Chapter 2
The Legal Environment

Discussion Questions

1. *Describe the process through which the legal context of human resource management is created.*

   The legal context of human resource management is shaped by a variety of forces. Congress identifies an area of employment relationship that could be improved by legislation. *Then,* it passes a statute and often creates an agency to enforce the statute. The agency issues regulations defining the statute, and the federal courts apply the body of law to actual circumstances.

2. *Summarize the role of the Thirteenth and Fourteenth Amendments to the U.S. Constitution in equal employment opportunity.*

   The Thirteenth Amendment, which abolishing slavery, was the beginning of the long road toward equal employment opportunity for African-American citizens of the United States. The Fourteenth Amendment that was passed in 1868 had making it illegal for the U.S. government to take the life, liberty, or property of individuals without the due process of law, and it also specifically prohibits a state from denying equal protection to its residents. The Reconstruction Civil Rights Acts of 1866 and 1871 granted all persons the same property rights, as well as the right to sue in federal courts if they are deprived of their civil rights. These laws, which were enacted in the nineteenth century, are the basis for federal court actions that have resulted in new major laws and related regulations passed by Congress in the twentieth century. Today equal employment opportunities are granted, by law, to all U.S. citizens regardless of their race, color, religion, gender, age, national origin, disability status, or status as a military veteran.

3. *What is illegal discrimination? What is legal discrimination?*
Discussion Questions

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Discrimination is the failure to treat people equally. The law requires that employers treat their employees equally with respect to certain factors such as regardless of their race, color, religion, gender, national origin, age, and disability. Obviously, the law cannot require that employers treat everyone equally because differences between workers may affect their productivity. Employers can legally discriminate in employment decisions with respect to by considering the job applicant’s education, skill level, appearance, experience, sexual-orientation (in many states), and ability as long as such factors are not used indirectly to discriminate on forbidden factors.

4. Identify and summarize the various forms of illegal discrimination.

Students’ answers will vary. Disparate treatment is intentionally involves treating employees or applicants differently because of their race, color, sex, religion, national origin, age, or disability status. Bona fide occupational qualifications are rare exceptions when sex, religion, age, or national origin can be used as a qualification for employment. A job qualification is said to have a disparate impact when the passing rate of the members of protected groups is less than four-fifths of the members of majority group’s groups. Griggs v. Duke Power Company is a landmark case that prohibited this type of discrimination which had been overlooked by Congress. Intent is not a required element of the prima facie case of disparate impact. Once the prima facie case of disparate impact has been demonstrated by the claimant, the burden shifts to of proving the employer to prove the business necessity of the qualification falls on the employer.

Pattern or practice discrimination is discrimination against all members of a protected class. It is illegal for an employer to retaliate against employees for either opposing a perceived illegal employment practice or participating in a proceeding that is related to an alleged employment practice.

5. Identify and summarize five major laws that deal with equal employment opportunity.

Students’ answers will vary. Title VII of the Civil Rights Act of 1964 prohibits discrimination in a broad range of employment actions on the basis of race, color, sex, religion, or national origin. Executive Order 11246 requires federal contractors who receiving $10,000 or more to have affirmative action plans to increase the employment of protected groups. Executive Order 11478 requires the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered.

The Equal Pay Act of 1963 requires that men and women receive equal pay for equal work. The Age Discrimination in Employment Act prohibits discrimination on the basis of
age against applicants and employees who are of age forty and over. The Vocational Rehabilitation Act of 1973 requires federal contractors who receive more than $2,500 a year to engage in affirmative action for disabled individuals. The Vietnam Era Veterans’ Readjustment Act of 1974 requires federal contractors to have an affirmative action program for those serving in the armed forces between 1964 and 1975. The Pregnancy Discrimination Act of 1978 gives pregnant women protection against discrimination based solely on their pregnancy. The Civil Rights Act of 1991 makes disparate impact cases easier to prove; it also provides for punitive damages in cases of intentional discrimination and for jury trials when compensatory or punitive damages are sought. The Americans with Disabilities Act of 1990 defines those who are considered disabled and protects them from a wide range of employment discrimination. It requires employers to make reasonable accommodations for people with disabilities except when the accommodation imposes an undue hardship on the employer. The Family and Medical Leave Act of 1993 requires employers of who have fifty employees or more to provide up to twelve weeks of unpaid leave per year for certain family emergencies.

6. Why is most employment regulation passed at the national level, as opposed to the state or local level?

Most employment regulation is passed at the national level as opposed to the state or local level because states and localities compete with each other in attracting businesses. Laws and regulations that restrict the freedom of employers may be viewed as undesirable and resulting in a competitive disadvantage. Hence, it is unlikely that all localities would voluntarily choose to pass such laws. If employment laws are passed at the federal level, they are applied evenly throughout all jurisdictions, so they do not affect competition among domestic businesses. However, excessive regulations at the federal level could affect the ability of domestic companies to compete with less regulated foreign competitors.

7. Which equal employment opportunity laws will likely affect you most directly when you finish school and begin to look for employment?

Students’ answers will vary. If one is a member of a protected group, one may be encouraged by the fact that employers must treat one with a blind eye toward his or her race, color, sex, religion, national origin, or disability. Executive Order 11246 may provide an opportunity with a federal contractor through affirmative action. If one is a white male without a disability, one may find a few less opportunities because of preferential treatment by employers with legally permissible affirmative action programs.
8. Which equal employment opportunity law do you think is most critical? Which do you think is least critical today?

Students’ answers will vary. Students will answer this question from their own, based on their perspectives. It would be interesting if age discrimination were listed as the least critical, since for most students it is probably the farthest factor from their minds.

9. Which equal employment opportunity law do you think is the most difficult to obey? Which do you think is easiest to obey?

Students’ answers will vary. The laws that are the most difficult to obey are the ones that are the least clear. The Americans with Disabilities Act has been in effect for only about ten years, so the laws are still evolving. Federal courts are still defining “disability” and what accommodations employers must reasonably make. Although courts occasionally change the burdens of proof, Title VII and the Age Discrimination in Employment Act have been around for over thirty years and have been interpreted fairly consistently by courts. Conversely, the laws that are easiest to obey are those that are most clear, such as the minimum wage law or child labor regulations.

10. In the case of a conflict between a legal and an ethical consequence of a human resource decision, which do you think should take precedence?

Students’ answers will vary. A person cannot justify breaking the law by reference to ethical behavior. However, it is rare that an act that is ethical is illegal, so it is not a matter of a choice of whether to break the law or to act ethically. The more likely scenario is when the law permits certain behavior that is otherwise unethical. Since the law changes frequently but the rules of ethical behavior do not, consistency dictates that a code of ethics be established and followed.

**Ethical Dilemmas in HR Management**

**Scenario summary**

Assume that one overhears that an OSHA inspector will inspect his or her place of employment within the next week. Both the employee and the plant manager are aware of a safety hazard at the plant. For financial reasons, the hazard will not be fixed before the inspection, but the employer does plan to reduce employees’ exposure to the problem.

**Questions**

1. What are the ethical issues in this situation?
One issue is whether the plant manager should spend the extra resources to fix the hazard immediately or wait until it is less expensive to do so. There is room for disagreement as to whether the risk of injury justifies the extra expense of fixing the problem immediately. The law requires the employer to eliminate only those recognized hazards that are likely to cause death or serious injury. As a practical matter, the employer cannot afford to eliminate all hazards immediately. A second issue is whether one should tell the plant manager what one heard. Not only might it be illegal to warn the plant manager of the inspection, but also it may be that the manager would not do anything differently if she or he knew the inspector was coming. One should have warned the manager of the condition. Let the manager explain her—or himself to the OSHA inspector.

2. What are the pros and cons for keeping this information to yourself versus telling your plant manager what you heard?

It may be illegal to warn the plant manager about the inspection, regardless of how one acquired the information. For OSHA inspections to provide the proper incentive for employers to provide a safe workplace, they must be unannounced. Otherwise, employers will comply only in preparation for inspections. If one does not tell the manager, not only will one be obeying the law but one will also be doing what is right from society’s perspective.

3. What do you think most managers would do? What would you do?

Students’ answers will vary. This makes an interesting class discussion.

Assignment

Purpose: Affirmative action was created as a way of directly and proactively attracting more qualified members of protected classes into the workforce. Although most people believe that affirmative action has served a useful function, some people now believe that it is no longer needed. Specifically, they argue that companies today recognize the importance of hiring the best people possible and will continue to seek those individuals on their own without the pressure of formal affirmative action. Others, however, believe that affirmative action is still necessary to meet its original objectives. The purpose of this exercise is to give the students additional insight into the arguments surrounding affirmative action.

Step 1: The instructor should ask the students to form groups of seven members each. Using a random procedure, students should divide themselves into two subgroups of three members each and a moderator.
**Step 2:** One subgroup will work together to develop a set of arguments about why affirmative action is still a necessary and important component of equal opportunity employment. The other group will work together to develop a set of arguments about why affirmative action is no longer a necessary and important component of equal employment opportunity.

**Step 3:** Students should reconvene as a group of seven. The moderator will randomly select one side to present its case first. That group will have 3 minutes to make its case. The second group will then have 3 minutes to make its case and an additional minute to rebut the first group. Finally, the first group will have 1 minute to rebut the arguments made by the second group.

**Step 4:** The moderator will then summarize the relative persuasiveness of each group regarding the affirmative action issue. In addition, the moderator should feel free to add whether or not either group did not bring up any additional thoughts he or she had about the issue.

**Step 5:** Students should develop a brief summary of the arguments made by both groups. Using whatever format is suggested by their instructor, they should share these arguments with the rest of the class.

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