

Legal and Practical Issues Associated With Today's Diverse Workplaces

Northern Hudson Valley Job Service Employer Committee

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Diversity of American Workforce

- In 1999, 12% of American workers were immigrants.
- In 2000, American Indians, Asians, and Hispanics composed 15.2% of employees of private employers with 100+ employees.
- In 2002, one in ten American citizens were foreign born.



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The Law

- Title VII of the Civil Rights Act of 1964 (Title VII)
 - ◆ Prohibits employment discrimination on the basis of race, color, religion, sex, and national origin
- Age Discrimination in Employment Act
 - ◆ Prohibits employment discrimination on the basis of age (40+ years of age)
- Americans with Disabilities Act
 - ◆ Prohibits employment discrimination on the basis of disability
- New York Human Rights Law
 - ◆ Prohibits employment discrimination on the basis of race, color, creed, sex, national origin, age (18+ years of age), disability, marital status, arrest and criminal convictions, and sexual orientation.



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The Law

- These protections exist regardless of whether the individual:
 - ◆ was born in the United States or in a foreign country; or
 - ◆ is a citizen of the United States.



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National Origin Discrimination

- Includes discrimination based on:
 - ◆ Ethnicity – e.g., discrimination against someone because he is Arab, or because he is *not* Hispanic;
 - ◆ Physical, linguistic, or cultural traits – e.g., discrimination against someone because she has physical, linguistic or cultural traits closely associated with a national origin group (e.g. dresses in African-style dress); or
 - ◆ Perception – e.g., discrimination based upon a belief a person is a member of a particular national origin group (e.g. perceiving someone to be Muslim based upon his speech, mannerisms, or appearance).



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Citizenship

- Under Title VII, Employers may not use citizenship to screen out applicants or discriminate against employees because of national origin.
 - ◆ For example, an employer may not require that higher paying positions be filled by U.S. citizens.



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Citizenship

- Other Laws that may affect Employers' treatment of non-citizens:
 - ◆ Immigration Reform and Control Act of 1986 ("IRCA"): prohibits employers with 4 or more employees from discriminating in hiring, referral, or discharge against U.S. citizens and foreign citizens authorized to work in the U.S.
 - ◆ Fair Labor Standards Act: requires that employees, including non-citizens, must be paid federal minimum wage
 - ◆ Special Visa Programs: may impose special requirements relating to wages, working conditions, and other terms and conditions of employments.



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Recruitment

- Recruiters, Temporary Agencies, and other Employers cannot discriminate on the basis of membership in a protected class.
 - ◆ Should not screen out employees based on these protected traits; and
 - ◆ Should not adopt recruiting practices that have the purpose or effect of screening out individuals based on these protected traits (i.e., word of mouth recruitment).



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Recruitment

- Use a variety of recruitment tools (job fairs, open houses, professional associations, search firms, internships) to attract applicants from diverse backgrounds.
- Advertisements should state any language requirements required by business necessity and state that the employer is an “equal opportunity employer.”



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Hiring

- Employer cannot limit the type of positions for which employees can be hired based on their protected status.
 - ◆ For example, an Employer cannot keep employees “in the back” and in positions without customer contact because of the employee’s national origin.
- Employer cannot rely on discomfort of customer, client, or coworkers as the basis for discrimination (e.g., the desire for an “All-American image”).



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