# Instructor Manual

Mike Aamodt, Industrial/Organizational Psychology: An Applied Approach, 9e, 2023, 9780357658345; Chapter 3: Lecture Guide Legal Issues in Employee Selection

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## Purpose and Perspective of the Chapter

This chapter is designed to introduce a student into the concept of legal issues in employee selection. Students will learn the legal process involving employment law, protected groups in hiring and firing decisions, the concept of adverse impact and affirmative action, and employee privacy rights.

## Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Instructor Manual (contains outlines, suggested activities, and resources for instructor use in the course)
* PowerPoint (provides text and image-based lectures with active learning activities)
* Test Bank (contains assessment questions and problems)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* Workbook (contains exercises to help students apply what they’ve learned)
* Stats Primer (brief guide on understanding statistics)

## Chapter Objectives

The following objectives are addressed in this chapter:

03.01 Describe the legal process involving employment law.

03.02 Identify what classes of people are protected by federal law.

03.03 Determine the legality of an employment practice.

03.04 Explain the concept of adverse impact.

03.05 Define affirmative action.

03.06 Describe the important issues involving employee privacy rights.

## Complete List of Chapter Activities and Assessments

For additional guidance refer to the Teaching Online Guide.

|  |  |  |  |
| --- | --- | --- | --- |
| Chapter Objective | PPT slide | Activity/Assessment | Duration |
| 03.01 Describe the legal process involving employment law. | 4-8 |  |  |
| 03.02 Identify what classes of people are protected by federal law. | 11-16, 19  Workbook | Activity: Discussion  Exercise 3.1  Federally Protected Classes | 5 minutes  10 minutes |
| 03.03 Determine the legality of an employment practice. | 9-10, 17-18  25-35  Workbook  Workbook | Activity: Discussion  Exercise 3.4  Legality of Employment Practices  Exercise 3.5  Sexual Harassment | 5 minutes  10 minutes  10 minutes |
| 03.04 Explain the concept of adverse impact. | 20-24  Workbook  Workbook | Exercise 3.2  Determining Adverse Impact  Exercise 3.3  Responses to Adverse Impact | 10 minutes  10 minutes |
| 03.05 Define affirmative action. | 36-47  Workbook | Activity: Discussion  Activity: Discussion  Exercise 3.6  Understanding Affirmative Action | 5 minutes  5 minutes  10 minutes |
| 03.06 Describe the important issues involving employee privacy rights. | 48-49  Workbook | Activity: Discussion  Exercise 3.7  Employee Privacy Issues | 10 minutes  10 minutes |
| All objectives | 2  3  50  51  Workbook | Icebreaker  Learning Objectives  Discussion: Focus on Ethics  Self-Assessment  Exercise 3.8  Testing Your Legal Knowledge | 10 minutes  10 minutes  10 minutes  10 minutes |

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## Key Terms

**Equal Employment Opportunity Commission (EEOC):** A branch of the Department of Labor charged with investigating and prosecuting complaints of employment discrimination.

**Grievance system:** A process in which an employee files a complaint with the organization and a person or committee within the organization makes a decision regarding the complaint.

**Mediation:** A method of resolving conflict in which a neutral third party is asked to help the two parties reach an agreement.

**Arbitration:** A method of resolving conflicts in which a neutral third party is asked to choose which side is correct.

**Binding arbitration:** A method of resolving conflicts in which a neutral third party is asked to choose which side is correct and in which neither party is allowed to appeal the decision.

**Nonbinding arbitration:** A method of resolving conflicts in which a neutral third party is asked to choose which side is correct but in which either party may appeal the decision.

**Case law:** The interpretation of a law by a court through a verdict in a trial, setting precedent for subsequent court decisions.

**Protected class:** Any group of people for whom protective legislation has been passed.

**Fifth Amendment:** The amendment to the U.S. Constitution that mandates that the federal government may not deny a person equal protection under the law.

**Fourteenth Amendment:** The amendment to the U.S. Constitution that mandates that no state may deny a person equal protection under the law.

**Race:** According to federal law, races are Black or African American, White, Asian, American Indian or Alaskan Native, and Native Hawaiian or Other Pacific Islander.

**Age Discrimination in Employment Act (ADEA):** A federal law that, with its amendments, forbids discrimination against an individual who is over the age of 40.

**Vocational Rehabilitation Act of 1973:** Federal act passed in 1973 that prohibits federal government contractors or subcontractors from discriminating against the physically or mentally handicapped.

**Americans with Disabilities Act (ADA):** A federal law, passed in 1990, that forbids discrimination against the physically and mentally disabled.

**Pregnancy Discrimination Act:** A 1978 federal law protecting the rights of pregnant women.

**Vietnam-Era Veterans Readjustment Assistance Act (VEVRAA):** A 1974 federal law that mandates that federal government contractors and subcontractors take affirmative action to employ and promote Vietnam-era veterans.

**Jobs for Veterans Act:** A law passed in 2002 that increased the coverage of VEVRAA to include disabled veterans, veterans who have recently left the service, and veterans who participated in a U.S. military operation for which an Armed Forces Service Medal was awarded.

**Bona fide occupational qualification (BFOQ):** A selection requirement that is necessary for the performance of job-related duties and for which there is no substitute.

**Adverse impact:** An employment practice that results in members of a protected class being negatively affected at a higher rate than members of the majority class. Adverse impact is usually determined by the four-fifths rule.

**Four-fifths rule:** When the selection ratio for one group (e.g., women) is less than 80% (four-fifths) of the selection for another group (e.g., men), adverse impact is said to exist.

**Job related:** The extent to which a test or measure taps a knowledge, skill, ability, behavior, or other characteristic needed to successfully perform a job.

**Quid pro quo:** A type of sexual harassment in which the granting of sexual favors is tied to an employment decision.

**Hostile environment:** A type of harassment characterized by a pattern of unwanted conduct related to gender that interferes with an individual’s work performance.

**Qualified workforce:** The percentage of people in a given geographic area who have the qualifications (skills, education, etc.) to perform a certain job.

**Fourth Amendment:** The amendment to the U.S. Constitution that protects against unreasonable search or seizure; the amendment has been ruled to cover such privacy issues as drug testing, locker and office searches, psychological testing, and electronic surveillance.

**Drug-Free Workplace Act:** Requires federal contractors to maintain a drug-free workplace.

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## What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* Updated EEOC statistics
* Updated EEOC settlements
* Addition of Bostock v. Clayton County
* Additional discussion on grooming standards
* Updated examples of harassment
* Enhanced discussion of electronic surveillance
* Revised international comparison of protected classes (Table 3.1)
* Revised summary of Canadian employment law (Appendix)
* New case law added to chapter

Updated OFCCP disability goals

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## Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. "CH.##” refers to the chapter objective; “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and use the Ice Breaker in the PPT if desired, and if one is provided for this chapter. Review learning objectives for Chapter 3 (PPT Slide 3).*

1. Student Engagement Prior to Class
   1. Have your students read the following short article prior to coming to class. Discrimination at Rent-a-Center – This is a great example of employment discrimination.

<https://www.shrm.org/hr-today/news/hr-magazine/pages/0802covstory.aspx>

1. Describing the legal process involving employment law (03.01, PPT Slide 4)
   1. Resolving the complaint internally (PPT Slide 5)
      * Employee must utilize internal resolution prior to filing complaint with EEOC
   2. Alternative dispute resolution (PPT Slide 6)
      * Grievance system: internal committee
      * Mediation: neutral third party helps resolve
      * Arbitration: neutral third party decides resolution
        1. Binding arbitration vs. nonbinding arbitration
   3. Filing a discrimination charge (PPT Slide 7)
      * Usually filed with government agency
      * State agency used if alleged violation involves state law
      * Federal agency (usually EEOC) used if alleged violation involves federal law
        1. EEOC complaint must be filed within 180 days of discriminatory act for nondeferral states
        2. EEOC complaint must be filed within 300 days of discriminatory act for deferral states
        3. Employer must be notified within 10 days
   4. Outcomes of an EEOC investigation (PPT Slide 8)
      * Charge does not have merit:
        1. complainant accepts and process ends
        2. Complainant does not accept and is issued “right to sue”
      * Charge does have merit:
        1. EEOC works settlement
        2. Case goes to federal district court if settlement cannot be reached
        3. U.S. Supreme Court
2. Determining the legality of an employment practice (03.03, PPT Slide 9)
   1. **Visualization**: Flowchart for determining whether an employment decision is legal (PPT Slide 10)
3. Identifying what classes of people are protected by federal law (03.02, PPT Slide 11)
   1. Sex (CRA)
   2. Race (CRA)
   3. National origin (CRA)
   4. Color (CRA)
   5. Age (ADEA)
   6. Religion (CRA)
   7. Disability (ADA)
   8. Pregnancy
   9. Military veteran status (VEVRAA)
   10. Americans with Disabilities Act (ADA) & 2008 ADA Amendments Act (PPT Slide 12)
       * Organizations must make reasonable accommodation
       * **Activity**: Discussion (PPT Slide 13, 5 minutes)
       * Definition of disability (PPT Slide 14): current, previous, regarded as such
       * Reasonable accommodations (PPT Slide 15)
       * ADA clarifications (PPT Slide 16)
4. Determining the legality of an employment practice continued (03.03, PPT Slide 17-18)
   1. Is the requirement a bona fide occupational qualification (BFOQ)? (PPT Slide 17)
      * Only members of a particular class can perform, no exceptions
      * **Activity**: Discussion (PPT Slide 18, 5 minutes)
5. Identifying what classes of people are protected by federal law continued (03.02, PPT Slide 19)
   1. Has local, state, or case law added protected classes?
      * State law examples
      * Local law examples
      * Case law examples
6. Explaining the concept of adverse impact (03.04, PPT Slide 20)
   1. Adverse impact: employment decision results in negative consequences for one group more than another group
      * Four-fifths rule
      * **Example**: adverse impact (Slide 21)
   2. Was the requirement designed to intentionally discriminate against a protected class? (PPT Slide 22)
      * City limits (socio-economic class discrimination)
      * Literacy test requirements
   3. Can the employer prove that the requirement is job related? (PPT Slide 23)
      * Employer must demonstrate that employment practice is job related or exempt from adverse impact
      * Exceptions: bona fide seniority system, national security, veteran’s preference rights
      * Did employer look for reasonable alternative with less adverse impact? (PPT Slide 24)
7. Determining the legality of an employment practice continued (03.03, PPT Slide 25)
   1. Harassment
      * **Activity**: Discussion (PPT Slide 26, 5 minutes)
      * EEOC complaints (PPT Slide 27)
      * Types of harassment (PPT Slide 28)
        1. Quid pro quo (PPT Slide 29): granting of sexual favors is tied to employment decisions; organization is always liable
        2. Hostile environment (PPT Slide 30): pattern of behavior
      * Organizational liability for sexual harassment (PPT Slide 31)
        1. Quid pro quo: organization is always liable
        2. Hostile: organization must demonstrate reasonable care to prevent and correct
           1. Preventing sexual harassment (PPT Slide 32): communication and enforcement of policy
           2. Correcting sexual harassment (PPT Slide 33): organization must have made effort to investigate and correct any complaints
   2. Family Medical Leave Act (FMLA) (PPT Slide 34-35)
      * 12 weeks of unpaid leave each year
      * DOL definition of serious health condition
8. Explaining affirmative action (03.05, PPT Slide 36)
   1. **Activity**: Discussion (PPT Slide 37, 5 minutes)
   2. Reasons for affirmative action plans (PPT Slide 38)
      * Involuntary (government regulation, court order)
      * Voluntary (consent decree, desire to be a good citizen)
   3. Affirmative action strategies (PPT Slide 39)
      * Monitoring, hiring, and promotion
      * Intentional recruitment
      * Identification and removal of employment practices that work against minority employees
      * Preferential hiring and promotion
   4. **Visualization**: Legality of preferential hiring (PPT Slide 40). Criteria used to assess an affirmative action plan:
      * Legality of preferential hiring: was there a history of discrimination? (PPT Slide 41)
        1. History of discrimination must be demonstrated
      * Legality of preferential hiring: who are the beneficiaries of the plan? (PPT Slide 42)
        1. Extent to which plan benefits people who were not actual victims of discrimination
      * Legality of preferential hiring: what population was used to establish hiring or promotion goals? (PPT Slide 43)
        1. Area population
        2. Qualified workforce
      * Legality of preferential hiring: what is the impact on non-minorities? (PPT Slide 44)
        1. Magnitude must be reasonable
        2. All people hired must be qualified
        3. Race/gender can be used to break ties among equally qualified
      * Legality of preferential hiring: is there an end point? (PPT Slide 45)
        1. Must be periodically reviewed, must end when goals are achieved
   5. Unintended consequences of affirmative action programs (PPT Slide 46)
      * Affirmative action plans might result in unintended negative consequences for people hired due to AA plans
      * **Activity**: Discussion (PPT Slide 47, 5 minutes)
9. Describing the important issues involving employee privacy rights (03.06, PPT Slide 48 & 49)
   1. Employment practice can be illegal if it unnecessarily violates an individual’s right to privacy
      * Drug use considerations: job applicants vs. current employees
        1. Public sector
        2. Accuracy of drug tests
        3. Care and privacy taken during testing
      * Office and locker searches
      * Psychological tests: questions cannot unnecessarily invade privacy of applicant
      * Electronic surveillance considerations
   2. **Activity**: Discussion (PPT Slide 50, 10 minutes)

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## Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. Discussion: Americans with Disabilities Act (ADA) (PPT Slide 13, 5 minutes)
   1. What experiences have you had with disabled coworkers?
      1. Answer: student answers will vary.
2. Discussion: Bona Fide Occupational Qualification (BFOQ) (PPT Slide 18, 5 minutes)
   1. Is gender a BFOQ for Hooters?
      1. Answer: yes. Discuss loophole.
3. Discussion: Harassment (PPT Slide 26, 5 minutes)
   1. What examples of harassment have you seen in the workplace?
      1. Answer: student answers will vary.
4. Discussion: Affirmative action (PPT Slide 37, 5 minutes)
   1. What is affirmative action? Is it a good idea?
      1. Answer: student answers will vary.
5. Discussion: Preferential hiring (PPT Slide 47, 5 minutes)
   1. Is preferential hiring and promotion a good idea?
      1. Answer: student answers will vary.
6. Discussion: Ethics behind workplace privacy (PPT Slide 50, 10 minutes)
   1. Students will discuss questions listed concerning workplace privacy.
      1. Answer: student answers will vary.
7. Career Workshop: What to do if you feel you are being discriminated against at work.
   1. Career Workshop can be used as supplemental in-class discussion.
8. Applied Case Study: Keystone RB Company, Goshen, Indiana
   1. Case study can be used as supplemental in-class discussion.

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## Additional Activities and Assignments

1. **Workbook Exercise 3.1**: Federally Protected Classes
   1. Exercise lists applicants and asks students to identify if each applicant would be considered a *federally* protected class.
      1. Answer:
         1. Yes: recently retired veterans are qualified veterans
         2. Yes: religion (Civil Rights Act)
         3. Yes: potential disability (ADA)
         4. Yes: gender identification is now a federally protected class
         5. Yes: sex (Civil Rights Act)
         6. No: only people over the age of 40 are protected
         7. Yes: national origin (Civil Rights Act)
         8. Yes: color (Civil Rights Act)
         9. No: education level is not a federally protected class
         10. No: this is a grooming standard
2. **Workbook Exercise 3.2**: Determining Adverse Impact
   1. Exercise asks student to identify if an EEOC investigation will reveal adverse impact in an example situation.
      1. Answer:

Gender

|  |  |  |
| --- | --- | --- |
|  | Male | Female |
| Number of applicants | 25 | 5 |
| Number hired | 17 | 2 |
| Selection ratio | 0.68 | 0.40 |

0.40/0.68 = 0.59 < 0.80 (adverse impact)

Race/Ethnicity

|  |  |  |
| --- | --- | --- |
|  | White | Hispanic or Latinx |
| Number of applicants | 20 | 10 |
| Number hired | 14 | 5 |
| Selection ratio | 0.70 | 0.50 |

0.50/0.70 = 0.71 < 0.80 (adverse impact)

1. **Workbook Exercise 3.3**: Responses to Adverse Impact
   1. Exercise lists example situations of employment practices in which adverse impact is present and asks students to identify if they will be found to be legal based on job relatedness, is the result of a *bona fide* seniority system, is in use due to national security concerns, or was implemented to provide veterans with preferential hiring.
      1. Answer:
         1. A: legal, veterans preference
         2. B: legal, the valid testing procedure (r = 0.45) justifies the adverse impact
         3. B: legal, bona fide seniority system
2. **Workbook Exercise 3.4**: Legality of Employment Practices
   1. Exercise lists example situations of employment practices and asks students to decide if they are legal.
      1. Answer:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Q1 | Q2 | Q3 |
| Refer to federally protected class? | No | Yes (Gender) | No |
| BFOQ? |  | ? |  |
| Adverse impact? | Probably not |  | Yes  0.10 / 0.20 = 0.50 |
| Job related? |  |  | Yes  Significant validity  (r = 0.30) |
| Searched for test with less adverse impact? |  |  | Yes |
| Legal Status | Legal | It would depend on the BFOQ status | Legal |

1. **Workbook Exercise 3.**5: Sexual Harassment
   1. Exercise lists example situations and asks students to indicate if they represent quid pro quo, hostile environment, or no sexual harassment.
      1. Answer:
         1. A: quid pro quo
         2. B: no harassment. The behavior is not unwanted.
         3. C: hostile environment. Judy’s behavior is based on Brian’s gender, is a pattern, and is unwanted.
         4. D: hostile environment. John only calls the women “honey”, the behavior is a pattern, and it is unwanted.
2. **Workbook Exercise 3.6**: Understanding Affirmative Action
   1. Exercise lists an example situation of a school system that developed an affirmative action program and asks students to explain the legality of the plan.
      1. Answer:

|  |  |
| --- | --- |
| Legal Consideration | Legal Status |
| History of discrimination? | Yes – 30% of population numbers compared to 5% employment numbers |
| Population used to set goals | No – the qualified work force should have been used rather than the area population |
| Trammel rights of nonminorities? | ? – it would depend on whether 3.4 GPA and 3 years of experience are considered significantly higher than 3.2 GPA and 2 years of experience |

1. **Workbook Exercise 3.7**: Employee Privacy Issues
   1. Exercise lists example situations and asks students to identify if an invasion of privacy has occurred.
      1. Answer: student answers will vary.
2. **Workbook Exercise 3.8**: Testing Your Legal Knowledge
   1. Exercise lists example situations and asks students to identify if there are any legal issues with the employment practices.
      1. Answer:
         1. Yes, they can do that. A company must have 50 or more employees for FMLA to take effect.
         2. No. The scarring is covered under the ADA definition of “considered to be disabled”.
         3. No. Because it is done equally to men and women it would be annoying, but not illegal.
         4. Yes, this is a hostile environment sexual harassment. The behavior is related to gender, a pattern, and unwanted.
         5. No, you can’t file a complaint. Although being Italian is covered by national origin, the 9-month period exceeds the 180 day time limit.

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## Additional Resources

### Internet Resources

* **Labor State Laws.**<http://topics.law.cornell.edu/wex/table_labor>This site provides links to comprehensive information about state employment laws.

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## Appendix

### Generic Rubrics

Providing students with rubrics helps them understand expectations and components of assignments. Rubrics help students become more aware of their learning process and progress, and they improve students’ work through timely and detailed feedback.

Customize these rubrics as you wish. The writing rubric indicates 40 points and the discussion rubric indicates 30 points.

### Standard Writing Rubric

|  |  |  |  |
| --- | --- | --- | --- |
| **Criteria** | **Meets Requirements** | **Needs Improvement** | **Incomplete** |
| Content | The assignment clearly and comprehensively addresses all questions in the assignment.  15 points | The assignment partially addresses some or all questions in the assignment.  8 points | The assignment does not address the questions in the assignment.  0 points |
| Organization and Clarity | The assignment presents ideas in a clear manner and with strong organizational structure. The assignment includes an appropriate introduction, content, and conclusion. Coverage of facts, arguments, and conclusions are logically related and consistent.  10 points | The assignment presents ideas in a mostly clear manner and with a mostly strong organizational structure. The assignment includes an appropriate introduction, content, and conclusion. Coverage of facts, arguments, and conclusions are mostly logically related and consistent.  7 points | The assignment does not present ideas in a clear manner and with strong organizational structure. The assignment includes an introduction, content, and conclusion, but coverage of facts, arguments, and conclusions are not logically related and consistent.  0 points |
| Research | The assignment is based upon appropriate and adequate academic literature, including peer reviewed journals and other scholarly work.  5 points | The assignment is based upon adequate academic literature but does not include peer reviewed journals and other scholarly work.  3 points | The assignment is not based upon appropriate and adequate academic literature and does not include peer reviewed journals and other scholarly work.  0 points |
| Research | The assignment follows the required citation guidelines.  5 points | The assignment follows some of the required citation guidelines.  3 points | The assignment does not follow the required citation guidelines.  0 points |
| Grammar and Spelling | The assignment has two or fewer grammatical and spelling errors.  5 points | The assignment has three to five grammatical and spelling errors.  3 points | The assignment is incomplete or unintelligible.  0 points |

### Standard Discussion Rubric

|  |  |  |  |
| --- | --- | --- | --- |
| **Criteria** | **Meets Requirements** | **Needs Improvement** | **Incomplete** |
| Participation | Submits or participates in discussion by the posted deadlines. Follows all assignment. instructions for initial post and responses.  5 points | Does not participate or submit discussion by the posted deadlines. Does not follow instructions for initial post and responses.  3 points | Does not participate in discussion.  0 points |
| Contribution Quality | Comments stay on task. Comments add value to discussion topic. Comments motivate other students to respond.  20 points | Comments may not stay on task. Comments may not add value to discussion topic. Comments may not motivate other students to respond.  10 points | Does not participate in discussion.  0 points |
| Etiquette | Maintains appropriate language. Offers criticism in a constructive manner. Provides both positive and negative feedback.  5 points | Does not always maintain appropriate language. Offers criticism in an offensive manner. Provides only negative feedback.    3 points | Does not participate in discussion.  0 points |