possible in the area of employment opportunities. One of the major laws in this regard is the Civil Rights Act of 1964.

### 1 Prohibiting Discrimination



The Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, creed, religion, sex, or national origin.

### 2 Hiring Practices



Employers are not permitted to discriminate in hiring practices either directly through disparate treatment, or indirectly through disparate impact.

### 3 Fair Treatment



The protection granted to employees under the Civil Rights Act includes not only hiring practices but also treatment on the job.





### Cesar Chavez

Unions exist within many industries. In 1952, a migrant worker named Cesar Chavez began working for the ethical treatment of field workers. By 1972, he was the president of the United Farm Workers Union. Because of Cesar Chavez's efforts, field and citrus workers have better pay and working conditions. Cesar Chavez is the first union leader in U.S. history to be honored with a state holiday. In California, Cesar Chavez Day is celebrated on March 31.

*Do you think that Cesar Chavez should also be recognized with a national holiday? Why or why not?*

### Get Involved

Do a report on Cesar Chavez, and share it in class. Ask your parents and neighbors about the advantages and disadvantages of belonging to a union.

applied for a position as an auto mechanic at his shop, Walther refused to consider her as a candidate, in spite of her excellent qualifications and experience. He later told an employee that he “didn’t believe in hiring female mechanics.” Walther chose to hire a young male mechanic who had little experience and formal training. If sued, Walther could be found guilty of practicing discrimination through disparate treatment.

Employers have a defense against the charge of disparate treatment. This defense is termed a **bona fide occupational qualification (BFOQ)**. If the employer can show that the qualification in question is a *bona fide* (good faith) employment qualification, then the discrimination may be justified. For example, requiring that all applicants for a job modeling women’s bathing suits be female would be a *bona fide* occupational qualification. However, the BFOQ defense can never be used to justify discrimination based on race.

**Disparate Impact** Discrimination can also take place via **disparate impact**, which is indirect discrimination. Discrimination through disparate impact occurs when an employer has an employment policy or criteria that appears neutral on the surface but has an unfair impact on the members of one or more of the protected classes. For example, an employer who only hires people who are over six feet tall may be discriminating through disparate impact.

**Example 5.** Marcus Kachur, the owner of Allied Trucking and Hauling, stipulated that all employees must be able to bench-press 150 pounds. Nearly all women who applied at Kachur’s firm were unable to meet this requirement. Kachur justified his policy by stating that employees needed to be able lift heavy objects to perform their daily job duties. However, Kachur’s employees were primarily in charge of driving goods to their destinations. Very seldom did Kachur’s employees actually load or unload goods. If sued, Kachur could be found guilty of practicing discrimination through disparate impact.

Employers have a defense against a charge of disparate impact, known as **business necessity**. If the employer can show that qualification is required to perform the job, then it may be permitted despite its disparate impact on a protected class. For instance, a requirement that all applicants for a job as a surgeon have a medical degree might have a disparate impact on one of the protected classes. However, because a medical degree is needed to do the job, this qualification is a business necessity.

## Civil Rights Act of 1991

The Civil Rights Act of 1991 was enacted by Congress for several reasons. It was intended to strengthen the doctrine of disparate impact, which had been weakened by a 1989 Supreme Court case. The new law makes it clear that in disparate impact cases, the employer has the burden of proving the existence of a business necessity. Moreover, the employer must also prove that the hiring or promotion qualification is directly related to the specific job involved in the case rather than to general business objectives. A second reason for passing the new civil rights act was to allow plaintiffs who believe that they have been discriminated against because of sex, religion, national origin, or disability to recover not only any back pay owed to them, but also compensatory and punitive damages. Before this new act, only people discriminated against because of race had this right.

## Sexual Harassment

Sexual harassment can occur either through a *quid pro quo* activity or through the creation of a hostile working environment. Neither the expression *quid pro quo harassment* nor the expression *hostile work environment* appears in Title VII of the Civil Rights Act of 1964. Nevertheless, the courts have consistently recognized both types of discrimination. **Quid pro quo harassment** occurs when one worker demands sexual favors from another worker in exchange for some employment-related decision, such as a raise or a promotion. In contrast, the creation of a **hostile working environment** occurs when a pattern of severe and pervasive sexually demeaning behavior has altered the workplace, making it a distressing, humiliating, or hostile place. Such demeaning behavior could include sexually explicit comments, jokes, photographs, cartoons, posters, gestures, and so on.

An employer may be liable for sexual harassment committed by an employee's supervisor, or someone else in a position of power, if some sort of employment action occurs as a result of that harassment. Employment action has been defined by the courts to include termination, disadvantageous reassignment, or demotion. In the absence of this type of employment action, the employer may escape liability by demonstrating reasonable care was taken to prohibit or eliminate such harassment. This can be shown if the employer has an effective anti-harassment policy in place. Even with such proof, the employer must also show that the complaining party did not take advantage of the procedures outlined in the anti-harassment policy and that the failure to use the procedures in the policy was unreasonable.

## Pregnancy Discrimination Act

To ensure the fair and equal treatment of pregnant women, the Pregnancy Discrimination Act was enacted. The law makes it unlawful to



### Social Studies

The Civil Rights Act of 1964 prohibited discrimination in employment based on race, color, religion, sex, or national origin.

### Research Activity

Research the events in history that led up to the passing of this act by considering the following questions:

- What major civil rights events took place between 1954 and 1965?
- Who were the leaders in the civil rights movement?
- Which civil rights event do you think was most important? Why?

Write a two-page report based on your findings.





## AMERICANS WITH DISABILITIES ACT

The federal government has attempted to open employment opportunities for workers with disabilities by passing the Americans with Disabilities Act.

*What accommodations might a company have to make for an employee who is blind?*

discriminate against a woman because of childbirth or physical problems associated with pregnancy or childbirth. In addition, the law prohibits an employer from creating an employee benefits package that discriminates against women who are pregnant.

## Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) of 1967, amended in 1978, prohibits employment agencies, employers with 20 or more employees,

and labor unions of more than 25 members from discriminating on the basis of age. This act forbids discrimination against any person aged 40 or older in hiring, firing, promotion, or other aspects of employment. The law does not apply if age is a true job qualification, as in the modeling of children's fashions.

The ADEA was amended by Congress in 1990 to make it clear that the act forbids discrimination against older employees with regard to their retirement and pension plans. In addition, the amendment that is known as the Older Workers' Benefit Protection Plan Act (OWBPPA) gives workers a legal way to remedy a situation in which they have been cheated or coerced into surrendering their ADEA rights by signing a waiver.

## Americans with Disabilities Act

The Americans with Disabilities Act of 1990 forbids discrimination on the basis of a disability if the disabled individual can do the "essential functions" of a job. The act defines **disability** as any "physical or mental impairment that substantially limits one or more of the major

life activities.” Employers cannot discriminate against those with disabilities when screening or hiring, granting promotions, offering pay raises, or offering on-the-job-training opportunities. Both direct and indirect discrimination are outlawed. Indirect discrimination occurs when an employer makes a hiring decision based on a qualification that is not related to job performance but has the effect of eliminating the disabled individual.

**Example 6.** Melinda Breakwater, who has a visual disability, applied for a position as an accountant with the Rawlings Department Store. Ross Benteen, the store’s Human Resources Director, tested her eyesight by having her read a chart written in extremely fine print. Breakwater failed the test and was rejected solely on that basis. Breakwater can argue that Rawlings has violated the ADA if she can show that she would not have to read such fine print on the job, or that she could have been reasonably accommodated if provided with a magnifier.

In Example 6, if the job Breakwater had applied for involved driving and her eyesight prevented her from driving, she would not have a discrimination case under the ADA. Moreover, employers are not without some protection. For example, if a proposed accommodation would cause “undue hardship,” then the employer would be excused. Factors used in determining whether a proposed accommodation will cause hardship include the nature and cost of the accommodation needed as well as the financial ability of the company to provide the necessary accommodation.

## Section 21.2 Assessment

### Reviewing What You Learned

1. What is discrimination?
2. What is the objective of the Civil Rights Act of 1964?
3. What is the mission of the Americans with Disabilities Act?

### Critical Thinking Activity

**Ethical and Social Attitudes** Select one of the laws discussed in this chapter. Then in one to two paragraphs, relate ethical and social attitudes to changes that occur in the law. How have ethical and social attitudes changed over

time, and how are they reflected in changes in the law?

### Legal Skills in Action

**Sexual Harrassment** Your friend, Alison, believes that she has been the victim of sexual harassment. She is apprehensive about reporting the harassment to the Human Resources Director at her place of employment, which is a requirement of the company’s anti-harassment policy. Write a letter to Allison explaining whether she should file the complaint.



## Chapter Summary

### Section 21.1 Laws Relating to Employment Conditions and Benefits

- Businesses with 11 or more employees that engage in interstate commerce must meet the health and safety standards of the Occupational Safety and Health Administration (OSHA). OSHA makes sure the businesses adhere to safety regulations by conducting random inspections and imposing fines for violations.
- The federal Fair Labor Standards Act of 1938, also known as the Wage and Hour Law, requires certain employers to pay their employees a minimum hourly wage rate, plus time-and-a-half for all work in excess of 40 hours per week. In addition, the Equal Pay Act states that employers engaged in interstate commerce must pay women the same rate of pay as men holding the same type of job. Pension plans are protected by the Employment Retirement Income Security Act (ERISA). ERISA requires employers to place employee contributions to pension plans in a trust that is independent of the employer's control. Another ERISA requirement imposes a duty of good faith on those who manage pension plans. Other ERISA requirements include informing employees of their retirement benefits and submitting reports on the plan to the Secretary of Labor.
- The Drug-Free Workplace Act applies to companies that have contracts with the federal government. Under the act, companies must implement a plan to make sure employees do not use drugs on the job, and drug testing may be used under certain circumstances. The Employee Polygraph Protection Act prohibits employers from using lie detector tests for screening of applicants or for random testing of employees.
- Unemployment compensation is a system of government payments to people who are out of work and looking for a job. You may be

disqualified for unemployment benefits for a limited period if your unemployment arises out of a strike or lockout. Workers are also disqualified if they refuse suitable work without cause, have been discharged for misconduct, or have quit their jobs without “good cause.” Workers’ compensation is an insurance program that provides income for workers who are injured or develop a disease as a result of their jobs.

### Section 21.2 Laws Regulating Employment Discrimination

- An employer cannot discriminate on the basis of sex, race, color, national origin, religion, age, disability, or pregnancy.
- The Civil Rights Act of 1991 was enacted by Congress to strengthen the doctrine of disparate impact of employment discrimination by requiring that the employer prove the existence of a business necessity that justifies discriminating against an employee. In addition, the Civil Rights Act allows plaintiffs who believe that they have been discriminated against because of sex, religion, national origin, or disability to recover back pay, and compensatory and punitive damages.
- The Age Discrimination Act (ADEA) of 1967, amended in 1978, prohibits some employers and labor unions from discriminating on the basis of age. The act forbids discrimination against any person aged 40 or older in hiring, firing, promotion, or other aspects of employment.
- The Americans with Disabilities Act of 1990 forbids discrimination on the basis of a disability if the disabled individual can do the “essential functions” of a job. Employers cannot discriminate against any “physical or mental impairment that substantially limits one or more of the major life activities” when screening or hiring, granting promotions, offering pay raises, or offering on-the-job-training opportunities.

## Using Legal Language

Consider the key terms in the list below. Then use these terms to complete the following exercises.

OSHA	disparate treatment
equal pay rule	pension plan
social security	disparate impact
unemployment compensation	business necessity
disability	harassment
workers' compensation	discrimination
hostile work environment	
<i>bona fide occupational qualification</i> (BFOQ)	
<i>quid pro quo</i> harassment	

1. These terms will help you remember important information about your rights as an employee. Write a summary of Chapter 21 for a friend who is not taking this class. In your summary, use and explain each of the terms listed above.
2. Save a copy of your summary for future reference.

## The Law Review

Answer the following questions. Refer to the chapter for additional reinforcement.

3. What is OSHA, and what is its purpose?
4. What is the purpose of the Drug Free Workplace Act? Does it require that companies drug test their employees?
5. Describe the Social Security Act. How many workers in the United States participate in the social security system?
6. What defense do employers have against the charge of disparate treatment? Explain your answer.
7. In what situation might an employment qualification that would encourage disparate impact be permitted?
8. Identify an employee's right to continued employment by examining current legislation, for example, unlawful termination, sexual harassment, family leave, Americans with Disabilities Act, and employee privacy. Select four such laws, and write a one- to two-sentence explanation of each.
9. What is *quid pro quo* harassment?

## Understanding Business and Personal Law

Online 

**Self-Check Quiz** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 21: Employment Protection and Equal Opportunity—Self-Check Quizzes to prepare for the chapter exam.

### Linking School to Work

#### Interpreting and Communicating Information

In this chapter, you learned about various laws covering employment protection and equal opportunity, and government agencies responsible for enforcing these laws.

10. Research the findings on a government agency audit, for example, compliance with regulations of wage and hours, safety and health, and equal employment. Write a two-page report on your findings.
11. Select three laws that regulate the workplace and research which government agencies are charged with enforcing the laws. Then interview workers and employees in your community that are affected by this legislation and ask them if and how the laws have affected their lives.

### Let's Debate

You hear a coworker telling your employer—for the third time in two months—that the handrail in the stairway to the shop's basement needs to be replaced. A week later, the rail is still broken.

#### Debate

12. If you know that the handrail is broken, do you have an obligation to be careful on the stairway? Who is responsible for safety in the workplace?
13. Is there anything you can do to prevent an injury?

### Grasping Case Issues

For the following cases, give your decision and state a legal principle that applies.

14. Wilma McAtee is CEO of Nortex International. Douglas Sweeney, a Nortex engineer, believes that several operations in the main plant are endangering workers. He files several internal complaints. When he gets nowhere, he files a complaint with OSHA. McAtee learns that Sweeney filed the complaint and fires him for it. Is McAtee within her rights? Explain your answer.
15. In January, Oxotech Petroleum hires Lydia Truell as a research scientist, at a salary of \$65,000 per year. In March, Oxotech hires Gary Carr to do essentially the same job at a salary of \$72,000. The two scientists have similar education and experience backgrounds, and they work side by side. Does the law have any provision covering this sort of inequity? Explain your answer.
16. Jerry Figliano applies for a job as an armored-car driver. Because armored-car personnel carry firearms, Figliano is required to take a drug test. He refuses, arguing that the test violates his privacy rights. Is he correct? Explain your answer.
17. Franklin Vasquez wants to become a flight attendant. He is discouraged from applying by a supervisor, who tells him that the company only hires people who took home economics in high school or were members of Future Stewardesses of America. If Vasquez files a complaint with the Equal Employment Opportunities Commission, which of the two theories of discrimination would form the basis for his complaint? Explain your answer.
18. Robert Patton works as an accountant. He has never received an unfavorable performance review. At age 55, Patton develops problems with his eyes that require him to use a special lamp and to take frequent breaks to prevent eye strain. Upon learning of the required changes, Patton's supervisor fires him and hires a younger person. What law or laws might protect Patton? Explain your answer.



## Analyzing Real Cases

In each case that follows, you be the judge.

### 19. Unemployment Benefits

Pamela White was hired by Inside Radio/Radio Only, Inc. as a newsletter editor. The company told her she would occasionally have to work 10 extra hours per week. Several assistants quit, and White was forced to work more than 80 hours per week for four weeks. During that time, White had to do the assistants' work and had to create the newsletter manually. She was forced to skip meals, and eventually suffered from nutritional problems, a mild case of depression, and a more severe case of nervous exhaustion. White quit her job and filed for unemployment compensation.

*Should she receive benefits? Why or why not?*

*Inside Radio/Radio Only, Inc. v. Board of Review*, 498 A.2d 793 (NJ).

### 20. Employment Extensions

As part of its retirement system, the state of Wyoming required state employees who were 65 years of age to apply for yearly extensions of their employment. Six state workers, Anderson, Bosshardt, Chessborough, Kuatholz, Nelson, and Ventling, filed a complaint with the EEOC.

*Do the state workers have a cause of action against Wyoming? Should the state workers win their case? Why or why not?*

*EEOC v. The Wyoming Retirement System*, 771 F.2d 1425 (10th Circuit).

## Legal Link

### Payroll Deduction

Now that Harvey is receiving a steady paycheck, he notices that his employer is deducting a small amount for social security taxes (often called FICA) each week. Harvey doesn't know much about social security.

### Connect

Using a variety of search engines, help Harvey answer the following questions:

21. Who runs the Social Security Administration?
22. What benefits does social security provide?
23. Can you predict how much money Harvey will receive from social security when he retires?
24. How can Harvey replace his social security card if he loses it?



25. **Predict** Why do you think the government has created so much legislation to protect employees?
26. **Connect** What safety features are in place in your school to protect students from danger?
27. **Question** Identify legislation and agencies that regulate an employer's obligation to supply a safe and accessible workplace. Interview workers and employees affected by this legislation, and write a one-page report on your findings.
28. **Respond** Are there any new workplace issues that employees face? Do you think the federal government will create a law to deal with the issues? Explain your answer.



# Law Workshop:

## *Using Legal Tools*



### What Is a Sports Agent?

In Unit 4, you learned about the authority and duties of an agent to a principal. In this workshop, you will apply this knowledge to better understand the relationship between a professional athlete and a sports agent.



### Step A: Preparation



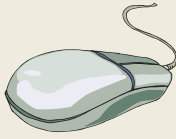
**Problem:** *What duties does a sports agent perform for a professional athlete?*

**Objectives:** In this workshop, you will investigate the career of a sports agent, and create an agreement between yourself (as an agent) and a hypothetical professional athlete. You will also create a contract between the athlete and a hypothetical corporate sponsor.



- **Research** the sports agent career.
- **Analyze** a number of agreements and contracts.
- **Create** an agreement between yourself and a hypothetical professional athlete.
- **Use technology** to produce a contract.

## Step B: Procedure



1. Use the Internet and library to locate information about sports agents. Two helpful Web sites are [www.prosports.com](http://www.prosports.com) and [www.sports-management.com](http://www.sports-management.com).
2. Write a brief report about being a sports agent.
3. Based on Chapter 18 and your own research, write an agreement between yourself (as a sports agent) and a hypothetical professional athlete.
4. Write a contract between the athlete you represent and a corporate sponsor. (Corporate sponsors are businesses that pay celebrities to endorse their products.)
5. Present your agreement and contract to the rest of your class. Explain how your agreement and contract fulfill your duties as an agent to the principal and how they fulfill the principal's duties to you.

## Step C: Creating a Model to Analyze Your Agreements



Create two charts; one should list the agent's duties to the principal, and the other should list the principal's duties to the agent. Check the duties that you believe are addressed in your agreement and contract. Share your checklist with your class.

Agent's Duties to the Principal	Agency Agreement	Sponsorship Contract
Obedience to Instruction		
Good Faith		

Principal's Duties to the Agent	Agency Agreement	Sponsorship Contract
Compensation		
Reimbursement		

## Step D: Workshop Analysis Report



Analyze the charts you created, and answer the following questions:

1. How are the agent's duties to the principal expressed?
2. How are the principal's duties to the agent expressed?
3. Are any duties implied, rather than expressed, in these agreements? If so, what are they?

## Automobile Workers v. Johnson Controls, Inc.

United States Supreme Court

499 U.S. 187 (1991)

**Issue** Can an employer exclude a female employee from certain employment positions to protect the health of a fetus if the woman should become pregnant?

**Facts** Johnson Controls, Inc. manufactures batteries containing lead. Concerned about the safety of its employees, Johnson Controls adopted safety measures directed at its female workers. Because exposure to lead can pose serious health risks to a fetus, Johnson Controls encouraged women who expected to give birth to choose positions that would not expose them to lead. The company required any woman who wished to work in such a position to sign a statement advising her “that women exposed to lead have a higher rate of abortion.” After eight female employees with high levels of lead became pregnant, Johnson Controls excluded nearly all women from positions that exposed them to lead.

... [I]t is [Johnson Controls’] policy that women who are pregnant or who are capable of bearing children will not be placed into jobs involving lead exposure or which could expose them to lead through the exercise of job bidding, bumping, transfer, or promotion rights.”

Several female employees filed a class action suit against Johnson Controls, alleging that the company’s “fetal protection policy” constituted unlawful discrimination on the basis of gender.

**Opinion** Congress has adopted legislation prohibiting discriminatory practices in employment based on gender. The Civil Rights Act of 1964, as amended, prohibits gender-based classifications as a term or condition of employment and prohibits such classifications in other matters affecting an employee’s status in a company. The Civil Rights Act was amended by the Pregnancy Discrimination Act of 1978, which provides that gender discrimination includes discrimination “because of or on the basis of pregnancy, childbirth, or related medical conditions.”

### **Is the Policy Discriminatory?**

The Court determined that Johnson Controls’ fetal protection policy is discriminatory because it excludes only women with the ability to become pregnant from certain positions. Although evidence exists about the adverse effects of lead on the male reproductive system, Johnson Controls’ policy excludes only females from the designated positions. An employer’s good intentions for such discrimination do not cure the discriminatory practice.



### **A Bona Fide Occupational Qualification?**

Although the Court determined that Johnson Controls' policy was discriminatory, it examined whether the policy fell within the exception in the Civil Rights Act that allows an employer to discriminate on the basis of "religion, sex, or national origin in those certain instances where religion, sex, or national origin is a *bona fide* occupational qualification reasonably necessary to the normal operation of that particular business or enterprise." Johnson Controls argued that its policy fits within the BFOQ exclusions for safety reasons. The Court concluded such an exception is limited to those situations in which gender or pregnancy interferes with the employee's ability to perform the job. The Court noted that fertile women can manufacture batteries as well as other employees.

The above-cited Pregnancy Discrimination Act of 1978 provides that unless pregnant employees differ from other employees "in their ability or inability to work," they must be "treated the same" as other employees. The Court further stated that "[w]omen as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job." The Court observed that "[d]ecisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them, rather than to the employers who hire those parents."

**Holding** The Court held that an employer may not exclude a female employee from certain employment positions to protect the health of a fetus if the woman should become pregnant. Such a policy constitutes sexual discrimination prohibited by the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978.

The Court also explained that Johnson Controls would not likely be held liable for potential fetal injuries or defects of the children of its female employees. As long as an employer informs employees of a potential risk, it has not acted negligently. Any actions on the part of Johnson Controls to avoid hiring women because of fear of liability, therefore, would not be justified.



### **Questions for Analysis**

1. What was the purpose of Johnson Controls' policy of excluding women from employment positions that would expose them to lead?
2. On what two federal acts did the Supreme Court base its decision that Johnson Controls' fetal protection policy constituted unlawful sexual discrimination?
3. Did it matter that Johnson Controls possessed good intentions when it implemented its fetal protection policy?
4. In what instances is an employer permitted to discriminate against employees based on gender?
5. Give an example of a situation wherein an employer may discriminate based on gender.

### **Web Resources**

Go to the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) for information about how to access online resources for the Landmark Cases.