Title VII of the Civil Rights Act of 1964

Equal Employment Opportunity
“As a consequence, self-discipline has eroded and societies are left to try to maintain order and civility by compulsion. The lack of internal control by individuals breeds external control by governments.”

“Gentlemanly behavior [once] protected women from coarse behavior. Today, we expect sexual harassment laws to restrain coarse behavior. ... Policemen and laws can never replace customs, traditions and moral values as a means for regulating human behavior. At best, the police and criminal justice system are the last desperate line of defense for a civilized society. Our increased reliance on laws to regulate behavior is a measure of how uncivilized we’ve become.”

The Higher Law

“There is a great risk in justifying what we do individually and professionally on the basis of what is ‘legal’ rather than what is ‘right.’ In so doing, we put our very souls at risk. The philosophy that what is legal is also right will rob us of what is highest and best in our nature. What conduct is actually legal is, in many instances, way below the standards of a civilized society and light years below the teachings of the Christ. If you accept what is legal as your standard of personal or professional conduct, you will deny yourself of that which is truly noble in your personal dignity and worth.”

Justice Sandra Day O’Connor

Born 1930

Stanford law school graduate in 1952

Appointed to the U.S. Supreme Court in 1981
In 1964

- More than 88% of U.S. population was White
- 33% of working population was female; only 10% were mothers
- The gender-wage gap was estimated at 59%
- Women comprised only 40% of college graduates
- Non-whites comprised less than 5% of college graduates
1964

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Today

• 72% of population is White; 12% African-American; 15% Hispanic
• 50% of working population is female; 71% are working mothers
• The gender-wage gap is estimated at 77%
• Women comprise about 57% of college graduates
• Non-whites comprise about 28% of college graduates
Thomas Dartmouth Rice (1808-1860) creates "Jim Crow" during the American Civil War (1861-1865).

The Emancipation Proclamation was issued in 1863.

"Jim Crow Laws" were enacted between the 1870s and 1960s, including the Louisiana law of 1890 which enforced separate but unequal treatment for African Americans.

The Civil Rights Act of 1875 was passed to address these issues.
Jackie Robinson joins the Brooklyn Dodgers - 1947

World War II
1939 - 1945

Brown vs. Topeka Board of Education - 1954

Elvis Presley releases his first album - 1956

19th Amendment grants Women the right to vote - 1920

World War I
1914 - 1918

Invention of the Twinkie - 1930

1920

1914 - 1918

1920

1939 - 1945

1954

1956

1955

Rosa Parks arrested

1955
Individual Protections Under Title VII

• Race
• Color
• National Origin
• Sex
• Religion
• Pregnancy (added in 1978)
Discrimination Cases Filed Today

Race: 33%
Sex: 30%
Retaliation: 38% (the most successful claims filed today)
Disability: 26%
Age: 23%
National Origin: 11%
Religion: 4%
Color: 3%
Equal Pay Act: 1%
GINA: .3%
Vance v. Ball State University

Court Definition of ‘Supervisor’

Institutional Liability
Institutional Liability

**Harasser as Co-worker**
Institutional liability if it was negligent in controlling working conditions.

**Harasser as Supervisor**
Institutional liability if harassment culminates in **tangible employment actions**.

Employer may escape liability if ...

1. actions are taken to prevent and correct undesired behavior
2. plaintiff fails to take advantage of institutional resources for resolving concerns
Title VII – Employment Practices

• Hiring and firing
• Compensation, assignment, or classification of employees
• Transfer, promotion, layoff, or recall
• Job advertisements and recruitment
• Testing
• Use of company facilities
• Training and apprenticeship programs
• Retirement plans, leave and benefits
• Other terms and conditions of employment
Additional Areas of Coverage

• Harassment on the basis of race, color, national origin, sex or religion
• Refusal or failure to reasonably accommodate an individual’s sincerely held religious observances or practices, unless doing so would impose an undue hardship on the operation of the employer’s business
• Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain race, color, national origin, sex or religion
• Denial of employment opportunities to an individual because of marriage to, or association with, an individual of a particular race, color, national origin, sex or religion
Buonanno v. AT&T Broadband, LLC

“... fully recognize, respect and value the differences among all of us.”

vs.
Buonanno v. AT&T Broadband, LLC

“... fully recognize, respect and value the differences among all of us.”

vs.

“... fully recognize, respect and value that there are differences among all of us.”
Failure to listen to understand
Religious Exemption from Title VII

“This subchapter [Title VII] shall not apply to an employer with respect to ... a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.”

SEC. 2000e-1. [Section 702](a)

**FACTS**

- In the 1950’s Duke Power had a policy that African-American employees were only allowed to work in its Labor department which were the lowest-paying positions within the company.
- In 1955 the company added a requirement of a high school diploma for its higher paying jobs.
- After the Civil Rights Act it removed the racial requirement but retained the H.S. diploma requirement and added an IQ test requirement.
- The policy required a minimum score on the IQ tests to be considered for a promotion/transfer.
- African-American applicants were less likely to hold a H.S. diploma and tended to score lower on the tests.
- As a result African-American applicants were selected at a much lower rate for higher paying positions.
- There were numerous non African-American employees working in higher paying positions who met neither requirement.
QUESTION:

• Did Duke's policy, requiring a high school education and the achievement of minimum scores on two separate aptitude tests, violate Title VII?
HOLDING:
• Broad aptitude tests used in hiring practices that disparately impact ethnic minorities must be reasonably related to the job.
  • Disparate Impact Test- unintentional discrimination
  • Business Necessity- reasonably related
Facts:

• The Pittsburgh Press newspaper had a practice of advertising help wanted ad’s under the heading “help wanted-male” or “help-wanted female.”

• Wilma Heide of the Pittsburgh chapter of the National Organization of Women filed a complaint with the Human Relations Commission alleging that the practice was gender discrimination.

• After her complaint, the city passed an ordinance was that forbid newspapers from sex-designated classified advertising.

• The Pittsburgh Press filed suit, alleging that the ordinance was a violation of First Amendment Rights.
Question: Was the ordinance enacted a violation of the Pittsburgh Press Company’s First Amendment rights to free speech and of the press?
Holding:

• Help wanted ads were a form of commercial speech, excluded from protections of freedom of speech and of the press under the First Amendment.

• An advertiser seeking only male/female applicants “is likely to discriminate in hiring decisions.”
McDonnell Douglas Corp. v. Green (1973)

FACTS

• McDonnell Douglas was an Aerospace Company. Percy Green, a black mechanic and laboratory technician was laid off due to a “reduction in force.”

• Green, who was a long-time activist, believed his discharge was racially motivated.

• He and others protested by a “stall-in”, using cars to block the road to the factory.

• McDonnell Douglas later advertised for several vacant mechanic positions for which Green was qualified for.

• Green applied but was not hired with McDonnell Douglas citing his participation in the “stall-in” and other activities as the reason.

• Green sued alleging that he was discriminated against because of his involvement in the Civil Rights Movement & race.
Question: Who bears the burden of proof in a case alleging discrimination under Title VII and does that include a burden-shifting analysis?
HOLDING:

• The ruling made a framework for the decision of Title VII cases and how they would be analyzed in a court of law.

• It established in employment discrimination cases:

  1) The employee must first establish a prima facie case of discrimination:

     a. The plaintiff was a member of a “protected group”
     b. The plaintiff was qualified in all respects for the job they sought
     c. The plaintiff was rejected in spite of being fully qualified
     d. The employer continued seeking for applicants with the plaintiff’s qualifications

  2) The employer must produce evidence of a legitimate non-discriminatory reason for its actions.

  3) The plaintiff must then be afforded a fair opportunity to present facts to show an inference of discrimination or pretext by the employer.
Dothard v. Rawlinson (1977)

FACTS
• The first US Supreme Court case where the Bona Fide Occupational Qualifications (BFOQ) defense was used.
• In the 1970’s there were height and weight restrictions to be considered as an applicant for an Alabama prison guard.
• Such requirements ruled out Diane Rawlinson.
• Rawlinson sued on the basis that the requirements had a disparate impact under Title VII.
• After Rawlinson filed her lawsuit Alabama passed a regulation that prison guards be the same sex as the inmates. At the time there were four male prisons and one female prison.
• Lower court sided with Rawlinson and the State of Alabama appealed, arguing that sex, height and weight requirements were valid occupational qualifications given the nature of the job thus creating a business necessity.
Question: Are sex, height and/or weight requirements valid occupational qualifications?
HOLDING:

• 1) Under Title VII, an employer may not, in the absence of business necessity, set restrictions which have a disproportionately adverse effect on one gender.

• 2) 8-1 the court ruled weight and height were not legitimate occupational qualifications.

• 3) 6-3 the court ruled in this case, given the nature of the job, gender was a legitimate occupational qualification. The Court noted “female prison guards were more vulnerable to male sexual attack than male prison guards.”
Torres v. Wisconsin (1988, 7th Circuit Court of Appeals)

• Narrowed the use of gender as an occupational qualification.
• Several male prison guards at a women’s prison were demoted and had their positions filled by females due to a new policy that designated certain positions within the prison as open to women only.
• The prison argued the change was necessary to protect the privacy rights of the inmates and to promote the prison's purposes of security and rehabilitation.
• The Court ruled the prison had not established gender was a BFOQ.
University of Texas Southwestern Medical Center v. Nassar (2012)

FACTS

• Academic institution within the University of Texas system specializing in medical education.
• Affiliated with Parkland Memorial Hospital which permits students to gain clinical experience working in its facilities. The agreement also requires the Hospital to offer empty staff physician posts to the University's faculty members.
• Nassar is a medical doctor of Middle Eastern descent who specialized in internal medicine and infectious diseases.
• Nassar alleged that his supervisor was biased against him on account of his religion and ethnic heritage, a bias manifested by undeserved scrutiny of his billing practices and productivity, as well as comments that "Middle Easterners are lazy."
• Nassar made numerous complaints to his line management but continued to feel his supervisor was biased against him
• Nassar arranged to continue working at the Hospital without also being on the University's faculty.
• The University objected to the job offer asserting that the offer was inconsistent with the affiliation agreement requirement that all staff physicians also be members of the University Faculty. Nassar’s job offer was later withdrawn.
• Nassar alleged constructive discharge of his faculty position due to racial discrimination & retaliation against him by the school by preventing him from receiving a job at the hospital.
**Question:** What standard should be applied in retaliation cases, but-for causation or the lesser mixed motive?
HOLDING
Title VII retaliation claims must be proved according to traditional principles of but-for causation. They are not established merely by showing that retaliation was a motivating factor for the adverse employment action.
Pregnancy Discrimination Act of 1978

• Amended Title VII to “prohibit sex discrimination on the basis of pregnancy.”

• Common forms of discrimination are:
  • Not being hired due to visible pregnancy or likelihood of becoming pregnant
  • Being fired after informing an employer of pregnancy
  • Being fired after maternity leave
  • Receiving a pay decrease due to pregnancy
Key Points to Remember

Personal bias / preferences
It’s about the job not the individual
Don’t assume
Personal and institutional liability – A University “Agent”
Consultation
Questions
Travel Policy
&
Training Programs
“Religion”