

## **LEGAL FOUNDATIONS**

The Affirmative Action Program is designed to comply with Executive Order No. 93-159 which incorporates the following federal and state laws, executive orders and regulations.

Title VI and VII of the Civil Rights Act of 1964, as amended;

Title IX of the Education Amendments of 1972;

Age Discrimination in Employment Act of 1967, as amended;

Fair Labor Standards Act of 1938, as amended;

Equal Employment Opportunity Commission Guidelines on Affirmative Action of 1979;

Uniform Guidelines on Employee Selection Procedures of 1978;

The Equal Pay Act of 1963;

The Rehabilitation Act of 1973, as amended;

Vietnam Era Veterans Readjustment Assistance Act of 1974;

The Immigration Reform and Control Act of 1986;

The Americans with Disabilities Act of 1990;

The Civil Rights Act of 1991;

The Kansas Act Against Discrimination of 1953, as amended;

The Kansas Civil Service Act (K.S.A. 75-2925 et seq);

The Kansas Administrative Rules and Regulations;

Federal Executive Order # 11141, declaring Policy Against Discrimination Based on Age, signed February 12, 1964;

Federal Executive Order # 11246, as amended – Non Discrimination under Federal Contracts, signed September 24, 1965.

**Below is a summary of several significant federal and state employment laws, executive orders and regulations, as amended, which relate to equal employment opportunity and affirmative action:**

**Title VI, Civil Rights Act of 1964** – Prohibits discrimination on the basis of race, color or national origin in programs or activities receiving federal financial assistance. Employment discrimination is covered if the primary objective of the financial assistance is to provide employment or where employment discrimination causes or may cause discrimination in providing services under such programs.

**Title VII, Civil Rights Act of 1964** – Covers employer of 15 or more employees. Prohibits discrimination based on race, color, sex, religion or national origin.

**Age Discrimination in Employment Act of 1967** – Protects applicants and employees from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits and other aspects of employment.

**Fair Labor Standards Act of 1938 (FLSA)**, as amended – Sets minimum wage, overtime pay, recordkeeping requirements and child labor standards for employees who are covered by the Act. Certain executive, professional, administrative and sales employees are specifically exempted from the provisions of the Act. Government employees were added to FLSA coverage in 1986.

**Equal Employment Opportunity Commission Affirmative Action Guidelines of 1979** – Interprets Title VII and provides guidance on taking voluntary affirmative action. Affirmative action under these guidelines must be reasonable and related to the problems disclosed by self analysis. Affirmative action may include interim goals or targets. Such goals or targets for previously excluded groups may be higher than the percentage of their availability in the workforce so that the long term goal may be met in a reasonable period of time. In order to achieve such goals or targets, employers may consider race, sex, and disability status in making selections from qualified or qualifiable applicants.

**Uniform Guidelines on Employee Selection Procedures of 1978** – Provides a framework for determining the proper use of tests and other selection procedures. The Guidelines are designed to aid in the achievement of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin. They apply to private and public employers, labor organizations, employment agencies, apprenticeship committees, licensing and certification boards, contractors and sub-contractors who are covered by one or more provisions of federal equal employment opportunity law. The Guidelines apply to employee selection procedures which are used in making employment decisions, such as hiring, retention, promotion, transfer, demotion, dismissal or referral. Employee selection procedures include job requirements (physical, education, experience) and evaluation of applicants or candidates on the basis of application

forms, interviews, performance tests, paper and pencil tests, performance training programs or probationary periods and any other procedures used to make an employment decision. The Guidelines permit ranking where the evidence of validity is sufficient to support that method used.

**Equal Pay Act of 1963** – Prohibits sex-based compensation differentials for work requiring equal skill, effort and responsibility. The four exceptions to the Act are (1) seniority system, (2) merit system, (3) system that measures earnings by the quality or quantity of production and (4) any factor other than sex.

**Rehabilitation Act of 1973**, Sections 503 and 504, as amended:

Section 503 – Employment Under Federal Contracts – Requires that a provision for affirmative action must be included in any government contract or subcontract amounting to \$2,500 or more. The contract may be for supplies, services, use of real or personal property or construction.

Section 504 – Non-Discrimination Under Federal Grants – Prohibits discrimination against qualified handicapped individuals in federally assisted programs or activities solely on the basis of their handicaps. It encompasses the entire federal grant-awarding structure and covers handicapped individuals by prohibiting discrimination, the denial of benefits, or exclusion from participating on the basis of handicap.

**Vietnam Era Veterans Readjustment Assistance Act of 1974** – Requires federal contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam Era.

**Immigration Reform and Control Act of 1986** – Seeks to prevent employment of aliens not authorized to work. This law includes the “Paperwork Provisions”, which requires employers to review and retain proper documentation that verifies every employee hired on or after November 7, 1986 meets citizenship or work authorization requirements. The law also contains an “Anti-Discrimination” provision which prohibits discrimination against aliens who are authorized to work in this country.

**Americans with Disabilities Act of 1990** – Prohibits discrimination against persons with disabilities. As of July 26, 1994, this act applies to companies with 15 or more employees.

**Civil Rights Act of 1991**- Reverses several Supreme Court decisions and provides for compensatory and punitive damages (in addition to equitable relief) in cases of intentional discrimination as determined by a jury, if one is requested. Much of the Act restores the law of employment discrimination to where it was prior to 1989.

**Kansas Act Against Discrimination of 1953, as amended** – Prohibits discrimination in employment practices on the basis of race, color, age, sex, religion, national origin, ancestry and disability. The law prohibits any act which in any manner would limit or deprive or tend to deprive any person of employment opportunities or other wise adversely affect the person's status as an employee or applicant for employment. All employers in Kansas with four or more employees must comply with the law.

**Kansas State Civil Service Act** - Requires all personnel administration actions regarding employees in the state classified service to be made without regard to race, national origin, ancestry, religion, political affiliation or other non-merit factors, and shall not be based on sex, age, or physical disability except where sex, age, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration ( Kansas Civil Service Act, 75-2925)

**Kansas Administrative Rules and Regulations** – Interprets the Kansas Civil Service Act and provides for a uniform, comprehensive and effective system of personnel administration for the State of Kansas.

**Executive Order 11141** – Declaring Policy Against Discrimination Based on Age – Prohibits discrimination against older workers by contractors and subcontractors on federally funded projects in all aspects of employment.

**Executive Order 11246, as amended** – **Nondiscrimination Under Federal Contracts** - Contractors must provide information, reports and permit access to books, records and accounts as may be required to ascertain compliance with rules and regulations established under this Executive Order. Contractors' noncompliance or affirmative action clauses or any other rules or regulations established under this Executive Order may cause cancellation, termination and/or suspension of contract.

## SIGNIFICANT SUPREME COURT DECISIONS

**Weber v. Kaiser Aluminum and Chemical Corporation (1976).** In the first important private-sector decision, the justices ruled 5-2 that private companies and unions could voluntarily adopt quotas to eliminate “manifest racial imbalance.”

**Bakke v. Regents, University of California (1978).** In the case of a rejected medical school applicant the court held 5-4 that a public university could not use quotas to reserve a precise number of places for minority students. But the court also ruled, 5-4, that race could be a factor in deciding admissions.

**Fullilove v. Klutznick (1980).** The court upheld a law requiring that at least 10 percent of all federal public works funds go to minority contractors.

**Stotts v. Memphis Firefighters (1984).** The justices held that seniority systems may not be disrupted to save the jobs of recently hired black employees.

**Firefighters Local 93 v. Cleveland (1986).** The court held that trial judges may approve voluntary pacts between unions and public employers to give minorities hiring preferences.

**Johnson V. Transportation Agency, Santa Clara County, California (1986).** The court upheld a county’s voluntary affirmative action plan against a title VII challenge by a man who had scored slightly higher in a promotion process than a woman but was passed over for promotion in favor of her. It rules that gender was properly considered as a factor under the plan, which was adopted to correct imbalances in the county’s workforce. The plan voluntarily set out a short-term goal of achieving a statistically measurable yearly improvement “in conditions of employment for minorities and women”. The court approved the plan as a moderate, flexible, case-by-case approach to effecting a gradual improvement in the representation of minorities and women in the agency’s workforce. The court relied on the reasoning of *Weber v. Kaiser Aluminum*. In that case, the court upheld voluntary action effort by private-sector employers to correct a history of discrimination. It concluded that the same rule could apply in the public sector where there was a clear imbalance between the percentage of women in an area’s labor pool and those working for a particular employer. He also found that Santa Clara County treated sex as just one of many factors in deciding the promotion. “No persons are automatically excluded from consideration; all are able to have their qualification weighed against those of other applicants.” Justice Brennan found the county’s action eminently reasonable. He wrote “The agency has sought to take a moderate, gradual approach, one which established realistic guidance for employment decisions, and which visits minimum intrusion on the legitimate expectations of other employees. Such a plan is fully consistent with federal civil rights law), for it embodies the contribution that voluntary employer action can make...”

**Wygant v. Jackson Board of Education (1986).** The court upheld seniority, ruling that laying off more experienced white teachers violates the constitutional guarantee of equal protection. But the justices also said that preferential treatment of minorities is not always unconstitutional.

**Adarant Constructors, Inc. v. Pe'na (1995).** The Supreme Court held that racial classifications in federal affirmative action plans must meet the same strict scrutiny standard that is applied to state and local affirmative action programs. That means they must be justified by a compelling interest and must be “narrowly tailored” to serve that interest.

**Faragher v. City of Boca Raton Certiorari to the United States Court of Appeals for the Eleventh Circuit No. 97C282.** Argued March 25, 1998B Decided June 26, 1998. Held: An employer is vicariously liable for actionable discrimination caused by a supervisor, but subject to an affirmative defense looking to the reasonableness of the employer's conduct as well as that of the plaintiff victim.

**Burlington Industries, Inc v. Ellerth Certiorari to the United States Court of Appeals for the Seventh Circuit No. 97C569.** Argued April 22, 1998B Decided June 26, 1998. Held: Under Title VII, an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse, tangible job consequences, may recover against the employer without showing the employer is negligent or otherwise at fault for the supervisor's actions, but the employer may interpose an affirmative defense.