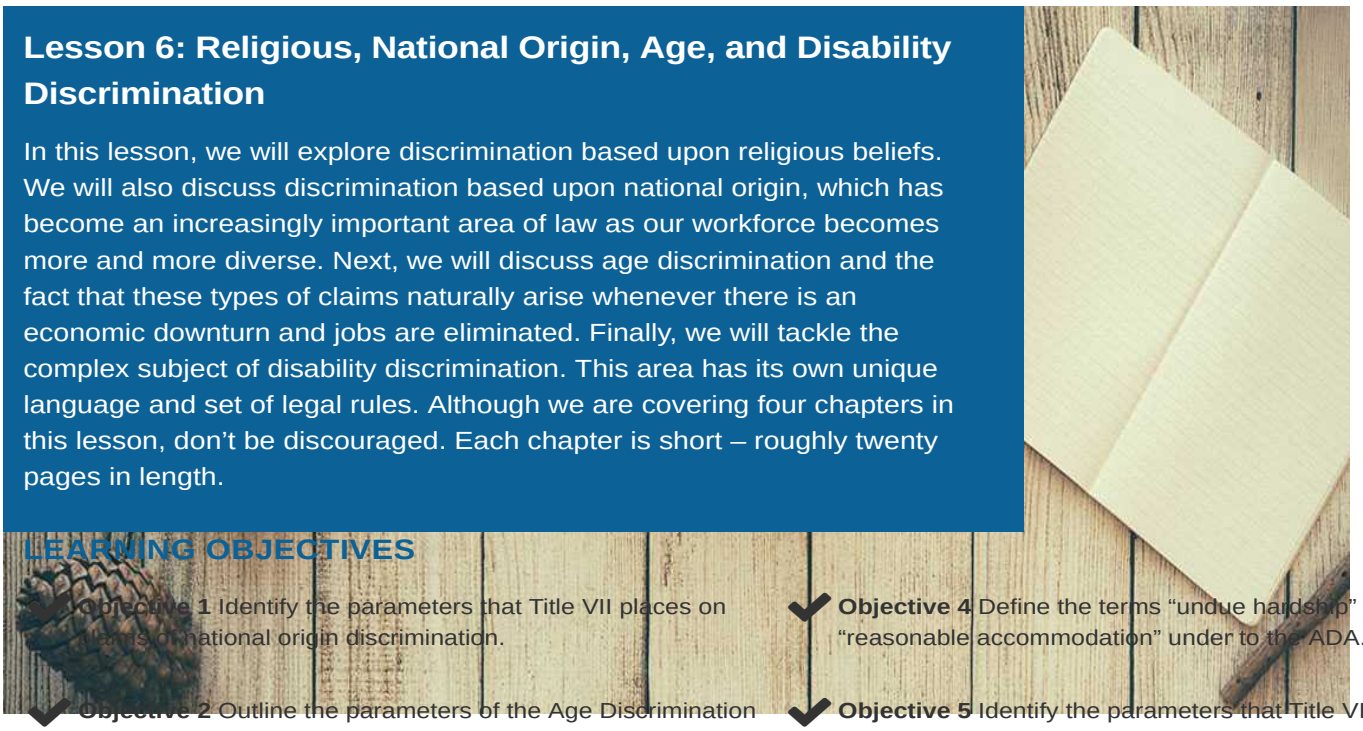
Lesson 6: Religious, National Origin, Age, and Disability Discrimination

In this lesson, we will explore discrimination based upon religious beliefs. We will also discuss discrimination based upon national origin, which has become an increasingly important area of law as our workforce becomes more and more diverse. Next, we will discuss age discrimination and the fact that these types of claims naturally arise whenever there is an economic downturn and jobs are eliminated. Finally, we will tackle the complex subject of disability discrimination. This area has its own unique language and set of legal rules. Although we are covering four chapters in this lesson, don't be discouraged. Each chapter is short – roughly twenty pages in length.



LEARNING OBJECTIVES

- **Objective 1** Identify the parameters that Title VII places on claims of national origin discrimination.
- **Objective 2** Outline the parameters of the Age Discrimination in Employment Act (ADEA) and the Older Workers' Benefit Protection Act.
- **Objective 3** Explain why claims filed under the Americans with Disabilities Act (ADA) differ significantly from other claims of discrimination.
- **Objective 4** Define the terms "undue hardship" and "reasonable accommodation" under to the ADA.
- **Objective 5** Identify the parameters that Title VII places on claims of religious discrimination.

Text Readings

Employment Law: New Challenges in the Business Environment, Chapters 14, 15, 16 and 17

Additional Readings

Required Readings

- Prohibited Employment Policies/Practices(https://www.eeoc.gov/laws/practices/index.cfm)
- Genetic Information Discrimination(https://www.eeoc.gov/laws/types/genetic.cfm)

Supplemental Readings

- U.S. Department of Labor(https://www.dol.gov/)
- Pre-Employment Inquiries and Height & Weight(https://www.eeoc.gov/laws/practices/inquiries_height_weight.cfm)

Lecture Notes

In this lesson, we will focus on four forms of discrimination. Let's get started!

Religious Discrimination

Our first order of business will be to discuss religious discrimination. While the percentage of filings with the EEOC based on claims of religious discrimination is small in comparison to those based on some of the other categories, there was a sharp increase following the 9/11 terrorist attacks. Muslim victims came forward and claimed that due to their religious affiliation, they were being harassed and subjected to offensive and intimidating conduct.

As an interesting sidebar, Steve Jobs, the late CEO of Apple, was sometimes revered and sometimes despised. During the 1970s, Jobs traveled throughout India, adopting a Zen and vegetarian lifestyle. When he returned to the United States and began working for Atari, Jobs didn't bathe with any regularity. He believed that his clean lifestyle meant he did not suffer from body odor. His coworkers begged to disagree. Not wanting to lose Jobs, and at the same time trying to keep all employees happy, Atari opted to put Jobs' desk in a basement where his body odor couldn't offend other workers. For those of you interested in learning more about Jobs, check out the book by Walter Isaacson. Given what you have learned in this lesson, do you believe Jobs could have made the claim he was being discriminated against? How about the co-workers? How much body odor should be tolerated?

Religion in the workplace has always been a hot topic. HR professionals have a duty to investigate all claims of harassment and discrimination or to make certain that a third party conducts an independent investigation. Based on the results of the investigation, prompt and effective corrective action must be taken to stop the offensive conduct. Visit the Department of Labor at https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm to learn more about what protections are afforded individuals wishing to express their religious beliefs in the workplace. There, you can also find a question and answer document, issued by the EEOC, which addresses religious garb and grooming in the context of employment. Human resources personnel should

grooming in the context of employment. Human resources personnel should also keep up to date on what is permitted and not permitted along these lines. You can see from the Jobs' example what a touchy subject religion and grooming practices can pose for employers.

National Origin Discrimination

Throughout its history, America has been a magnet that attracts people from other countries, but newcomers often encounter discrimination upon their arrival. Too often they are not welcomed into neighborhoods or the workplace. National origin was included in Title VII's list of protected groups to ensure that employers did not base employment decisions on stereotypes about people based on their countries of origin.

National origin is defined by the EEOC guidelines as "an applicant's or his or her ancestor's place of origin, or relating to the physical, cultural, or linguistic characteristics of a national origin group." It is important to note that Title VII protects against discrimination based on the country of origin, not on country of citizenship. Title VII protects individuals who are not U.S. citizens from discrimination, based on the characteristics listed by the statute, but it does not protect individuals from discrimination because they are aliens, rather than U.S. citizens. Note also that Title VII protects American-born employees from discrimination on the basis of their American origin. Make certain you understand the depth and breadth of Title VII's protections in this area.

National origin discrimination issues frequently arise with respect to English fluency or English-only requirements. These requirements must be analyzed under the ***bona fide occupational qualification*** analysis. An employer must be able to show that English fluency is necessary for the job and the requirement is necessary to maintain supervisory control of the workplace. Courts have reached conflicting decisions on the legality of English-only policies. Some have held such policies to be discriminatory. Others have reasoned that such policies are not discrimination based on national origin because all employees, regardless of ancestry, must speak English on the job. Still, these rules have been subject to increasing challenges in recent years.

The EEOC, which brings only a limited number of cases each year, brought a national origin suit against a large distributor of minority beauty products. The lawsuit resulted from the company's enforcing an English-only policy in which employees were required to speak English on breaks and in personal phone conversations, even though many were hired for their bilingual skills. As a general rule, English-only rules that are applied during the time an employee is working (discounting lunches and breaks) are less likely to be considered discriminatory and more likely to show a business justification.

One of your assigned readings, which can be found at https://www.eeoc.gov/laws/types/genetic.cfm, discusses Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment. This is a relatively new area of law. You should find this article both interesting and indicative of the ways in which antidiscrimination laws might be expanded in the future.

Age Discrimination

America's culture is obsessed with youth, physical fitness, and beauty. Even the most open-minded of us sometimes stereotype elderly people as lacking energy and interest in learning. While research shows that older workers are more reliable, harder working, more committed, and have less absenteeism than younger workers, the perception of them as employees is the opposite. The fact is that many older workers are working longer and longer, either by choice or by necessity. It is also true that as the pool of workers shrinks and competition among workers increases, employers must be able to tap this source of labor and do so effectively. Talented workers will not choose employers who exhibit outdated thinking about the contributions of older workers.

You may be surprised to learn that age was not included in the classes covered by Title VII. Instead, Congress separately enacted the Age Discrimination in Employment Act (ADEA) in 1967. There are key differences between the two laws. The ADEA allows employers more latitude than Title VII with respect to adverse hiring and firing decisions. Under the ADEA, an employer may rebut a ***prima facie*** case of discrimination by identifying any reasonable factor other than age that motivated the action. If an employer can save money by hiring a younger worker to replace a seasoned better-paid worker, the law will allow such a termination because the decision is based on economics. In addition, the ADEA protects only employees over 40. There is no protection from reverse age discrimination. An individual under 40 cannot sue, alleging discrimination based on the fact he or she was too young.

Human Resource professionals should be on guard for age issues whenever there is workforce restructuring or downsizing. The negative effects of these situations are prone to impact employees in the protected age group more than those outside it. All demotion and termination decisions should be carefully reviewed to ensure that they were based on legitimate, nondiscriminatory reasons. When severance benefits are paid in exchange for a release of discrimination claims, the process and the release must comply with the Older Workers' Benefit Protection Act (OWBPA). This Act also protects older workers in the hiring process when an employer fears the older worker will strain the employer's health and pension benefits.

According to Oprah, 50 is the new 30; but a generation separates the ages of 40 and 60. Some argue that workers over 60 should be afforded extra protection against employment discrimination. Many people in this 60-something age group are still providing financial assistance to their "boomerang" children and also helping their aging parents adjust to life in nursing homes, etc., which means they need to remain gainfully employed. What are your thoughts on this controversial subject?

Americans with Disabilities Act

Millions of Americans have one or more physical or mental disabilities. The unemployment rate for disabled Americans is roughly two and one-half times that of the general workforce. Against this backdrop, the American Disabilities Act (ADA) was passed in 1990 and became effective in 1992. The protection afforded disabled individuals by the ADA is different from that afforded other minorities under Title VII.

Under the ADA, employers with 15 or more employees cannot discriminate against any individual who has an impairment that limits ***major life activities***. Discrimination occurs when an employer takes a tangible employment action against such an individual. (You will recall that legal term from the lesson covering sexual harassment.) Major life activities under the original EEOC regulations included both the inability to care for oneself and to perform manual tasks as well as an impairment in seeing, speaking, hearing, walking, breathing, learning, and/or working. Amendments to ADA later expanded the definition of major life activities. Also included are individuals with cancer, heart conditions, AIDS, and disfigurement, as well as those individuals recovering from substance abuse.

The employer must take proactive steps to make their workplaces accessible to the impaired worker, and they must act to protect both disabled applicants and workers who become disabled once they are hired. Clearly, there are costs to the employer associated with this process, but Congress determined in passing the ADA that the benefits from the law outweighed those costs. An exception to this mandate is the ***"undue hardship"*** that an employer would encounter in making these accommodations. The courts will look at the nature of the business, the financial condition of the business, and the cost of the accommodation to decide if an undue hardship exists.

Make certain to familiarize yourself with the terms ***"reasonable accommodation"*** and "undue hardship." The ADA requires that employers "reasonably accommodate" disabled individuals who can perform the essential functions of the job with such accommodation. When an employee learns that he or she will need some form of accommodation to perform a job, the burden is on the employee to request an accommodation. An employer is not deemed to know when a worker needs an accommodation. Once the employee has made a request for accommodation, formal or informal, the employer is responsible for working with the employee to determine the most effective accommodation. The law provides for an interactive process, one in which both the employer and employee participate and cooperate to find a solution.

It is important for you to recognize that there is no definitive list of impairments. Courts decide on a case-by-case basis if an individual is disabled under the ADA. Human Resource professionals must understand the analysis that is used for this determination and know how courts have applied it to a variety of situations. This requires keeping up-to-date with the decisions handed down by federal and state courts. There are many important disability discrimination subtopics too numerous to cover in this lesson. For example, there are restrictions on employers' preemployment inquiries that relate to disabilities. Employers' handling of employee medical information is also subject to important rules. Harassment based on disability is a new area of concern for employers. Read all you can about this topic and then continue to read. Only the well-informed can provide sound advice in this complex area.

According to the Gutman article, four controversies persist, in spite of legislation forbidding each practice. They are: (1) adverse impact theory; (2) sexual harassment; (3) retaliation; and (4) reverse discrimination. Retaliation is the most common complaint brought to the EEOC. Employers are grappling to make sense of the ***Ledbetter Fair Pay Act***, and the complex U.S. Supreme

make sense of the ***Ledbetter Fair Pay Act***, and the complex U.S. Supreme Court cases of ***Ricci v. DeStefano*** (2009) and ***Wal-Mart v. Dukes*** (2011). At the same time, they are trying to digest the compliance requirements of an ever-evolving Title VII. Remember that Title VII also reflects changing social values, which means it will continue to expand over the course of the next 50 years and beyond (Gutman, A. & Dunleavy, E. M., 2013, p. 487 and p. 503).

Training for managers and employees in all the areas covered in this course is needed. Many of these topics are still evolving and being fleshed out by the courts. Moreover, these areas of law are not likely to disappear in the near or even distant future. Discussing an employee's disability or claims of religious harassment, for example, are difficult and personal areas. But an organization risks ruining its business reputation and takes a significant legal gamble if it ignores or poorly handles issues that arise in these areas. Training often has the beneficial effect of bringing misconceptions and misunderstandings to the surface so that they can be addressed.

References

Gutman, A., & Dunleavy, E. M. (2013). Contemporary Title VII Enforcement: The Song Remains the Same? ***Journal of Business and Psychology***, 28(4), 487-503.

Moran, J. J. (2014). ***Employment Law: New Challenges in the Business Environment*** (6th ed.). Upper Saddle River, NJ: Prentice Hall.

PowerPoint Lecture Notes

Use the lecture notes available in PowerPoint as you study this chapter by CLICKING THE LINK BELOW. These notes will help you identify main concepts and ideas presented in this chapter.

If you do not have PowerPoint on your computer, you can download a free viewer from Microsoft by clicking here(http://www.microsoft.com/downloads/details.aspx?FamilyID=048dc840-14e1-467d-8dca-19d2a8fd7485&DisplayLang=en).

Chapter 14(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/_course-system-files/Lesson_06/../../V3/PowerPoints/chapter14.ppt)

Chapter 15(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/_course-system-files/Lesson_06/../../V3/PowerPoints/chapter15.ppt)

Chapter 16(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/_course-system-files/Lesson_06/../../V3/PowerPoints/chapter16.ppt)

Chapter 17(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/_course-system-files/Lesson_06/../../V3/PowerPoints/chapter17.ppt)