

CHAPTER 2

THE HOSPITALITY MANAGER'S LEGAL CHALLENGES

I can still remember the separate water fountains and segregated buses as a young boy growing up in Atlanta in the 1950s . . . The Civil Rights Act of 1964 was enacted to end this discrimination and begin to restore the full rights of citizenship for all Americans.¹

Herman Cain, former CEO and president, the National Restaurant Association

CHAPTER OBJECTIVES

After completing this chapter, you will be able to

- Define Title VII of the 1964 Civil Rights Act.
- Identify the Equal Employment Opportunity Commission's (EEOC) role in discrimination lawsuits.
- Define sexual harassment.
- List the protected classes covered under Title VII.
- Define and give an example of a bona fide occupational qualification (BFOQ) defense.
- Define the Americans with Disabilities Act (ADA).
- Explain *disability*, *reasonable accommodation*, and *undue hardship* as defined by the ADA.
- Define the Age Discrimination in Employment Act.
- Define the Equal Pay Act.
- Define the Immigration Reform and Control Act.



HRM IN ACTION

Most human resources professionals working in the hospitality industry will tell you that the very first step in the employee recruitment process should be the creation of a job description. A **job description** details the primary duties of a particular position. Creating this list of responsibilities first will force management to focus on the particular set of skills and characteristics an applicant should have in order to do the job well. However, before the manager even begins to create job descriptions, it's important all members involved in the recruitment process recognize that there are certain laws that regulate the hiring process in the hospitality industry. The following section focuses on the legal landscape of the hospitality industry, providing some important dos and don'ts with respect to issuing employment applications, conducting interviews and background checks, and, of course, writing job descriptions.

EMPLOYMENT LAW AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

There are numerous federal and state employment laws that hospitality managers must obey as they go about the business of making daily, routine management decisions. One of the most important of these laws is **Title VII of the 1964 Civil Rights Act**. This law applies to businesses with 15 or more employees, including state and local governments. Title VII prohibits employment discrimination based on an individual's sex, race, color, religion, and national origin. Whether writing a job description, placing a help-wanted advertisement in the local newspaper, or conducting a job interview, it is essential that managers have a thorough understanding of Title VII to ensure that no employment discrimination of any sort occurs. The **Equal Employment Opportunity Commission**, commonly referred to as the EEOC, is the federal agency that provides oversight and coordination of Title VII as well as other federal EEO (equal employment opportunity) laws (see Figure 2.1).

In addition to the guidelines the law imposes on the hiring process itself, managers must understand that *all* matters that are employment-related are covered under Title VII. Determining whether to promote a specific employee, deciding who will receive a raise in pay, designing work schedules, training schedules, and even administering employee discipline are all management duties that will in one way or another fall under the broad spectrum of Title VII. Figure 2.2 provides examples of discriminatory practices as defined by the EEOC. In Chapter 9, we will cover in greater detail the types of questions that hospitality managers are prohibited from asking on the job application as well as during the job interview.

Figure 2.1

Hospitality operations must post notices advising employees of their rights under federal, state, and local EEO laws. (Source: U.S. Equal Employment Opportunity Commission.)

Equal Employment Opportunity is **THE LAW**

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN
Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires employers to take affirmative steps to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of a disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of a job.

VIETNAM ERA AND SPECIAL DISABLED VETERANS

38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans, special disabled veterans, recently separated veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Any person who believes a contractor has violated its nondiscrimination or equal opportunity obligations under one or more of the authorities above should immediately contact:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration (ESA), U.S. Department of Labor (DOL), 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 693-0100 (DOL's toll free TTY number, for individuals with hearing impairments is (800) 326-2577), or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor, or access OFCCP's web site via the Internet at www.dol.gov/esa/ofccp_org.htm.

Previous Edition Useable

Private Employment, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, national origin, or sex (including pregnancy). Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations, unless such accommodations would impose an undue hardship on the employer.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, and other terms, conditions or privileges of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort and responsibility under similar working conditions, in the same establishment.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time frames in which you must file charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected. If you believe that you have been discriminated against under any of the above laws, you should immediately contact:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TTY number is (800) 669-6820, or access EEOC's web site at www.eeoc.gov.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of a disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities, who, with or without reasonable accommodation, can perform the essential functions of a job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

EEOC-P/E-1 (Revised 9/02)

DISCRIMINATORY PRACTICES

What Discriminatory Practices Are Prohibited by Title VII?

Under Title VII, it is illegal to discriminate in any aspect of employment, including the following:

- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements
- Recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Pay, retirement plans, and disability leave
- Other terms and conditions of employment

Discriminatory practices under these laws also include:

- Harassment on the basis of race, color, religion, sex, national origin, disability, or age.
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices.
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group.
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, or national origin. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Employers are required to post notices to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading.

Note: Many states and municipalities also have enacted protections against discrimination and harassment based on sexual orientation, status as a parent, marital status, and political affiliation. For information, please contact the EEOC District Office nearest you.

Figure 2.2

Discriminatory practices and conditions of employment covered by Title VII. (Source: U.S. Equal Employment Opportunity Commission.)

TALES FROM THE FIELD

I finished my degree in Baking and Pastry Arts and took a job as the pastry chef in a small privately owned restaurant. The restaurant was successful, and the owner gave me carte blanche in the pastry area. I brought my own recipes to the job and further fine-tuned them, and before long, the restaurant (and my recipes) was getting excellent reviews and write-ups. After about eight months, the owner fired me one day when I had called in sick due to some serious dental work I had to have done. I was shocked, but even more surprised when he told me that in order to receive my final paycheck, I would have to turn over all of my recipes to him. I refused, and he refused to release my check. I had to file a complaint with the state wage and hour board in order to get paid, but I did get paid, and as I understand it, the owner's business was then audited for other potential wage violations!

Melissa, 24, Murfreesboro, Tennessee

ILLEGAL DISCRIMINATION

The word *discrimination* has typically gotten a bad rap. When we hear the word, we automatically think of it as something negative or ugly. Truthfully, we discriminate each and every day as we live our lives. For example, deciding which pair of socks to wear when we dress for work or school—or whether to wear any socks at all—is a form of discrimination. When we choose one pair of socks over the other, we are doing so based upon some selection criteria that we somehow deem relevant. Will the blue socks look better with the khaki slacks or would black socks look best? Discrimination then is simply about making choices. Title VII does not necessarily prevent hospitality managers from making informed choices in matters of employment; it prevents managers from making *illegal* choices, or decisions that are based upon some flawed or illegal selection criteria, such as race, religion, gender, and so forth.

There was a time in our nation's history—roughly 30 years ago—when society felt that certain types of people were best suited for certain types of jobs. A good example comes from our nation's airline industry, a relatively new industry in the grand scheme of things. Airline pilots had to be male, and stewardesses had to be female. It did not matter whether pilots and copilots were married or single, but stewardesses had to remain single—to get married meant losing one's job. When hiring stewardesses, the airlines were careful to select only those female applicants who were deemed the most attractive. There were strict height and weight requirements, and most airlines required that the applicant attach

Photo 2.1

The airline stewardess is now referred to as a flight attendant and is no longer required to be female and unmarried.



both a head-and-shoulders photo as well as a full-body photo to her application. It is not hard to imagine what probably happened to the applications of those less attractive.

In our more enlightened world today, these hiring practices seem ridiculous and unreasonable. While the estimated 4,000 female airline pilots flying today still only account for about 5 percent of all airline pilots, clearly, women are making inroads in the world of aviation. The term *stewardess* has been replaced with the more modern term *flight attendant*, and anyone who flies today will see that the modern flight attendant comes in all shapes, colors, ages, and sexes. A flight attendant's marital status is also no longer a job qualification.

Changes in employment practices such as these and many others were a result of the enactment of Title VII of the 1964 Civil Rights Act. According to Title VII, choosing one job applicant over another or making other employment decisions based upon an individual's sex, race, color, religion, or national origin is illegal. The penalties for illegal discrimination can be severe as well as expensive, and the fallout from such acts can also be a public relations nightmare.

BONA FIDE OCCUPATIONAL QUALIFICATION

When Title VII was enacted, Congress *did* realize that there would be legitimate occasions when management would need to choose a male applicant over a female applicant, or vice versa. Congress also knew that some positions might

ethical dilemma

Erica is a dining room manager for a small lodging operation based in the Midwest. Last week she placed a help-wanted ad for a host/hostess position in the local newspaper, and today she has set aside some time to review the applications that have come in thus far. All applicants in this hotel turn their completed applications in at the front desk, and Erica requested that any clerk taking an application make a few notations on the application about the general age, sex, and appearance of each applicant. Erica feels that younger, more attractive females are best suited for the hostess position in the restaurant, so she begins to sort through the applications, putting aside those in which the clerks' notations indicate older applicants, unattractive applicants, and male applicants. For those applications on which the clerks have failed to make notations, Erica attempts to weed out less-preferred applicants by ascertaining age based upon high school graduation year and so forth. Applications with first names that are clearly masculine are also put aside. Which of the *10 Ethical Principles for Hospitality Managers* is being violated? Can an action that is clearly in violation of a law still be ethical? How will Erica's hiring practices affect her hotel's standing in the community if her actions are discovered?

require that the job applicant be of a specific religion or national origin. Based on these realizations, Congress created what one might call a legal loophole. This loophole is known as **bona fide occupational qualification**, or simply **BFOQ**. Let's say that a manager of a resort hotel needs to hire a men's locker room attendant. Because of BFOQ, the manager could *legally* discriminate against any females who might apply for this job. It is important to note that the BFOQ defense is construed narrowly by the courts. Generally, two elements are necessary in order to qualify: (1) the job in issue must require a worker of a particular sex, religion, or national origin and (2) such a requirement must be necessary to the essence of the business operation. BFOQ is not a defense against a claim of racial discrimination.

THE HOOTERS RESTAURANT CHAIN

Some students preparing for careers in hospitality management may ask: "Well, how does Hooters [the restaurant chain] get away with hiring only female servers?" The answer is not a simple one. The restaurant chain was sued in 1992 when seven men from Illinois and Maryland claimed they were discrimi-

nated against when they applied to be servers at a Hooters restaurant. The EEOC initially took the case, alleging that Hooters employment practices of hiring only women to be servers, bartenders, and hosts were in violation of Title VII. Hooters claimed that because the restaurant chain was actually providing vicarious sexual recreation, female sexuality was a BFOQ. The EEOC alleged that all along Hooters was primarily a food business that marketed itself as a family restaurant rather than as an entertainment establishment.

The chain then launched a clever public relations campaign that featured a hairy, ugly “Hooters Guy,” and the EEOC, which had initially demanded a \$22 million fine from the restaurant chain, decided not to pursue the case. In 1997, the chain paid \$3.75 million to the plaintiffs to settle the case and agreed to create gender-neutral host and bartender positions, but the settlement agreement allows Hooters to continue to lure customers with an exclusively female staff of “Hooters Girls.”²

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that violates Title VII of the 1964 Civil Rights Act. There are numerous documented incidents in which hotels and restaurants have been fined hundreds of thousands of dollars for engaging in sexual harassment. The EEOC defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affect’s an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.”

Sexual harassment in the workplace generally occurs in one of two ways. A manager or a supervisor—someone in a position of power—sexually harasses an employee by virtue of the power held over that employee. This is known as **quid pro quo** or “this for that” type of harassment. Promising or withholding a raise or a promotion in return for sexual favors is an example of quid pro quo harassment. Another form of sexual harassment is known as creating a **hostile work environment**. This occurs when a manager allows employees to engage in telling dirty jokes or allows employees to circulate offensive pictures, Web sites, or e-mail messages. Allowing employees to make crude or suggestive comments of a sexual nature could also lead to a charge of hostile work environment by another employee.

It is important to note that the harasser’s conduct must be *unwelcome*. It is important for the victim to inform the harasser directly that the conduct is unwelcome and that it must stop. If the unwelcome harassment continues, the victim should use any employer complaint mechanism or grievance system that is available. It is also important that hospitality organizations have a system in

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a coworker, or a nonemployee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

Figure 2.3

Circumstances in which sexual harassment may occur. (Source: U.S. Equal Employment Opportunity Commission.)

place that allows the employee to bypass the supervisor in case the supervisor is also the harasser. Figure 2.3 illustrates some other circumstances in which charges of sexual harassment may occur.

In January 2004, the EEOC settled bias suits with two Florida restaurants that were required to pay more than \$500,000 in fines for the sexual harassment of female employees. ABC Pizza, a Tampa Bay area pizza chain, was found guilty of subjecting female employees to a sexually hostile working environment. The EEOC contended that the conduct was created by the restaurant's manager and was primarily directed toward two sisters who were ages 16 and 17 at the time they were employed with the company. The manager's conduct included inappropriate touching as well as crude sexual comments.³ The other Florida case involved a Longhorn Steakhouse where an assistant manager subjected female employees to hip and lower back touches, breast grabbing, and inappropriate verbal comments. The company was forced to pay the three victims \$200,000.⁴ Both of these companies are now required to conduct annual training on Title VII with emphasis on sexual harassment.

**Managers
Must
Establish
Guidelines
and Policies**

Clearly, hospitality managers and supervisors must have well-established guidelines for preventing the sexual harassment of employees. Training is essential, and prevention is usually the best tool to eliminate this unlawful behavior. The EEOC recommends that managers clearly communicate to employees that sexual harassment will not be tolerated. Indeed, as a result of recent and expensive lawsuits such as those noted previously, most hospitality operations today have a zero tolerance policy with regard to sexual harassment. It is important

that managers train their employees and clearly define what constitutes sexual harassment.

Employees should also be informed about an effective complaint or grievance system that allows victims to come forward and report harassment when it occurs. When an employee does complain, the manager must take immediate and appropriate action, including a fair investigation and disciplinary action when appropriate. As with all other areas of Title VII, managers are prohibited from retaliating against employees who may come forward and report illegal employment practices. Retaliation on the part of management could take various forms. Examples might include cutting an employee's work hours, demoting an employee, disciplining an employee for infractions that are normally overlooked, and transferring an employee to a less-desirable job or a location.

STATE AND LOCAL EMPLOYMENT LAWS

Title VII of the 1964 Civil Rights Act is a federal law, but many states, cities, and towns have enacted their own civil rights and equal opportunity employment laws and have added additional protected classes. For example, some states' and cities' civil rights laws not only make it illegal to discriminate based upon race, sex, color, religion, and national origin (Title VII), but they have also included such protected categories as marital status, disability, age, and sexual orientation. A state or local law must be at least as strict as the federal law, but it may also be stricter. It is important to note that the law that is deemed the *stricter law* is the one that must be followed. If ever in doubt, the prudent manager will always consult with an attorney who is well versed in federal as well as in any local laws that may apply to matters of employment.

AFFIRMATIVE ACTION PLANS

When organizations engage in illegal hiring practices, they could be required by the EEOC to implement affirmative action hiring procedures. This means that the EEOC now requires the organization to hire a certain number of female job applicants or a certain number of applicants who belong to a specific age group or race. Affirmative action is a term that is becoming more generalized, as it may be applied to a variety of federal, state, and private-sector programs aimed at achieving racial and gender diversity in the workforce.

THE AMERICANS WITH DISABILITIES ACT

President George H. W. Bush signed the **Americans with Disabilities Act (ADA)** into law in 1990, and the law went into effect in July 1992. This sweeping legislation covers five areas: employment, public transportation, public accommodations, telecommunication services, and public services. Future hospitality managers and supervisors will be most concerned with just two of the five areas covered: Title I, which governs areas of employment discrimination and is overseen by the EEOC, and Title III, which sets rules and guidelines for the public accommodation of disabled individuals (guests and customers) and is overseen by the U.S. Department of Justice. For the purposes of this textbook, our discussion will be focused only on Title I of the ADA—employment issues.



Photo 2.2

Title III of the ADA requires, among other things, that the hospitality business reserve a percentage of parking spaces for handicapped guests.

DISABILITY DEFINED

Under the provisions of Title I of the ADA, it is illegal to discriminate against people with disabilities in all employment and employment-related issues. The ADA defines a **disabled individual** as “any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.” Protected groups under the ADA include individuals who use wheelchairs, walkers, and so on; individuals who are speech, vision, or hearing impaired; people with mental retardation or emotional illness; individuals with a disease such as cancer, heart disease, asthma, diabetes, or AIDS; and individuals with drug and alcohol problems who are in supervised rehab programs. It is estimated that there are more than 50 million Americans who qualify as being disabled under the ADA. Job applicants and employees who illegally use drugs are *not* covered under the ADA. See Figure 2.4 for EEOC guidelines in this area.

Drug and Alcohol Use

- Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use.
- Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations.
- Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

Figure 2.4

Illegal drug and alcohol use exceptions to the ADA. (Source: U.S. Equal Employment Opportunity Commission.)

Under the guidelines of the ADA, it is illegal for employers to discriminate against disabled individuals who are otherwise qualified to perform the **essential functions** of the job, with or without **reasonable accommodation**, so long as the individual does not pose a threat to the health and safety of others. It is important for hospitality industry managers to understand the importance of clearly determining a position's essential functions. This is best addressed when the job description is created, which we will review in a later chapter. For example, a cook would most certainly need cooking skills, which would be essential to successful job performance. What if the applicant for the position of a cook lacked the ability to hear servers' orders being shouted out? Would this disability be a legitimate reason for not hiring the applicant? Under the ADA's guidelines, probably not. As long as the applicant possesses the ability to perform the

job's essential skills (cooking), the manager would most likely be expected to provide something reasonable that would accommodate the individual's hearing disability.

REASONABLE ACCOMMODATION

Accommodating an individual's disability is generally less costly and less intrusive than many managers realize. The EEOC has suggested that most reasonable accommodations cost less than \$50, and there are many examples of reasonable accommodations that cost absolutely nothing. Minor changes in either work duties, procedures, work schedules, or in the physical work environment are often all that is required to make a reasonable accommodation. The ADA stipulates that an employer must provide work areas and equipment that are wheelchair accessible unless this is not **readily achievable** or unless it would cause **undue hardship**. Generally, whether something is readily achievable or would cause undue financial hardship is left up to the EEOC to decide.

The hospitality manager is required to provide a reasonable accommodation not only to the disabled applicant for employment but also to employees already on staff who are or who become disabled and cannot perform their original jobs.

AVOIDING ILLEGAL QUESTIONS AND PRACTICES UNDER THE ADA

Hospitality managers need to use caution during the job application and interview process to avoid any illegal practices with respect to the ADA. The ADA strictly limits the circumstances under which employers may ask questions about disability or require medical examinations of employees. Such questions and exams are only permitted when management has a reasonable belief, based on objective evidence, that a particular employee will be unable to perform essential job functions or will pose a direct threat because of a medical condition.

The manager may ask a wide range of questions designed to determine an applicant's qualifications for a job, but the manager may not directly ask about the existence, nature, or severity of a disability during an interview, unless previously disclosed by the candidate. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for *all* entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs. Figure 2.5 provides some legal alternatives to some potentially illegal questions under the ADA.

Illegal Interview Questions with Legal Alternatives	
Examples of Illegal Questions	Legal Alternatives
Do you have a disability?	Are you able to perform the essential functions of this job? (The interviewer must have already thoroughly described the job.)
Have you ever been hospitalized? If so, for what condition?	
Have you ever been treated for a mental condition?	Can you demonstrate how you would perform the following job-related functions?
Have you had a major illness in the last five years?	Preemployment questions about illness may not be asked because they may reveal the existence of a disability. However, an employer may provide information on its attendance requirements and ask if an applicant will be able to meet these requirements.
How many days were you absent from work because of illness last year?	
Are you currently taking any medications?	

Figure 2.5 Illegal interview questions with legal alternatives under the ADA. (Source: U.S. Equal Employment Opportunity Commission.)

AGE DISCRIMINATION IN EMPLOYMENT

To prevent employment discrimination based upon an individual’s age, the U.S. Congress passed the **Age Discrimination in Employment Act of 1967**. This law prohibits discrimination against individuals who are 40 years of age and older. The act was amended in 1986 to eliminate rules requiring mandatory retirement ages that were common in many industries. Enforcement of this law is handled by the EEOC, and violations can be time-consuming and costly. As with Title VII, exceptions based upon BFOQ are permitted, but they are extremely limited and would likely have no application in the hospitality industry.

EQUAL PAY ACT

In order to prevent huge disparities in pay and wages between men and women, Congress passed the **Equal Pay Act** in 1963. This law requires businesses to pay equal wages for equal work. Jobs are considered equal when

both sexes work at the same place and the job requires substantially the same skill, effort, responsibility, and working conditions. Pay differences based on a seniority or merit system or on a system that measures earnings by quantity or quality of production are permitted. The law is interpreted as applying to “wages” in the sense of all employment-related payments, including overtime, uniforms, travel, and other fringe benefits. The EEOC handles equal pay violations, and the penalties can be severe. In a case from 1970, a federal court found that Wheaton Glass Company had violated the Equal Pay Act when it paid male factory workers 21 cents an hour more than female workers. The court ordered Wheaton to pay \$900,000 in back pay and interest to more than 2,000 female employees.⁵

IMMIGRATION REFORM AND CONTROL ACT

The **Immigration Reform and Control Act of 1986 (IRCA)** was passed to control illegal immigration to the United States. This federal law imposes civil and criminal penalties on employers who knowingly hire illegal aliens. The law is administered by the Department of Homeland Security’s U.S. Citizenship and Immigration Service, and penalties against businesses that knowingly use illegal labor can include fines of up to \$10,000 per worker as well as potential criminal charges against the business or its owner. The law requires employers to verify the identity and employment eligibility of all workers hired after November 6, 1986. Hospitality managers accomplish this by requiring all employees to complete Form I-9, Employee Eligibility Verification. A Form I-9 is illustrated in Figure 2.6.

Form I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by the authorized U.S. government officials. Currently, the debate in Washington, D.C. has heated up considerably over the “immigration issue” in which some members estimate that nearly four million immigrants are in the country illegally. Some members of Congress prefer a new law that would provide many of these immigrants with a “pathway to citizenship,” while others call this route “amnesty” and suggest the criminalization and deportation of all illegal immigrants. The National Restaurant Association, which predicts a nationwide shortage of restaurant industry workers well into the year 2010, prefers legislation that would create a legal means for many of these immigrants to become guest workers in the United States. There appears to be no easy solution to the problem, but the impact of any legislation on the hospitality industry will be profound.

Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.		I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A Lawful Permanent Resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____	
Employee's Signature		Date (month/day/year)	

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address (Street Name and Number, City, State, Zip Code)	
		Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. Document Title: _____ Document #: _____ Expiration Date (if any): _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

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Figure 2.6

Form I-9, Employment Eligibility Verification. (Source: U.S. Department of Homeland Security, U.S. Citizenship and Immigration Service.)

SUMMARY

- Employment laws affect virtually every aspect of the employee-employer relationship, so it is important to follow specific guidelines when asking job applicants to fill out applications and when interviewing prospective job candidates.
- Title VII of the 1964 Civil Rights Act prohibits discrimination on the basis of sex, race, color, national origin, and religion.
- Bona fide occupational qualification (BFOQ) is a legal defense against discrimination in the areas of sex, religion, and national origin, but the courts narrowly construe this defense; hospitality managers are not allowed to retaliate against employees who file discrimination claims.
- The Americans with Disabilities Act (ADA) prohibits discrimination based upon an individual being disabled, and this law applies to both job applicants as well as to current employees who are disabled or who may become disabled and who can no longer perform the essential duties of the job.
- A disabled applicant who otherwise can perform the essential functions of the job with or without a reasonable accommodation should be hired, so long as doing so does not cause the employer undue hardship.
- The Age Discrimination in Employment Act prohibits employment discrimination against those who are 40 years of age and over; the EEOC has oversight of this law.
- The Equal Pay Act prohibits sex discrimination as it relates to pay and salary issues and requires equal pay for equal work.
- The Immigration Reform and Control Act requires that employers verify and retain each worker's proof of identity and proof of legal status to work in the United States; this is done by completing and keeping on file the Form I-9.

PRACTICE QUIZ

1. Title VII of the 1964 Civil Rights Act prohibits job discrimination on the basis of age.
A. True B. False
2. Choosing a white applicant over an African-American applicant because of customer preferences would be in violation of Title VII.
A. True B. False
3. Title VII of the 1964 Civil Rights Act only impacts the hospitality manager's relationship with job applicants—not with current employees.
A. True B. False
4. The ADA requires that hospitality managers hire individuals who are disabled, regardless of the individual's ability to perform the essential functions of the job.
A. True B. False

5. The U.S. Department of Justice has legal jurisdiction over Title VII of the 1964 Civil Rights Act.
A. True B. False
6. With respect to the I-9 form, acceptable documentation must include which of the following:
A. An item from List A, List B, and List C
B. An item from List B only
C. An item from List A only
D. An item from List C only
7. Title VII of the 1964 Civil Rights Act prohibits discrimination based upon all of the following *except*:
A. Race
B. Color
C. Age
D. National origin
8. Refusing to hire a female applicant for the position of men's locker room attendant would be a legal defense of Title VII based upon
A. Reasonable accommodation
B. Bona fide occupational qualification (BFOQ)
C. Essential duties
D. Undue hardship
9. Which of the following individuals would currently *not* be covered under the ADA?
A. An individual who is HIV positive or who has AIDS
B. An individual who illegally uses drugs
C. An individual who is in supervised alcohol rehab
D. None of the above are covered under the ADA
10. Paying a female dishwasher less than a male dishwasher could be in violation of
A. The ADA
B. The Pregnancy Discrimination Act
C. The Equal Pay Act
D. Title VII of the 1964 Civil Rights Act

REVIEW QUESTIONS

1. Eric Holmes has applied for the position of a reservations clerk in your hotel. The individual has no experience, but he types quickly and accurately and has good listening skills as well as a pleasant speaking voice. Eric has very limited eyesight; he is considered to be “legally blind” and is covered under the ADA. Discuss ways in which management in your hotel could accommodate Eric’s disability with or without a reasonable accommodation.
2. The owner of the small restaurant that you manage has come to you with a new concept, and he wants you to adopt his idea as quickly as possible so as to boost lagging sales in the bar. He would like for you to begin hiring only attractive women to bartend as well as to serve cocktails in the bar. In order to do this, several employees—both male and female—would either have to be transferred to another department or let go. How would you respond to the owner and why? Write a report to the owner clarifying your point of view and be prepared to share your report with the rest of the class.
3. Write a sexual harassment policy for a small hospitality business. Be sure to define both quid pro quo and hostile environment harassment. What steps and procedures should employees take if they feel that they are victims of sexual harassment? What steps should management take when an employee makes a claim of sexual harassment?
4. Conduct an Internet search and find at least two examples—separate from those presented in the text—in which a hospitality operation has been sued for violation of either Title VII or the ADA. What are the circumstances of each case? What was the outcome? Be prepared to share your findings with the rest of the class.
5. Provide examples for ways in which a hospitality business could make a *reasonable accommodation* for each of the following job applicants:
 - An applicant for the position of dishwasher who has a hearing disorder.
 - An applicant for the position of sales manager who is wheelchair bound.
 - An applicant for the position of server who lacks use of the left arm.

HANDS-ON HRM

Lee and Sue are college students, and they both work the 3 to 11 shift at the front desk of the Delmar Inn, a 250-room suburban hotel property located on the outskirts of a large Midwestern city. One afternoon as they are reporting for work, Joe Goodman, the front-office manager, tells them that the hotel is currently running a help-wanted ad in the local newspaper, and that if any applicants should come in, they should instruct them to fill out an application and then place the completed application in the in-basket on Joe’s desk in the back office. Lee and Sue tell Joe “no problem,” and they begin to settle in to their nightly shift routine. Joe wishes them a good evening as he closes the door to his office and leaves the hotel for the day.

Guest arrivals are somewhat slow and staggered, and Lee and Sue start to get bored pretty quickly until a few job applicants walk in and inquire about the help-wanted ad and ask to fill out applications. After accepting several applications and placing them in a pile at the front desk, Lee says to Sue, “Hey, we ought to put a few notes on these people’s applications so that ol’ Joe knows what he’s dealing with when he looks them over in the morning.” “Notes like what?” asks Sue. Lee snatches an application from the pile and says, “Well, take this one, for example. This gal was a babe!” Lee grabs a pen and writes on the upper right-hand corner of the application: *Awesome babe! Great bod!* “Oh, fun,” giggles Sue, and she grabs an application from the pile. “I remember this woman,” she says. “She was older than my mother!” Sue writes on the application: *Don’t hire! Old hag!* “Cool,” laughs Lee, and the two of them spend the next 30 minutes going through the applications and writing notes for Joe.

When they finish, they step back to admire their handiwork. Every application has a handwritten note on the upper right-hand corner: *Total Geek! Would NOT fit in!; Nice-looking guy, clean-cut! I’d date him!; Too much perfume! Bad dye job!; Don’t hire this one! Looked foreign and spoke with a weird accent!; Strange-acting and has some kind of speech impediment!; Pretty lady but had three kids with her!;* and on and on. Finally, they put the applications in Joe’s in-basket and return to their shift duties.

QUESTIONS

1. When Joe sees the applications that Lee and Sue have accepted, what do you think his reaction will be? Explain your answer in detail.
2. List and briefly discuss all of the ways in which Lee and Sue’s “helpful notes” to Joe could cause legal problems for the Delmar Inn? Be specific and cite examples.
3. If you were Joe would you terminate Lee and Sue or would you choose to administer some other kind of discipline? Explain your answer.
4. What kind of training should the hotel offer its employees to ensure that such activities do not occur again in the future? Be specific and explain your answer in detail.

KEY TERMS

Job description A form that lists a job or a position within a hospitality industry business setting and that details the essential duties associated with that specific job or position.

Title VII of the 1964 Civil Rights Act A federal law that makes it illegal to discriminate against job applicants as well as current employees on the basis of sex, race, color, religion, or national origin.

Equal Employment Opportunity Commission (EEOC) The EEOC is the U.S. government agency charged with overseeing Title VII of the 1964 Civil Rights Act and Title I of the Americans with Disabilities Act.

Bona fide occupational qualification (BFOQ) A legal loophole, or a legal defense, to job discrimination based upon sex, national origin, or religion. There is no BFOQ defense to racial discrimination.

Sexual harassment A form of sex discrimination according to Title VII of the 1964 Civil Rights Act.

Quid pro quo This for that—you give me this, and I’ll do that.

Hostile work environment An environment that is hostile can be created when management allows employees to tell off-color jokes, send off-color e-mails, or put up pictures or photos that someone could deem offensive.

Americans with Disabilities Act (ADA) A federal law that makes it illegal to discriminate against a job applicant or a current employee who is disabled.

Disabled individual The ADA describes a disabled individual as “any individual who has a physical or mental impairment that substantially limits one or more major life activity, has a record of such impairment, or is regarded as having such impairment.”

Essential functions The primary, essential duties associated with a job position. These would be found on the job description and are important because of the Americans with Disabilities Act.

Reasonable accommodation Under the ADA, an individual who is disabled but otherwise qualified to perform the essential functions of a job may require a reasonable accommodation. This could be a minor adjustment of the individual’s work schedule, an adjustment of policy or procedure, or the purchase of a device that would allow the individual to perform the duties of the job.

Readily achievable This term is associated with the ADA and generally refers to the adjustment of a task or a physical adjustment to the facility that is easily accomplished without great difficulty or expense.

Undue hardship A legal defense to the ADA that is generally left up to the interpretation of the courts. It could refer to a financial hardship or a business hardship.

Age Discrimination in Employment Act of 1967 This law prohibits discrimination against individuals who are 40 years of age and older.

Equal Pay Act The law requires businesses to pay equal wages for equal work without regard to the sex of the employee.

Immigration Reform and Control Act of 1986 (IRCA) All workers hired after November 6, 1986, must provide proper documentation and complete the Form I-9 to prove that they have the legal right to work in the United States.

NOTES

1. Herman Cain, "Separate Water Fountains," Opinion Columns, 2004, <http://www.herman-cain.com/news/press-opinion-042105.asp>.
2. Ralph R Reiland, "Save Millions in Damages, Go Topless," *Restaurant Hospitality*, 81:11 (November 1997), 152-154.
3. EEOC press release, January 8, 2004, www.eeoc.gov/press/1-8-04-b.html.
4. Ibid.
5. *Schultz v. Wheaton Glass Co.*, 421 F. 2d 259 (3d Cir. 1970).