

FAIR EMPLOYMENT LEGISLATION
 [Equal Employment Opportunity or Managing Diversity]
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The basic aim here is to insure employment decisions are made based on *job-related criteria* instead of race, color, national origin, sex, religion, age, etc.

Sources: Federal and State Laws; Executive Orders; Agency Guidelines; Court Decisions

The end results fall in three major categories:

- 1) Specify procedures the employer must follow
- 2) Prohibit discriminatory practices
- 3) Prescribe remedies for affected employees

Two major legislative changes occurred in the early 1960s:

1963, The Equal Pay Act= Equal pay for equal work. One can consider factors such as length of service, merit, incentive, and geographic location.

1964 (amended), The Civil Rights Act, Title VII. This legislation created the **Equal Employment Opportunity Commission (EEOC)**. There are five commissioners who are appointed by the President. This agency has two basic tasks. They (1) formulate procedures, and (2) resolve complaints. There are roughly 3,000 employees, of which 97% are involved in enforcement. There are normally state and even city versions of this agency. In Jacksonville, we have the Human Rights Commission. A person may be urged or required to use one or the other. Normally attempts are made to resolve things via the state (local) agency first.

* There are filing deadlines that must be respected. For example, federal cases should be filed within 180 days, and in the state of Florida, one has up to one year. There is a work sharing agreement between most state and federal EEO offices. If one files a charge with the state office and it is forwarded to the federal office, the filing deadline is extended to 300 days. The EEOC will notify the employer within 10 days of the charge being filed. The charge will then be placed into a waiting list until an investigator is assigned. The length of this wait varies greatly with the volume of charges that have been filed during the period in question.

A person may be discontented with past events many years later. Legally, the filing deadlines are critical. If there is an ongoing inequity, or a new event takes place that creates a new filing deadline, the filing deadline issue may not be a problem. A past history of similar incidents can create a serious problem for a company if the managers fail to take corrective action. One does not want to have a "pattern in practice" found, or be caught attempting to engage in a "cover-up."

* How does a manager normally hear about an employee filing a discrimination charge with the government? The most common form of first contact is a registered letter. Once an investigator is

assigned, the managers will be asked questions. Contacts may later be made by telephone, there may be visits to the site, and/or people may be called in for a hearing. The EEOC may attempt conciliation. If this fails and a problem is deemed to exist, a letter to sue may be issued to the complainant. While companies do not lose all of these cases, one gets the impression by talking to managers that they dislike the process. They feel uncomfortable being questioned, having to provide documents, and as some of them put it, "being treated as guilty until proven innocent." Once the investigation is started, it must be concluded in 120 days. The complaining employee normally is given 90 days to sue once the EEOC concludes its investigation. Most of the cases that are pursued involve the loss of a job.

* Filing a complaint normally involves answering the following questions (Dessler, 2011: 50). What happened? Who was involved? When did the incident take place? Who was present? Was the work process impacted? A written statement summarizing the known facts, the accuser's allegations and the remedy sought would then be prepared, signed and dated. *In order to document a situation, one must answer questions regarding who, what, when and where.*

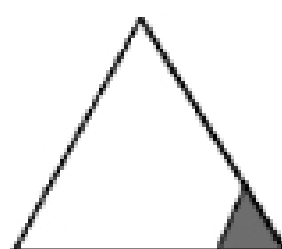
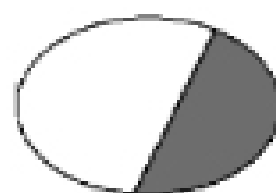
MEASURES OF ILLEGAL DISCRIMINATION

Unequal Treatment or Disparate Treatment: This measure refers to protected groups being dealt with differently when it is not based on accepted "objective" factors. For example, in a promotion situation, one might consider the candidates' relative qualifications in education, training, experience, seniority and job performance. In a fight situation, one might look at the severity of each person's actions, and/or past disciplinary records that might justify different punishments. The burden of proof in this category rests with the employee. If it is shown the objective factors do not explain the unequal treatment, it is presumed the charge of discrimination is true. Blatant discriminatory remarks would be covered under this measure, but one need not have such evidence.

Unequal Impact, Disparate Impact or Adverse Impact: This measure refers to barriers that appear to be neutral on the surface, such as an employment test, may have an adverse impact on members of protected groups. The employer may not intend to discriminate, but there is less presence of minorities than could reasonably or statistically be expected (i.e. it smells fishy= there may not be adequate numbers of members of protected groups relative to the labor market, and/or they may be locked in lower level jobs). In this case, the burden of proof can shift onto the employer (the managers must demonstrate the job relatedness of the test, the business necessity, etc.).

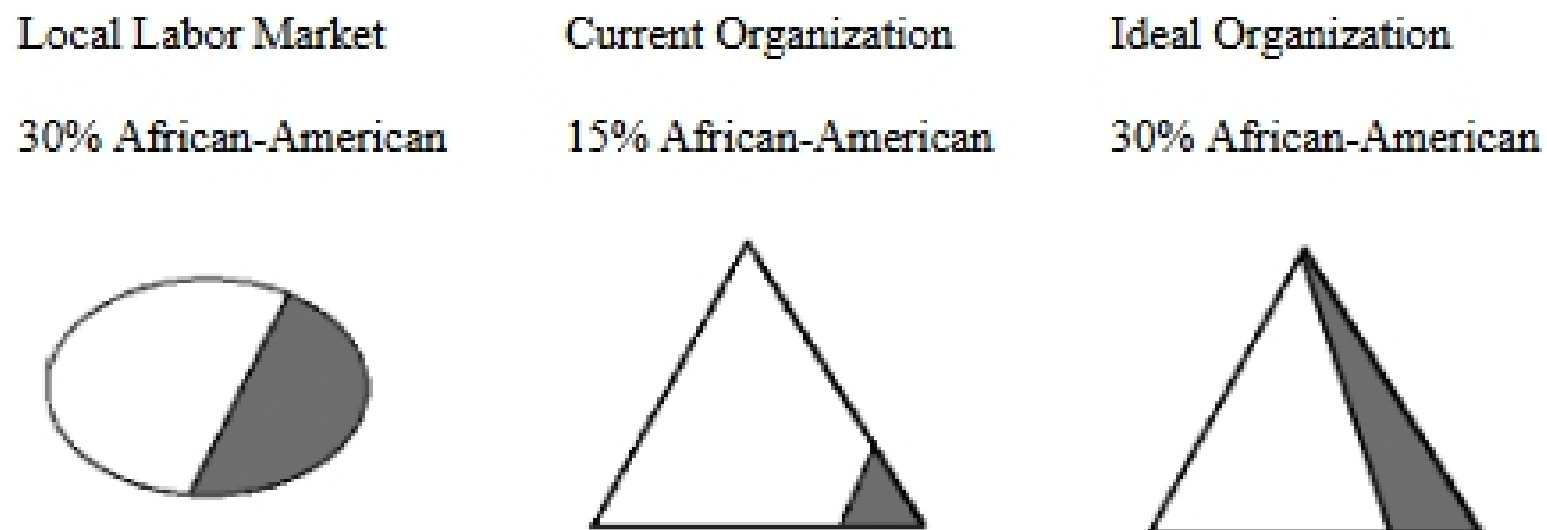
Local Labor Market
30% African-American

Current Organization
15% African-American



AFFIRMATIVE ACTION (AA)

AA is not a measure of discrimination. The term also does not refer to passive nondiscrimination. *AA stands for a set of aggressive steps designed make sure that members of protected groups are equitably represented in all levels and areas of the work force.* AA was created by two executive orders issued by President Johnson.



What would one normally expect to find in an AA plan?

- (1) *An analysis of shortcomings relative to the relevant labor market:* A chart reflecting the current representation in each department/area is created. One might find underutilization, parity or overutilization. The chart contains information about the employees in terms of male/female, White, African-American, Hispanic, Native American and Asian.
- (2) *A timetable for correction:* This timetable may contain short term and long term goals.
- (3) *A plan for achieving:* This may entail changes in recruiting, training and promotion practices until these groups are equitably represented in all areas. One may have to also evaluate availability, including the number of people in each category who are both available and interested.
- (4) *Auditing and evaluation:* An internal audit and reporting system should be set up to monitor and evaluate progress in each part of the program.

Who has written AA plans?

- (1) Employers with federal contracts greater than \$50,000 per year and 50 or more employees must have an AA plan. If an employer does not convince the Office of Federal Contract Compliance Programs (OFCCP) that proper progress is being made towards the organization's goals, all federal contracts may be lost and a future bar may be issued. Of course, one might be making good faith efforts and simply fall somewhat short of a goal one year. The extent of the effort and the progress made in prior years will be considered.
- (2) A court may order a company that has been found guilty of past acts of discrimination to adopt an AA plan.