



## Course Learning Outcomes for Unit IV

Upon completion of this unit, students should be able to:

5. Identify and discuss sexual harassment, discrimination, and orientation issues within the workplace and their implications.
  - 5.1 Describe how sex discrimination relates to current issues of equal pay.
  - 5.2 Discuss justifications for employer policies about dress and grooming.
  - 5.3 Distinguish between an employer's vicarious liability for sexual harassment and an employer's liability for a hostile work environment.
  - 5.4 Identify the six requirements for sexual harassment.

## Reading Assignment

### Chapter 10:

Sex Discrimination

### Chapter 11:

Sexual Harassment

## Unit Lesson

Title VII of the Civil Rights Act includes sex as a protected class. That means that an employer cannot take a negative employment action against someone on the basis of his or her sex. As we have seen in earlier units, negative employment actions include refusing to hire someone, terminating someone, denying someone a promotion, and, especially in connection with discrimination on the basis of sex, paying someone less than is paid to a person of a different sex who is doing essentially the same work.

While it is acknowledged that sex was included as a protected class in Title VII because women were generally treated differently (and usually worse) than men were in employment situations, the prohibition against discrimination on the basis of sex is broad enough to include any discrimination based on sex, whether it is a male hiring official refusing to hire a female, a female hiring official refusing to hire a male, or a female or male hiring official refusing to hire someone of the same or opposite sex. If sex is a determining factor in an employment action, then there is prohibited sex discrimination against someone.

As in most cases of employment discrimination, it seems as though discrimination on the basis of sex would be easy to avoid – simply do not consider a person's sex in making an employment decision. However, as we have seen before, there are characteristics of a person that are not specifically a matter of sex but that can have the effect of including the person's sex in the consideration. For instance, a hiring official may ask an applicant if he or she has children, which on its face seems to be an innocuous question, but that question, asked of a female who could be assumed to be the parent who would have to stay at home with a sick child, could lead to a decision not to hire the person for a reason that is related to her sex. Therefore, those responsible for hiring stay away from questions for applicants that can even remotely relate to the sex of the applicant.

There is a specific situation when an employer is justified in taking an employment action on the basis of the sex of the applicant or employee involved. When there is a bona fide occupational qualification involved, the employer can properly insist that the applicant or employee be of a specific sex and can properly exclude all others from consideration. For instance, a dressing room attendant in the women's department of a department store will legitimately need to be a female, so for that job, being a female is a bona fide occupational qualification – that is, being a female is necessary for the proper performance of that job. This,

however, is a very limited exception to the general rule that sex cannot properly be taken into consideration in taking employment actions (Moran, 2014).

While Title VII is broad enough to cover just about any employment action, there are other federal laws that overlap with Title VII and which actually strengthen Title VII. One of those laws is the Equal Pay Act, which requires that employees who perform the same functions for an employer and who are required to have the same education and experience must be paid the same amount – difference in the sex of an employee is not a legitimate reason to pay one employee more than another employee. Paying two employees of different sexes, who do the same work and have the same qualifications, different amounts of compensation is discrimination based on sex and a violation of Title VII and is also a violation of the Equal Pay Act (Moran, 2014).

Another issue that can arise in the context of sex discrimination relates to dress and grooming codes. While it may seem to be discrimination based on sex if an employer has a different set of dress and grooming codes for female and for male employees, the courts seem to be satisfied to uphold such different codes for females and males if there is a legitimate reason for treating each group differently, but as is always the case, the real question is the reasonableness of the codes and the different group treatment, and a court will not hesitate to find discrimination if it appears that the codes are not reasonable or that there is no justification for the differences in the codes (Moran, 2014).

### **Sexual Harassment**

The original idea of discrimination based on sex has been extended over the years to address a sort of overt discrimination based on sex. This situation is usually identified as sexual harassment. Sexual harassment is not always something that amounts to a formal employment action such as hiring or firing someone on the basis of sex, but it is often something less formal. Sexual harassment results when an employee is subjected to unwanted sexual advances or unwanted and objectionable sexual comments in the workplace. These instances are less formal because they are not the employer taking some adverse action against the employee being harassed; the negative actions are being taken by fellow employees. If an employee is approached by a superior with suggestions that the employee provide sexual favors to the superior in return for a promotion, a raise, or a good job evaluation, that is clearly sexual harassment, and the employer will be liable to the harassed employee for sexual harassment, a form of discrimination based on sex. Also, if the harassment is in the form of unwanted comments that make the employee uncomfortable in the workplace to the point that the employee's performance in the workplace is adversely affected, the hostile work environment that is created can also lead to a claim of sexual harassment. There is, however, an important point that needs to be made here. If a superior sexually harasses an employee by suggesting an exchange of sexual favors for some positive employment action, the employer is liable for that sexual harassment under the theory of vicarious liability – the superior represents the employer, so the employer is responsible for what that superior does. However, in the case of an employee being sexually harassed by fellow employees so that a hostile work environment is created, the employer may not be responsible for that sexual harassment unless the employer has actual knowledge of the situation. That is why employees are urged to report such actions to their superior or the employer's human resources office – that reporting puts the employer on notice of what is going on, and if the employer does not act quickly to resolve the situation, then the employer becomes liable for allowing a hostile work environment to exist (Moran, 2014).

### Reference

Moran, J. J. (2014). *Employment law: New challenges in the business environment* (6th ed.). Upper Saddle River, NJ: Prentice Hall.

## **Learning Activities (Non-Graded)**

### **Case Study**

Locate and read Case 11.2, Patricia Calloway v. Aerojet General Corporation, found on page 275 of your textbook. Once you have read and reviewed the case scenario, respond to the following questions:

1. Do you agree with the court's decision?

2. Why would Aerojet have to treat Calloway's assertions as sexual harassment when she was a willing party to the sexual harassment?
3. Should Calloway's unethical behavior preclude her from bringing this lawsuit?

Your response should be a minimum of 700 words in length. You are required to use at least your textbook as source material for your response. All sources used, including the textbook, must be referenced; paraphrased and quoted material must have accompanying citations per APA guidelines.

Non-graded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

## **Key Terms**

1. Bona fide occupational qualification
2. Comparable worth
3. Customer preference
4. Equal pay
5. Hostile work environment
6. Reasonable person standard
7. Sex discrimination
8. Sexual harassment
9. Vicarious liability