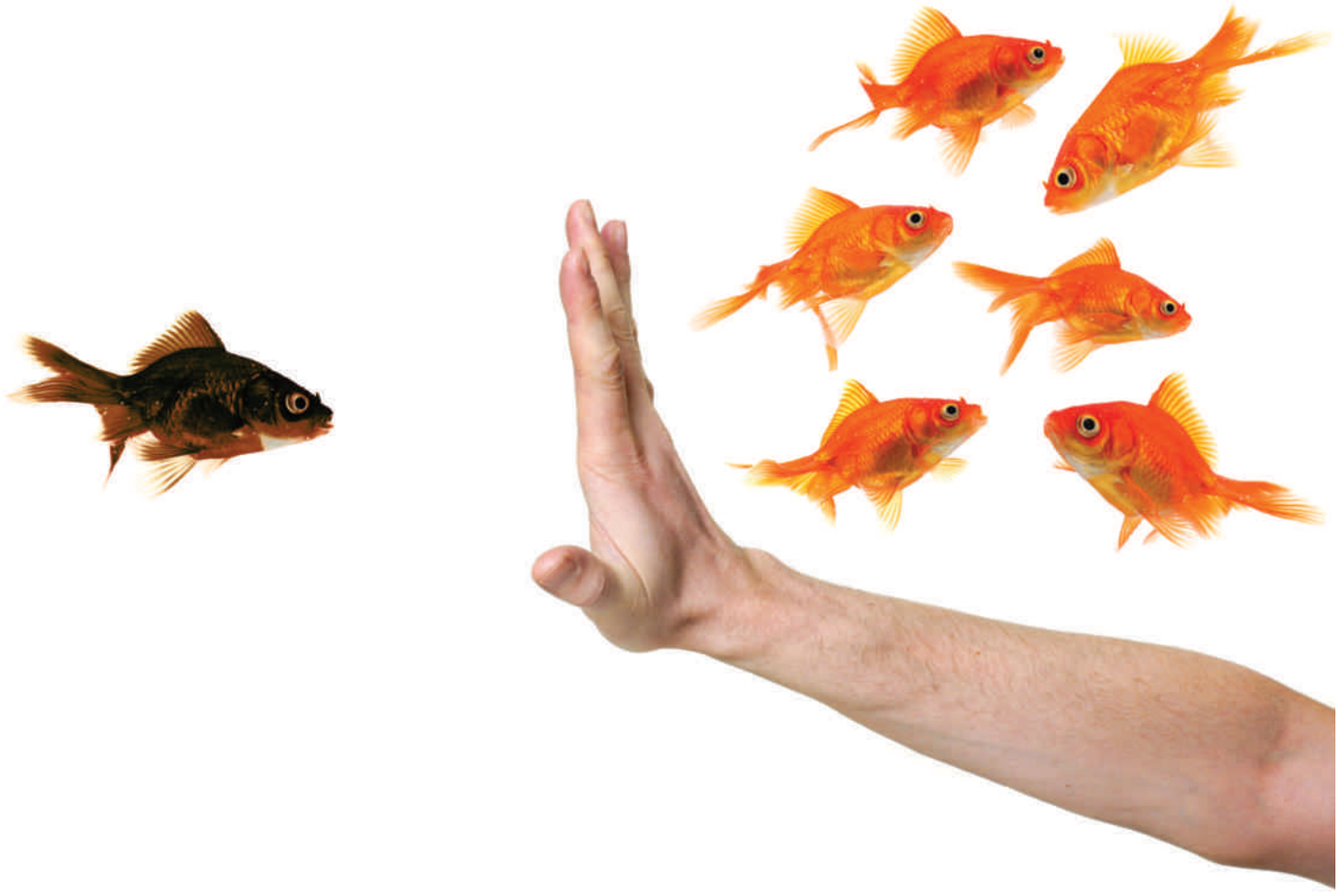
Royalty-free



5 Discrimination in the Workplace

Learning Objectives

After completing this chapter, you should be able to:

- Define the various types of discrimination.
- Explain the notions of affirmative action, equal opportunity, preferential treatment, individual and group compensation, and reverse discrimination.
- Explain the different arguments for and against affirmative action.
- Describe the different U.S. affirmative action laws and procedures.
- Describe the major Supreme Court decisions that have clarified affirmative action laws.

Contents

5.1 Introduction

Racial prejudice has been the source of social conflict and personal suffering for as long as there have been human records, and quite possibly for tens of thousands of years before that. Rival ethnic groups wage war upon each other, enslave members of opposing groups, and even try to exterminate them. The concept of racial equality is a comparatively recent one, and it has only been a matter of decades that governments have denounced racial prejudice and made efforts to undo at least some of the damage it has caused.

India is a case in point, with its centuries-old tradition of the *caste system*, which has splintered the population into a hierarchy of social classes. While the higher castes have been the holders of the country's wealth and power, at the very bottom are the "untouchables" who are so low that, in the past, upper castes avoided coming into any contact with them. Making up 16% of the country's population, they historically had no meaningful access to education, respectable employment, or political representation. Millions today live on the streets or in garbage dumps, where they forage for scraps of anything that might have some resale value. While India was a colony, the British government made efforts to elevate the untouchables into mainstream society, one of the first efforts at what we now call affirmative action. After independence in 1947, the government of India continued this policy, even writing into the constitution special protections and opportunities for the untouchables. Among these policies is the reservation of 16% of all government jobs for untouchables, in direct proportion to their number in the population. A high percentage of student positions in universities are also reserved for them.

When we look at India's situation, it is easy to conclude that the country chose the right remedy: Dramatic injustices call for dramatic corrective measures, without which the untouchables would be forever locked into a cycle of the most unimaginable poverty. It is not just India, however, that has

Associated Press/Saurabh Das

This 2011 photo shows an Indian "untouchable" who has prospered despite the odds. Hari Kishan Pippal now owns a hospital, a Honda dealership, and a shoe factory (Sullivan, 2011).

this problem. Many of the world's countries have minority groups that are economically suffering because of a history of discrimination. The United States is a case in point. This country has adopted solutions like India's, though not quite as radical. Businesses in particular are on the cutting edge of social reforms that aim to elevate historically disadvantaged minority groups. Sometimes companies proactively embrace these efforts, but in most cases, the efforts are backed by government mandates and businesses have no choice but to comply. Discrimination in the workplace is one of the most important ethical and legal issues for businesses. Social conscience urges companies to eliminate discriminatory employment practices, and the law requires them to do so. In this chapter, we will explore many of the issues connected with discrimination in the workplace.

5.2 Discrimination

We will begin with a look at the nature of discrimination itself, how it affects businesses and other social institutions, and the evidence for it.

Features of Discrimination

Take this simple case of discrimination: A man and a woman both apply for the same job; the woman's qualifications are much stronger, but the employer hires the man instead. In essence, the woman was turned down purely because of her gender, and not because of her abilities. **Discrimination** is the unjust or prejudicial treatment of people on arbitrary grounds, such as race, gender, or age, which results in denial of opportunity, such as in business employment or promotion.

Key to this definition is the idea that *the treatment is based on arbitrary grounds*. A person's gender or skin color is irrelevant to his or her job performance as, for example, an accountant, and it would be arbitrary to deny that person an employment opportunity on that basis. Sometimes, though, it is not discriminatory to deny opportunities to people because of some unique feature about them. Suppose that a blind person applied for a job as an air-traffic controller and was turned down for the specific reason of blindness. In this case, having eyesight is a necessary requirement for doing that job, and there is nothing arbitrary about denying that opportunity to blind people.

However, it can be a challenge sometimes to determine whether a particular physical feature is needed to do the job. An interesting case illustrating this is that of a 240-pound woman from San Francisco who was denied work as an aerobics instructor because of her weight. The company

in question was Jazzercise, which advertised itself as the world's leading dance-fitness program, having 5,000 certified instructors across the country. The company's stated policy was that their instructors must have a "fit appearance," and they turned down the woman when seeing her in person. After she complained to the San Francisco Human Rights Commission, the Jazzercise company agreed to drop the "fit appearance" criterion and conceded that "recent studies document that it may be possible for people of varying weights to be fit" (quoted in Ackman, 2002). This case shows that long-standing stereotypes may be grounded in little more than prejudice, and this is precisely what makes discriminatory treatment unfair.

The most commonly acknowledged forms of discrimination today are on the bases of:

- race,
- gender,
- disability, and
- age.

Still others include color, creed, political affiliation, national origin, religion, ancestry, pregnancy, medical condition, mental condition, marital status, sexual orientation, and status as a veteran. The list of discrimination types could be endless: I could discriminate against people who were fans of a rival sports team, or liked a particular type of music, or drove a particular model of car. Whatever differences exist between one human and another could potentially become matters of prejudice.

Social Institutions and Discrimination

In combating discrimination, there are three principal social institutions that are targeted for change: schools, businesses, and governments.

Eliminating discrimination in schools is important because these institutions provide people with the skills to compete for almost everything else in life. If schools at both the K–12 and college levels systematically discriminated against certain groups, those individuals would forever be at a competitive disadvantage and locked into something like a caste system which it would be exceedingly difficult to rise above.

Eliminating discrimination in the workplace is important because it is the quality of jobs that determines whether an employee becomes rich or poor. When employers systematically discriminate against certain groups, they thereby turn those groups into a socioeconomic underclass from which, again, it is difficult to break free.

Finally, eliminating discrimination in positions of political power is important because it is the government that shapes social policy regarding the equal treatment of groups. Without proper representation in government, the risk is too great that the interests of White males will prevail over those of other groups.

Types of Discrimination

The type of discrimination that is most relevant to businesses is called **employment discrimination** and involves the prejudicial treatment of people in hiring, promotion, and termination

decisions. In the past, employment discrimination was an integral and acceptable part of doing business; that was a reflection of the prevailing social order. Women and ethnic minorities, it was felt, belonged only in specific jobs, typically lower paying ones, and it was just assumed that the better jobs should go to White males. Not so now. The law protects women and minority groups from employment discrimination, and it is a serious blemish on a business's moral record to be accused of discriminatory practices. Still, some employment discrimination continues today in spite of changing laws and social attitudes.

Sometimes businesses engage in **intentional discrimination**, when the policies of a company are shaped by overt racial prejudices of its managers or executives. For example, a family restaurant in a racially divided town had a policy of placing a small letter B on the back of application forms filled out by black applicants. They would then overlook these applications when selecting candidates to interview. The business managers were knowingly and intentionally discriminating against black applicants. Other times, however, businesses engage in **unintentional discrimination**, when their policies uncritically reflect prejudicial stereotypes. The Jazzercise example from before appears to be of this sort, in that the company wrongly assumed that only people within a certain weight range were athletically fit.

Evidence of Discrimination

When looking for evidence of discrimination within the business world, there are two types: direct and indirect. **Direct evidence of discrimination** is overt written or oral statements by employers that display their discriminatory intention. The story of the application forms with the small B on the back would be an example. Finding direct evidence, though, is difficult, since employers rarely make explicit discriminatory statements such as "our policy is to not hire black people" either in writing or verbally. It is more likely that there will be **indirect evidence of discrimination**, where the behavior of the company implies discriminatory conduct. Examples might be withholding training or promotion opportunities from a minority worker that majority workers instead receive.

One strategy for presenting indirect evidence of discrimination in court is called the **burden-shifting formula**, where the burden rests on the employer to show that its behavior was not discriminatory (*McDonnell Douglas Corp v. Green*, 1973). The formula has three steps:

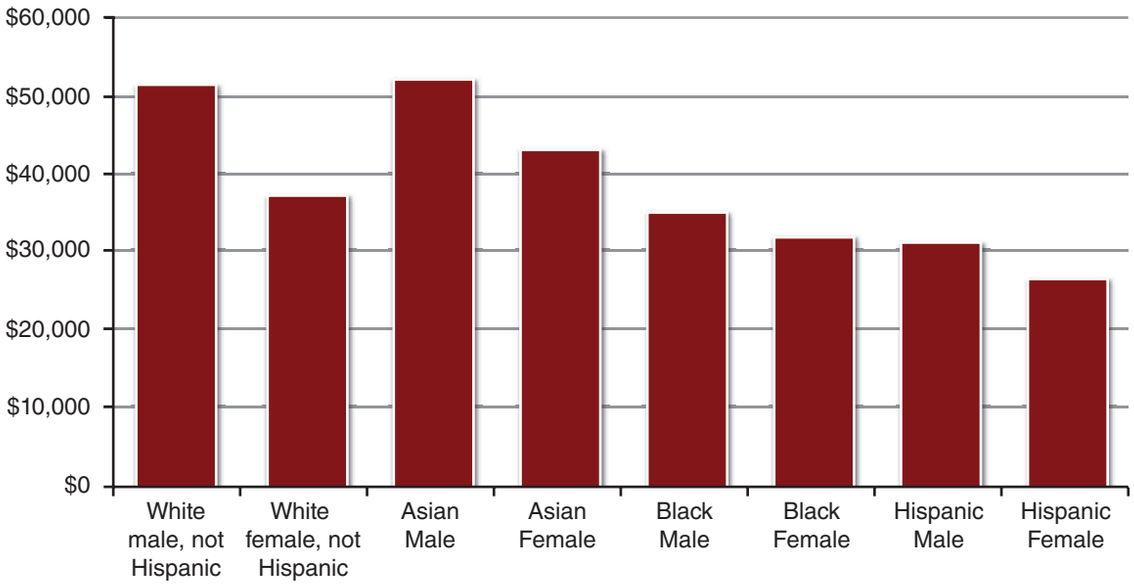
1. The employee makes an initial case that she was treated differently, such as that she was overlooked for promotion because she was female.
2. The employer gives a nondiscriminatory explanation for its conduct, such as that the woman lacked seniority and thus was not qualified for promotion.
3. The employee refutes this explanation as a mere pretext for discrimination, such as by showing that less experienced males in the company had gotten promotions.

The evidence here is still indirect, since there is no explicit statement from the company to the effect of "we did not promote you because you are a woman." However, through the undermining of the company's nondiscriminatory explanation, it seems more reasonable that the company's differential treatment was discriminatory in nature.

There is another type of indirect evidence that suggests the discriminatory treating of minorities within society as a whole, namely **income inequality**, which involves an analysis of the extent to which income is distributed in an uneven manner among a population. Some income-inequality

studies focus specifically on race and gender disparities, and much of those data in the United States come from the Census Bureau. The statistics show that race and gender income differences have decreased since 1953, but a sizeable income gap still remains between minority workers and White males, as Figure 5.1 reveals. The statistics themselves show only that major income disparities exist between White males and minority workers. But to use this as evidence for discrimination, a person must further show that these differences cannot be reasonably explained by nondiscriminatory factors.

Figure 5.1: The U.S. Income Gap, 2009



Source: U.S. Census Bureau. (2009). Historical income tables. Tables P-5 and P-38. Retrieved from http://www.census.gov//hhes/www/income/data/historical/people/

With gender, there are a few possible nondiscriminatory reasons. It is often suggested that women gravitate towards careers that pay lower than those of men, such as education, counseling, and nursing. It is also argued that many women place less value on jobs with long work hours and more value on a flexible schedule that allows for family commitments. In the words of one analyst, "women are less willing to work long hours and relocate, and more eager for part-time work arrangements" (*Women in Management*, 2002). These explanations are controversial, and perhaps even grounded in stereotypes. However, they suggest that women's choices may be a source of gender income disparities and, if so, the income-inequality argument for discrimination falls apart.

With racial income inequality, there is also a possible nondiscriminatory explanation: Black and Hispanic people have less access to education, which in turn makes them less competitive for lucrative jobs. Thus, their lower pay may be not the result of employment discrimination, but instead an unfortunate consequence of their sociological background. The educational obstacle is less of a barrier for White women, who first surpassed White men in college enrollment in 1991; since then, the gap has continued to widen (Mather & Adams, 2007).

Pay gaps that begin at the initial acquisition of jobs often continue with promotions within the company. This sometimes leads to a phenomenon called the **glass ceiling**, where women and minority

workers hit a level beyond which they cannot advance, while their White male counterparts continue to progress. In the words of one governmental investigation, it is "the unseen, yet unbreachable barrier that keeps minorities and women from rising to the upper rungs of the corporate ladder, regardless of their qualifications or achievements" (Federal Glass Ceiling Commission, 1995).

The image of a glass ceiling is a telling one: It suggests that as women and minorities compete with others to climb the ladder of success, they bump into a barrier that keeps them from rising higher, while they can see their White male counterparts continue to rise above them. For example, Outback Steakhouse settled a $19 million class-action lawsuit by female employees who maintained that they "hit a glass ceiling and could not get promoted to the higher-level profit-sharing management positions in the restaurants" (Equal Employment Opportunity Commission, 2009). But this concept of the glass ceiling is also controversial, and with gender-based glass ceilings the argument has been put forward that many obstacles to women's promotion result from personal choices, such as the desire for part-time working arrangements. As one analyst stated, "the only ceiling that exists in corporate America is gender-neutral—it prevents those who choose to devote more time to their personal lives from advancing at the same rate as those who devote more uninterrupted time to the workplace" (*Women in Management*, 2002).

Associated Press/Charles Dharapak

President Barack Obama signs the Lilly Ledbetter Fair Pay Act in 2009 with Lily Ledbetter (right).

In short, income-inequality statistics and the phenomenon of the glass ceiling demonstrate that serious pay gaps exist. However, that in and of itself does not constitute compelling indirect evidence of systematic employment discrimination. It still may be important to attempt to eliminate the pay gap even if it cannot be demonstrated to result from current discriminatory employment practices. The pay gap that exists still has historical roots in past discrimination, and that alone may justify remedying the inequality.

5.3 Affirmative Action

There is no doubt that employment discrimination has taken place in the past and continues today to at least some extent. The question, then, becomes one of finding the best means of combating it. The gentlest public policy for uprooting discrimination in organizations is **equal opportunity**, which is simply the policy of treating employees without discrimination. It involves neutral, nondiscriminatory hiring practices. The hope is that, through the simple removal of discriminatory barriers, historically disadvantaged groups may finally be able to compete head-to-head with White males and thereby eventually remove all racial and gender economic disparities. By today's standards, there is nothing controversial about this neutral, nondiscriminatory notion of equal opportunity, and perhaps only a committed bigot would oppose it.

A much more aggressive mechanism for combating discrimination is **affirmative action**, which is a policy of improving the opportunities of those within historically disadvantaged groups through positive measures beyond neutral, nondiscriminatory action. We will next look at key features of affirmative action policies and at arguments for and against them.

Features of Affirmative Action

The principal aim of affirmative action policies in the workplace is to increase the representation of women and minority groups in areas of business from which they have been historically excluded. Some of these positive measures include

- active recruiting of minority workers,
- elimination of biases in job criteria,
- minority training programs for senior positions, and
- active promotion of minority workers to senior positions.

The aim of affirmative action is sometimes described as **equal results**, meaning achieving proportional minority representation in a work or economic environment where minorities are presently underrepresented. For example, if 2% of the White male population is wealthy, then 2% of the population of women and minorities should be wealthy. In this sense, affirmative action seeks to achieve an outcome in which women and minorities are proportionally represented in positions of wealth and power. One government agency provides testimonials of employees who have benefited from affirmative action programs; here are two:

- Bernadette, of Washington, D.C., works as a carpenter because of a federal affirmative action program. She is an African-American single parent with two children, who says "because the company had an affirmative action program, I got on the job site."
- Janice became an astronaut with NASA at the Johnson Space Center in July 1991, because of NASA's affirmative action program. She has since logged over 438 hours in space. She describes the NASA equal employment opportunity policy: "Under NASA's developing equal opportunity and diversity policies, all hiring and advancement decisions are based on individual qualifications and merit, but recruitment and development programs are structured such that high-quality candidates are available to help achieve a representative workforce." (Office of Federal Contract Compliance Programs, 2002, Section D.iii)

The point in both of these testimonials is that affirmative action programs through their employers gave these women work opportunities that they would not likely have received otherwise. Affirmative action policies are typically seen as temporary measures to fix problems that exist right now; when equality is achieved, they will no longer be necessary.

Preferential Treatment

The most controversial component of affirmative action is **preferential treatment**, that is, special consideration given in hiring and promotion situations to people from historically disadvantaged groups. Suppose, for example, that a White man and a Black man are applying for the same job,

and, although their credentials are similar, the White man has more educational experience. Thus, on paper, the White man is the stronger candidate. Since the Black man is a member of a historically underrepresented group, preferential-treatment policies would make him the preferred candidate over the White man. Sometimes preferential treatment involves a **quota system,** where a certain number of jobs are set aside for members of minority groups in direct proportion to their numbers in the community. The notions of affirmative action and preferential treatment are often used interchangeably, but they are not identical: Preferential treatment is just one type of affirmative action policy, and is not necessarily the central component. As one governmental agency stated, "Affirmative action is not preferential treatment. Nor does it mean that unqualified persons should be hired or promoted over other people. What affirmative action does mean is that positive steps must be taken to provide equal employment opportunity" (EEOC, 1993). Nevertheless, preferential treatment has become the focal point for debates about affirmative action policies.

Compensation for Discrimination

The strategy of affirmative action programs is group oriented in the sense that every individual who belongs to a designated group will thereby qualify for some special consideration. To explain, there are two ways that we might compensate minority groups for their historical disadvantages:

- There might be **individual compensation**, where each person is compensated based on his or her individual claim. For example, a Black man might argue that he was discriminated against when he was overlooked for a promotion at his job. He could then sue his company and present his case in court; if he succeeded, his company would then compensate him individually. Scenarios like this in fact occur regularly.
- Alternatively, there might be **group compensation**, where each individual within a disadvantaged group is compensated based purely on his or her membership in that group. This is the approach that the government takes with affirmative action policy. It identifies a group that has been historically disadvantaged and addresses the situation by compensating each person within that group.

Copyright Bettmann/Corbis/AP Images/Ken Yimm

Diane Joyce was a dispatcher in Santa Clara County who won in a Supreme Court case on affirmative action in 1987. The Court upheld her employer's right to give Joyce a promotion over a male applicant.

The benefit of group compensation is that it avoids the impossible task of examining the claims of each person individually within that group. For example, with group compensation, a Black woman would not have to show how she had been personally disadvantaged through the legacy of slavery, Jim Crow laws, and racial prejudice. Those facts have already been established for her minority group as a whole, so she would not have to make her case individually.

There are downsides to group compensation, however, which is the source of some of the controversy with affirmative action policies:

- Some individual members of a minority group may be less deserving of compensation than other individual members but receive the benefit anyway. Take, for example, a Black man who was raised in an affluent family and never personally experienced any prejudice or discrimination. He would still be entitled to the same special consideration as a Black man who has personally experienced discrimination.
- Some members of majority groups may be as deserving of special consideration as members of a minority group are, yet will not qualify to receive it. Take, for example, a White man whose family has been caught up in a cycle of poverty for generations and who experiences the same socioeconomic disadvantages as a poor Black man. Since he is not a member of the Black minority group, he does not qualify for compensation.

From the government's standpoint, however, the strengths of group compensation outweigh its weaknesses, so this is the approach that affirmative action policies take.

Arguments for Affirmative Action

Among the many arguments offered in defense of affirmative action policies, here are three common ones.

Associated Press/M. Spencer Green

In this 2003 photo, former President Bill Clinton addresses the Rainbow PUSH Coalition on the topic of affirmative action.

Helps Create Fairness

The first and most important one is that affirmative action is a matter of fairness since it lessens the competitive disadvantage of minorities, which results from past unjust social treatment. It creates a more equal playing field for employment and promotion, since White males still have many advantages. The rationale behind affirmative action was given in a famous speech by President Lyndon Johnson in 1965:

> Equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family that you live with and the neighborhoods you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man. (paragraph 16)

Johnson's point was that people's abilities are often shaped by social factors beyond their control, particularly education and family environment. A member of racial minority who is born into such a disadvantaged situation will not be able to effectively compete for higher level jobs; it is only through affirmative steps that society can help elevate him or her to those positions. President Bill Clinton similarly stated that "the purpose of affirmative action is to give our nation a way to finally

address the systemic exclusion of individuals of talent on the basis of their gender or race from opportunities to develop, perform, achieve and contribute" (1995, p. 1108). His point was that social practices of systematic exclusion have had a long-term negative impact on minority groups that cannot immediately be erased by merely ending discriminatory behavior.

Helps Reduce Poverty

A second argument for affirmative action is that it helps reduce poverty. Completely apart from issues of fairness, affirmative action has an important social benefit, since high poverty rates adversely affect society as a whole and not just the poor themselves. Poverty contributes to crime, reduces the educational level of the workforce, and strains the country's welfare system. Minority discrimination and poverty are correlated, and thus by providing job opportunities to members of those minority groups, poverty within those groups is lessened. This not only reduces poverty for the recipients of affirmative action, but it helps break the cycle of poverty that these recipients would otherwise pass on to their children.

Helps Reduce Racism

A third argument is that affirmative action helps reduce racism. Much of the bigotry expressed towards minorities owes to low socioeconomic status, a culture of poverty, and harmful stereotypes that inevitably result from this. Through getting better jobs, the socioeconomic status of members of minority groups is improved and the traditional stereotypes do not apply. These workers thus become positive role models that others within that minority group may be inspired to follow. They also become positive models that others in society can look towards when upgrading their own attitudes about minorities.

Arguments Against Affirmative Action

There are three main arguments against affirmative action, each of which focuses on the controversial component of preferential treatment.

Creates Reverse Discrimination

The first of these is that preferential treatment is unfair and amounts to **reverse discrimination**, where a more qualified candidate from the majority group is unfairly denied an opportunity in preference to a less qualified candidate from a minority group. On this view, affirmative action policies work so hard to protect minority groups that they often penalize a member of the majority group, usually a White male. Then California Governor Pete Wilson expressed this sentiment here:

> Today the fundamental American principle of equality is being eroded, eroded by a system of preferential treatment that awards public jobs, public contracts, and seats in our public universities, not based on merit and achievement but on membership in a group defined by race, ethnicity, or gender. That's not right. It's not fair. It is, by definition, discrimination. (1996, p. 167)

In this quotation, Wilson argued that all discrimination on the basis of race and sex is inherently unfair and unequal—and that also applies to preferential treatment. The rights that White

males have to not be discriminated against are as valid as those of any member of a minority group.

Associated Press/Bob Martinez

In this 1995 photo, California Governor Pete Wilson signs an executive order to end affirmative action programs in the state.

The point is that even if we concede that preferential-treatment programs aim to help historically disadvantaged groups, such good intentions alone do not make the policies just. Imagine that, in our efforts to redress the past harms from discrimination, we redistributed half of the wealth of all White males among minorities. One day I have $10,000 in my bank account and the next day I have $5,000, with the missing half going into the bank accounts of members of disadvantaged minorities. Even if this had a proven benefit to the members of the minority groups, most of us would judge an effort like this to be grossly unfair to White males. While preferential treatment is not as extreme as this, it has the same kind of built-in unfairness. Another way that this unfairness is expressed is that preferential treatment essentially takes the view that two wrongs make a right. Some Whites in the past discriminated against some minority groups, even enslaving their members, and that was undoubtedly wrong. In the present, descendants of those members of minority groups, through preferential-treatment programs, have a right to opportunities over better qualified Whites who had nothing to do with that past discrimination. But these two wrongs do not make preferential treatment right.

Associated Press/Stew Milne

In this 2004 photo, Roger Williams University student Adam Noska (center) is awarded a "whites only" scholarship from College Republicans president Jason Mattera. The award was intended to draw attention to the issue of affirmative action. However, just days after receiving the award, and amid a whirl of controversy at the school, Noska announced that he regretted taking the scholarship and was donating the money to charity (Carroll, 2004).

Creates Social Tension and Negative Attitudes About Minorities

A second argument against preferential treatment is that it creates social tension and negative attitudes about minorities who benefit from these programs. If an employer has one job opening and hires a minority applicant to fill it, there may be 50 angry White male applicants, each of whom blames that minority applicant for

taking the job away from him. The Wilson quote earlier shows the kind of outrage that preferential-treatment programs can generate. Other critics have gone further and argued that preferential-treatment programs have created an atmosphere in which White males are openly vilified and can do little to stop it. As one opponent of these programs stated, "We have institutionalized a counter-white-male bias. We have created a new group who are being discriminated against.... [This group has] no access to legal recourse or power. We have institutionalized discrimination against one group. When does it end?" (Lynch, 1989, p. 181). Rather than creating equality and removing social tension, preferential treatment has resulted in a new inequality where there is a hierarchy of the oppressed. Blacks are the primary recipients of preferential treatment, followed by women, then Native Americans, then Hispanics, then Asians, then individuals with disabilities, and this continues until we finally reach White males at the bottom of the scale. Thus, according to critics, what started out as a policy to reduce social tensions has ended up creating new tensions.

What Would You Do?

You are a White employee and are on a list to be considered for a training program that would lead to career advancement and a pay increase. You find out that you were not accepted, but some minority candidates with less seniority and experience than you were.

1. Would you accept the decision?
2. Would you complain to the person in charge and ask for your candidacy to be reevaluated?
3. Would you attempt to negotiate an agreement that you will accept the decision in this case, but that you expect to be accepted into the program the next time?
4. Suppose that you tried to negotiate an agreement for the next time the program was offered, but the company did not cooperate. Would you get a lawyer and threaten to sue?

Exceeds Sufficient Nondiscrimination Without Preferential Treatment

A third argument is that nondiscrimination without preferential treatment is sufficient for achieving social equality. Society has come a long way since the days of overt racism and sexism, and the laws that we currently have in place are all that we need to elevate the economic status of women and minorities. Government officials continually promise that preferential treatment is only a temporary measure that in time will no longer be necessary, but that time seems to never come. Critics thus contend that programs of preferential treatment are no longer necessary, and now is the time for dismantling them.

5.4 Affirmative Action in U.S. Law

Each country has its own history of both discriminatory practices and laws to combat them; we have already examined the situation in India. In this section we will look at the United States' affirmative action laws and the impact that they have on businesses. The legal issues surrounding affirmative action policies in the United States are not always the most enjoyable things to explore. There are subtle conceptual distinctions and complex regulations, and emotions run high. However, this is precisely where nondiscrimination in the workplace is put into practice. From the standpoints of both the government and businesses themselves, being ethical in employment nondiscrimination ultimately means following government regulations. All employees in medium to large companies need to be familiar with key aspects of these laws; for many managers, mastery of affirmative action policies will be a key part of their job.

Two Laws and Two Governmental Agencies

The story of affirmative action regulation in the United States begins with the civil rights movement of the late 1950s and the Civil Rights Act of 1964. This legislation was devised to put an end to a century of racial segregation and discrimination. It was hotly contested in Congress; one Southern senator stated, "We will resist to the bitter end any measure or any movement which would have a tendency to bring about social equality and intermingling and amalgamation of the races in our states" (quoted in Spartacus Educational, n.d.). Fortunately that senator was outvoted. The critical portion of the act that grants equal opportunity for employment appears in Title VII:

> It shall be an unlawful employment practice for an employer—
>
> (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, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees 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, religion, sex, or national origin. (Section 703)

Title VII allows for some exemptions where discrimination can be permitted, but these must involve **bona fide occupational qualifications**, that is, qualifications that relate to an essential job duty and are "reasonably necessary to the normal operation of that particular business or enterprise". (Civil Rights Act [1964] Title VII, Section 703, 3e). An example of this would be disqualifying a blind applicant for an air-traffic controller job, as mentioned earlier. Similarly, a theater company could disqualify a male actor who applied for a female role in a play, or an Episcopal church could disqualify an ordained Baptist preacher for a ministerial position.

The term *affirmative action* made its way into law through an executive order by President Kennedy in 1961 requiring any business seeking a federal government contract to engage in affirmative action. The order stated, "The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin" (Executive Order No. 10925, 1961). But Kennedy's conception of affirmative action was mild, and meant essentially that contractors needed to exhibit an active concern to eliminate discrimination. Four years later, this order was revised by President Johnson to include gender (Executive Order No. 11246, 1965).

In this photo, Rosa Parks (left) sits at the front of a Montgomery, Alabama, bus. In 1955, Parks was arrested for refusing to vacate her seat on a Montgomery bus for a White passenger.

It was in 1968 that the government first required target dates for evaluating a contractor's affirmative action program. The regulation stated, "The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of minority groups, including, when there are deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity" (Affirmative Action Law and Legal Definition, n.d.). This is the basis of the more aggressive notion of affirmative action that includes preferential treatment. In theory, the executive orders for contractors do not require every company in the United States to adopt aggressive affirmative action policies. However, since government contracts are such an important source of revenue throughout the business world, the executive orders had the practical effect of mandating this uniformly, especially for medium to large corporations.

Enforcing Title VII and Executive Order No. 11246

The task of enforcing Title VII of the Civil Rights Act was assigned to the **Equal Employment Opportunity Commission (EEOC)**, which sets policies for dealing with discrimination complaints, holds hearings on specific complaints, and has the authority to file discrimination suits against employers. The commission's single mission is "the elimination of illegal discrimination from the workplace" (Equal Employment Opportunity Commission, n.d.). While the EEOC oversees compliance with Title VII, the affirmative action executive order for government contractors is under the domain of the **Office of Federal Contract Compliance Programs (OFCCP)**—a branch of the Department of Labor. The OFCCP enforces affirmative action compliance in several ways. It offers technical assistance to federal contractors and subcontractors to help them understand the regulatory requirements and review process. It conducts compliance evaluations and complaint investigations of federal contractors' personnel policies and procedures. The ultimate punishment by the OFCCP for violations is the loss of a company's federal contracts, and companies may have to pay lost wages to victims of discrimination. Each year, the OFCCP issues an "Opportunity Award" to a contractor who implements outstanding affirmative action programs; recipients have included Raytheon, Texas A&M University, and Dell.

Protected Classes and Minorities

The laws and regulations that are jointly enforced by the EEOC and OFCCP are called **equal employment opportunity (EEO) laws**. From a business's perspective, EEO laws mandated by the EEOC and OFCCP go hand in hand: While the one agency oversees Title VII, and the other, government contracts, medium to large businesses typically need to comply with both. It is beyond the scope of this chapter to give a detailed account of the EEO laws, but there are a few important concepts relating to these laws that are central to compliance for businesses and to the debates surrounding them.

The first is the concept of **protected classes**, which are the specific groups that are protected from employment discrimination by law. Since the enactment of the Civil Rights Act, the list of legally protected groups in the United States has grown; it currently includes seven groups: (1) women, (2) minorities, (3) veterans, (4) individuals with disabilities, (5) people over 40, (6) pregnant women, and (7) anyone on the basis of genetic information. Technically speaking, every U.S. citizen belongs to some protected class, if only by virtue of being either a man or a woman and having genetic information. However, the EEO laws aim specifically at protecting women and minority groups because of the history of discrimination against them ("Equal Employment Opportunity (EEO) Terminology," n.d., under "Protected class"). A **minority** is a subgroup of a population that differs in race, religion, or national origin from the dominant group. The EEOC designates a minority as

being one of four groups: (1) American Indians or Alaskan Natives, (2) Asians or Pacific Islanders, (3) Blacks, or (4) Hispanics. The EEOC does not technically classify women as a minority. However, women are considered as having "minority status" as far as the law is concerned, since they have experienced the same kind of systematic employment discrimination as the various minorities.

Compliance Guidelines and Plans

The government does not simply trust that employers will embrace nondiscrimination and affirmative action practices. Rather, employers must follow complex protocols, and compliance places high demands on their personnel resources. Several consulting companies specialize in affirmative action compliance; one advertises that it can help companies successfully navigate "through the complex maze of affirmative action regulations" (AAP Consultants LLC, n.d.).

There are two main government protocols that most medium to large businesses must follow for proper compliance. The first is the **Uniform Guidelines on Employee Selection Procedures (UGESP)**, which are guidelines that require employers to carefully inspect the processes they use to hire, promote, or terminate employees, and assure that those processes are fair and nondiscriminatory. First issued in 1978, the UGESP was designed by several government agencies as a nationwide policy to help achieve the national goal of equal employment opportunity, and it applies to both private and public employers. According to the guidelines, employers need to keep detailed records of applicants for employment and promotion. If a company's current practices produce a deficiency of women or minority employees, the company must conduct a validity study to show that the imbalance was not discriminatory (Uniform guidelines on employee selection procedures, 2010).

Suppose, for example, that you owned a metal-fabrication company and all of the metal-lathe workers that you hired were White males. Using a validity study, you might show that your hiring criteria for those employees involved a specialized mathematics test that would legitimately identify workers who would be good metal-lathe operators. It then turned out that only White male applicants performed well on that specialized test. This would show that your hiring practice was not inherently discriminatory, and that instead, your choice was dependent on your pool of candidates. If a complaint of employment discrimination were ever brought against you, the validity study would be evidence in your defense. On the other hand, if the test you gave to job applicants were racially biased, this would be revealed in your validity study and you would need to change your testing procedure.

The UGESP aims at weeding out discriminatory hiring and promotion practices. However, a second government protocol, known as an **affirmative action plan (AAP)**, focuses more aggressively on assuring that employers implement affirmative action in their employment practices. In some cases, affirmative action plans are mandatory; in others, they are voluntary. The OFCCP requires contractors with 50 or more employees and government contracts of $50,000 to develop these plans. However, the EEOC advises all private-sector companies to devise voluntary affirmative action plans as a way of addressing deficiencies in their hiring and promotion procedures, especially as might be revealed by the Uniform Guidelines on Employee Selection Procedures.

It is not enough for businesses to merely create an affirmative action plan; they must also make a good-faith effort to put the plan into practice. According to the OFCCP, "good faith efforts may include expanded efforts in outreach, recruitment, training and other activities to increase the pool of qualified minorities and females" (2002). The government recognizes the controversial nature of preferential-treatment policies and potential accusations of reverse discrimination. Accordingly, the OFCCP has stated that "the actual selection decision [for hiring or promotion] is

to be made on a nondiscriminatory basis" (2002). The EEOC has stated further that "a voluntary affirmative action plan cannot unnecessarily trammel the rights of non-targeted groups, usually non-minorities or men" (1997).

The required components of an affirmative action plan are listed in the Federal Code of Regulations, and the OFCCP provides a sample plan that companies can use as a model (Office of Federal Contract Compliance Programs, n.d.). Each organization is required to devise its own plan, and there is great latitude in how each can arrange its plan's components. However, certain elements are required, and the plans often fall into two parts: one for minorities and women, and another for veterans and individuals with disabilities. The main components of affirmative action plans regarding women and minorities are:

- *Determining whether women and minorities are underrepresented within the company*. This involves listing the number of women and minority workers and the various jobs that they hold within a company. This, then, is statistically compared to the availability of women and minority workers in the relevant job market outside the company.
- *Establishing goals and programs to address underrepresentation*. This may involve more strategic use of recruitment and job-opening advertisements, and EEO training for supervisors and all other employees.
- *Conducting an internal audit of hiring, promotion, and termination procedures to detect problem areas*. This involves a statistical comparison of, on the one hand, women and minority workers who have been hired, promoted, or terminated and, on the other, men and nonminority workers within the same job groups.

Associated Press/Elaine Thompson

In this 2010 photo, a Les Schwab Tire Centers employee fixes a tire. The company was forced to pay $2 million in a suit brought against it by the EEOC, which claimed the company denied certain jobs to women (Foden-Vencil, 2010).

The main components of affirmative action plans regarding veterans and individuals with disabilities are:

- *Making a reasonable effort to accommodate the physical or mental limitations of veteran/disabled employees*. When determining the extent of such accommodations, financial cost and organizational necessity are factors that may be considered.
- *Disseminating veteran/disability policy information both internally and externally*. This may involve communicating EEO policies through job advertisements, employee training, and memos to employees.
- *Creating an audit and reporting system regarding compliance with veteran/disability policy*. This may involve annually reviewing company hiring and promotion procedures for indications of discrimination or stereotyping.

The plan regarding veterans and individuals with disabilities differs from the plan regarding women and minorities. No statistical comparison is needed between veterans and disabled workers within

the company and those in the job market outside the company. Rather, the goal is to improve awareness of the conditions that create a discrimination-free environment for veterans and individuals with disabilities.

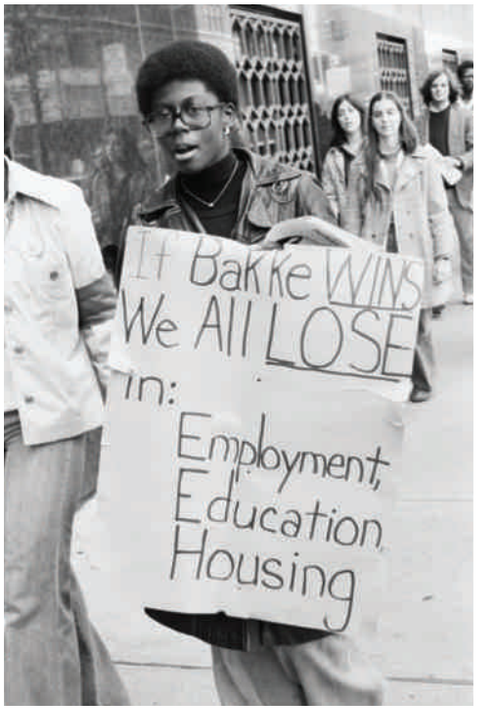
Supreme Court Cases

Since the 1970s, the U.S. Supreme Court has heard a series of cases on affirmative action policies, and those rulings have established that some policies are legally permitted under the U.S. Constitution while others are not. The court's decisions, though, are made on a case-by-case basis, and do not always establish clear and uniform policies. One reason is that the makeup of the Supreme Court continually changes, with some justices being more sympathetic to affirmative action than others. Another reason is that the court cases themselves significantly differ in their details, even when on the surface they seem to be about the same issue. We will look at some of the famous Supreme Court cases that have wrestled with the nuances of affirmative action practices of businesses, universities, and government offices. We will consider them chronologically.

The first important case, *Regents of the University of California vs. Bakke* (1978), involved a White man named Allan Bakke who twice applied to the school of medicine at the University of California, Davis, but was rejected both times, while less qualified minority applicants were admitted as part of a racial quota system that reserved 16 places for minorities. The court ruled that universities could take race into account when admitting students, but it was unconstitutional for them to use rigid racial quotas to increase minorities as the University of California had done. The university was required to admit Bakke. While the legal case ended there, the ruling has been continually debated by legal scholars and in the media. A case in point is the following comparison between the medical careers of Bakke and Patrick Chavis, one of the 16 minority candidates against whom Bakke was originally competing:

> Bakke … ended up with a part-time anesthesiology practice in Rochester, Minnesota. Dr. Patrick Chavis, the African-American who allegedly "took Bakke's place" in medical school, has a huge OB/GYN practice providing primary care to poor women in predominantly minority Compton. Bakke's scores were higher, but who made the most of his medical school education? From whom did California taxpayers benefit more? (Rice & Hayden, 1995)

While Chavis's story has frequently been used as a justification of the University of California's quota system, the story flipped when Chavis was found guilty of gross negligence and incompetence in the treatment of three liposuction patients at his clinic, one of whom



In this 1977 photo, protestors demonstrate over the *Bakke* affirmative action case.

died. The lesson to be learned from this is that a social policy as widespread and complex as affirmative action cannot be judged on the success or failure of any isolated individual. There will always be some examples of great achievement and others of dismal failure, and these can never substitute for systematic and methodologically sound studies of the issue.

In another case, *United Steelworkers of America v. Weber* (1979), Brian Weber, a young White laboratory assistant at the Kaiser Aluminum and Chemical Corporation, applied for a special training program that would have resulted in a promotion. The company made an agreement with the United Steelworkers of America labor union that for every one White person accepted into such training programs, one Black person would also be accepted. The company had many more Whites than Blacks, and thus accepted some Black employees into the program ahead of White employees with more seniority. When Weber was not accepted into the program, he sued on the grounds that the decision violated Title VII of the Civil Rights Act. The court ruled against Weber and in favor of his company. Affirmative action plans were acceptable, according to the court, when they aimed to correct a statistical imbalance but did not involve quotas. Thus, Kaiser did nothing wrong, since the one-for-one system was not, strictly speaking, based on quotas. The court's decision was controversial, and one dissenting justice stated the company's preferential treatment of blacks clearly violated the wording of Title VII, which prohibits discrimination for employment opportunities on the basis of race. The justice continued that, by siding with the Kaiser company against Weber, the court's majority decision was reminiscent of "escape artists such as Houdini" insofar is it eluded the clear language of the law in Title VII and wrongly concluded that employers are "permitted to consider race in making employment decisions" (*United Steelworkers of America v. Weber*, dissenting opn. of J. Rehnquist, 222).

The next case is *City of Richmond v. J. A. Croson Co*. (1989). In this one, the city of Richmond, Virginia, with a Black population of around 50%, had an affirmative action policy that required 30% of all construction contracts to be awarded to minority-owned companies. One of its projects was for the installation of toilet facilities in the city jail. The J. A. Croson Company applied for the contract, but its bid was denied when it could not comply with the city's minority requirement. It then sued on the grounds of discrimination. The city of Richmond argued that racial discrimination created a situation in which minority-owned businesses had virtually no access to government contracts, locally or nationally, and that preferential treatment of minority companies was the remedy. The Supreme Court ruled against Richmond, arguing that the city had failed to demonstrate a compelling interest in its preferential-treatment policy. According to the court, every disadvantaged group could make a competing claim that preferential treatment was the only corrective remedy that would work. Consequently, the court argued, "the dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs" (*City of Richmond v. J. A. Croson Co*., 505–506).

Another important case regarding affirmative action in universities is *Grutter v. Bollinger* (2003). Barbara Grutter, a White woman with strong academic credentials, was rejected from the University of Michigan's law school. She sued on the grounds that the school had used race as a predominant factor, thus giving applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups. The court ruled in favor of the law school, indicating that the Constitution "does not prohibit the Law School's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body" (*Grutter v. Bollinger*, 343). The court clarified, though, that preferential-treatment policies cannot go on indefinitely:

> Race-conscious admissions policies must be limited in time. This requirement reflects that racial classifications, however compelling their goals, are potentially so dangerous that they may be employed no more broadly than the interest demands. Enshrining a permanent justification for racial preferences would offend this fundamental equal protection principle. (*Grutter v. Bollinger*, 342)

Associated Press/Susan Walsh

In this 2003 photo, Barbara Grutter (left), who sued the University of Michigan's law school, leaves the Supreme Court. Grutter sued on the grounds that the school used race as a predominant factor in its admissions. The court ruled in favor of the school.

The point is that even though preferential-treatment programs serve an important social purpose, they are potentially damaging and can only be used as temporary measures. The Court explicitly stated, "We expect that 25 years from now the use of racial preferences will no longer be necessary" (*Grutter v. Bollinger*, 343).

In *Ricci v. DeStefano* (2009), a fire department in New Haven, Connecticut, administered a promotion exam to 118 applicants for the positions of captain and lieutenant. When the results came in, city officials determined that too few minority candidates had scored high enough on the exam, and thus they threw the results out, issuing no promotions. Nineteen firefighters, mostly White males, sued on the grounds of reverse discrimination. The Supreme Court ruled in favor of the firefighters and maintained that the city had violated Title VII of the Civil Rights Act by engaging in "race-based decision making" when discarding the test results (*Ricci v. DeStefano*, slip op. at 19).

All of these Supreme Court cases specifically involve questions about preferential-treatment policies, and whether they violate the rights of Whites. While the rulings differ in many respects, a consistent pattern emerges regarding the permissibility of quota systems in affirmative action programs. Generally speaking, the court considers quotas discriminatory against whites; however, the government can rightfully order companies to meet gender and minority quotas when they have repeatedly engaged in discriminatory practices.

A final Supreme Court case on affirmative action is not about reverse discrimination against whites, but instead about the ability of women and minority employees to sue their employers for discriminatory practices. The 2011 case, *Wal-Mart v. Dukes*, was the largest gender-discrimination case to that point in history. Betty Dukes, a 54-year-old Walmart employee, sued the company for sex discrimination when she was denied training that would have led to a promotion. Her suit, though, was a class action on behalf of 1.5 million female employees who, like herself, she claimed, were also denied promotion within the company because of their gender-discriminatory employment practices. Walmart argued that the class-action lawsuit was unjustified, since the 1.5 million female employees had different jobs with different supervisors at 3,400 different stores

nationwide, and did not have enough in common to be combined together into a single suit. The Supreme Court agreed with Walmart and threw out the case. What this means is that it may be more difficult for victims of systematic discrimination to bring class-action lawsuits against their employers; they may only be able to bring suits on an individual basis. That makes a major difference in the deterrence effect that potential lawsuits could have on businesses. A class action suit like Dukes's, if successful, could have cost Walmart billions of dollars. By contrast, the damages of a lawsuit by a single individual might only be in the thousands of dollars.

5.5 Conclusion

We opened this chapter looking at affirmative action in India. There are defenders of India's radical policy who argue that it is essential for reducing economic differences between its ethnic groups (Deshpande, 2006). But in his book *Affirmative Action in India and the United States*, economist Thomas Sowell argued that India's efforts at boosting the social level of untouchables have been a failure: "It is hard to escape the conclusion that affirmative action in India has produced minimal benefits to those most in need and maximum resentments and hostility toward them on the part of others." According to Sowell, while untouchables have had special positions open to them in universities, businesses, and governments, comparatively few have been able to acquire the skills to move into those positions. For a teenager whose life experience has been salvaging scrap metal from a garbage dump, it makes little difference if law schools have special spots available to students who are untouchables. The odds are slim that such a teenager will succeed in even getting a high-school diploma.

Sowell's assessment of affirmative action programs throughout the world was the same, and he argued that people in the United States can learn by observing patterns of failures elsewhere. One such pattern is that every country claims that its problem with discrimination against minorities is unique, which justifies its policies of preferential treatment. Further, Sowell wrote, in all of these countries "considerable effort has been made to depict such policies as 'temporary,' even when in fact these preferences turn out not only to persist but to grow" (2004, p. 2). The reason, he explained, is that politicians would be blamed for saying no to them, whereas it is much easier to just say yes (Robinson & Sowell, 2004). Another pattern is that when affirmative action policies are set in place, members of majority groups often cheat the system by getting themselves reclassified as members of a minority group—based on very remote minority ancestry—and thus take advantage of special opportunities for minorities. Perhaps most importantly, Sowell argued that there often are not adequate statistical data to show the progress of groups that have been given preferential treatment. Even when such data do exist, it is difficult "to determine how much of that progress was due to preferential policies, rather than to other factors at work at the same time" (Sowell, 2004, p. 19). Nevertheless, Sowell argued, countries push on with their affirmative action programs in the absence of any good data that it works.

Sowell's point is that the problems of discrimination are not unique to the United States, nor are the problems with preferential treatment. To some extent, many people in the United States share Sowell's skeptical attitudes about affirmative action policies. Nationwide surveys on this subject are routinely taken, and not surprisingly, the results depend on whether those policies involve preferential treatment. When asked "Do you generally favor or oppose affirmative action programs for racial and ethnic minorities?," 56% were in favor of such programs, 36% were opposed to them, and 9% were unsure. When asked the same question about affirmative action programs

for women, 63% were in favor, 29% opposed, and 9% unsure. However, attitudes changed when preferential treatment was a factor. When asked "Do you think members of some racial groups should get preference for jobs in private companies so that the workforce has the same racial makeup as its community?," only 21% said yes, while 74% said no and 5% were unsure ("Race and Ethnicity," 2004).

Preferential treatment policies are controversial in the United States and everywhere else in the world where they have been put into practice. Public support might be stronger for these programs if it could be shown with some certainty that they are indeed successful in improving the conditions of historically disadvantaged groups, and they will not continue indefinitely. The problem, though, is that discrimination and its devastating effects on minorities are the consequence of hundreds, and sometimes thousands, of years of prejudicial tradition. It is unrealistic to expect that such a historically rooted problem can be solved with just a few decades of policy changes, and it is understandable that "temporary" policies of preferential treatment have become ongoing features of social policy.

Summary

We began this chapter looking at different types of discrimination. Employment discrimination is specifically the prejudicial treatment of people in hiring, promotion, and termination decisions. Some discrimination is intentional, in that a company's policies are shaped by overt racial prejudices of its managers or executives. Other times it is unintentional, as when a company uncritically perpetuates prejudicial stereotypes. Evidence of discrimination can be direct, when there are overt written or oral statements by employers that display their discriminatory intention. It can also be indirect, when the behavior of the company implies discriminatory conduct. One indirect type of evidence for discrimination is income inequality, where statistical analysis shows that income is distributed in an uneven manner among a population. Another type of indirect evidence is the phenomenon of the glass ceiling, where women and minority workers hit a level beyond which they cannot advance, while their White male counterparts continue to progress.

Next we looked at affirmative action, which is a policy of improving the opportunities of those within historically disadvantaged groups through positive measures beyond neutral, nondiscriminatory action. This is a more aggressive policy than equal opportunity, which is simply the policy of treating employees without discrimination. The most controversial type of affirmative action policy is preferential treatment, which involves special consideration given to people from historically disadvantaged groups in hiring and promotion situations. This often involves a quota system, where a certain number of jobs are set aside for members of minority groups in direct proportion to their numbers in the community. Compensating victims of discrimination can be done individually, such as when a person sues her company based on her specific situation. However, governmental affirmative action policies rest on group compensation, where each individual within a disadvantaged group is compensated based purely on his or her membership in that group. The concept of affirmative action is a controversial one, and we looked at arguments both for and against it.

From a practical standpoint, nondiscriminatory behavior in the workplace essentially means following affirmative action laws that are mandated by the government. The two main affirmative action laws are (1) Title VII of the Civil Rights Act, which grants equal opportunity for employment,

and (2) the presidential executive order requiring government contractors to take affirmative action measures. The Equal Employment Opportunity Commission (EEOC) oversees compliance with Title VII, and the Office of Federal Contract Compliance Programs (OFCCP) oversees compliance with the executive order. These two agencies stipulate two procedures for compliance. The first is laid out in the Uniform Guidelines on Employee Selection Procedures (UGESP), and the second involves the creation of an affirmative action plan (AAP).

Problems routinely arise within the business world with attempts to follow affirmative action laws. Several major Supreme Court rulings have clarified when a business's affirmative action decision crosses the line and becomes unconstitutional. The Supreme Court's general view is that quota systems are discriminatory against White males, but companies can still be ordered to use quotas when they have repeatedly engaged in discriminatory practices.

Discussion Questions

Consider the Jazzercize example at the beginning of this chapter and discuss whether the company was discriminating against the instructor.

1. Unintentional discrimination occurs when a company's policies uncritically reflect prejudicial stereotypes yet do not involve overt racial prejudices of its managers or executives. Think of examples, either real or imaginary, in which a company might be engaged in unintentional discrimination.
2. Examine the statistical data presented earlier that indicate income inequality throughout the United States. Then discuss how much of that inequality can be attributed to discrimination rather than to nondiscriminatory factors.
3. Preferential treatment is just one component of affirmative action, but it is the component that has caused the most controversy. Suppose that the government banned all preferential-treatment programs throughout the country. Would this make the remaining elements of affirmative action ineffective? That is, is affirmative action essentially meaningless without preferential treatment?
4. Governmental affirmative action policies rely on a system of group compensation, rather than individual compensation. Examine the different advantages and disadvantages of the group-compensation approach as listed in the chapter, and discuss whether the government did the right thing by adopting the group-compensation approach.
5. Consider the three arguments in favor of affirmative action discussed in the chapter. Indicate which is the weakest and which is the strongest, and discuss why.
6. Consider the three arguments against affirmative action discussed in the chapter. Indicate which is the weakest and which is the strongest, and discuss why.

Key Terms

affirmative action The policy of improving the opportunities of those within historically disadvantaged groups through positive measures beyond neutral, nondiscriminatory action.

affirmative action plan (AAP) U.S. federal requirement for assuring that employers implement affirmative action in their employment practices.

bona fide occupational qualifications Qualifications that relate to an essential job duty and are reasonably necessary to the normal operation of that particular business or enterprise.

burden-shifting formula The legal strategy for a minority employee where the burden rests on the employer to show that its behavior was not discriminatory.

direct evidence of discrimination Overt written or oral statements by employers that display their discriminatory intention.

discrimination The unjust or prejudicial treatment of people on arbitrary grounds, such as race, gender, or age, which results in denial of opportunity, such as in business employment or promotion.

employment discrimination The prejudicial treatment of people in hiring, promotion, and termination decisions.

Equal Employment Opportunity Commission (EEOC) U.S. federal agency responsible for enforcing Title VII of the Civil Rights Act by setting policies for dealing with discrimination complaints, holding hearings on specific complaints, and filing discrimination suits against employers.

equal employment opportunity (EEO) laws The laws and regulations that are jointly enforced by the EEOC and OFCCP.

equal opportunity The policy of treating employees without discrimination.

equal results An affirmative action concept of achieving proportional minority representation in a work or economic environment where minorities are presently underrepresented.

glass ceiling A discrimination situation in which women and minority workers hit a level beyond which they cannot advance, while their White male counterparts continue to progress.

group compensation An antidiscrimination policy in which each individual within a disadvantaged group is compensated based purely on his or her membership in that group.

income inequality Indirect evidence of discrimination based on an analysis of the extent to which income is distributed in an uneven manner among a population.

indirect evidence of discrimination Behavior of a company that implies discriminatory conduct.

individual compensation An antidiscrimination policy in which each person is compensated based on his or her individual claim.

intentional discrimination Discrimination where the policies of a company are shaped by overt racial prejudices of its managers or executives.

minority A subgroup of a population that differs in race, religion, or national origin from the dominant group.

Office of Federal Contract Compliance Programs (OFCCP) U.S. federal agency (a branch of the Department of Labor) responsible for implementing the affirmative action executive order regarding government contractors.

preferential treatment Special consideration given to people from historically disadvantaged groups in hiring and promotion situations.

protected classes Specific groups that are protected from employment discrimination by law.

quota system An affirmative action concept where a certain number of jobs are set aside for members of minority groups in direct proportion to their numbers in the community.

reverse discrimination An aspect of preferential treatment where a more qualified candidate from the majority group is unfairly denied an opportunity in preference to a less qualified candidate from a minority group.

Uniform Guidelines on Employee Selection Procedures (UGESP) U.S. federal guidelines that require employers to carefully inspect the processes they use to hire, promote, or terminate employees, and assure that those processes are fair and nondiscriminatory.

unintentional discrimination Discrimination where a company's policies uncritically reflect prejudicial stereotypes.