

Employment Law

Dr. Mike Aamodt
Radford University



Judicial Pecking Order

- U.S. Constitution
 - 5th Amendment (federal government)
 - 14th Amendment (state & local governments)
- Federal Laws (CRA, ADA, ADEA, FMLA, EPA)
- Executive orders (Executive Order 11246 – Federal Contractors)
- Federal case law (interprets Constitution and federal laws)
 - U.S. Supreme Court
 - Circuit Courts of Appeal (12 circuits, Virginia is 4th)
 - U.S. District Courts
- Federal administrative guidelines
 - EEOC
 - OFCCP

Federal Regulatory Agencies Department of Labor

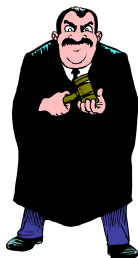
- Equal Opportunity Employment Commission (EEOC)
 - Director is Naomi Earp
 - Handles complaints for federal employment laws
 - Is complaint driven
- Office of Federal Contract Compliance Programs (OFCCP)
 - Director is Charles James
 - Monitors federal contracts under EO 11246
 - Is audit driven

Problem Scope

Year	Complaints	% Unwarranted	Monetary Benefits
2007	82,792	78.1%	\$290.6
2006	75,768	77.8	\$229.9
2005	75,428	78.6	\$276.1
2004	79,432	80.5	\$251.7
2003	81,300	80.0	\$269.0
2002	84,442	79.9	\$257.7
2001	80,840	77.9	\$247.8
2000	79,896	78.8	\$245.7
1999	77,444	83.6	\$210.5
1998	79,591	87.6	\$169.2
1997	80,680	89.0	\$176.7
1996	77,990	90.9	\$145.2
1995	87,259	87.9	\$136.0
1994	91,189	84.4	\$146.3

Potential Legal Problems

- Disparate treatment (intentional discrimination)
- Disparate impact (adverse impact)
- Invasion of privacy
- Illegal search
- Violation of wage & hour laws



Important Employment Laws

- Civil Rights Act (1964, 1991) – Title VII
- Age Discrimination in Employment Act
- Vietnam-Era Veterans Readjustment Act
- Disability
 - Americans with Disabilities Act
 - Vocational Rehabilitation Act
- Family Issues
 - Family Medical Leave Act
 - Pregnancy Discrimination Act
- Pay
 - Equal Pay Act
 - Fair Labor Standards Act

Employee Complaint Process

- Alleged discriminatory act
- Internal investigation
- Internal resolution process
 - Essential to have a formal policy
 - Options
 - Dictate a decision
 - Mediate a solution
 - Arbitrate a decision
 - Appeal procedure is important
- External resolution process
 - State agencies in deferral states
 - EEOC
 - Law suit



Alternative Dispute Resolution

- **Mediation**
 - Neutral third party
 - Disputants reach agreement
- **Arbitration**
 - Neutral third party
 - Arbitrator makes decision
 - Binding
 - Nonbinding
- **Dictation**
 - Third party makes decision



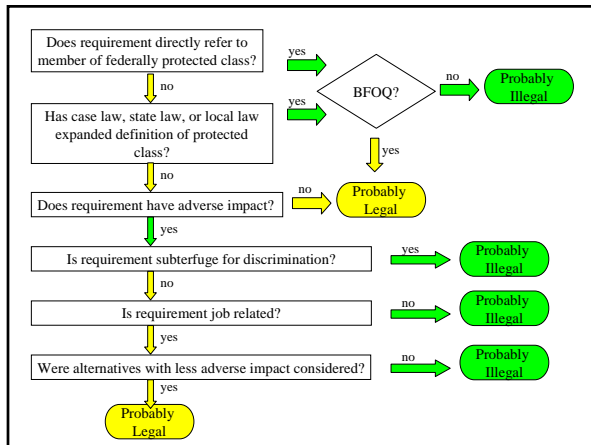
EEOC Complaint Process

1. Alleged discriminatory act
2. Complaint filed
 - a. 180 days for nondeferral states
 - b. 300 days for deferral states
3. Employer notified within 10 days
4. Investigation (goal is to complete in 120 days)
 - a. **Reasonable cause found**
 - 1) attempt to reach agreement
 - 2) if no agreement, EEOC can file suit
 - b. **Reasonable cause not found**
 - 1) right to sue letter issued to employee
 - 2) employee has 90 days to file suit

Employment Decisions

- Hiring
- Placement
- Promotion
- Assignment (shift, patrol zone)
- Salary
- Discipline
- Training opportunities





Does Requirement Directly Refer to a Member of a Federally Protected Class?

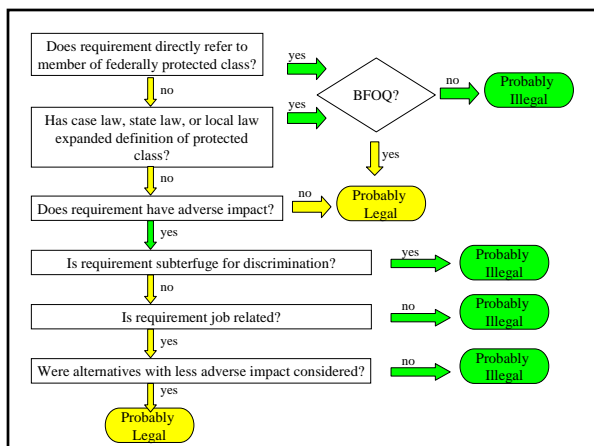
- | | |
|--------------------------|-----------------------|
| • Sex (Civil Rights Act) | • Color (CRA) |
| – Male | • Age (over 40; ADEA) |
| – Female | • Religion (CRA) |
| • Race (CRA) | • Disability (ADA) |
| – African American | – Current |
| – Asian American | – Previous |
| – White | – Regarded as such |
| – Native American | • Vietnam veteran |
| • National origin (CRA) | • Pregnant female |

Federally Protected Class Exercise



3-1

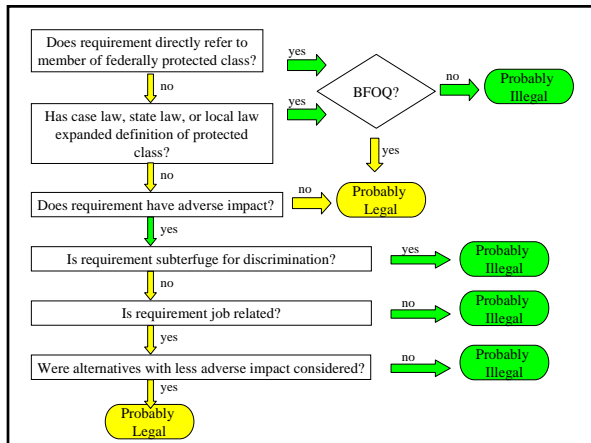
A	A World War II veteran claims he was discriminated against because he was in the war
B	A Mormon says his religion forbids him to work on certain days
C	A person who is visually impaired claims she is disabled
D	A gay applicant wasn't hired because of his sexual preference
E	A male wasn't hired for a sales position in a retail store specializing in women's athletic shoes
F	A 24-year old woman wasn't hired for a managerial job because she was too young
G	A Norwegian applicant claimed he wasn't hired because a Chinese restaurant hired only Asians
H	A light-skinned African American would not hire a dark-skinned African American
I	A store wouldn't hire anyone with a college degree because of the belief that such people had no common sense
J	A fast food chain refused to hire men with long hair



Is the Requirement a Bona Fide Occupational Qualification (BFOQ)?

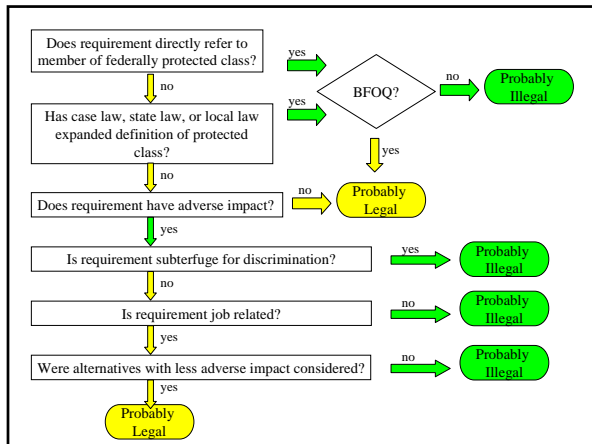
- Only members of a particular class can perform the job
- There can be no exceptions
- According to the courts:
 - Race can never be a BFOQ
 - Religion has been (e.g., Nun, priest)
 - Gender seldom is
 - Customer preference doesn't matter





Has Local, State or Case Law Added Protected Classes?

- **State Law Examples**
 - Virginia protects marital status
 - Wisconsin protects sexual orientation
- **Local Law Examples**
 - Cincinnati protects people of Appalachian heritage
 - Santa Cruz, CA outlaws discrimination based on height and physical appearance
- **Case Law Examples**
 - Transsexuals are not a sex
 - Former drug use is not a disability



Does the Requirement Have Adverse Impact on Members of a Protected Class?

- Adverse impact occurs when a neutral employment practice affects members of a protected class at a disproportionate rate
 - Hiring
 - Promotion
 - Termination

Racial Group	Bachelor's Degree (%)	High School Diploma (%)
Asian	~40	~35
White	~25	~75
African American	~15	~65
Hispanic	~10	~15

Four-Fifths Rule

- Occurs when the selection rate for one group is less than 80% of the rate for the highest scoring group
- History (Biddle, 2005)
 - Adverse impact first mentioned in EEOC guidelines in 1966
 - Griggs v. Duke Power* (1971)
 - Technical Advisory Committee on Testing (TACT) of the Fair Employment Practice Commission (FEPC) of California in 1972
 - Committee of 32 specialists discussed the issue for months
 - 20 of the members discussed the need for a statistical **and** practical test of significance and decided on the 80% rule
 - Statistical not practical for most because it was difficult to compute
 - 1978 *Uniform Guidelines* discuss 80% test as a, "rule of thumb"

Four-Fifths Rule

Occurs when the selection rate for one group is less than 80% of the rate for the highest scoring group

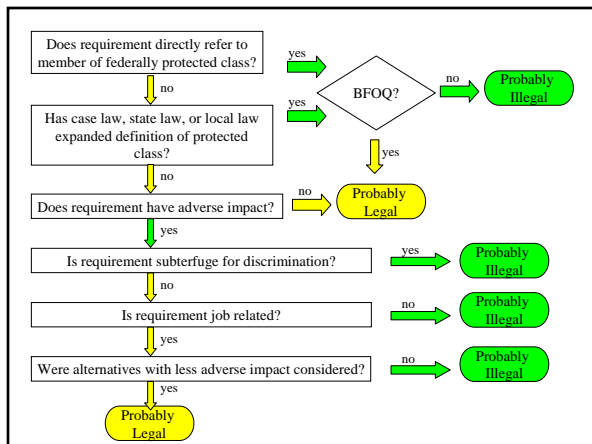
	Male	Female
Number of applicants	50	30
Number hired	20	10
Selection ratio	.40	.33

$.33 \div .40 = .83 > .80$ (no adverse impact)

Adverse Impact - Example 2

	Male	Female
Number of applicants	40	20
Number hired	20	4
Selection ratio	.50	.20

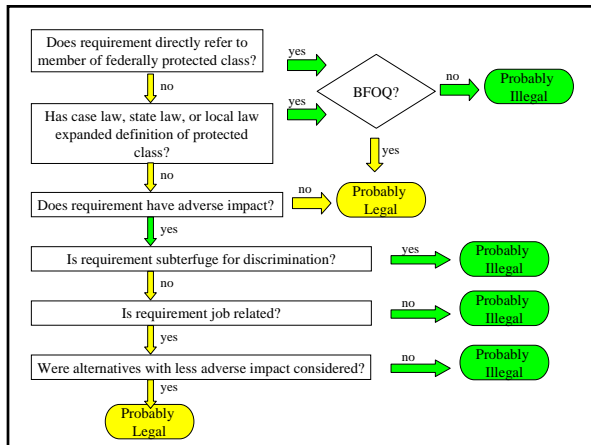
$.20 \div .50 = .40 < .80$ (adverse impact)



Was the Requirement a Subterfuge for Intentional Discrimination?

- Old voting requirements
- Residency requirements
- Height requirements





Can the Employer Prove that the Requirement is Exempt or Job Related?

- Exemptions
 - Bona fide seniority system
 - Veteran's preference rights
 - National security
- Job Related
 - Types
 - BFOQ
 - Valid testing procedure
 - Methods
 - Content validity
 - Criterion validity
 - Validity generalization



Content Validity

- Based on a solid job analysis
- A method of rationally matching tasks with the necessary knowledge, skills, abilities, and other characteristics (KSAOs) to perform the job



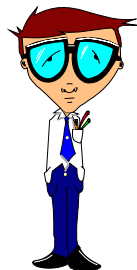
Criterion Validity

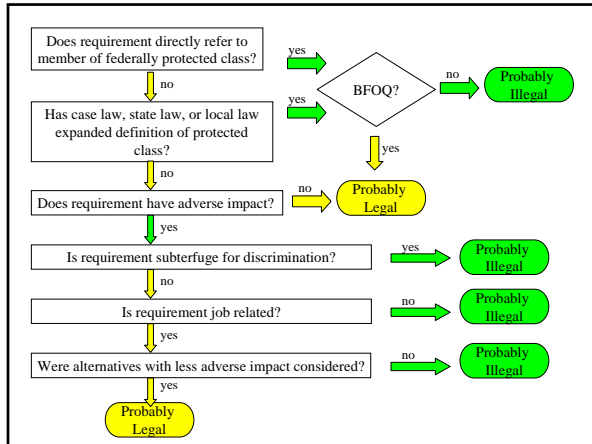
- Correlate test scores with relevant criteria
- Two types
 - Concurrent
 - Predictive
- Requirements
 - Reasonable sample size
 - Good range of test and criterion scores
 - A good criterion



Validity Generalization

- Based on meta-analysis
- Borrows validity from other studies or organizations
- Job analysis results must be similar





Did Employer Look for Reasonable Alternative with Less Adverse Impact?

- A different test measuring the same construct
- A different type of test
- Changes to testing conditions
 - video rather than written
 - practice exams
 - conditioning programs
- Job redesign

