

3. If a practice is “fair in form but discriminatory in operation,” the courts will not uphold it.
4. *Business necessity* is the defense for any existing program that has adverse impact. The court did not define business necessity.
5. Title VII does not forbid testing. However, the test must be job related (valid), in that performance on the test must relate to performance on the job.

ALBEMARLE PAPER COMPANY V. MOODY In the *Albemarle* case, the Court provided more details on how employers could prove that tests or other screening tools relate to job performance.²⁵ For example, the Court said that if an employer wants to test candidates for a job, then the employer should first clearly document and understand the job’s duties and responsibilities. Furthermore, the job’s performance standards should be clear and unambiguous. That way, the employer can identify which employees are performing better than others. The Court’s ruling also established the EEOC (now Federal) Guidelines on validation as the procedures for validating employment practices.



LEARNING OBJECTIVE 2-2

List the basic features of at least five post-1990 employment laws, and explain with examples how to avoid accusations of sexual harassment at work.

Civil Rights Act of 1991 (CRA 1991)

The act that places the burden of proof back on employers and permits compensatory and punitive damages.

The Laws Enacted from 1991 to the Present

The Civil Rights Act of 1991

Several subsequent Supreme Court rulings in the 1980s limited the protection of women and minority groups under equal employment laws. For example, they raised the plaintiff’s burden of proving that the employer’s acts were in fact discriminatory. This prompted Congress to pass a new Civil Rights Act. President George H. W. Bush signed the **Civil Rights Act of 1991 (CRA 1991)** into law in 1991. The effect of CRA 1991 was to roll back equal employment law to where it stood before the 1980s decisions and to place more responsibility on employers.

BURDEN OF PROOF First, CRA 1991 addressed the issue of *burden of proof*. Burden of proof—what the plaintiff must show to establish possible illegal discrimination, and what the employer must show to defend its actions—plays a central role in equal employment cases.²⁶ Today, in brief, once an aggrieved applicant or employee demonstrates that an employment practice (such as “must lift 100 pounds”) has an adverse impact on a particular group, then the burden of proof shifts to the employer, who must show that the challenged practice is job related.²⁷ For example, the employer has to show that lifting 100 pounds is required for performing the job in question, and that the business could not run efficiently without the requirement—that it is a business necessity.²⁸

MONEY DAMAGES Before CRA 1991, victims of *intentional* discrimination (which lawyers call *disparate treatment*) who had not suffered financial loss and who sued under Title VII could not then sue for compensatory or punitive damages. All they could expect was to have their jobs reinstated (or to get a particular job). They were also eligible for back pay, attorneys’ fees, and court costs.

CRA 1991 makes it easier to sue for *money damages* in such cases. It provides that an employee who is claiming intentional discrimination can ask for (1) compensatory damages, and (2) punitive damages, if he or she can show the employer engaged in discrimination “with malice or reckless indifference to the federally protected rights of an aggrieved individual.”²⁹

“mixed-motive” case

A discrimination allegation case in which the employer argues that the employment action taken was motivated not by discrimination, but by some nondiscriminatory reason such as ineffective performance.

MIXED MOTIVES Some employers in “**mixed-motive**” cases had taken the position that even though their actions were discriminatory, other factors like the employee’s dubious behavior made the job action acceptable. Under CRA 1991, an employer cannot avoid liability by proving it would have taken the same action—such as terminating someone—even without the discriminatory motive.³⁰ *If there is any such motive, the practice may be unlawful.*³¹

Americans with Disabilities Act (ADA)

The act requiring employers to make reasonable accommodations for disabled employees; it prohibits discrimination against disabled persons.

The Americans with Disabilities Act

The **Americans with Disabilities Act (ADA)** of 1990 prohibits employment discrimination against qualified disabled individuals.³² It prohibits employers with 15 or more workers from discriminating against qualified individuals with disabilities, with regard to applications, hiring, discharge, compensation, advancement, training, or other terms, conditions, or privileges of employment.³³ It also says employers must make “reasonable accommodations” for physical or mental limitations unless doing so imposes an “undue hardship” on the business.

The ADA does not list specific disabilities. Instead, EEOC guidelines say someone is disabled when he or she has a physical or mental impairment that “substantially limits” one or more major life activities. Initially, impairments included any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder, but the list is growing.³⁴ (Recently, a Massachusetts court held that firing a qualified medical marijuana user may qualify for disability discrimination).³⁵

The act specifies conditions that it does *not* regard as disabilities, including homosexuality, compulsive gambling, pyromania, and certain disorders resulting from the current illegal use of drugs.³⁶

Mental disabilities account for the greatest number of ADA claims.³⁷ Under EEOC ADA guidelines, “mental impairment” includes “any mental or psychological disorder, such as . . . emotional or mental illness.” Examples include major depression, anxiety disorders, and personality disorders. The ADA also protects employees with intellectual disabilities, including those with IQs below 70–75.³⁸ The guidelines say employers should be alert to the possibility that traits normally regarded as undesirable (such as chronic lateness, hostility, or poor judgment) may reflect mental impairments. Reasonable accommodation might then include providing barriers between work spaces.

qualified individuals

Under ADA, those who can carry out the essential functions of the job.

QUALIFIED INDIVIDUAL Just being disabled doesn’t qualify someone for a job, of course. Instead, the act prohibits discrimination against **qualified individuals**—those who, with (or without) a reasonable accommodation, can carry out the *essential functions* of the job. The individual must have the requisite skills, educational background, and experience. A job function is essential when, for instance, it is the reason the position exists, or it is so highly specialized that the employer hires the person for his or her expertise or ability to perform that particular function. For example, when an Iowa county highway worker had an on-the-job seizure, his driver’s license was suspended, and the court ruled he had no ADA claim because he couldn’t perform the essential functions of the job.³⁹

REASONABLE ACCOMMODATION If the individual can’t perform the job as currently structured, the employer must make a “reasonable accommodation” unless doing so would present an “undue hardship.”⁴⁰ Reasonable accommodation might include redesigning the job, modifying work schedules, or modifying or acquiring equipment or other devices; widening door openings or permitting telecommuting are examples.⁴¹ For example, about 70% of working-age blind adults are unemployed or underemployed. Existing technologies such as screen-reading programs might enable most to work successfully.⁴² Review the company’s Web sites to ensure they don’t hamper people with handicaps.⁴³

Attorneys, employers, and the courts continue to work through what “reasonable accommodation” means.⁴⁴ In one classic case, a Walmart door greeter with a bad back asked if she could sit on a stool while on duty. The store said no. The federal court agreed door greeters must act in an “aggressively hospitable manner,” which can’t be done from a stool.⁴⁵ Standing was an essential job function. You can use technology and common sense to make reasonable accommodation (see Figure 2-1).

THE ADA AMENDMENTS ACT OF 2008 (ADAAA) Employers traditionally prevailed in almost all—96%—federal circuit court ADA decisions.⁴⁶ One case typifies what plaintiffs faced. An assembly worker sued Toyota, arguing that carpal tunnel syndrome

FIGURE 2-1 Examples of How to Provide Reasonable Accommodation

- Employees with *mobility* or *vision impairments* may benefit from voice-recognition software.
- Word-prediction software suggests words based on context with just one or two letters typed.
- Real-time translation captioning enables employees to participate in meetings.
- Vibrating text pagers notify employees when messages arrive.
- Arizona created a disability-friendly Web site to help link prospective employees and others to various agencies.

prevented her from doing her job.⁴⁷ The U.S. Supreme Court ruled that the ADA covers carpal tunnel syndrome only if her impairments affect not just her job performance, but also her daily living activities. The employee admitted that she could perform personal chores such as washing her face and fixing breakfast. The Court said the disability must be central to the employee's daily living (not just to his or her job).⁴⁸

However, the ADA Amendments Act of 2008 (ADAAA) made it easier for employees to show that their disabilities are influencing one of their "major life activities," such as reading and thinking.⁴⁹ For example, sensitivity to perfume might be considered a disability.⁵⁰ Employers must therefore redouble their efforts to ensure they're complying with the ADA.⁵¹

Many employers simply take a progressive approach. Common employer concerns about people with disabilities (for instance, that they are less productive and have more accidents) are generally baseless.⁵² For example, Walgreens tries to fill at least one-third of the jobs at its large distribution centers with people with disabilities.⁵³

Figure 2-2 summarizes some important ADA guidelines for managers and employers.

Uniformed Services Employment and Reemployment Rights Act

Under the Uniformed Services Employment and Reemployment Rights Act (1994), employers are generally required, among other things, to reinstate employees returning from military leave to positions comparable to those they had before leaving.⁵⁴

Genetic Information Nondiscrimination Act of 2008 (GINA)

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits discrimination by health insurers and employers based on people's genetic information. Specifically, it prohibits the use of genetic information in employment, prohibits the intentional acquisition of genetic information about applicants and employees, and imposes strict confidentiality requirements.⁵⁵

Technology enables employers to accommodate disabled employees.



FIGURE 2-2 ADA Guidelines for Managers and Employers

- Do not deny a job to a disabled individual if the person is qualified and able to perform the essential job functions.
- Make a reasonable accommodation unless doing so would result in undue hardship.
- Know what you can ask applicants. In general, you may *not* make preemployment inquiries about a person's disability before making an offer. However, you *may* ask questions about the person's ability to perform essential job functions.
- Itemize essential job functions on the job descriptions. In virtually any ADA legal action, a central question will be, what are the essential functions of the job?
- Do not allow misconduct or erratic performance (including absences and tardiness), even if that behavior is linked to the disability.



State and Local Equal Employment Opportunity Laws

In addition to federal laws, all states and many local governments prohibit employment discrimination. The state or local laws usually cover employers (like those with less than 15 employees) not covered by federal legislation.⁵⁶

Employers ignore city and state EEO laws at their peril. In New York City, for instance, city law applies to employers with as few as 4 employees (not 15, as under Title VII).⁵⁷ Managers use manuals such as *HR Compliance Basics: Your State and Federal Employment Law Manual* (available from the SHRM) to understand local EEO requirements.

State and local equal employment opportunity agencies (often called *Human Resources Commissions* or *Fair Employment Commissions*) also play a role in equal employment compliance. When the EEOC receives a discrimination charge, it usually defers it for a limited time to the state and local agencies that have comparable jurisdiction. If that doesn't achieve satisfactory remedies, the charges go back to the EEOC for resolution.

Religious Discrimination⁵⁸

The EEOC enforces laws prohibiting discrimination based on age, disability, equal pay/compensation, genetic information, national origin, pregnancy, race/color, religion, retaliation, sex, and sexual harassment.

Religious discrimination involves treating someone unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical, or moral beliefs. Unless it would be an undue hardship on the employer, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies to schedule changes or leave for religious observances, as well as to such things as religious dress or grooming practices. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard).

One question is how far employers must go to accommodate employees' religious practices. For example, the EEOC found reasonable cause that food giant Cargill violated Title VII by telling Muslim employees at one plant they couldn't have prayer breaks.⁵⁹ Here what is "reasonable" depends partly on how disruptive the accommodation would be. For example, such breaks might be too disruptive for high-speed continuous production lines.⁶⁰

Trends in Discrimination Law

Some trends are expanding equal employment's impact, while others are forming new headwinds.

In terms of the former, the U.S. Supreme Court held that the Federal Defence of Marriage Act's exclusion of state-sanctioned, same-sex marriages was unconstitutional.⁶¹ The Department of Labor (DOL) then held that under the Employee

Retirement Income Security Act (ERISA), “The term ‘spouse’ will be read to refer to any individuals who are lawfully married under any state law, including those . . . who are [now] domiciled in a state that doesn’t recognize such marriages.”⁶² In 2014, then-President Obama signed an executive order barring federal contractors from discriminating against lesbian, gay, bisexual, and transgender employees, for instance in benefits.⁶³ In 2017, a federal appeals court ruled that the Title VII ban on sex discrimination means employers cannot discriminate against lesbian and gay workers.⁶⁴ Several states require that employers permit people who don’t identify with either the male or female gender to check off a third, “non-binary” classification.⁶⁵ The DOL passed regulations requiring that federal contractors employ a minimum (7%) of disabled workers or face penalties, possibly including loss of their contracts.⁶⁶

Recent decisions may produce headwinds. The U.S. Supreme Court upheld a Michigan constitutional amendment banning affirmative action in admissions to the state’s public universities. This may allow voters in other states to eliminate affirmative action-based admissions to their public universities.⁶⁷ And in two other decisions, the Court made it more difficult for someone to bring a retaliation claim against an employer; it also more strictly defined “supervisor,” reducing the likelihood someone could show that an employer was responsible for a “supervisor’s” harassing behavior.⁶⁸ With its stated goal of reducing regulations, the Republican administration could be less supportive of EEO regulations (and regulations in general). In 2017, Attorney General Sessions said religious organizations could employ only people whose beliefs are consistent with the companies’ religious principles.⁶⁹

Table 2-1 summarizes selected equal employment opportunity laws, actions, executive orders, and agency guidelines.

Sexual Harassment

The past few years have witnessed a dramatic increase in accusations and admissions of sexual harassment.⁷⁰

Under Title VII, **sexual harassment** generally refers to harassment on the basis of sex when such conduct has the purpose or effect of substantially interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment. In one recent year, the EEOC received 11,717 sexual harassment charges, about 15% of which were filed by men.⁷¹ (The U.S. Supreme Court held, in *Oncale v. Sundowner Offshore Services Inc.*, that same-sex sexual harassment is also actionable under Title VII.⁷²) One study found “women experienced more sexual harassment than men, minorities experienced more ethnic harassment than whites, and minority women experience more harassment overall than majority men, minority men, and majority women.”⁷³ In late 2017 the EEOC updated its sexual harassment guidelines.⁷⁴

Under EEOC guidelines, employers have an affirmative duty to maintain workplaces free of sexual harassment and intimidation. CRA 1991 permits victims of intentional discrimination, including sexual harassment, to have jury trials and to collect compensatory damages for pain and suffering and punitive damages, where the employer acted with “malice or reckless indifference” to the person’s rights.⁷⁵ The **Federal Violence Against Women Act of 1994** further provides that a person “who commits a crime of violence motivated by gender and thus deprives another” of her rights shall be liable to the party injured.

WHAT IS SEXUAL HARASSMENT? EEOC guidelines define *sexual harassment* as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that takes place under any of the following conditions:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

sexual harassment

Harassment on the basis of sex that has the purpose or effect of substantially interfering with a person’s work performance or creating an intimidating, hostile, or offensive work environment.

Federal Violence Against Women Act of 1994

The act that provides that a person who commits a crime of violence motivated by gender shall be liable to the party injured.

TABLE 2-1 Summary of Important Equal Employment Opportunity Laws*

Action	What It Does
Title VII of 1964 Civil Rights Act, as amended	Bars discrimination because of race, color, religion, sex, or national origin; instituted the EEOC.
Executive orders	Prohibit employment discrimination by employers with federal contracts of more than \$10,000 (and their subcontractors); establish office of federal compliance; require affirmative action programs.
Federal agency guidelines	Guidelines cover discrimination based on sex, national origin, and religion, as well as on employee selection and other procedures such as test validation.
Supreme Court decisions: <i>Griggs v. Duke Power Co.</i> , <i>Albemarle v. Moody</i>	Ruled that job requirements must be related to job success; that discrimination need not be overt to be proved; that the burden of proof is on the employer to prove the qualification is valid.
Equal Pay Act of 1963	Requires equal pay for men and women for performing similar work.
Age Discrimination in Employment Act of 1967	Prohibits discriminating against a person age 40 or over in any area of employment because of age.
State and local laws	Often cover organizations too small to be covered by federal laws.
Vocational Rehabilitation Act of 1973	Requires affirmative action to employ and promote qualified handicapped persons and prohibits discrimination against handicapped persons.
Pregnancy Discrimination Act of 1978	Prohibits discrimination in employment against pregnant women, or those with related conditions.
Vietnam Era Veterans' Readjustment Assistance Act of 1974	Requires affirmative action in employment for veterans of the Vietnam War era.
<i>Ward Cove v. Atonio</i>	Made it more difficult to prove a case of unlawful discrimination against an employer.
Americans with Disabilities Act of 1990	Strengthens the need for most employers to make reasonable accommodations for disabled employees at work; prohibits discrimination.
Civil Rights Act of 1991	Reverses various U.S. Supreme Court decisions; places burden of proof back on employer and permits compensatory and punitive money damages for discrimination.
ADA Amendments Act of 2008	Makes it easier for employee to show that his or her disability "substantially limits" a major life function.
Genetic Information Non-discrimination Act	Signed into law in May 2008, prohibits discriminating against employees and applicants based on their genetic information.

* The actual laws (and others) can be accessed via a search at www.usa.gov/Topics/Reference-Shelf/Laws.shtml, accessed June 28, 2018.

PROVING SEXUAL HARASSMENT There are three main ways someone can prove sexual harassment:

- 1. *Quid Pro Quo.*** The most direct is to prove that rejecting a supervisor's advances adversely affected what the EEOC calls a "tangible employment action," such as hiring, firing, promotion, demotion, and/or work assignment. In one case, the employee showed that continued job success and advancement were dependent on her agreeing to the sexual demands of her supervisors. "Sexual harassment" generally requires that the behavior be pervasive or severe. Thus, in one case, the court ruled that although the supervisor had touched the employee's shoulder twice as he drove her back from work and also mentioned that she "owed him" for hiring her, she did not have a trialable sexual harassment claim.⁷⁶
- 2. *Hostile Environment Created by Supervisors.*** The harassment need not have tangible consequences such as demotion. For example, one court found that a male supervisor's behavior had substantially affected a female employee's emotional and psychological ability to the point that she felt she had to quit her job. Therefore, even though the supervisor made no direct threats or promises in exchange for sexual advances, his advances interfered with the woman's performance and created an offensive work environment. That was sufficient to prove sexual harassment. Courts generally do not interpret as sexual harassment sexual relationships that arise during the course of employment but that do not have a substantial effect on that employment.⁷⁷ The U.S. Supreme Court also held

that sexual harassment law doesn't cover ordinary "intersexual flirtation." In his ruling, Justice Antonin Scalia said courts must carefully distinguish between "simple teasing" and truly abusive behavior.⁷⁸

3. Hostile Environment Created by Coworkers or Nonemployees. Coworkers or nonemployees can trigger such suits. One court held that a mandatory sexually provocative uniform led to lewd comments by customers. When the employee refused to wear the uniform, she was fired. The employer couldn't show there was a job-related necessity for the uniform, and only female employees wore it. The court ruled that the employer, in effect, was responsible for the sexually harassing behavior. Such abhorrent client behavior is more likely when the clients are in positions of power, and when they think no one will penalize them.⁷⁹ Employers are also liable for the sexually harassing acts of nonsupervisory employees if the employer knew or should have known of the conduct.

WHEN IS THE ENVIRONMENT "HOSTILE"? Hostile environment sexual harassment generally means the intimidation, insults, and ridicule were sufficiently severe to alter the employee's working conditions. Courts look at several things. These include whether the discriminatory conduct is *frequent or severe*; whether it is *physically threatening* or humiliating, or a mere offensive utterance; and whether it unreasonably *interferes* with an employee's work performance.⁸⁰ Courts also consider whether the employee subjectively *perceives* the work environment as being abusive. For example, did he or she welcome the conduct or immediately complain?⁸¹

SUPREME COURT DECISIONS The U.S. Supreme Court used a case called *Meritor Savings Bank, FSB v. Vinson* to endorse broadly the EEOC's guidelines on sexual harassment. Two other Supreme Court decisions further clarified sexual harassment law.

In the first, *Burlington Industries v. Ellerth*, the employee accused her supervisor of *quid pro quo* harassment. She said her boss propositioned and threatened her with demotion if she did not respond. He did not carry out the threats, and she was promoted. In the second case, *Faragher v. City of Boca Raton*, the employee accused the employer of condoning a hostile work environment. She said she quit her lifeguard job after repeated taunts from other lifeguards. The Court ruled in favor of the employees in both cases.

The Court's written decisions have two implications for employers and managers. First, in *quid pro quo* cases it is *not* necessary for the employee to suffer a tangible job action (such as a demotion) to win the case. Second, the Court laid out an important defense against harassment suits. It said the employer must show that it took "reasonable care" to prevent and promptly correct any sexually harassing behavior *and* that the employee unreasonably failed to take advantage of the employer's policy.

These decisions suggest an employer can defend itself against sexual harassment liability by showing two things:

- First, it must show "that the employer exercised reasonable care to *prevent* and *correct promptly* any sexually harassing behavior."⁸²
- Second, it must demonstrate that the plaintiff "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer." The employee's failure to use formal reporting systems would satisfy the second component.⁸³

The following Tools feature provides guidelines for managers.



IMPROVING PERFORMANCE: HR TOOLS FOR LINE MANAGERS AND SMALL BUSINESSES

How to Address Sexual Harassment:⁸⁴

- Take all complaints about harassment seriously.
- Issue a strong policy statement condemning such behavior. Describe the prohibited conduct, assure protection against retaliation, describe a confidential complaint process, and provide impartial investigation and corrective action.

- Take steps to prevent sexual harassment from occurring. For example, communicate to employees that the employer will not tolerate sexual harassment, and take immediate action when someone complains. After firing host Matt Lauer, NBC now requires any employees who know of inappropriate workplace relationships to report them to human resources.⁸⁵
- Establish a management response system that includes an immediate reaction and investigation. Some organizations use an app from www.projectcallisto.org/ to facilitate recording and reporting sexual harassment.⁸⁶
- Train supervisors and managers to increase their awareness of the issues, and discipline managers and employees involved in sexual harassment. ■

WHY THE LAW ISN'T ENOUGH Unfortunately, several problems can negate the legal requirements.

First, “Women perceive a broader range of socio-sexual behaviors (touching, for instance) as harassing.”⁸⁷ In one study, about 58% of employees reported experiencing potentially harassment-type behaviors at work. About four times as many men as women found the behavior flattering or benign.⁸⁸ Sexual harassment training and policies can reduce this problem.⁸⁹

Second, victims are often fearful (for instance, of not getting the job). In one study, the male interviewer asked female applicants improper questions such as “Do you have a boyfriend?” and “Do people find you desirable?”⁹⁰ All the applicants answered all the questions. When asked why, they said they felt more fear than anger in the interview.

Third, victims often won’t complain. For example, two Air Force generals appeared before the U.S. Congress’ House Armed Services Committee to explain (among other things) how 23 instructors at an Air Force base could engage in unprofessional relationships or sexual assaults against 48 female trainees. The Air Force blamed both a climate of fear among female personnel (who believed that reporting the offenses to superior officers would be futile or counterproductive) and “a weak command structure.”⁹¹

Finally, neither harassment training nor the HR department are always helpful. Many such training programs simply fulfill the employer’s legal obligation to show that it educated employees about the firm’s antiharassment policies. And when they do receive harassment reports, many HR departments do nothing.⁹² As one extreme example, the Weinstein Company’s HR department allegedly bounced harassment complaints back to Mr. Weinstein when people made allegations about him.⁹³

WHAT THE EMPLOYEE CAN DO First, complain. Remember that courts generally look to whether *the harassed employee used the employer’s reporting procedures to file a complaint promptly*. If the employer has an effectively communicated complaint procedure, use it and then cooperate in the investigation.⁹⁴ In that context, steps an employee can take include:

1. Speak with the harasser and his or her boss, stating that the unwanted overtures should cease.
2. Inform your own supervisor.
3. If the problem does not cease, file written reports regarding the unwelcome conduct and unsuccessful efforts to get it to stop with the harasser’s manager and/or the human resource director.
4. If these do not suffice, the accuser may file a claim with the EEOC. In serious cases, the employee can also consult an attorney about suing the harasser for assault and battery, intentional infliction of emotional distress, injunctive relief, and to recover compensatory and punitive damages.⁹⁵

MyLab Management Apply It!

What do you think of how one employer actually dealt with problems such as sexual harassment? If your professor has assigned this activity, go to the Assignments section of www.pearson.com/mylab/management to complete the video exercise.



TRENDS SHAPING HR: DIGITAL AND SOCIAL MEDIA

Some employees will use Facebook and other accounts to harass and bully coworkers (as with disparaging comments). Here, employers must distinguish between illegal online harassment (that applying to race, religion, national origin, age, sex/gender, genetic information, and disability discrimination) and common personality conflicts. However, at a minimum, employers should have a zero-tolerance policy on bullying.⁹⁶

Of course, social media has also been a boon for staffing, for instance for finding candidates on LinkedIn. However, viewing an applicant's social media profile can be problematic, as it may reveal information on things like religion, race, and sexual orientation.⁹⁷ Some states forbid employers from requiring or even requesting employees' or applicants' passwords. It's therefore sensible to have policies restricting who can check out candidates online and how they can do it. Supervisors probably should not do such checking themselves. ■

LEARNING OBJECTIVE 2-3

Illustrate two defenses you can use in the event of discriminatory practice allegations, and list specific discriminatory personnel management practices in recruitment, selection, promotion, transfer, layoffs, and benefits.

Defenses Against Discrimination Allegations

To understand how employers defend themselves against employment discrimination claims, we should first briefly review some basic legal terminology.

Discrimination law distinguishes between disparate *treatment* and disparate *impact*. *Disparate treatment* means intentional discrimination. Disparate treatment “exists where an employer treats an individual differently because that individual is a member of a particular race, religion, gender, or ethnic group.”⁹⁸ A rule that says “We don’t hire drivers over 60 years of age” exemplifies this.

Disparate impact means that “an employer engages in an employment practice or policy that has a greater adverse impact (effect) on the members of a protected group under Title VII than on other employees, regardless of intent.”⁹⁹ A rule that says “Employees must have college degrees to do this particular job” exemplifies this (because more white males than some minorities earn college degrees).

Disparate impact claims do not require proof of discriminatory intent. Instead, the plaintiff must show that the apparently neutral employment practice (such as requiring a college degree) creates an adverse impact—a significant disparity—between the proportion of (say) minorities in the available labor pool and the proportion you hire. Thus, disparate impact allegations require showing that the act produced an adverse impact. If it has, then the employer will probably have to defend itself (for instance, by arguing that there is a business necessity for the practice). Adverse impact “refers to the total employment process that results in a significantly higher percentage of a protected group in the candidate population being rejected for employment, placement, or promotion.”¹⁰⁰ Then the burden of proof shifts to the employer.

The Central Role of Adverse Impact

Showing that one of the employer’s employment practices or policies has an **adverse impact** therefore plays a central role in discriminatory practice allegations.¹⁰¹ Under Title VII and CRA 1991, a person who believes that (1) he or she was a victim of unintentional discrimination because of an employer’s practices need only, (2) establish a *prima facie* case of discrimination. This means showing, for instance, that the employer’s selection procedures (like requiring a college degree for the job) did have an adverse impact on the protected minority group.

So, for example, if a minority applicant feels he or she was a victim of discrimination, the person need only show that the employer’s selection process resulted in an adverse impact on his or her group. (For example, if 80% of the white applicants passed the test, but only 20% of the black applicants passed, a black applicant has a *prima facie* case proving adverse impact.) Then the burden of proof shifts to the employer. It becomes the employer’s task to prove that its test (or application blank or the like) is a valid predictor of performance on the job (and that it applied its selection process fairly and equitably to both minorities and nonminorities).

adverse impact

The overall impact of employer practices that result in significantly higher percentages of members of minorities and other protected groups being rejected for employment, placement, or promotion.

Employees who believe they are victims of harassment should have a mechanism for filing a complaint.

Dmytro Zinkevych/123RF



In practice, an applicant or employee can use one of the following five methods to show that one of an employer's procedures (such as a selection test) has an adverse impact on a protected group.

disparate rejection rates

A test for adverse impact in which it can be demonstrated that there is a discrepancy between rates of rejection of members of a protected group and of others.

4/5ths rule

Federal agency rule that a minority selection rate less than 80% (4/5ths) of that for the group with the highest rate is evidence of adverse impact.

DISPARATE REJECTION RATES The **disparate rejection rate** method compares the rejection rates for a minority group and another group (usually the remaining nonminority applicants).¹⁰²

Federal agencies use a “**4/5ths rule**” to assess disparate rejection rates: “A selection rate for any racial, ethnic, or sex group which is less than four-fifths or 80% of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact.” For example, suppose the employer hires 60% of male applicants but only 30% of female applicants. Four-fifths of the 60% male hiring rate would be 48%. Because the actual female hiring rate of 30% is less than 48%, adverse impact exists as far as these federal agencies are concerned.¹⁰³

THE STANDARD DEVIATION RULE Similarly, the courts have used the *standard deviation rule* to confirm adverse impact. (The standard deviation is a statistical measure of variability. It is a measure of the dispersion of a set of data from its mean. Suppose we calculate the average height of students in your management class. In simplest terms, the standard deviation helps to describe, among other things, how wide a range there is in height between the shortest and tallest students and the class’s average student height.) In selection, the standard deviation rule holds that, as a rule of thumb, the difference between the numbers of minority candidates we *would have expected to hire* and whom we *actually hired* should be less than two standard deviations.

Consider this example. Suppose 300 applicants apply for 20 openings; 80 of the applicants are women, and the other 220 are men. We use our screening processes and hire 2 females and 18 males. Did our selection process have an adverse impact? To answer this, we can compute the standard deviation:

$$SD = \sqrt{\frac{(\text{Number of minority applicants})}{(\text{Number of total applicants})} \times \frac{(\text{Number of nonminority applicants})}{(\text{Number of total applicants})} \times (\text{Number of applicants selected})}$$

In our case:

$$\begin{aligned} SD &= \sqrt{\left(\frac{80}{300} \times \frac{220}{300} \times 20\right)} = \sqrt{(0.2667 \times 0.7333 \times 20)} \\ &= \sqrt{3.911} = SD = 1.977 \end{aligned}$$

In our example, women are 26% (80/300) of the applicant pool. We should therefore *expect* to hire 26% of the 20 people hired, or about 5 women. We *actually* hired 2 women. The difference between the numbers of women we would expect to hire and whom we actually hired is $5 - 2 = 3$. We can use the standard deviation rule to gauge if there is adverse (disparate) impact. In our example, the standard deviation is 1.977. Again, the standard deviation rule holds that as a rule of thumb, the difference between the numbers of minority candidates we would have expected to hire and whom we actually hired should be less than two standard deviations. Two times 1.9777 is about 4. Since the difference between the number of women we would have expected to hire (5) and actually hired (2) is 3, the results suggest that our screening did not have adverse impact on women. (Put another way, in this case, hiring just 2 rather than 5 is not a highly improbable result.)¹⁰⁴

restricted policy

Another test for adverse impact, involving demonstration that an employer's hiring practices exclude a protected group, whether intentionally or not.

RESTRICTED POLICY The **restricted policy** approach means demonstrating that the employer's policy intentionally or unintentionally excluded members of a protected group. Here the problem is usually obvious—such as policies against hiring guards less than 6 feet tall. Evidence of restricted policies such as these is enough to prove adverse impact and to expose an employer to litigation.

POPULATION COMPARISONS This approach compares (1) the percentage of minority/protected group and white workers in the organization with, (2) the percentage of the corresponding group in the labor market.

"Labor market," of course, varies with the job. For some jobs, such as secretary, it makes sense to compare the percentage of minority employees with the percentage of minorities in the surrounding community, since they will come from that community. But determining whether an employer has enough black engineers might involve determining the number available nationwide, not in the surrounding community.

Employers use *workforce analysis* to analyze the data regarding the firm's use of protected versus nonprotected employees in various job classifications. The process of comparing the percentage of minority employees in a job (or jobs) at the company with the number of similarly trained minority employees available in the relevant labor market is *utilization analysis*.

MCDONNELL DOUGLAS TEST Lawyers in disparate impact cases use the previous approaches (such as population comparisons) to test whether an employer's policies or actions have the effect of unintentionally screening out disproportionate numbers of women or minorities. Lawyers use the McDonnell Douglas test for showing (intentional) disparate treatment, rather than (unintentional) disparate impact.

This test grew out of a case at the former McDonnell Douglas Corporation. The applicant was qualified, but the employer rejected the person and continued seeking applicants. Did this show that the hiring company intentionally discriminated against the female or minority candidate? The U.S. Supreme Court set four rules for applying the McDonnell Douglas test:

1. That the person belongs to a protected class;
2. That he or she applied and was qualified for a job for which the employer was seeking applicants;
3. That, despite this qualification, he or she was rejected; and
4. That, after his or her rejection, the position remained open and the employer continued seeking applications from persons with the complainant's qualifications.

If the plaintiff meets all these conditions, then a *prima facie* case of disparate treatment is established. At that point, the employer must articulate a legitimate non-discriminatory reason for its action, and produce evidence but not prove that it acted based on such a reason. If it meets this relatively easy standard, the plaintiff then has the burden of proving that the employer's articulated reason is merely a pretext for engaging in unlawful discrimination.

ADVERSE IMPACT EXAMPLE Assume you turn down a member of a protected group for a job with your firm. You do this based on a test score (although it could have been interview questions or something else). Further, assume that this person feels he or she was discriminated against due to being in a protected class, and decides to sue your company.

Basically, all he or she must do is show that your procedure (such as the selection test) had an adverse impact on members of his or her minority group. The plaintiff can apply five approaches here. These are disparate rejection rates, the standard deviation rule, restricted policy, population comparisons, and, for disparate *treatment* cases, the McDonnell Douglas test. Once the person proves adverse impact (to the court's satisfaction), the burden of proof shifts to the employer. The employer must defend against the discrimination charges.

There is nothing in the law that says that because your procedure has an adverse impact on a protected group, you can't use it. In fact, it may well happen that some tests screen out disproportionately higher numbers of, say, blacks than they do whites. What the law does say is that once your applicant has made his or her case (showing adverse impact), the burden of proof shifts to you. Now the employer must defend use of the procedure.

There are then two basic defenses employers use to justify an employment practice that has an adverse impact on members of a minority group: the bona fide occupational qualification (BFOQ) defense and the business necessity defense.

Bona Fide Occupational Qualification

bona fide occupational qualification (BFOQ)

Requirement that an employee be of a certain religion, sex, or national origin where that is reasonably necessary to the organization's normal operation. Specified by the 1964 Civil Rights Act.

An employer can claim that the employment practice is a **bona fide occupational qualification (BFOQ)** for performing the job. Title VII specifically permits this defense. Title VII provides that "it should not be an unlawful employment practice for an employer to hire an employee . . . on the basis of religion, sex, or national origin *in those certain instances where religion, sex, or national origin is a bona fide occupational qualification* reasonably necessary to the normal operation of that particular business or enterprise."

However, courts usually interpret the BFOQ exception narrowly. It is usually a defense to a disparate treatment case based upon direct evidence of *intentional* discrimination, rather than to disparate impact (unintentional) cases. As a practical matter, employers use it mostly as a defense against charges of intentional discrimination based on age.

AGE AS A BFOQ The Age Discrimination in Employment Act (ADEA) permits disparate treatment in those instances when age is a BFOQ.¹⁰⁵ For example, age is a BFOQ when the Federal Aviation Agency sets a compulsory retirement age of 65 for commercial pilots.¹⁰⁶ Actors required for youthful or elderly roles suggest other instances when age may be a BFOQ. However, courts set the bar high: The reason for the age limit must go to the essence of the business. A court said a bus line's maximum-age hiring policy for bus drivers was a BFOQ. The court said the essence of the business was safe transportation of passengers, and, given that, the employer could strive to employ the most qualified persons available.¹⁰⁷

RELIGION AS A BFOQ Religion may be a BFOQ in religious organizations or societies that require employees to share their particular religion. For example, religion may be a BFOQ when hiring persons to teach in a religious school. But again, courts construe this defense very narrowly.

GENDER AS A BFOQ Gender may be a BFOQ for positions like actor, model, and restroom attendant requiring physical characteristics possessed by one sex. However, for most jobs today, it's difficult to claim that gender is a BFOQ. For example, gender is not a BFOQ just because the position requires lifting heavy objects. A Texas man filed a complaint against Hooters of America alleging that one of its franchisees would not hire him as a waiter because it "merely wishes to exploit female sexuality as a marketing tool to attract customers and ensure profitability" and so was limiting hiring to females.¹⁰⁸ Hooters argued a BFOQ defense before reaching a confidential settlement.

NATIONAL ORIGIN AS A BFOQ A person's country of national origin may be a BFOQ. For example, an employer who is running the Chinese pavilion at a fair might claim that Chinese heritage is a BFOQ for persons to deal with the public.

Business Necessity

"Business necessity" is a defense created by the courts. It requires showing that there is an overriding business purpose for the discriminatory practice and that the practice is therefore acceptable.

It's not easy to prove business necessity.¹⁰⁹ The Supreme Court made it clear that business necessity does not encompass such matters as avoiding an employer inconvenience, annoyance, or expense. For example, an employer can't generally discharge employees whose wages have been garnished merely because garnishment (requiring the employer to divert part of the person's wages to pay his or her debts) creates an inconvenience. The Second Circuit Court of Appeals held that business necessity "must not only directly foster safety and efficiency" but also be essential to these goals.¹¹⁰ Furthermore, "the business purpose must be sufficiently compelling to override any racial impact. . . ."¹¹¹

However, many employers use the business necessity defense successfully. In an early case, *Spurlock v. United Airlines*, a minority candidate sued United Airlines. He said that its requirements that pilot candidates have 500 flight hours and college degrees were unfairly discriminatory. The court agreed that the requirements did have an adverse impact on members of the person's minority group. But it held that in light of the cost of the training program and the huge human and economic risks in hiring unqualified candidates, the selection standards were a business necessity and were job related.¹¹²

In general, when a job requires a small amount of skill and training, the courts closely scrutinize any preemployment standards or criteria that discriminate against minorities. There is a correspondingly lighter burden when the job requires a high degree of skill, and when the economic and human risks of hiring an unqualified applicant are great.¹¹³

Attempts by employers to show that their selection tests or other employment practices are *valid* are examples of the business necessity defense. Here the employer must show that the test or other practice is job related—in other words, that it is a valid predictor of performance on the job. Where the employer can establish such validity, the courts have generally supported using the test or other employment practice as a business necessity. In this context, *validity* means the degree to which the test or other employment practice is related to or predicts performance on the job; Chapter 6 explains validation. The following Know Your Employment Law discussion sums up how to apply all this.



KNOW YOUR EMPLOYMENT LAW

Examples of What You Can and Cannot Do

Before proceeding, we should review what federal fair employment laws allow (and do not allow) you to say and do.

Federal laws like Title VII usually don't expressly ban preemployment questions about an applicant's race, color, religion, sex, or national origin. In other words, "with the exception of personnel policies calling for outright discrimination against the

members of some protected group,” it’s not the questions but their impact.¹¹⁴ Thus, illustrative inquiries and practices like those on the next few pages are not illegal per se. For example, it isn’t illegal to ask a job candidate about her marital status (although such a question might seem discriminatory). You can ask. However, be prepared to show either that you do not discriminate or that you can defend the practice as a BFOQ or business necessity.

But, in practice, there are two reasons to avoid such questions. First, although federal law may not bar such questions, many state and local laws do.

Second, the EEOC has said that it will disapprove of such practices, so just asking the questions may draw its attention. Such questions become illegal if a complainant can show you use them to screen out a greater proportion of his or her protected group’s applicants, and you can’t prove the practice is required as a business necessity or BFOQ.

Let’s look now at some of the potentially discriminatory practices to avoid.¹¹⁵

Recruitment

Word of Mouth You cannot rely upon word-of-mouth dissemination of information about job opportunities when your workforce is all (or mostly all) white or all members of some other class such as all female, all Hispanic, and so on. Doing so reduces the likelihood that others will become aware of the jobs.

Misleading Information It is unlawful to give false or misleading information to members of any group, or to fail or refuse to advise them of work opportunities and the procedures for obtaining them.

Help-Wanted Ads “Help wanted—male” and “help wanted—female” ads are violations unless gender is a bona fide occupational qualification for the job. The same applies to ads that suggest age discrimination. For example, you cannot advertise for a “young” man or woman.

Selection Standards

Educational Requirements Courts have found educational qualifications to be illegal when (1) minority groups are less likely to possess the educational qualifications (such as a high school degree), and (2) such qualifications are also not job related. However, there may be jobs for which educational requirements (such as college degrees for pilot candidates) are a necessity.

Tests Courts deem tests unlawful if they disproportionately screen out minorities or women *and* they are not job related. According to a former U.S. Supreme Court Chief Justice,

Nothing in the [Title VII] act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrating a reasonable measure of job performance.

The employer must be prepared to show that the test results are job related—for instance, that test scores relate to on-the-job performance.

Preference to Relatives Do not give preference to relatives of current employees with respect to employment opportunities if your current employees are substantially nonminority.

Height, Weight, and Physical Characteristics Physical requirements such as minimum height are unlawful unless the employer can show they’re job related. For example, a U.S. Appeals Court upheld a \$3.4 million jury verdict against Dial Corp. Dial rejected 52 women for entry-level jobs at a meat-processing plant because they failed strength tests, although strength was not a job requirement.¹¹⁶ Maximum weight

rules generally don't trigger adverse legal rulings. To qualify for reasonable accommodation, obese applicants must be at least 100 pounds above their ideal weight or there must be a physiological cause for their disability. However, legalities aside, managers should be vigilant.¹¹⁷ Studies show that obese individuals are less likely to be hired, less likely to receive promotions, more likely to get undesirable sales assignments, and more likely to receive poor customer service.¹¹⁸

Arrest Records Unless the job requires security clearance, do not ask an applicant whether he or she has been arrested or spent time in jail, or use an arrest record to disqualify a person automatically. Due to racial and ethnic disparities in arrest and prison rates, both the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) set forth new guidance discouraging employers from using blanket exclusions against individuals with criminal records.¹¹⁹

Application Forms Employment applications generally shouldn't contain questions about applicants' disabilities, workers' compensation history, age, arrest record, or U.S. citizenship. It's generally best to collect personal information required for legitimate reasons (such as emergency contact) after you hire the person.¹²⁰

Discharge Due to Garnishment Disproportionate numbers of minorities suffer garnishment procedures (in which creditors make a claim to some of the person's wages). Therefore, firing a minority member whose salary is garnished is illegal, unless you can show some overriding business necessity.

Sample Discriminatory Promotion, Transfer, and Layoff Practices

Fair employment laws protect not just job applicants but also current employees. For example, the Equal Pay Act requires that equal wages be paid for substantially similar work performed by men and women. Therefore, courts may hold that any employment practices regarding pay, promotion, termination, discipline, or benefits that

1. Are applied differently to different classes of persons,
2. Adversely impact members of a protected group, and
3. Cannot be shown to be required as a BFOQ or business necessity are illegally discriminatory.

Personal Appearance Regulations and Title VII Employees sometimes file suits against employers' dress and appearance codes under Title VII. They usually claim sex discrimination, but sometimes claim racial or even religious discrimination. A sampling of court rulings follows:¹²¹

- **Dress.** In general, employers do not violate the Title VII ban on sex bias by requiring all employees to dress conservatively. For example, a supervisor's suggestion that a female attorney tone down her attire was permissible when the firm consistently sought to maintain a conservative dress style and counseled men to dress conservatively. However, Alamo Rent-A-Car lost a case when it tried to prevent a Muslim woman employee from wearing a headscarf.
- **Hair.** Courts usually favor employers here. For example, employer rules against facial hair do not constitute sex discrimination because they discriminate only between clean-shaven and bearded men, discrimination not qualified as sex bias under Title VII. Courts have also rejected arguments that prohibiting cornrow hairstyles infringed on black employees' expression of cultural identification.
- **Uniforms.** When it comes to discriminatory uniforms and/or suggestive attire, however, courts frequently side with employees. For example, requiring female employees (such as waitresses) to wear sexually suggestive attire as a condition of employment has been ruled as violating Title VII in many cases.¹²²
- **Tattoos and body piercings.** About 38% of Millennials in one survey had tattoos as compared with 15% of baby boomers. About 23% of Millennials had body

piercings as compared with 1% of baby boomers. One case involved a waiter with religious tattoos on his wrists at Red Robin Gourmet Burgers. The company insisted he cover his tattoos at work; he refused. Red Robin settled the suit after the waiter claimed that covering the tattoos would be a sin based on his religion.¹²³

MyLab Management Talk About It 1

If your professor has assigned this, go to the Assignments section of www.pearson.com/mylab/management to complete these discussion questions. Have you ever had an experience in which an employer apparently violated one or more of the preceding guidelines—for example, told you to change your hairstyle—or have you ever simply noticed a violation (such as a store posting a sign that said “delivery boy wanted”)? What was your reaction? What did you do? Are there situations in which the employer may have been within the law to do what he or she did?

Finally, keep three other things in mind:

1. *Good intentions are no excuse.* As the Supreme Court held in the *Griggs* case, good intent or absence of discriminatory intent does not redeem procedures that operate as built-in headwinds for minority groups and are unrelated to measuring job capability.
2. One cannot claim that a *union agreement necessitates some discriminatory practice.* Equal employment opportunity laws prevail.¹²⁴
3. A strong defense *is not your only recourse.* The employer can agree to eliminate the illegal practice and (when required) to compensate the people discriminated against.



LEARNING OBJECTIVE 2-4

List the steps in the EEOC enforcement process.

The EEOC Enforcement Process

Even careful employers eventually face employment discrimination claims and have to deal with the EEOC.¹²⁵ All managers (not just human resource managers) play roles in this process. Figure 2-3 provides an overview of this EEOC enforcement process.¹²⁶

- **File Charge.** The process begins when someone files a claim with the EEOC. Either the aggrieved person or a member of the EEOC who has reasonable cause to believe that a violation occurred must file the claim in writing and under oath.¹²⁷ Under CRA 1991, the discrimination claim must be filed within 300 days (when there is a similar state law) or 180 days (where there is no similar state law) after the alleged incident took place (2 years for the Equal Pay Act).¹²⁸ The U.S. Supreme Court, in *Ledbetter v. Goodyear Tire & Rubber Company*, held that employees claiming Title VII pay discrimination must file their claims within 180 days of when they first receive the allegedly discriminatory pay. Congress then passed, and President Obama signed, the Lilly Ledbetter Fair Pay Act into law. Employees can now file such claims anytime, as long as they're still receiving an “infected” paycheck. (The EEOC recently received 91,503 private-sector discrimination charges in one fiscal year.¹²⁹) One may obtain employment practices liability insurance against discrimination claims.¹³⁰
- **Charge Acceptance.** The EEOC’s common practice is to accept a charge and orally refer it to the state or local agency on behalf of the charging party. If the agency waives jurisdiction or cannot obtain a satisfactory solution, the EEOC processes it upon the expiration of the deferral period.¹³¹
- **Serve Notice.** After a charge is filed (or the state or local deferral period has ended), the EEOC has 10 days to serve notice on the employer. Attorneys advise against submitting lengthy statements in response to a charge. Instead, provide a concise explanation describing why the actions were lawful.¹³² Figure 2-4 lists some questions to ask after receiving a bias complaint from the EEOC.

FIGURE 2-3 The EEOC Charge-Filing Process

Note: Parties may settle at any time.

Source: Based on www.eeoc.gov.

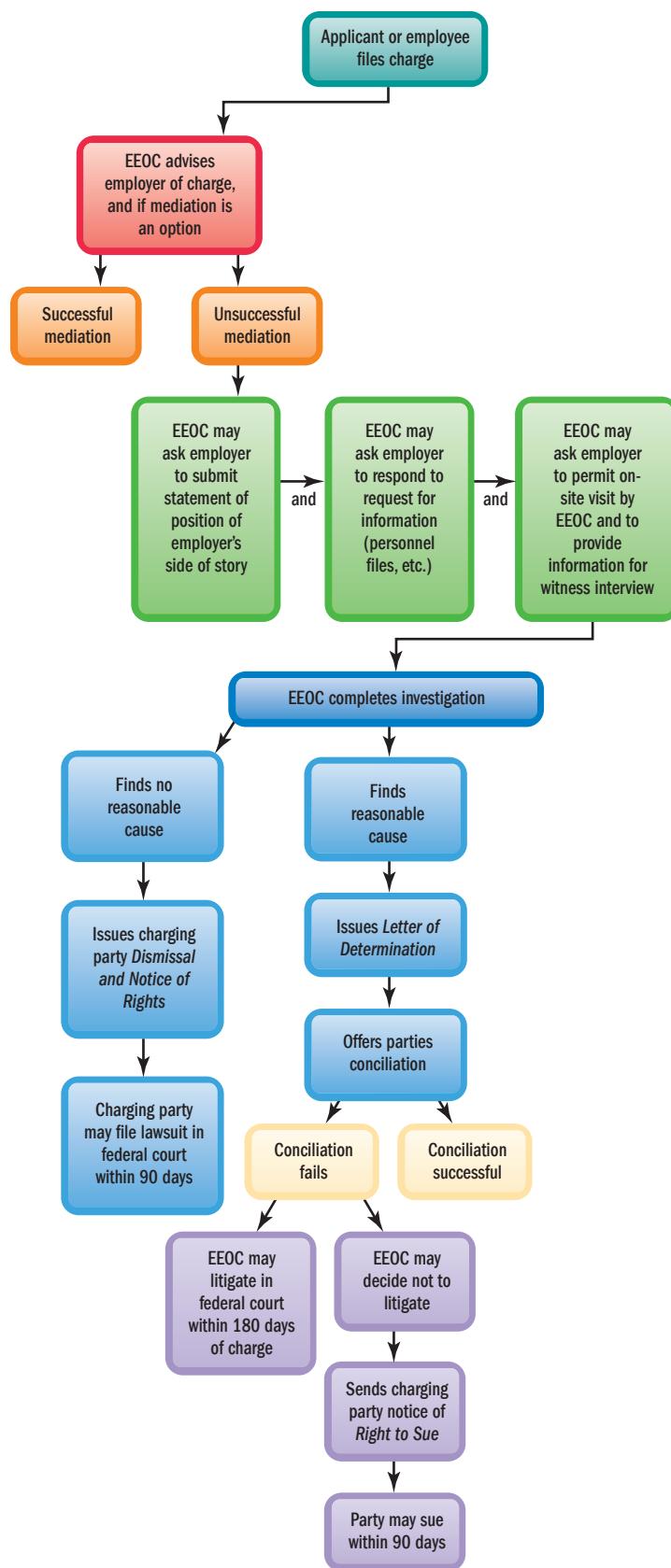


FIGURE 2-4 Questions to Ask When an Employer Receives Notice That the EEOC Has Filed a Bias Claim

Source: Based on Bureau of National Affairs, Inc., “Fair Employment Practices: Summary of Latest Developments,” January 7, 1983, p. 3; Kenneth Sovereign, *Personnel Law* (Upper Saddle River, NJ: Prentice Hall, 1999), pp. 36–37; and Equal Employment Opportunity Commission, “What You Can Expect After a Charge Is Filed,” www.eeoc.gov/employers/process.cfm, accessed June 28, 2018.

1. Exactly what is the charge, and is your company covered by the relevant statutes? (For example, Title VII and the Americans with Disabilities Act generally apply only to employees with 15 or more employees.) Did the employee file his or her charge on time, and was it processed in a timely manner by the EEOC?
2. What protected group does the employee belong to?
3. Is the EEOC claiming disparate impact or disparate treatment?
4. Are there any obvious bases upon which you can challenge and/or rebut the claim? For example, would the employer have taken the action if the person did not belong to a protected group?
5. If it is a sexual harassment claim, are there offensive comments, calendars, posters, screensavers, and so on, on display in the company?
6. In terms of the practicality of defending your company against this claim, who are the supervisors who actually took the allegedly discriminatory actions, and how effective will they be as potential witnesses? Have you received an opinion from legal counsel regarding the chances of prevailing?

- **Investigation/Fact-Finding Conference.** The EEOC then investigates the charge to determine whether there is reasonable cause to believe it is true; it has 120 days to decide.¹³³ Early in the investigation, the EEOC holds an initial *fact-finding conference*. The EEOC’s focus here is often to find weak spots in each party’s position. It uses these to push for a settlement.
- **Cause/No Cause.** If it finds no reasonable cause, the EEOC must dismiss the charge and issue the charging party a Notice of Right to Sue. The person then has 90 days to file a suit on his or her own behalf.
- **Conciliation.** If the EEOC does find cause, it has 30 days to work out a conciliation agreement. The EEOC conciliator meets with the employee to determine what remedy would be satisfactory. It then tries to negotiate a settlement with the employer.
- **Notice to Sue.** If this conciliation is not satisfactory, the EEOC may bring a civil suit in a federal district court, or issue a Notice of Right to Sue to the person who filed the charge.

Voluntary Mediation

The EEOC refers about 10% of its charges to a voluntary mediation mechanism, “an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination.”¹³⁴ If the parties don’t reach agreement (or one of the parties rejects participation), the EEOC processes the charge through its usual mechanisms.¹³⁵

Faced with an offer to mediate, the employer has three options: Agree to mediate the charge; make a settlement offer without mediation; or prepare a “position statement” for the EEOC. If the employer does not mediate or make an offer, the position statement is required. It should include a robust defense, including information relating to the company’s business and the charging party’s position; a description of any rules or policies and procedures that are applicable; and the chronology of the offense that led to the adverse action.¹³⁶

Mandatory Arbitration of Discrimination Claims

Many employers, to avoid EEOC litigation, require applicants and employees to agree to arbitrate such claims. The EEOC does not favor mandatory arbitration. However, the U.S. Supreme Court’s decisions (in *Gilmer v. Interstate/Johnson Lane Corp.* and similar cases) make it clear that “employment discrimination plaintiffs [employees] may be compelled to arbitrate their claims under some circumstances.”¹³⁷ Given this, employers “may wish to consider inserting a mandatory arbitration clause in their employment applications or employee handbooks.”¹³⁸ To protect such a process against appeal, the employer should institute steps to protect against arbitrator bias, allow the arbitrator to offer a claimant



broad relief (including reinstatement), and allow for a reasonable amount of pre-hearing fact finding.

alternative dispute resolution or ADR program

Grievance procedure that provides for binding arbitration as the last step.

Rockwell International has a grievance procedure that provides for binding arbitration as the last step. Called (as is traditional) an **alternative dispute resolution or ADR program**, Rockwell gradually extended the program to all nonunion employees at some locations. New hires at Rockwell must sign the agreement. Current employees must sign it prior to promotion or transfer. U.S. federal agencies must have ADR programs.¹³⁹ ADR plans are popular, although the EEOC generally prefers mediation for handling bias claims.¹⁴⁰

The accompanying HR Tools feature provides some guidelines to follow in addressing EEOC claims.



IMPROVING PERFORMANCE: HR TOOLS FOR LINE MANAGERS AND SMALL BUSINESSES

Chances are the EEOC won't file a suit, but getting a notice saying it's investigating is still scary. Whether you are managing one team or your own small business, every manager should know in advance what the EEOC will be looking for and what to do. A checklist follows.¹⁴¹

During the EEOC Investigation:

- ✓ *Conduct your own investigation* to get the facts.
- ✓ Ensure that there is information in the EEOC's file *demonstrating lack of merit* of the charge.
- ✓ *Limit the information supplied* to only those issues raised in the charge itself.
- ✓ *Get as much information* as possible about the *charging party's claim*.
- ✓ *Meet with the employee* who made the complaint to clarify all the relevant issues. For example, what happened? Who was involved?
- ✓ Remember that the *EEOC can only ask (not compel) employers* to submit documents and ask for the testimony of witnesses under oath.
- ✓ Give the EEOC a *position statement*. It should contain words to the effect that "the company has a policy against discrimination and would not discriminate in the manner charged in the complaint."
- ✓ Support the statement with documentation.

During the Fact-Finding Conference:

- ✓ Because the only official record is the notes the EEOC investigator takes, *keep your own records*.
- ✓ Bring an *attorney*.
- ✓ Make sure you are *fully informed* of the charges and facts of the case.
- ✓ Before appearing, *witnesses (especially supervisors)* need to be aware of the legal significance of the facts they will present.

During the EEOC Determination and Attempted Conciliation:

- ✓ If there is a finding of cause, *review it carefully*, and point out inaccuracies in writing to the EEOC.
- ✓ Use this letter to try again to convince the parties that the charge is *without merit*.
- ✓ *Conciliate prudently*. If you have properly investigated the case, there may be no real advantage in settling at this stage.
- ✓ Remember: Odds are that *no suit will be filed* by the EEOC.

Two Mistakes to Avoid

Finally, keep two other things in mind.

- ✓ First, avoid *management malpractice*, which is aberrant managerial conduct that "exceeds all bounds usually tolerated by society."¹⁴² In one outrageous example,

the employer demoted a manager to janitor and humiliated him. The jury awarded the man millions. Supervisors who commit management malpractice may be personally liable for paying some of the judgment.

- ✓ Second, *do not retaliate*. Retaliation occurs when employers treat applicants, employees, former employees, or people closely associated with them, less favorably because, for instance, they threatened to file a discrimination charge.¹⁴³ Retaliation is the most common charge filed with the EEOC.¹⁴⁴ ■

MyLab Management Talk About It 2

If your professor has assigned this, go to the Assignments section of www.pearson.com/mylab/management to complete these discussion questions. Check with the EEOC's Web site and compile a list of the biggest financial settlements this past year for retaliation claims. About how much was the average claim? What you would do to avoid doing something that prompted the EEOC to become interested in your company?



LEARNING OBJECTIVE 2-5

Give examples of attitudes that undermine diversity efforts, and explain how you would create a diversity management program.

diversity

The variety or multiplicity of demographic features that characterize a company's workforce, particularly in terms of race, sex, culture, national origin, handicap, age, and religion.

stereotyping

Ascribing specific behavioral traits to individuals based on their apparent membership in a group.

gender-role stereotypes

The tendency to associate women with certain (frequently nonmanagerial) jobs. On the other hand, diversity can be an engine of performance, as the following feature shows.

discrimination

Taking specific actions toward or against a person based on the person's group.

tokenism

When a company appoints a small group of women or minorities to high-profile positions, rather than more aggressively seeking full representation for that group.

ethnocentrism

The tendency to view members of other social groups less favorably than members of one's own group.

Diversity Management

Diversity means being diverse or varied and at work means having a workforce composed of two or more groups of employees with various racial, ethnic, gender, cultural, national origin, handicap, age, and religious backgrounds.¹⁴⁵ We introduce diversity and diversity management here, and then address them in features throughout the book.

Potential Threats to Diversity

Workforce diversity produces both benefits and problems for employers. Unmanaged, it can produce behavioral barriers that reduce cooperation. Potential problems include:

- **Stereotyping.** Here someone ascribes specific behavioral traits to individuals based on their apparent membership in a group:¹⁴⁶ for example, “older people can't work hard.” Cheryl Sandberg, Facebook's Chief Operating Officer, says many people hold such unconscious assumptions (stereotypes); one is that men are expected to be assertive while women should be collaborative. So, a woman who pushes for more for herself is viewed as “bossy,” whereas a man is viewed as doing his job.¹⁴⁷ Put another way, women confront **gender-role stereotypes**, the tendency to associate women with certain (frequently nonmanagerial) jobs.¹⁴⁸

Prejudice is a bias toward prejudging someone based on that person's traits, as in “we won't hire him because he's old.” Some people's biases are subconscious. To check, try asking questions like, “Do I typically hire the same type of person?” and “To whom do I generally assign the best projects?”¹⁴⁹

- **Discrimination** is prejudice in action. It means taking specific actions toward or against the person based on the person's group.¹⁵⁰ Of course, it's generally illegal to discriminate at work based on someone's age, race, gender, disability, or national origin. But in practice, discrimination may be subtle. For example, many argue that a “glass ceiling,” enforced by an “old boys' network” (friendships built in places like exclusive clubs), hinders women from reaching top management.
- **Tokenism** means a company appoints a small group of women or minorities to high-profile positions, rather than more aggressively seeking full representation for that group.¹⁵¹
- **Ethnocentrism** is the tendency to view members of other social groups less favorably than one's own. Thus, in one study, managers attributed the performance of some minorities less to their abilities and more to help they received from others. The same managers attributed the performance of *non*minorities to their own abilities.¹⁵²



IMPROVING PERFORMANCE: HR AS A PROFIT CENTER

Diversity can actually drive higher profits. In one study, researchers examined the diversity climate in 654 stores of a large U.S. retail chain. They defined *diversity climate* as the extent to which employees in the stores said the firm promotes equal opportunity and inclusion. They found the highest sales growth in stores with the highest pro-diversity climate, and the lowest in stores where subordinates and managers reported less hospitable diversity climates.¹⁵³ Another study found racial discrimination to be related negatively to employee commitment, while organizational efforts to support diversity reduced such negative effects.¹⁵⁴ When Merck needed halal certification for one of its medicines, it turned to its Muslim employees. They helped Merck bring the product to market faster and helped ensure its acceptance among Muslims.¹⁵⁵

More than 50 of the largest U.S. companies, including GE, Microsoft, and Walmart, filed briefs with the U.S. Supreme Court arguing that affirmative action produces increased sales and profits. ■

MyLab Management Talk About It 3

If your professor has assigned this, go to the Assignments section of [www.pearson.com/mylab/management](http://www.pearson.com/mylab/) to complete these discussion questions. What do you think accounts for the fact that diversity apparently seems to produce higher profits? Do you think that would always be the case? Why or why not?

Managing Diversity

managing diversity

Maximizing diversity's potential benefits while minimizing its potential barriers.

The key to deriving such benefits is properly managing diversity's potential problems. **Managing diversity** means maximizing diversity's potential benefits while minimizing the potential problems—such as prejudice—that can undermine cooperation. In practice, diversity management requires both compulsory and voluntary actions. Compulsory actions (particularly EEO law compliance) can't guarantee cooperation. Managing diversity therefore also relies on taking voluntary steps to encourage employees to work together productively.¹⁵⁶

TOP-DOWN DIVERSITY MANAGEMENT PROGRAMS The employer may institute a *diversity management program*, usually at the initiative of a top executive. The program's main aim is to make employees more sensitive to and better able to deal with cultural differences. First, make sure diversity training is the solution, or if some other approach is more advisable. Next, set measurable program goals, for instance, in terms of quantifiable attitudes toward diversity.¹⁵⁷ Then, five steps are typical:¹⁵⁸

Provide strong leadership. Companies with exemplary reputations in managing diversity typically have CEOs who champion the cause of diversity. Leadership here means, for instance, becoming a role model for the behaviors required for the change. One study concluded that top managers who excelled at creating inclusive organizations were also those who were personally passionate about encouraging inclusion and diversity.¹⁵⁹

Assess the situation. One study found that the most common tools for assessing a company's diversity include equal employment hiring and retention metrics, employee attitude surveys, management and employee evaluations, and focus groups.

Provide diversity training and education. The most common starting point for a diversity management effort is usually some type of employee education program.

Change culture and management systems. Combine education programs with other concrete steps aimed at changing the organization's culture and management systems. For example, change the performance appraisal procedure to appraise supervisors based partly on their success in reducing intergroup conflicts.

Evaluate the diversity management program. For example, do employee attitude surveys now indicate any improvement in employees' attitudes toward diversity?

The problem is that many diversity programs are ineffective. Some fail because even positively inclined employees may resist participating in mandatory programs.¹⁶⁰ Others fail by providing a false sense of security. For instance one study found that appointing diversity committees and chief diversity officers lulled managers into believing their workplace was inclusive when it was not.¹⁶¹

Some firms are therefore pursuing alternatives. The consulting firm Deloitte LLP concluded that gender-based diversity groups are no longer the best way to encourage diversity. Instead, it is creating what it calls inclusion councils. Rather than groups comprised of only women or minorities, the councils each include a diversity of inputs and points of view.¹⁶²

DIVERSITY THROUGH ENGAGEMENT Others wisely design their diversity efforts to elicit their employees' engagement and active participation.¹⁶³ For example, at software company SAP, the Chief Learning Officer discovered that while participants rated SAP's diversity training program highly, the program seemed to produce only limited results. She therefore replaced it with a year-long leadership development program she called the "Leadership Excellence Acceleration Program" (LEAP). Every year LEAP gathers together high-performing female employees. For a year they then engage in exercises such as in-house team consulting assignments and listening to speakers.¹⁶⁴ SAP also offers female employees a global business network of 8,000 female employees, and SAP's board recently committed to boosting the leadership positions held by SAP women to 25% (from 23%).¹⁶⁵ SAP's efforts seem to be successful, in terms its female employees moving into management positions.¹⁶⁶

Implementing the Affirmative Action Program

Equal employment opportunity aims to ensure that anyone, regardless of race, color, disability, sex, religion, national origin, or age, has an equal opportunity based on his or her qualifications. *Affirmative action* means taking actions (in recruitment, hiring, promotions, and compensation) to eliminate the current effects of past discrimination.

Affirmative action is still a significant workplace issue. The incidences of major court-mandated affirmative action programs are down, but courts still use them. Furthermore, many employers must still engage in voluntary programs. For example, Executive Order (EO) 11246 (issued in 1965) requires federal contractors to take affirmative action to improve employment opportunities for groups such as women and racial minorities. It covers about 22% of the U.S. workforce.¹⁶⁷ In discussing methods for increasing diversity, two researchers say that "few are as effective as affirmative action policies."¹⁶⁸

Under guidelines such as EO 11246, the key aims of affirmative action programs are (1) to use numerical analysis to determine which (if any) target groups the firm is underutilizing relative to the relevant labor market, and (2) to eliminate the barriers to equal employment. Many employers pursue these aims with a **good-faith effort strategy**; this emphasizes identifying and eliminating the obstacles to hiring and promoting women and minorities, and increasing the minority or female applicant flow. Reasonable steps to take include those shown in Figure 2-5 (page 58).

For example, place recruiting ads on online minority-oriented job sites. Diversity candidate Web sites with job banks include the National Urban League, Hispanic Online, Latino Web, Society of Hispanic Engineers, Gay.com, Association for Women in Science, and Minorities Job Bank.

EMPLOYEE RESISTANCE Avoiding employee resistance to affirmative action programs is important. Here, studies suggest that current employees need to believe the program is fair. *Transparent selection procedures* (explaining clearly what selection tools and standards the company uses) help in this regard. *Communication* is also crucial. Show that the program doesn't involve preferential selection standards. Provide details on the qualifications of all new hires (both minority and nonminority). *Justifications* for the program should emphasize redressing past discrimination and the practical value of diversity, not underrepresentation.¹⁶⁹

good-faith effort strategy

An affirmative action strategy that emphasizes identifying and eliminating the obstacles to hiring and promoting women and minorities, and increasing the minority or female applicant flow.

FIGURE 2-5 Steps in an Affirmative Action Program

1. Issue a written equal employment policy indicating that the firm is an equal employment opportunity employer and the employer's commitment to affirmative action.
2. Demonstrate top-management support for the equal employment policy—for instance, appoint a high-ranking EEO administrator.
3. Publicize internally and externally the equal employment policy and affirmative action commitment.
4. Survey current minority and female employment by department and job classification to determine where affirmative action programs are especially desirable.
5. Carefully analyze employer human resources practices to identify and eliminate hidden barriers.
6. Review, develop, and implement specific HR programs to improve female and minority utilization.
7. Use focused recruitment to find qualified applicants from the target group(s).
8. Establish an internal audit and reporting system to monitor and evaluate progress.
9. Develop support for the affirmative action program, inside the company and in the community.

PROGRAM EVALUATION Is the diversity program effective? Some commonsense questions to ask include:

- Are there women and minorities reporting directly to senior managers, and in senior manager positions?
- Do women and minorities have a fair share of the jobs that are the traditional stepping-stones to successful careers in the company?
- Do women and minorities have equal access to international assignments?
- Is the employer taking steps that ensure that female and minority candidates will be in the company's career development pipeline?
- Are turnover rates for female and minority managers the same or lower than those for white males?
- Do employees report that they perceive positive behavior changes as a result of the diversity efforts?¹⁷⁰

reverse discrimination

Claim that due to affirmative action quota systems, white males are discriminated against.

Diversity management can blend a diverse workforce into a close-knit and productive community.

Reverse Discrimination

Reverse discrimination means discriminating against *nonminority* applicants and employees.¹⁷¹ Many court cases have addressed these issues.



In one of the first such cases, *Bakke v. Regents of the University of California* (1978), the University of California at Davis Medical School denied admission to white student Allen Bakke, allegedly because of the school's affirmative action quota system, which required that a specific number of openings go to minority applicants. In a 5-to-4 vote, the U.S. Supreme Court struck down the policy that made race the only factor in considering applications for a certain number of class openings and thus allowed Bakke's admission.

Bakke was followed by many other cases. In 2009, the U.S. Supreme Court ruled in an important reverse discrimination suit brought by Connecticut firefighters. In *Ricci v. DeStefano*, 19 white firefighters and one Hispanic firefighter said the city of New Haven should have promoted them based on their successful test scores. The city argued that certifying the tests would have left them vulnerable to lawsuits from minorities for violating Title VII.¹⁷² The Court ruled in favor of the (predominantly white) plaintiffs. In New Haven's desire to avoid making promotions that might appear to adversely impact minorities, Justice Kennedy wrote that "the city rejected the test results solely because the higher scoring candidates were white." The consensus of observers was that the decision would make it harder for employers to ignore the results obtained by valid tests, even if the results disproportionately impact minorities.¹⁷³

The bottom line seems to be that employers should emphasize the external recruitment and internal development of better-qualified minority and female employees, "while basing employment decisions on legitimate criteria."¹⁷⁴

Chapter Review

Chapter Section Summaries

2-1. Several of the most important equal employment opportunity laws became law in the period from 1964 to 1991.

- Title VII of the 1964 Civil Rights Act states that an employer cannot discriminate based on race, color, religion, sex, or national origin. Title VII established the Equal Employment Opportunity Commission and covers most employees.
- Under the Equal Pay Act of 1963 (amended in 1972), it is unlawful to discriminate in pay on the basis of sex when jobs involve equal work, skills, effort, and responsibility and are performed under similar working conditions.
- The Age Discrimination in Employment Act of 1967 made it unlawful to discriminate against employees or applicants who are between 40 and 65 years of age.
- The Vocational Rehabilitation Act of 1973 requires most employers with federal contracts to take affirmative action when employing handicapped persons.
- The Pregnancy Discrimination Act of 1978 prohibits using pregnancy, childbirth, or related medical conditions to discriminate in

hiring, promotion, suspension, or discharge or in any term or condition of employment.

- The EEOC, Civil Service Commission, Department of Labor, and Department of Justice together issued Uniform Guidelines. These set forth "highly recommended" procedures regarding HR activities like employee selection and record keeping.
- *Griggs v. Duke Power Company* was an important early case. Here, Chief Justice Burger held that in employment, discrimination does not have to be overt to be illegal, and an employment practice that discriminates must be job related.

2-2. Equal employment law continues to evolve, with important new legislation enacted since 1990–1991.

- The Civil Rights Act of 1991 reversed the effects of several Supreme Court rulings—for instance, underscoring that the burden of proof is the employer's once a plaintiff establishes possible illegal discrimination.
- The Americans with Disabilities Act prohibits employment discrimination against qualified disabled individuals. It also says

employers must make “reasonable accommodations” for physical or mental limitations unless doing so imposes an “undue hardship” on the business.

- The Federal Violence Against Women Act of 1994 provided women with another way to seek relief for (violent) sexual harassment. Basically, sexual harassment refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that takes place, for instance, when such conduct is made either explicitly or implicitly a term or condition of an individual’s employment. Three main ways to prove sexual harassment include *quid pro quo*, hostile environment created by supervisors, and hostile environment created by coworkers or those who are not employees.

- 2-3. Employers use various defenses against discrimination allegations.** Here employers need to distinguish between disparate treatment (intentional discrimination) and disparate impact (a policy that has an adverse impact regardless of intent). Plaintiffs show adverse impact by the standard deviation rule or by showing disparate rejection rates, restricted policy, or population comparisons, or by applying the McDonnell Douglas test. Employers defend themselves by showing that the employment practice is a bona fide occupational qualification (for instance, gender is a BFOQ for a position such as model).

Or they may defend themselves by using the business necessity defense, which requires showing that there is an overriding business purpose. Given all this, the manager needs a working knowledge of *discriminatory employment practices*. For example, in recruitment, employers no longer use “help wanted—male” ads.

- 2-4. All managers play an important role in the EEOC enforcement process.** The basic steps in this process include filing the charge, charge acceptance by the EEOC, serving notice on the employer, the investigation/fact-finding conference, a finding of cause/no cause, conciliation efforts, and (if necessary) a notice to sue. The EEOC refers about 10% of its charges to voluntary mediation mechanisms.

- 2-5. Managing diversity** means maximizing diversity’s potential benefits while minimizing the potential barriers. General steps include providing strong leadership, assessing the situation, providing diversity training and education, changing the culture and management systems, and evaluating the diversity management program’s results. Affirmative action generally means taking actions to eliminate the present effects of past discrimination. Many employers still pursue voluntary, good-faith effort strategies in identifying and eliminating the obstacles to hiring and promoting women and minorities. Other employers are under court-mandated requirement to do so.

Discussion Questions

- 2-1.** What important precedents were set by the *Griggs v. Duke Power Company* case? The *Albemarle v. Moody* case?
- 2-2.** Explain each of the four examples of a bona fide occupational qualification.

- 2-3.** What is sexual harassment? How can an employee prove sexual harassment?
- 2-4.** What is the difference between disparate treatment and disparate impact?

Individual and Group Activities

- 2-5.** Working individually or in groups, respond to these three scenarios based on what you learned in this chapter. Under what conditions (if any) do you think the following constitute sexual harassment? (a) A female manager fires a male employee because he refuses her requests for sexual favors. (b) A male manager refers to female employees as “sweetie” or “baby.” (c) A female employee overhears two male employees exchanging sexually oriented jokes.

- 2-6.** Working individually or in groups, discuss how you would set up an affirmative action program.
- 2-7.** Compare and contrast the issues presented in *Bakke* with more recent court rulings on affirmative action. Working individually or in groups, discuss the current direction of affirmative action.
- 2-8.** Working individually or in groups, write a one-page paper titled “What the Manager Should

Know About How the EEOC Handles a Person's Discrimination Charge.”

- 2-9. Explain the difference between affirmative action and equal employment opportunity.
- 2-10. Assume you are the manager in a small restaurant; you are responsible for hiring employees, supervising them, and recommending them for promotion. Working individually or in groups, compile a list of potentially discriminatory management practices you should avoid.
- 2-11. Appendices A and B at the end of this book (pages 614–634) list the knowledge someone studying for the HRCI (Appendix A) or SHRM (Appendix B) certification exam needs to have in each area of human resource management (such as in Strategic Management



and Workforce Planning). In groups of several students, do four things: (1) review Appendix A and/or B; (2) identify the material in this chapter that relates to the Appendix A and/or B required knowledge lists; (3) write four multiple-choice exam questions on this material that you believe would be suitable for inclusion in the HRCI exam and/or the SHRM exam; and, (4) if time permits, have someone from your team post your team's questions in front of the class, so that students in all teams can answer the exam questions created by the other teams.

Experiential Exercise

“Space Cadet” or Victim?¹⁷⁵

Written and copyrighted by Gary Dessler, PhD.

Discrimination lawsuits are rarely simple because the employer will often argue that the person was fired due to poor performance rather than discrimination. So, there's often a “mixed-motive” element to such situations. The facts of a case illustrate this (*Burk v. California Association of Realtors*, California Court of Appeals, number 161513, unpublished, 12/12/03). The facts were as follows. The California Association of Realtors maintained a hotline service to provide legal advice to real estate agents. One of the 12 lawyers who answered this hotline was a 61-year-old California attorney who worked there from 1989 to 2000. Until 1996 he received mostly good reviews. At that time, association members began filing complaints about his advice. His supervisor told him to be more courteous.

Two years later, association members were still complaining about this individual. Among other things, association members who called in filed complaints referring to him as “a space cadet” and “incompetent.” Subsequently, his supervisor contacted six association members whom the 61-year-old lawyer had recently counseled; five of the six said they had bad experiences. The association fired him for mistreating association members and providing inadequate legal advice.

The 61-year-old lawyer sued the association, claiming that the firing was age related. To support his claim, he noted that one colleague had told him that he was “probably getting close to retirement” and that another colleague had told him he was “getting older.” The appeals court had to decide whether the association fired the 61-year-old lawyer because of his age or because of his performance.

Purpose: The purpose of this exercise is to provide practice in analyzing and applying knowledge of equal opportunity legislation to a real problem.

Required Understanding: Be thoroughly familiar with the material presented in this chapter. In addition, read the preceding “space cadet” case on which this experiential exercise is based.

How to Set Up the Exercise/Instructions:

- Divide the class into groups.
- Each group should develop answers to the following questions:
 - 2-12. Based on what you read in this chapter, on what legal basis could the 61-year-old California attorney claim he was a victim of discrimination?
 - 2-13. On what laws and legal concepts did the employer apparently base its termination of this 61-year-old attorney?
 - 2-14. Based on what laws or legal concepts could you take the position that it is legal to fire someone for poor performance even though there may be a discriminatory aspect to the termination? (This is not to say that there necessarily was such a discriminatory aspect with this case.)
 - 2-15. If you were the judge called on to make a decision on this case, what would your decision be, and why?
- The court’s decision follows, so please do not read this until you’ve completed the exercise.

In this case, the California State Appeals court held that “the only reasonable inference that can be drawn from the evidence is that [plaintiff] was terminated because he failed to competently perform his job of providing thorough, accurate, and courteous legal advice to hotline callers.”

Application Case

Seeking Gender Equity at Starbucks

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Starbucks is progressive in terms of gender equity policies.¹⁷⁶ By the 1990s it was offering health insurance coverage to Starbucks partners (employees) who were in lesbian and gay relationships, and its health care insurance covers gender reassignment surgery. More recently it announced that it had eliminated its partners' gender wage gap: Starbucks male and female partners performing similar work are paid almost exactly the same—within 99.7% of each other (compared with about 70% nationwide).

However, several large Starbucks shareholders think its gender efforts still fall short. For example, Zevin Asset Management proposed that Starbucks report on whether its paid family leave policy was discriminatory. According to Starbucks, the policy is generous and competitive for a retail chain. For example, it gives Starbucks corporate office workers 16 weeks paid leave if they gave birth, and 12 weeks if they are new fathers or adoptive parents. Starbucks says its program is exceptional because even employees who work just 20 hours a week can use it. But Zevin says the problem is that the policy is discriminatory because retail store workers who give birth or adopt only get six weeks of paid leave and fathers get none. Some shareholders say this will harm Starbucks' reputation, because it is

on record as saying that it tries to treat corporate and retail partners the same.

Although shareholders often reject proposals like these, employers may still implement the recommendations, particularly when they involve equitable treatment. Several years ago, for instance another investment firm proposed that several tech giants like Amazon and Apple pay male and female employees equitably. The proposal never came to a vote, because the tech firms soon closed their gender wage gaps.

So at the end of the day, such proposals present top managers with a dilemma. Starbucks, for instance, believed that its parental leave policy was already one of the best in the industry, and that was probably true. Yet it did seem somewhat inequitable to offer better benefits to corporate office workers than to those in the retail stores.

Questions

- 2-16. Do you agree that it is inequitable to offer the corporate workers better benefits than the store partners? Why? Is that what the law would seem to say?
- 2-17. What arguments would you make as Starbucks' CEO concerning why the current policy is fair?
- 2-18. How would you handle this situation if you were running a company that was confronted by a shareholder making these demands?

Continuing Case

Carter Cleaning Company

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A Question of Discrimination

One of the first problems Jennifer faced at her father's Carter Cleaning Centers concerned the inadequacies of the firm's current HR management practices and procedures.

One problem that particularly concerned her was the lack of attention to equal employment matters. Each store manager independently handled virtually all hiring; the managers had received no training regarding such fundamental matters as the types of questions they should not ask of job applicants. It was therefore not unusual for female applicants to be asked questions such as "Who's going to take care of your children while you are at work?" and for minority applicants to be asked questions about arrest records and credit histories. Nonminority applicants—three store managers were white males and three were white females—were not asked these questions, as Jennifer discerned from her interviews with the managers. Based on discussions with her father, Jennifer deduced two reasons for the laid-back attitude toward equal employment: (1) her father's lack of insight about the legal requirements, and (2) the fact that, as Jack Carter put it, "Virtually all our workers are women or minority members anyway, so no one can come in here and accuse us of being discriminatory, can they?"

Jennifer decided to mull that question over, but before she could, she was faced with two serious equal rights problems. Two women in one store privately confided to her that their manager was making unwelcome sexual advances toward them. One claimed he had threatened to fire her unless she "socialized" with him after hours. And during a fact-finding trip to another store, an older gentleman—he was 73 years old—complained of the fact that although he had almost 50 years of experience, he was paid less than people half his age in the same job. Jennifer's review of the stores resulted in the following questions.

Questions

- 2-19. Is it true, as Jack Carter claims, that "virtually all our workers are women or minority members anyway, so no one can come in here and accuse us of being discriminatory"?
- 2-20. How should Jennifer and her company address the sexual harassment charges and problems?
- 2-21. How should she and her company address the possible problems of age discrimination?
- 2-22. Given the fact that each of its stores has only a handful of employees, is her company covered by equal rights legislation?
- 2-23. And finally, aside from the specific problems, what other personnel management matters (application forms, training, and so on) have to be reviewed given the need to bring them into compliance with equal rights laws?

MyLab Management

Go to www.pearson.com/mylab/management for Auto-graded writing questions as well as the following Assisted-graded writing questions:

- 2-24. Explain the main features of Title VII, the Equal Pay Act, the Pregnancy Discrimination Act, the Americans with Disabilities Act, and the Civil Rights Act of 1991.
- 2-25. What are the two main defenses you can use in the event of a discriminatory practice allegation, and what exactly do they involve?
- 2-26. MyLab Management only—comprehensive writing assignment for this chapter.

MyLab Management Try It!

How would you apply the concepts and skills you learned in this chapter? If your professor has assigned this activity, go to the Assignments section of www.pearson.com/mylab/management to complete the simulation.

PERSONAL INVENTORY ASSESSMENTS



How sensitive to different cultures are you? Go to www.pearson.com/mylab/management to complete the Personal Inventory Assessment related to this chapter.

Key Terms

Title VII of the 1964 Civil Rights Act, 33
Equal Employment Opportunity Commission (EEOC), 33
affirmative action, 34
Office of Federal Contract Compliance Programs (OFCCP), 34
Equal Pay Act of 1963, 34
Age Discrimination in Employment Act of 1967 (ADEA), 34

Vocational Rehabilitation Act of 1973, 34
Pregnancy Discrimination Act, 34
Uniform Guidelines, 35
protected class, 35
Civil Rights Act of 1991 (CRA 1991), 36
“mixed-motive” case, 36
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Endnotes

1. Patrick Dorrian, “Uber Accused of Nationwide Sex-Based Pay and Promotional Bias,” *Bloomberg BNA Bulletin to Management*, November 7, 2017.
2. For example, see <http://eeoc.gov/eeoc/newsroom/index.cfm>. As another example, see “Wells Fargo to Pay \$3.5 Million to Resolve Black Brokers’ Claims,” *Bloomberg BNA Bulletin to Management*, January 10, 2017.
3. Betsy Morris, “How Corporate America Is Betraying Women,” *Fortune*, January 10, 2005, pp. 64–70.
4. Based on or quoted from International Association of Official Human Rights Agencies, *Principles of*
- Employment Discrimination Law* (Washington, DC). See also Bruce Feldacker, *Labor Guide to Labor Law* (Upper Saddle River, NJ: Prentice Hall, 2000); “EEOC Attorneys Highlight How Employers Can Better Their Nondiscrimination Practices,” *Bloomberg BNA Bulletin to Management*, July 20, 2008, p. 233; and www.eeoc.gov, accessed August 4, 2013. Plaintiffs still bring equal employment claims under the Civil Rights Act of 1866. For example, in 2008 the U.S. Supreme Court held that the act prohibits retaliation against someone who complains of discrimination against others when contract rights (in this case, an employment agreement) are at stake. Charles Louderback, “U.S. Supreme Court Decisions Expand Employees’ Ability to Bring Retaliation Claims,” *Compensation & Benefits Review*, September/October 2008, p. 52.
- Employment discrimination law is a changing field, and the appropriateness of the rules, guidelines, and conclusions in this chapter may also be affected by factors unique to the employer’s operation. They should be reviewed by the employer’s attorney before implementation.
- For a conciliation agreement, see “FedEx to Pay \$3 Million, Amend Practices to Settle OFCCP Charges of Bias in Hiring,” *Bloomberg BNA Bulletin to Management*, March 27, 2012, p. 97.
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- This is based on Joshua Brustein “Studies Show Racial

- and Gender Discrimination Throughout the Gig Economy,” <https://www.bloomberg.com/news/articles/2016-11-22/studies-show-racial-and-gender-discrimination-throughout-the-gig-economy> November 22, 2016; Marta Moakley, “EEOC Targets Gig Economy, Workplace Discrimination in Strategic Enforcement Plan,” *XpertHR Legal Editor*, October 25, 2016, <http://www.xperthr.com/news/eecoc-targets-gig-economy-workplace-discrimination-in-strategic-enforcement-plan/23960/>; Will Knight, “Is the Gig Economy Rigged?” *MIT Technology Review*, November 17, 2016, <https://www.technologyreview.com/s/602832/is-the-gig-economy-rigged/>. Such discrimination seems to work both ways. For example, one of these studies found that Boston Uber drivers cancelled trips more often when prospective riders had African-American sounding names.
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12. “Staples Must Pay Fired Older Workers \$16M for Age Bias,” *Bloomberg BNA Bulletin to Management*, June 7, 2016, p. 181.
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 17. The U.S. Supreme Court ruled in *California Federal Savings and Loan Association v. Guerra* that if an employer offers no disability leave to any of its employees, it can (but need not) grant pregnancy leave to a woman disabled for pregnancy, childbirth, or a related medical condition.
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 22. The EEOC and the OFCCP agreed to coordinate their efforts more closely and to share information on employers with federal contracts or subcontracts. “EEOC, OFCCP Issue Updated Agreement on Coordinated Enforcement, Data Sharing,” *Bloomberg BNA Bulletin to Management*, November 22, 2011, p. 371.
 23. *Griggs v. Duke Power Company*, 3FEP cases 175.
 24. This is applicable only to Title VII and CRA 91; other statutes require intent.
 25. James Ledvinka, *Federal Regulation of Personnel and Human Resources Management* (Boston: Kent, 1982), p. 41.
 26. Bruce Feldacker, *Labor Guide to Labor Law* (Upper Saddle River, NJ: Prentice Hall, 2000), p. 513.
 27. “The Eleventh Circuit Explains Disparate Impact, Disparate Treatment,” *BNA Fair Employment Practices*, August 17, 2000, p. 102. See also Kenneth York, “Disparate Results in Adverse Impact Tests: The 4/5ths Rule and the Chi Square Test,” *Public Personnel Management* 31, no. 2 (Summer 2002), pp. 253–262; and “Burden of Proof Under the Employment Non-Discrimination Act,” www.civilrights.org/lgbt/enda/burden-of-proof.html, accessed August 8, 2011.
 28. We’ll see that the process of filing a discrimination charge goes something like this: The plaintiff (say, a rejected applicant) demonstrates that an employment practice (such as a test) has a disparate (or “adverse”) impact on a particular group. *Disparate impact* means that an employer engages in an employment practice or policy that has a greater adverse impact (effect) on the members of a protected group under Title VII than on other employees, regardless of intent. (Requiring a college degree for a job would have an adverse impact on some minority groups, for instance.) Disparate impact claims do not require proof of discriminatory intent. Instead, the plaintiff’s burden is to show two things. First, he or she must show that a significant disparity exists between the proportion of (say) women in the available labor pool and the proportion hired. Second, he or she must show that an apparently neutral employment practice, such as word-of-mouth advertising or a requirement that the jobholder “be able to lift 100 pounds,” is causing the disparity. Then, once the plaintiff fulfills his or her burden of showing such disparate impact, the employer has the heavier burden of proving that the challenged practice is job related. For example, the employer has to show that lifting 100 pounds is actually required for effectively performing the position in question, and that the business could not run efficiently without the requirement—that it is a business necessity.
 29. Commerce Clearing House, “House and Senate Pass Civil Rights Compromise by Wide Margin,” *Ideas and Trends in Personnel*, November 13, 1991, p. 179.
 30. Mark Kobata, “The Civil Rights Act of 1991,” *Personnel Journal*, March 1992, p. 48.
 31. Again, though, if the “employer shows that it would have taken the same action even absent the discriminatory motive, the complaining employee will not be entitled to reinstatement, back pay, or damages”; www.eeoc.gov/policy/docs/caregiving.html#mixed, accessed September 24, 2011.
 32. Elliot H. Shaller and Dean Rosen, “A Guide to the EEOC’s Final Regulations on the Americans with Disabilities Act,” *Employee Relations Law Journal* 17, no. 3 (Winter 1991–1992), pp. 405–430; and www.eeoc.gov/ada, accessed November 20, 2007.
 33. “ADA: Simple Common Sense Principles,” *BNA Fair Employment Practices*, June 4, 1992, p. 63; and www.eeoc.gov/facts/ada17.html, accessed September 24, 2011.
 34. Shaller and Rosen, “A Guide to the EEOC’s Final Regulations,” p. 408. Other specific examples include “epilepsy, diabetes, cancer, HIV infection, and bipolar disorder”; www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm, accessed June 27, 2018.
 35. Kevin McGowan, “Fired Medical Marijuana User Can Sue for Disability Bias,” *Bloomberg BNA Bulletin to Management*, July 25, 2017.
 36. Shaller and Rosen, “A Guide to the EEOC’s Final Regulations,” p. 409. Thus, one court held that a worker currently engaging in illegal use of drugs was “not a qualified individual with a disability” under the ADA. “Drug Addict Lacks ADA Protection, Quarter Firms,” *Bloomberg BNA Bulletin to Management*, April 26, 2011, p. 133.
 37. James McDonald Jr., “The Americans with Difficult Personalities Act,” *Employee Relations Law Journal* 25, no. 4 (Spring 2000), pp. 93–107; and Betsy Bates, “Mental Health Problems Predominate in ADA Claims,” *Clinical Psychiatry News*, May 2003, http://findarticles.com/p/articles/mi_hb4345/is_5_31/ai_n29006702, accessed September 24, 2011. For a detailed discussion of dealing with this issue, see www.eeoc.gov/facts/intellectual-disabilities.html, accessed September 2, 2011.
 38. “EEOC Guidance on Dealing with Intellectual Disabilities,”

- Workforce Management*, March 2005, p. 16.
39. "Driver Fired After Seizure on Job Lacks ADA Claim," *Bloomberg BNA Bulletin to Management*, January 4, 2011, p. 6.
40. www.ada.gov/reg3a.html#Anchor-Appendix-52467, accessed January 23, 2009.
41. See "EEOC Guidance on Telecommuting as ADA Accommodation Discussed," *Bloomberg BNA Bulletin to Management*, October 16, 2012, p. 335.
42. Martha Frase, "An Underestimated Talent Pool," *HR Magazine*, April 2009, pp. 55–58; and Nicole LaPorte, "Hiring the Blind, While Making a Green Statement," *The New York Times*, March 25, 2012, p. b3; and <http://www.freedomscientific.com/Products/Blindness/Jaws>, accessed January 23, 2017.
43. Genevieve Douglas, "Websites Could Be Next Disability Law Litigation Hotspot," *Bloomberg BNA Bulletin to Management*, October 17, 2017.
44. M. P. McQueen, "Workplace Disabilities Are on the Rise," *The Wall Street Journal*, May 1, 2007, p. A1.
45. "No Sitting for Store Greeter," *BNA Fair Employment Practices*, December 14, 1995, p. 150. For more illustrative cases, see Tillinghast Licht, "Reasonable Accommodation and the ADA—Courts Draw the Line," at <http://library.findlaw.com/2004/Sep/19/133574.html>, accessed September 6, 2011.
46. For example, a U.S. circuit court found that a depressed former kidney dialysis technician could not claim ADA discrimination after the employer fired him for attendance problems. The court said he could not meet the essential job function of predictably coming to work. "Depressed Worker Lacks ADA Claim, Court Decides," *BNA Bulletin to Management*, December 18, 2007, p. 406. See also www.eeoc.gov/press/5-10-01-b.html, accessed January 8, 2008.
47. *Toyota Motor Manufacturing of Kentucky, Inc. v. Williams*. 534 U.S. 184 (2002).
48. "Supreme Court Says Manual Task Limitation Needs Both Daily Living, Workplace Impact," *BNA Fair Employment Practices*, January 17, 2002, p. 8.
49. "EEOC Issued Its Final Regulations for ADA Amendments Act," *Workforce Management*, June 2011, p. 12.
50. "Rise in ADA Cases Calls for Focus on Accommodations, Job Descriptions," *Bloomberg BNA Bulletin to Management*, September 25, 2012, p. 310.
51. Lawrence Postol, "ADAAA Will Result in Renewed Emphasis on Reasonable Accommodations," *Society for Human Resource Management Legal Report*, January 2009, pp. 1–3.
52. Mark Lengnick-Hall et al., "Overlooked and Underutilized: People with Disabilities Are an Untapped Human Resource," *Human Resource Management* 47, no. 2 (Summer 2008), pp. 255–273.
53. Susan Wells, "Counting on Workers with Disabilities," *HR Magazine*, April 2008, p. 45.
54. "Wachovia Violated USERRA by Failing to Reinstate Reservist to Comparable Job," *Bloomberg BNA Bulletin to Management*, September 20, 2011, p. 297.
55. www.eeoc.gov/press/2-25-09.html, accessed April 3, 2009; and Susan Hauser, "Sincerely Yours, Gina," *Workforce Management*, July 2011, pp. 16–18.
56. James Ledvinka and Robert Gatewood, "EEO Issues with Preemployment Inquiries," *Personnel Administrator* 22, no. 2 (February 1997), pp. 22–26.
57. "Employers More Vulnerable Under New York City Statute," *Bloomberg BNA Bulletin to Management*, July 31, 2012, p. 245.
58. Quoted or paraphrased from www.eeoc.gov/laws/types/index.cfm; www.eeoc.gov/laws/types/religion.cfm; www.eeoc/internal_eeo/index.cfm; and www.eeoc.gov/federal/otherprotections.cfm, all accessed May 9, 2013.
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60. "More Muslim Workers Allege Bias to Prayer Breaks," *Bloomberg BNA Bulletin to Management*, May 10, 2016, p. 150.
61. "Employer Should Respond to DOMA with Steps That Offset Risks, Attorneys Say," *Bloomberg BNA Bulletin to Management*, July 2, 2013, pp. 209–210.
62. "DOL Says 'Spouse' and 'Marriage' in ERISA Include Same-Sex Legally Married Couples," *Bloomberg BNA Bulletin to Management*, September 24, 2013, p. 305.
63. "OFCCP Announces Final Rule Protecting LGBT Federal Contractor Workers from Bias," *Bloomberg BNA Bulletin to Management*, December 9, 2014.
64. Kevin McGowan, "Landmark Gay Bias Ruling May Move Issue Closer to High Court," *Bloomberg BNA Bulletin to Management*, April 11, 2017.
65. Jay-Ann Cataga, "When Workers Are Male or Female, EEOC Reporting Is Complex," *Bloomberg BNA Bulletin to Management*, October 3, 2017.
66. "OFCCP Announces 'Higher Historic' Final Rules on Contractor Hiring of Veterans, Disabled," *Bloomberg BNA Bulletin to Management*, September 3, 2013, p. 281; Lauren Weber, "Are You Disabled? Now Your Boss Wants to Know," *The Wall Street Journal*, March 19, 2014, p. B1.
67. Adam Liptak, "Justices Back Ban on Race as Factor in College Entry," *The New York Times*, April 23, 2014, pp. A1, A 12.
68. Melanie Trottman and Lauren Weber, "Bar Is Raised in Worker Bias Cases," *The Wall Street Journal*, June 25, 2013, p. B1, B8.
69. Chris Strohm and Arit John, "US Issues Religious Freedom Memo Giving Leeway in Hiring," *Bloomberg BNA Bulletin to Management*, October 10, 2017.
70. "Sexual Harassment Scandals Imperil Democrats More Than Republicans," *The Economist*, November 25, 2017, p. 24; "An Open Secret," *The Economist*, October 21, 2017, pp. 59–62; "Sex and Power," *The Economist*, October 21, 2017, p. 16. An abbreviated list of those accused of sexual harassment recently includes movie producer Harvey Weinstein, Sen. Al Franken, television host Charlie Rose, and Congressman John Conyers. One reportedly defended himself by saying that when he grew up in the '60s and '70s the "rules were different"; however, most would agree that all or most of the reported behaviors were never acceptable.
71. www.eeoc.gov/types/sexual_harassment.html, accessed April 24, 2009; and www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm, accessed October 3, 2011.
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75. Larry Drake and Rachel Moskowitz, "Your Rights in the Workplace," *Occupational Outlook Quarterly* (Summer 1997), pp. 19–29.
76. "EEOC: 'Boss's Shoulder Touching Not Sexual Harassment,'" *Bloomberg BNA Bulletin to Management*, February 11, 2014, p. 45.
77. Patricia Linenberger and Timothy Keaveny, "Sexual Harassment: The Employer's Legal Obligations," *Personnel* 58 (November/December 1981), p. 64; and "Court Examines Workplace Flirtation," <http://hr.blr.com/HR-news/Discrimination/Sexual-Harassment/Court-Examines-Workplace-Flirtation>, accessed October 2, 2011.
78. Edward Felsenthal, "Justice's Ruling Further Defines Sexual Harassment," *The Wall Street Journal*, March 5, 1998, p. B5.
79. Hilary Gettman and Michele Gelfand, "When the Customer Shouldn't Be King: Antecedents and Consequences of Sexual Harassment by Clients and Customers," *Journal of Applied Psychology* 92, no. 3 (2007), pp. 757–770.
80. See the discussion in "Examining Unwelcome Conduct in a Sexual Harassment Claim," *BNA Fair Employment Practices*, October 19, 1995, p. 124. See also Michael Zugelder et al., "An Affirmative Defense to Sexual Harassment by Managers and Supervisors: Analyzing Employer Liability and Protecting Employee Rights in the U.S.," *Employee Responsibilities and Rights* 18, no. 2 (2006), pp. 111–122.
81. Ibid.; "Examining Unwelcome Conduct in a Sexual Harassment Claim," p. 124.
82. For example, a server/bartender filed a sexual harassment claim against Chili's Bar & Grill. She claimed that her former boyfriend, also a restaurant employee, had harassed her. The court ruled that the restaurant's prompt response warranted ruling in favor of it. "Ex-Boyfriend Harassed, but Employer Acted Promptly," *Bloomberg BNA Bulletin to Management*, January 8, 2008, p. 14.
83. See Mindy D. Bergman et al., "The (Un)reasonableness of Reporting: Antecedents and Consequences of Reporting Sexual Harassment," *Journal of Applied Psychology* 87, no. 2 (2002), pp. 230–242. See also www.eeoc.gov/policy/docs/harassment-facts.html, accessed October 2, 2011.
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- policy/docs/-harassment-facts.html, accessed October 2, 2011.
85. Emily Smith, "NBC Orders Staff to Rat Out Misbehaving Colleagues or Be Fired," at <https://pagesix.com>, accessed December 27, 2017.
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 87. Maria Rotundo et al., "A Meta-Analytic Review of Gender Differences in Perceptions of Sexual Harassment," *Journal of Applied Psychology* 86, no. 5 (2001), pp. 914–922. See also Nathan Bowling and Terry Beehr, "Workplace Harassment from the Victim's Perspective: A Theoretical Model and Meta Analysis," *Journal of Applied Psychology* 91, no. 5 (2006), pp. 998–1012.
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 93. Rebecca Greenfield, "Why Your HR Department Can't Stop Sexual Harassment," *Bloomberg BNA Bulletin to Management*, October 31, 2017.
 94. Mary Rowe, "Dealing with Sexual Harassment," *Harvard Business Review*, May–June 1981, p. 43; the quoted material goes on to say that "the employer still bears the burden of proving that the employee's failure was unreasonable. If the employee had a justifiable fear of retaliation, his or her failure to utilize the complaint process may not be unreasonable" and is quoted from www.uiowa.edu/~eod/policies/sexual-harassment-guide/employer-liability.htm, accessed October 3, 2011.
 95. As of 2017 the EEOC was testing a new online system to let people submit EEOC inquiries and to schedule appointments, as a way to encourage people who believe they were discriminated against to reach out to the EEOC. Patrick Dorrian, "Federal Job Bias Tool Rolled Out in Five Cities," *Bloomberg BNA Bulletin to Management*, March 21, 2017.
 96. "Employers Should Address Inappropriate Behavior on Social Sites," *Bloomberg BNA Bulletin to Management*, February 19, 2013, p. 62.
 97. "Be Careful with Social Media When Vetting Potential Workers," *Bloomberg BNA Bulletin to Management*, June 25, 2013, p. 206.
 98. John Moran, *Employment Law* (Upper Saddle River, NJ: Prentice Hall, 1997), p. 166.
 99. "The Eleventh Circuit Explains Disparate Impact, Disparate Treatment," p. 102.
 100. John Klinefelter and James Thompkins, "Adverse Impact in Employment Selection," *Public Personnel Management*, May/June 1976, pp. 199–204; and www.eeoc.gov/policy/docs/factemployment_procedures.html, accessed October 2, 2011.
 101. Moran, *Employment Law*, p. 168.
 102. Employers use several types of statistics in addressing adverse impact. (For a discussion, see Robert Gatewood and Hubert Feild, *Human Resource Selection* [Fort Worth, TX: The Dryden Press, 1994], pp. 40–42, and Jean Phillips and Stanley Gully, *Strategic Staffing* [Upper Saddle River, NJ: Pearson, 2012], pp. 68–69.) For example, *stock statistics* might compare at a single point in time (1) the percentage of female engineers the company has, as a percentage of its total number of engineers, with (2) the number of trained female engineers in the labor force as a percentage of the total number of trained engineers in the labor force. Here, the question of relevant labor market is important. For example, the relevant labor market if you're hiring unskilled assemblers might be the local labor market within, say, 20 miles from your plant, whereas the relevant labor market for highly skilled engineers might well be national and possibly international. *Flow statistics* measure proportions of employees, in particular, groups at two points in time: before selection and after selection takes place. For example, when comparing the percentage of minority applicants who applied with the percentage hired, the employer is using flow statistics.
 103. An employer's company-wide minority hiring statistics may be defensible company-wide but not departmentally. The employer therefore may employ *concentration statistics* to drill down and determine the concentration of minorities versus nonminorities in particular job categories.
 104. One study found that using the 4/5ths rule often resulted in false-positive ratings of adverse impact, and that incorporating tests of statistical significance could improve the accuracy of applying the 4/5ths rule. See Philip Roth, Philip Bobko, and Fred Switzer, "Modeling the Behavior of the 4/5ths Rule for Determining Adverse Impact: Reasons for Caution," *Journal of Applied Psychology* 91, no. 3 (2006), pp. 507–522.
 105. The results must be realistic. In this example, hiring 2 out of 5 women suggests there is no adverse impact. But suppose we had hired only 1 woman. Then the difference between those we would be expected to hire (5) and whom we actually hired (1) would rise to 4. Hiring just one less woman might then trigger adverse impact issues, because twice the standard deviation is also about 4. However, realistically, it probably would not trigger such concerns, because with such small numbers, one person makes such a difference. The point is that tools like the 4/5ths rule and the standard deviation rule are only rules of thumb. They do not themselves determine if the employer's screening process is discriminatory. This fact may work both for and against the employer. As the Uniform Guidelines (www.uniformguidelines.com/qandaprint.html) put it, "Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. . . ."
 106. The ADEA does not just protect against intentional discrimination (disparate treatment). Under a Supreme Court decision (*Smith v. Jackson*, Miss., 2005), it also covers employer practices that seem neutral but that actually bear more heavily on older workers (disparate impact). "Employees Need Not Show Intentional Bias to Bring Claims Under ADEA, High Court Says," *BNA Bulletin to Management* 56, no. 14 (April 5, 2005), p. 105.
 107. The Fair Treatment for Experienced Pilots Act raised commercial pilots' mandatory retirement age from 60 to 65 in 2008. Allen Smith, "Congress Gives Older Pilots a Reprieve," *HR Magazine*, February 2008, p. 24.
 108. www.foxnews.com/story/0,2933,517334,00.html, accessed January 7, 2010.
 109. Howard Anderson and Michael Levin-Epstein, *Primer of Equal Employment Opportunity* (Washington, DC: The Bureau of National Affairs, 1982), pp. 13–14.
 110. *U.S. v. Bethlehem Steel Company*, 3FEP cases 589.
 111. *Robinson v. Lorillard Corporation*, 3FEP cases 653.
 112. *Spurlock v. United Airlines*, 5FEP cases 17.
 113. Anderson and Levin-Epstein, *Primer of Equal Employment Opportunity*, p. 14.
 114. Ledvinka and Gatewood, "EEO Issues with Preemployment Inquiries," pp. 22–26.
 115. Ibid.; www.eeoc.gov/laws/practices/index.cfm, accessed August 2, 2013.
 116. "Eighth Circuit OKs \$3.4 Million EEOC Verdict Relating to Pre-Hire Strength Testing Rules," *BNA Bulletin to Management*, November 28, 2006, p. 377.
 117. Svetlana Shkolnikova, "Weight Discrimination Could Be as Common as Racial Bias," www.usatoday.com/news/health/weightloss/2008-05-20-overweight-bias_N.htm, accessed January 21, 2009.
 118. Jenessa Shapiro et al., "Expectations of Obese Trainees: How Stigmatized Trainee Characteristics Influence Training Effectiveness," *Journal of Applied Psychology* 92, no. 1 (2007), pp. 239–249. See also Lisa Finkelstein et al., "Bias Against Overweight Job Applicants: Further Explanations of When and Why," *Human Resource Management* 46, no. 2 (Summer 2007), pp. 203–222. For an interesting study, see T. A. Judge and D. M. Cable, "When It Comes to Pay, Do the Thin Win? The Effect of Weight on Pay for Men and Women," *Journal of Applied Psychology*, January 2011.
 119. "OFCCP Issues Criminal Records Directive, Cautions Contractors on Blanket Exclusions," *Bloomberg BNA Bulletin to Management*, February 12, 2013, p. 49; and "EEOC to Focus on Hiring, Pay and Harassment," *HR Magazine*, February 2013, p. 11.
 120. See, for example, www.eeoc.gov/policy/docs/guidance-inquiries.html, accessed June 28, 2009.

121. This is based on *BNA Fair Employment Practices*, April 13, 1989, pp. 45–47; and “Crossed: When Religion and Dress Code Policies Intersect,” www.mcguire_woods.com/news-resources/item.asp?item=3108, accessed October 2, 2011.
122. Eric Matusewitch, “Tailor Your Dress Codes,” *Personnel Journal* 68, no. 2 (February 1989), pp. 86–91; Matthew Miklave, “Sorting Out a Claim of Bias,” *Workforce* 80, no. 6 (June 2001), pp. 102–103, and “Laws and Cases Affecting Appearance,” www.boardmanlawfirm.com/perspectives_articles/appearance.php, accessed September 8, 2011.
123. Rita Pyrillis, “Body of Work,” *Workforce Management*, November 7, 2010, pp. 20–26.
124. This isn’t ironclad, however. For example, the U.S. Supreme Court, in *Stotts*, held that a court cannot require retention of black employees hired under a court’s consent decree in preference to higher-seniority white employees who were protected by a bona fide seniority system. It’s unclear whether this decision also extends to personnel decisions not governed by seniority systems. *Firefighters Local 1784 v. Stotts* (BNA, April 14, 1985).
125. In a more recent plan, the EEOC said it would focus on hiring, and particularly enforcing its guidance on indiscriminate use of criminal conduct in background screening; on gender-based pay discrepancies; and on enforcing its requirements against harassment based on race, ethnicity, religion, age, and disability. “EEOC to Focus on Hiring, Pay and Assessment,” p. 11.
126. Prudent employers often purchase employment practices liability insurance to insure against some or all of the expenses involved with defending against discrimination, sexual harassment, and wrongful termination-type claims. Antone Melton-Meaux, “Maximizing Employment Practices Liability Insurance Coverage,” *Compensation & Benefits Review*, May/June 2008, pp. 55–59.
127. Litigants must watch the clock. In an equal pay decision, the U.S. Supreme Court held (in *Ledbetter v. Goodyear Tire & Rubber Company*) that the employee must file a complaint within 180 (or 300) days of the employer’s decision to pay the allegedly unfair wage. The clock starts with that first pay decision, not with the subsequent paychecks that the employee receives. “Justices Rule 5–4 Claim-Filing Period Applies to Pay Decision, Not Subsequent Paycheck,” *BNA Bulletin to Management* 58, no. 23 (June 5, 2007), pp. 177–184; and www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm, accessed May 1, 2012. A U.S. Supreme Court case will make it more difficult for plaintiffs to file class-action claims for discrimination. See “Supreme Court Hands Wal-Mart Big Victory: Reverses Approval of Class-Action Claim,” *BNA Bulletin to Management*, June 21, 2011, p. 193.
128. In 2007, the U.S. Supreme Court, in *Ledbetter v. Goodyear Tire & Rubber Company*, held that employees claiming Title VII pay discrimination must file their claims within 180 days of when they first receive the allegedly discriminatory pay. As of 2009, Congress was working to formulate new legislation enabling an employee to file a claim at any time, as long as the person is still receiving an “infected” paycheck.
129. www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm, accessed January 24, 2017.
130. “EPLI Now Established Employer Litigation Strategy,” *Bloomberg BNA Bulletin to Management*, November 29, 2011, p. 382.
131. If the charge was filed initially with a state or local agency within 180 days after the alleged unlawful practice occurred, the charge may then be filed with the EEOC within 30 days after the practice occurred or within 30 days after the person received notice that the state or local agency has ended its proceedings.
132. “Attorneys: Employer Should Handle EEOC Discharges Strategically,” *Bloomberg BNA Bulletin to Management*, October 15, 2013, p. 334.
133. “EEOC Attorneys Stress the Importance of Cooperation During Investigations,” *Bloomberg BNA Bulletin to Management*, March 8, 2011, p. 73.
134. www.eeoc.gov/mediate/facts.html, accessed June 29, 2009.
135. “EEOC’s New Nationwide Mediation Plan Offers Option of Informal Settlements,” *BNA Fair Employment Practices*, February 18, 1999, p. 21; and www.eeoc.gov/employees/mediation.cfm, accessed October 2, 2011.
136. Timothy Bland, “Sealed Without a Kiss,” *HR Magazine*, October 2000, pp. 85–92.
137. Stuart Pompey and Michael Pappas, “Is There a Better Way? Compulsory Arbitration of Employment Discrimination Claims After *Gilmer*,” *Employee Relations Law Journal* 19, no. 3 (Winter 1993–1994), pp. 197–216, and www.eeoc.gov/policy/docs/mandarb.html, accessed September 5, 2011. The EEOC says here, for instance, that “the employer imposing mandatory arbitration is free to manipulate the arbitral mechanism to its benefit.”
138. See Pompey and Pappas, pp. 210–211.
139. David Nye, “When the Fired Fight Back,” *Across-the-Board*, June 1995, pp. 31–34; and www.eeoc.gov/federal/fed-employees/adr.cfm, accessed October 3, 2011.
140. “EEOC Opposes Mandatory Arbitration,” *BNA Fair Employment Practices*, July 24, 1997, p. 85; and www.eeoc.gov/employees/mediation.cfm, accessed October 2, 2011.
141. “Tips for Employers on Dealing with EEOC Investigations,” *BNA Fair Employment Practices*, October 31, 1996, p. 130; “Conducting Effective Investigations of Employee Bias Complaints,” *BNA Fair Employment Practices*, July 13, 1995, p. 81; Commerce Clearing House, *Ideas and Trends*, January 23, 1987, pp. 14–15; <http://eeoc.gov/employers/investigations.html>, accessed October 4, 2009; and www.eeoc.gov/employers/process.cfm, accessed January 25, 2017.
142. Kenneth Sovereign, *Personnel Law*, 4th ed. (Upper Saddle River, NJ: Prentice Hall, 1999), p. 220. Perhaps surprisingly, more senior managers than nonmanagers report suffering retaliation when reporting workplace misconduct. *Bloomberg BNA Bulletin to Management*, September 11, 2012, p. 294. This includes what one report calls “traceable retaliation,” such as demotions, physical harm, and online harassment.
143. www.eeoc.gov/employers/smallbusiness/faq/what_is_retaliation.cfm, accessed January 24, 2017.
144. <https://www.eeoc.gov/eeoc/plan/upload/2016par.pdf>, accessed January 24, 2017.
145. See, for example, Michael Carroll and Everett Mann, “Defining Work-Force Diversity in Public Sector Organizations,” *Public Personnel Management* 24, no. 1 (Spring 1995), pp. 99–111; Richard Koonce, “Redefining Diversity,” *Training and Development Journal*, December 2001, pp. 22–33; and Kathryn Canas and Harris Sondak, *Opportunities and Challenges of Workplace Diversity* (Upper Saddle River, NJ: Pearson, 2008), pp. 3–27. Others list race and ethnicity diversity, gender diversity, age diversity, disability diversity, sexual diversity, and cultural and national origin diversity as examples. Lynn Shore et al., “Diversity in Organizations: Where Are We Now and Where Are We Going?” *Human Resource Management Review* 19 (2009), pp. 117–133.
146. Taylor Cox Jr., *Cultural Diversity in Organizations* (San Francisco, CA: Berrett-Koehler Publishers, Inc., 1993), p. 88; also see Stefanie Johnson et al., “The Strong, Sensitive Type: Effects of Gender Stereotypes and Leadership Prototypes on the Evaluation of Male and Female Leaders,” *Organizational Behavior and Human Decision Processes* 106, no. 1 (May 2008), pp. 39–60.
147. Cheryl Sandberg, “Women Are Leaning In—But They Face Pushback,” *The Wall Street Journal*, September 27, 2016, p. R2.
148. For example, see Zoe Kinias and Jessica Sim, “Facilitating Women’s Success in Business: Interrupting the Process of Stereotype Threat Through Affirmation of Personal Values,” *Journal of Applied Psychology*, 101, no. 11 (2016), pp. 1585–1597.
149. “Outsmarting Our Brains: Overcoming Hidden Biases to Harness Diversity’s True Potential,” Ernst & Young LLP, 2013; and Dana Wilkie, “Bringing Bias into the Light,” *HR Magazine*, December 2014, pp. 32–27.
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3

Human Resource Management Strategy and Performance

LEARNING OBJECTIVES

When you finish studying this chapter, you should be able to:

- 3-1** Give examples of each of the seven steps in the strategic management process.
- 3-2** List with examples the main types of strategies.
- 3-3** Define *strategic human resource management*, and give an example of strategic human resource management in practice.
- 3-4** Give at least five examples of HR metrics.
- 3-5** Give five examples of what employers can do to have high-performance systems.
- 3-6** Explain how you would design a program to improve employee engagement.

When the Ritz-Carlton Company took over managing the Portman Hotel in Shanghai, China, the hotel already had a good reputation among business travelers. However, many luxury hotels were opening there. To stay competitive, the Portman's new managers decided to reposition the hotel with a new strategy, one that emphasized outstanding customer service. But they knew that improving the service would require new employee behaviors, and therefore new selection, training, and pay policies and practices. We will see what they did.



WHERE ARE WE NOW . . .

The next part of this book, Part 2, turns to the nuts and bolts of human resource management, including activities like analyzing jobs and recruiting and selecting employees. Ideally, activities like these should produce the employee behaviors and competencies the firm needs to achieve its strategic goals. Therefore, the main purpose of the present chapter is to explain how managers formulate human resource strategies for their companies. We'll address the **Strategic Management Process**, **Types of Strategies**, **Strategic Human Resource Management**, **HR Metrics and Benchmarking**, **High-Performance Work Systems**, and **Employee Engagement**. We'll turn in the following chapter to how to analyze jobs and recruit employees.

LEARNING OBJECTIVE 3-1

Give examples of each of the seven steps in the strategic management process.

The Strategic Management Process

Employers can't intelligently design their human resource policies and practices without understanding the role these policies and practices are to play in achieving their companies' strategic goals. In this chapter, we look at how managers design strategic and human resource plans, and how they evaluate the results of their plans. We start with an overview of the basic management planning process.

The Management Planning Process

The basic management planning process consists of five steps: setting objectives, making basic planning forecasts, reviewing alternative courses of action, evaluating which options are best, and then choosing and implementing your plan. A *plan* shows the course of action for getting from where you are to the goal. *Planning* is always "goal-directed" (such as, "double sales revenue to \$16 million in fiscal year 2020").

In companies, it is traditional to view the goals from the top of the firm down to front-line employees as a chain or *hierarchy of goals*. Figure 3-1 illustrates this. At the top, the president sets long-term or "strategic" goals (such as "double sales revenue to \$16 million in fiscal year 2020"). His or her vice presidents then set goals for their units that flow from, and make sense in terms of accomplishing, the president's goal (see Figure 3-1). Then their own subordinates set goals, and so on down the chain.¹

Policies and procedures provide day-to-day guidance employees need to do their jobs in a manner that is consistent with the company's plans and goals. Policies set broad guidelines delineating how employees should act. For example, "It is the policy of this company to comply with all laws, regulations, and principles of ethical conduct." *Procedures* spell out what to do if a specific situation arises. For example:

Any employee who believes this policy has been violated must report this belief to the employee's immediate supervisor. If that is not practical, the employee should file a written report with the Director of Human Resources. There is to be no retaliation in any form.²

Employers write their own policies and procedures, or adapt ones from existing sources (or both). For example, most employers have employee manuals listing the

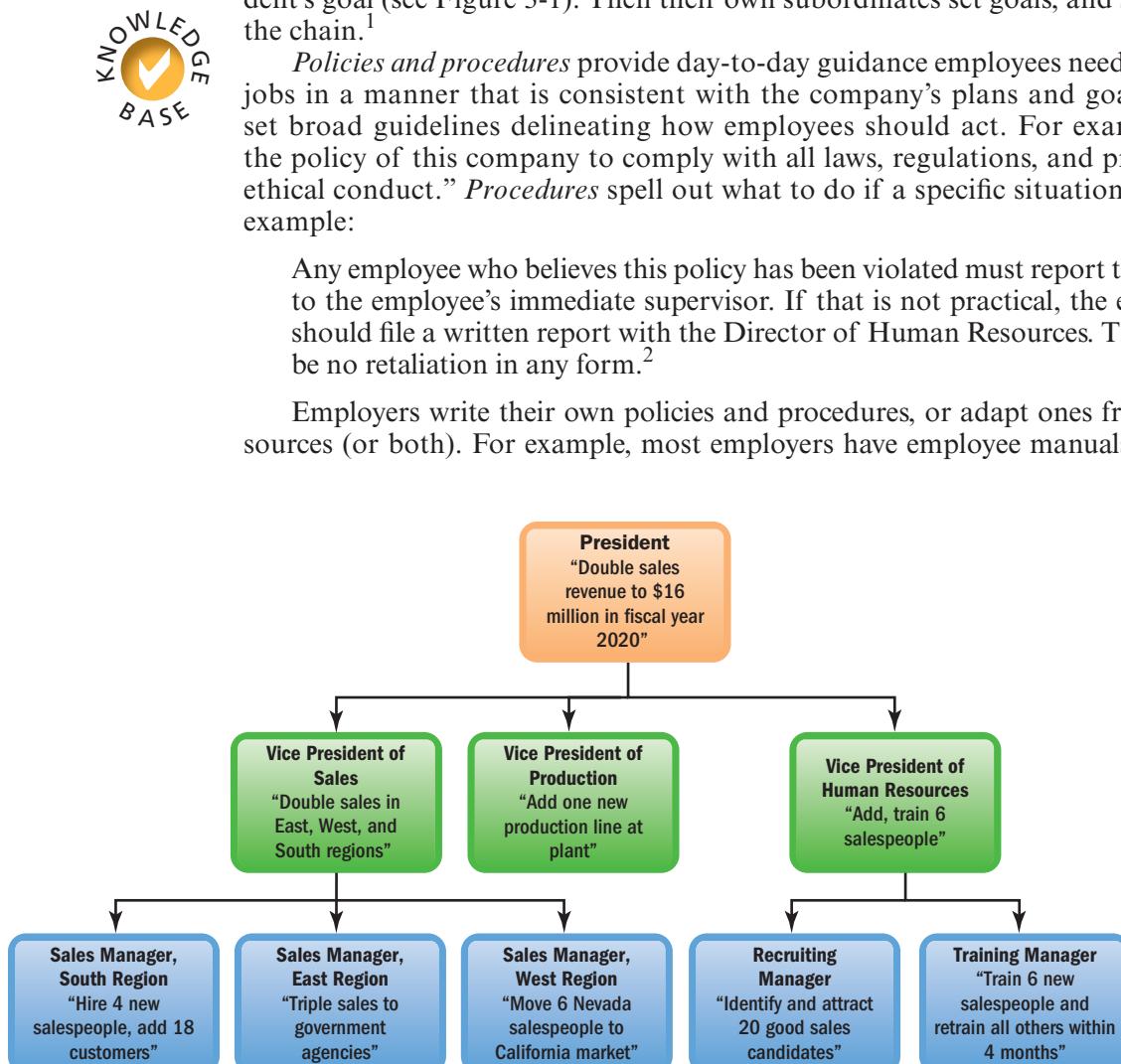


FIGURE 3-1 Sample Hierarchy of Goals Diagram for a Company



strategic plan

The company's plan for how it will match its internal strengths and weaknesses with external opportunities and threats in order to maintain a competitive advantage.

strategy

A course of action the company can pursue to achieve its strategic aims.

strategic management

The process of identifying and executing the organization's strategic plan by matching the company's capabilities with the demands of its environment.



company's human resource policies and procedures. An online search for prepackaged HR policies manuals would produce choices (for instance go to www.bizmanualz.com/, and then click HR Policies and Procedures Manual).³

What Is Strategic Planning?

Setting goals for the company usually starts at the top, by formulating an overall strategic plan for the company. A **strategic plan** is the company's overall plan for how it will match its internal strengths and weaknesses with its external opportunities and threats in order to maintain a competitive position. The strategic planner asks, "Where are we now as a business, and where do we want to be?" He or she then formulates a strategic plan to help guide the company to the desired end point.⁴ When Walmart bought Jet.com to expand online, and WeWork branched out into renting entire facilities to companies like IBM, they were engaged in strategic planning.

A **strategy** is a course of action. Both PepsiCo and Coca-Cola face the same basic problem—people are drinking fewer sugared drinks. However, they each chose different strategies to deal with this. PepsiCo *diversified* by selling more food items like chips. Coca-Cola *concentrated* on sweet beverages, and on boosting advertising to (hopefully) boost Coke sales.⁵

Finally, **strategic management** is the process of identifying and executing the organization's strategic plan by matching the company's capabilities (strengths and weaknesses) with the demands of its environment (its competitors, customers, and suppliers, for instance).

The Strategic Management Process

Figure 3-2 summarizes the strategic management process. Its seven steps include (1) ask, "What business are we in now?"; (2) evaluate the firm's internal and external strengths, weaknesses, opportunities, and threats; (3) formulate a new business direction; (4) decide on strategic goals; and (5) choose specific strategies or courses of action. Steps (6) and (7) are to implement and then evaluate the strategic plan.

The strategic management process begins (step 1) by asking, "What business are we in?" Here the manager defines the company's current business. Specifically, "What products do we sell, where do we sell them, and how do our products or services differ from our competitors?" For example, the Coca-Cola Company sells mostly sweetened beverages such as Coke and Sprite, while PepsiCo sells drinks but also foods such as Quaker Oats and Frito chips.

The second step is to ask, "*Are we in the right business given our strengths and weaknesses and the challenges that we face?*" To answer this, managers "audit" or study both the firm's environment and the firm's internal strengths and weaknesses. The *environmental scan worksheet* in Figure 3-3 is a guide for compiling information

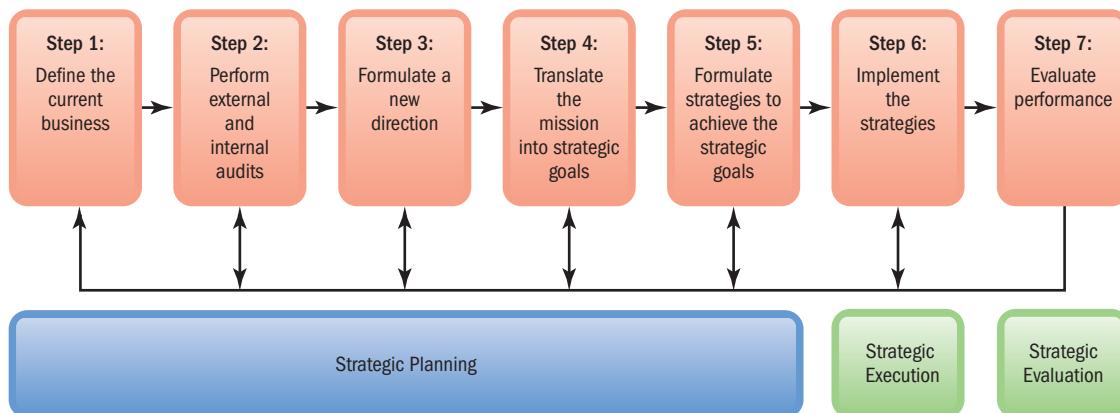


FIGURE 3-2 The Strategic Management Process

**FIGURE 3-3 Worksheet
for Environmental
Scanning**

Economic Trends (such as recession, inflation, employment, monetary policies)	<hr/> <hr/> <hr/>
Competitive and Market Trends (such as market/customer trends, entry/exit of competitors, new products from competitors)	<hr/> <hr/> <hr/>
Political Trends (such as legislation and regulation/deregulation)	<hr/> <hr/> <hr/>
Technological Trends (such as introduction of new production/distribution technologies, rate of product obsolescence, trends in availability of supplies and raw materials)	<hr/> <hr/> <hr/>
Social Trends (such as demographic trends, mobility, education, evolving values)	<hr/> <hr/> <hr/>
Geographic Trends (such as opening/closing of new markets, factors affecting current plant/office facilities location decisions)	<hr/> <hr/> <hr/>

about the company's environment. As you can see, this includes the economic, competitive, and political trends that may affect the company. The *SWOT chart* in Figure 3-4 is widely used. Managers use it to compile and organize the company's strengths, weaknesses, opportunities, and threats. This audit may also include analyzing the so-called PEST factors. These include Political factors such as government regulations and employment laws; Economic factors including unemployment and economic growth; Social factors such as changing demographics and health consciousness trends; and Technological factors such as social media, digitalization, and self-driving vehicles. In any case, the manager's aim is to create a strategic plan that makes sense in terms of the company's strengths, weaknesses, opportunities, and threats.

Next, based on this analysis (in other words, on the environmental scan, SWOT, and PEST analyses), the task in step 3 is to decide *what should our new business be*, in terms of what we sell, where we will sell it, and how our products or services differ from

FIGURE 3-4 SWOT Matrix, with Generic Examples

Potential Strengths	Potential Opportunities
<ul style="list-style-type: none"> Market leadership Strong research and development High-quality products Cost advantages Patents 	<ul style="list-style-type: none"> New overseas markets Failing trade barriers Competitors failing Diversification Economy rebounding
Potential Weaknesses	Potential Threats
<ul style="list-style-type: none"> Large inventories Excess capacity for market Management turnover Weak market image Lack of management depth 	<ul style="list-style-type: none"> Market saturation Threat of takeover Low-cost foreign competition Slower market growth Growing government regulation

vision statement

A general statement of the firm's intended direction; it shows, in broad terms, "what we want to become."

mission statement

Summarizes the answer to the question, "What business are we in?"

competitors' products and services? Some managers express the essence of their new business with a *vision statement*. A **vision statement** is a general statement of the firm's intended direction; it shows, in broad terms, "what we want to become."⁶ For example, PepsiCo's vision is to pursue performance within a framework of socially responsible purposes. Because of this, PepsiCo CEO Indra Nooyi and her executives choose which businesses to be in based on that vision's focus on human sustainability, environmental sustainability, and talent sustainability.⁷ For example, that vision prompted PepsiCo to add the healthy Quaker Oats and Gatorade to its lineup of products.

Whereas the vision statement describes in broad terms what the business should be, the company's **mission statement** summarizes what the company's main tasks are today. Several years ago, Ford adopted what was for several years a powerful Ford mission statement—making "Quality Job One."

In any case, the next step (step 4) is to translate the desired new direction into *strategic goals*. At Ford, for example, what exactly did making "Quality Job One" mean for each department in terms of how they would boost quality? The answer was laid out in goals such as "no more than 1 initial defect per 10,000 cars."

Next, (step 5) the manager *chooses strategies*—courses of action—that will enable the company to achieve its strategic goals. For example, how should Ford pursue its goal of no more than 1 initial defect per 10,000 cars? Perhaps open two new high-tech plants, and put in place new, rigorous employee selection, training, and performance-appraisal procedures.

Step 6, *strategy execution*, means translating the strategies into action. This means actually hiring (or firing) people, building (or closing) plants, and adding (or eliminating) products and product lines.

Finally, in step 7, the manager *evaluates* the results of his or her planning and execution. Things don't always turn out as planned. All managers should periodically assess the progress of their strategic decisions.

LEARNING OBJECTIVE 3-2

List with examples the main types of strategies.

Types of Strategies

In practice, managers engage in three types or levels of strategic planning, *corporate-level* strategic planning, *business unit* (or *competitive*) strategic planning, and *functional* (or *departmental*) strategic planning (see Figure 3-5).

corporate-level strategy

Type of strategy that identifies the portfolio of businesses that, in total, comprise the company and the ways in which these businesses relate to each other.

Corporate Strategy

For any business, the corporate strategy answers the question, "What businesses will we be in?" Specifically, the **corporate-level strategy** identifies the portfolio of businesses that, in total, comprise the company and how these businesses relate to each other. For example, with a *concentration* (single-business) corporate strategy,

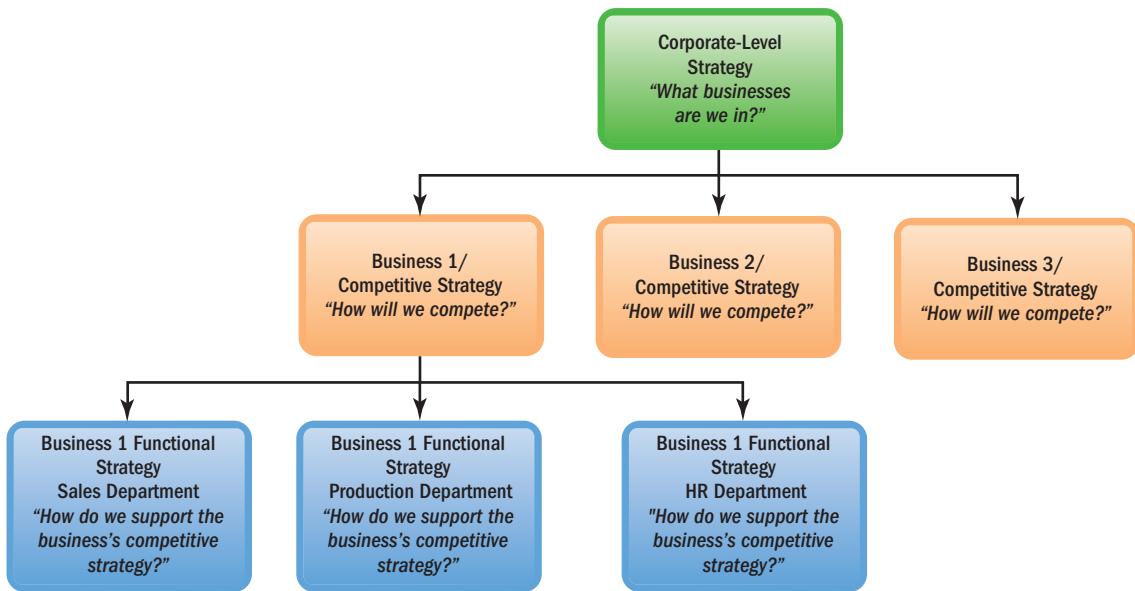


FIGURE 3-5 Type of Strategy at Each Company Level

the company offers one product or product line, usually in one market. WD-40 Company is one example. With one spray lubricant, its product scope is narrow. A *diversification* corporate strategy means the firm will expand by adding new product lines. Here product scope is wider. PepsiCo is diversified. Thus, PepsiCo added Frito-Lay chips and Quaker Oats to its drinks businesses, and both Google (with its Waymo division) and Apple are moving into the self-driving car business.⁸

A *vertical integration* strategy means the firm expands by, perhaps, producing its own raw materials, or selling its products directly. Thus, Apple opened its own Apple stores. With a *consolidation* strategy, the company reduces its size. With *geographic expansion*, the company grows by entering new territorial markets, for instance, by taking the business abroad.

Competitive Strategy

Once the manager decides what businesses to be in, each business needs a basis on which to compete. For example, within PepsiCo, each of its businesses (such as Pepsi and Frito-Lay) should have a *business-level/competitive strategy* (again, see Figure 3-5). The **competitive strategy** identifies how to build and strengthen the business's competitive position in the marketplace.⁹ It answers the question, for instance, How should Pizza Hut compete with Papa John's? or How should Walmart compete with Target?

Managers build their competitive strategies around their businesses' competitive advantages. **Competitive advantage** means any factors that allow a company to differentiate its product or service from those of its competitors to increase market share. Coca-Cola has a "secret formula" that shows how to create its famous beverage. However, competitive advantages needn't be tangible. For example, here is how a former vice president of human resources at the Toyota Motor Manufacturing facility in Georgetown, Kentucky, described the importance of human capital as a competitive advantage:

People are behind our success. Machines don't have new ideas, solve problems, or grasp opportunities. Only people who are involved in thinking can make a difference. . . . Every auto plant in the United States has basically the same machinery. But how people are utilized and involved varies widely from one company to another. The workforce gives any company its true competitive edge.¹⁰

competitive strategy

A strategy that identifies how to build and strengthen the business's long-term competitive position in the marketplace.

competitive advantage

Any factors that allow an organization to differentiate its product or service from those of its competitors to increase market share.

Managers typically adopt one or more of three standard competitive strategies—cost leadership, differentiation, or focus—to achieve competitive advantage. *Cost leadership* means becoming the low-cost leader in an industry; Walmart is an example. With *differentiation*, the firm seeks to be unique in its industry along dimensions that are widely valued by buyers.¹¹ Thus, Volvo stresses its cars' safety, and Artisan Pizza stresses fresh ingredients. *Focusers* carve out a market niche. Thus Jopwell.com is “The leading career advancement platform for Black, Latinx, and Native American students and professionals.”¹²

Functional Strategy

functional strategy

A strategy that identifies the broad activities that each department will pursue in order to help the business accomplish its competitive goals.

Each department should operate within the framework of its business's competitive strategy. **Functional strategies** identify what each department must do to help the business accomplish its strategic goals. Thus, for, say, P&G to make its Olay skincare products a top-tier brand, its product development, production, marketing, sales, and human resource departments must engage in activities that are consistent with this unit's high-quality mission.¹³ Inferior products, cheap packaging, or sloppy salespeople would not do.

Managers' Roles in Strategic Planning

Devising the company's overall strategic plan is top management's responsibility. However, few top executives formulate strategic plans without lower-level managers' input. No one knows more about the firm's competitive pressures, product and industry trends, and employee capabilities than do the company's department managers.

For example, the human resource manager is in a good position to supply “competitive intelligence”—information on competitors. Details regarding competitors' incentive plans, employee opinion surveys about customer complaints, and information about pending legislation such as labor laws are examples. Human resource managers should also be the masters of information about their own firms' employees' strengths and weaknesses.

In practice, devising the firm's overall strategic plan involves frequent discussions among and between top and lower-level managers. The top managers then use this information to hammer out their strategic plan.



LEARNING OBJECTIVE 3-3

Define strategic human resource management, and give an example of strategic human resource management in practice.

Strategic Human Resource Management

The company's top managers choose overall corporate strategies, and then choose competitive strategies for each of the company's businesses. Then departmental managers within each of these businesses formulate functional strategies for their departments. Their aim should be to have functional strategies that will support the competitive strategy and the company-wide strategic aims. The marketing department would have marketing strategies. The production department would have production strategies. The human resource management (“HR”) department would have *human resource management strategies*.



HR in Action at the Hotel Paris Starting as a single hotel in a Paris suburb in 1995, the Hotel Paris is now a chain of nine hotels, with two in France, one each in London and Rome, and others in New York, Miami, Washington, Chicago, and Los Angeles. To see how managers use strategic human resource management to improve performance, see the Hotel Paris Case on pages 92–93 and answer the questions.

What Is Strategic Human Resource Management?

Every company's human resource management policies and activities should make sense in terms of the firm's strategic aims. For example, a high-end hotel like the Shanghai Portman will have different employee selection, training, and pay policies than will a small roadside motel because the Shanghai's customers expect exceptional service. **Strategic human resource management** means formulating and executing human resource policies and practices that produce the employee competencies and behaviors the company needs to achieve its strategic aims. The following Strategic Context feature illustrates this.

strategic human resource management

Formulating and executing human resource policies and practices that produce the employee competencies and behaviors the company needs to achieve its strategic aims.

■ IMPROVING PERFORMANCE: THE STRATEGIC CONTEXT

The Shanghai Ritz-Carlton Portman Hotel

When the Ritz-Carlton Company took over managing the Portman Hotel in Shanghai, China, the new management reviewed the Portman's strengths and weaknesses and its fast-improving local competitors. They decided that to compete, they had to improve the hotel's level of service. Achieving that in turn meant formulating new human resource management plans for hiring, training, and rewarding hotel employees. It meant putting in place a new human resource strategy for the Portman Hotel, one aimed at improving customer service. Their HR strategy involved taking these steps:

- *Strategically*, they set the goal of making the Shanghai Portman outstanding by offering superior customer service.
- To achieve this, Shanghai Portman employees would have to exhibit new *skills and behaviors*, for instance, in terms of how they treated and responded to guests.
- To produce these employee skills and behaviors, management implemented new human resource management *plans, policies, and procedures*. For example, they introduced the Ritz-Carlton Company's *human resource system* to the Portman: "Our selection [now] focuses on talent and personal values because these are things that can't be taught . . . it's about caring for and respecting others."¹⁴ In 2017 Ritz-Carlton became part of Marriott, but Ritz-Carlton's "Gold Standards" credo remains the same. It says, in part: "We pledge to provide the finest personal service and facilities for our guests who will always enjoy a warm, relaxed, yet refined ambience."¹⁵

Management's efforts paid off. Their new human resource plans and practices helped to produce the employee behaviors required to improve the Portman's level of service, thus attracting new guests. Travel publications were soon calling it the "best employer in Asia," "overall best business hotel in Asia," and "best business hotel in China," recognition that continues to this day.¹⁶ Profits soared, in no small part due to effective strategic human resource management.

MyLab Management Talk About It 1

If your professor has assigned this, go to the Assignments section of www.pearson.com/mylab/management to complete this discussion question. Asian culture is different from that in the United States. For example, team incentives tend to be more attractive to people in Asia than are individual incentives. How do you think these cultural differences would have affected how the hotel's new management selected, trained, appraised, and compensated the Shanghai Portman's employees?

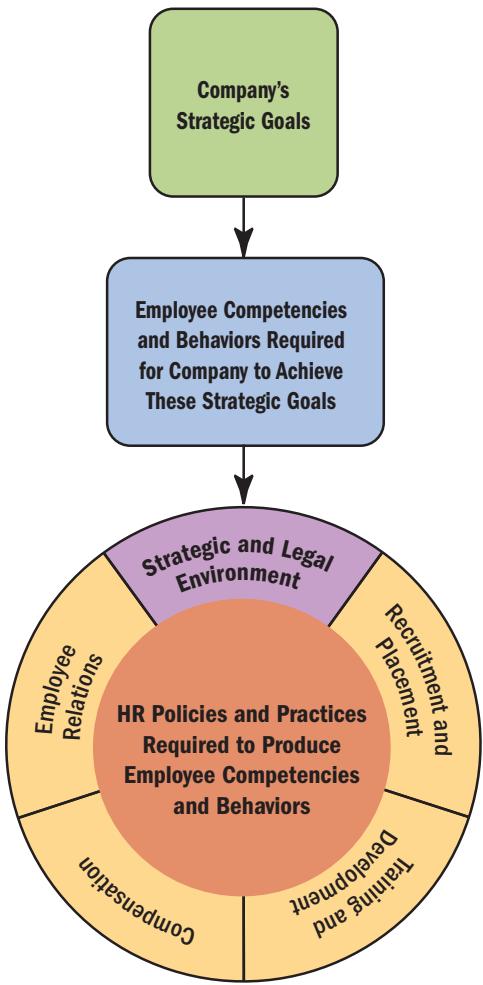
The basic idea of strategic human resource management is this: In formulating human resource management policies and activities, the manager should formulate policies that produce the employee skills and behaviors that the company needs to achieve its strategic goals.¹⁷

The HR strategy is dynamic, not static. In other words, the manager should determine where each HR activity (recruiting, and so on) is now, and where it should be in order to support the employer's strategic aims. The key to success is to think through how the manager is going to transform the various HR activities so that they align with and support the company's strategic priorities.¹⁸ The bottom line is that the manager should not design any HR activities without understanding very clearly the business's strategic needs, and how to align the HR activities with those strategic needs.

Figure 3-6 outlines this idea. First, the manager formulates *strategic plans* and goals. Next, he or she asks, "What *employee skills and behaviors* will we need to achieve these plans and goals?" And finally, he or she asks, "Specifically what recruitment, selection, training, and other *HR policies and practices* should we put in place so as to produce the required employee skills and behaviors?" Managers often refer to their specific HR policies and practices as *human resource strategies*.¹⁹ The accompanying HR as a Profit Center feature presents another strategic human resource management example.

FIGURE 3-6 The HR Strategy Model

Note: This figure opens each chapter of this book and says this: The company's HR policies and practices should produce the employee competencies and behaviors that the company needs to achieve its strategic goals.



IMPROVING PERFORMANCE: HR AS A PROFIT CENTER

The Zappos “WOW” Way

When your strategy involves selling shoes and clothes online to people who can't try them on, you need employees who are energized and enjoy what they're doing—Zappos (part of Amazon) wants employees to deliver “WOW” through service.²⁰ That's why Zappos' founders knew they needed special methods for hiring, developing, and retaining employees, and that's just what they created. As their Web site says, “This ain't your mama's HR! Recruiting, benefits, and employee relations keep this cruise ship afloat with fun, inventive ways of getting employees motivated and educated about the Zappos Family of companies, their benefits, and the other fun stuff going on around here!”²¹

While they may not appeal to everyone, these “fun, inventive techniques” include interviewing job applicants in what looks like the set of a talk show, asking employees to submit their own designs for Steve Madden shoes, and (during Zappos' annual “Bald & Blue Day”) having some employees volunteer to shave their heads or dye their hair blue.²² And, if you're not happy working at Zappos, the company will pay you to leave—it wants no one there who doesn't truly want to be there. Zappos also believes in what it calls “Holacracy,” namely encouraging every employee to be innovative.²³

Again, that may not be for everyone, but it works for Zappos. It knows that selling online profitably requires energized employees who really enjoy what they're doing. Management uses these special HR practices to cultivate the energized and fun environment that Zappos needs to execute its strategy, and judging from Zappos' success they seem to be working. ■

MyLab Management Talk About It 2

If your professor has assigned this, go to the Assignments section of www.pearson.com/mylab/management to complete this discussion question. Why do you think Zappos' top managers believe it is so important for employees to provide a “WOW” factor in their business?

Sustainability and Strategic Human Resource Management

Today's emphasis on *sustainability* has important consequences for human resource management. *Strategic human resource management* means having human resource policies and practices that produce the employee skills and behaviors that are necessary to achieve the company's strategic goals, and these often include sustainability goals.

For example, PepsiCo wants to deliver “Performance with Purpose.” This means achieving financial performance while also achieving human sustainability, environmental sustainability, and talent sustainability.²⁴ PepsiCo's human resource managers can help the company achieve these goals.²⁵ For example, they can work with top management to institute *flexible work arrangements* that help sustain the environment by reducing commuting. They can use *incentive systems* to motivate employees to achieve PepsiCo's sustainability goals.²⁶ The bottom line is that HR policies and practices can support a firm's sustainability strategy and goals.

MyLab Management Apply It!

How would you evaluate the process these managers used to formulate their strategic plan? If your professor has assigned this activity, go to the Assignments section of www.pearson.com/mylab/management to complete the video exercise.

Strategic Human Resource Management Tools

Managers use several tools to translate the company's strategic goals into human resource management policies and practices. These tools include the strategy map, the HR scorecard, and the digital dashboard.

strategy map

A strategic planning tool that shows the “big picture” of how each department’s performance contributes to achieving the company’s overall strategic goals.

HR scorecard

A process for assigning financial and nonfinancial goals or metrics to the human resource management-related chain of activities required for achieving the company’s strategic aims and for monitoring results.

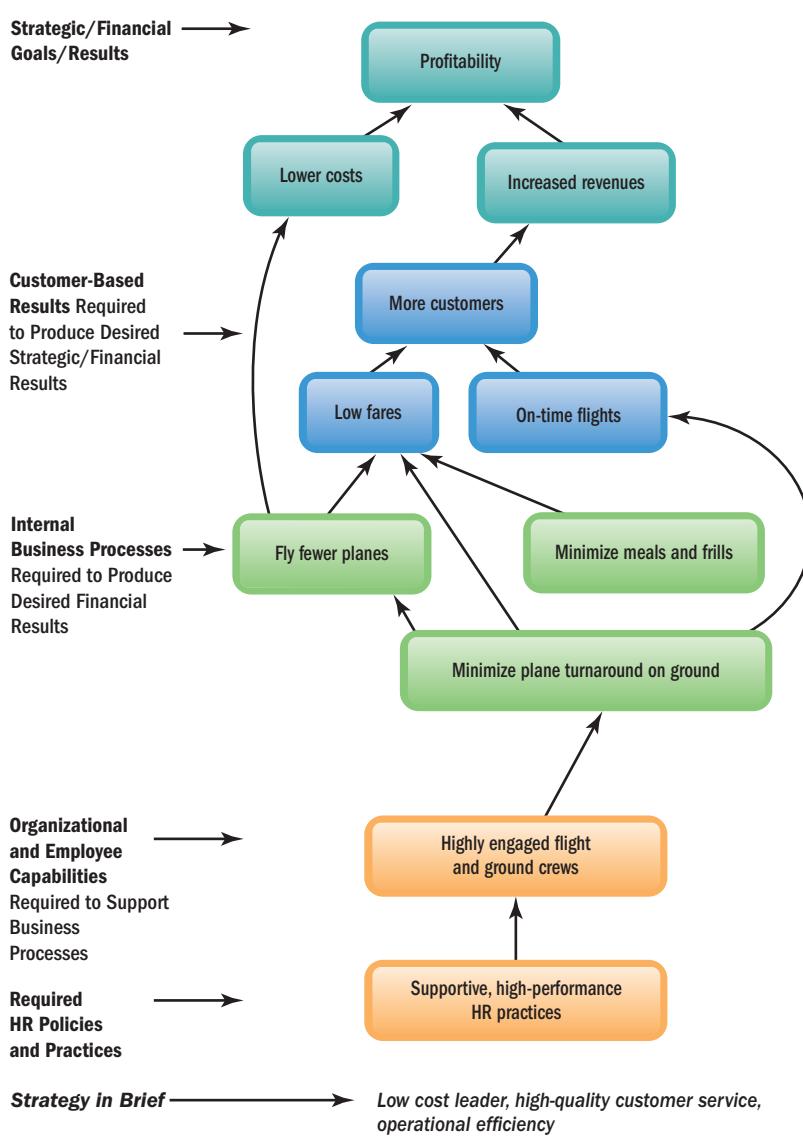
STRATEGY MAP The **strategy map** summarizes how each department’s performance contributes to achieving the company’s overall strategic goals. It helps the manager and each employee visualize and understand the role his or her department plays in achieving the company’s strategic plan. Management gurus sometimes say that the map clarifies employees’ “line of sight.” It does this by visually linking their efforts with the company’s ultimate goals.²⁷

Figure 3-7 presents a strategy-map example for Southwest Airlines. The top-level target is to achieve its profitability, costs, and revenue goals. Then the strategy map shows the chain of activities that help Southwest Airlines achieve these goals. Like Walmart, Southwest has a low-cost-leader strategy. So, for example, to boost revenues and profitability Southwest must fly fewer planes (to keep costs down), maintain low prices, and maintain on-time flights. In turn (further down the strategy map), on-time flights and low prices require fast turnaround. This, in turn, requires motivated ground and flight crews. The resulting strategy map helps each department understand what it needs to do to support Southwest’s low-cost strategy.²⁸ For example, what steps must Southwest’s human resource team take to boost the motivation and dedication of its ground crews?

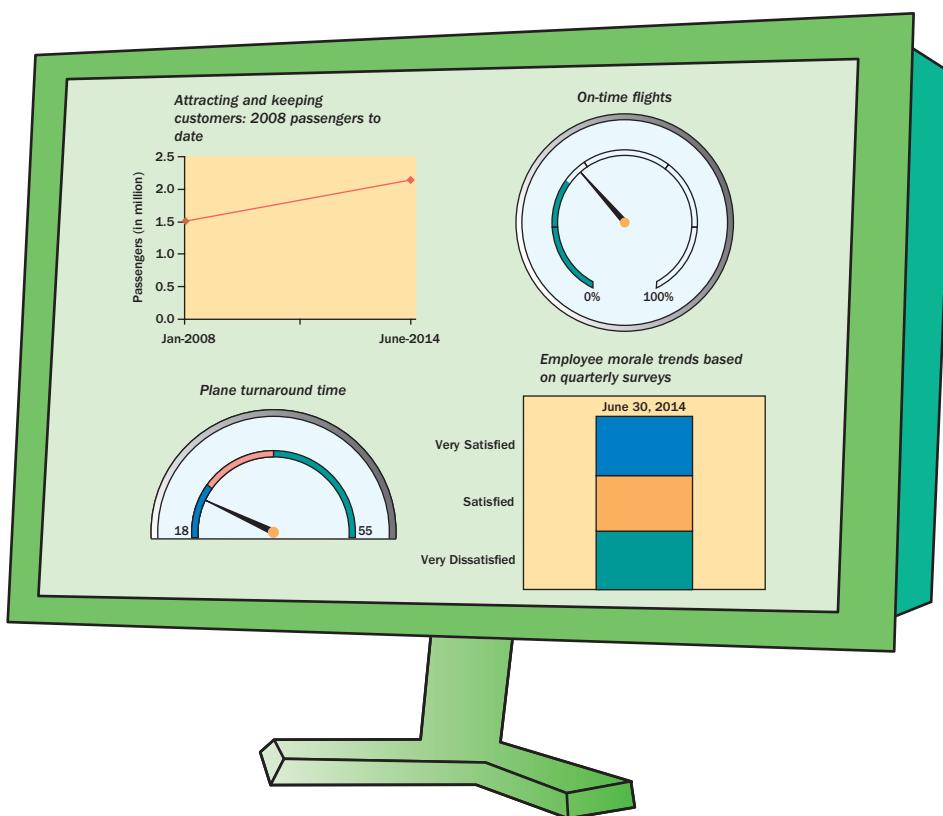
THE HR SCORECARD Many employers quantify and computerize the strategy map’s activities. The **HR scorecard** helps them to do so. The **HR scorecard** is not a scorecard. It refers to a process for assigning financial and nonfinancial goals or metrics

FIGURE 3-7 Strategy Map for Southwest Airlines

Source: Based on TeamCHRYSTALIS.com, accessed July 2006; http://mcknightkaney.com/Strategy_Maps_Primer.html; www.strategymap.com.au/home/StrategyMapOverview.html.



A digital dashboard presents the manager with desktop graphs and charts, showing a computerized picture of how the company is doing on all the metrics from the HR scorecard process.



to the human resource management-related strategy-map chain of activities required for achieving the company's strategic aims.²⁹ (Metrics for Southwest might include airplane turnaround time, percent of on-time flights, and ground crew productivity.) The idea is to take the strategy map and to quantify it.

Managers use special scorecard software to facilitate this. The computerized scorecard process helps the manager quantify the relationships between (1) the HR activities (amount of testing, training, and so forth), (2) the resulting employee behaviors (customer service, for instance), and (3) the resulting firm-wide strategic outcomes and performance (such as customer satisfaction and profitability).³⁰ The HR scorecard derives from the “balanced scorecard” planning approach, which aims to balance hard data such as financial measures with soft data such as customer satisfaction in assessing a company's performance.

digital dashboard

Presents the manager with desktop graphs and charts, and shows a computerized picture of where the company stands on all those metrics from the HR scorecard process.

DIGITAL DASHBOARDS The saying “a picture is worth a thousand words” explains the purpose of the digital dashboard. A **digital dashboard** presents the manager with desktop graphs and charts, showing a computerized picture of how the company is doing on all the metrics from the HR scorecard process. As in the preceding illustration, a top Southwest Airlines manager's dashboard might display real-time trends for various strategy-map activities, such as fast turnarounds and on-time flights. This enables the manager to take corrective action. For example, if ground crews are turning planes around slower today, financial results tomorrow may decline unless the manager takes action.

Figure 3-8 summarizes the three strategic planning tools.

Strategy Map

Graphical tool that summarizes the chain of activities that contribute to a company's success, and so shows employees the “big picture” of how their performance contributes to achieving the company's overall strategic goals.

HR Scorecard

A process for assigning financial and nonfinancial goals or metrics to the human resource management-related chain of activities required for achieving the company's strategic aims and for monitoring results.

Digital Dashboard

Presents the manager with desktop graphs and charts, so he or she gets a picture of where the company has been and where it's going, in terms of each activity in the strategy map.

FIGURE 3-8 Three Important Strategic HR Tools



HR Metrics, Benchmarking, and Data Analytics

We've seen that strategic human resource management means formulating HR policies and practices that produce the employee competencies and behaviors the company needs to achieve its strategic goals. Being able to measure results is essential to this process. For example, it would have been futile for the Ritz-Carlton Portman Shanghai's managers to set "better customer service" as a goal if they couldn't measure customer service.³¹ Relevant measures might include, for instance, hours of training per employee, productivity per employee, and (via customer surveys) customer satisfaction.

Human resource managers use many such measures (or "**human resource metrics**"). For example, there is (on average) one human resource employee per 100 company employees for firms with 100–249 employees. This HR employee-to-employee ratio drops to about 0.79 for firms with 1,000–2,499 employees and to 0.72 for firms with more than 7,500 employees.³² Figure 3-9 illustrates other human resource management metrics. They include employee tenure, cost per hire, and annual overall turnover rate.³³

Benchmarking

Just measuring how one is doing (for instance, in terms of employee productivity) is rarely enough for deciding what (if anything) to change. Instead, most managers want to know

LEARNING OBJECTIVE 3-4

Give at least five examples of HR metrics.

human resource metrics

The quantitative gauge of a human resource management activity, such as employee turnover, hours of training per employee, or qualified applicants per position.

Organizational Data

- Revenue
- Revenue per FTE
- Net Income Before Taxes
- Net Income Before Taxes per FTE
- Positions Included Within the Organization's Succession Plan

HR Department Data

- Total HR Staff
- HR-to-Employee Ratio
- Percentage of HR Staff in Supervisory Roles
- Percentage of HR Staff in Professional/Technical Roles
- Percentage of HR Staff in Administrative Support Roles
- Reporting Structure for the Head of HR
- Types of HR Positions Organizations Expect to Hire in this year

HR Expense Data

- HR Expenses
- HR Expense to Operating Expense Ratio
- HR Expense to FTE Ratio

Compensation Data

- Annual Salary Increase
- Salaries as a Percentage of Operating Expense
- Target Bonus for Non-Executives
- Target Bonus for Executives

Tuition/Education Data

- Maximum Reimbursement Allowed for Tuition/Education Expenses per Year
- Percentage of Employees Participating in Tuition/Education Reimbursement Programs

Employment Data

- Number of Positions Filled
- Time-to-Fill
- Cost-Per-Hire
- Employee Tenure
- Annual Overall Turnover Rate
- Annual Voluntary Turnover Rate
- Annual Involuntary Turnover Rate

Expectations for Revenue and Organizational Hiring

- Percentage of Organizations Expecting Changes in Revenue in Current Year Compared with Previous Year
- Percentage of Organizations Expecting Changes in Hiring in Current Year Compared with Previous Year

Metrics for More Profitable Organizations

- Total HR Staff
- HR-to-Employee Ratio
- HR Expenses
- HR Expense to Operating Expense Ratio
- HR Expense to FTE Ratio
- Annual Salary Increase
- Target Bonus for Non-Executives
- Target Bonus for Executives
- Maximum Reimbursement Allowed for Tuition/Education Expenses-Per-Year
- Percentage of Employees Participating in Tuition/Education Reimbursement Programs
- Time-to-Fill
- Cost-Per-Hire
- Annual Overall Turnover Rate

FIGURE 3-9 Metrics for the SHRM® 2017 Customized Human Capital Benchmarking Report

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“How are we doing?” *in relation to something*. For example, are our accident rates rising or falling? Similarly, the manager may want to *benchmark* the results—compare high-performing companies’ results to your own, to understand what makes them better.³⁴

The Society for Human Resource Management’s (SHRM’s) benchmarking service enables employers to compare their own HR metrics with those of other companies. The employer can request comparable (benchmark) figures not just by industry, but by employer size, company revenue, and geographic region. (See <http://shrm.org/research/benchmarks/>.)

Figure 3-10 illustrates one of the SHRM’s many sets of comparable benchmark measures. It shows how much employers are spending for tuition reimbursement programs.

Strategy-Based Metrics

Benchmarking provides one perspective on how your company’s human resource management system is performing.³⁵ It shows how your human resource management system’s performance compares to the competition. However, it may *not* reveal the extent to which your firm’s HR practices are supporting its strategic goals. Thus, if the strategy calls for doubling profits by improving customer service, to what extent are our training practices helping to improve customer service?

Managers use *strategy-based metrics* to answer such questions. **Strategy-based metrics** measure the activities that contribute to achieving a company’s strategic aims.³⁶ Thus, for the Portman Shanghai, the strategic HR metrics might include 100% employee testing, 80% guest returns, incentive pay as a percent of total salaries, and sales up 50%. If changes in HR practices such as increased training have their intended effects, then strategic metrics like guest returns should also rise.



strategy-based metrics

Metrics that specifically focus on measuring the activities that contribute to achieving a company’s strategic aims.

HR audit

An HR audit is an analysis of the completeness, efficiency, and effectiveness of the organization’s HR functions, including its HR policies, practices, processes, and relevant metrics.

What Are HR Audits?

Human resource managers often assess matters like employee turnover and safety via *human resource audits*. An **HR audit** is an analysis of the completeness, efficiency, and effectiveness of the organization’s HR functions, including its HR policies, practices, processes, and relevant metrics.³⁷ This generally involves using a checklist to review the company’s human resource functions (recruiting, testing, training, and so on), as well as ensuring that the firm is adhering to regulations, laws, and company policies. The HR auditor may first review payroll data, focusing on what and when each employee was paid. He or she will then turn to whether the human resource records are in order (for instance, are medical records kept separate from résumés?). He or she will also review the employer’s handbooks and policies, for instance, checking for disability accommodation policies, social media policies, and family and medical leave policies.³⁸

FIGURE 3-10 SHRM Customized Human Capital Benchmarking Report

Source: “HR Expense Data,” from *SHRM Customized Human Capital Benchmarking Report*. Reprinted with permission from the Society for Human Resource Management. All rights reserved. www.shrm.org/Research/benchmarks/Documents/sample_humnba_capital_report.pdf.

Tuition/Education Data					
	n	25th Percentile	Median	75th Percentile	Average
Maximum reimbursement allowed for tuition/education expenses per year	32	\$1,000	\$5,000	\$7,500	\$6,000
Percentage of employees participating in tuition/education reimbursement programs	32	1.0%	3.0%	5.0%	4.0%

Beyond that, HR audits vary in scope. Typical areas audited include:³⁹

1. Roles and headcount (including job descriptions, and employees categorized by exempt/nonexempt and full- or part-time)
2. Compliance with federal, state, and local employment-related legislation
3. Recruitment and selection (including use of selection tools, background checks, and so on)
4. Compensation (policies, incentives, survey procedures, and so on)
5. Employee relations (union agreements, performance management, disciplinary procedures, employee recognition)
6. Mandated benefits (Social Security, unemployment insurance, workers' compensation, and so on)
7. Group benefits (insurance, time off, flexible benefits, and so on)
8. Payroll (such as legal compliance)
9. Documentation and record keeping. For example, do our files include résumés and applications, offer letters, job descriptions, performance evaluations, benefit enrollment forms, payroll change notices, and documentation related to personnel actions such as employee handbook acknowledgments?⁴⁰
10. Training and development (new employee orientation, development, technical and safety, career planning, and so on)
11. Employee communications (employee handbook, newsletter, recognition programs)
12. Termination and transition policies and practices



TRENDS SHAPING HR: DIGITAL AND SOCIAL MEDIA

Data like monthly payroll costs are interesting but relatively useless until converted to information. *Information* is data presented in a form that makes it useful for making decisions. For example, knowing your cost per hire is interesting. However, presenting cost-per-hire data that shows whether the cost is trending up or down provides information you can use to make decisions.⁴¹

Data analytics means using statistical and mathematical analysis to find relationships and make predictions. For example, when online bookstores use algorithms to predict which books you're most likely to buy based on things like what books you've already bought and similarities between you and other groups, they are using data analytics.⁴² Data analytics relies on data mining. *Data mining* sifts through huge amounts of employee data to identify correlations that employers then use to improve their employee-selection and other practices. *Data mining* is “the set of activities used to find new, hidden, or unexpected patterns in data.”⁴³

Big data is basically data analytics on steroids. The basic idea (of scientifically analyzing data to find relationships and make predictions) is the same. However, with “big data” the volume, velocity, and variety of data that are analyzed are much greater. In terms of *volume*, for example, Walmart now collects about 2.5 petabytes of data—2.5 million gigabytes—*every hour* from its customer transactions.⁴⁴ Similarly, in terms of *velocity*, all these data are being created more or less instantaneously (as at Walmart); that means companies can use them to more quickly adapt in real time (for instance, to who's buying what products, and so how to adjust online promotions). Finally, big data capitalizes on the huge *variety* of data now available. For instance, data come not just from Walmart's transactions but from customers' mobile phones, GPS, and social networks too.

Talent Analytics

Data analytics tools like these enable employers to analyze together employee data (like employee demographics, training, and performance ratings) from traditional sources such as employee records, as well as data from new sources (like company internal social media sites, GPS tracking, and e-mail activity).⁴⁵ Employers then use *talent analytics* (data analytics applied to HR issues) to answer questions that

in the past they couldn't answer, or couldn't answer as well. For example, human resource consultant Aon Hewitt has an “analytics engine” that analyzes its client’s employee and performance data. Computer dashboards then enable its clients to answer questions such as “Are there potential turnover trends we should further analyze to head off potential problems?”⁴⁶ “What factors drive our high-performing salespeople?” And, “what sorts of people are most likely to have accidents and submit claims?”

Talent analytics can produce striking profitability results. For example, Best Buy used talent analytics to discover that a 0.1% increase in employee engagement led to a more than \$100,000 rise in a Best Buy store’s annual operating income.⁴⁷ Employers use talent analytics to answer several types of talent management questions:

- **Human Capital Facts** For example, “What are the key indicators of my organization’s overall health?” JetBlue found that employee engagement correlated with financial performance.
- **Analytical HR** For example, “Which units, departments, or individuals need attention?” Lockheed Martin collects performance data in order to identify units needing improvement.
- **Human Capital Investment Analysis** For example, “Which actions have the greatest impact on my business?” By monitoring employee satisfaction levels, Cisco improved its employee retention rate from 65% to 85%, saving the company nearly \$50 million in recruitment, selection, and training costs. A Google talent analytics team analyzed data on employee backgrounds, capabilities, and performance.⁴⁸ It identified factors (such as an employee feeling underutilized) likely to lead to the employee leaving—and thus helped it reduce turnover. Microsoft identified correlations among the schools and companies its employees arrived from and the employees’ subsequent performance. This helped it improve its recruitment and selection practices.⁴⁹ ■

MyLab Management Talk About It 3

If your professor has assigned this, go to the Assignments section of [www.pearson.com/mylab/management](http://www.pearson.com/mylab/) to complete this discussion question. Could Best Buy or some of these other companies have made the same discoveries without using talent analytics tools? How?

Digital tools like talent analytics enable HR managers to be more scientific and analytical. And, they often shift “who does HR” *from* the human resource department *to* other departments (such as finance), and sometimes to line managers like the heads of departments (for instance, Aon Hewitt’s digital dashboard shows line managers when there’s a turnover problem).

Digital tools like these show great promise. In one study, 82% of high-performing organizations gave human resource management leaders such analytical workforce data, compared with 33% of low-performing ones.⁵⁰



TRENDS SHAPING HR: SCIENCE IN TALENT MANAGEMENT

Data analytics facilitates making decisions based on a measurable and objective review of the situation. Managers have a name for this. *Evidence-based human resource management* means using data, facts, analytics, scientific rigor, critical evaluation, and critically evaluated research/case studies to support human resource management proposals, decisions, practices, and conclusions.⁵¹

You may sense that being evidence-based is similar to being scientific, and if so, you are correct. A *Harvard Business Review* article even argues that managers must become more scientific and “think like scientists” when making business decisions.⁵²

But how can managers think like scientists? Objectivity, experimentation, and prediction are the heart of science. In gathering evidence, scientists (or managers) first need to be *objective*, or there's no way to trust their conclusions. Recently, a medical school disciplined several professors. They had failed to reveal that they were on the payroll of the drug company that supplied the drugs, the results of which the doctors were studying. Who could trust their objectivity or conclusions?

Being scientific also requires *experimentation*. An experiment is a test one sets up in such a way as to ensure that he or she understands the reasons for the results obtained. For example, in their *Harvard Business Review* article, “A Step-by-Step Guide to Smart Business Experiments,” the authors argue that if you want to judge a new incentive plan’s impact on corporate profits, don’t start by implementing the plan with all employees. Instead, implement it with an “experimental” group (which gets the incentive plan) *and* with a “control” group (a group that does *not* get the incentive plan). Doing so will help you gauge if any performance improvement stemmed from the incentive or from some other cause (such as a new company-wide training program).⁵³ And, it will enable you to *predict* how changing the incentive plan will affect performance.

For managers, the point of being “scientific” is to make better decisions by forcing you to gather the facts. “Is this sales incentive plan really boosting sales?” “We’ve spent \$40,000 in the past 5 years on our tuition-refund plan; what (if anything) did we get out of it?” What’s the evidence?

Successful HR managers need to be scientific today. As an example, the chemical company BASF Corp. used talent analytics to analyze data on the relationship among stress, health, and productivity in its 15,000 U.S. headquarters staff. Based on that analysis, the company instituted health programs that it calculated would more than pay for themselves in increased productivity by reducing stress.⁵⁴

Throughout this book we will show examples of how managers use evidence to make better human resource management decisions. For example: Which recruitment source produces our best candidates? Does it pay to use this testing program? And, does our safety program really lead to fewer accidents? ■

MyLab Management Talk About It 4

If your professor has assigned this, go to the Assignments section of [www.pearson.com/mylab/management](http://www.pearson.com/mylab/) to complete this discussion question. If it is apparently so easy to do what BASF did to size up the potential benefits of health programs, why do more employers not do so?

LEARNING OBJECTIVE 3-5

Give five examples of what employers can do to have high-performance systems.

high-performance work system (HPWS)

A set of human resource management policies and practices that promote organizational effectiveness.

High-Performance Work Systems

One reason to measure, benchmark, and scientifically analyze HR practices is to promote high-performance work practices. A **high-performance work system (HPWS)** is a set of human resource management policies and practices that together produce superior employee performance.

What exactly are these high-performance work practices? In one study, researchers collected data from 359 firms before, during, and after the 2007–2009 recession. They found that firms that used more effective staffing and training outperformed competitors before, during, and after the recession.⁵⁵

Another study looked at 17 manufacturing plants, some of which adopted high-performance work system practices. The high-performance plants paid more (median wages of \$16 per hour compared with \$13 per hour for all plants), trained more, used more sophisticated recruitment and hiring practices (tests and validated interviews, for instance), and used more self-managing work teams.⁵⁶ Those with the high-performance HR practices performed significantly better than did those without such practices. Service companies (such as hotels) particularly gain from such high-performance work systems and practices.⁵⁷

Studies like these show that high-performance work systems' policies and practices do differ from less productive ones (Table 3-1). For example, high-performing companies recruit more job candidates, use more selection tests, and spend many more hours training employees. Table 3-1 illustrates three things.

First, it shows examples of *human resource metrics* such as hours of training per employee, or qualified applicants per position. (In Table 3-1, the metric for "Number of qualified applicants per position" is 37 in the high-performing companies.) Managers use these to assess their companies' performance and to compare one firm with another.⁵⁸

Second, it illustrates *what employers must do* to have high-performance systems. For example, high-performing companies have more than four times the number of qualified applicants per job than do low performers. They also hire based on validated selection tests, and extensively train employees.

Third, Table 3-1 shows that high-performance work practices usually *aspire to encourage employee involvement and self-management*. In other words, an aim of the high-performance recruiting, screening, training, and other human resources practices is to nurture an engaged, involved, informed, empowered, and self-motivated workforce.⁵⁹

TABLE 3-1 Examples Selected from Several Studies of How Recruitment, Selection, Training, Appraisal, Pay, and Other Practices Differ in High-Performance and Low-Performance Companies

	Lower-Performance Companies' HR Practice Averages (e.g., company performance in terms of sales/employee, innovation, and employee retention)*	Higher-Performance Companies' HR Practice Averages (e.g., company performance in terms of sales/employee, innovation, and employee retention)*
Recruitment: Average number of qualified applicants per position	8	37
Selection: Average percentage of employees hired based on a validated <i>selection test</i>	4%	30%
Training: Average number of hours of <i>training</i> for new employees	35 hours	117 hours
Appraisal: Average percentage of employees receiving a regular <i>performance appraisal</i>	41%	95%
Pay Practices: Average percentage of the workforce eligible for <i>incentive pay</i>	28%	84%
Use of Teams: Average percentage of the workforce routinely working in all teams: semiautonomous, cross-functional, or project teams	11%	42%
Self-Directed Teams: Percent of companies with <i>semiautonomous or autonomous</i> work teams	9%	70%
Operational Information Sharing: Employees receive relevant operating performance information	62%	82%
Financial Information Sharing: Employees receive relevant financial performance information	43%	66%

*Findings rounded.

Based on "Comparison of HR Practices in High-Performance and Low-Performance Companies," by B. E. Becker, et al., from *The HR Scorecard: Linking People, Strategy and Performance* (Boston: Harvard Business School Press, 2001); Barry Macy, Gerard Farias, Jean-Francois Rosa, and Curt Moore, "Built to Change: High-Performance Work Systems and Self-Directed Work Teams—A Longitudinal Field Study," *Research in Organizational Change and Development*, 16, pp. 339–418, 2007; James Gathrie, Wenchuan Liu, Patrick Flood, and Sarah MacCurtain, "High Performance Work Systems, Workforce Productivity, and Innovation: A Comparison of MNCs and Indigenous Firms," The Learning, Innovation and Knowledge (LINK) Research Centre Working Paper Series, WP 04-08, 2008. Michael C. Campion, and Malika Masimova, "A High Performance Work Practices Taxonomy: Integrating the Literature and Directing Future Research," *Journal of Management*, 39, no. 5, July 2013, pp. 1184–1220.

LEARNING OBJECTIVE 3-6

Explain how you would design a program to improve employee engagement.

Employee Engagement Guide for Managers: Employee Engagement and Performance

Employee engagement refers to being psychologically involved in, connected to, and committed to getting one's jobs done. Engaged employees "experience a high level of connectivity with their work tasks," and work hard to accomplish their task-related goals.⁶⁰

Employee engagement is important because it drives performance and productivity. For example, based on a Gallup survey, business units with the highest levels of employee engagement have an 83% chance of performing above the company median; those with the lowest employee engagement have only a 17% chance.⁶¹ According to one review of the evidence, employee engagement is correlated with employees' customer service productivity, and improvements in employee engagement were associated with significant increases in sales, product quality, productivity, safety incidents at work, retention and absenteeism, and revenue growth.⁶² One consulting firm estimates that a 5% increase in employee engagement correlates to a 0.7% increase in operating margins.⁶³ Companies with highly engaged employees are also less likely to be unionized.⁶⁴ In one survey, highly engaged employees lost only about 7.5 days of productivity per year, compared to about 14 days for disengaged employees.⁶⁵ A survey by consultants Watson Wyatt Worldwide concluded that companies with highly engaged employees have 26% higher revenue per employee.⁶⁶

The Employee Engagement Problem

The problem is that, depending on the study, only about 21–30% of employees nationally are engaged.⁶⁷ Gallup distinguishes among engaged employees "who work with passion and feel a profound connection to their company," not-engaged employees who are essentially "checked out," and actively disengaged employees. The latter "act out their unhappiness" by undermining what their engaged coworkers are accomplishing.⁶⁸ Gallup found that about 30% of employees were engaged, 50% were not engaged, and 20% were actively disengaged.

What Can Managers Do to Improve Employee Engagement?

Managers improve employee engagement by taking concrete steps to do so. We'll look more closely at how they do this in a moment, but one important activity is *providing supportive supervision*. For example, a Gallup survey found that managers who focus their support and coaching on their employees' strengths can "practically eliminate active disengagement"; conversely, "bosses from hell" kill employee engagement.⁶⁹ Other steps managers can take to foster engagement include making sure employees (1) *understand* how their departments contribute to the company's success, (2) *see how their efforts contribute* to achieving the company's goals, (3) get a *sense of accomplishment* from working at the firm,⁷⁰ and (4) are highly *involved*—as when working in self-managing teams.⁷¹ Employers should also *hold managers responsible* for employee engagement. For example, WD-40 Company has its managers meet periodically with their employees to discuss how to improve employee engagement.⁷²

How to Measure Employee Engagement

Firms like Gallup (www.gallup.com), and Towers Watson (go to www.towerswatson.com/en-US, then click Solutions, and then Surveys) offer comprehensive employee engagement survey services. However, monitoring employee engagement needn't be complicated. With about 180,000 employees worldwide, the consulting firm Accenture uses a three-part "shorthand" method it calls "say, stay, and strive." First, Accenture assesses how positively the employee speaks about the company and recommends it to others. Second, it looks at who stays with the company, and

why. Third, it looks at “strive.” For instance, “do employees take an active role in the overall success of the organization by moving beyond just doing tasks to going above and beyond?”⁷³

The Employee Engagement Guide for Managers sections in this and the following chapters will show how managers use human resource activities to improve employee engagement.

How Kia Motors (UK) Improved Performance with an HR Strategy Aimed at Boosting Employee Engagement

Kia Motors is a successful automobile manufacturer employing tens of thousands of employees around the world, and one famous for its 10-year warranty and for the quality and value of its products. However, Kia was not always so successful. In July 1997, Kia was under bankruptcy protection and having difficulty servicing its \$10.6 billion of debt.⁷⁴ In 1998, Hyundai Motorcar Company of Korea purchased 51% of Kia. That triggered a multiyear program aimed at improving Kia’s operating performance. Today, Hyundai owns about one-third of Kia Motors, although Kia is still a close-knit part of Hyundai Motor Group.

THE CHALLENGES After several years of improving operating conditions under Hyundai Motor Group, Kia (as well as most auto manufacturers around the world) ran into strong headwinds as credit tightened and consumers cut spending around 2006. Looking at the situation in 2006–2007, Kia’s chairman, writing in the company’s annual report said,

In today’s automobile industry, competition is so severe that even the bold at heart, if well-informed, would be hesitant to confidently predict future victors in the car market. Japanese automobile companies are unrelenting in their measures against us, while latecomers, such as China, are speeding up to catch up with us as far as they can. Stagnation and the world economic growth, coupled with exchange-rate risks and other major threats, present unfavorable economic conditions for any global player.⁷⁵

In the face of these challenges, the chairman went on to lay out what Kia’s strategy for dealing with this intense global competition would be. As he said:

We intend to base future growth on raising our competencies as a global maker in all areas including production, sales, marketing, branding, as well as before and after servicing. We will also concentrate on our global quality management we have driven so far. We will first strengthen our basic competitiveness in terms of production costs and final products. Second, we will exclude all the unnecessary elements from the management through advanced systems to groundwork the base of stable profit making. Third, we will efficiently invest in new future businesses with our specialized R&D and global production bases.⁷⁶

Also in 2006–2007, Kia Motor’s UK subsidiary (Kia UK), which employed about 2,500 people, faced particularly dire circumstances; these included rapidly falling sales, increased financial losses, and low levels of employee engagement. Employee turnover was 31%. The direct cost to the company from the 31% turnover alone was estimated at about 600,000 British pounds (about \$1 million) in 2006 (due to higher than necessary recruitment, legal, and employee dismissal costs).⁷⁷

THE NEW HUMAN RESOURCE MANAGEMENT STRATEGY Gary Tomlinson, Kia UK’s newly appointed head of HR, believed that Kia UK’s low employee engagement was probably both a cause and an effect of the unit’s poor performance. In fact, a survey of Kia UK employees had identified numerous personnel issues including possibly poor morale and communications. He knew Kia UK needed a new HR strategy to address this. He also knew that this strategy should support the parent company’s strategy of basing “future growth on raising our competencies as a global maker in

all areas including production, sales, marketing, branding, as well as before and after servicing.”

Tomlinson (with the support of Kia UK’s top management) wisely decided to develop, as he put it, “an employee engagement strategy to improve employee morale and address the high levels of employee turnover.”⁷⁸ In brief, the idea was that, by (1) putting in place new HR policies and practices aimed at improving employee engagement, he could (2) change Kia UK employees’ behavior (improve performance and reduce turnover, for instance), and thereby (3) support the parent company’s stated strategy of “raising our competencies as a global maker in all areas.” The following shows what he actually did to boost employee engagement.

HOW TO EXECUTE AN EMPLOYEE ENGAGEMENT STRATEGY Actually executing Kia UK’s employee engagement HR strategy involved six steps (and these provide a roadmap for any such endeavor). First, Kia UK set *measurable objectives* for the program. These objectives included improving by at least 10% survey feedback scores for line managers’ behaviors in terms of communication, the quality of appraisal feedback they gave their direct reports, the recognition of work done, and the respect between manager and employee.⁷⁹ Other objectives included reducing employee turnover employment costs (e.g., recruitment costs) by at least 10% per year.

Second, Kia UK held an extensive *leadership development* program. For example, it sent all managers for training to improve their management skills. Kia then tested the new skills with “360-degree” assessment tools (having managers’ bosses, peers, and subordinates rate the managers’ new leadership skills).

Third, Kia UK instituted new *employee recognition programs*. These included, for instance, giving “Outstanding Awards” to selected employees quarterly, and “Kia thank you” cards for jobs well done.⁸⁰

Fourth, Kia UK *improved internal communications*. For example, it instituted quarterly employee briefings and more extensive use of performance appraisals, and launched a new corporate intranet called Kia Vision (this provided key business information and other useful communiqués to all employees). Based on employee feedback, Kia UK also decided, as part of the enhanced communications, to institute an *employee forum*. This consisted of one representative from each department; the forum in effect empowered and involved employees by enabling them to express opinions, suggestions, and concerns about their jobs.

Fifth, Kia instituted a new *employee development program*. This involved using the company’s appraisal process to identify employees’ training needs. Kia then created training plans for each employee. It based these plans on Kia’s needs and on the employee’s stated career aspirations.

Sixth, Kia UK made a number of changes to its *compensation and other policies*. For instance, it eliminated bonuses and substituted fixed-rate percentage-based salary increases. It also rewrote the entire employee handbook and all HR policies and procedures “to ensure they were aligned with [Kia UK’s new] cultural values.”⁸¹

THE RESULTS The results of the new employee engagement program were impressive. Employee surveys of employee engagement and of line managers’ communications and other behaviors improved markedly; employee turnover fell from 31% in 2006 to 15% in 2007, to 5% in 2008, and to below 2% by the end of 2009. Recruitment and turnover costs fell by more than 400,000 British pounds within two years, a 71% reduction.⁸²

Earlier we said that *strategic human resource management* means having the HR policies and practices that will produce the employee competencies and behaviors that the company needs to achieve its strategic goals. Kia UK’s employee engagement program illustrates how one company actually did this.

Chapter Review

Chapter Section Summaries

- 3-1.** All managers' personnel and other decisions should be consistent with the goals that cascade down from the firm's overall strategic plan. Those goals form a hierarchy, starting with the president's overall strategic goals (such as double sales revenue to \$16 million) and filtering down to what each individual manager needs to do in order to support that overall company goal. The strategic planning process's seven steps include: (1) ask, "Where are we now as a business?"; (2) evaluate the firm's internal and external strengths, weaknesses, opportunities, and threats; (3) formulate a new business direction; (4) decide on strategic goals; and (5) choose specific strategies or courses of action; steps (6) and (7) are to implement and then evaluate the strategic plan.
- 3-2.** We distinguished among **three types of strategies:** corporate, business/competitive, and functional/department strategies.
- 3-3.** Each function or department in the business needs its own functional strategy, and **strategic human resource management** means formulating and executing human resource policies and practices that produce the employee competencies and behaviors the company needs to achieve its strategic aims. Human resource strategies are the specific human resource management policies and practices managers use to support their strategic aims. Important and popular

strategic human resource management tools include the strategy map, the HR scorecard, and digital dashboards.

- 3-4.** The manager will want to gather and analyze data prior to making decisions. **Human resource metrics** (quantitative measures of some human resource management activities such as employee turnover) are critical in creating high-performance human resource policies and practices.
- 3-5.** A **high-performance work system** is a set of human resource management policies and practices that together produce superior employee performance.
- 3-6.** Employee engagement is important because it drives performance and productivity. Actually **executing Kia UK's employee engagement HR strategy** involved six steps. These were: set *measurable objectives* for the program; provide *leadership development*, for example, send all managers for training to improve their management skills; institute new *employee recognition programs*, for instance, giving "Outstanding Awards" to selected employees quarterly; institute a new *employee development program*, for instance, using the company's appraisal process to identify employees' training needs and to create training plans for each employee; and change the *compensation* and *other policies* to ensure they are aligned with the new cultural values.

Discussion Questions

- 3-1.** Give an example of hierarchical planning in an organization.
- 3-2.** What is the difference between a corporate strategy and a competitive strategy? Give one example of each.
- 3-3.** Explain why strategic planning is important to all managers.

- 3-4.** Explain with examples each of the eight steps in the strategic management process.
- 3-5.** Explain with examples how human resources management can be instrumental in helping a company create a competitive advantage.
- 3-6.** Outline how you would implement an employee engagement program.

Individual and Group Activities

- 3-7.** With three or four other students, form a strategic management group for your college or university. Your assignment is to develop the outline of a strategic plan for the college or university. This

should include such things as strategic goals and corporate, competitive, and functional strategies. In preparing your plan, make sure to show the main strengths, weaknesses, opportunities, and

threats the college faces, and which prompted you to develop your particular strategic plans.

- 3-8. Using the Internet or library resources, review the annual reports of five companies. Bring to class examples of how those companies say they are using their HR processes to help the company achieve its strategic goals.
- 3-9. Interview an HR manager and write a short report on “The Strategic Roles of the HR Manager at XYZ Company.”
- 3-10. Using the Internet or library resources, bring to class and discuss at least two examples of how companies are using an HR scorecard to help create HR systems that support the company’s strategic aims. Do all managers seem to mean the same thing when they refer to HR scorecards? If not, how do they differ?
- 3-11. In teams of several students, choose a company for which you will develop an outline of a strategic HR plan. What seem to be this company’s main strategic aims? What is the firm’s competitive strategy?



What would the strategic map for this company look like? How would you summarize your recommended strategic HR policies for this company?

- 3-12. Appendices A and B at the end of this book (pages 614–634) list the knowledge someone studying for the HRCI (Appendix A) or SHRM (Appendix B) certification exam needs to have in each area of human resource management (such as in Strategic Management and Workforce Planning). In groups of several students, do four things: (1) review Appendix A and/or B; (2) identify the material in this chapter that relates to the Appendix A and/or B required knowledge lists; (3) write four multiple-choice exam questions on this material that you believe would be suitable for inclusion in the HRCI exam and/or the SHRM exam; and (4) if time permits, have someone from your team post your team’s questions in front of the class, so that students in all teams can answer the exam questions created by the other teams.

Experiential Exercise

Developing an HR Strategy for Starbucks

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A few years ago, Starbucks was facing serious challenges. Sales per store were stagnant or declining, and its growth rate and profitability were down. Many believed that its introduction of breakfast foods had diverted its “baristas” from their traditional jobs as coffee-preparation experts. McDonald’s and Dunkin’ Donuts were introducing lower-priced but still high-grade coffees. Starbucks’ former CEO stepped back into the company’s top job. You need to help him formulate a new direction for his company.

Purpose: The purpose of this exercise is to give you experience in developing an HR strategy, in this case, by developing one for Starbucks.

Required Understanding: You should be thoroughly familiar with the material in this chapter.

How to Set Up the Exercise/Instructions: Set up groups of several students for this exercise. You are probably already quite familiar with what it’s like to have a cup of coffee or tea in a Starbucks coffee shop, but if not, spend some time in one prior to this exercise. Meet in groups and develop an outline for an HR strategy for Starbucks Corp. Assume that for a corporate strategy Starbucks will remain primarily an international chain of coffee shops. Your outline should include four basic elements: a business/competitive strategy for Starbucks, the workforce requirements (in terms of employee competencies and behaviors) this strategy requires, specific HR policies and the activities necessary to produce these workforce requirements, and suggestions for metrics to measure the success of the HR strategy.

Application Case

Tesla’s Strategy

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By 2017 Tesla Motors briefly had a market value higher than the much-larger General Motors. Tesla’s strategic plan, formulated in 2006 by company founder Elon Musk, was to start by offering a high-performance energy-efficient electric roadster “without compromises” and then expand to offer less-expensive family cars, while eventually enabling battery recharging with solar power devices.⁸³

By early 2017, it was clear that Tesla was not soon going to achieve its goal of producing 5,000 Model 3 family sedans per week, and the company also faced numerous human resource management-related challenges.⁸⁴

For example, hundreds of workers stopped building Tesla’s battery factory near Reno, Nevada, claiming that outside contract workers were lowering their pay. Workers at Tesla’s car plant complained of high employee accident rates. Musk reportedly said that Tesla wasn’t skimping on safety to make more profit, but rather to survive and continue to offer employment.

Tesla also laid off about 700 workers at its California manufacturing facility. Many union activists asked why, having to ramp up production of the new Tesla Model 3, the company would dismiss so many employees. Some felt it wasn't because of poor performance reviews, but because Tesla wanted to fire employees who wanted a union. Elon Musk defends dismissing the 700 workers. Basically, he said (1) most companies have performance reviews and use them to screen out employees, and (2) because it wants the highest-quality cars, Tesla needs to have higher performance standards than its competitors. As Musk says, if a little company wants to compete with a giant one, the little one must have a lot more skill, or it will get pummeled.

Some of Tesla's HR procedures are also somewhat unusual. For example, Tesla requires that new employees sign confidentiality agreements prohibiting them from discussing Tesla's business strategy and working conditions. The United Auto Workers filed unfair labor practice charges against Tesla, claiming that such agreements violate employees' rights.

Tesla does use some sophisticated HR tools to improve its HR processes. For example, they used talent analytics to determine if employee referral programs improve their recruitment and retention processes and distributed an employee engagement survey.

By May 2017, Tesla appointed a new HR head, Gaby Toledano, with the title Chief People Officer. In announcing the appointment, Tesla noted that she would help Tesla address its labor and harassment disputes. Ms. Toledano acknowledged that some disputes between workers weren't reaching the HR office fast enough, but she said she's working on the problem. Furthermore, Tesla employees receive antidiscrimination and antiharassment training.

Questions

- 3-13. Was Tesla's human resource strategy consistent with its overall strategy to produce "uncompromising" high-performance cars?
- 3-14. Given what Kia UK accomplished, should Tesla implement such an engagement program? Why?
- 3-15. What would you do now if you were Tesla's Chief People Officer?
- 3-16. Based on the case, provide examples for Tesla of at least four strategically required organizational outcomes, and four required workforce competencies and behaviors.
- 3-17. Provide a brief illustrative outline of a strategy map for Tesla.

Continuing Case

Carter Cleaning Company

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The High-Performance Work System

As a person who keeps up with the business press, Jennifer Carter is familiar with the benefits of programs such as total quality management and high-performance work systems.

Jack, her father, actually installed a total quality program of sorts at Carter, and it has been in place for about 5 years. This program takes the form of employee meetings. Jack holds employee meetings periodically, but particularly when there is a serious problem in a store—such as poor-quality work or machine breakdowns. When problems like these arise, instead of trying to diagnose them himself or with Jennifer, he contacts all the employees in that store and meets with them when the store closes. Hourly employees get extra pay for these meetings. The meetings have been useful in helping Jack to identify and rectify several problems. For example, in one store all the fine white blouses were coming out looking dingy. It turned out

that the cleaner/spotter had been ignoring the company rule that required cleaning ("boiling down") the perchloroethylene cleaning fluid before washing items like these. As a result, these fine white blouses were being washed in cleaning fluid that had residue from other, earlier washes.

Jennifer now wonders whether these employee meetings should be expanded to give the employees an even bigger role in managing the Carter stores' quality. "We can't be everywhere watching everything all the time," she said to her father. "Yes, but these people only earn about \$8 to \$15 per hour. Will they really want to act like mini-managers?" he replied.

Questions

- 3-18. Would you recommend that the Carters expand their quality program? If so, specifically what form should it take?
- 3-19. Assume the Carters want to institute a high-performance work system as a test program in one of their stores. Write a one-page outline summarizing important HR practices you think they should focus on.

Translating Strategy into HR Policies and Practices Case*,§

* The accompanying strategy map for this chapter is in MyLab Management; the overall map on the inside back cover of this text outlines the relationships involved.

Improving Performance at the Hotel Paris

The Hotel Paris International

Starting as a single hotel in a Paris suburb in 1995, the Hotel Paris is now a chain of nine hotels, with two in France, one each in London and Rome, and others in New York, Miami, Washington, Chicago, and Los Angeles. As a corporate strategy, the Hotel Paris's management and owners want to continue to expand geographically. They believe doing so will let them capitalize on their reputation for good service, by providing multicity alternatives for their satisfied guests. The problem is, their reputation for good service has been deteriorating. If they cannot improve service, it would be unwise for them to expand, since their guests might prefer other hotels after trying the Hotel Paris.

Several things are complicating their problem. Tourists increasingly stay at short-term rental apartments (often through sites such as airbnb.com) for a fraction of what fine hotels cost. In 2018 Airbnb agreed to more stringently comply with the limits on the lengths of rentals in the heart of Paris, but not elsewhere. Marriott recently acquired the Starwood hotels chain (including many brands such as Ritz-Carlton) and will present increased competition. And the election as French president of Emmanuel Macron in 2017 prompted widespread optimism among many in France regarding the country's growth prospects, but also the possibility of some labor strife, at least in the short run.

The Strategy

Top management, with input from the HR and other managers, and with the board of directors' approval, chooses a new competitive

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strategy and formulates new strategic goals. It decides: "The Hotel Paris International will use superior guest services to differentiate the Hotel Paris properties, and to thereby increase the length of stays and the return rate of guests, and thus boost revenues and profitability." All Hotel Paris managers—including the director of HR services—must now formulate strategies that support this competitive strategy.

The Strategically Required Organizational Outcomes

The Hotel Paris's basic strategy is to use superior guest services to expand geographically. For HR director Lisa Cruz, reviewing the hotel's activities makes it clear that achieving the hotel's strategic aims means achieving a number of required organizational outcomes. For example, Lisa and her management colleagues must take steps that produce fewer customer complaints and more written compliments, more frequent guest returns and longer stays, and higher guest expenditures per visit.

The Strategically Relevant Workforce Competencies and Behaviors

The question facing Lisa, then, is this: What competencies and behaviors must our hotel's employees exhibit, if we are to produce required organizational outcomes such as fewer customer complaints, more compliments, and more frequent guest returns? Thinking through this question helps Lisa come up with an answer. For example, the hotel's required employee competencies and behaviors would include, "high-quality front-desk customer service," "taking calls for reservations in a friendly manner," "greeting guests at the front door," and "processing guests' room service meals efficiently." All require motivated, high-morale employees.

The Strategically Relevant HR Policies and Activities

The HR manager's task now is to identify and specify the HR policies and activities that will enable the hotel to produce these crucial workforce competencies and behaviors. For example, "high-quality front-desk customer service" is one such required behavior. From this, the HR director identifies HR activities to produce such front-desk customer service efforts. For example, she decides to *institute practices to improve the disciplinary fairness and justice in the company*, with the aim of *improving employee morale*. Her assumption is that enhanced fairness will produce higher morale and that higher morale will produce improved front-desk service.

The Strategy Map

Next, Lisa, working with the hotel's chief financial officer (CFO), outlines a strategy map for the hotel. This outlines the cause-and-effect links among the HR activities, the workforce behaviors, and the organizational outcomes (the figure on this book's inside back cover shows the overall map; you'll find detailed maps for each HR function in each chapter's related MyLab Management page).

This map and its linkages reflect certain assumptions on Lisa's part. For example, based on experience and discussions with the firm's other managers, she formulates the following *hypothesis* about how HR affects hotel performance: Improved grievance procedures cause improved morale, which leads to improved front-desk service, which leads to increased guest returns, which leads to improved financial performance. The HR director then chooses metrics to measure each of these factors. For example, she decides to measure "improved disciplinary procedures" in terms of how many grievances employees submit each month. She measures "improved morale" in terms of "scores on our hotel's semi-annual attitude survey," and measures "high-quality front-desk customer service" in terms of "customer complaints per month."

She moves on to quantifying the cause-and-effect links among these measures. For example: "Can we show top management that there is a measurable, sequential link between improved disciplinary procedures, high morale, improved front-desk service, number of guest return visits, and hotel financial performance (revenues and profits)?" If she can show such links, she has a persuasive case that shows HR's measurable contribution to the hotel's bottom-line financial performance.

In practice, the HR manager may well just rely on a largely subjective but logical argument to make the case for such cause-and-effect linkages. But ideally, she will use statistical methods such as correlation analysis to determine if measurable links exist, and (if so) what their magnitudes are. In this way, she might find, for instance, that a 10% improvement in grievance rates is associated with an almost 20% improvement in morale. Similarly, a 20% improvement in morale is associated with a 30% reduction in customer front-desk complaints. Furthermore, a 30% reduction in complaints is associated with a 20% increase in guest return visits, and a 20% increase in return rate is associated with a 6% rise in hotel revenues. It would appear that a relatively small HR effort in reducing grievances might have a big effect on this hotel's bottom-line performance!

Several things complicate this measurement process. For example, it's risky to draw cause–effect conclusions from correlation measures like these (do fewer grievances lead to higher morale, or vice versa?). Furthermore, it's rare that a single factor (such as grievance rates) will have such effects alone, so we may want to measure the effects of several HR policies and activities on morale simultaneously.

As explained in this chapter, computerization could enable Lisa to build a more comprehensive HR scorecard process, one that might handle links among dozens of cause-and-effect metrics. (Several vendors supply such scorecard software.) If not, then she will rely more on the logic and common sense underlying the strategy map to make her case.

How We Will Use the Hotel Paris Case

A Hotel Paris case in each chapter will show how Lisa, the Hotel Paris's HR director, uses that chapter's concepts and techniques to: (1) create HR policies and practices that help the Hotel Paris, (2) produce the employee competencies and behaviors the company needs, and (3) to produce the customer service the Hotel Paris requires to achieve its strategic goals.

For example, she will endeavor to improve workforce competencies and behaviors by instituting improved recruitment (processes Chapter 5), and measure improved recruitment in terms of "number of qualified applicants per position." Similarly, she will recommend to management that they change the company's pay policies, so that the "target percentile for total compensation is in the top 25%." She could argue, based on competitors' experience, that doing so will translate into improved customer service behavior, more satisfied customers, and improved hotel performance. In practice, all the human resource management functions we discuss in this book influence employee competencies and behaviors, and thereby organizational performance.

You will find the strategy map for each Dessler *Human Resource Management* chapter's topic in the chapter's MyLab Management; the summary map on the inside back cover of this book outlines the overall relationships involved for the Hotel Paris.

Questions

- 3-20. Draw a more simplified and abbreviated strategy map for the Hotel Paris. Specifically, summarize in your own words an example of the hierarchy of links among the hotel's *HR practices*, necessary *workforce competencies* and behaviors, and required *organizational outcomes*.
- 3-21. Using Table 3-1 and Figure 3-9, list at least 15 metrics the Hotel Paris could use to measure its HR practices.

MyLab Management

Go to www.pearson.com/mylab/management for Auto-graded writing questions as well as the following Assisted-graded writing questions:

- 3-22. Define and give at least two examples of the cost-leadership competitive strategy and the differentiation competitive strategy.
- 3-23. You own a small business, and your friend, over lunch, just mentioned that “it sounds like you have an employee engagement problem.” What exactly would you do to improve employee engagement in your company now?
- 3-24. MyLab Management only—comprehensive writing assignment for this chapter.

MyLab Management Try It!

How would you apply the concepts and skills you learned in this chapter? If your professor has assigned this activity, go to the Assignments section of www.pearson.com/mylab/management to complete the simulation.

PERSONAL INVENTORY ASSESSMENTS



Personality plays a big role in empowering employees. Go to www.pearson.com/mylab/management to complete the Personal Inventory Assessment related to this chapter.

Key Terms

strategic plan, 72
strategy, 72
strategic management, 72
vision statement, 74
mission statement, 74

corporate-level strategy, 74
competitive strategy, 75
competitive advantage, 75
functional strategy, 76

strategic human resource management, 76
strategy map, 79
HR scorecard, 79
digital dashboard, 80

human resource metric, 81
strategy-based metrics, 82
HR audit, 82
high-performance work system (HPWS), 85

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4

Job Analysis and the Talent Management Process

LEARNING OBJECTIVES

When you finish studying this chapter, you should be able to:

- 4-1** Define talent management, and explain what talent management-oriented managers do.
- 4-2** Discuss the process of job analysis, including why it is important.
- 4-3** Explain and use at least three methods of collecting job analysis information.
- 4-4** Explain how you would write a job description, and what sources you would use.
- 4-5** Explain how to write a job specification.
- 4-6** Give examples of competency-based job analysis.

When Daimler opened its Mercedes-Benz assembly plant in Alabama, its managers had a dilemma. Their strategy was to create a high-performance plant that Daimler could then extend to other plants in America, South Africa, Brazil, and Germany. The dilemma was that while plant managers couldn't hire, train, or pay their employees without knowing what each employee was expected to do, in this plant self-managing teams assembled the vehicles, and so workers' tasks might change every day. How do you hire people whose job duties are always changing?¹ We'll see what they did.



WHERE ARE WE NOW . . .

Managers should know what a job entails before deciding who to recruit and hire for it, so human resource management really starts with determining what the job entails. The main purpose of this chapter is to show you how to analyze jobs and write job descriptions. We discuss several techniques for analyzing jobs and explain how to write job descriptions and job specifications. The main topics we address include **The Talent Management Process**, **The Basics of Job Analysis**, **Methods for Collecting Job Analysis Information**, **Writing Job Descriptions**, **Writing Job Specifications**, and **Using Competencies Models**. Then, in Chapter 5 (Personnel Planning and Recruiting), we'll see how to actually find the employees you need.

LEARNING OBJECTIVE 4-1

Define talent management, and explain what talent management-oriented managers do.

Talent Management Process

For many people, Chapters 4–13 represent the heart of this book, specifically recruitment, selection, training, appraisal, career planning, and compensation. Managers traditionally view these activities as a series of steps:

1. Decide what positions to fill, through job analysis, personnel planning, and forecasting.
2. Build a pool of job applicants, by recruiting internal or external candidates.
3. Obtain application forms and perhaps have initial screening interviews.
4. Use selection tools like tests, interviews, background checks, and physical exams to identify viable candidates.
5. Decide to whom to make an offer.
6. Orient, train, and develop employees so they have the competencies to do their jobs.
7. Appraise employees to assess how they're doing.
8. Compensate employees to maintain their motivation.

This stepwise view makes sense. For example, the employer needs job candidates before selecting whom to hire.

The problem with the stepwise view is twofold. First, the process usually isn't really stepwise. For example, managers don't just train employees (step 6 above) and then appraise how they're doing (step 7). Instead (to use our example), the appraisal may well also loop back to shape the employee's subsequent training. So, first, rather than view these eight HR activities as stepwise, it is best to view them holistically—because the steps interactively affect each other and work together. The second problem is that focusing just on each step may cause the manager to miss the forest for the trees. It's not just each step but the *results you obtain* by applying them together that's important. So, second, it's important to remember that each and every step should be focused on achieving, in unison, some specific result (such as, say, improving customer service).

Recognizing all this, the trend today is to view these eight activities not stepwise but as part of a coordinated *talent management* effort.² We will define **talent management** as *the holistic, integrated and results- and goal-oriented process of planning, recruiting, selecting, developing, managing, and compensating employees*.³ What does this mean in practice? The manager who takes a talent management approach tends to take actions such as the following:

1. He or she starts with the results and asks, “What recruiting, testing, training, or pay action should I take to produce the employee competencies we need *to achieve our company's goals*?”
2. He or she treats activities such as recruiting and training as interrelated. For example, the manager knows that having employees with the right skills depends as much on recruiting and training as on applicant testing.
3. Because talent management is holistic and integrated, he or she will probably use the same “profile” of required human skills, knowledge, and behaviors (“competencies”) for formulating a job's recruitment plans as for making selection, training, appraisal, and compensation decisions for it.
4. And, to ensure the activities are all focused on the same ends, the manager will take steps to coordinate the talent management functions (recruiting and training, for example). Doing so often involves using talent management software.

Talent Management Software

Employers use talent management software to help ensure that their talent management activities are aimed in a coordinated way to achieve the company's HR aims. For example, Oracle says its Talent Management suite helps the manager to hire the best talent, provide real-time evaluations of workforce performance, and “[a]llign and

develop your workforce with your talent management goals.”⁴ SilkRoad Technology’s Talent Management Solution includes applicant tracking, onboarding, performance management, and compensation support. It helps the manager to “. . . recruit, manage, and retain your best employees.”⁵



LEARNING OBJECTIVE 4-2

Discuss the process of job analysis, including why it is important.

job analysis

The procedure for determining the duties and skill requirements of a job and the kind of person who should be hired for it.

job descriptions

A list of a job’s duties, responsibilities, reporting relationships, working conditions, and supervisory responsibilities—one product of a job analysis.

job specifications

A list of a job’s “human requirements,” that is, the requisite education, skills, personality, and so on—another product of a job analysis.

The Basics of Job Analysis

Talent management starts with understanding what jobs need to be filled, and the human traits and competencies employees need to do those jobs effectively.

What Is Job Analysis?

Organizations consist of positions that have to be staffed. The organization chart (see Figure 4-1) shows the title of each supervisor’s position and, by means of connecting lines, who is accountable to whom, who has authority for each area, and who is expected to communicate with whom. **Job analysis** is the procedure through which you determine the duties of the company’s positions and the characteristics of the people to hire for them.⁶ Job analysis produces information for writing **job descriptions** (a list of what the job entails) and **job** (or “person”) **specifications** (what kind of people to hire for the job). Virtually every personnel-related action—interviewing applicants, and training and appraising employees, for instance—requires knowing what the job entails and what human traits one needs to do the job well.⁷ Just about every employer today—from Marriott to Airbnb—uses job analysis and the job descriptions that stem from it.⁸

The supervisor or human resources specialist normally collects one or more of the following types of information via the job analysis:

- **Work activities.** Information about the job’s actual work activities, such as cleaning, selling, teaching, or painting. This list may also include how, why, and when the worker performs each activity.
- **Human behaviors.** Information about human behaviors the job requires, like sensing, communicating, lifting weights, or walking long distances.
- **Machines, tools, equipment, and work aids.** Information regarding tools used, materials processed, knowledge dealt with or applied (such as finance or law), and services rendered (such as counseling or repairing).

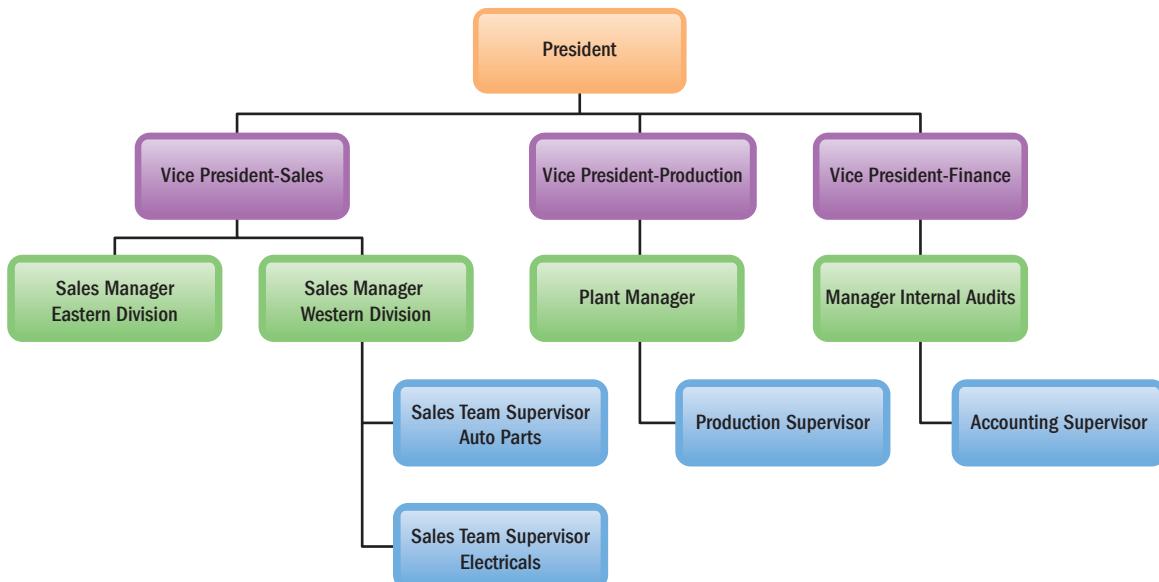


FIGURE 4-1 Organization Chart

- **Performance standards.** Information about the job's performance standards (in terms of quantity or quality levels for each job duty, for instance).
- **Job context.** Information about such matters as physical working conditions, work schedule, incentives, and, for instance, the number of people with whom the employee would normally interact.
- **Human requirements.** Information such as knowledge or skills (education, training, work experience) and required personal attributes (aptitudes, personality, interests).

Uses of Job Analysis Information

As Figure 4-2 summarizes, job analysis is important because it supports just about all human resource management activities.

RECRUITMENT AND SELECTION Information about what duties the job entails and what human characteristics are required to perform these duties helps managers decide what sort of people to recruit and hire.

EEO COMPLIANCE Knowing a job's duties is necessary for determining, for example, whether a selection test is a valid predictor of success on the job. Furthermore, to comply with the ADA, employers should know each job's *essential job functions*—which *requires a job analysis*.

PERFORMANCE APPRAISAL A performance appraisal compares an employee's actual performance of his or her duties with the job's performance standards. Managers use job analysis to learn what these duties and standards are.

COMPENSATION Compensation (such as salary and bonus) usually depends on the job's required skill and education level, safety hazards, degree of responsibility, and so on—all factors you assess through job analysis.

TRAINING The job description lists the job's specific duties and requisite skills—thus pinpointing what training the job requires.

Conducting a Job Analysis

There are six steps in doing a job analysis of a job, as follows.

STEP 1: Identify the use to which the information will be put because this will determine how you collect the information. Some data collection techniques—like interviewing the employee—are good for writing job descriptions. Other techniques, like the position

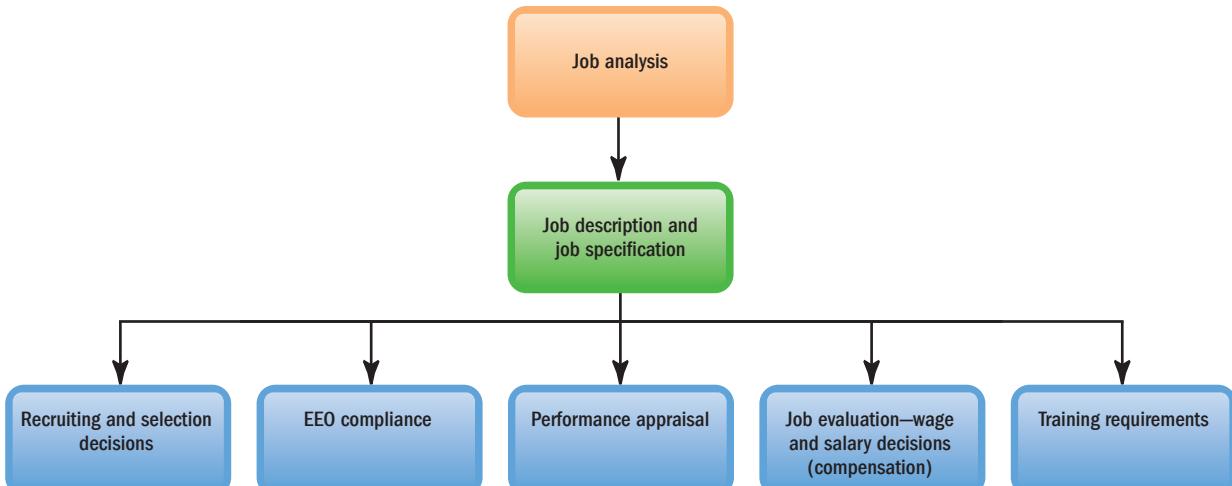


FIGURE 4-2 Uses of Job Analysis Information

analysis questionnaire we describe later, provide numerical ratings for each job; these can be used to compare jobs for compensation purposes.

STEP 2: Review Relevant Background Information About the Job, Such as Organization Charts and Process Charts⁹ It is important to understand the job's context. For example, **organization charts** show the organizationwide division of work, and where the job fits in the overall organization. A **process chart** provides a detailed picture of the workflow. Thus, in the process chart in Figure 4-3, the quality control clerk should review components from suppliers, check components going to the plant managers, and give information regarding the components' quality to these managers. Finally, an existing job description may provide a starting point for revising the job description.

organization chart

A chart that shows the organization-wide distribution of work, with titles of each position and interconnecting lines that show who reports to and communicates with whom.

process chart

A workflow chart that shows the flow of inputs to and outputs from a particular job.

workflow analysis

A detailed study of the flow of work from job to job in a work process.

Workflow Analysis Reviewing the organization chart, process chart, and job description helps the manager identify what a job's duties and demands are now. However, it does *not* answer questions like "Does how this job relates to other jobs make sense?" or "Should this job even exist?" To answer such questions, the manager may conduct a *workflow analysis*. **Workflow analysis** is a detailed study of the flow of work from job to job in one identifiable work process (such as processing a mortgage application). In turn, this analysis may lead to changing or "reengineering" the job. The following HR as a Profit Center feature illustrates workflow analysis.



IMPROVING PERFORMANCE: HR AS A PROFIT CENTER

Boosting Productivity Through Work Redesign¹⁰

The Atlantic American insurance company conducted a workflow analysis to identify inefficiencies in how it processes insurance claims. As the firm's HR director said, "We followed the life of a claim to where it arrived in the mail and where it eventually ended up" in order to find ways to improve the process.¹¹

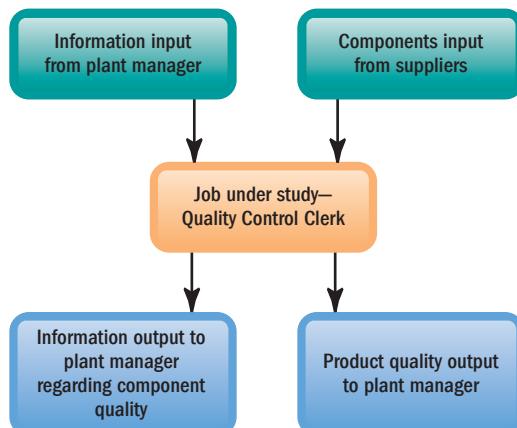
The workflow analysis prompted several performance-boosting redesigns of the insurance claim jobs. The firm reduced from four to one the number of people opening mail, replacing three people with a machine that does it automatically. A new date stamping machine lets staff stamp 20 pages at a time rather than one. A new software program adds bar codes to each claim automatically, rather than manually. The new system lowered costs. ■

MyLab Management Talk About It 1

If your professor has assigned this, go to the Assignments section of www.pearson.com/mylab/management to complete these discussion questions. Based on your experience, what would the workflow look like for the process a dry-cleaning store uses to accept and chronicle a new order of clothes from a customer? How might this process be improved?

FIGURE 4-3 Process Chart for Analyzing a Job's Workflow

Source: Henderson, Richard I., *Compensation Management in a Knowledge Based World*, 9th Ed., © 2003, p.137. Reprinted and Electronically reproduced by permission of Pearson Education, Inc., Upper Saddle River, New Jersey.



In conducting a workflow analysis, the manager may use a *flow process chart*; this lists in order each step of the process. The manager may convert this step-by-step flow process chart into a diagrammatic process chart. This shows, with arrows and circles, each step in the process.

business process reengineering

Redesigning business processes, usually by combining steps, so that small multifunction process teams using information technology do the jobs formerly done by a sequence of departments.

job enlargement

Assigning workers additional same-level activities.

job rotation

Systematically moving workers from one job to another.

job enrichment

Redesigning jobs in a way that increases the opportunities for the worker to experience feelings of responsibility, achievement, growth, and recognition.

Business Process Reengineering The workflow analysis at American Atlantic led to a *reengineering* of its claims processing operation. **Business process reengineering** means redesigning business processes, usually by combining steps so that small multi-function teams, often using information technology, do the jobs formerly done by a sequence of departments. The basic reengineering approach is to:

1. Identify a business process to be redesigned (such as processing an insurance claim)
2. Measure the performance of the existing processes
3. Identify opportunities to improve these processes
4. Redesign and implement a new way of doing the work
5. Assign ownership of sets of formerly separate tasks to an individual or a team who use new computerized systems to support the new arrangement

As at Atlantic American, reengineering usually requires redesigning individual jobs. For example, workers doing date stamping must now know how to use the new date-stamping machine.

Job Redesign Early economists enthusiastically described why specialized jobs were more efficient (as in, “practice makes perfect”). Today, most agree that specialized jobs can backfire, for instance by sapping morale. Experts typically suggest three ways to redesign specialized jobs to make them more challenging. **Job enlargement** means assigning workers additional same-level activities. Thus, the worker who previously only bolted the seat to the legs might attach the back too. **Job rotation** means systematically moving workers from one job to another.

Psychologist Frederick Herzberg argued that the best way to motivate workers is through what he called job enrichment. **Job enrichment** means redesigning jobs in a way that increases the opportunities for the worker to experience feelings of responsibility, achievement, growth, and recognition—and therefore more motivation. It does this by *empowering* the worker—for instance, by giving the worker the skills and authority to inspect the work, instead of having supervisors do that. Herzberg said empowered employees would do their jobs well because they wanted to, and quality and productivity would rise. That philosophy, in one form or another, is the theoretical basis for the team-based self-managing jobs in many companies around the world today.

STEP 3: Select Representative Positions Next, with a job to analyze, the manager generally selects a sample of positions to focus on. For example, it is usually unnecessary to analyze the jobs of all the firm’s 200 assembly workers; instead a sample of 10 jobs will do.

STEP 4: Actually Analyze the Job The actual job analysis involves greeting each job holder; briefly explaining the job analysis process and the participants’ roles in this process; spending about 15 minutes interviewing the employee to get agreement on a basic summary of the job; identifying the job’s broad areas of responsibility, such as “calling on potential clients”; and then interactively identifying specific duties/tasks within each area using one of the methods we describe just below.¹²

STEP 5: Verify the Job Analysis Information with the Worker Performing the Job and with His or Her Immediate Supervisor This will help confirm that the information (for instance, on the job’s duties) is correct and complete and help to gain their acceptance.

STEP 6: Develop a Job Description and Job Specification The *job description* lists the duties, activities, and responsibilities of the job, as well as its important features, such as working conditions. The *job specification* summarizes the personal qualities, traits, skills, and background required for getting the job done.

LEARNING OBJECTIVE 4-3

Explain and use at least three methods of collecting job analysis information.



Methods for Collecting Job Analysis Information

There are many ways (interviews or questionnaires, for instance) to collect job information.¹³ The basic rule is to use those that best fit your purpose. Thus an interview might be best for creating a list of job duties. The more quantitative “position analysis questionnaire” may be best for quantifying each job’s value for pay purposes. Before actually analyzing the job, keep several things in mind.

- Make the job analysis a *joint effort by a human resources manager, the worker, and the supervisor*. The human resource manager might observe the worker doing the job, and have the supervisor and worker complete job questionnaires. The supervisor and worker then verify the HR manager’s list of job duties.
- *Make sure the questions and the process are clear* to the employees.
- *Use several job analysis methods*. For example, a questionnaire might miss a task the worker performs just occasionally. Therefore it’s prudent to follow up the questionnaire with a short interview.

The Interview

Job analysis interviews range from unstructured (“Tell me about your job”) to highly structured ones with hundreds of specific items to check off.

Managers may conduct individual interviews with each employee, group interviews with groups of employees who have the same job, and/or supervisor interviews with one or more knowledgeable supervisors. Use group interviews when a large number of employees are performing similar or identical work, since this can be a quick and inexpensive way to gather information. As a rule, the workers’ immediate supervisor attends the group session; if not, you can interview the supervisor separately.

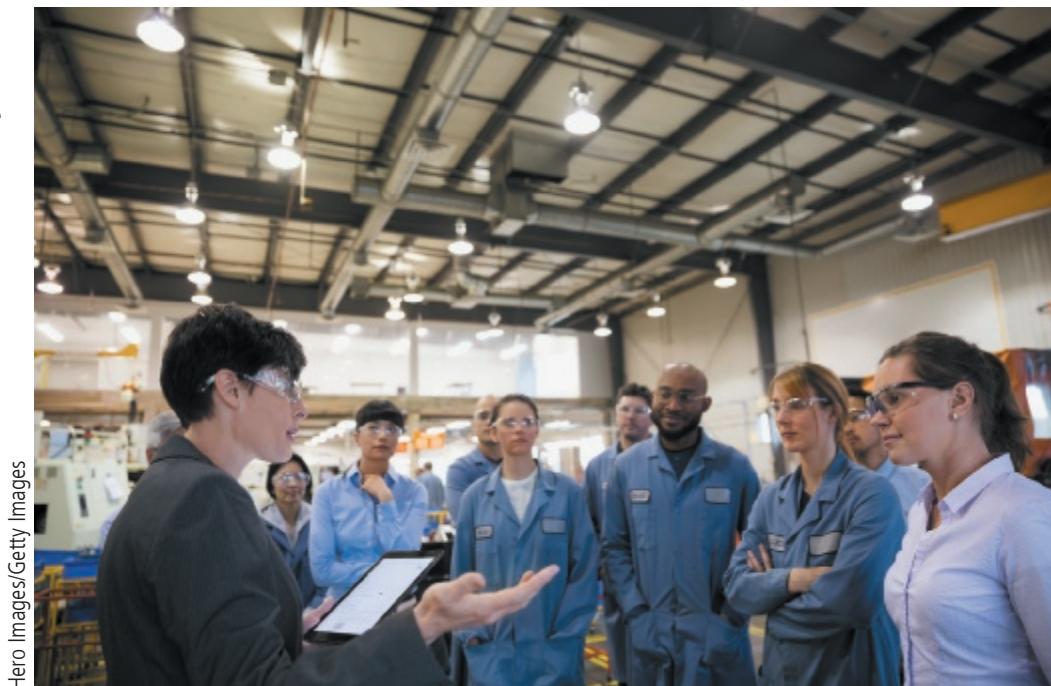
The interviewee should understand the reason for the interview. There’s a tendency for workers to view such interviews, rightly or wrongly, as “efficiency evaluations.” If so, interviewees may hesitate to describe their jobs accurately.

TYPICAL QUESTIONS Typical interview questions include the following:

What is the job being performed?

What exactly are the major duties of your position?

It is helpful to spend several minutes prior to collecting job analysis information explaining the process that you will be following.



- What physical locations do you work in?
- What are the education, experience, skill, [and any certification and licensing] requirements?
- In what activities do you participate?
- What are the job's responsibilities and duties?
- What are the basic accountabilities or performance standards that typify your work?
- What are your responsibilities? What are the environmental and working conditions involved?
- What are the job's physical, emotional, and mental demands?
- What are the health and safety conditions?
- Are you exposed to any hazards or unusual working conditions?

STRUCTURED INTERVIEWS Many managers use questionnaires to guide the interview. Figure 4-4 presents one example. It includes questions regarding matters like the general purpose of the job, supervisory responsibilities, job duties, and skills required.

PROS AND CONS The interview's wide use reflects its advantages. It's a simple and quick way to collect information. Skilled interviewers can also unearth important activities that occur occasionally, or informal contacts not on the organization chart. The employee can also vent frustrations that might otherwise go unnoticed.

Distortion of information is the main problem.¹⁴ Job analysis often precedes changing a job's pay rate. Employees therefore often view it as pay-related, and exaggerate some responsibilities while minimizing others. In one study, researchers listed possible job duties either as simple task statements ("record phone messages and other routine information") or as ability statements ("ability to record phone messages and other routine information"). Respondents were more likely to report performing the ability-based versions of the statements. There may be a tendency for people to inflate their job's importance when abilities are involved, to impress the perceptions of others.¹⁵

INTERVIEWING GUIDELINES To get the best information possible:

- Establish rapport with the interviewee. Know the person's name, speak understandably, briefly review the interview's purpose, and explain how the person was chosen for the interview.
- Use a structured guide that lists questions. This ensures you'll identify crucial questions ahead of time and that all interviewers (if more than one) cover all the required questions. (However, also ask, "Was there anything we didn't cover with our questions?")
- Make sure you don't overlook crucial but infrequently performed activities—like a nurse's occasional emergency room duties. Ask the worker to list his or her duties in order of importance and frequency of occurrence.
- After completing the interview, review the information with the worker's supervisor and the worker.

Questionnaires

Having employees fill out questionnaires to describe their job duties and responsibilities is another popular job analysis approach.

Some questionnaires are structured checklists. Here each employee gets an inventory of perhaps hundreds of specific duties or tasks (such as "change and splice wire"). He or she must indicate if he or she performs each task and, if so, how much time is normally spent on each. At the other extreme, the questionnaire may simply ask, "describe the major duties of your job."

FIGURE 4-4 Job Analysis Questionnaire for Developing Job Descriptions

Source: Adapted from www.tsu.edu/PDFFiles/Human%20Resources/HR%20Forms/JAQ%20FORM_rev%20100809%20a.pdf; www.delawarepersonnel.com/class/forms/jaq/jaq.shtml; www.uh.edu/human-resources/forms/JAQ.doc; www.tnstate.edu/hr/documents/.../Job%20Analysis%20Questionnaire.doc (all accessed July 24, 2013).

JOB ANALYSIS QUESTIONNAIRE*

PURPOSE AND INSTRUCTIONS

Because no one knows the job as well as the person doing it, we are asking you to complete this form. The purpose is to obtain current information on your job based on a review of job duties and responsibilities. We are not asking you about your job performance; only what your job requires you to do.

EMPLOYEE DATA (PLEASE PRINT):

Your Name: _____ Today's date _____

Employee ID: _____

Location/Department: _____

Your Job Title: _____ Job Code: _____

How long have you been in your current position: _____

Work Telephone Number: _____

Supervisor's Name: _____ Supervisor's Title: _____

SUMMARY OF DUTIES/RESPONSIBILITIES

Give a brief description of the main function/purpose of your job. This statement should be a brief summary of the responsibilities listed in the next section.

Listing of Job Duties

What do you do on your job? Please list your job's specific duties/responsibilities in the space below. In doing so:

Please list the most important duties/responsibilities first. Write a separate statement for each duty/responsibility.

At the end of each statement please indicate the approximate percent of your workday (25%, 7%, etc.) you spend on that duty.

Please place an asterisk (*) next to the duties that you consider to be absolutely essential to this job.

(Add additional duties as necessary)

Are there duties you are now performing that are not now in your job description? If so please list them on back of this page.

(Continued)

FIGURE 4-4 *Continued***Minimum Level of Education (or Equivalent Experience) This Job Requires**

What is the minimum level of education necessary to perform your job? Select only one please:

1. Elementary education.
2. Some high school.
3. A high school diploma or equivalent (G.E.D.).
4. A formal vocational training program (approximately one year), an apprenticeship, or some formal college education.
5. An associate's degree (AA, AS).
6. A bachelor's degree (BA, BS).
7. A master's degree (MA, MS, MBA, MPA).
8. A doctorate degree (Ph.D., MD, JD, EED).
9. Are you required to be licensed or certified to perform your work?

[] Yes [] No List type _____

Required Training on Job

What is the level of on-the-job or classroom training someone requires to do your job? Please select one choice below:

1. No additional training required.
2. A day or two.
3. A week.
4. A month.
5. Several months.
6. One year.
7. Two years or more.

SUPERVISORY RESPONSIBILITIES

Do you supervise others as part of your job? If so please briefly describe the nature of your supervisory responsibilities.

PHYSICAL JOB DEMANDS

Please briefly describe this job's main physical demands. For example, does it involve Sitting? Walking? Standing? Lifting? Detailed repetitive motions? Climbing? Etc.

Working Conditions: Environmental and Safety Job Demands

Please list this job's working conditions, such as: air-conditioned office work; outdoor or indoor extreme heat or cold; wet; noise; job hazards; working in elevated conditions; etc.

EMPLOYEE COMMENTS

Is there any other information that would be important in understanding your job? If so, please give us your comments below.

SUPERVISOR'S REVIEW

Based on your understanding of the job as it currently exists, please review the employee's response and provide your own comments in the space below. **Please do not change the employee's responses.**

In practice, the questionnaire often falls between these two extremes. As illustrated in Figure 4-4, a typical job analysis questionnaire might include several open-ended questions (such as “Give a brief description of the main function/purpose of your job.”) as well as structured questions (concerning, for instance, education required).

Questionnaires have pros and cons. This is a quick and efficient way to obtain information from a large number of employees; it’s less costly than interviewing dozens of workers, for instance. However, developing and testing it (perhaps by making sure the workers understand the questions) can be time-consuming. And as with interviews, employees may distort their answers.

Observation

Direct observation is especially useful when jobs consist of observable physical activities—assembly-line worker and accounting clerk are examples. However, it’s usually not appropriate when the job entails a lot of mental activity (lawyer, design engineer). Nor is it useful if the employee only occasionally engages in important activities, such as a nurse who handles emergencies. *Reactivity*—the worker’s changing what he or she normally does because you are watching—is another problem.

Managers often use direct observation and interviewing together. One approach is to observe the worker on the job during a complete work cycle. (The *cycle* is the time it takes to complete the job; it could be a minute for an assembly-line worker or an hour, a day, or longer for complex jobs.) Here you take notes of all the job activities. Then, ask the person to clarify open points and to explain what other activities he or she performs that you didn’t observe.

Participant Diary/Logs

Another method is to ask workers to keep a **diary/log**; here for every activity engaged in, the employee records the activity (along with the time) in a log.

Some firms give employees pocket dictating machines and pagers. Then randomly during the day, they page the workers, who dictate what they are doing at that time.

Quantitative Job Analysis Techniques

Qualitative methods like interviews and questionnaires are not always suitable. For example, if your aim is to compare jobs for pay purposes, a mere listing of duties may not suffice. You may need to say that, in effect, “Job A is twice as challenging as Job B, and so is worth twice the pay.” To do this, it helps to have quantitative ratings for each job. The position analysis questionnaire and the Department of Labor approach are quantitative methods for doing this.

diary/log

Daily listings made by workers of every activity in which they engage along with the time each activity takes.

position analysis questionnaire (PAQ)

A questionnaire used to collect quantifiable data concerning the duties and responsibilities of various jobs.

POSITION ANALYSIS QUESTIONNAIRE The **position analysis questionnaire (PAQ)** is a very popular quantitative job analysis tool, consisting of a questionnaire containing 194 items.¹⁶ The 194 items (such as “written materials”) each represent a basic element that may play a role in the job.¹⁷ The items each belong to one of five PAQ basic activities: (1) Having Decision-Making/Communication/Social Responsibilities, (2) Performing Skilled Activities, (3) Being Physically Active, (4) Operating Vehicles/Equipment, and (5) Processing Information. The final PAQ “score” reflects the job’s rating on each of these five activities. To get those scores, the job analyst decides if each of the 194 items (such as one on using “written materials”) applies to the job and, if so, to what extent. For example, within the “Processing Information” activity section, an item on the extent to which the job requires using “written materials” such as books and reports might get a rating of 4. Since the PAQ scale ranges from 1 to 5, a 4 suggests that written materials do play a significant role in this job. The analyst can use an online version of the PAQ (see www.paq.com) for each job he or she is analyzing.

One of the PAQ's strengths is in assigning jobs to job classes for pay purposes. With ratings for each job's decision-making, skilled activity, physical activity, vehicle/equipment operation, and information-processing characteristics, you can quantitatively compare jobs relative to one another,¹⁸ and then classify jobs for pay purposes.¹⁹

DEPARTMENT OF LABOR (DOL) PROCEDURE Experts at the U.S. Department of Labor did much of the early work developing job analysis.²⁰ They used their results to compile what was for many years the bible of job descriptions, the *Dictionary of Occupational Titles*. This mammoth book contained detailed information on virtually every job in America. Internet-based tools have largely replaced the *Dictionary*.²¹ However, the U.S. Department of Labor job analysis procedure remains a good example of how to quantitatively rate, classify, and compare jobs. As Table 4-1 shows, the DOL method uses a set of standard activities called *worker functions* to describe what a worker must do with respect to *data, people, and things*. With respect to data, for instance, the functions include synthesizing and copying. For people, they include mentoring and supervising. For things, basic functions include manipulating and handling.

Each worker function has an importance rating. Thus, “coordinating” is 1, whereas “copying” is 5. If you were analyzing the job of a receptionist/clerk, for example, you might label the job 5, 6, 7 to represent copying data, speaking/signaling people, and handling things. You might code a psychiatric aide in a hospital 1, 7, 5 in relation to data, people, and things. In practice, you would score each task that the worker performed as part of his or her job in terms of data, people, and things. Then you would use the highest combination (say 4, 6, 5) to rate the overall job, since this is the highest level that you would expect a successful job incumbent to attain. If you were selecting a worker for that 4, 6, 5 job, you'd expect him or her to be able to at least compute (4), speak/signal (6), and tend (5). If you were comparing jobs for pay purposes, a 4, 6, 5 job should rank higher (see Table 4-1) than a 6, 8, 6 job. The manager can then present a summary of the job along with its 3-digit rating on a form such as in Figure 4-5.²²

Online Job Analysis Methods²³

Employers also use online job analysis methods. Here the human resource department generally distributes standardized job analysis questionnaires to geographically disbursed employees online, with instructions to complete the forms and return them by a particular date. The job analyst may then convene, online, job experts to

TABLE 4-1 Basic Department of Labor Worker Functions

	Data	People	Things
Basic Activities	0 Synthesizing 1 Coordinating 2 Analyzing 3 Compiling 4 Computing 5 Copying 6 Comparing	0 Mentoring 1 Negotiating 2 Instructing 3 Supervising 4 Diverting 5 Persuading 6 Speaking/signaling 7 Serving 8 Taking instructions/helping	0 Setting up 1 Precision working 2 Operating/controlling 3 Driving/operating 4 Manipulating 5 Tending 6 Feeding/offbearing 7 Handling

Note: Determine employee's job “score” on data, people, and things by observing his or her job and determining, for each of the three categories, which of the basic functions illustrates the person's job. “0” is high; “6,” “8,” and “7” are lows in each column.