

Implications of Affirmative Action in Recruitment, Employment and Termination of Personnel

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The principle of affirmative action first appeared in Executive Order 10925 of March 6, 1961, which also provided for the establishment of the President's Committee on Equal Employment Opportunity. The principle of affirmative action arose because of the realization that — without implementation — existing federal legislation¹ prohibiting discriminatory practices in employment would not eliminate the current inequalities. Thereupon, in Title VII of the Civil Rights Act of 1964, Congress provided legal enforcement for equal opportunity as it once again reaffirmed affirmative action.

Because the Civil Rights Act of 1964 governed only private industry, Executive Orders 11246 and 11375 were promulgated in 1965 and 1967 to cover not only federal employees but also employees of federal government contractors, including city, county and state governments as well as educational institutions.

In the context of discrimination in employment, affirmative action is easily confused with equal employment opportunity. It is therefore pertinent to differentiate these two significantly contrasting concepts:

(1) Equal Employment Opportunity has been defined by the Southwest Federal Regional Council as

An employment environment whereby all

employees and employment applicants are judged on individual merit without regard to race, color, national origin, religion, sex, age, physical disability, or political affiliation.²

In Executive Order 11246, the idea of equal employment opportunity is stated somewhat differently: "The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin."³

(2) The Commission on Civil Rights defines affirmative action as

Steps taken to remedy the grossly disparate staffing and recruitment patterns that are the present consequence of past discrimination and to prevent the occurrence of employment discrimination in the future.⁴

Executive Order 11246 elaborates this definition when it states

The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.⁵

Affirmative action demands considerably more effort of an organization than does equal employment opportunity (EEO). Affirmative action requires employers to undertake a careful analysis of past employment practices, to make a demographic analysis of the work force of the city, county or Standard Metropolitan Statistical Area, and an analysis of present

employees in light of the demographic analysis. Furthermore, it requires that each employer "make an extra effort to hire and promote those in the protected classes with the implied provision that the most important 'qualification' is membership in the protected classes."⁶

Libraries and librarians are affected by the provisions of laws relating to affirmative action in various degrees depending on the type of library and the political character of the parent organization. Title VII of the Civil Rights Act of 1964 influences (a) federal, state, and local governments together with their sub-units, (b) institutions of higher education (with few exceptions), and (c) all employers with fifteen or more employees. Executive Order 12466 and its amending Executive Order 11375 affect federal government contractors including cities, counties, school systems, and higher education. The Equal Pay Act of 1963 governs not only employees of state and local governments, but also employees in most schools and in commerce and industry; the Age Discrimination in Employment Act of 1967 governs employees in federal, state and local governments as well as commerce and industry. It is readily apparent, therefore, that most librarians in the United States are covered by one or more laws or executive orders concerning affirmative action in employment.⁷ The exceptions to this are private schools that do not accept federal money, certain religious institutions, or places of employment having fifteen or fewer, or, in the case of the Age Discrimination Act, twenty or fewer employees.

The several laws and the executive orders relating to equal opportunity employment are administered by a bewildering array of federal agencies, offices, or commissions. This bureaucracy not only contributes to the consternation with which employers view the laws but also fuels the active criticism of the federal govern-

ment's actions to end discrimination in employment.

The General Accounting Office recently criticized the Equal Employment Opportunity Commission:

The extent of underutilization of minorities and women in the better paying jobs and overutilization of minorities and women in the lower-paying jobs . . . compared with their total participation rates, actually worsened during this 8-year period [i.e. 1966-1974].⁸

Because of the alleged laxity of federal agencies, the U. S. Commission on Civil Rights has proposed that Congress enact legislation

Consolidating all Federal equal employment enforcement responsibility in a new agency, the National Employment Rights Board with broad administrative as well as litigative authority to eliminate discriminatory employment practices in the United States.⁹

Most organizations including states, cities, colleges, and universities are required to formulate and file an affirmative-action plan and to update this plan each year. Certain smaller organizations will be required only to prepare an affirmative-action plan and retain it. The affirmative-action plan, comprehensive in that it will cover all elements of personnel policy and management, should consist of the following elements:

A. A statement of the goals or objectives of the program set forth in qualitative as well as in quantitative terms.

B. Discrete measures that the organization will take to achieve the objectives.

C. Assignment of responsibility within the organization to an affirmative-action officer. (This person should be a strong, results-oriented individual.)

D. A timetable and target dates for the achievement of the objectives of the action plan.

E. An evaluation procedure.¹⁰

The question of the timetable and target dates is especially fragile and

unpredictable now because organizations, including libraries, are very limited in the number of new individuals they may hire.

Guidelines provided to organizations for affirmative action are both precise and detailed. What set of guidelines an organization follows depends on the law or executive order to which the organization is required to provide considerable amounts of data including data relative to the composition of the current work force, applicant data by sex and race, equal employment opportunity grievances and their resolution, test reliability and validity studies, affirmative action program goals and program analysis. The library as a unit of the parent organization will be responsible for compiling records relative to recruitment sources and advertising, interviews, candidates selected or rejected for employment, promotion, transfer or termination.

In the process of recruitment, affirmative action will influence the librarian to choose media which will communicate the library's recruitment message to a wide audience. Advertisements will be submitted to those newspapers or radio stations that are subscribed to by minorities in addition to those ordinarily used.¹¹ These advertisements should be in the language of the targeted minority. Both commercial and social agency minority employment organizations will help the library reach the people it is attempting to interest. Librarians could also consult pastors of minority churches, minority organizations including chambers of commerce and social work agencies — all of these could assist in locating the minority worker. These procedures should result in a larger pool of minority applicants. Naturally, the library still has the right to hire the most qualified applicants, provided always that the stated job qualifications are appropriate.

Affirmative action also mandates that job qualifications and the methods utilized

to qualify candidates for a job be valid for that job. In addition, the U. S. Supreme Court decision in the landmark *Griggs vs Duke Power Company* case (1971) required that in certain instances a stated qualification of a high school diploma be demonstrated to be a valid prerequisite for the job.¹² Thus, *Griggs vs Duke Power Company* has significant meaning for supervising librarians who have established the master's degree in library science as a prerequisite for a given position. Assuredly, we may anticipate that in the future a hiring librarian will be called upon to demonstrate the validity of the requirement for an MLS in the job situation.

Griggs vs Duke Power Company has revealed that certain heretofore widely respected aptitude tests contained significant percentages of culturally biased items. While few libraries regularly employ aptitude tests, those that do should be aware of the impact of that Supreme Court decision.

The U. S. Civil Service Commission guidelines suggest that organizations insure that all qualifying requirements be job related, that any affirmative-action plan include provision for entry level or trainee positions, and that upward mobility opportunities and programs be announced to employees.¹³ Therefore, when size of institution permits, the librarian will structure new jobs at the trainee, or assistant level, to provide opportunities for employees to experience growth. Libraries will also provide career ladder opportunities to employees who may not possess the requisite educational credentials currently considered the *sine qua non* for many positions within the library.

While employment and placement processes will experience appreciable revision in the library, it is reasonable to project that considerable change will be made by supervising librarians in their performance appraisal function. Court decisions

including those in the *Allen vs City of Mobile*, *Brito vs Zia Company* and *Wade vs Mississippi Cooperative Extension Service* have demonstrated the invalidity of many methods of performance appraisal.¹⁴

In addition to the above cited decisions, guidelines exist which direct organizations to review and monitor performance appraisal programs to assure objectivity of the program.¹⁵ Therefore librarians will direct substantial effort toward validating performance appraisal methods currently employed in libraries.

Librarians who employ methods of performance appraisal depending on graphic rating scales subject to supervisor's bias or methods which evaluate an employee's "personal qualities" should learn that in certain cases these and other techniques have been judged not only prejudicial but also invalid as measures. Librarians are advised to investigate performance appraisal methods which tend to obviate subjective evaluation by supervisors. Among such methods are peer, group or forced choice evaluation, behavioral expectancy rating scales and management by objectives.

Grievance procedures, which have been identified primarily with union-management relations, will soon constitute a chapter in the library's personnel manual since affirmative action guidelines encourage the development of these procedures. The grievance procedures, which should incorporate referral to an impartial individual or body if needed, ordinarily will be communicated to each employee of the library in both oral and written messages.

Finally, in terminating personnel, affirmative action guidelines suggest that exit interviews be conducted. An alternative to the interview is the use of post-termination questionnaires. The interviews or questionnaires are meant to determine if real or imagined discrimination was a fac-

tor in the employee's termination. In view of the Age Discrimination in Employment Act and other legislation, it is incumbent upon the employer to accumulate sufficient documentation of the unsatisfactory worker's performance. Documentation of an employee's performance is always advisable in selection, promotion, transfer and performance evaluation, but the need for documentation takes on a special significance when a supervisor terminates an employee.

Governmental agencies, including the U. S. Commission on Civil Rights and various federal courts, are concerned about terminations of minority employees from another viewpoint.¹⁶ The Commission on Civil Rights is deeply disturbed by the impact the present recession is having on women and minorities who only recently found gainful employment, aided no doubt by the affirmative action drive in the United States. Many of these individuals are now being laid off before an organization's more veteran employees are terminated.

Forceful arguments can be offered in support of claims that these women and minorities who had their civil rights abridged for so long should not be terminated now. Such actions, moreover, might emasculate the whole affirmative action program. While the Supreme Court has not ruled on this question to this date, it is quite possible that the Court will do so. The decision could affect people recently terminated from libraries.

To summarize briefly affirmative action and its companion principle equal employment opportunity will both change and strengthen personnel management functions as practiced by librarians. Functions that are certain to change are recruitment, selection, placement, promotion and performance appraisal. The greatest influence upon libraries may come about through establishing equivalent qualifications for positions and

constructing career ladders to assist individuals in their upward career movement.

Footnotes

¹Such legislation includes the Civil Rights Act of 1866 and the Civil Rights Act of 1870.

²Southwest Interagency Regional Council. *Uniform Interagency Guidelines for EEO Affirmative Action Plans*. June, 1975. Forward.

³Executive Order 11246. Section 202.

⁴U. S. Commission on Civil Rights. *Statement on Affirmative Action for Equal Employment Opportunities*, February, 1973, p. 16.

⁵Executive Order 11246. Section 202.

⁶James Higgins. "A Manager's Guide to the Equal Employment Opportunity Laws." *PERSONNEL JOURNAL*, Vol. 55, (Aug., 1976), p. 410.

⁷Other federal laws designed to remove discriminative employment practices include the Age Discrimination in Employment Act of 1967, the Rehabilitation Act amendments of 1974, and Executive Order 11758. The last two are concerned with the employment of the mentally and physically handicapped.

⁸U. S. General Accounting Office. *The Equal Employment Opportunity Commission Has Made Limited Progress in Eliminating Employment Discrimination*. U. S. Government Printing Office, 1976, p. 39.

⁹U. S. Commission on Civil Rights. *The Federal Civil Rights Enforcement Effort — 1974*. Vol. V. *To Eliminate Employment Discrimination*. U. S. Government Printing Office, 1976, p. 649.

The Commission on Civil Rights was joined in 1977 in urging a move to a single "rights" agency by President Carter and a staff report of the U.S. House of Representatives Subcommittee on Equal Opportunities.

¹⁰U. S. Civil Service Commission. *Guidelines for the Development of an Affirmative Action Plan*. U. S. Government Printing Office, 1975.

¹¹Phillip Ash. *Meeting Civil Rights Requirements in Your Selection Programs*. International Personnel Management Association, 1974.

¹²Hugh S. Wilson. "A Second Look at Griggs vs Duke Power Company: Ruminations on Job Testing, Discrimination, and the Role of the Federal Courts," *VIRGINIA LAW REVIEW*, Vol. 58, #5 (1972), pp. 844-874.

¹³U. S. Civil Service Commission. *Guidelines for the Development of an Affirmative Action Plan*. U. S. Government Printing Office, 1975, p. 18.

¹⁴William H. Holley and Hubert S. Field. "Performance Appraisal and the Law," *LOWER LAW JOURNAL*, Vol. 26 (July, 1975), p. 427.

¹⁵U. S. Civil Service Commission. *Guidelines for the Development of an Affirmative Action Plan*. U. S. Government Printing Office, 1975, p. 32.

¹⁶U. S. Commission on Civil Rights. *Last Hired, First Fired: Layoffs and Civil Rights*. U. S. Government Printing Office, 1977.

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