

Employment Discrimination

Discrimination is treating similarly situated individuals unequally. Federal and state governments have enacted laws that prohibit discrimination on the basis of protected classifications, such as sex, race, religion, disability and age. The purpose of these laws is to eliminate discrimination in the workplace based on prejudices that are unrelated to the ability to perform the job.

In general, an individual within a protected classification must not be treated less favorably than others outside of the protected classification in regard to hiring decisions or employment conditions. An employment decision made because of an employee's protected classification may lead to a discrimination lawsuit where the employee is entitled to a jury trial and where both compensatory and punitive damages are available.

Federal Protected Classes and Covered Employers

Federal laws protect employees and job applicants against employment discrimination when it involves:

- Unfair treatment because of race, color, religion, sex (including pregnancy), national origin, age (40 or older) disability or genetic information
- Harassment by managers or co-workers (or others in the workplace) because of race, color, religion, sex (including pregnancy), national origin,

age (40 or older), disability or genetic information

- Denial of a reasonable accommodation that the employee needs because of religious beliefs or disability
- Retaliation because the employee complained about job discrimination, or assisted with a job discrimination investigation or lawsuit.

pregnancy), national origin, disability and genetic information.

- Employers with 20 or more employees during 20 or more calendar weeks in the current or preceding calendar year are subject to federal discrimination protections for age (40 or older).
- Virtually all employers are covered by the federal Equal Pay Act, which makes it illegal to pay different wages

An employment decision made because of an employee's protected status may lead to a discrimination lawsuit where the employee is entitled to a jury trial and where both compensatory and punitive damages are available.

An employer must have a certain number of employees to be covered by federal anti-discrimination laws. This number varies depending on the type of employer (for example, whether the employer is a private company, a government employer, an employment agency or a labor union) and the kind of discrimination involved. For private employers, the following rules apply:

- Employers with 15 or more employees during 20 or more calendar weeks in the current or preceding calendar year are subject to federal discrimination protections for race, color, religion, sex (including

to men and women if they perform substantially equal work in the same workplace.

The same general coverage rules apply to state and local government employers, except these employers are subject to federal discrimination protections for age (40 or older) no matter how many employees they have. All federal agencies are covered by these discrimination protections.

Discrimination Claims

If an employer has the required number of employees, a person is protected under

federal anti-discrimination laws if he or she is:

- A current employee
- A job applicant
- A former employee
- An applicant or participant in a training or apprenticeship program.

If a complaint involves discrimination based on age or disability, other requirements must be met in order for a person to be covered. For example, for age discrimination, the person must be age 40 or older. The law does not protect workers under age 40 from discrimination based on age.

The Equal Employment Opportunity Commission (EEOC) is authorized to investigate charges of discrimination and to bring actions in federal court on behalf of both individuals and classes of employees.

Generally, an individual must prove the following factors to have a viable claim for discrimination:

1. The individual must be a member of a protected class.
2. The individual's employment rights or right to employment must have been adversely affected (for example, refusal to hire, termination or failure to promote).
3. The individual performed satisfactorily or was "qualified" for the position sought or terminated from.
4. Employer treated individuals outside the protected class more favorably.

If an individual can prove the points above, then a court may conclude that the employer engaged in unlawful discrimination, unless the employer can prove that its actions were for a nondiscriminatory reason. If an employer can show a nondiscriminatory reason (that is, a legitimate and lawful business purpose), then the individual must prove that the reason given by the employer

was a pretext (or not the true reason) for discriminating against the individual because of his or her protected characteristic. An individual will prove an unlawful discriminatory practice if he or she proves that an unlawful action was the motivating factor for an employment action. An employer may avoid paying damages if it can prove that the same employment action would have been taken even in the absence of a discriminatory motive.

Categories of Discrimination

There are four general categories of discrimination:

1. **Disparate treatment** discrimination occurs when an employer intentionally treats one employee differently from another based upon a prohibited basis such as sex, age or religion.
2. **Disparate impact** discrimination is more difficult to spot and often involves a work rule or other employment policy (for example, a minimum height or weight requirement that discriminates against women and minorities) that appears to be bias-free but adversely affects an otherwise qualified protected class when applied.
3. **Failure to make reasonable accommodations** for an individual's disability or religious practice.
4. A practice or policy that continues the effects of **past discrimination**.

State and Local Laws

Employers must also be knowledgeable of their **state and local discrimination laws**. Many states have much broader discrimination laws and prohibit discrimination on the basis of creed, marital status, ancestry, arrest record, conviction record, military service, unfair honesty testing, sexual orientation, sexual harassment and unlawful use of products, in addition to the protections provided at the federal level.

Discrimination lawsuits can be time-consuming and expensive. It is imperative

for employers to audit their practices so they can uncover problem situations and practices before they lead to expensive litigation. Employers can help avoid discrimination claims by offering compliance training, being direct and honest when implementing disciplinary procedures, contesting meritless charges, implementing user-friendly internal complaint procedures and seeking legal advice before little problems become big ones.

Check out the U.S. Department of Labor's *Disability Nondiscrimination Law Advisor*, which helps employers determine which federal nondiscrimination laws apply to their business:

www.dol.gov/elaws/odep.htm.