

EMPLOYMENT LAW
INSTRUCTOR'S MANUAL



Managing a Diverse Workforce: Affirmative Action

By Thomas A. Timmerman, Ph.D., SPHR

PROJECT TEAM

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Part I

LECTURE PRESENTATION

Suggested time: 50 minutes

Suggested audience: Undergraduate, any major.

Suggested reading: A good summary of affirmative action plans is provided by the Office of Federal Contract Compliance Programs (OFCCP). The OFCCP (not the EEOC) enforces Executive Order 11246 and provides guidance on affirmative action issues. The summary can be accessed through the OFCCP web site at www.dol.gov/ofccp/regs/compliance/fs11246.htm.

OUTLINE

Overview: One of the biggest challenges in teaching affirmative action is that students bring preconceived ideas with them to class. Many of these preconceptions are wrong, but students are resistant to change because beliefs about affirmative action are often strongly tied to deeply held political and social values. Therefore, this module begins by introducing affirmative action through nontraditional illustrations. These illustrations help demonstrate what affirmative action really is. They also introduce affirmative action as a strategic initiative that is fully consistent with meritocracy.

I. Illustrations

a. Parable: The Fish Story

Begin by telling students that today's discussion isn't about affirmative action. Instead, ask them to help solve a business-related dilemma in a fictitious fishing business. Fishing from a single lake, AA Fishing and its competitors quickly exhaust the supply of good fish and must settle for mediocre fish. When AA Fishing finds a second, smaller lake, should it abandon the first lake? Or should it pay someone to fish in the second lake? By the end of the parable, students realize that fishing in the smaller, less popular lake is equivalent to an affirmative action effort to find talented employees in neglected applicant populations.

b. Case Study: The Integration of Major League Baseball

This case demonstrates that the fish story is not a parable. Before 1947, Major League Baseball teams only fished from one talent pool (i.e., the white pool). In 1947, the

Brooklyn Dodgers decided to actively recruit from a neglected lake. The Dodgers—and teams that followed—replaced their mediocre fish with more-talented and more-valuable employees from the African-American pool. The evidence was very clear: Teams willing to actively pursue talented players in neglected pools were more successful than teams that decided to stick with only traditional talent sources.

c. Research: The Bertrand and Mullainathan Study

Students who see the logic and value of the case study often argue that people are more enlightened today. No one, they suggest, would exclude talented people because of their gender or race. In fact, some may argue that the pendulum has swung too far and organizations are hiring less-qualified minorities and women in the name of diversity. A study conducted by two economists may refute this idea. Sending out 5,000 fake resumes with “white” names and “African-American” names to employers in Chicago and Boston, they found that poorly qualified white applicants were more likely to receive interviews than highly qualified black applicants. The results of this study show that affirmative action is still needed in many organizations across the labor market.

II. Steps in an Affirmative Action Plan

A sample affirmative action plan is provided by the OFCCP and can be found at www.dol.gov/ofccp/regs/compliance/pdf/sampleaap.pdf.

a. Step 1: Utilization Analysis

In the first step, organizations must determine, job by job, if there are any neglected pools of talent. If not, affirmative action efforts are unnecessary. If there are underutilized talent pools, we continue to the second step.

b. Step 2: Develop Goals and Timetables

In the second step, the organization develops realistic goals and timetables. Goals should reflect the availability of employees in the local labor pool. The local labor pool is the area from which the organization recruits to fill jobs. Timetables should consider the anticipated growth in each job and typical turnover rates.

c. Step 3: Implement New Recruiting and Selection Practices

Underutilization of talent pools is often a sign that an organization needs to change its recruiting practices. If an organization is using valid selection tools, underutilization can be addressed by recruiting from nontraditional sources and using the same selection practices. If underutilization is resulting from the selection process, the organization will need to adopt different selection tools or reduce any bias associated with the existing tools.

d. Step 4: Monitor Progress

The only way for organizational leaders to determine if they are doing a good job tapping all of the available labor pools is to continuously monitor their efforts.

III. What Affirmative Action Is Not

- a. Government Mandate
Relatively few organizations are legally required to have an affirmative action plan. For everyone else, it's just a good idea.
- b. Reverse Discrimination
Affirmative action plans must abide by certain guidelines so as not to violate the rights of majority members.
- c. Quotas
Strict quotas are specifically forbidden, and organizations are not punished for failing to meet goals.
- d. Diversity for the Sake of Diversity
Returning to the baseball case study, the Brooklyn Dodgers didn't pursue Jackie Robinson because he brought diverse perspectives or appealed to African-American customers. They pursued him because of his talent. This approach to affirmative action firmly roots it in the pursuit of organizational performance.



SCRIPT

PLEASE NOTE: [Click] will reveal additional information on the slide. Some of the information is intended to be surprising, so the custom animations triggered by each click are important.

[Slide 1]

I know we're supposed to talk about affirmative action today, but I've had a change of heart. I'd like to spend class time talking about things that help organizations perform better. As we all know, affirmative action is more about politics than anything else. So let's talk about helping organizations perform better.

[Slide 2]

In fact, I own a business that needs your help. In my spare time, when I'm not teaching, I have a fishing business, AA Fishing.

[Slide 3]

I started the business when I found a lake with many good fish. I found that I could sell these good fish for \$5 per pound [Click].

The lake also has some smaller, mediocre fish. I can sell these for \$2 per pound [Click].

The lake also has some very small fish that are worthless [Click].

I also happen to know (don't ask me how I know, I just know) that 20 percent of the fish in the lake are good fish, 30 percent are mediocre fish, and 50 percent are bad fish. You can also make this assumption: I'm a good fisherperson. So, on average, as long

as they're available, I know how and where to catch the best fish. I occasionally catch some mediocre and bad fish, but for the most part I usually catch the good ones.

With such an amazing opportunity, what do you think eventually happened?
Competition [Click].

What will this competition do to my business? It will make it harder for me to catch the good fish. As they disappear, I will eventually have to settle for more mediocre fish. As the mediocre fish disappear, there will only be worthless fish left in the lake.

But I may have an idea. I found another lake.

[Slide 4]

The lake is smaller and has only half as many fish as the first lake (don't ask me how I know, I just know), but the proportions are the same: 20 percent of the fish are good, 30 percent are mediocre, and 50 percent are worthless. The question I have for you is: How can my business best use Lake 2? [Wait for answers after each question.]

- Should I ignore Lake 2 because it's smaller? Doesn't seem right to completely ignore a source of good fish.
- Should I abandon Lake 1 for Lake 2? Lake 1 is still the biggest source of fish.
- Should I fish Lake 1 and Lake 2 on alternating days? If I try this, I might lose my prime spot at Lake 1.
- Or should I hire someone to fish in Lake 2? As long as my expenses are less than my revenues, this makes sense. Everyone agree? Good.
- What if the fish in Lake 2 prefer a different kind of bait? As long as my expenses are less than my revenues, I should be willing to do whatever it takes to catch the good fish in Lake 2. Correct? Good.

What if I face competition in Lake 2? Should I hire someone to pursue the good fish in a third lake? [Wait for answers.] As long as my expenses are less than my revenues. Correct? Good.

One more question about strategy. I've discovered that the three lakes are actually connected by a stream.

[Slide 5]

Occasionally, fish from Lake 3 and Lake 2 swim upstream to Lake 1. One of my competitors told me that instead of hiring people to fish in Lakes 2 and 3, he's just going to wait for the fish to swim upstream to him in Lake 1. What do you think about this strategy? [Wait for answers.] I can beat my competitors if I am proactive and pursue the good fish more aggressively. Right? Good.

Last question. How will I know if the people I hire to fish in Lake 2 and Lake 3 are actually doing the best job possible? Remember what I said earlier. Lake 2 has half the number of fish as Lake 1. Lake 3 has half the number of fish as Lake 2 (don't ask me how I know, I just know). So if I catch 100 fish from Lake 1, the person I hire to

fish in Lake 2 should catch about 50 and the person I hire to fish in Lake 3 should catch about 25. In fact, if I have less competition in the smaller lakes, I should easily catch 50 from Lake 2 and 25 from Lake 3.

Assuming that these people are motivated to catch as many fish as possible, what if we only get 30 from Lake 2? [Wait for answers after each question.]

- Do we blame the fish? No, they're hungry and need to eat just like the other fish.
- Would it help if the person fishing in Lake 2 caught some mediocre or bad fish to try and make up the difference? No. Bad fish are bad fish, regardless of which lake they come from.
- The answer is: We need to try something different. We might need to try a different bait, or a different place, or a different time. The key is, if we're not catching as many fish as we should from the smaller lakes, we need to try something different. Everyone agree? Great.

[Slide 6]

So let's review what we've decided is good for the organization:

1. We want the good fish, regardless of which lake they come from.
2. If we concentrate on one lake only, we will eventually run out of good fish and have to settle for mediocre or bad fish.
3. We are willing to spend money to pursue good fish in other lakes.
4. It makes no sense to wait for the good fish in other lakes to swim to us.
5. We won't be satisfied with our catch from the smaller lakes until we catch them in proportion to their availability.

Does anyone disagree with any of the above? Anyone?...Last chance...

If you haven't guessed by now, we really are talking about affirmative action. If you agree with these five principles, you will agree that affirmative action is good for organizations.

Before we talk about the details of affirmative action, let me give you a real-life example that mirrors the fish story.

[Slide 7]

One of the first victims of affirmative action in the United States was Ed Stevens. Does anyone know Ed Stevens? Ed Stevens already had two years of work experience when he was let go to make room for an African-American with no experience at the same level. Several of his co-workers were so upset that they started a petition to present to management. The co-workers argued that the new African-American employee would upset the organization's "chemistry" and drive away customers. Upper management rejected the petition and threatened to fire those who refused to work with the new employee. One of the employees refused and was fired. How

does this make you feel about affirmative action? If you've never heard of Ed Stevens, maybe you've heard of his replacement [click].

Ed Stevens was replaced by Jackie Robinson.

In case you've never heard of Jackie Robinson, he's one of the greatest baseball players who ever played the game. Until 1947, the owners of Major League Baseball teams had an unwritten agreement to fish from one lake only. In 1947, Brooklyn Dodgers owner Branch Rickey decided to fish from a different lake because he knew that by concentrating only on one lake, he was settling for mediocre and bad fish (like Stevens).

Larry Higbe (a mediocre fish at best) was the player who refused to play with Robinson. Interestingly enough, the other good fish on the Dodgers team (like Duke Snider and Pee Wee Reese) were happy to have Robinson on the team. By replacing bad fish with good fish, the Dodgers won the National League Championship in 1947 and recorded the highest attendance in the team's history. Apparently, the customers cared more about a winning team than the racial make-up of the team.

[Slide 8]

Notice the parallels with the fish story:

1. Rickey wanted the most talented players, regardless of where they came from.
2. By concentrating on white players only, there were mediocre and bad players filling out the rosters.
3. The Dodgers spent money sending scouts into the Negro Leagues to find the most talented players.
4. The Dodgers didn't wait for African-American players to knock down the doors and demand equal treatment.
5. Robinson was the first, but not the only, good fish landed by the Dodgers from the African-American pool.

So how long do you think it took for other teams to imitate this innovation? The last team to integrate was the Boston Red Sox. They stuck with Lake 1 until 1959, when they finally found an African-American good enough for their team—Pumpsie Green. They finished in fifth place that season.

Do you know why you've never heard of Pumpsie Green? Because he was a mediocre fish from the African-American pool. By 1959—12 years after Jackie Robinson joined the Brooklyn Dodgers—there was a tremendous amount of social and political pressure on the Red Sox to integrate. The owner finally gave in and selected Pumpsie Green. Green filled a quota. While all of the other teams were integrating and getting better during the 1950s, the Red Sox never finished above third place.

And that's the problem that uninformed organizations face. When they view affirmative action as the filling of quotas, they're more willing to settle for mediocre and bad fish. The Dodgers did affirmative action the right way.

Incidentally, another reason that the integration of baseball is a good example of affirmative action is that no government intervention was required. In 1947, it was still perfectly legal to discriminate on the basis of race. Good affirmative action occurs when an organization voluntarily examines its staffing practices and realizes that it's missing out on a pool of talent. Then it proactively pursues that talent pool.

Does anyone think that the Dodgers were wrong in replacing Ed Stevens with Jackie Robinson? I know what you're thinking. You're thinking that people are more enlightened today than they were in 1947 and that anyone in their right mind would rather have Jackie Robinson than Ed Stevens.

That could be true. Let me ask you: How many of you would rather have less-talented white employees than very talented African-American employees? No one? Wonderful! Racial harmony has finally been achieved!

But maybe we should ask if that's really happening beyond our classroom. That's exactly what two economists did a few years ago.

[Slide 9]

In 2001 and 2002, Marianne Bertrand and Sendhil Mullainathan mailed out 5,000 resumes in response to entry-level job advertisements in Boston and Chicago. They set up voice mail accounts and e-mail accounts to record which resumes received invitations to interview. Half of the resumes were designed to be a good fit for the jobs. They had the appropriate levels of education and experience. Half of the resumes were designed to be a poor fit for the jobs. They lacked the appropriate education and/or experience.

So the first question we can ask with this study is: Are resume screeners good at choosing people based on their fit with the job requirements? [Click]

Among the resumes designed to be a good fit for the job, 9.2 percent received invitations to interview. Among the resumes designed to be a poor fit for the job, 7.6 percent received invitations. Right off the bat, this tells us that there may be some subjectivity in the selection process, even the seemingly simple process of screening resumes.

But that's not what the study was really about. The resumes were manipulated in another way as well. Half of the resumes in each group were given female names, and half were given male names. So who do you think got more invitations to interview? If you think this class is too predictable, you're predicting that males got more invitations. Some of you might be thinking (but not willing to say) that the diversity movement in the United States has turned the tables. You're thinking that women got all the breaks. So let's go to the data.

[Slide 10]

Among the resumes with male names, 7.7 percent received invitations to interview. Among the females, it was 8.6 percent. Ah ha! Females are getting all the breaks!

Before you get all excited about this difference, remember that these were entry-level jobs advertised in the newspaper. There was an abundance of clerical and administrative jobs. So does this finding mean that men were being discriminated against? Or does it mean that women were seen as more appropriate for low-paying jobs? We really can't tell.

But that's not what the study was about either. There was one more manipulation of the names on the resumes.

[Slide 11]

Half of the male names were names like Brad, Jay, Matthew and Todd. The other half were names like Tyrone, Leroy, Jamal and Rasheed. Half of the female names were names like Kristen, Laurie, Meredith and Jill. The other female names were names like Ebony, Lakisha, Keisha and Latoya. So what was the difference between the names in Group 1 and Group 2?

The names in Group 2 were predominately African-American names. By the way, it doesn't mean you're a racist if you automatically associate those names with African-Americans. In fact, the names were chosen by looking at data from the U.S. census. The names in Group 1 were names chosen more often by whites. The names in Group 2 were names chosen more often by African-Americans.

So which group was more likely to get an invitation to interview?

[Slide 12]

In this situation, if you think white males are at a disadvantage, you would expect that (just like earlier) African-Americans were more likely to receive an interview. So let's go to the data.

Among the resumes with white names, 10.1 percent received invitations. Among the resumes with African-American names, 6.7 percent received invitations. In other words, in these particular labor markets, if you had a white name on your resume, you would have to send out 10 resumes to get one interview. If you had an African-American name on your resume, you would have to send out 15 resumes to get one interview. Those with African-American names had to work 50 percent harder to get the same opportunity as those with white names.

There's one more way to slice up the data.

[Slide 13]

Remember that half of the resumes were designed to be a poor fit for the job. Among the resumes with white names and designed to be a poor fit for the job, 8.8 percent received invitations to interview. If the resume was designed to be a good

fit for the job, this number increased to 11.31 percent. Among the resumes with African-American names and designed to be a poor fit for the job, 6.41 percent received invitations to interview. What about highly qualified African-Americans? If you believe the radio talk shows, these were the most highly desired candidates in the labor force. But only 6.99 percent of them received invitations to interview.

There are at least two implications to this study. First, if you've got a white name, having a good resume does make a difference. If you've got an African-American name, however, having a good resume doesn't really help that much.

The second implication is this: Even in 2002 in Boston and Chicago, poorly qualified whites were more likely to get interviews than highly qualified African-Americans (8.8 percent vs. 6.99 percent). In other words, Ed Stevens was more likely to get an interview than Jackie Robinson.

There is a bit of good news in all of this. It shows that there are still untapped talent pools. People who are willing to proactively pursue those talent pools can still find Jackie Robinson, Hank Aaron and Willie Mays.

Now would be a good time to point out that underutilization might occur because of conscious racism or sexism. That's pretty easy to spot. But underutilization might also occur because of unconscious and unintentional processes. I don't think those people screening resumes were necessarily racist. I think that stereotypes are so ingrained that we can accidentally discriminate. That is why counting is so important to determine if affirmative action is needed. The only way we can tell if we're doing a good job is to count what we have and compare that to what's available. In a few minutes, we'll talk about how to find out what's available.

Teaching Note

More details about the Bertrand and Mullainathan study can be found in: Bertrand, M., & Mullainathan, S. (2004). Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination. *American Economic Review*, 94, 991-1013.

By the way, other studies have found similar patterns of discrimination. Around the same time, sociologist Devah Pager conducted a similar study. Instead of sending out resumes, Pager sent white and African-American accomplices to apply for 350 entry-level jobs in the Milwaukee, Wisc., area. Half of the applicants told the employers that they had been convicted of drug possession. Among the white applicants with drug convictions, 17 percent were offered interviews. Among the African-American applicants with drug convictions, only 5 percent were offered interviews. More surprising, however, was the fact that 14 percent of the African-Americans without drug convictions were offered interviews, compared to 34 percent among the

whites. In other words, employers were more likely to interview whites with drug convictions than equally qualified African-Americans without such convictions.

Teaching Note

More details about the Pager study can be found in: Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108, 937-975.

[Slide 14]

So let's summarize what we've seen so far:

1. The fish story demonstrated what affirmative action is really about. It's about noticing underutilization and proactively addressing it.
2. The baseball story demonstrated that affirmative action done well leads to better organizational performance.
3. The Bertrand and Mullainathan study demonstrated that underutilization still happens, even across the labor market.
4. So far in our discussion, the government hasn't forced anyone to engage in affirmative action.

[Slide 15]

So which organizations are legally required to have affirmative action plans?

1. Federal contractors and subcontractors with at least 50 employees and at least \$50,000 in contracts. This requirement was created by Executive Order 11246, signed by President Lyndon Johnson in 1965. (www.dol.gov/ofccp/regs/compliance/fs11246.htm)
2. Sometimes, a judge will order an organization to have an affirmative action plan if it has been found guilty of illegal discrimination.
3. As we saw in the baseball example, for everyone else it's just a good idea.

[Slide 16]

So what, exactly, are employers required to do and what should organizations voluntarily do? You'll notice that the steps have largely been addressed in our previous illustrations.

Implementation:

1. First, conduct a utilization analysis where the organization's labor force, job by job, is compared with the relevant labor force. So what does "relevant labor force" mean? It means that the organization compares its workforce to the make-up of the labor force *from which it recruits*. If the employer is recruiting secretaries, it

might recruit from its city, so it needs to find the racial and gender make-up of the secretaries in that city. If it is recruiting college faculty, it might recruit nationwide. Usually, data regarding the relevant labor force are available from the U.S. census or from the Bureau of Labor Statistics (BLS). (www.eeoc.gov/eeoc/statistics/census/)

2. If the workforce matches (within 80 percent) the relevant labor force, the organization can stop there. If there is underutilization (based on race or gender), the employer should establish goals and timetables. The goal should come from the relevant labor force. The organization's goal should be to adequately tap the relevant pools (just like in the fish story).

Going back to the fish story, if I catch 100 fish from Lake 1, I should catch 50 from Lake 2. What if I'm only getting 45 from Lake 2? Is that close enough? The guideline that most organizations use is that 80 percent of the target is close enough. Using this guideline, 40 fish from Lake 2 would be close enough ($.8 \times 50$).

Appropriate timetables depend on anticipated growth in each job. If the employer plans to add new jobs to its existing workforce, it will have an opportunity to quickly address its goals. Timetables should also consider the typical turnover in a job. The organization should be able to meet goals faster in jobs with high turnover than in jobs with low turnover.

3. The third step is where the organization changes its recruiting and selection practices to pursue the goals. Most often, underutilization can be addressed with better recruiting efforts in nontraditional areas. Let's look at a few examples from real companies.

[Slide 17]

1. SAS Institute is a software company based in Cary, North Carolina. Its work environment is legendary, and affirmative action played a big part in its early success. Company founder Jim Goodnight realized during the late 1970s and early 1980s that female computer programmers were being ignored by most companies. He knew that this pool would be a good one in which to fish. He soon found, however, that young female programmers often left SAS when they got pregnant. Many of them wanted to return to work, but their skills quickly became obsolete. He decided to make it as easy as possible for his talented programmers to return to work by opening one of the first on-site day care centers. This, and many other family-friendly policies, helped SAS earn the reputation as the premier workplace for talented programmers, male or female. Notice that SAS proactively pursued talented programmers in a neglected pool and made the organization attractive to them.

Teaching Note

More information about the family-friendly work environment at SAS can be found in its Corporate Social Responsibility Report at www.sas.com/corporate/corpgovernance/csr-report.pdf.

2. Raytheon Company (based in Waltham, Mass.) realized that underutilization could occur in pools beyond race and gender. In response, Raytheon established relationships with Gallaudet University (Washington, D.C.), the National Resource Center for the Disabled (Washington, D.C.) and the Rochester School for the Deaf (Rochester, N.Y.). It is finding tremendous amounts of talent where others have neglected to fish.

Teaching Note

More details about Raytheon's Opportunity Award from the Secretary of Labor can be found at www.raytheon.com/newsroom/feature/honor1006/.

3. Half of San Diego, Calif.-based Sempra Energy's employees are minorities. This fact alone sends the powerful recruiting signal that minorities are welcome in the organization. The organization has also established relationships with historically black colleges like Howard University. These relationships help create social networks that help the organization recruit talented minorities.

Teaching Note

Details about Sempra's diversity initiatives can be found at www.sempra.com/diversity/diversity.htm.

4. Financial giant Goldman Sachs has earmarked \$100 million to educate women in Africa, India and the Middle East. Goldman Sachs realizes that talent is being wasted around the world because of historical and cultural norms against educating women. These women may not end up working for Goldman Sachs, but they will contribute to economic growth, which is good for the women, good for their countries and good for organizations like Goldman Sachs. Closer to home, Goldman Sachs is one of the corporate sponsors of Leadership Education and Development Program in Business (LEAD). This program identifies talented minority high school students and invites them to participate in Summer Business Institutes at top-tier universities. At these institutes, students interact with high-ranking corporate officers and cultivate relationships that may eventually turn into internships and full-time jobs. Notice how Goldman Sachs pursues talented employees in neglected labor pools before they ever become job applicants.

Teaching Note

Details about Goldman Sachs' diversity initiatives can be found at <http://www2.goldmansachs.com/careers/our-firm/diversity/index.html>.

[Slide 18]

Underutilization can also be addressed by changing selection practices. As we saw in the Bertrand and Mullainathan study, underutilization may occur because of subjectivity in the selection process. We'll cover more of this when we talk about selection, but let's take a look at how one organization reduced underutilization by changing its selection process.

[Slide 19]

Home Depot is a chain of home improvement stores. From the outset, the founders created a masculine culture. As the chain grew, few women were hired or promoted. The women who were hired were typically placed in cashier positions instead of sales positions. Not only were the sales positions more lucrative, but promotions were typically drawn from employees in sales positions. Facing a class-action lawsuit and tremendous growth during the mid-1990s, Home Depot created an automated hiring and promotion system known as the Job Preference Program (JPP). Under this program, applicants for new jobs took standardized tests administered by computer. This system would objectively identify the most qualified applicants and pass their names on to the hiring managers. The JPP removed managerial discretion early in the process and broadened the pool of people considered for jobs and promotions. Use of the JPP increased the number of female managers by 30 percent and the number of minority managers by 28 percent.

Teaching Note

More details about Home Depot's Job Preference Program can be found at http://money.cnn.com/magazines/fortune/fortune_archive/2000/04/03/277088/index.htm.

Before we go any further, I should point out that everything we've talked about so far shouldn't be controversial. No one should be opposed to recruiting and selecting the best employees. The selection process, however, is where affirmative action may become controversial.

Imagine this scenario: Suppose we conduct a utilization analysis and discover that our organization is underutilizing females. We do a good job of recruiting more female applicants, and we end up with two final candidates who appear to be equally qualified. One is female, and one is male. If they are equally qualified, should we hire the woman or flip a coin? Organizations that discover underutilization and decide to engage in affirmative action are allowed (but are not required) to hire the female in this situation because of her gender. The whole purpose of an affirmative action plan is to correct previous discrimination (that's how underutilization analyses started in the first place). Courts allow organizations to discriminate based on sex and race but only if there is demonstrated underutilization and the person being hired is qualified to perform the job. If the woman in this case was not qualified for the job, the organization could not legally favor her over the male.

[Slide 20]

The fourth and final step in an affirmative action plan is monitoring progress. Employers must continuously count and measure their progress against their goals. If they are not making progress, they must figure out why. If members of underutilized groups are not applying, then the organization probably has a recruiting problem. If members of underutilized groups are applying for jobs but not being selected, then there may be bias in the selection process. Just like in the fish story, they may need to fish in different spots at different times and with different bait. They can't blame the fish; they need to do something differently.

Hopefully, our discussion so far shows that affirmative action done well is aimed at maximizing organizational performance. However, let's talk about what affirmative action is not.

[Slide 21]

We made this point earlier, but remember that few organizations are legally required to develop affirmative action plans.

Many people are concerned that affirmative action results in reverse discrimination—or discrimination against majority group members (usually white males). It is true that some organizations have pursued affirmative action goals too aggressively. Various court rulings have established these guidelines for affirmative action plans:

1. The plan must be temporary. Once goals are met, the plan is over because the organization is adequately tapping neglected pools.
2. The purpose of the plan must be to correct documented underutilization. An organization cannot favor one group over another unless there is demonstrated evidence of underutilization.
3. It is illegal to increase the percentage of a minority group by banning the hiring of majority members until the goal is met.
4. It is also illegal to increase the percentage of an underutilized group by firing majority members.
5. Finally, one of the biggest concerns is related to the competence of the minority members. Preference may be given only to qualified minority members. It is illegal to hire an unqualified minority member in the interest of affirmative action. Are there organizations that would hire Pumpsie Green instead of Mickey Mantle in the interest of affirmative action? Probably. But they are doing affirmative action a disservice, and organizational performance will suffer.



Teaching Note

As these guidelines develop, they are incorporated into the Code of Federal Regulations (CFR). The specific regulations regarding affirmative action plans can be found at www.dol.gov/dol/allcfr/Title_41/Chapter_60.htm.



Why might an organization hire Pumpsie Green instead of Mickey Mantle? Many people misinterpret affirmative action as requiring quotas. Federal guidelines, however, specifically forbid strict quotas. The guidelines also stipulate that organizations will not be punished for failing to meet their goals. Just like in the fish story, failing to meet a goal simply means that the organization needs to try something different. Substituting bad fish doesn't help.

Affirmative action is not diversity for the sake of diversity. You may hear that diversity is good for organizations because demographic diversity brings diverse perspectives to an organization and diverse perspectives lead to better decision making and organizational performance. Another assumption is that diverse employees are needed to serve diverse customers. Believe it or not, very little research has actually tested these assumptions. The research that has been conducted does not support the idea that simply increasing diversity will increase organizational performance. Employee diversity is also related to conflict, for example. This conflict may end up hurting organizational performance if it's not properly managed. For these reasons, I can't support the argument that diversity for the sake of diversity is good for organizational performance, but I will argue that organizations perform better when they replace Ed Stevens with Jackie Robinson.

[Slide 22]

So let's wrap this up with a simple distinction between what affirmative action is and what it is not. Affirmative action is an attempt by an organization to actively recruit and select talented employees from traditionally under-tapped pools.

Affirmative action is, for many employers, not a government mandate that forces organizations to hire unqualified employees.

Any questions?

Part II

EXERCISES

Overview: These exercises are designed to build on the lecture presentation.

1. Out-of-class exercise: Find an affirmative action plan

- a. Some organizations, especially universities, make their affirmative action plans available on their web sites. Ask students to find an affirmative action plan and discuss the highlights in class. Ask students to answer the following questions:
 - i. Which jobs and job families were analyzed for underutilization?
 - ii. Did the different jobs have different relevant labor forces?
 - iii. Which jobs showed underutilization? Which jobs showed no underutilization?
 - iv. How did the organization propose addressing the underutilization?
- b. Students can be evaluated according to whether they accurately answer the questions above.

Teaching Note

Most affirmative action plans actually have multiple relevant labor forces for a single job. If an organization hires 60 percent of its supervisors from external sources and 40 percent from internal sources, then both of these will appear as a relevant labor force (weighted accordingly). Students are likely to have questions about this.

2. In-class exercise: Debate

- a. In spite of the lecture presentation, some students will remain skeptical of affirmative action. Ask for volunteers to debate one or more of the following issues:
 - i. Affirmative action perpetuates the stereotype that minorities and women receive jobs and promotions because of their race/gender and not because of their qualifications.
 - ii. Because affirmative action promotes organizational performance, all organizations should be legally required to practice it.

iii. Whites are underutilized in the National Basketball Association.

b. Debate guidelines

- i. One team represents the affirmative position (the position that one of the statements above is true). The second team represents the negative position (the position that the statement is not true).
- ii. The affirmative team presents its argument (5 minutes).
- iii. The negative team presents its argument (5 minutes).
- iv. The instructor moderates and accepts questions from the teams and other class members, alternating between the affirmative team and the negative team (15 minutes).
- v. Each team presents its summary and rebuttal (3 minutes each).
- vi. Remaining class time is used to assess the quality and strength of the arguments.

c. Students can be evaluated by the instructor and/or classmates by using a rubric such as the one found at www.csun.edu/~ds56723/phil338/hout338rubric.htm.

Teaching Note

It might be a good idea for instructors to brush up on the psychological research related to affirmative action before moderating such a debate. A good summary can be found in: Crosby, F.J., Iyer, A., Clayton, S., & Downing, R.A. (2003). Affirmative action: Psychological data and the policy debates. *American Psychologist*, 58, 93-115.

3. Out-of-class exercise: Affirmative action data analysis

- a. In this exercise, students conduct their own utilization analysis and determine if goals are necessary.
- b. Instructions to student: Below you will find data from an organization related to the number of individuals in seven different job groups. Your task is to decide if underutilization is present in each job group. If so, determine an appropriate goal for the organization.



PLEASE NOTE: In order to streamline the exercise, the EEO Category 1 has not been split as currently required. The former category designation (1.Officials and Managers) is used here instead of the current designations (1.1 Executive/Senior Level Officials and Managers; 1.2 First/Mid Level Officials and Managers).

Job Group EEO Category	Total Number of Incumbents	Number of Females	Percentage of Females	Female Availability	Goal Needed?	Goal
1 Officials and Managers	9	0		47.6%		
2 Professionals	22	10		43.8%		
4 Sales Workers	10	2		34.5%		
5 Administrative Support Workers	30	25		87.7%		
6 Craft Workers	43	4		5.5%		
7 Operatives	10	1		6.3%		
8 Laborers and Helpers	16	1		19.1%		

Job Group EEO Category	Total Number of Incumbents	Number of Minorities	Percentage of Minorities	Minority Availability	Goal Needed?	Goal
1 Officials and Managers	9	1		18.1%		
2 Professionals	22	4		8.2%		
4 Sales Workers	10	0		12.4%		
5 Administrative Support Workers	30	13		27.6%		
6 Craft Workers	43	15		23.2%		
7 Operatives	10	3		37.5%		
8 Laborers and Helpers	16	6		26.3%		

Teaching Note: Answers

Job Group EEO Category	Total Number of Incumbents	Number of Females	Percentage of Females	Female Availability	Goal Needed?	Goal
1 Officials and Managers	9	0	0.0%	47.6%	Yes	47.6%
2 Professionals	22	10	45.5%	43.8%	No	
4 Sales Workers	10	2	20.0%	34.5%	Yes	34.5%
5 Administrative Support Workers	30	25	83.3%	87.7%	No	
6 Craft Workers	43	4	9.3%	5.5%	No	
7 Operatives	10	1	10.0%	6.3%	No	
8 Laborers and Helpers	16	1	6.3%	19.1%	Yes	19.1%

Job Group EEO Category	Total Number of Incumbents	Number of Minorities	Percentage of Minorities	Minority Availability	Goal Needed?	Goal
1 Officials and Managers	9	1	11.1%	18.1%	Yes	18.1%
2 Professionals	22	4	18.2%	8.2%	No	
4 Sales Workers	10	0	0.0%	12.4%	Yes	12.4%
5 Administrative Support Workers	30	13	43.3%	27.6%	No	
6 Craft Workers	43	15	34.9%	23.2%	No	
7 Operatives	10	3	30.0%	37.5%	No	
8 Laborers and Helpers	16	6	37.5%	26.3%	No	

Teaching Note

The first question that students will have is: How close is close enough? The OFCCP recommends an 80 percent rule of thumb. In the minority analysis, for example, the relevant labor force for Job Group 1 is 18.1 percent minority. Eighty percent of 18.1 percent is 15.0 percent. The percentage of incumbent minorities is 11.1 percent, which is less than 15.0 percent, so a goal is needed. It is worth pointing out to students that this 80 percent rule of thumb is not the same as the 4/5 rule used to determine adverse impact. Adverse impact is measured by comparing selection rates of majority and minority groups.

The second question that students will have is: Should we look for underutilization of whites and males as well? From a strategic standpoint, you don't want to underutilize any group, so the analyses can be done. In the data above, the only case in which whites or males are underutilized is whites in Job Group 5. White availability in the labor force is 72.4 percent. Eighty percent of 72.4 percent is 57.9 percent. The percentage of white incumbents is 56.7 percent (slightly below 57.9 percent). Organizations often neglect this because the primary purpose of affirmative action is to protect the traditional victims of discrimination. For at least one example of an organization identifying the underutilization of white males, see Sonoma County at sonoma-county.org/hr/pdf/eeo_plan_2005.pdf.

Summary: This organization is underutilizing females in the following job groups: officials and managers, sales workers, and laborers. The organization is underutilizing minorities in the following job groups: officials and managers and sales workers.

Part III

ASSESSMENT OF LEARNING

Multiple-Choice Test Items

1. What is the proper order of the steps of an affirmative action plan?
 - a. Conduct utilization analysis, set goals, change staffing practices, monitor progress.
 - b. Set goals, conduct utilization analysis, change staffing practices, monitor progress.
 - c. Change staffing practices, monitor progress, set goals, conduct utilization analysis.
 - d. Monitor progress, change staffing practices, set goals, conduct utilization analysis.

2. Utilization analysis compares the organization's workforce to the:
 - a. National workforce.
 - b. County workforce.
 - c. City workforce.
 - d. Area from which applicants are recruited.

3. The study by Bertrand and Mullainathan found:
 - a. Discrimination isn't really a problem anymore.
 - b. Poorly qualified whites were more likely to get interviews than highly qualified African-Americans.
 - c. Males were more likely to get interviews than females.
 - d. Poorly qualified African-Americans were more likely to get interviews than highly qualified whites.

4. Which of the following is the primary way in which affirmative action programs help organizations perform better?
 - a. More diverse perspectives among employees.
 - b. Greater ability to serve diverse customers.

- c. Greater amount of talent.
 - d. None of the above; affirmative action doesn't help organizations perform better.
5. Which of the following would be legal as part of an affirmative action plan?
- a. Sending recruiters to historically black colleges and universities.
 - b. Hiring only women until an affirmative action goal is met.
 - c. Firing whites to increase the percentage of African-Americans.
 - d. Hiring unqualified minorities to meet an affirmative action goal.
6. In 1947, the Brooklyn Dodgers tried affirmative action and found:
- a. Attendance went down when they integrated the team.
 - b. The best team members quit when they integrated the team.
 - c. The team won the National League Championship.
 - d. Every other Major League Baseball team integrated the following year.
7. Which of the following is true about goals and timetables with respect to affirmative action plans?
- a. Timetables should consider the anticipated growth in each job.
 - b. Timetables should consider the typical turnover in each job.
 - c. Goals should match the relevant labor force.
 - d. All of the above.
8. Which of the following would most likely help meet affirmative action goals?
- a. Using more newspaper ads to recruit applicants.
 - b. Using more employee referrals to recruit applicants.
 - c. Automating the selection process.
 - d. None of the above.

Teaching Note

Multiple-Choice Answers

1. a
2. d
3. b
4. c
5. a
6. c
7. d
8. c

Integrative Test Items

1. Suppose you are the CEO at O’Rafferty’s, a restaurant chain with 600 locations nationwide. Across the chain, you have 2,400 managers and assistant managers (2,100 of these are males, and 300 of these are females). You are disappointed in the chain’s recent performance, and you believe that the problem lies in the poor skills of the managers and assistant managers. You ask two vice presidents to look into the problem. During a follow-up meeting, you hear this conversation between your vice presidents:

VP1: In the past year, we’ve hired 50 of the 500 women who applied for these positions and we’ve hired 1,000 of the 2,000 men who applied. Nationwide, the percentage of females in these positions is 40 percent. I think we should change our recruiting practices and set a goal for the company to have females in 40 percent of the manager and assistant manager positions.

VP2: It sounds like you’re suggesting quotas. I am absolutely against your idea. We can’t help the fact that women aren’t applying. Besides, women don’t make very good restaurant managers anyway; you need to be tough for this job. How will your plan help performance? That’s the key issue. Our employee referral program is working great. We need to stick with it and invest (lots of money) in training programs to improve our managers’ and assistant managers’ skills.

- a. Which VP do you agree with? Explain any flaws you find in their arguments.
- b. Walk through the four steps of an affirmative action plan and explain whether an affirmative action plan is needed here and how it would be implemented.
- c. Explain how your affirmative action plan will improve organizational performance.

Teaching Note

Evaluating Student Responses to Integrative Question 1

- a. VP1 has the strongest argument. He or she recognizes that the female pool is underutilized. The recommended goal is consistent with the relevant labor pool. VP2 equates goals with quotas. Students should know that these are not the same. VP2 also states, "We can't help the fact that women aren't applying." That's what recruiting is for. VP2 also makes stereotypical comments that may be common throughout the organization. VP2 claims the employee referral program is "working great." Employee referral programs, however, tend to perpetuate the existing demographic make-up of the organization. If the organization has a high number of poorly qualified males in manager positions, it is likely that they are referring their poorly qualified male friends in the referral program.
- b. The first step is the utilization analysis. Companywide, the organization has women in 12.5 percent of the management positions. The available workforce is 40 percent, so there is evidence of underutilization. The second step is to set goals and timetables. The goal should be 40 percent, but we do not have enough evidence about growth and turnover to set a specific timetable. Students should at least recognize how these two factors influence the timetables. The third step is changing staffing practices to attract and select more women. Students may have a variety of ideas. Regardless of their specific ideas, new recruiting practices should focus on attracting more female applicants. Changes to the selection process should focus on removing subjectivity and bias that may be permeating the culture. The final step is monitoring progress. Someone in the organization should have the designated responsibility of measuring progress and creating the conditions that foster progress.
- c. The affirmative action plan will improve organizational performance to the extent that we replace poorly qualified managers with more highly qualified managers. By fishing in a neglected lake, we should have access to more-talented managers. Training might help, but training is more likely to help if we begin with talented managers.

Teaching Note

This test item can also be used to assess students' grasp of adverse impact. Selection ratios can be calculated from the available information.

2. Suppose you are the CEO at the Chapin Regional Medical Center (CRMC). CRMC is a 200-bed hospital that employs 950 people, including 300 nurses. In the local labor market (from which CRMC recruits nurses), 25 percent of the pool of nurses is male. Over the last few years, the hospital has faced a number of problems among its nurses. Compared with other hospitals, CRMC has had more medication errors, more drug theft, higher turnover among the better nurses and low performance appraisal ratings from supervisors. You ask two executives to look into the problems, and one week later you hear this conversation:

Exec1: I think we need to increase performance by increasing the diversity of our nursing staff. Out of 300 nurses, only two are men. Increasing diversity would bring diverse perspectives to the staff. Also, we have male and female patients, so it only makes sense that our nursing staff should match the profile of our patients.

Exec2: Increase diversity? What a bonehead idea! Nurses need to be nurturing and compassionate. Everyone knows that women are better at being nurturing and compassionate than men. In fact, the only reason we hired the two male nurses we have is because they're gay. Only about 2 percent of the applications we get are from men, but I tend to ignore the ones we do get. They usually don't have very much experience anyway. I personally oversee the selection process, and I only look at nurses with at least 10 years of experience. Then I personally give each one an in-depth interview to find out what makes her tick. We need to simply stick with our employee referral plan, keep hiring the applicants from that group with the most experience, and then invest a ton of money in training and continuing education.

- a. Which executive do you agree with? Explain any flaws you find in their arguments.
- b. Walk through the four steps of an affirmative action plan and explain whether an affirmative action plan is needed here and how it would be implemented.
- c. Explain how your affirmative action plan will improve organizational performance.

Teaching Note

Evaluating Student Responses to Integrative Question 2

- a. Exec1 has the strongest argument but probably for the wrong reasons. He or she recognizes that the male pool is underutilized. It is unlikely, though, that diverse perspectives or customer matching will help the kinds of problems the hospital is experiencing. Exec2 makes stereotypical comments that may be common throughout the organization. Exec2 claims they need to stick with the employee referral program. But employee referral programs tend to perpetuate the existing demographic make-up of the organization. If the organization has a high number of poorly qualified women, it's likely that they are referring their poorly qualified female friends in the referral program.

- b. The first step is the utilization analysis. Less than 1 percent of the nurses in the hospital are men, but the available workforce is 25 percent male so there is evidence of underutilization. The second step is to set goals and timetables. The goal should be 25 percent, but we do not have enough evidence about growth and turnover to set a specific timetable. Students should at least recognize how these two factors influence the timetables. The third step is changing staffing practices to attract/select more men. Students may have a variety of ideas. Regardless of their specific ideas, new recruiting practices should focus on attracting more male applicants. Changes to the selection process should focus on removing subjectivity and bias that may be permeating the culture. The final step is monitoring progress. Someone in the organization should have the designated responsibility of measuring progress and creating the conditions that foster progress.
- c. The affirmative action plan will improve organizational performance to the extent that it will replace poorly qualified nurses with more highly qualified nurses. By fishing in a neglected lake, we should have access to more-talented nurses.
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