

Affirmative action and employment at will



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There has always been a great deal of conversation in the workplace regarding discrimination. Today in business, employers and employees will be presented with situations that everyone in the workplace may not agree with completely. In the United States, there have been a great deal of instances where individuals have been discriminated and even fired without probable cause. Prior to the 1960s, Congress didn't intervene in these types of situations, but they have since created a number of antidiscrimination laws. This is to help protect all of the employees. (Mayer, Warner, Siebel, Lieberman, & Martina, (n. d)). Some of the most important laws that have been created were the Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (Mayer, Warner, Siebel, Lieberman, & Martina, (n. d.)). In this paper we will discuss two common business issues regarding affirmative action and employment at will. We will discuss how these options can impact employment and can cause discrimination amongst the employees.

In business today, employers and even employees, have to be able to effectively handle discrimination in the workplace. This is a very popular issue today, and that is why Congress created the Title VII of the Civil Rights Act of 1964. This law will prohibits discrimination on a number of factors. The factors prohibit the discrimination based on race, sex, religion, national origin, and even color (Mayer, Warner, Siebel, Lieberman, & Martina, (n. d.)). With this law, employers are not allowed to discriminate based on these

factors in the terms or hiring, promotion, layoff, and discharge decisions (Mayer, Warner, Seibel, Lieberman, & Martina, (n. d.)). The main purpose of this law is to ensure that all people in the workplace have a safe place to work that is free from discrimination. This law gives individuals the right tools to be able to protect themselves from being discriminated against and also the option to file a lawsuit if they feel the need to do so (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)).

With the creation of the Title VII of the Civil Rights Act of 1964, it has been very effective in helping to protect the employee's rights in creating a healthy workplace. There have also been many exceptions to this Civil Rights Act of 1964. One of the main exceptions is affirmative action (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). Affirmative action is most commonly referred to as the art of promoting opportunities to members that have normally been disadvantaged groups in the past (Affirmative Action, 2018). The main purpose of affirmative action is to give people that have been discriminated against an advantage in the workplace. The process of affirmative action has been around since the 19th century. The first time that this was really discussed was in President Kennedy's Executive Order 10925 (Affirmative Action Fast Fact, 2018). This policy was in place to help the discrimination in the workplace. Another key aspect of this order stated that employers need to document their affirmative action practices so employees are aware of what can potentially happen in the workplace (Affirmative Action).

The process of affirmative action is said to be very beneficial for the groups or individuals that have once been discriminated in the past. With affirmative
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action, employers need to be extremely careful with their plans that they set forth for their employees. In businesses that utilize affirmative action, the employers need to be more careful with the hiring and firing processes more than the decision to promote an employee (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). Studies have shown that promoting employees based on affirmative action is most likely to be upheld if ever taken to court. With the information that we have since presented, we will look at some arguments for and against affirmative action (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)).

While reviewing affirmative action in the workplace it was very apparent that this topic was very prominent in the education environment. There have been many cases in the past where educational institutions have acted in a discriminatory manner. A remedy for these institutions would be affirmative action plans (Affirmative Action, 2018). With the number of educational cases today, one of the most discussed was the Brown versus Board of Education. In this case, the Supreme Court stated public schools are not allowed to exclude minority groups from the white schools. This was the start of the affirmative action lawsuits that was set to help prevent discrimination in the schools (Mangum & Dehaan, 2019).

While the antidiscrimination cases were very apparent in the early 1960s, there have also been recent cases where affirmative action has come into discussion. One of the recent cases was Fisher versus the University of Texas, 579 in 2016. The premise of this case was that the University of Austin had a top ten percent law. This means that they would only

essentially look at individuals that graduated in the top ten percent of their class for admission to the university (Affirmative Action Fast Facts, 2018).

The students that did not meet the top ten percent criteria would have an Academic Index (AI) and a Personal Achievement Index (PAI). The reviews completed by the admissions representatives would review the student's leadership and work experience. They would also review any other special documents that would give the committee a glimpse into their background. In this review process, race is considered as one of the special characteristics. In this case, the court found that the university's use of race was constitutional because diversity was included in the review (Affirmative Action Fast Facts, 2018).

There are many positives and negatives of using affirmative action. As discussed in the previous cases, the use of affirmative action is to ensure there is diversity in the schools and also in the workplace. These criteria will help create communities that are open to diversity and minority groups (Chrisman, 2013). The idea of affirmative action gives employers the opportunity to employ different cultures that will only help create a better workplace. There will be new ideas that would not have been there had it not been for a diverse organization (Chrisman, 2013).

Another advantage of affirmative action is that it gives people that would have been discriminated in the past, more opportunities in the workplace today (Affirmative Action, 2018). The Brown versus Board of Education case helps bring this advantage to light. The colored students were normally sent to separate schools from the whites, but with this case, they were not to be

separated from the whites. Using affirmative action in this case, was a way to help the discriminated individuals have opportunities they would normally not have in colored schools (Chrisman, 2013).

While there is a great deal of positives about affirmative action, there are also negatives that need to be discussed. One of the main disadvantages of affirmative action is that it is considered to be reverse discrimination. This is because employers are going to focus on employees that have faced discrimination in the past (Mangum & Dehaan, 2019). This is discriminating against the individuals that are not in minority groups that could potentially have more experience in their position. There is a case about this type of scenario, Johnson versus Santa Clara County Transportation Agency. In this case, a woman was promoted even though there was a male that have more experience. This company had a published affirmative action plan and this case was overturned (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)).

Another negative about affirmative action is that it could potentially reinforce the discussion of stereotypes and racism. The use of affirmative actions has also seen where it can lower the self-esteem for those that may be more qualified for jobs in the workplace. This has been seen to make individuals believe they are less worthy if they are not a minority which again, is a conversation of reverse discrimination. If companies decide to move forward with affirmative action, they need to be careful as there is an effective way to proceed to avoid potential lawsuits (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)).

We will now look at another popular topic in the workplace, employment at will. Employment at will means that employers have the right to hire and fire employees at any time for any reason (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). To help protect employees from employment at will, there are also laws enacted for this type of employment status.

While employers have the right to employment at will, courts will look for an exception to this process. The exception mentioned is tort of wrongful discharge. Wrongful discharge states that employers have the ability to fire an employee for a bad reason (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). An employer needs to know what a bad reason for firing an employee could be. Some examples include discharging an employee for refusing to violate a law or even for exercising their legal right (Mayer, Siedel, Lieberman, & Martina, (n. d.)).

With the employment at will doctrine, employers need to be very careful. For example, with the wrongful discharge of an employee for refusing to violate a law can be very common. There have been cases where employers have asked their employees not to testify truthfully at trial. The employee could potentially be fired for not listening to the employer (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). If the case would be sent to court, the employer would be held liable.

An important aspect of employment at will is that common law can help modify this process for employers. During the hiring process, employees can be given oral promises that may be enforceable in court (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)). This could essentially become a he

said she said type of case. In order to help protect the company, the employer needs to ensure the employment at will is clearly documented in the employee handbook (Mayer, Warner, Siedel, Lieberman, & Martina, (n. d.)).

When you are dealing with employment law, there will always be advantages and disadvantages. One of the main positives about employment at will is beneficial for the employer. It allows the employer to have the option of dissolving a working relationship without any cause. It can be easier for employers to fire individuals if the reason does not need to be documented (Sentell & Robbins, 2008). While this may seem like a great idea it can also have its disadvantages for the organization.

One of the main disadvantages of employment at will is that employees are also able to end the working relationship at any time for any reason (Sentell & Robbins, R. 2008). For employees, this means that they will not to provide a notice for the employer. The employees are able to just quit and leave the employer short staffed. This could hurt the company's production and turnover rate. It could also lower morale for the company as a whole (Sentell & Robbins, 2008).

Just like affirmative action, there have been cases involving employment at will. There was a case in 1999 that involved an individual who interviewed with Arnold Worldwide Inc (Thelen, 2006). During the hiring process it was made clear that the employment would be considered " at will". He was told that he would be hired to help grow the organization, but in the offer letter it did mention " at will". In this case, the courts rules in favor for the

organization as they mentioned in the offer letter “ at will” (Thelen, 2006). This is a very important case for employers to be aware of in order to help prevent unnecessary trials in the future. Companies need to be clear and up front with the employees in the hiring process to avoid any misconception on the type of employment.

In this paper, we discussed affirmative action and employment at will. These topics are very common in business today. In order to help prevent employment trials, the employer needs to be up to date on these employment laws. There are a number of advantages and disadvantages to both of these topics. It will be up to the employer to determine what is needed for their organization in order to decide what action the employer wants to take moving forward.

References

- Affirmative Action. (2018). Retrieved from https://www.law.cornell.edu/wex/affirmative_action
- Affirmative Action Fast Facts. (2018). Retrieved from <https://www.cnn.com/2013/11/12/us/affirmative-action-fast-facts/index.html>
- Chrisman, R. (2013). Affirmative Action. *The Black Scholar* , 43 (3), 71-72. <https://doi.org/10.5816/blackscholar.43.3.0071>
- Mangum, M., & Dehaan, L. (2019). Entitlement and Perceived Racial Discrimination: The Missing Links to White Opinions Toward Affirmative Action and Preferential Hiring and Promotion. *American Politics Research* , 47 (2), 415-442. <https://doi.org/10.1177/1532673X18816709>

- Mayer, D., Warner, D., Siedel, G. Lieberman, J., & Martina, A. (n. d.) *Business law and the legal environment* . Washington, D. C.: Saylor Foundation. Available at: <https://www.saylor.org/site/textbooks/Business%20Law%20and%20the%20Legal%20Environment.pdf>
- Sentell, E., & Robbins, R. (2008). EMPLOYMENT AT-WILL. *Journal of Legal, Ethical and Regulatory Issues* , 11 (1), 1-15. Retrieved from <http://search.proquest.com/docview/216238320/>
- Thelen, James B., (2006). *California: Supreme Court confirms at-will employment offer*. Society for Human Resource Management. https://www.shrm.org/hr-today/news/hr-news/pages/cms_018360.aspx