

## **Computer Simulation and Learning Theory, Volume 3, 1976**

### **ISSUES IN EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION: AN EXPERIENTIAL EXERCISE**

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The passage of the Civil Rights Act of 1964 and the creation of the EEOC have had the effect of putting pressure on companies and unions to cease overt discrimination and open additional job opportunities in production-line and other "blue collar" jobs. In its first four years, the commission's investigations of alleged illegal discrimination resulted in the filing of a mere handful--fewer than two dozen--federal suits to stop discrimination by employers or by unions. Most of the suits were against small companies or union locals. It was not until mid-1968 that a suit was brought against the nationwide operations of a large employer.

There are several reasons for the EEOC's slow initial performance. Congress initially appropriated about \$2 million for it in 1964, but President Johnson did not name the commissioners until well into 1965. The chairman was Franklin D. Roosevelt, Jr. But Roosevelt, after a few months, resigned to run for political office. So roughly two years passed before the commission really began. When it did, it found the administrative machinery provided by Congress slow and cumbersome. Initially it could only investigate complaints against private employers, employment agencies, unions, or labor-management apprenticeship programs. Upon finding illegalities, it could only try conciliation and had to recommend to the Justice Department that suits be brought. The EEOC had no authority to hold administrative hearings on its complaints or to ban illegal union or employer discriminatory practice. Authority to hold such proceedings is a basic part of the power of other regulatory agencies and accounts for the tremendous volume of their work. The EEOC has asked repeatedly for such authority and Congress has refused to grant it, perhaps in part because of the Commission's strong advocacy position compared to other regulatory agencies.

A change came in 1972 when the Act was expanded to include state and local governments and educational institutions. This provided coverage for 11 million and 4.3 million employees respectively. There was also a change in procedure in that now the EEOC no longer viewed discrimination as a single, isolated act, but viewed systematic discrimination which had disparate effects on "protected groups." The major charge to the EEOC was then to eliminate discrimination due to race, color, religion, sex and national origin in hiring and upgrading all employee conditions. It was also given the power to sue discriminatory employers.

Of the first 175,000 EEOC cases, 63 percent were found in favor of the complainant and at least 250 suits have been brought against employers. In 1974 over 6,000 cases involving women were filed and many traditional hiring requirements such as height,

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weight, working hours, childbearing, etc., have been ruled against. Millions of dollars have been paid by organizations for their discriminatory behavior. The most famous of these is probably the AT&T case which paid 15 million, 23 million, and 30 million to various management and non-management groups for discrimination. Part of these payments were in the form of back pay, wage adjustments, and promotion payments. Another case which involved nine steel companies (73 percent of the industry's output) paid 31 million in back pay ranging from \$250 to \$3,000 to minorities and women (22,800 of a workforce of 347,000). The steel companies also established goals and time-tables concerning seniority, transfer, earnings, promotions and test validity.

Although we can now see the impact the EEOC Guidelines have had (i.e., little criticism from industry was received from 1966 to 1970), the now famous 1971 Griggs vs. Duke Power cases changed all of that. In this case the United States Supreme Court said that, "The administrative interpretation of the Act by the enforcing authority is entitled to great deference." A more recent case (Moody vs. Albermarle Paper Co.) seems to have affirmed that the 1970 EEOC Guidelines on Employee Selection Program "entitled to great deference" as the procedures to be used in selection design.

It is in this context that it was felt necessary to design an experiential exercise in EEO and Affirmative Action. The one discussed here can be used in various courses such as personnel administration, labor relations, industrial relations, business and society, business and government, labor law, etc. It may require some previous knowledge in human resource planning and personnel selection procedures, but can also be used as an introduction to both topics, especially with graduate students.

The EEO aspect of the exercise focuses upon the inappropriate testing procedures in the past and the legal aspects of selecting people--job discrimination. Basically, what is defined as job discrimination is two factors. The first is the "adverse impact" that an organization's selection procedures may have on protected groups (minorities and women). The second is that there is no discrimination even if the selection procedures demonstrate adverse impact provided they are also shown to be job related. Therefore for discrimination in employment to exist an organization must be using selection procedures which show adverse impact on protected groups that are not job related. Further, not only must past practices causing adverse impact be eliminated but many organizations must engage in proactive (Affirmative Action) practices to remedy past discrimination. The authority for these proactive efforts comes primarily from Executive Order 11246 as amended.

The objectives of the exercise are thus;

1. To gain an understanding of the law as it relates to employment discrimination with respect to selection procedures (i.e., job analysis, testing, performance, criteria, and the validation of selection methods).

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2. To build skills in detecting and avoiding discriminatory practices as well as planning for specific remedies through Affirmative Action programs.

Students are introduced to EEO/Affirmative Action by reviewing four major federal laws now available for seeking redress for discrimination in employment: The Civil Rights Act of 1866; Title VII of the Civil Rights Act of 1964, as amended in 1972; the Age Discrimination in Employment Act of 1967; and the Equal Pay Act of 1963. These as well as a few others are summarized in Figure 1. Beyond these laws, the implications for personnel practice are then reviewed as summarized in Figure 2.

The experiential parts of the exercise consist of the following:

### **Part I**

1. EEO/Affirmative Action
2. Calculation of "adverse impact"

### **Part II**

1. Affirmative Action proposed for a small manufacturer
  2. Roles of Board members
- ### **Part III**
1. Profile of a large city's labor force
  2. The Affirmative Action Format (uncompleted) for the city

### **Part IV**

1. Basic company information for a major corporation
2. An in-basket of information for the new Personnel Administrator
3. Employment codes for the labor force employed by the organization
4. Profile of the organization's labor force
5. Company breakdown
6. Affirmative Action Format (EEO-1) to be completed
7. Blank agenda to present the EEO/Affirmative Action plan to the Board of Directors

Each of these parts becomes more sophisticated. Thus, Part IV is much more difficult and time consuming than Part II. As students progress in their skills in selection validation and human resource planning they may be given the opportunity to perform more difficult parts. The exercise also includes a glossary of legal terms related to EEO/Affirmative Action issues. A comprehensive bibliography is included here for those who might be interested in designing their own EEO/Affirmative Action Exercise.

## **SELECTED READINGS IN EEO/AFFIRMATIVE ACTION**

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15. U.S. Civil Service Commission, Guidelines for the Development of an Affirmative Action Plan, Bureau of Intergovernmental Personnel Programs, Washington, D.C.: U.S. Government Printing Office, 1975.
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FIGURE 1  
A REVIEW OF EMPLOYMENT DISCRIMINATION LAW

| Agency  | Authority  | Scope of Authority  |
|---|--|---|
| Equal Employment Opportunity Commission (EEOC)                | 1964 Civil Rights Act (78 Stat 241), as amended by 1972 EEO Act (86 Stat 103)        | Can bring suits against private employers & labor unions with more than 15 employees. Suits must be preceded by efforts at conciliation & must originate in individual complaints, although they may be expanded to pattern & practice suits. All Justice Department authority to bring EEO suits goes to EEOC.   |
| Justice Department Civil Rights Division                      | 1964 Civil Rights Act, as amended by 1972 EEO Act                                    | Can bring suit where there exists a prima facie case of a private employer or labor union with more than 15 employees engaging in a pattern or practice of discrimination. May complete individual complaint suits begun before 1972 act. Can bring individual as well as pattern & practice suits against agencies of state & local government. After March 1974 this authority was transferred to EEOC. |
| Civil Service Commission                                      | 1972 EEO Act, ExecOrder 11478<br>1970 Intergovernmental Personnel Act (84 Stat 1909) | Reviews & approves EEO policies of all federal agencies<br>Consults with state & local governments to establish & improve merit hiring systems & conducts compliance reviews.   |
| Labor Department Office of Federal Contract Compliance (OFCC) | ExecOrder 11246, as amended (ExecOrder 11375); Labor Dept. Revised Order No. 4       | Requires all federal contractors with more than \$50,000 in contracts to take affirmative action to bring about EEO.  |
| All Other Federal Agencies                                    | ExecOrders 11246 & 11375; Labor Dept. Revised Order No. 4                            | Authority delegated by OFCC to review contract compliance. Each agency also is responsible for internal EEO, consistent with Civil Service guidelines.  |
| Equal Employment  | 1972 EEO Act   | Members include representatives from EEOC, Justice, Civil Service, Labor & the Civil Rights Commission. Responsibility is to coordinate EEO policy for first 4 of these agencies.   |

FIGURE 2  
GENERAL GUIDELINES TO LAWFUL AND UNLAWFUL EMPLOYMENT PRACTICES<sup>a</sup>

| Types of Inquiries<br>of Job Applicants<br>Typically Made By<br>Employers in<br>Selection |   |  | Lawful Practice(s)<br>Related to Inquiry   | Possibly Unlawful Practice(s)<br>Related to Inquiry   |
|---|---|--|--|---|
| 1. Name   | Inquiry as to full name.  |  |  | Inquiry into any title which indicates race, color, religion, sex, national origin or ancestry.   |
| 2. Address  | Inquiry into place and length of current and previous addresses |  |  | Specific inquiry into foreign addresses which would indicate national origin.   |
| 3. Sex  |   |  |  | Any inquiry which would indicate sex.   |
| 4. Religion -<br>Creed  |   |  |  | <p>A. Any inquiry to indicate or identify denomination or customs.</p> <p>B. May not be told this is a Protestant (Catholic, Jewish) organization.</p> <p>C. Request of a recommendation or reference from someone in clergy.</p> |
| 5. Birthplace or<br>National Origin   |   |  |  | <p>A. Any inquiry into place of birth.</p> <p>B. Any inquiry into place of birth of parents, grandparents or spouse.</p> <p>C. Any other inquiry into national origin.</p>  |
| 6. Race or Color  |   |  |  | Any inquiry which would indicate race, color  |
| 7. Citizenship  |   |  | <p>A. Whether or not a U.S. Citizen</p> <p>B. If not, whether intends to become one.</p> <p>C. If U.S. residence is legal.</p> <p>D. If spouse is citizen.</p> <p>E. Require proof of citizenship after being hired.</p> | <p>A. If native-born or naturalized.</p> <p>B. Proof of citizenship before hiring.</p> <p>C. Whether parents or spouse are native-born or naturalized.</p>  |

FIGURE 2 (Continued)

| Types of Inquiries<br>of Job Applicants<br>Typically Made By<br>Employers in<br>Selection | Lawful Practice(s)<br>Related to Inquiry   | Possibly Unlawful Practice(s)<br>Related to Inquiry  |
|---|--|--|
| 8. Age  | A. Request proof of age in form of work permit issued by school authorities.<br>B. Require proof of age by birth certificate after hiring.   | Require birth certificate or baptismal record before hiring.   |
| 9. Photographs  | May be required <u>after</u> hiring for identification purposes.   | Require photograph <u>before</u> hiring.   |
| 10. Education   | A. Inquiry into what academic professional or vocational schools attended.<br>B. Inquiry into language skills, such as reading and writing of foreign languages.   | A. Any inquiry asking specifically the nationality, racial or religious affiliation of a school.<br>B. Inquiry as to what is mother tongue or how foreign language ability was acquired, unless necessary for job. |
| 11. Relatives   | Inquiry into name, relationship and address of person to be notified in case of emergency.   | Any inquiry about a relative which is unlawful.  |
| 12. Organization  | A. Inquiry into organization memberships, excluding any organization the name or character of which indicates race, color, religion, sex, national origin or ancestry of its members.<br>B. What offices are held, if any. | Inquiry into all clubs and organizations where membership is held.   |
| 13. Military Service  | A. Inquiry into U.S. Armed Forces service.<br>B. Rank attained.<br>C. Which branch of service.<br>D. Require military discharge certificate after being hired.   | A. Inquiry into military service in armed service of any country but U.S.<br>B. Request military service records.  |

FIGURE 2 (Continued)

| Types of Inquiries<br>of Job Applicants<br>Typically Made By<br>Employers in<br>Selection | Lawful Practice(s)<br>Related to Inquiry  | Possibly Unlawful Practice(s)<br>Related to Inquiry  |
|---|---|--|
| 14. Work Schedule   | Inquiry into willingness to work required<br>work schedule.   | Any inquiry into willingness to work any<br>particular religious holiday.  |
| 15. Other   | Any question that has a direct reflection<br>Qualifications (i.e., can be shown to be job-related) on<br>the job to be applied for. | Any non-job related inquiry that may present<br>information permitting unlawful discrimina-<br>tion.   |
| 16. References  | General personal and work references not<br>relating to race, color, religion, sex,<br>national origin, or ancestry.                | Request references specifically from clergy-<br>men or any other persons who might reflect<br>race, color, religion, sex, national origin<br>or ancestry of applicant. |

<sup>a</sup> This figure was developed after the general guidelines used by the State of Ohio. Exceptions include Bona Fide Occupational Qualifications (BFOQs).