

Human Resource Management

Eleventh Edition

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Chapter 4

Legal Framework of Equal Employment

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SECTION 2
Staffing the
Organization

Learning Objectives

- After you have read this chapter, you should be able to:
 - Define three basic EEO concepts and discuss the key provisions of Title VII of the Civil Rights Act of 1964.
 - Give examples of three sex-based discrimination issues.
 - Indicate the major requirements of the Americans with Disabilities Act of 1990.
 - Discuss the two general approaches for complying with the 1978 Uniform Guidelines on Employee Selection Procedures.
 - Identify typical EEO recordkeeping requirements and the records used in the EEO investigative process.

Equal Employment Opportunity Concepts

- **Equal Employment Opportunity (EEO)**
 - Employment that is not affected by illegal discrimination.
- **Blind to differences**
 - Differences among people should be ignored and everyone should be treated equally.
- **Affirmative Action**
 - Employers are urged to hire groups of people based on their race, age, gender, or national origin, to make up for historical discrimination.

EEO Concepts (cont'd)

- **Discrimination**

- “Recognizing differences among items or people.”
- Illegal in employment-related situations when either:
 - ❖ Different standards are used to judge different individuals, or
 - ❖ The same standard is used, but it is not related to the individuals' jobs.

- **Protected Class**

- Individuals within a group identified for protection under equal employment laws and regulation.
 - ❖ Race, ethnic origin, color
 - Gender
 - Age
 - ❖ Disability
 - Military experience
 - Religion
 - ❖ Marital status
 - Sexual orientation

Major Federal Equal Employment Opportunity Laws and Regulations

Act	Year	Key Provisions
Broad-Based Discrimination		
Title VII, Civil Rights Act of 1964	1964	Prohibits discrimination in employment on basis of race, color, religion, sex, or national origin
Executive Orders 11246 and 11375	1965 1967	Require federal contractors and subcontractors to eliminate employment discrimination and prior discrimination through affirmative action
Executive Order 11478	1969	Prohibits discrimination in the U.S. Postal Service and in the various government agencies on the basis of race, color, religion, sex, national origin, handicap, or age
Vietnam Era Veterans' Readjustment Assistance Act	1974	Prohibits discriminations against Vietnam-era veterans by federal contractors and the U.S. government and requires affirmative action
Civil Rights Act of 1991	1991	Overturms several past Supreme Court decisions and changes damage claims provisions
Congressional Accountability Act	1995	Extends EEO and Civil Rights Act provisions to U.S. congressional staff

Figure 4-1

Major Federal Equal Employment Opportunity Laws and Regulations (cont'd)

Act	Year	Key Provisions
Race / National Origin Discrimination		
Immigration Reform and Control Act	1986 1990 1996	Establishes penalties for employers who knowingly hire illegal aliens; prohibits employment discrimination on the basis of national origin or citizenship
Gender / Sex Discrimination		
Equal Pay Act	1963	Requires equal pay for men and women performing substantially the same work
Pregnancy Discrimination Act	1978	Prohibits discrimination against women affected by pregnancy, childbirth, or related medical conditions; requires that they be treated as all other employees for employment-related purposes, including benefits

Figure 4-1 (cont'd)

Major Federal Equal Employment Opportunity Laws and Regulations (cont'd)

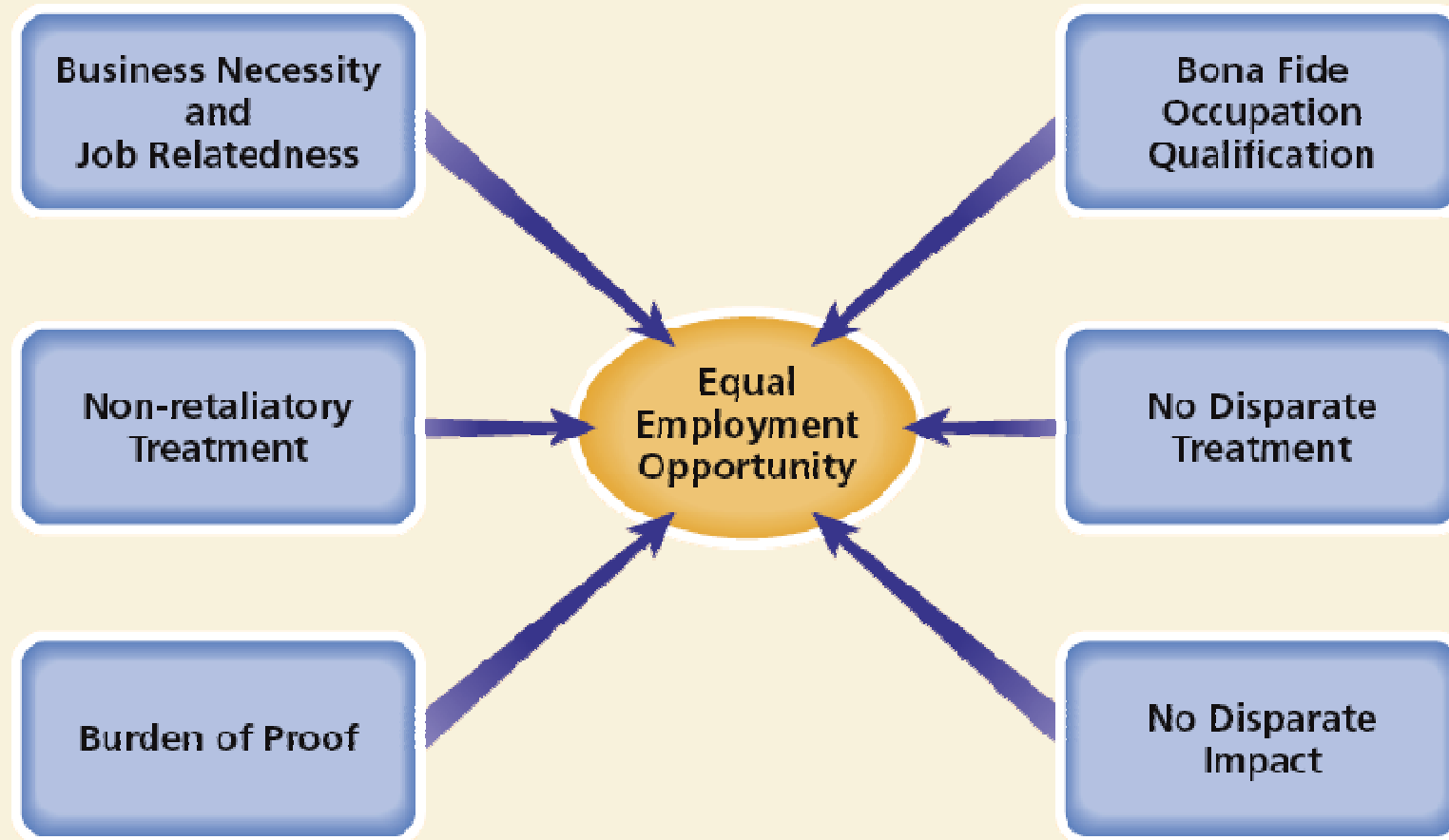
Act	Year	Key Provisions
Age Discrimination		
Age Discrimination in Employment Act (as amended in 1978 and 1986)	1967	Prohibits discrimination against persons over age 40 and restricts mandatory retirement requirements, except where age is a bona fide occupational qualification
Older Workers Benefit Protection Act of 1990	1990	Prohibits age-based discrimination in early retirement and other benefits plans
Disability Discrimination		
Vocational Rehabilitation Act and Rehabilitation Act of 1974	1973 1974	Prohibit employers with federal contracts over \$2,500 from discriminating against individuals with disabilities
Americans with Disabilities Act	1990	Requires employer accommodations for individuals with disabilities

Figure 4-1 (cont'd)

Major Equal Employment Laws

- Civil Rights Act of 1964, Title VII
 - Established the Equal Opportunity Commission to enforce the act's provisions.
 - Coverage
 - ❖ All private employers with 15 or more employees
 - ❖ All educational institutions, public and private
 - ❖ State and local governments
 - ❖ Public and private employment agencies
 - ❖ Labor unions with 15 or more employees
 - ❖ Joint labor/management apprenticeship committee

EEO Concepts



Business Necessity and Job Relatedness

- **Business Necessity**
 - A practice that is necessary for safe and efficient organizational operations.
- **Bona Fide Occupational Qualifications (BFOQ)**
 - A business characteristic providing a legitimate reason why an employer can exclude persons on otherwise illegal bases of consideration.
- **Disparate Treatment**
 - A situation that exists when protected-class members are treated differently from others.

Business Necessity and Job Relatedness

- **Disparate Impact**
 - Occurs when substantial underrepresentation of protected-class members results from employment decisions that work to their disadvantage.
 - *Griggs vs. Duke Power* (1971) decision:
 - ❖ Lack of intent to discriminate is no defense if discrimination occurs.
 - ❖ The employer has the burden of proof in proving that an employment requirement is a job-related “business necessity.”
 - **Retaliation**
 - ❖ EEO laws prohibit employers from taking punitive actions against individuals who exercise their legal rights.

Burden of Proof

- Burden of proof
 - What individuals who file suit against employers must prove in order to establish that illegal discrimination has occurred.
 - *Reeves v. Sanderson Plumbing Products*
 - ❖ Circumstantial evidence can shift the burden of proof to the employer.
 - A plaintiff charging discrimination:
 - ❖ Must be a protected-class member
 - ❖ Must prove that disparate impact or disparate treatment existed.
 - ❖ Once a court rules that a *prima facie* (preliminary) case has been made, the burden of proof shifts to the employer.

Civil Rights Act of 1991

- Significant provisions:
 - Employment practices must be job-related and consistent with business necessity.
 - Plaintiffs must challenge a particular employer practice and show that protected-class status played *some role*.
 - Provided limited compensatory damages for intentional discrimination.
 - Allowed plaintiffs to seek jury trials.
 - Prohibited race and gender norming of tests and the use of alternative scoring based on protected class membership.
 - Extended EEO coverage to U.S. citizens overseas and government employees.

Executive Orders 11246, 11375, and 11478

- Executive Orders

- Orders issued by the President of the United States to provide direction to government departments on a specific area.
 - ❖ Require holders of federal contracts not to discriminate on the basis of race, color, religion, national origin, or sex and to develop affirmative action plans.
- Office of Federal Contract Compliance (OFCCP) in the Department of Labor enforces these presidential orders.

Laws on Sex/Gender Discrimination

- **Pregnancy Discrimination Act (PDA) of 1978**
 - Requires an employer to treat maternity leave the same as other personal or medical leaves.
 - Employers must treat pregnant employees the same as other employees.
- **Family Medical Leave Act (FMLA) of 1990**
 - Requires that individuals be allowed up to 12 weeks of unpaid leave for family/medical purposes.

Laws on Sex/Gender Discrimination

- **Equal Pay Act of 1963**
 - Requires employers to pay similar wage rates for similar work without regard to gender. Exceptions are permitted for differences in seniority, performance, output, and other work-related factors.
- **Pay Equity (Comparable Worth)**
 - The concept that pay for jobs requiring comparable levels of knowledge, skill, and ability should be paid similarity, even if actual duties differ significantly.
 - Courts have consistently ruled against the concept.
 - Arises from the continuing gap between the earnings of women and men.

Laws on Sex/Gender Discrimination

- Sexual Harassment

- Actions that are sexually directed, are unwanted, and subject the worker to adverse employment conditions or create a hostile work environment.
- Can occur between a boss and a subordinate, among co-workers, and when non-employees have business contacts with employees.



Americans with Disabilities Act (ADA)

- Disabled Person

- Someone who has a physical or mental impairment that substantially limits life activities, who has a record of such impairment, or who is regarded as having such an impairment.

- Who is disabled?

- ❖ Mitigation means and methods
- ❖ Mental disabilities (e.g., depression)
- ❖ Life threatening illnesses (e.g., AIDS and HIV)



Americans with Disabilities Act (ADA)

- **Essential Job Functions**
 - Fundamental job duties of the employment position that an individual with a disability holds or desires.
- **Reasonable Accommodation**
 - A modification or adjustment to a job or work environment that enables a qualified individual with a disability to have an equal employment opportunity.
- **Undue Hardship**
 - Significant difficulty or expense imposed on an employer in making an accommodation for individuals with disabilities.

Major Sections of the Americans with Disabilities Act

Title I:	Title II:	Title III:	Title IV:	Title V:
Employment Provisions	Public Participation and Service	Public Access	Telecommunications	Administration and Enforcement
Prohibits employment-related discrimination against persons with disabilities	Prohibits discrimination related to participation of disabled persons in government programs and for public transportation	Ensures accessibility of public and commercial facilities	Requires provision of telecommunications capabilities and television closed captions for persons with hearing and speech disabilities	Describes administrative and enforcement provisions and lists who is not covered by ADA

Figure 4-3

Employment Discrimination Acts

- **Age Discrimination in Employment (ADEA)**
 - Prohibits employment discrimination against all individuals age 40 or older working for employers having 20 or more workers.
 - Does not apply if age is a job-related qualification (BFOQ).
- **Older Workers Benefit Protection Act (OWBPA)**
 - An amendment to the ADEA aimed at protecting employees when they sign liability waivers for age discrimination in exchange for severance packages.

Immigration Reform and Control Act (IRCA)

- Immigration Reform and Control Act (IRCA)
 - Prohibits employment discrimination against persons legally permitted to work in the United States.
 - Requires employers to document (I-9 form) eligibility for employment.
 - Provides penalties for knowingly employing illegal workers.



Discrimination Laws and Regulations

- **Religious Discrimination**
 - Discrimination is illegal unless religion is a bona fide occupational qualification. Reasonable accommodation of beliefs is required.
- **Genetic Bias Discrimination**
 - A developing area with no clear guidelines as yet on use of genetic information in employment.
- **Appearance and Weight Discrimination**
 - Application of workplace dress codes is permitted.
 - Height and weight-related job requirements must be job-related.

Discrimination Laws and Regulations (cont'd)

- **Sexual Orientation**

- At present, federal protection against workplace discrimination has not been granted.

- **Military Status**

- The Vietnam-Era Veterans Readjustment Act and the Uniformed Services Employment and Reemployment Act encourage the employment of veterans and require employers to provide leaves of absence and reemployment rights for employees called to active duty.

Discrimination Laws and Regulations (cont'd)

- **Seniority and Discrimination**
 - Courts have held that the application of a valid seniority system does not violate the rights of protected-class individuals.
- **Conviction and Arrest Records**
 - Employers may not use arrest records in employment decisions.
 - Conviction records may be used in determining employability if the offense is job-related.

Guidelines to Lawful and Unlawful Pre-employment Inquiries

Subject of Inquiry	It May Not Be Discriminatory to Inquire About . . .	It May Be Discriminatory to Inquire About . . .
1. Name	<ul style="list-style-type: none"> a. Whether applicant has ever worked under a different name 	<ul style="list-style-type: none"> a. The original name of applicant whose name has been legally changed b. The ethnic association of applicant's name
2. Age	<ul style="list-style-type: none"> a. If applicant is over the age of 18 b. If applicant is under the age of 18 or 21 if that information is job related (e.g., for selling liquor in a retail store) 	<ul style="list-style-type: none"> a. Date of birth b. Date of high school graduation
3. Residence	<ul style="list-style-type: none"> a. Applicant's place of residence b. Alternative contact information 	<ul style="list-style-type: none"> a. Previous addresses b. Birthplace of applicant or applicant's parents c. Length lived at current and previous addresses
4. Race or Color		<ul style="list-style-type: none"> a. Applicant's race or color of applicant's skin

Figure 4-4

Guidelines to Lawful and Unlawful Pre-employment Inquiries (cont'd)

Subject of Inquiry	It May Not Be Discriminatory to Inquire About . . .	It May Be Discriminatory to Inquire About . . .
5. National Origin and Ancestry		<ul style="list-style-type: none"> a. Applicant's lineage, ancestry, national origin, parentage, or nationality b. Nationality of applicant's parents or spouse
6. Sex and Family Composition		<ul style="list-style-type: none"> a. Sex of applicant b. Marital status of applicant c. Dependents of applicants or child-care arrangements d. Whom to contact in case of emergency
7. Creed or Religion		<ul style="list-style-type: none"> a. Applicant's religious affiliation b. Applicant's church, parish, mosque, or synagogue c. Holidays observed by applicant
8. Citizenship	<ul style="list-style-type: none"> a. Whether the applicant is a U.S. citizen or has a current permit/visa to work in U.S. 	<ul style="list-style-type: none"> a. Whether applicant is a citizen of a country other than the U.S. b. Date of citizenship
9. Language	<ul style="list-style-type: none"> a. Language applicant speaks and/or writes fluently, if job related 	<ul style="list-style-type: none"> a. Applicant's native tongue b. Language used at home

Figure 4-4 cont'd

Guidelines to Lawful and Unlawful Pre-employment Inquiries (cont'd)

Subject of Inquiry	It May Not Be Discriminatory to Inquire About . . .	It May Be Discriminatory to Inquire About . . .
10. References	<ul style="list-style-type: none"> a. Names of persons willing to provide professional and/or character references for applicant b. Previous work contacts 	<ul style="list-style-type: none"> a. Name of applicant's religious leader b. Political affiliation and contacts
11. Relatives	<ul style="list-style-type: none"> a. Names of relatives already employed by the employer 	<ul style="list-style-type: none"> a. Name and/or address of any relative of applicant b. Whom to contact in case of emergency
12. Organizations	<ul style="list-style-type: none"> a. Applicant's membership in any professional, service, or trade organization 	<ul style="list-style-type: none"> a. All clubs or social organizations to which applicant belongs
13. Arrest Record and Convictions	<ul style="list-style-type: none"> a. Convictions, if related to job performance (disclaimer should accompany) 	<ul style="list-style-type: none"> a. Number and kinds of arrests b. Convictions, unless related to job requirements and performance
14. Photographs		<ul style="list-style-type: none"> a. Photographs with application, with resume, or before hiring
15. Height and Weight		<ul style="list-style-type: none"> a. Any inquiry into height and weight of applicant, except where a BFOQ exists

Figure 4-4 cont'd

Guidelines to Lawful and Unlawful Pre-employment Inquiries (cont'd)

Subject of Inquiry	It May Not Be Discriminatory to Inquire About . . .	It May Be Discriminatory to Inquire About . . .
16. Physical Limitations	<ul style="list-style-type: none"> a. Whether applicant has the ability to perform job-related functions with or without accommodation 	<ul style="list-style-type: none"> a. The nature or severity of an illness or physical condition b. Whether applicant has ever filed a workers' compensation claim c. Any recent or past operations, treatments, or surgeries and dates
17. Education	<ul style="list-style-type: none"> a. Training applicant has received, if related to the job b. Highest level of education applicant has attained, if validated that having certain educational background (e.g., high school diploma or college degree) is needed to perform the specific job 	<ul style="list-style-type: none"> a. Date of high school graduation
18. Military	<ul style="list-style-type: none"> a. Branch of the military applicant served in and ranks attained b. Type of education or training received in military 	<ul style="list-style-type: none"> a. Military discharge details b. Military service records
19. Financial Status		<ul style="list-style-type: none"> a. Applicant's debts or assets b. Garnishments

Figure 4-4 cont'd

Uniform Guidelines on Employee Selection Procedures (1978)

- Used by the EEOC, the Department of Labor's OFCCP, the Department of Justice, and the Office of Personnel Management.
 - Attempt to explain how an employer should deal with hiring, retention, promotion, transfer, demotion, dismissal, and referral.
 - If sued, employers can choose one of two routes to prove they are not illegally discriminating against employees: no disparate impact, and job-related validity.

Uniform Guidelines on Employee Selection Procedures (cont'd)

- “No Disparate Impact” Approach
 - Disparate impact occurs whenever a substantial underrepresentation of protected-class members is evident in selection decisions.
 - 4/5ths Rule
 - ❖ If the selection rate for a protected-class is less than 80% (4/5ths) of the selection rate for the majority group or less than 80% of the group’s representation in the relevant labor market, then discrimination exists.

Internal Disparate Impact Example

Female applicants: 25% were selected for jobs

Male applicants: 45% were selected for jobs

Disparate Impact Determination

- ◆ **Male selection rate of 45% \times 4/5 (80%) = 36%**
- ◆ **Female selection rate = 25%**

Disparate impact exists because the female selection rate is less than 4/5 of the male selection rate.

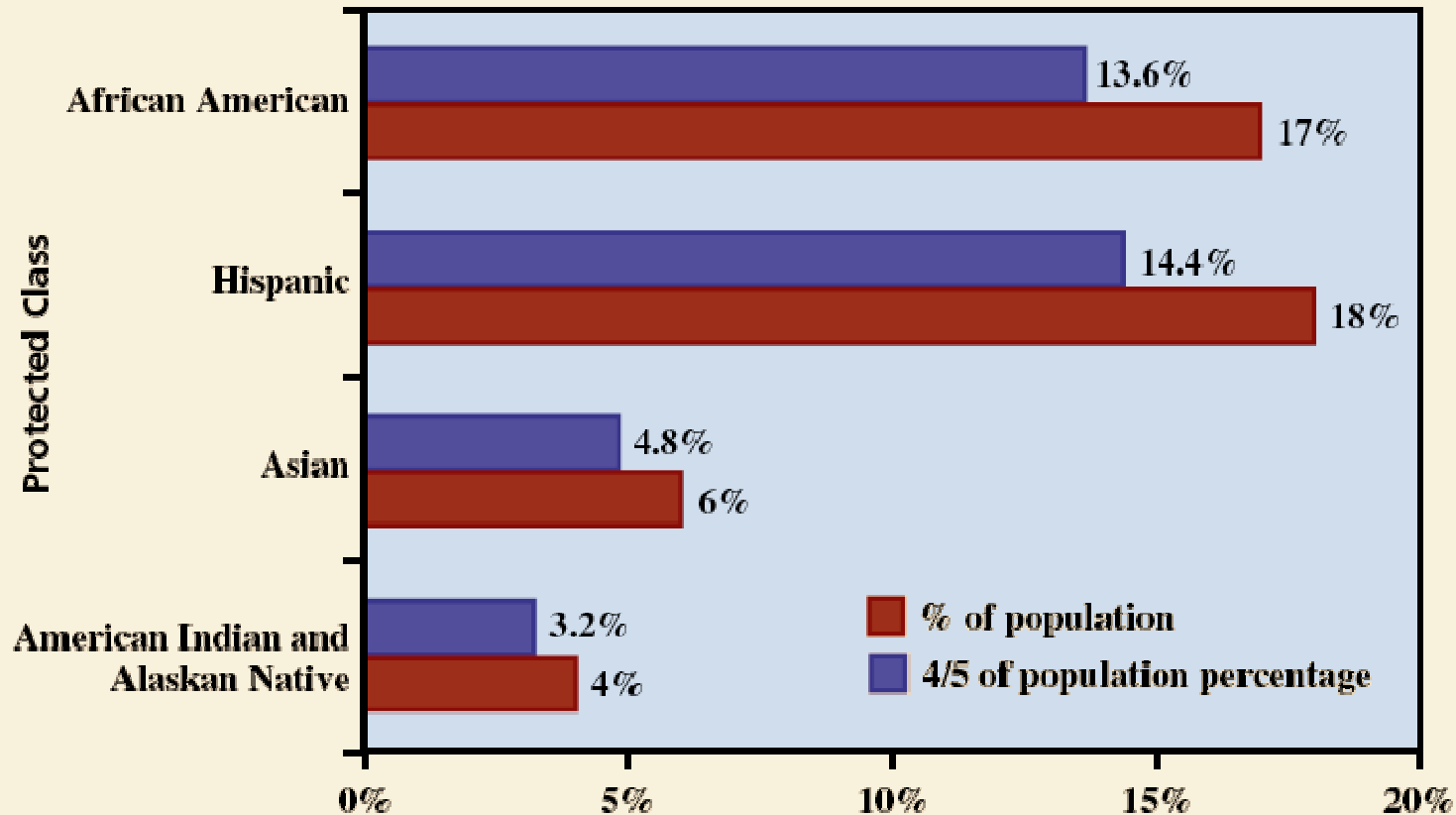
Internal Metrics for Disparate Impact

- HR activities that should be checked most frequently for internal disparate impact include the following:
 - Selection of candidates for interviews from those recruited
 - Pass rates for various selection tests
 - Performance appraisal ratings as they affect pay increases
 - Promotions, demotions, and terminations
 - Identification of individuals for layoffs

EEO Enforcement

- **Equal Employment Opportunity Commission**
 - EEOC is the enforcement authority for EEO laws.
 - Composed of five members appointed by the President and confirmed by the Senate.
 - Members (limited to no more than three from the same political party) serve seven year terms.
- **Office of Federal Contract Compliance (OFFCP)**
 - Ensures that federal contractors have nondiscriminatory practices and take affirmative action to overcome the effects of past discrimination.

External Disparate Impact Example



Protected Class	% of Total Employees at Acme Company	4/5 of Group in the Population (from Figure 4-6)	Disparate Impact?
African American	10% (50/500)	13.6%	Yes (10% < 13.6%)
Hispanic	15% (75/500)	14.4%	No (15% > 14.4%)

Figure 4-6

Job-Related Validation Approach

- **Validity**
 - The extent to which a test actually measures what it says it measures.
- **Reliability**
 - The consistency with which a test measure measures an item.
- **Employment “test”**
 - Any employment procedure used as the basis for making an employment-related decision.
 - Must have both reliability and job-related validity.

Validity and Equal Employment

- Selection Procedures and Validity

- Employers must demonstrate that tests of knowledge, skills, and abilities (KSAs) are valid when disparate impact exists.

- Content Validity

- Validity as measured by a logical, nonstatistical method (job analysis) to identify the KSAs and other characteristics necessary to perform the job.
 - ❖ Example: A work sample test measuring how well an applicant performed essential tasks of the job.

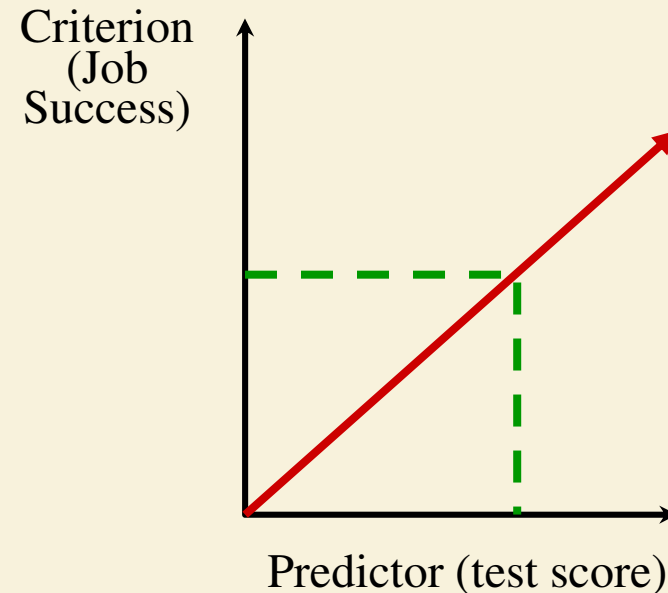
Validity and Equal Employment (cont'd)

- **Criterion-Related Validity**

- Validity measured by a procedure that uses a test as the predictor of how well an individual will perform on the job.

- **Correlation Coefficient**

- Index number giving the relationship between a predictor (a test) and a criterion variable (a measure of success on the job).



Test Scores and Job Performance

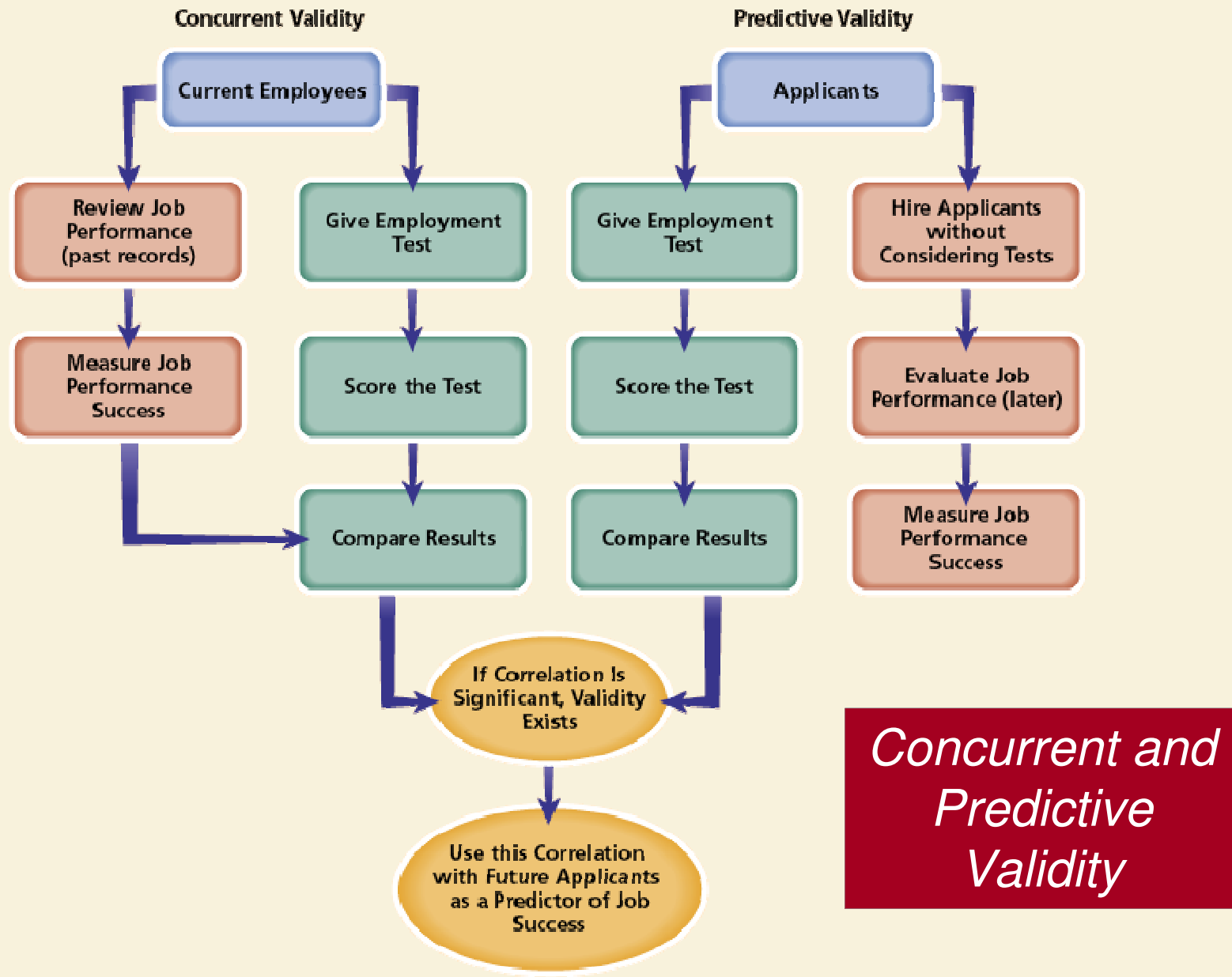
Applicant	Predictor (test score) (0–100, with 100 high)	Criterion (job performance, on a 5-point scale) (1–5 scale, 5 high)
Joe	60	2
Rashad	75	3
Anne	88	4
Sarah	52	1
Fred	80	4
Sally	95	5
Juan	85	4
Linda	58	2
Jeff	78	3
A. J.	65	3

Note: Correlation looks at the relationships between the test scores and job performance of the whole group.

Figure 4–7

Validation Strategies: Construct Validity

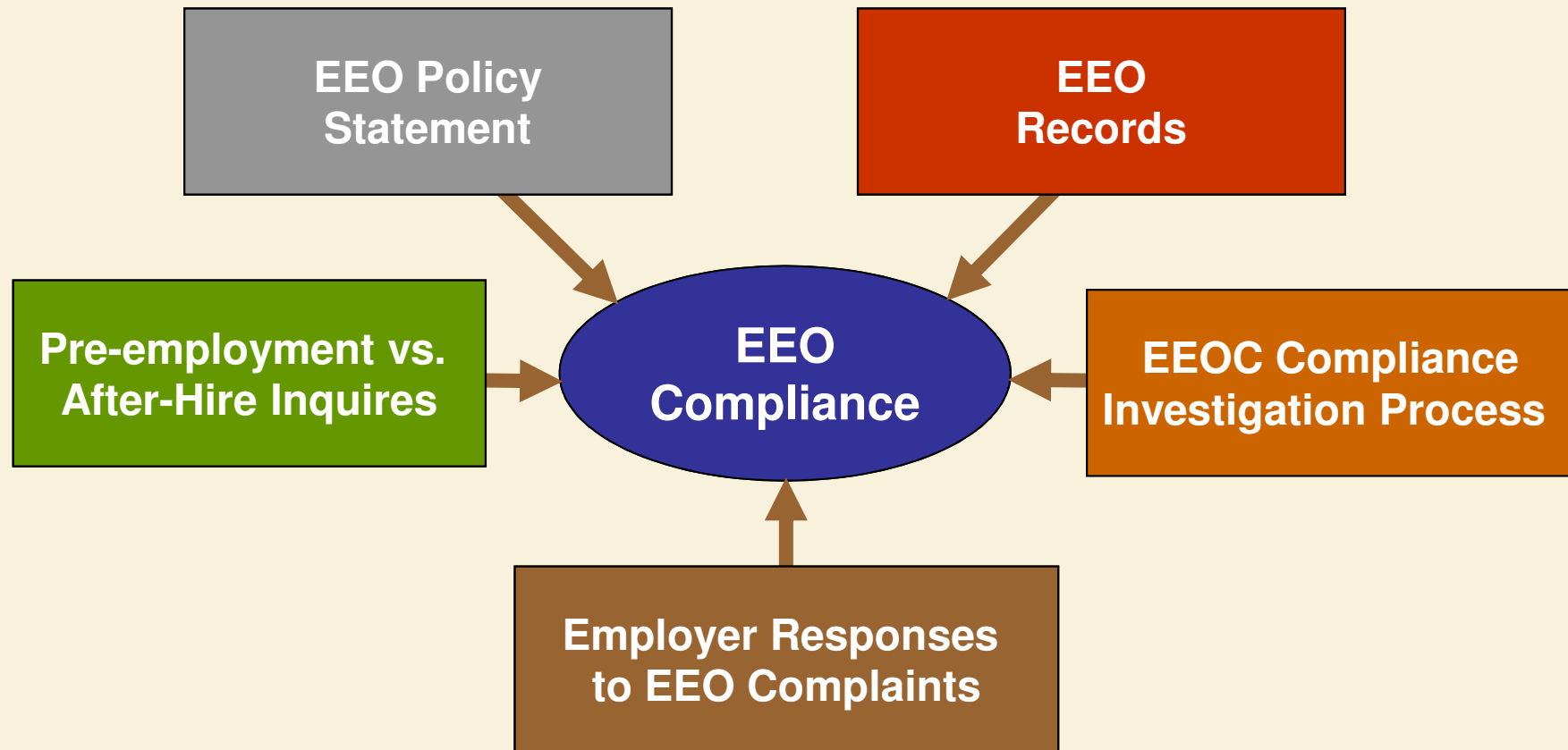
- **Concurrent Validity**
 - Measured when an employer tests current employees and correlates the scores with their performance ratings.
- **Predictive Validity**
 - Measured when test results of applicants are compared with subsequent job performance.



Concurrent and Predictive Validity

Figure 4-8

Elements of EEO Compliance



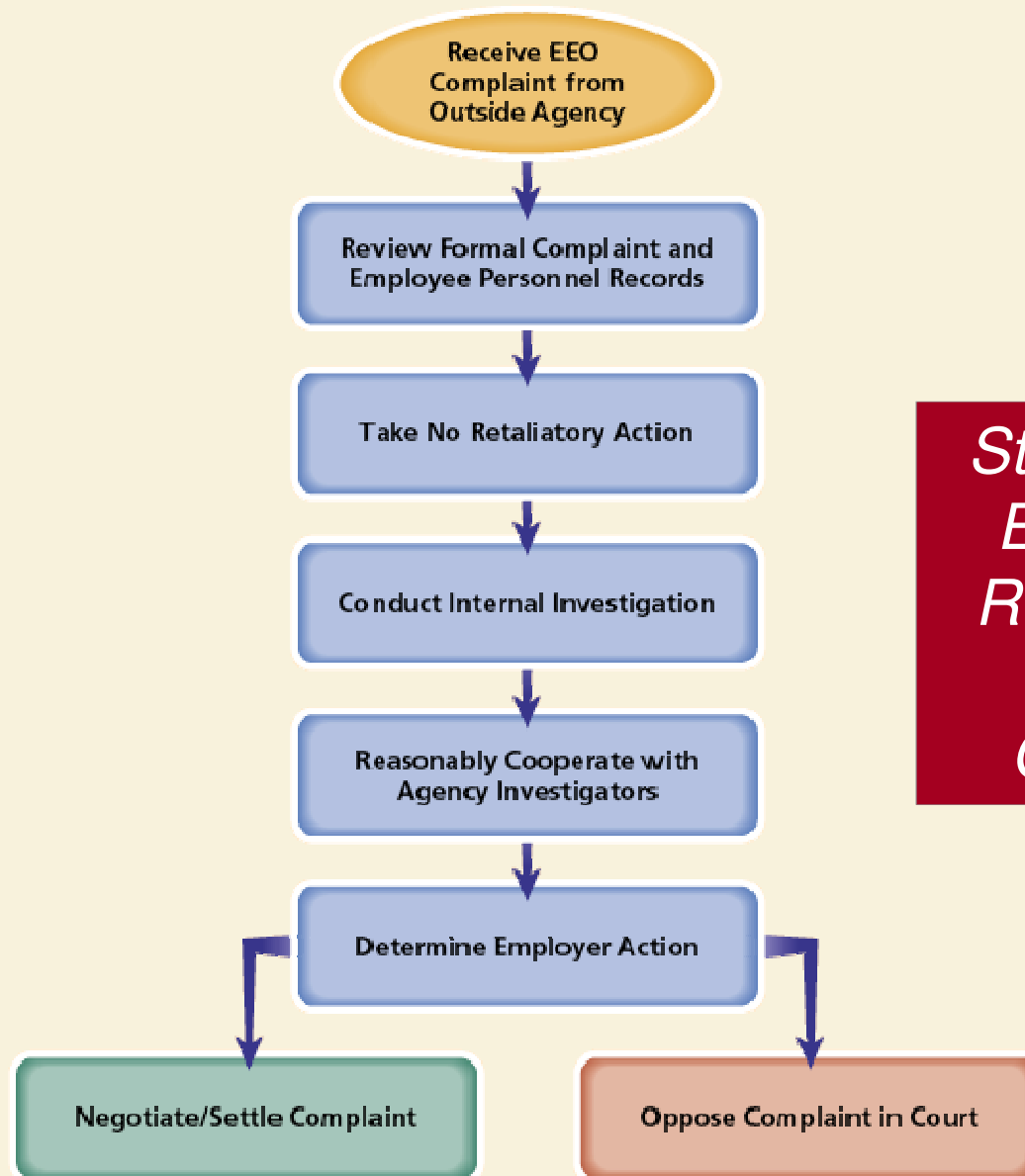
EEO Records

- Records Retention

- All employment records must be maintained as required by the EEOC—application forms and documents concerning hiring, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation, and selection for training and apprenticeship.
- The length of time documents must be kept varies, but generally *three years is recommended as a minimum.*

EEO Records (cont'd)

- EEOC-1 (Annual Reporting Form)
 - Employers who must file this report:
 - ❖ All employers with 100 or more employees, except state and local governments
 - ❖ Subsidiaries of other companies if the total number of combined employees equals 100 or more
 - ❖ Federal contractors with at least 50 employees and contracts of \$50,000 or more
 - ❖ Financial institutions with at least 50 employees, in which government funds are held or saving bonds are issued
- Applicant Flow Data
 - Self-reported information on an employer's employment process from applicants.



Stages in the Employer's Response to an EEO Complaint