

# Arguments for and against affirmative action and act will employment



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## **Introduction**

When a person applies for employment, they hope to get hired for their skills, experience, and previous work ethic and not because they are of a different race or gender. The 1964 Civil Rights Act refers to affirmative action as requiring companies to encourage equal opportunities between races, genders, religions, sexual orientation, and persons with disabilities and veterans in order to avoid discrimination between organizations (Bloomenthal, 2018). At will employment is when an employee can be released at any moment without any warning, reason, or explanation, but they can also choose to leave their employment at any given time (Doyle, 2019). This paper will discuss the pros (for) and cons (against) of affirmative action and at will employment.

### Affirmative Action

The Office of Federal Contract Compliance Programs (OFCCP) enforces the Affirmative Action Plan (AAP) under the Department of Labor umbrella (Bloomenthal, 2018). President John Kennedy introduced affirmative action in 1961. He presented an executive order that stated government contractors would ensure that affirmative action was utilized in the applicant and employment process regardless of race, creed, color, or origin (Webster, 2017). The policy highlighted the demand of equal opportunity and also was later implemented into college admissions.

### Pros

Whether people want to believe it or not, discrimination still does exist in the 21st century. It is unfortunate that affirmative action still has to exist in order to ensure that opportunity is available to all rather than the majority, a policy has to exist to guarantee there will be a percentage of minorities in the workplace.

Benefits of affirmative action are that it allows a diverse atmosphere and innovative thinking amongst employees and within company. For example, a study was conducted and revealed that when an organization has more than 30% women on a board of directors, there are changes in behavior, improvements in governance, and deeper discussions (Bloomenthal, 2018).

In 2015, a case was filed with the Supreme Court by several Fortune 500 companies to ensure that universities continue with admissions using affirmative action (Parloff, 2017). Some of the companies that are involved in the case to preserve affirmative action in the universities are Apple, Microsoft, and Proctor & Gamble. Although the company's policies are not questioned in the case to the Supreme Court, their argument is that affirmative action within the universities, colleges, business schools, and engineering organizations allows them to get the diverse workforce that they need for their diversity goals (Parloff, 2017).

Utilizing affirmative action within companies will save them from the possibility of being sued for discrimination and the opportunity to be proactive rather than reactive in the matter of diverse hiring and ensures longevity and continued profitability.

#### Cons

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In 2008, Abigail Fisher had a case filed against the University of Texas because she was denied admission and she blamed it on the affirmative action program. Fisher claims that the reason that she did not get accepted to the university was because she was white (Webster, 2017). The university denied Fisher's accusations and revealed the reason she was not accepted was because of her academic performance.

There are some people that state the affirmative action policy is obsolete and not necessary and that it leads to the opposite of what they are trying to do with reverse discrimination because it is a disadvantage to the majority. For instance, if an African American and Caucasian who had the same qualifications were applying for a job, the African American would get the job due to affirmative action. It is perceived that an applicant would get hired based on numbers and quotas rather than their qualifications, which could later cause a hostile work environment within an organization.

Consequences of being a minority and hired within a company could cause negative actions by coworkers because their opinion is that the person was only hired due to the color of their skin, gender, religion, or disabilities.

### Employment At Will

Employment at will was known in the 16th century as the "English Rule" (Sentell & Robbins, 2008, p. 1). England established a statute that prohibited employers from firing employees unless there was a satisfactory reasoning or cause. The statute was repealed and the rule began that employment that had a contract, but did not specify a duration would be presumed as a one-year term (Sentell & Robbins, 2008, p. 1).

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The English Rule was later implemented in the U. S. in the 19th century and made it the American Rule by stating that employment that had a contract without any specificity of duration could be terminated by either party at will for a reason or not. This allows employers to fire an employee without notice or a reason or no reason at all dependent on statutory restrictions (Sentell & Robbins, 2008, p. 1).

### Employment At Will Exceptions

Exceptions to employment at will are the following: Employment contracts, implied contracts, good faith and fair dealing, and public policy (Doyle, 2019). Employees can get collective bargaining agreements or contracts of employment to receive more rights than other employee at will employees without employment contracts. Implied contracts are in effect when a contract has been created between the employee and employer and they are prohibited from being fired. Whether they have legal documents that prove this contract or not does not matter, but it is the employee's responsible to provide proof if there is ever a case where they were illegitimately fired. Good faith and fair dealing protects an employee from being fired because an employer does not want to pay out commissions, healthcare, or retirement. Finally, public policy exception prevents employees from getting fired if it violates the state's public policy (Doyle, 2019).

### Pros

There are 24 states that have at will employment. The benefits of at will employment are as follows (Reddy, n. d.):

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1. It offers employees flexibility to look for better employment.
2. Promotions are based on merit.
3. It is an employer's benefit if they want to fire an employee for poor performance.
4. No requirement of negotiating contracts.
5. Less issues with employees because they just come to work and are productive because they do not fear getting fired and do not want to quit if it is a good paying job.

#### Cons

At will employment also has its downsides, the cons are as follows (Reddy, n. d.):

1. It is a slow hiring and fast firing process due to the amount of people that want a job, but if the employee is not performing to the employer's liking, they can be fired without notice or reasoning.
2. Undependable employment for employees or employees for employers causes frustration and no stability.
3. Employees can be fired for any reason without notice and for any reason or no reason at all.
4. Backlash of employees filing unfair terminations that have caused certain states to offer security measures for at will employees.

5. There is not any negotiating or complaining of the work environment or voicing concerns of work safety because the employer can fire the employee.

In the case *Shaw v. Burchfield*, the Supreme Court wanted to alter the at will employment rule because Shaw was under contract with three Farm Bureau agencies alleged breach of contract, unintentional contract interference or business advantage prospective, in civil conspiracy (Sentell & Robbins, 2008, p. 4). The Supreme Court found it difficult to find a solution to this case because there were contracts made that authorized the termination of employment due to the at will employment laws and exceptions.

### Summary

President John Kennedy initiated affirmative action in 1961 and is cited in the 1964 Civil Rights Act. He created an executive order that ensured that affirmative action was utilized in the applicant and hiring process regardless of race, creed, color, or origin. Fortune 500 companies such as Apple, Microsoft, and Proctor & Gamble filed a case with the Supreme Court to ensure that universities, colleges, and engineering organizations continued include affirmative action with their admissions to enable their guarantee of having a diverse workforce. Those that are against affirmative action find it inconvenient such as Abigail Fisher who filed a case against University of Texas stating she did not get accepted due to affirmative action.

Employment at will or at will employment is when an employer has the opportunity to fire an employee for no just cause or reason without notice and it also allows the opportunity for an employee to quit at any time without <https://assignbuster.com/arguments-for-and-against-affirmative-action-and-act-will-employment/>

notice. Those that are for the at will employment see the benefits of flexibility, promotions based on merit, and less issues with employees. The negative aspects of at will employment are slow hiring process and fast firing, no dependability, and the consistent risk of being fired at any given time or an employee quitting at any given time.

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