Chapter 3 – The Legal Context
Learning Objectives

After studying this chapter, you should be able to:

- Explain why complying with staffing laws can be strategic.
- Discuss different types of employment relationships.
- Describe different types of staffing-related lawsuits.
- Discuss the role affirmative action and equal employment opportunity play when in a firm’s staffing process.
- Describe various barriers to legally defensible staffing.
How Can Legal Compliance Be Strategic?

- Avoid the expense of lawsuits
- Avoid the negative public relations that comes with litigation
- Allows companies to capitalize on the strengths of diversity and perform better because they focus more on performance and merit
- Be better able to hire quality people from all segments of the labor force
Why Do Employment Laws Exist?

- Because the employer typically has disproportionate power in the employment relationship.

- Help to promote fairness and consistent treatment among different employees by prohibiting *unfair discrimination* in employment and providing equal employment opportunity for everyone.
Complying With Employment Laws

- Enhances hiring quality
- Enhances the firm’s reputation and image as an employer
- Promotes fairness perceptions among job candidates
- Reduces spillover effects (for example, rejected applicants not becoming customers or discouraging others from applying for jobs)
- Reinforces an ethical culture
- Enhances organizational performance by ensuring that people are hired or not hired based on their qualifications, not biases
- Promotes diversity, which can enhance an organization’s ability to appeal to a broader customer base
Types of Employment Relationships

*Employee*: someone hired by another person or business for a wage or fixed payment in exchange for personal services, and who does not provide the services as part of an independent business

*Independent contractor*: performs services wherein the employer controls or directs only the *result* of the work

*Contingent workers*: any job in which an individual does not have a contract for long-term employment

- Temporary workers
- Leased workers
- Part-time and seasonal workers
- Unionized workers (e.g., hiring electricians for a project from a union hall)
- Outsourced work
Employment at Will

- **Definition**: either party can terminate the employment relationship at any time, for just cause, no cause, or any cause that is not illegal, with no liability as long as there is no contract for a definite term of employment.

- Following formal discipline and termination procedures whenever possible is still advised to help avoid discrimination and wrongful termination claims.

- Best used as a legal defense to keep the organization from being forced to follow its own policies inflexibly.

- Signing an employment application or to acknowledge receipt of an employee handbook produces a written record that the policy has been read and understood.
Exceptions to Employment at Will

- *Retaliatory discharge* (prohibited by EEO laws)
- *Implied employment contract* (when an employer’s personnel policies or handbooks indicate that an employee will not be fired except for good cause or specify a procedural process for firing)
- *Implied covenant of good faith and fair dealing* (e.g., firing an employee to prevent their vesting in the pension plan next month)
- *Federal or state discrimination protection* supersedes employment at will
Labor Unions

- Legally representing workers, organizing employees and negotiating the terms and conditions of union members’ employment

- The conditions of employment are contained in a contract called a *collective bargaining agreement* or a *collective employment agreement*
Four Union Models

- A *closed shop* exclusively employs people who are already union members. An example is a compulsory hiring hall, where the employer must recruit directly from the union.

- A *union shop* employs both union and non-union workers, but new employees must join the union within a specified time limit.

- An *agency shop* requires non-union workers to pay a fee to the union for its services in negotiating their contract.

- An *open shop* does not discriminate based on union membership in employing or keeping workers. Some workers benefit from a union or the collective bargaining process despite not contributing to the union.
### Laws and Regulations

**TABLE 3-2** Summary of Federal Laws Relevant to Staffing

<table>
<thead>
<tr>
<th>Law or Executive Order</th>
<th>Who Is Covered</th>
<th>General Provisions</th>
<th>Further Information</th>
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<tbody>
<tr>
<td>Law or Executive Order</td>
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<tr>
<td>----------------------------------------</td>
<td>-----------------------------------------------------</td>
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<td>-------------------------------------------</td>
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<tr>
<td>Pregnancy Discrimination Act of 1978</td>
<td>Private employers with at least 15 employees</td>
<td>Pregnancy, childbirth, or related medical conditions (Defines pregnancy as a temporary disability that requires accommodation)</td>
<td><a href="http://www.eeoc.gov/facts/fs-preg.html">www.eeoc.gov/facts/fs-preg.html</a></td>
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<tr>
<td></td>
<td>Labor unions, employment agencies, and educational institutions</td>
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<tr>
<td></td>
<td>Local, state, and federal governments</td>
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<tr>
<td>Americans with Disabilities Act (ADA) of 1990</td>
<td>Private employers with at least 15 employees</td>
<td>Qualified individual with or perceived as having a disability</td>
<td><a href="http://www.eeoc.gov/policy/">http://www.eeoc.gov/policy/</a></td>
</tr>
<tr>
<td></td>
<td>Local, state, and federal governments</td>
<td></td>
<td><a href="http://www.eeoc.gov/laws/types/disability.cfm">http://www.eeoc.gov/laws/types/disability.cfm</a></td>
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<tr>
<td>ADA Amendments Act of 2008</td>
<td>Private employers with at least 15 employees, Local, state, and federal governments</td>
<td>Instructs courts and employers to adopt a broad standard when determining whether an individual is considered disabled</td>
<td><a href="http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm">http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm</a></td>
</tr>
<tr>
<td>Rehabilitation Act of 1973</td>
<td>Federal contractors with contracts exceeding $2,500 must engage in affirmative action</td>
<td>Individuals with a handicap</td>
<td><a href="http://www.eeoc.gov/laws/types/disability.cfm">http://www.eeoc.gov/laws/types/disability.cfm</a></td>
</tr>
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</tr>
<tr>
<td>Age Discrimination in Employment Act of 1967</td>
<td>Private employers with at least 20 employees</td>
<td>Protects people 40 years of age or older</td>
<td><a href="http://www.eeoc.gov/policy/adea.html">www.eeoc.gov/policy/adea.html</a></td>
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<tr>
<td></td>
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<td></td>
<td><a href="http://www.eeoc.gov/laws/types/age.cfm">http://www.eeoc.gov/laws/types/age.cfm</a></td>
</tr>
<tr>
<td>Immigration Reform and Control Act of 1986</td>
<td>Employers with at least 4 employees must verify the employment eligibility of everyone hired</td>
<td>Citizens, U.S. nationals, and aliens authorized to work in the United States are eligible for employment</td>
<td><a href="https://www.oig.lsc.gov/legis/irca86.htm">https://www.oig.lsc.gov/legis/irca86.htm</a></td>
</tr>
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<tr>
<td>Worker Adjustment and Retraining Notification Act (WARN) of 1988</td>
<td>Employers with at least 100 employees not including employees who have worked less than six months in the last 12 months and not including employees who work less than 20 hours per week Private, public, quasi-public entities which operate in a commercial context Regular local, federal, and state government entities that provide public services are not covered</td>
<td>Must provide 60 days advance notice of covered plant closings and covered mass layoffs of 50 or more people (excluding part-time workers)</td>
<td><a href="http://www.doleta.gov/layooff/warn.cfm">www.doleta.gov/layooff/warn.cfm</a></td>
</tr>
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<tr>
<td>The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994</td>
<td>All members of the uniformed services (including non-career National Guard and Reserve members, as well as active duty personnel)</td>
<td>Ensures that members of the uniformed services are entitled to return to their civilian employment after their service</td>
<td><a href="http://www.dol.gov/elaws/userra.htm">www.dol.gov/elaws/userra.htm</a></td>
</tr>
<tr>
<td>Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA) (Amended in 2002 by the Jobs for Veterans Act)</td>
<td>Any contractor or subcontractor with a contract of $25,000 or more with the federal government</td>
<td>Prohibits discrimination against and requires affirmative action for disabled veterans as well as other categories of veterans</td>
<td><a href="http://www.dol.gov/compliance/laws/comp-vevraa.htm">http://www.dol.gov/compliance/laws/comp-vevraa.htm</a> <a href="http://www.doleta.gov/Seniors/html_docs/docs/veteransjobs.cfm">http://www.doleta.gov/Seniors/html_docs/docs/veteransjobs.cfm</a></td>
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<tr>
<td>Consumer Credit Reporting Reform Act of 1996</td>
<td>Employers who conduct credit checks for employment purposes (e.g., if an employee handles money, which may require being bonded)</td>
<td>Employers must disclose in advance the company’s intention to obtain a credit report and obtain written permission from the applicant or employee. The applicant or employee must receive a copy of the report and a written description of their rights under this Act before action is taken based on the report</td>
<td><a href="http://www.ftc.gov/os/statutes/03.1224fcra.pdf">www.ftc.gov/os/statutes/03.1224fcra.pdf</a></td>
</tr>
</tbody>
</table>

**TABLE 3-2** Summary of Federal Laws Relevant to Staffing
Improper Interview Questions

- How many children do you have?
- What is your native language?
- What clubs or social organizations do you belong to?
- Are you planning any medical procedures?
Equal employment opportunity: employment practices are designed and used in a “facially neutral” manner

Affirmative action: the proactive effort to eliminate discrimination and its effects, and to ensure nondiscriminatory results in employment practices in the future

- An affirmative action plan describes in detail the actions to be taken, procedures to be followed, and standards to be adhered to, when it comes to establishing an affirmative action program

Staffing Quotas: establish specific requirements, that certain percentages of disadvantaged groups be hired to equalize their proportional representation of under-represented groups in the company’s workforce, with their proportions in the organization’s relevant labor market
Affirmative Action Plans Involving Preferential Treatment

- Should be remedial in nature
- Should not exclude all non-minorities
- Should be temporary
- Should be formalized
Equal Employment Opportunity Commission (EEOC)

Enforces the following federal statutes:
- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act of 1967 (ADEA)
- Pregnancy Discrimination Act of 1978
- Title I and V of The Americans with Disabilities Act (ADA) of 1990
- Sections 501 and 503 of the Rehabilitation Act of 1973
- Sections 102 and 103 of The Civil Rights Act of 1991
- The Equal Pay Act of 1963
- The Genetic Information Nondiscrimination Act of 2008 (GINA)

The EEOC receives over 90,000 charges each year. Even companies with large, sophisticated staffing functions are vulnerable.

The EEOC encourages and facilitates voluntary compliance through tailored programs to meet the needs of employers and through programs to educate the public on EEO laws.
The Office of Federal Contract Compliance Programs (OFCCP)

Part of the U.S. Department of Labor’s Employment Standards Administration.

Responsible for administering and enforcing three equal employment opportunity programs that apply to federal contractors and subcontractors:

- Executive Order 11246 (later expanded by Executive Order 11375)
- Section 503 of the Rehabilitation Act of 1973
- The affirmative action provisions of the Vietnam Era Veteran’s Readjustment Assistance Act of 1974

Ensures that federal contractors with at least 50 employees and who receive $50,000 or more in grants, goods, and services take affirmative action to promote equal employment opportunity and annually file appropriate affirmative action plans.
The OFCCP’s mission is to ensure non-discrimination, to expand opportunities, and to make sure that all employment decisions are inclusive and supportive of diversity.

Primarily relies on compliance reviews and complaint investigations.

Although the OFCCP does enforce affirmative action compliance, it focuses to a greater extent on class action discrimination.

Conducts systemic reviews of employers’ employment practices to search out discrimination.
Who is an “Applicant?”

The legal definition of an applicant is particularly important with regard to two employment law issues:

1. Only “applicants” may establish a prima facie case of unlawful discrimination regarding hiring decisions under state and federal discrimination statutes

2. Employers must determine who qualifies as an “applicant” in order to identify the gender and race of all applicants to evaluate whether its hiring practices have an adverse impact on men, women, or minorities

The question of who is an applicant is critical to establishing the proportions of the applicant pool belonging to different legally protected groups (e.g., sex, race, national origin, etc.).

Understanding the definition of an applicant can help employers minimize risk and protect themselves from costly audit defense.
How the OFCCP Defines “Applicant”

The OFCCP considers a person applying via the Internet and related technologies to be an applicant if all four of the following criteria are satisfied:

1. The individual submits an expression of interest in employment through the Internet or related electronic data technologies;
2. The contractor considers the individual for employment in a particular position;
3. The individual’s expression of interest indicates the individual possesses the basic qualifications for the position; and
4. The individual at no point in the contractor’s selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.
Disparate Treatment

- The intentional discrimination based on a person’s protected characteristic
- Can be *direct*, for example resulting from a company’s policy to not hire older workers
- Can be *inferred* from situational factors or result from a combination of permissible and prohibited factors
Inferring Disparate Treatment

To establish this type of case of discrimination under the theory of disparate treatment, the plaintiff must show:

- That he or she belongs to a group protected from discrimination (race, gender, etc.).
- That he or she applied for the job and was qualified for the job for which the employer was seeking applicants.
- That despite being qualified he or she was rejected. (The plaintiff does not need to prove that he or she was rejected because of his protected status, only that despite his or her qualifications, he or she was rejected.)
- That after being rejected, the position remained open and the employer continued to seek applicants whose qualifications were similar to those of the plaintiff.
Inferring Disparate Treatment, cont.

- The burden then shifts to the employer to show that the discrimination is the result of a *bona fide occupational qualification* that is reasonably necessary for the normal operation of the business or the plaintiff wins the case.

- If the employer shows that the discrimination is based on a business necessity, the plaintiff then has the opportunity to present evidence showing that the employer’s stated reason for the rejection was false and merely a pretext.

- To establish a case allowed to go to court, the plaintiff need not prove that discrimination was the motivating factor in the hiring or promotion decision, only raise an inference that such misconduct occurred.
Mixed Motive Case of Disparate Treatment

- Employer is accused of having both, a legitimate, and an illegitimate reason for making the employment decision.

- It is sufficient to show that a protected characteristic (race, sex, etc.) was a motivating factor in an employment decision, even if other legitimate factors (such as absences) also motivated the decision.

- A plaintiff only needs to prove that the protected characteristic was a motivating factor – one of the reasons for the decision – no matter how small a role it played.

- If a plaintiff satisfies the burden of proof that discrimination was a motivating factor in the employer’s adverse employment action, the employer is found liable.

- The burden of proof then shifts to the employer to eliminate or reduce a plaintiff’s monetary damages by proving to the jury that they would have made the same employment decision in the absence of the discriminatory motive.
Disparate Treatment and Mixed Motive Cases

- Under the mixed motive analysis, the burden of proof is on the defendant to show that the decision would have been the same despite plaintiff’s race or sex.

- Under the disparate treatment method, the burden of proof is on the plaintiff to disprove the same thing.
Adverse Impact

- **Definition**: When an action has a disproportionate effect on a protected group, regardless of the employer’s intent.

- The only defense for adverse impact is when the adverse impact is justified by business necessity or job relatedness (a *bona fide occupational qualification* or BFOQ).

- Assessment scores cannot be altered or changed to reduce the adverse impact on protected groups.

- Assessment test results cannot be ignored simply because they have an adverse impact on a protected group.
Adverse Impact Statistics

Stock statistics: compare the percentage of men, women, or minorities employed in a job category with their availability in the relevant population of qualified people interested in the position

<table>
<thead>
<tr>
<th>Job Category: Clerical Workers</th>
<th>Current Clerical Workers (%)</th>
<th>Availability in Relevant Population (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Females</td>
<td>80</td>
<td>60</td>
</tr>
<tr>
<td>Males</td>
<td>20</td>
<td>40</td>
</tr>
</tbody>
</table>
Adverse Impact Statistics

*Flow statistics*: compare the percentage of applicants hired from different subgroups to determine if they are significantly different from each other.

The Uniform Guidelines on Employee Selection Procedures states that organizations must keep records of applicant flow statistics and applicant selection rates must be calculated:

- For each job category,
- For both internal and external selection decisions,
- For each step in the selection process, and
- By applicant race and sex.

<table>
<thead>
<tr>
<th>Job Category: Sales Associates</th>
<th>Number of Applicants</th>
<th>Number Hired</th>
<th>Selection Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>200</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>Women</td>
<td>100</td>
<td>25</td>
<td>25</td>
</tr>
</tbody>
</table>
The 4/5 (or 80%) Rule

The 80% rule: a selection rate for any race, sex, or ethnic group which is less than 4/5 (or 80%) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact

- Only a guideline; provides for exceptions based on issues surrounding statistical and practical significance of the differences in selection rates (such as small sample sizes)
Adverse Impact Statistics

**Concentration statistics:** compare the percentages of men, women, or minorities in various job categories to see if men, women, or minorities are concentrated in certain workforce categories

- If half of an organization’s employees are female but women tend to comprise 90% of the clerical workforce and men tend to comprise 90% of the managerial workforce, women may be underutilized in managerial positions and men underutilized in clerical positions.

<table>
<thead>
<tr>
<th>TABLE 3-6</th>
<th>Concentration Statistics: An Example</th>
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<tbody>
<tr>
<td><strong>Job Category</strong></td>
<td><strong>Sales (%)</strong></td>
</tr>
<tr>
<td>Whites</td>
<td>30</td>
</tr>
<tr>
<td>Blacks</td>
<td>50</td>
</tr>
<tr>
<td>Hispanics</td>
<td>20</td>
</tr>
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</table>
Establishing an Adverse Impact Case

The plaintiff must prove, generally through statistical comparisons, that the challenged practice or selection device has a substantial adverse impact on a protected group.

- The defendant can then criticize the statistical analysis or offer different statistics.

If the plaintiff establishes disparate impact, the employer must prove that the challenged practice is “job-related for the position in question and consistent with business necessity.”

Even if the employer proves business necessity, the plaintiff may still prevail by showing that the employer has refused to adopt an alternative employment practice that would satisfy the employer’s legitimate interests without having a disparate impact on a protected class.
Defending Failure-to-Hire Lawsuits

- Failure-to-hire lawsuits can be difficult to defend because of the lack of work history with the plaintiff to rely on.

- Providing all recruits an accurate job description and using a standardized and well-documented recruitment and screening process are the foundation of the employer’s defense.

- Screening candidates using objective, job-relevant criteria with an established ability to predict job performance, and archiving all recruiter and interviewer notes, test and interview scores, etc. for each applicant can help defend the employer’s employment decisions in court.

- Reduce people’s desire to file a lawsuit by trying to generate applicants from diverse groups, proactively and genuinely, and by treating all recruits fairly and respectfully.
Negligent Hiring

Based on the common law concept that an employer has a general obligation not to hire an applicant that they knew or should have known, poses a risk of harm to third parties.

In order for a customer, employee, or other third party to win a negligent hiring suit against an employer, the following must generally be shown:

1. The existence of an employment relationship between the employer and the worker,
2. The employee’s unfitness,
3. The employer’s actual or constructive knowledge of the employee’s unfitness (failure to investigate an employee’s background can lead to a finding of constructive knowledge),
4. The employee’s act or omission causing the third party’s injuries, and
5. The employer’s negligence in hiring the employee as the most likely cause of the plaintiff’s injuries.

Negligent retention is similar to negligent hiring, but it focuses on situations in which a company knowingly retains employees who have a high risk of injuring themselves or others.
Negligent Referral

- **Definition**: misrepresenting or failing to disclose complete and accurate information about a former employee.

- A former employer can be sued for negligent referral if the employee is involved in some incident at the new workplace that might have been predicted based on prior behavior.

- **Defamation** (an unprivileged publication of false statements to third parties that tends to harm the reputation of the plaintiff in the community) is currently the most common cause of action used by former employees to challenge a former employer’s reference.

- To avoid the risk of a defamation charge it may be best to say as little as possible except in those situations where the employee’s behaviors could endanger others in the new workplace.
Trade Secret Litigation

Trade secrets can be any type of information, process, idea, or “know how” that is not generally known and gives the possessor an advantage in the marketplace.

- Includes a wide range of confidential business or proprietary information, such as chemical formulas, industrial processes, business strategies, and even customer lists.
- Almost all organizations have trade secrets to protect.
- Trade secret litigation can take place after an employee is hired by a competitor, or during the interview process.

Companies must take reasonable precautions including requiring employees to sign confidentiality, incompetence and nondisclosure agreements.

Interviewers must know what information is protected, and how to question job candidates.

Warn candidates at the beginning of an interview not to share a previous employer’s proprietary information.
EEOC Best Practices Definition

A best practice in staffing:

- Complies with the law,
- Promotes equal employment opportunity,
- Addresses one or more barriers that adversely affect equal employment opportunity,
- Manifests management commitment and accountability,
- Ensures management and employee communication,
- Produces noteworthy results, and
- Does not cause or result in unfairness.
Key Elements That Support Successful EEO Programs

Study – know the laws and standards, remove EEO barriers, and seek assistance from the EEOC, professional consultants, associations or groups, etc.

Plan – know the relevant workforce and demographics, define the problem(s), propose solutions, and develop strategies for achieving them.

Lead – have all levels of management champion the cause and provide leadership for EEO implementation at all organizational levels.

Encourage – link pay and performance for how employees interact, support and respect each other.

Notice – monitor the impact of EEO practices; ensure that unfairness does not occur as a result of a corrective strategy.

Discuss – communicate and reinforce the message that diversity is a business asset.

Include – bring all employees and groups into the analysis, planning, and implementation process.

Dedicate – assign needed resources and stay persistent; investment in EEO may take a little while to pay off.
General Barriers to Legally Defensible Staffing

- The “like me” bias
- Stereotypes
- Ignorance
- Prejudice
- Perception of loss by persons threatened by EEO practices
- Hiring managers
Specific Barriers to EEO

Barriers to recruiting:

- Failing to advertise widely in order to attract diverse applicants
- Recruitment practices that overlook or fail to seek all qualified individuals
- An over-reliance on informal networks for recruitment
- A lack of formal systems for recruitment
Specific Barriers to EEO, cont.

Barriers to advancement and promotion:

- Deficient feedback, performance evaluation, and promotion processes of employees
- Little or no access to informal networks of communication by employees of protected classes
- Different standards of performance used for different classes of employees
- Lack of equal access to assignments that provide key career experiences, visibility, and interaction with senior managers
- EEO HR personnel not included in the recruitment process for higher job levels
Specific Barriers to EEO, cont.

Barriers in terms and conditions:

- Unequal pay
- Counterproductive behavior and harassment in the workplace
- Employer policies that are not family-friendly
- Inflexible working hours and working conditions
- Failing to provide reasonable accommodation to qualified individuals with disabilities
Specific Barriers to EEO, cont.

Barriers in termination and downsizing:

- Unfairness of standards used in making layoff decisions; differences in benefits given to different types of employees
- Inadequate planning for the layoff
- Lack of adequate incentives to encourage voluntary separations
- Lack of communication between employers and employees
- Failure to provide counseling, job placement assistance, and training to laid-off employees
Discussion Questions

- Do laws prohibiting certain kinds of hiring discrimination benefit only job seekers? Or do companies benefit from the enforcement of discrimination laws? If so, how?

- What is meant by “at-will employment” and what advice would you give an organization considering this type of employment relationship?

- What is the difference between flow, stock, and concentration statistics? How is each type of statistic used?
Discussion Questions, cont.

- What is affirmative action? What is an affirmative action plan? Do you feel that affirmative action is a good way to remedy past discrimination? Why or why not?
- Which three general barriers to legally defensible staffing do you feel are most common? What can companies do to remove these barriers?
The opening vignette describes how Abercrombie & Fitch engaged in “creative” recruiting to fill sales jobs with candidates who matched the company’s carefully constructed marketing image. The high-profile clothing retailer staffed its stores with good-looking, young, white men and women and touched off a lawsuit that ultimately cost the company $40 million and a barrage of bad publicity.

Working alone or in a group of 3-5 students, answer the following questions. Be prepared to share your answers with the class.

- Do you think Abercrombie should be allowed to staff its stores in a way that reinforces its marketing image? Why or why not?
- What are some alternative ways Abercrombie can staff its stores legally and still project a desirable image?
Develop Your Skills Exercise

The best test of any question posed to a job applicant is whether the employer can demonstrate a job-related necessity for asking the question. Because both the intent behind the question and how the information is to be used by the employer are important, an employer should consider whether the answers to the question, if used to make the hiring decision, will adversely affect and screen out minorities or members of one sex.

This chapter’s Develop Your Skills feature presented five improper interview questions (provided again below), along with an explanation of why each question should be avoided. Working with a partner, identify what the employer really wants to know by asking each question, and come up with an alternative way to find out the same information.

- How many children do you have?
- What is your native language?
- What clubs or organizations do you belong to?
- What is your height? What is your weight?
- Are you able to work on Christmas Day?
Global biopharmaceutical company Pfizer believes that a diverse workforce leads to more innovative and creative thinking.\textsuperscript{127} The company also feels that inclusion is the foundation to the ownership culture that it wants to build among its employees.\textsuperscript{128} Pfizer recognized that better attracting and retaining diverse employees would require it to pay more attention to its diversity and inclusion initiatives. In addition to relying more on its worldwide diversity and inclusion leadership council comprised of senior executives from around the company, Pfizer also created employee resource groups, including people with disabilities, Latino/Hispanics, African American, and LGBT employees, to better apply their ideas to influence company results.\textsuperscript{129}

Questions
1. Why is Pfizer interested in improving diversity and inclusion at the company?
2. How does a proactive focus on diversity and inclusion improve Pfizer’s legal compliance?
3. If you were in charge of diversity and inclusion at Pfizer, what would you do to further improve diversity and inclusion at the company?
Chern’s Case Assignment

a) Use stock, flow, and concentration statistics to determine if any evidence of discrimination exists.

b) Recommend strategies to alleviate any discrimination you find.
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