CENGAGE

DENISI + GRIFFIN

HR^5

HUMAN RESOURCES

4LTR PRESS

STUDENT EDITION
NOW WITH MINDTAP

MINDTAP
From Cengage

HR^5

HUMAN RESOURCES

ANGELO DENISI

A.B. Freeman School of Business | Tulane University

RICKY W. GRIFFIN

Mays Business School | Texas A&M University

CENGAGE

Australia • Brazil • Mexico • Singapore • United Kingdom • United States

HR5

Angelo S. DeNisi, Ricky W. Griffin

Senior Vice President, Higher Ed Product, Content, and Market Development: Erin Joyner

Product Director: Bryan Gambrel

Product Manager: Michael Giffen

Content Delivery Manager: John Rich

Senior Content Manager: Kim Kusnerak

Product Assistant: Nicholas Perez

Marketing Manager: Audrey Jacobs

Production Service: MPS Limited

Senior Designer: Bethany Bourgeois

Internal Designer: Trish & Ted Knapke: Ke Design

Cover Designer: Lisa Kuhn–Curio Press, LLC/ Bethany Bourgeois

Cover Image: iStockPhoto.com/aelitta

Intellectual Property Analyst: Diane Garrity

Intellectual Property Project Manager: Jillian Shafer

Library of Congress Control Number: 2018959066

Student Edition with Access Card:
ISBN: 978-0-357-04818-4
Book Only:
ISBN: 978-0-357-04819-1

Cengage
20 Channel Center Street
Boston, MA 02210
USA

Cengage is a leading provider of customized learning solutions with employees residing in nearly 40 different countries and sales in more than 125 countries around the world. Find your local representative at **www.cengage.com**.

Cengage products are represented in Canada by Nelson Education, Ltd.

To learn more about Cengage platforms and services, register or access your online learning solution, or purchase materials for your course, visit **www.cengage.com**.

Printed in the United States of America
Print Number: 01 Print Year: 2019

DENISI / GRIFFIN

HR5

BRIEF CONTENTS

iStockPhoto.com/aelitta

CONTENTS

Part 1
AN OVERVIEW OF HUMAN RESOURCE MANAGEMENT

SpVVK/iStock Editorial/Getty Images

edttoro/Shutterstock.com

Goodluz/Shutterstock.com

1 The Nature of Human Resource Management

Spiv / V / Stock Editorial/Getty Images

After finishing this chapter go to PAGE 23 for STUDY TOOLS

LEARNING OBJECTIVES

- 1-1 Describe the contemporary human resource perspectives
- 1-2 Trace the evolution of the human resource function in organizations
- 1-3 Identify and discuss the goals of human resource management
- 1-4 Discuss the setting for human resource management
- 1-5 Describe the job of human resource managers from the perspectives of professionalism and careers

SpVVK/iStock Editorial/Getty Images

OPENING CASE
Promoting Profits through People

At first glance, Google, Hilcorp, and Quicken Loans appear to have little in common. After all, one is a software development company, one is an oil and gas producer, and one is a financial services business. They are headquartered in different states, use different resources, sell different products, have different organizational structures, and do not directly compete with one another. But they do share a few things in common: They have all been cited as among the most admired companies in the United States by *Fortune* magazine, they routinely appear on lists of the best places to work, and they are consistently profitable.

So, what else do they have in common? They invest heavily in attracting the best employees and then work diligently to train them and offer them rewarding career opportunities. They pay well, offer good benefits, and strive to make their employees feel valued. And while many different things determine a firm's profitability, the relationships Google, Hilcorp, and Quicken Loans have with their employees has a strong impact on their success.

Google, for example, offers stock options and health-care benefits to all of its employees, even those who only work part-time. The firm also keeps all of its employees informed about its business strategy, its profitability and growth goals, and career opportunities. In December 2010, the CEO of Hilcorp pledged to give every employee $100,000 if the firm doubled its equity value, net production, and reserves by the end of December 2015. The goal was met, and the firm made good on its promise. Quicken Loans offers a $20,000 forgivable loan when employees want to buy their first home and then adds another $5,000 for decorating or improvements.

"In order to create better alignment across all employees, our bonus structure treats everyone equally. We have a culture that we are all in this together."[1]

—GREG LALICKER, PRESIDENT OF HILCORP

In addition to Google, Hilcorp, and Quicken Loans, of course, there are many other businesses today that see their employees as a major contributor to their competitive advantage. For instance, Wegmans Food Markets, The Container Store, Genentech, USAA, FedEx, Marriott International, and KPMG are also among the firms that routinely appear on lists of good places to work and also consistently post consistent growth, profit, and other indicators of financial success. The bottom line is that while there are many routes to business success, treating employees well is often the best way to go.[2]

THINK IT OVER

1. Given the success enjoyed by Hilcorp, Google, and Quicken Loans, why don't all firms use similar approaches to managing their employees?
2. If you were starting a new business, what kind of relationship would you want to have with your employees? How would you go about trying to achieve this?

Regardless of their size, mission, market, or environment, all organizations strive to achieve their goals by combining various resources into goods and services that will be of value to their customers. Economists traditionally thought in terms of concrete physical resources such as ownership investment, sales revenues, and bank loans to provide capital and to cover expenses necessary to conduct business. Material resources such as factories, equipment, raw materials, computers, and offices also play an important role in the actual creation of goods and services and are easy to think about when we discuss a firm's resources. But managers are beginning to view less tangible resources as the most critical for gaining a competitive advantage.

For example, successful organizations need information not only about consumers but also about the firm's competitive environment to help managers make decisions, solve problems, and develop competitive strategies. Many people refer to such resources as *knowledge-based resources*.[3] That is, organizations need to know how to get information and how to use that information. We discuss knowledge-based resources and knowledge workers later in this chapter and throughout the book, but for now it is sufficient to note that most (but not all) of this critical knowledge tends to reside in the people in the organization. Therefore, many experts in the field have come to recognize that no set of resources is more vital to an organization's success than its human resources.[4]

Human resources (HR) are the people an organization employs to carry out various jobs, tasks, and functions in exchange for wages, salaries, and other rewards. Human resources include everyone from the CEO, who is responsible for the overall effectiveness of the organization, to the custodian who cleans the offices after everyone else goes home. Each employee, in his or her own way, is a vital ingredient that helps determine the overall effectiveness—or lack of effectiveness—of the organization as it strives to accomplish its goals and objectives.

Human resource management (HRM) refers to the comprehensive set of managerial activities and tasks concerned with attracting, developing, and maintaining a qualified workforce—human resources—in ways that contribute to organizational effectiveness. As we will see, more and more organizations are coming to appreciate the dramatic impact that effective HRM can have on all aspects of the organization.[5] But in addition to organizations paying more attention to HRM in general, there are also several more recent developments in the field that may elevate the HRM function even higher. Several of these involve notions of talent management[6] and the idea of a differentiated workforce.[7] We will examine these new developments as part of our broad discussion of the field of HRM in this chapter. This discussion will serve as the basis for more detailed discussions of specific aspects of HRM in subsequent chapters. We begin with a look at contemporary HRM and the current field and then briefly trace the history of the field. We then identify and discuss goals of the HRM function before examining how the responsibilities for HRM are shared as staff and management functions. The HR department in different kinds of organizations is then discussed. Finally, we focus on the professionalism and career development of HR managers themselves.

1-1 CONTEMPORARY HUMAN RESOURCE MANAGEMENT PERSPECTIVES

Human resources (HR) are the people an organization employs to carry out various jobs, tasks, and functions in exchange for wages, salaries, and other rewards.

Human resource management (HRM) is the comprehensive set of managerial activities and tasks concerned with developing and maintaining a qualified workforce—human resources—in ways that contribute to organizational effectiveness.

In most organizations today, the role of HRM has become quite important. This results partly from a growing realization of the importance of people as a source of competitive advantage, but there are also more practical reasons. For instance, the passage of Title VII of the Civil Rights Act of 1964 (and various court decisions that followed it) made it clear that organizations had to find ways to hire, reward, and manage people effectively within the limits of the law. As a result, the HRM function came to require dedicated professionals who could balance legal and ethical concerns with the need of organizations to survive and be profitable. If a firm did not employ qualified managers in these roles, then they faced increased risks of serious financial penalties and legal fees.

Managers around the world have come to understand that properly managed human resources can be an important source of competitive advantage in an increasingly competitive world.

The view of HRM as part of the legal enforcement arm of an organization is largely applicable only in the United States. Yet managers around the world have come to understand that properly managed human resources can be an important source of competitive advantage in an increasingly competitive world. In fact, as noted earlier, human resources are the organization's most important resources. Hiring the right people, equipping them with the right skills, and then providing an environment in which they can truly contribute can substantially affect the quality and quantity of whatever goods or services the organization produces. Properly motivated and committed employees can add immeasurable value to an organization's bottom line. Given the shift in competitiveness, top executives in most firms now see that HRM practices and policies significantly affect their ability to formulate and implement strategy in any area and that other strategic decisions significantly affect the firm's human resources as well.

It was only natural, therefore, that HRM would eventually be elevated to the same level of importance and status as other major functional areas of the firm.[8] The top HR executive at most companies today has the status of vice president or executive vice president and is a fully contributing member of the firm's executive committee, the body composed of key top managers that makes major policy decisions and sets corporate strategy. Today, most firms use a term such as *human resource management* to reflect more accurately the sophistication and maturity of the function. But some people argue that even this term is outdated and does not do justice to the role the HR manager plays. Instead, some

Contemporary Challenges in HR

Labor Shortage? Or Labor Surplus?

During good times and bad, one thing is true: some businesses and industries will be cutting jobs and laying off workers. But other businesses and industries will be adding new jobs and hiring new employees. During challenging economic times like we've faced in the past decade or so, the press routinely reports large job cuts and predicts high unemployment. For example, plunging oil prices in 2015 and 2016 led many energy companies such as Shell, Schlumberger, BP, and Halliburton to impose significant job cuts. Many highly qualified engineers and geologists found themselves looking for work. But as oil prices began to increase in 2017 and 2018, those same companies started to hire new engineers and geologists.

> "It's time to plan for a massive demographic shift. Discourage retirement, encourage retraining, and encourage immigration."[9]
>
> —USA TODAY

But at the same time, U.S. businesses in some sectors are facing a growing labor shortage. How can we explain this apparently contradictory trend? There are actually several reasons. First, we have entered the retirement bulge associated with the baby boomer generation. This means that there are more workers retiring than there are younger workers entering the workforce. Second, the U.S. workforce has a growing misalignment between what workers can and are willing to do and what employers need for them to do, and between where jobs are located and where workers live.

Take construction, for example. During the economic downturn that started in 2008, literally hundreds of thousands of construction workers were laid off. Given the dearth of jobs and what they saw as limited prospects in the future, many of these workers decided to retire. Others moved to states where there was more demand for their services. Still others changed fields, taking jobs as truck drivers, factory workers, or roughnecks in what were then booming oil and gas fields. But now that construction is coming back, many building contractors are having trouble finding carpenters, plumbers, electricians, and other skilled workers.

Even some professional jobs are facing the same challenges. Take airline pilots, for example. There are about 90,000 commercial pilot jobs in the United States. A growing number of retirements coupled with new work rules requiring that pilots have more time to rest between flights and projected growth in air traffic combine to predict a shortage in the very near future. Some experts, for instance, project that there will soon be 8,000 or so openings a year. The major airlines such as Delta and American will likely not be impacted much by this, but shortages will likely occur in the regional airlines, especially because those pilots will be among the most qualified for openings in the bigger airlines.

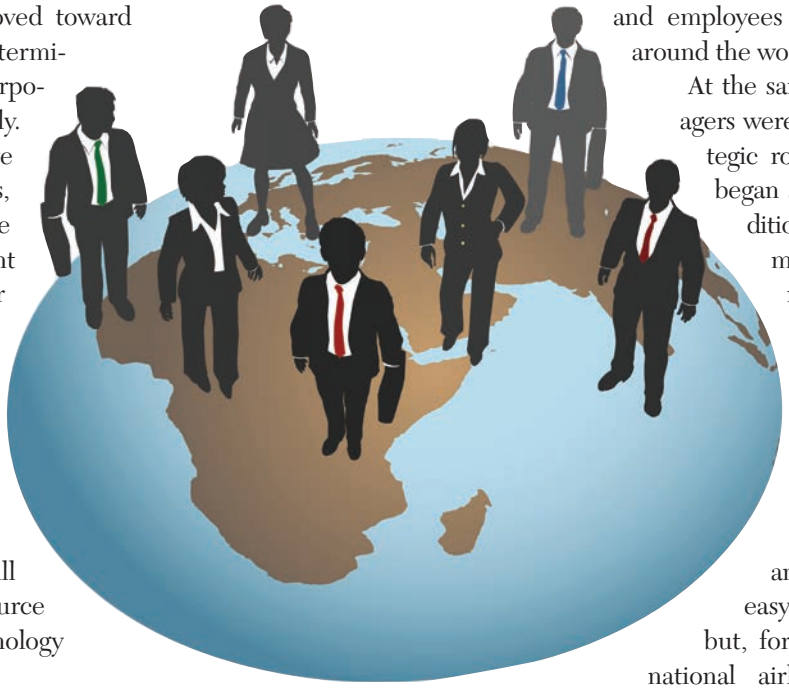
To complicate things even more, there are regional differences in job shortages and surpluses as well. For example, because so many energy companies have large operations in Texas and Louisiana, many petroleum engineers live in these states because there are generally more jobs available. But an energy company in the Northeast may have a harder time finding petroleum engineers because fewer of them choose to live there.[10]

THINK IT OVER

1. As an employee, how might you best prepare yourself for impending labor shortages in some fields? For potential labor surpluses in other fields?
2. As an HR manager, what might you do to entice workers where there is a labor shortage? What might you do to soften the impact of layoffs caused by an economic downturn?

Markus Mainka/Shutterstock.com

organizations have moved toward using more specialized terminology that fits their corporate culture more closely. The top HR executive at Southwest Airlines, for example, has the title of Vice President for People, while other firms, recognizing the importance of HR as knowledge resources, have started using titles such as chief knowledge officer. To keep things simple, though, we will use the human resource management terminology throughout this book.



Michael D Brown /Shutterstock.com

Many aspects of the modern HRM function actually date back to the 1980s and 1990s. It became apparent to many firms then that they were not able to compete effectively in the global marketplace. Some of these firms went out of business, and employees lost their jobs. Some firms were acquired by other, more successful companies, and in the aftermath, many employees of the acquired firm were seen as redundant and let go. Still other firms sought mergers with former or potential competitors in the hope of forming a new joint enterprise that could compete successfully. But again, in most cases, merged companies often did not find the same need for as many employees, and many workers lost their jobs.

Instead of simply managing the layoffs following a merger or acquisition, HR executives were part of the team deciding which firms to merge with or to acquire outright. HR managers could help to identify the critical human resources that the firm would need in the future, and they could also help to identify other firms that might already have those resources and thus be prime targets for takeovers or mergers. As knowledge became more critical in gaining competitive advantage, HR managers helped define strategies to acquire or develop knowledge resources. They also developed strategies for ensuring that any knowledge acquired was fully dispersed throughout the organization. With firms competing more broadly on a global basis, these factors become even more critical as firms try to integrate work processes and employees from diverse cultures around the world.

Outsourcing is the process of hiring outside firms to handle basic HRM functions, presumably more efficiently than the organization could.

At the same time that HR managers were taking on a more strategic role, many organizations began shrinking the more traditional roles played by HR managers. As these organizations looked for new ways to be competitive by reducing costs, they often explored activities within the company that could be done more efficiently by outsiders. Cleaning and maintenance were easy functions to replace, but, for example, many international airlines outsource their on-board catering to Lufthansa.

This trend has spread to other areas as well. Today, many large organizations hire outside firms to handle payroll, insurance and benefits, and even recruitment and selection in some cases.[11] This practice, commonly known as **outsourcing**, has resulted in smaller internal HR staffs and more reliance on outside consultants to provide the services once provided by those staffs. Thus, although the importance of HRM activities is growing, the importance of HR departments may be shrinking, and the kind of work performed by HR managers is certainly changing as the size of the HR function is shrinking.

Outsourcing can indeed be an important competitive weapon for organizations. If done properly, outsourcing results in more efficient operations. Outside firms that are hired benefit from the fact that they perform the same tasks for many companies. In addition, outsourcing tends to eliminate jobs that are more repetitious and perhaps dull. As a result, the employees who work on these jobs are more likely to be dissatisfied at work, which can have a tremendous cost for the firms. But not all functions can be outsourced for competitive advantage. Thus, it is critical that a firm retain any function that is either of strategic importance in its own right (i.e., strategic planning) or can lead to some advantage because the firm is especially expert at this function (e.g., selection or training). Therefore, the issue for most firms today is not whether to outsource but what to outsource and what to keep in-house.

Furthermore, many firms are beginning to realize that not all positions and not all employees contribute equally to firm performance. This is the notion behind the idea of

a differentiated workforce. Some positions are more critical to the firm's effective performance, and these positions should receive the lion's share of the attention. The best people must be recruited and trained for these positions, and turnover in these positions is especially costly. Likewise, not all employees are equally valuable to the firm, and the idea behind talent management is that extra care must be taken to attract and then retain "stars,"[12] including using large financial incentives to retain them. These movements are making HRM even more complex.[13]

In addition, the legal imperatives that in large part elevated the importance of the HRM function are changing and becoming more complex. In what has been termed a post–affirmative action world, issues regarding differential test performance of members of different ethnic and racial groups, especially in high-stakes situations (where jobs or entrance into academic institutions are involved), are becoming more rather than less complex. How do we address differences in test scores in a society where credentialing and accountability are becoming more important, and when we still haven't figured out how to deal with the diversity our society presents us?[14]

In addition, as laws and attitudes change relative to gay rights, including same-sex marriages, problems of benefits and legal protection suggest that diversity management will become even more complicated in the future.

Of course, the world has changed in many other ways over the past decades. Beginning with the attacks of September 11, 2001, issues of security have become much more important in the United States. These concerns manifest themselves initially in the need to attract, select, train, and motivate airport security personnel who serve as the first line of defense against terrorism. These tasks fall squarely in the domain of HRM, increasing the stakes involved in getting these practices right. Then, in 2005, Hurricanes Katrina and Rita devastated the Gulf Coast of the United States, and the results illustrated new demands for security of employee records and open lines of communication with employees. The arrival in 2017 of Hurricane Harvey reinforced the vulnerability of business operations to natural disasters and further emphasized the need for better HR information systems.

But more recent terrorist attacks in San Bernardino, CA; Paris, France; and Istanbul, Turkey; among others, have added further levels of complications. Not only has the need for security—at all levels—been made clear, but these attacks by radical Islamist groups have triggered new waves of fear and mistrust of all Muslims, which presents problems for HRM in terms of legal concerns and may also serve to limit immigration from certain parts of the world, which may further challenge HRM to find qualified people. Unfortunately, there are also threats that do not come from terrorists. An example occurred in February 2016, when an employee of a lawn care company in Kansas left after his shift was completed and then returned to shoot 14 people. The reasons for the shooting are not entirely clear, but the shooter had been served with a restraining order to keep away from his girlfriend, just before the shooting began. In any event, this incident was just one more example of the threat of workplace violence facing all employees at all locations.

The administration of President Trump has also generated some new uncertainty. After years of campaigning on the replacement to the Affordable Health Care Act ("Obamacare"), the Republican-controlled House and Senate failed to agree on a new plan for how to repeal and replace the it. The president, however, has signed several executive orders that have weakened the effects of the act by removing the mandate for insurance[15] and by ending the government subsidies that helped lower income families to afford insurance.[16] These orders have likely raised the cost for health care for many Americans and have left those who were able to receive benefits under the Affordable Care Act uncertain about their future. The Trump administration did manage to pass major revisions to the country's tax structure. Although there is some uncertainty about how individuals will be affected by the changes, it is clear that corporate tax rates will come down. In fact, in early 2018, several large corporations announced that they would give a share of their anticipated tax savings to their employees in the form of pay raises and/or bonuses.[17] It remains to be seen what the long-term effects of the new tax plan and the resulting increase in the federal deficit will have, but the possibility that employees will benefit, not only by lower taxes but also by higher wages, is an interesting one from the HRM perspective.

Another source of uncertainty grows from questions about immigration. The president campaigned on a policy of stopping illegal immigration and sending illegal immigrants back to their home countries. But it turns out that this latter piece is more difficult than had been anticipated. Groups of immigrants who brought family members into the United States via what's known as "chain migration" are concerned that their family members will be deported under various proposed bills. Democrats have fought against punishing these "dreamers" and have opposed changes to DACA (Deferred Action for Childhood Arrivals), which is the law that has protected them from deportation, and have even proposed a path to citizenship for these individuals.[18] Battles between parties have resulted in two short-term shut-downs of the U.S. government over the budget, with some Republicans arguing that funding for a

border wall with Mexico must be part of any deal, and some Democrats arguing that any budget bill must also protect the "dreamers." The president's position on these issues is not always clear, and despite bipartisan efforts to come up with a compromise, the future of immigration policies in the United States is uncertain. In early 2018, the Supreme Court refused to hear a case concerning the president's proposed ending of DACA, but this simply means that lower court injunctions will stand for now with the future still cloudy. The Court did decide to hear a case regarding President Trump's travel ban against people from mostly Muslim countries (i.e., Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen), and in a 5–4 decision ruled that the travel ban was legal and should be upheld.[19] As we will discuss in Chapter 7, changes in immigration policy can have serious effects for companies seeking to fill many types of jobs.

Also, the Supreme Court, now back to full strength as of April 2017, with the appointment of Neil Gorsuch, has already taken up a case where a baker refused to bake a custom wedding cake for a gay couple because the baker believed this went against his religious beliefs.[20] In June of 2018, the Court handed down a 7–2 decision in favor the baker.[21] The decision was very narrow, however, and focused on problems with a lower court decision against the baker, rather on the rights of same sex couples or on any limits to relying upon religious beliefs as a basis for what might be considered discrimination. We will have to wait for other decisions before either of these larger issues can be clearly decided.

We may not have to wait long, though, because there are a number of cases that are pending that deal with the rights of gay couples. These cases are percolating through the system as the Trump administration has taken a number of steps that would seem to reverse some of the recent gains in rights for gay and transgendered Americans. One such critical policy was a decision to ban transgendered persons from the U.S. military. This ban would not only prevent new recruits who were transgendered but would also seek to discharge any current serving transgendered individuals.[22] It is not clear how practical this latter aspect of the order is, but the president has made it clear that he does not want transgendered persons in the military[23] even though officials in the Pentagon, and pro-military senators, such as John McCain, derided this decision. These opponents have argued that the only reason for rejecting someone who wishes to serve in the military should be their inability to support the mission of the service, and, thus far, there has been no evidence provided to suggest this is the case for transgendered (or gay) individuals. The military has often been the employer of last resort for some Americans and, on the other hand, the military also provides training that can make veterans more employable. Thus, any restriction on who can join the military may well have an impact on HRM practices down the line.

The importance of the appointment of Justice Gorsuch was highlighted in another recent decision. In *Janus* v. *AFSCME*,[24] the Supreme Court decided (in a 5–4 decision) that public sector employees could not be required to pay union dues as a condition of employment. This decision reversed a long-standing policy that allowed public-sector employees to be charged a fee, even if they were not union members, since they would benefit from any collective bargaining efforts on the part of the union. This case went before the Supreme Court in 2016, but Justice Scalia (who was opposed to charging union dues for these employees) died before the final decision was reached, resulting in a 4–4 tie. Justice Gorsuch voted with the majority on the more recent case. It is especially significant, therefore, that Justice Kennedy announced in June 2018 that he would be retiring from the Supreme Court. Justice Kennedy was often a swing vote in major decisions and will probably be replaced with a more conservative justice and more decisions favoring a conservative agenda.

Finally, beginning in 2017, the war of words between the United States and North Korea has escalated, as the North Koreans have fired several test missiles across the Sea of Japan and have apparently developed a missile capable of delivering a nuclear warhead to the continental United States. There were repeated threats from both sides and several statements that military action was not "off the table" for the United States. The rhetoric began to cool down in early 2018, and the fact that North and South Korea sent athletes to compete together in the Winter Olympics gives some hope that there will not be a war in Korea. Also, in March 2018, the North Korean government issued a surprise invitation to President Trump to meet with the North Korean leadership face-to-face, and vowed to stop missile testing. The invitation was communicated via the South Korean government, but the president responded that he would meet with the North Koreans in the very near future without any pre-conditions. After several rounds of discussion, that meeting was finally held in Singapore in June 2018. Although little of substance came out of the summit, it was an important first step. While it remains to be seen whether this meeting will have a long-term impact, especially regarding North Korea's nuclear weapons, any deescalation of tension is helpful. Not only would a war on the Korean peninsula be disastrous for South Korea but also consider that China is North Korea's closest supporter, and anything that causes more friction between the United States and China could be problematic.

Before moving on to a more detailed discussion of the tasks and functions of modern HRM, it is useful to consider how we arrived where we are today. The struggle of HRM for legitimacy within the organization and how that legitimacy came about is due in large part to the history of how HRM developed.

1-2 EVOLUTION OF THE HUMAN RESOURCE FUNCTION

Even though businesses have existed for thousands of years, the practice of management itself has only been of special interest and concern for about 100 years.[25] Many early businesses were small enterprises and farms run by families interested only in supporting themselves and providing security for family members. The Industrial Revolution of the 18th century, however, sparked a greater interest in business growth and expansion, and large-scale business operations began to emerge throughout Europe and the United States. As these businesses grew and became increasingly complex, owners began to step aside and turn the operation of their firms over to full-time professional managers. Owners who remained in control of their businesses still needed to rely on managers to oversee a portion of their operations. This transition, in turn, resulted in greater awareness of the various functions of management that were necessary for long-term organizational success.[26]

A few early management pioneers and writers such as Robert Owen, Mary Parker Follette, and Hugo Münsterberg recognized the importance of people in organizations, but the first serious study of management practice—set during the early years of the 20th century—was based on scientific management.[27] **Scientific management** was concerned with structuring individual jobs to maximize efficiency and productivity. The major proponents of scientific management, such as Frederick Taylor and Frank and Lillian Gilbreth, had backgrounds in engineering and often used time-and-motion studies in which managers used stopwatches to teach workers precisely how to perform each task that made up their jobs. In fact, scientific management was concerned with every motion a worker made, and there were many examples of how changes in movements or in the placement of some piece of equipment led to increased productivity.

However, often laborers would use the production standards established by management as a way to work even more slowly. Other critics argued that individual workers were generally valued only in terms of their capacity to perform assigned tasks as efficiently and as productively as possible. Still, scientific management helped augment the concepts of assembly-line production, division of labor, and economies of scale that gave birth to the large businesses that transformed domestic and international economies throughout the 20th century.[28]

1-2a Origins of the Human Resource Function

As businesses such as General Motors (started in 1908), Bethlehem Steel (1899), Ford Motor Company (1903), Boeing (1916), and other industrial giants launched during this era expanded rapidly and grew into big companies, they obviously needed to hire more and more workers. B.F. Goodrich was the first company to establish a corporate employment department to deal with employee concerns in 1900. National Cash Register (NCR) set up a similar department in 1902 to deal with employee grievances, wages and salaries, and record keeping. The need for an employment department at Ford became clear as the company increased its production from 800 cars a day in 1910 to more than 9,000 cars a day by 1925, and increased its workforce from less than 200 to several thousand employees.[29] This same pattern of growth and hiring was being repeated in literally hundreds of other businesses across dozens of industries. These workers were needed to perform operating jobs created to produce ever-greater quantities of the products sold by the businesses. In the early days of this business explosion, the foreman, or first-line supervisor, usually hired new workers. Office workers were also needed, so people with titles such as *office manager* hired clerks and secretaries.

As these businesses became more complex and their hiring needs more complicated, however, the task of hiring new employees was too time consuming for a first-line supervisor or an office manager to perform. In addition, extra administrative duties were being added. For example, in 1913, Ford was paying its unskilled employees $2.34 per 9-hour day. Because the pay was so low and the work was both monotonous and tiring, the firm was also experiencing a turnover rate of almost 400 percent per year. Thus, the firm had to replace its average worker four times each year. It was hiring workers to fill new jobs while also hiring workers to replace those who quit. In 1914, Henry Ford made a dramatic effort to attract and retain higher-quality workers by boosting the firm's pay to a minimum of $5 for an 8-hour day.[30]

Scientific management, one of the earliest approaches to management, was concerned with structuring individual jobs to maximize efficiency and productivity.

"Divide each difficulty into as many parts as is feasible and necessary to resolve it."

—RENE DESCARTES

This action attracted a groundswell of new job applicants and almost overwhelmed first-line supervisors, who were then hiring new employees while overseeing the work of existing workers.

As a result of growth and complexity, most large businesses, including Ford, began hiring new employees through newly created specialized units. Ford, for example, called this unit the *employment department*. Although these units were initially created to hire those new employees, they also began to help manage the existing workforce. For example, the emergence and growth of large labor unions such as the United Auto Workers and the passage of the Fair Labor Standards Act in 1938 (established a minimum wage) and the National Labor Relations Act in 1935 (dealt with unionization procedures) made it necessary for businesses to have one or more managers represent the interests of the business to organized labor and to administer the emerging set of laws and regulations that governed labor practices.

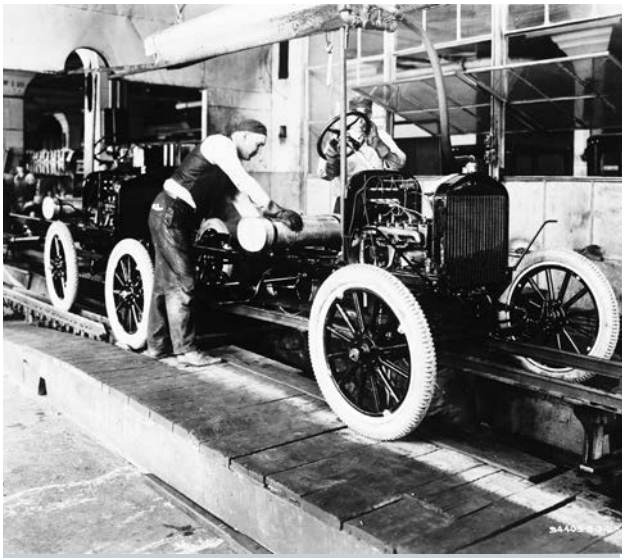
Meanwhile, other developments, many taking place in other parts of the world, provided organizations with some of the tools they would need to manage these employment processes more effectively. For example, in England, Charles Darwin's work was used by some theorists to popularize the idea that individuals differed from each other in important ways. In France, the work of Alfred Binet and Theophile Simon led to the development of the first intelligence tests, and, during the course of World War I, several major armies tried using these tests to assign soldiers to jobs. These efforts continued in the private sector after the end of World War I, and by 1923, books such as *Personnel Management* by Scott and Clothier were spelling out how to match a person's skills and aptitudes with the requirements of the job.

The **human relations era** supplanted scientific management as the dominant approach to management during the 1930s.

The human relations era was instigated by the **Hawthorne studies**.

Abraham Maslow's **hierarchy of human needs** was developed during the human relations era.

Douglas McGregor's **Theory X** and **Theory Y** framework grew from the human relations movement.



Library of Congress Prints and Photographs Division Washington, D.C[LC-DIG-det-4a27966]

Ford revolutionized hiring at plants such as this one by boosting pay to a minimum of $5 a day and shortening the workday to 8 hours.

Another important ingredient in the origins of the HR function during this period was the so-called **human relations era**, which emerged following the **Hawthorne studies**. Between 1927 and 1932, the Western Electric Company sponsored a major research program at its Hawthorne plant near Chicago. This research, conducted by Roethlisberger and Mayo, revealed for perhaps the first time that individual and group behavior played an important role in organizations and that human behavior at work was something managers really needed to understand more fully. One Hawthorne study suggested, for example, that individual attitudes may have been related to performance, and another suggested that a work group may have established norms to restrict the output of its individual group members.[31] Before this work, many managers paid almost no attention to their employees as people but instead viewed them in the same way they viewed a machine or a piece of equipment—as an economic entity to be managed dispassionately and with concern only for resource output.

Stimulated by the Hawthorne findings, managers began to focus more attention on better understanding the human character of their employees. During this era, for example, Abraham Maslow popularized his **hierarchy of human needs** (see Chapter 13 for a more detailed discussion of this model).[32] In addition, Douglas McGregor's well-known **Theory X** and **Theory Y** framework also grew from

the HR movement.[33] The basic premise of the HR era was that if managers made their employees more satisfied and happier, then they would work harder and be more productive. Today, researchers and managers alike recognize that this viewpoint was overly simplistic and that both satisfaction and productivity are complex phenomena affecting and affected by many factors. Nonetheless, the increased awareness of the importance of human behavior stimulated during this period helped organizations become even more focused on better managing their human resources. These organizations saw effective management of human resources as a means of potentially increasing productivity and, incidentally, as a way of slowing the growth of unionism, which was beginning to gain popularity.

1-2b Personnel Management

We noted earlier that growing organizations began to create specialized units to cope with their increasing hiring needs, deal with government regulations, and provide a mechanism for better dealing with behavioral issues. During the 1930s and 1940s, these units gradually began to be called **personnel departments** (the word *personnel* was derived from an Old French word that meant "persons"). They were usually set up as special, self-contained departments charged with the responsibility of hiring new workers and administering basic HR activities such as pay and benefits. The recognition that human resources needed to be managed and the creation of personnel departments also gave rise to a new type of management function—**personnel management**.[34]

During this period, personnel management was concerned almost exclusively with hiring first-line employees such as production workers, salesclerks, custodians, secretaries, blue-collar workers, unskilled labor, and other operating employees. Issues associated with hiring, developing, and promoting managers and executives did not surface until later. The manager who ran the personnel department was soon called the **personnel manager**.

Personnel management evolved further during World War II. Both the military and its major suppliers became interested in better matching people with jobs. They wanted to optimize the fit between the demands and requirements of the jobs that needed to be performed and the skills and interests of people available to perform them. Psychologists were consulted to help develop selection tests, for example, to assess individual skills, interests, and abilities more accurately. During the 1950s, the lessons learned during the war were adapted for use in private industry. New and more sophisticated techniques were developed, especially in the area of testing, and companies also began to experiment with more sophisticated reward and incentive systems. Labor unions became more powerful and demanded a broader array of benefits for their members. In addition, government legislation expanded and continued to add complexity to the job of the personnel manager.

Still, from the first days of its inception until the 1970s, personnel management was not seen as a particularly important or critical function in most business organizations. Although other managers accepted personnel management as a necessary vehicle for hiring new operating employees, personnel management was also seen primarily as a routine clerical and bookkeeping function. For example, personnel was responsible for placing newspaper ads to recruit new employees, filling out paperwork for those employees after they were hired, and seeing that everyone was paid on time.

While other organizational units, such as marketing, finance, and operations, grew in status and importance, the personnel department of most organizations was generally relegated to the status of necessary evil that had to be tolerated but that presumably contributed little to the success of the organization. Its offices were often drab and poorly equipped and were often located away from the central activity areas of the organization. Personnel managers themselves were often stereotyped as individuals who could not succeed in other functional areas and were assigned to personnel either because the organization had nothing else for them to do or as a signal that the individual was not deemed to be a candidate for promotion to a higher-ranking position.

As noted earlier, the first real impetus for the increased importance of the HRM role came with the passage of the Civil Rights Act in 1964. This law made it illegal for employers to consider factors such as gender, religion, race, skin color, or national origin when making employment-related decisions. The 1964 act, combined with several subsequent amendments, executive orders, and legal decisions, made the processes of hiring and promoting employees within the organization far more complex. Thus, it quickly became critically important

Personnel departments, specialized organizational units for hiring and administering human resources, became popular during the 1930s and 1940s.

Personnel management, a new type of management function, grew from the recognition that human resources needed to be managed.

The manager who ran the personnel department was called the **personnel manager**.

to organizations that those responsible for hiring and promoting employees fully understood the legal context within which they functioned. For example, ethical and moral issues aside, improper or inappropriate hiring practices left the organization open to lawsuits and other legal sanctions, accompanied by large fines, judgments, and new expenses. (We discuss the 1964 Civil Rights Act and related regulation more fully in the next chapter.)

But, as we noted earlier, the HR manager's role as a compliance officer has grown into the role of strategic partner, and this is the role we stress in this book. As firms continue to recognize the importance of human resources, they must do more than just obey the laws. Firms are increasingly competing to attract and retain the best talent they can and then to develop strategies or tactics that leverage those talented people into a competitive advantage. At the same time, however, HR management is changing in response to new technological innovations, so we must consider how the electronic age has affected the HRM function.

1-2c Human Resource Management in the Electronic Age

One of the most dramatic changes in our lives over the past 10 years or so has been the increasing presence of technology. Bigger, faster computers have allowed firms to compile large amounts of data and keep better track of employees, and new approaches to data analysis allow organizations to monitor patterns of behavior and preferences of those employees. Surveillance technology enables organizations to literally watch what employees do on the job (and in some cases, off the job as well).

Roy Lawe/Alamy Stock photo

Electronic systems for communication and monitoring present new challenges to the legal system and have led to new discussions about ethics and privacy.

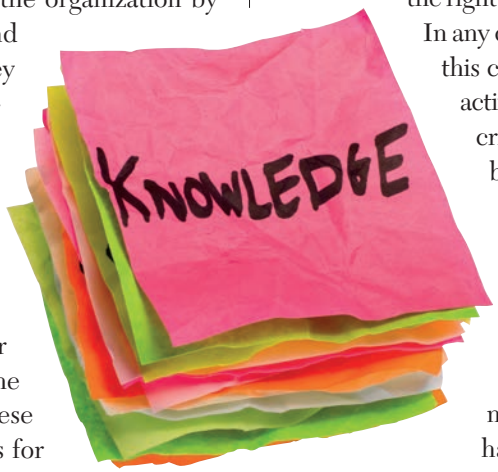
The Internet is no longer a luxury, but a necessity, and we now read books, make restaurant reservations, and do research online, in addition to "talking" to our friends.

The widespread use of technology, however, has not affected the basic approach to how we manage human resources, as much as it has affected how we execute various HR functions. For example, in Chapter 5, when discussing methods for conducting job analysis, we note that the O*NET OnLine system, introduced several years ago, now makes it possible for an organizations to obtain the job analysis information they need from an online database. In Chapter 7, when discussing recruiting techniques, we note that organizations have changed the way they advertise jobs to recognize that, today, most potential applicants search for jobs by accessing one of the many job-search websites (e.g., Monster .com). Chapter 7 also discusses the use of online testing for selection and interviews being conducted by SKYPE and other new technology, rather than face to face. In addition, as also noted in Chapter 7, training programs can now be purchased from vendors and provided to employees online, allowing them to take classes and training at their own pace. Information about benefits and the ability to change benefits are also available to employees online, allowing more flexibility in how benefit plans are administered, as discussed in Chapter 9. Finally, in Chapter 10, we note that computer monitoring allows organizations to collect real-time performance data from employees on various jobs, especially those involving telecommunications such as customer service representatives or staff in a call center.

Have these new applications of technology made HRM easier? Clearly, management can now easily deliver information and communicate with employees, but the openness of communication also means that employees can communicate with management, and this presents new challenges to managers. Electronic systems for communication and monitoring also bring up new challenges for the legal system (discussed in Chapter 2) and have led to new discussions about ethics and privacy. Thus, the new technology has made HRM easier in some ways but more complicated in others. Have these new applications of technology made HRM more effective? This question is important, but little data has addressed it. Nonetheless, we will discuss the opportunities and challenges presented by new technology and the Internet throughout the book.

One other way in which technology has affected the HRM function needs to be mentioned. As organizations introduced new technologies for manufacturing, communication, and HRM, they also increased their need

for more specialized employees. **Knowledge workers** are employees whose jobs are to acquire and apply knowledge, and they contribute to the organization by the nature of what they know and how well they can apply what they know. Although knowledge workers include more than workers who deal with computer technology (scientists and lawyers, for example, are usually considered knowledge workers), the explosion of technology at work has led to a huge increase in the need for workers who can learn and apply the management of this technology. These employees present special problems for recruitment, retention, and compensation, as well as for motivation; we will discuss these challenges throughout the book.



doglikehorse/Shutterstock.com

1-2d Emerging Human Resource Challenges

Unemployment rates in the United States continue to head down—now the rate is below 4 percent, which comes near what is known as functional full-employment, and wages have shown real gains as well. There are still many people who are under-employed, but companies are having to look harder to find qualified people. The stock market has shown huge gains since Donald Trump was elected president, and overall the economy is even less of an issue than it was a few years ago. But record-breaking drops in the Dow Jones average in early 2018 suggest that there still may be concerns over how the U.S. economy is growing. Interestingly, some have attributed the drops in stock prices to concerns over potential inflation and the idea that the Federal Reserve will raise interest rates to stem inflation. Thus, recent successes in turning around the economy may actually lead to a new set of concerns and challenges in coming months.

As noted earlier, some of the rights that were granted to LGBT (or LBGTQ) individuals and couples have been challenged since Donald Trump became president. It is interesting to note that when Mr. Trump was a candidate, he said he would be the best president the LGBT community ever had. But it would seem that political pressure from the right has caused him to change his position. In any case, it is not clear what will happen to this community or how it will affect HRM activities. It is clear, however, that several critical Supreme Court decisions will be forthcoming.

Perhaps the challenge that will be the most important for HR in the coming years stems from the "Me Too" movement and the new spotlight on sexual harassment and sexual misconduct at work. A number of important personalities have been caught in this movement, including Matt Lauer, Kevin Spacey, and Harvey Weinstein. Women are increasingly feeling empowered to speak out against the way they are treated at work, and people are finally taking the claims seriously. Some trace the movement back to the comments of then-candidate Donald Trump about how he treated women, which led to outrage over the fact that someone of his prominence could actually say the things he said. Others, however, suggest that these issues have been long simmering but women felt afraid to speak out about it—especially when the perpetrator was someone in power such as Harvey Weinstein.

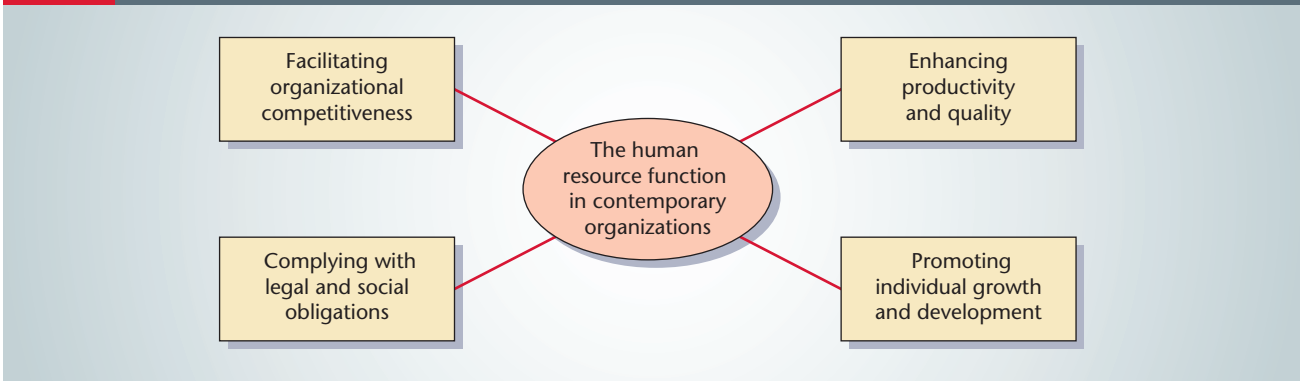
This movement has become so big that, in 2017, *TIME* magazine named as their "Person of the Year" the group of women who spoke out about their various episodes of sexual assault and harassment.[35] The movement has also gained momentum as more women speaking out have emboldened yet more women to come forward with problems they have encountered, and CEOs, moguls, and entertainment icons have all toppled as a result. We will discuss sexual harassment in Chapter 2, but these stories have gone beyond the typical complaint, and many actually deal with sexual assault. But, in any case, it is usually the responsibility of the HR department to deal with complaints of this nature at work. It is clear that the incidence of such complaints will increase and also that the consequences of not dealing with the complaints will also increase in the coming years.

Finally, around the world, the pressure on companies to address social issues continues to build. This has taken, and

Some evidence suggests that employees in green workspaces tend to be more satisfied and are healthier and more productive.

Knowledge workers are employees whose jobs are primarily concerned with the acquisition and application of knowledge. They contribute to an organization through what they know and how they can apply what they know.

FIG 1.1 GOALS OF HUMAN RESOURCE MANAGEMENT



continues to take, many forms. Some organizations elect to "go green." This might involve anything from paperless communications to designing buildings with smaller carbon footprints that will blend in with the environment. Other organizations have adopted "corporate social responsibility" as a goal, and some buy only from sustainable sources and make sure that they "do no harm" while conducting business. Still other organizations go beyond this and establish social goals in addition to profit-making goals. Sometimes this is called "conscious capitalism"[36] and refers to treating social outcomes and financial outcomes as complementary, rather than competing. Others refer to this as the "triple bottom line,"[37] where a firm tries to maximize the bottom line, the way people are treated, and the level of environmental responsibility (profits, people, and the planet). In any case, these new levels of concerns over social goals require different types of employees and different ways of treating those employees. As a result, these movements have major implications for HRM departments.

All of these changes mean that the job of the HR manager will continue to evolve. The role of these managers will continue to expand, and they will have to gain expertise in wider and wider sets of skills than ever before. We will discuss the effects of some of these changes throughout the book, but in a few years, we will certainly have to revise our view of the HR manager as the job continues to evolve to deal with other changes in the world.

1-3 GOALS OF HUMAN RESOURCE MANAGEMENT

This modern view of HRM has also meant that these departments have taken on increasingly important goals. Understanding the goals of HRM not only helps us put it in proper perspective but also provides a framework for evaluating any activities carried out by this area.[38] Figure 1.1 illustrates the four basic goals of the HRM function in most organizations today.

1-3a Facilitating Organizational Competitiveness

All organizations have a general set of goals and objectives that they try to accomplish. Regardless of the time horizon or the level of specificity involved in these goals, they are generally intended to promote the organization's ability to be competitive in fulfilling its purpose or mission. For example, business organizations such as General Electric, Walmart, Tata Industries, and Singapore Airlines exist primarily to make profits for their owners. Thus, their goals and objectives usually deal with sales or revenue growth, market share, profitability, return on investment, and so forth. Other organizations exist for different purposes and thus have goals other than increased profitability. Educational organizations such as The Ohio State University, Austin Community College, and the St. Louis Independent School District have their unique purposes. The same can be said for health-care organizations such as the Mayo Clinic, governmental organizations such as the U.S. Federal Bureau of Investigation (FBI) and the state of Missouri's revenue department, and charitable organizations such as the United Way.

People often associate competitiveness only with businesses, but each of these other types of organizations

"Quality is everyone's responsibility"

—W. EDWARDS DEMING

also must be managed effectively and compete for the right to continue to work toward fulfillment of its purpose. For example, a state university that misuses its resources and does not provide an adequate education for its students will not be held in high regard. As a result, the university will have difficulty competing for high-quality faculty and students, which are needed to enhance the university's reputation and thus make it more competitive. Similarly, a hospital that does not provide technical support for its doctors or adequate health care for its patients will find it more difficult to compete for the doctors and patients who might use and pay for its services.

Given the central role that HR play in organizational effectiveness, it is clear that organizations must hire and manage those individuals best able to help the firm remain competitive. Recently, some scholars and practitioners have therefore begun referring to *human capital* (rather than human resources). Human capital has been traditionally defined to include the knowledge, information, ideas, and skills of the individual,[39] but it has also been used to refer to the store of knowledge, and so on, available to an organization. This idea has been further expanded, however, to be called *human capital resources*,[40] which are defined as the human resource capacities accessible to a unit that help it gain some competitive advantage. HR analytics, also referred to as talent analytics, which will be discussed in several later chapters beginning with Chapter 5, makes it possible to take data from a wide variety of sources to help identify those unique resources and suggest ways to manage them better. From this perspective, a major goal of HRM functions in organizations is to translate potential capacities into actual capacities. This relates to attracting, developing, and managing human resources, and we will discuss these issues in more detail in Chapter 14. This also clearly relates to the strategic perspective, discussed further in Chapter 4. However, this perspective also suggests that the HR function move away from "silos" (e.g., compensation or training) to better appreciate how all the functions interact and need to be coordinated.

Facilitating organizational competitiveness must be the most important goal for modern HRM. This is the goal that sets the modern function apart even from the HRM function of 25 years ago. It is also the way in which the HRM function provides the most value to the organization. Of course, the second goal we will discuss also contributes to this goal of competitiveness.

> "The best executive is the one who has sense enough to pick good men to do what he wants done, and self-restraint to keep from meddling with them while they do it."
>
> —THEODORE ROOSEVELT

1-3b Enhancing Productivity and Quality

A related but somewhat narrower concern for most organizations in the world today involves the issues, hurdles, and opportunities posed by productivity and quality. **Productivity** is an economic measure of efficiency that summarizes and reflects the value of the outputs created by an individual, organization, industry, or economic system relative to the value of the inputs used to create them.[41] **Quality** is the total set of features and characteristics of a product or service that bears on its ability to satisfy stated or implied needs.[42] In earlier times, many managers saw productivity and quality as being inversely related; the best way to be more productive was to lower quality and therefore costs. Most managers today realize that productivity and quality usually go hand in hand; that is, improving quality almost always increases productivity.

Organizations around the world have come to recognize the importance of productivity and quality for their ability not only to compete but also to survive. Actually improving productivity and quality, however, takes a major and comprehensive approach that relies heavily on HRM. Among other things, an organization that is serious about productivity and quality may need to alter its selection system to hire different kinds of workers. It will definitely need to invest more in training and development to give workers the necessary skills and abilities to create high-quality products and services, and it will need to use new and different types of rewards to help maintain motivation and effort among its employees. Thus, in most organizations, HRM also has the goal of helping to enhance productivity and quality through different activities and tasks.

Productivity is an economic measure of efficiency that summarizes and reflects the value of the outputs created by an individual, organization, industry, or economic system relative to the value of the inputs used to create them.

Quality is the total set of features and characteristics of a product or service that bears on its ability to satisfy stated or implied needs.

1-3c Complying with Legal and Social Obligations

A third fundamental goal of the HRM function today is to ensure that the organization is complying with and meeting its legal and social obligations. As we noted earlier, the passage of the Civil Rights Act in 1964 really made this goal salient. Subsequent court cases made it clear that organizations that violated this law and discriminated in hiring, promotion, compensation, or other HR decisions, could face millions of dollars in fines and penalties. More recently, changes in the Americans with Disabilities Act (discussed in Chapter 2), as well as new legislation regarding equal pay for men and women (also discussed in the next chapter) brought new legal challenges to HRM departments. In most organizations, it is the role of the HRM department, along with the legal department, to ensure that business is conducted within the law so that financial penalties and bad press can be avoided.

Interestingly, the financial crisis of 2008–2009 introduced a new wrinkle into the role of government in the management of human resources. In several cases, the federal government made huge loans to private financial institutions to keep them solvent. But, in return, the government became a major stockholder in some of these firms. As such, the federal government had a lot to say about how employees were treated and paid (especially executives). Those loans have been paid off, and the government is no longer a stockholder in those firms, but the level of intervention in 2008–2009 leaves the door open to possible government intervention in the future. Such intervention would require the U.S. government to take on substantial HRM responsibilities.

Most managers today realize that productivity and quality usually go hand in hand—that is, improving quality almost always increases productivity.

As noted earlier, beyond the strict legal parameters of compliance, more and more organizations today are assuming some degree of social obligation to the society in which they operate. This obligation goes beyond the minimum activities required to comply with legal regulations and calls for the organization to serve as a contributing "citizen." Earlier in the chapter, we discussed the ideas of corporate social responsibility, conscious capitalism, and the triple bottom line, which all speak to this enhanced citizenship role. But organizations do not need to go this far to express their desire to be good citizens. Some firms support volunteer activities by employees in the local community either by granting time off or by matching employee contributions to local charities. Others provide pro bono services, and some establish charitable foundations to deal with societal problems. Whatever the choice, it often requires some work by the HRM department that goes above and beyond its usual responsibilities.

1-3d Promoting Individual Growth and Development

Finally, a fourth goal for HRM in most contemporary organizations is promoting the personal growth and development of its employees.[43] As a starting point, this goal usually includes basic job-related training and development activities. But in more and more organizations, it is increasingly going far beyond basic skills training. Some firms, for example, now offer basic educational courses in English, math, and science for their employees. Many organizations also include some provision for career development—helping people understand what career opportunities are available to them and how to pursue those opportunities. Formal mentoring programs are also commonly being used to help prepare women and minorities for advancement in the organization.[44]

Individual growth and development may also focus on areas that do not relate directly to job responsibilities. For example, some organizations provide stress-management programs to help their employees better cope with the anxieties and tensions of modern life. Wellness and fitness programs are also becoming more common as organizations seek new and different ways to help their employees remain physically, mentally, and emotionally fit and better prepared to manage their lives and careers. Still another common area for continuing education is personal financial planning, which may even include assistance in writing a will or retirement planning.

Organizations, however, are viewing this goal much more broadly. For many, it means that the firm should do everything it can to ensure that employees are personally fulfilled on the job. This may involve designing jobs that are more challenging and provide more personal satisfaction (see more in Chapter 14), or it may involve providing employees opportunities to be more creative at work (see Chapter 13). In general, more firms are seeing HRM as part of the psychological contract that they have with employees: Provide a personally rewarding work experience in return for the employees' working toward

the firm's strategic goals. A **psychological contract** is the overall set of expectancies held by the employee with regard to what he or she will contribute to the organization and held by the organization with regard to what it will provide to the individual in return. These firms know that they will get the most out of employees as sources of competitive advantage when the employees feel that their work experience is meaningful and helps them meet their potential. It is worth noting that this has largely come full circle to the early days of HRM and the human relations movement.

Many organizations provide career development guidance—helping people understand the career opportunities available to them and how to pursue them. Formal mentoring programs are also commonly used to prepare women and minorities for advancement.

1-4 THE SETTING FOR HUMAN RESOURCE MANAGEMENT

Another important factor to consider in the modern view of HRM is the setting in which the HR manager operates. Traditionally, all HR activities resided in a separate department, but this model is becoming rare. Instead, HR activities are carried out by both line and staff managers. Furthermore, we are seeing differences in the way HRM operates in larger versus smaller companies. We will explore some of these different settings.

1-4a Human Resource Management as a Staff versus Line Function

Organizations historically divided their managers into two groups: line management and staff management. HRM was traditionally considered to be a staff function. **Line managers** were those directly responsible for creating goods and services; that is, their contributions to the organization were generally assessed in terms of their actual contributions and costs to the organization's bottom line. The performance of a plant manager whose factory costs $2.5 million per year to support (for salaries, wages, materials, and machinery) and that generates $4 million per year in finished goods can be evaluated based on this information. Operations managers, financial managers, and marketing managers were generally considered to have line functions.

Staff managers, on the other hand, were those responsible for an indirect or support function that would have costs but whose bottom-line contributions were less direct. Legal, accounting, and HR departments were usually thought of as staff functions. Their role was to support line management's efforts to achieve organizational goals and objectives.

Today, however, many organizations have blurred this distinction. New forms of organizational design (e.g., teams and an emphasis on flatter and more decentralized organization) have made it more likely that many HRM activities are actually carried out by line managers. For example, it is fairly common today for line managers to be involved in evaluating the performance of subordinates and making recommendations about salary adjustments (although a staff member might help collect information used to support those decisions). Line managers are intimately involved in most of the interventions designed to enhance performance, and they often make decisions about pay raises and promotions.

In some organizations, the HRM function is structured in a completely different way. In these firms, the HRM department is structured around "centers of excellence." In these cases, the HR department is responsible for providing services only in those cases where it can provide higher-quality services than can be purchased on the outside (i.e., through the outsourcing discussed earlier). When they cannot provide higher-quality services, they are often asked to identify and then manage the outside consultants who are brought in to perform the services. In still other cases, the HR department itself functions as a consulting operation within the organization. These departments are expected to be responsive to the needs of the other functional areas, but they have to be able to demonstrate their added value, and they must actually "sell" their services to the line managers. In these arrangements, the HRM department budget is small, and the only way to

A **psychological contract** is the overall set of expectations held by the employee with regard to what he or she will contribute to the organization and that are held by the organization with regard to what it will provide to the individual in return.

Line managers are those directly responsible for creating goods and services.

Staff managers are those responsible for an indirect or support function that would have costs but whose bottom-line contributions are less direct.

Dusit/Shutterstock.com

Responsibilities for carrying out HR functions may reside in a separate HR department, but many smaller organizations do not have such departments and must deliver the required services in different ways.

hire and retain employees in that area is to provide services that other managers are willing to pay for. Thus, the HRM department becomes a self-funding operation, or it could even become somewhat of a profit center.

1-4b The Human Resource Department in Smaller versus Larger Organizations

There are also noteworthy differences in the way HRM operations are carried out in larger versus smaller organizations. As noted, responsibilities for carrying out HR functions may reside in a separate HR department, but many smaller organizations do not have such departments and must deliver the required services in different ways.[45] Most small organizations require line managers to handle their basic HR functions. In the case of a franchised operation such as a single McDonald's or Pizza Hut or an individual retail outlet such as an American Eagle or Abercrombie & Fitch clothing store, the store manager generally hires new employees, schedules and tracks working hours for all employees, and disciplines problem employees. The franchiser or home office, in turn, generally suggests or mandates hourly wages, provides performance appraisal forms for local use, and may handle payroll services.

A small independent business is generally operated in the same way, with the owner or general manager handling HR duties. Payroll and other basic administrative activities may be subcontracted to businesses in the local community that specialize in providing such services for other local organizations. Relatively little training is provided in these small organizations, and other HR issues are relatively straightforward. Very small organizations are exempt from many legal regulations (again, we cover this topic more fully in Chapter 2). Thus, a single manager can usually handle the HR function in smaller firms without too much difficulty.

As a firm grows beyond a certain size (usually around 250 employees), however, a separate HR unit becomes a necessity, and the issues involved become much more complicated. No standard approach exists, but a firm of this size might have one full-time manager and a single secretary or assistant to function as its HR department. These individuals handle all of the firm's HR administration.

As the firm continues to grow, however, more assistance is needed to staff the HR department, and so that department also grows. In fact, in the largest organizations, HR functions are themselves likely to have specialized subunits. For example, large firms might have separate departments to handle recruiting and selection, wages and salaries, training and development, and labor relations. Figure 1.2 shows how Shell Oil has organized its HR function.

FIG 1.2 THE HUMAN RESOURCE MANAGEMENT FUNCTION AT SHELL OIL

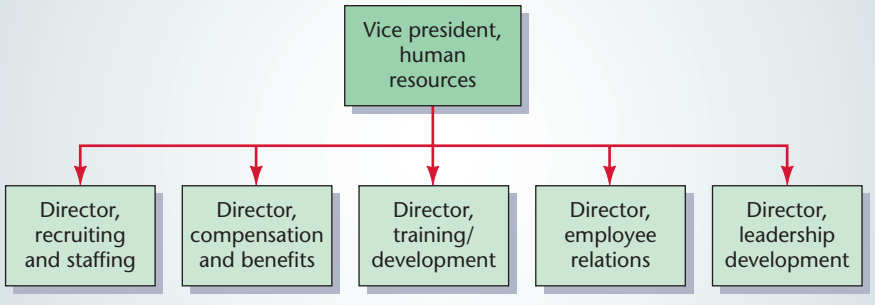
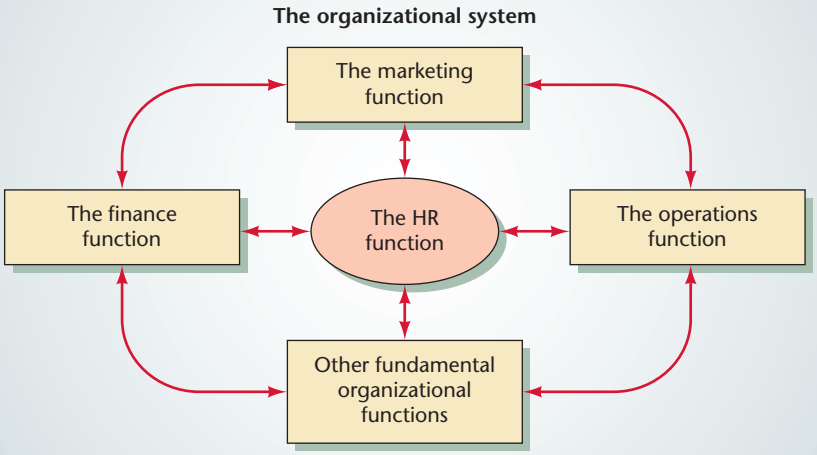


FIG 1.3 A SYSTEMS VIEW OF HUMAN RESOURCE MANAGEMENT



1-4c The Human Resource Management System

The modern view of HRM is also a systems-oriented view. By its very nature, a strategic perspective requires the coordination of the various HRM activities to ensure that they are consistent with corporate strategy. If those services are provided primarily internally by the HRM department, this coordination can be fairly simple. As those activities move outside the organization, perhaps by contracting with outside vendors, the coordination problem becomes much more complex. But, in any case, a strategic perspective means understanding that a decision made in any one area of HRM will affect what happens in every other area. If an organization needs highly skilled, knowledgeable workers to carry out its strategy, then all staffing activities must be coordinated toward identifying and attracting such employees. After these employees join the firm, however, performance appraisals, compensation, and performance management systems must all be changed to reflect the nature of the new employee.

Thus, although we will often discuss various tasks and functions of HRM from the perspective of discrete, self-contained activities, this is not the case in practice. In fact, these tasks and functions are highly interrelated and do not unfold neatly and systematically. Each of the various tasks and functions can affect or be affected by any of the other tasks and functions. In addition, most basic HR functions are practiced on an ongoing and continuous basis.

In fact, it is appropriate to think of HRM as a system. A system is an interrelated set of elements functioning as a whole. A **human resource management system**, is an integrated and interrelated approach to managing human resources that fully recognizes the interdependence among the various tasks and functions that must be performed. This viewpoint is illustrated in Figure 1.3. The basic premise of this perspective is that every element of the HRM system must be designed and implemented with full knowledge and understanding of, and integration with, the various other elements. For example, poor recruiting practices will result in a weak pool of applicants. Even if the organization has sophisticated selection techniques available, it will not make much difference without a pool of qualified applicants to choose from. As a result, there will be a greater need for training before a new employee starts work to provide him or her with the necessary skills. Subsequent performance appraisals will also be more difficult because it may take longer for these employees to become proficient in their jobs, affecting how much they are paid.

Figure 1.3 also illustrates another useful systems-based perspective on HRM. Many systems are themselves composed of subsystems—systems within a broader and more general system. By viewing the overall organization as a system, HRM then can be conceptualized as a subsystem within that more general organizational system. As the figure shows, the HRM subsystem both affects and is affected by the other functional subsystems throughout

A **human resource management system** is an integrated and interrelated approach to managing human resources that fully recognizes the interdependence among the various tasks and functions that must be performed.

the organization. This perspective can help to reinforce the idea that HRM must be approached from the same strategic vantage point afforded the other areas within the organization. Failure to do so can result in unanticipated consequences, poor coordination, and less-effective performance.


Markovka/Shutterstock.com

To illustrate, if the organization makes a strategic decision to compete on the basis of high-quality service, then it will almost certainly need to use several mechanisms to do so. For example, the organization will need to recruit and subsequently hire more-qualified new workers and provide more training to both new and current workers. Similarly, if the financial function of an organization dictates that major cost cutting be undertaken, some portion of those costs may come from the HR area. Thus, HR managers may need to reduce the size of the workforce, attempt to renegotiate labor contracts for a lower pay rate, defer payment of some benefits, and so forth.

The increasing globalization of business also reinforces the need to view the HRM function from a systems perspective; that is, HR managers must take a global perspective in managing people. Within the borders of their own country, HR managers must consider the social norms, individual expectations, and so forth that shape worker behaviors. Cross-national assignments for managers are also an important consideration for many businesses today. Thus, the global perspective on HRM includes the need to understand domestic similarities and differences in managing human resources in different countries and the role of international assignments and experiences in the development of HR skills and abilities.

This systems approach has also led to organizations becoming increasingly interested in ways to evaluate the effectiveness of HRM activities relative to the firm's strategic goals. Traditionally, many experts believed that HRM practices could not be assessed with anywhere near the objectivity that we could evaluate the effectiveness of a sales campaign, for instance. But the 1980s and 1990s saw further developments in utility analysis that made it possible to determine exactly how much HRM activities contributed to a company's bottom line.[46] **Utility analysis** is the attempt to measure, in more objective terms, the impact and effectiveness of HRM practices in terms of metrics such as a firm's financial performance. The advent of high-performance work systems resulted in broader metrics for evaluating HRM activities,[47] so it is now possible to develop fairly objective measures of the effects or effectiveness of HRM practices. It remains the role of the HRM department, however, to develop these metrics and apply them to all HRM activities undertaken on behalf of the organization.

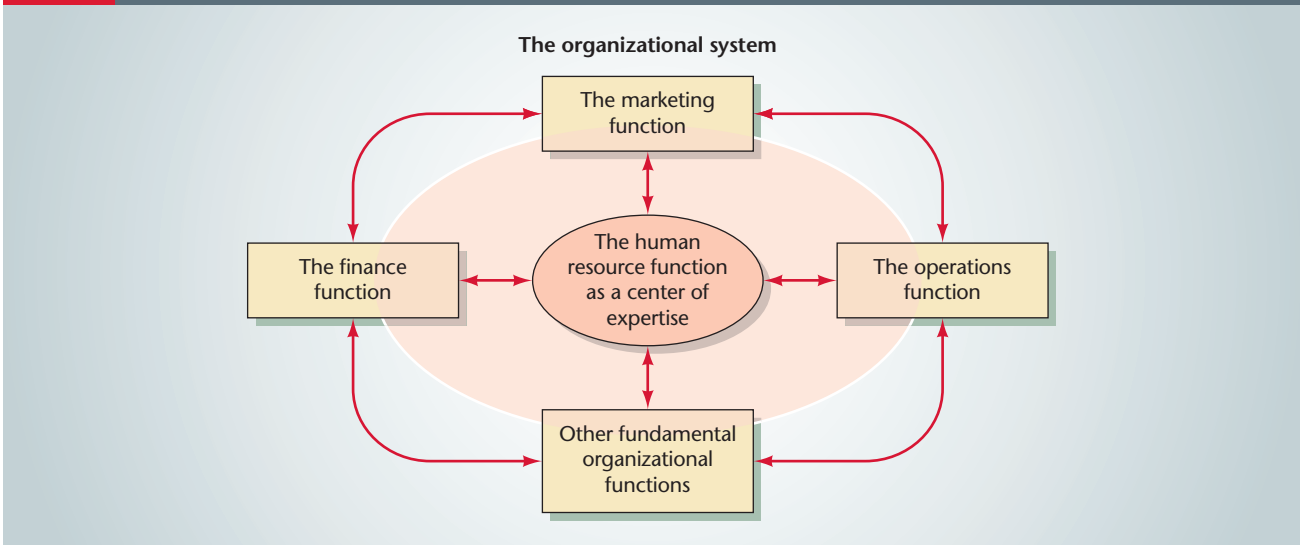
Utility analysis is the attempt to measure, in more objective terms, the impact and effectiveness of HRM practices in terms of such metrics as a firm's financial performance.

1-5 HUMAN RESOURCE MANAGERS

Who are today's HR managers? Given the rapid and dynamic changes that have characterized this field, it should come as no surprise that HR managers represent a diverse set of professionals with a variety of backgrounds, experiences, and career objectives. An HR executive today needs to understand different specialized areas such as the legal environment, the process of change management, labor relations, and so forth. In addition, contemporary HR executives must also possess general management abilities that reflect conceptual, diagnostic, and analytical skills. It is important that they fully understand the role and importance of the HR function for their organization.[48] Thus, both a solid educational background and a foundation of experience are necessary prerequisites for success.[49]

Consistent with these changes, it is often more useful to conceptualize HR as a center of expertise within the organization. In other words, everyone in the organization should recognize HR managers as the firm's most critical source of information about employment practices, employee behavior, labor relations, and the effective management of all aspects of people at work. This view of HRM is illustrated in Figure 1.4, which builds on the systems view of HRM presented earlier in Figure 1.3.

FIG 1.4 HUMAN RESOURCE MANAGEMENT AS A CENTER FOR EXPERTISE



1-5a Professionalism and Human Resource Management

Accompanying the shifts and changes in HR functions and importance is a greater emphasis on professionalism, which is reflected by a clear and recognized knowledge base and a generally understood way of doing business.[50] HR managers are no longer regarded as second-class corporate citizens, and more and more organizations are including a stint in HR as a normal step on a person's way to the top. Senior HR executives in large firms earn six-figure salaries and receive the same sorts of perquisites once reserved only for executives of operating units. In fact, the salaries for HR executives continue to rise at an impressive rate. HR departments are also being viewed more and more as cost centers, with the goal of providing clear and measurable financial benefits to the organization.[51]

Many HR managers today belong to the Society for Human Resource Management (SHRM), the field's largest professional HR association. SHRM publishes professional journals that help members stay abreast of the newest developments in the field, sponsor workshops and conferences, and so forth. SHRM has created the HR Certification Institute (HRCI). The HRCI is the recognized symbol of HR certification in much the same way that the accounting profession uses the certified public accountant exam and credential to designate those individuals who have formally achieved basic minimal competencies in prescribed areas.

The HRCI currently offers three core certifications: Professional in Human Resources (PHR), Senior Professional in Human Resources (SPHR), and Global Professional in Human Resources (GPHR). In addition, HRCI also offers a state-specific certification for California. To be eligible to take the PHR, SPHR, or GPHR exam, an HR professional must have a minimum of two years of professional (exempt-level) experience and pass a rigorous examination covering the body of HR knowledge as it relates to the particular certification. Beginning in 2011, eligibility requirements to take the exam were made more stringent. The HRCI website (www.hrci.org) has detailed information on the changes to the eligibility requirements.

1-5b Careers in Human Resource Management

How does one become an HR manager? Career opportunities in HRM continue to grow and expand and are expected to continue to do so. One obvious way to enter this profession is to get a degree in human resource management (or a related field) and then seek entry-level employment as an HR manager. Alternative job options may be as the HR manager for a small firm or as an HR specialist in a larger organization. Some universities also offer specialized graduate degree programs in human resource management. For example, a master of science or master of business administration degree with a concentration in human resource management would likely lead to a higher-level position in an organization than would a bachelor's degree alone.

Another route to HRM is through line management. As described earlier, more and more firms are beginning to rotate managers through the HR function as part of their own personal career-development program. Thus, people who go to work in marketing or finance may well have an opportunity at some point to sample central HRM responsibilities. Regardless of the path taken, however, those interested in HRM are likely to have a fascinating, demanding, and rewarding experience as they help their organization compete more effectively through the power of the people who make up every organization in every industry in every marketplace in the world today.

CLOSING CASE
Low Prices, High Pay

Most major retailers follow a simple path—low prices made possible in part by low wages and minimal benefits for their employees. Walmart, for instance, is often criticized for its low wages (an average of $12.14 an hour) and the fact so many of its employees do not get health-care benefits (about half, the company reports). Others, like Burger King, have run afoul of the law by requiring their store managers to work extra hours doing nonmanagerial tasks (e.g., emptying trash cans and sweeping floors) for no extra pay.

But in recent years, another set of retailers has started to thrive, often using a different business model—paying employees more and treating them better, under the assumption that they will be more satisfied and provide better customer service. These retailers include Nordstrom, The Container Store, Whole Foods, and REI. But perhaps none sets the bar quite as high as Costco. For starters, Costco pays its employees an average hourly wage of $21.45, and all its full-time employees get health insurance heavily subsidized by the company.

Costco got its start back in the 1950s, went through several permutations, and eventually took shape in its current incarnation in 1993 under the leadership of James Sinegal. Sinegal developed the idea that superior customer service could be a distinctive competitive advantage in the discount retailing industry. Accordingly, he set Costco on a course toward mass-market, low-price, warehouse retailing (like Walmart) but with superior customer service (like Nordstrom). Today Costco is the largest wholesale club operator in the United States with more than 500 members-only clubs in 44 states. Costco also owns and operates warehouse clubs in Canada, Mexico, South Korea, Taiwan, Australia, Spain, Iceland, and France. In 2017 the firm had revenues of over $129 billion and employed 239,000 people.

Most merchandise in Costco stores is bulk-packaged and marketed to businesses and families. The firm doesn't carry multiple brands of the same product, instead offering only the one it can sell for the lowest price. Average markup is only 15 percent. Most products are carried to the sales area on pallets in their original boxes. Customers must bring their own shopping bags or else use the boxes products are displayed in. Costco stores have skylights, and sensors reduce the in-store lighting on sunny days.

Trong Nguyen/Shutterstock.com

But as already noted, one area where Costco most assuredly is on the right track is its employees. The company pays well and offers very good benefits. In addition to the health benefit, employees get up to five weeks of paid vacation time a year, and Costco matches their contributions to a 401(k) retirement plan.

(Continued)

(Closing Case – continued)

Sinegal retired in 2012, and Craig Jelinek, a long-time Costco executive, took the helm. Under Jelinek's leadership, the retailing behemoth seems to have actually improved its trajectory. Its stock price has never been higher, for example, and sales are growing at a red-hot pace. Jelinek has vowed to not alter Costco's HR strategy. He recently commented, for example, "Could Costco make more money if the average wage was two or three dollars lower? The answer is yes. But we're not going to do it."[52]

Case Questions

1. Compare your shopping experiences at retailers such as Costco, Nordstrom, or Whole Foods with experiences you may have had at Walmart, Sears, or Kroger.
2. Under what circumstances might Costco have to start paying its workers less?
3. Costco has a policy of not hiring business school graduates because it wants employees to start at the bottom and work their way up. What are the advantages and disadvantages to this approach?

STUDY TOOLS 1

READY TO STUDY?

In the book, you can:

- ☐ Rip out the chapter review card at the back of the book for a handy summary of the chapter, key terms, and key legislation.

ONLINE AT CENGAGE.COM YOU CAN:

- ☐ Highlight key text, add notes, or listen to the text with the MindTap interactive ebook.
- ☐ Quiz yourself on key concepts.
- ☐ Find videos for further exploration.
- ☐ Prepare for tests with HR5 Flash Cards as well as those you create.

2 The Legal Environment

EmirMemedovski/Getty Images

After finishing this chapter go to PAGE 56 for STUDY TOOLS

LEARNING OBJECTIVES

- 2-1 Describe the legal context of human resource management
- 2-2 Identify key laws that prohibit discrimination in the workplace, and discuss equal employment opportunity
- 2-3 Discuss legal issues in compensation, labor relations, and other areas in human resource management
- 2-4 Discuss the importance to an organization of evaluating its legal compliance

EmirMemedovski/Getty Images

OPENING CASE
Unequal Pay for Equal Work?

It seems logical. Men and women with comparable credentials, comparable experience, and comparable performance ratings performing the same tasks should make comparable pay, right? But while it may seem logical, in reality, men tend to make more than women even when there are no obvious reasons for the discrepancy. For instance, one recent study found an annual pay gap of $20,000 between comparably qualified professional men and women in the millennial generation. In 2016, women who were full-time wage and salary workers had median usual weekly earnings that were 82 percent of those of male full-time wage and salary workers.

This pattern is not new. In fact, Title VII of the Civil Rights Act of 1964 broadly outlawed discrimination on the basis of gender in any aspect of the employment relationship (which obviously includes pay), and the Equal Pay Act of 1963 specifically stipulates that organizations must pay the same wages to men and women who are doing equal work. (Note, however, that both laws allow unequal pay if the basis for the differences are experience, performance, or other job-related factors.)

The question, then, is why, after more than fifty years of legislation outlawing disparate pay and widespread social awareness of this pattern, do such discrepancies still exist today? For years, experts attributed the problem to two things. First, some organizations have continued to practice outright discrimination. Some managers, for instance, either intentionally or unconsciously, may tend to reward men more if they are seen as the family "breadwinner" and reward women less if they are seen as providing only "secondary income." Obviously, this practice is illegal (and unethical) and can be grounds for legal action.

Another long-standing explanation is the so-called mommy track phenomenon. The premise here is that even if women and men start out the same, many women step away from their careers for periods ranging from a few months to as long as several years in order to have children. Even among families where both parents have careers, it is still more likely for a woman to make career sacrifices for the sake of family than it is for a man. Simplistically, if a woman suspends her career for, say, three years to start a family and then resumes her career, she has fallen three years behind her male peers in promotion opportunities and salary increases and may never catch up.

Recently, however, experts have come to believe that several other factors also play a role in the income gap. For

> "For women, success and likability are negatively correlated. As a woman gets more successful and powerful, she is less liked. . . . I don't know a senior woman in the workplace who hasn't been told she's too aggressive."
>
> —SHERYL SANDBERG, FACEBOOK COO

one thing, men are often more aggressive when they are first negotiating for a job. As a result, their initial salaries may be higher than their female counterparts. For another, this aggressiveness continues as men tend to ask for larger and more frequent salary adjustments than do their women peers. Hence, men may tend to start at a higher salary and then see their salaries grow faster than is the case for women.

Extending these ideas to a broader context, some evidence suggests that people tend to see aggressiveness and assertiveness positively in men but negatively in women. These positive or negative feelings can then easily translate into "likability." Likability, in turn, can then unconsciously begin to play a role in other elements of the employment relationship, including promotions, opportunities for career-enhancing assignments, and so forth. None of these explanations make it acceptable for a man to earn more than a woman, of course, but they do point to the need for complex and in-depth solutions.

THINK IT OVER

1. Suppose you offer a woman a job for $80,000, and she accepts it. You then offer a similar job to a man for $80,000. He demands $85,000, and you agree to pay him that amount. Should you now go back and adjust the woman's salary? Why or why not?
2. Richard Branson's Virgin Hotels Group has a policy that half of all management positions must be filled by women. Do you agree or disagree with this kind of policy? Why?

Organizations and managers must adhere to the laws and regulations that govern their employment practices. In general, organizations try to follow such laws and regulations for several reasons. One is an inherent commitment in most organizations to ethical and socially responsible behavior. Another is to avoid the direct costs and bad publicity that might result from lawsuits brought against the organization if those laws and regulations are broken. But as the opening case illustrates, these laws and regulations occasionally change or are reinterpreted by the courts. As we will see, failure to follow the law, even because of a well-intentioned misunderstanding, can be enormously costly to an organization.

As we noted in Chapter 1, the proliferation of laws and regulations affecting employment practices in the 1960s and 1970s was a key reason for the emergence of human resource management (HRM) as a vital organizational function. Managing within the complex legal environment that affects human resource (HR) practices requires a full understanding of that legal environment and the ability to ensure that others within the organization also understand it. This chapter is devoted in helping you understand the legal environment of HRM. First, we establish the legal context of HRM and then focus on perhaps the most important area of this legal context—equal employment opportunity—and review several key court cases that have established the law in this area. Subsequent sections introduce legal issues in compensation and labor relations. Various emerging legal issues are also introduced and discussed. Finally, we summarize how many of today's organizations evaluate their legal compliance.

BrAt82/Shutterstock.com

2-1 THE LEGAL CONTEXT OF HUMAN RESOURCE MANAGEMENT

The legal context of HRM is shaped by different forces. The catalyst for modifying or enhancing the legal context may be legislative initiative, social change, or judicial rulings. Governmental bodies pass laws that affect HR practices, for example, and the courts interpret those laws as they apply to specific circumstances and situations. Thus, the regulatory environment itself is quite complex and affects different areas within the HRM process.

2-1a The Regulatory Environment of Human Resource Management

The legal and regulatory environment of HRM in the United States emerges as a result of a three-step process. First is the actual creation of a new regulation. This regulation can come in the form of new laws or statutes passed by national, state, or local government bodies; however, most start at the national level. State and local regulations are more likely to extend or modify national regulations than create new ones. In addition, as we will see later, the president of the United States can also create regulations that apply to specific situations. Finally, court decisions, especially decisions by the Supreme Court of the United States, set precedence and so also play a major role in establishing the regulatory environment.

There are also numerous instances where court decisions have narrowed definitions of some laws and have reduced the ability of plaintiffs to bring charges under other laws. As a result, in some cases, activists have called for new laws to reestablish the original intent of a law that has been altered by various court decisions. For instance, the Civil Rights Act of 1991 was passed to reestablish certain provisions of the original Civil Rights Act passed in 1964 (we discuss these laws later).

The second step in the regulation process is the enforcement of these regulations. Occasionally, the laws themselves provide for enforcement through the creation of special agencies or other forms of regulatory groups. (We will discuss one important agency, the Equal Employment Opportunity Commission, later in the chapter.) In other situations, enforcement might be assigned to an existing agency, such as the Department of Labor. The court system also interprets laws that the government passes and provides another vehicle for enforcement. To be effective, an enforcing agency must have an appropriate degree of power. The ability to levy fines or bring lawsuits against firms that violate the law are among the most powerful

tools provided to the various agencies charged with enforcing HR regulations.

The third step in the regulation process is the actual practice and implementation of those regulations in organizations. In other words, organizations and managers must implement and follow the guidelines that the government has passed and that the courts and regulatory agencies attempt to enforce. In many cases, following regulations is a logical and straightforward process. In some cases, however, a regulation may be unintentionally ambiguous or be interpreted by the courts in different ways over time. Regardless of the clarity of the regulation, the actual process of implementing and demonstrating adherence to it may take an extended period of time. Thus, organizations are sometimes put in the difficult position of figuring out how to follow a particular regulation or needing an extended period to fully comply.

Danny Shanahan/Riley Illustration

2-2 EQUAL EMPLOYMENT OPPORTUNITY

Regulations exist in almost every aspect of the employment relationship. As illustrated in Figure 2.1, equal employment opportunity intended to protect individuals from illegal discrimination is the most fundamental and far-reaching area of the legal regulation of HRM. In one way or another, almost every law and statute governing employment relationships is essentially attempting to ensure equal employment opportunity. Such opportunity, however, has been interpreted to include protection that goes beyond ensuring that a person has a fair chance at being hired for a job for which the person is qualified. As also illustrated in Figure 2.1, this protection extends to preventing illegal discrimination against current employees with regard to performance appraisal, pay, promotion opportunities, and various other dimensions of the employment relationship. Several related legal issues warrant separate discussion as well.

Some managers assume that the legal regulation of HRM is a relatively recent phenomenon. In reality, however, concerns about equal opportunity can be traced back to the Thirteenth Amendment passed in 1865 to abolish slavery, and the Fourteenth Amendment passed in 1868 to provide equal protection for all citizens of the United States. The Reconstruction Civil Rights Acts of 1866 and 1871 further extended protection offered to people under the Thirteenth and Fourteenth Amendments, and together with those amendments, these laws still form the basis for present-day federal court actions that involve the payment of compensatory and punitive damages.[1]

FIG 2.1 LEGAL REGULATION OF HUMAN RESOURCE MANAGEMENT

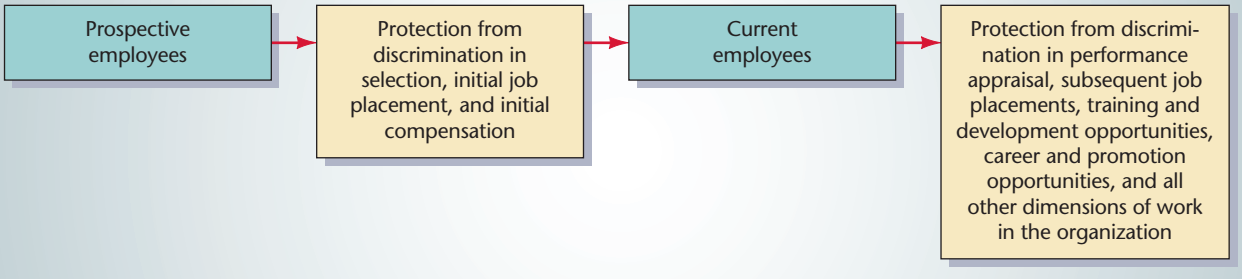


FIG 2.2 FORMS OF ILLEGAL DISCRIMINATION

2-2a Discrimination and Equal Employment Opportunity

The basic goal of all equal employment opportunity regulation is to protect people from unfair or inappropriate discrimination in the workplace.[2] However, most laws passed to eliminate discrimination do not explicitly define the term itself. It is also instructive to note that discrimination per se is not illegal. Organizations routinely "discriminate" between effective and ineffective employees in how they are treated. As long as the basis for this discrimination is purely job related, however, such an action is legal and appropriate when based on performance or seniority and when applied objectively and consistently. Problems arise, though, when differentiation between people is not job related; the resulting discrimination is illegal. Various court decisions and basic inferences about the language of various laws suggest that **illegal discrimination** is the result of behaviors or actions by an organization or managers within an organization that cause members of a protected class to be unfairly differentiated from others. (We discuss protected classes later in this chapter.)

Although numerous laws deal with different aspects of equal employment opportunity, the Civil Rights Act of 1964 clearly signaled the beginning of a new legislative era in American business. The act grew out of the growing atmosphere of protest for equal rights in the early 1960s and contains several sections called *titles* that deal with different areas of application of the Civil Rights Act. Our discussion will focus on Title VII, which deals with work settings under the heading of Equal Employment Opportunity.

Illegal discrimination results from behaviors or actions by an organization or managers within an organization that cause members of a protected class to be unfairly differentiated from others.

Disparate treatment discrimination exists when individuals in similar situations are treated differently based on the individual's race, color, religion, sex, national origin, age, or disability status.

The most significant single piece of legislation specifically affecting the legal context for HRM to date has been Title VII of the Civil Rights Act of 1964.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 The most significant single piece of legislation specifically affecting the legal context for HRM to date has been **Title VII of the Civil Rights Act of 1964**. Congress passed the Civil Rights Act, and President Lyndon Johnson signed it into law in 1964 as a way to ensure that equal opportunities would be available to everyone. Title VII of the act states that it is illegal for an employer to fail or refuse to hire any individual, to discharge any individual, or to discriminate in any other way against any individual with respect to any aspect of the employment relationship on the basis of that individual's race, color, religious beliefs, sex, or national origin.

The law applies to all components of the employment relationship, including compensation, employment terms, working conditions, and various other privileges of employment. Title VII applies to all organizations with 15 or more employees working 20 or more weeks a year and that are involved in interstate commerce. In addition, it also applies to state and local governments, employment agencies, and labor organizations. Title VII also created the Equal Employment Opportunity Commission (EEOC) to enforce the various provisions of the law (we discuss the EEOC later in this chapter). Under Title VII, as interpreted by the courts, several types of illegal discrimination are outlawed. These types are discussed next and are illustrated in Figure 2.2.

DISPARATE TREATMENT **Disparate treatment** discrimination exists when individuals in similar situations are treated differently *and* when the differential treatment

is based on the individual's race, color, religion, sex, national origin, age, or disability status. For example, if two people with the same qualifications for the job apply for a promotion, and the organization uses one individual's race or national origin to decide which employee to promote, then the individual not promoted is a victim of disparate treatment discrimination. To prove discrimination in this situation, an individual filing a charge must demonstrate that there was a discriminatory motive; that is, the individual must prove that the organization considered the individual's protected class status when making the decision.

One circumstance in which organizations can legitimately treat members of different groups differently is when a **bona fide occupational qualification (BFOQ)** exists for performing a particular job. This means that some personal characteristic, such as age, legitimately affects a person's ability to perform the job. For example, a producer casting a new play or movie can legally refuse to hire an older person to play a role that is expressly written for a young person. Few legitimate BFOQs exist, however. For example, a local bar cannot hire only young and attractive people as servers based on the argument that their customers prefer young and attractive servers. In fact, customer or client preference can never be the basis of a BFOQ. As we will see, this situation can become quite complex.

Monika Wisniewska/Shutterstock.com

Under Title VII of the Civil Rights Act, it is illegal for an employer to fail or refuse to hire or to discharge any individual or to in any other way discriminate against any individual with respect to any aspect of the employment relationship on the basis of that individual's race, color, religious beliefs, sex, or national origin.

To claim a BFOQ exception, the organization must be able to demonstrate that hiring on the basis of the characteristic in question (e.g., age) is a **business necessity**; that is, the organization must be able to prove that the practice is important for the safe and efficient operation of the business. But what if customers at a casino would prefer female card dealers or if customers at an automobile dealership prefer male salespeople? These customers might go elsewhere if these preferences were not satisfied, and those decisions could surely hurt the business involved. In general, neither case would qualify as a BFOQ, but reality is rarely this simple.

The case of *Diaz* v. *Pan American World Airways*, for example, was filed after Celio Diaz (a male) applied for the job of flight attendant with Pan American Airlines (Pan Am).[3] He was rejected because Pan Am had a policy of hiring only women for this position (as did many airlines in 1971). Diaz filed suit for discrimination, but Pan Am argued that gender was a BFOQ for the job of flight attendant. This argument was based on Pan Am's own experience with male and female flight attendants and on the fact that Pan Am's customers overwhelmingly preferred to be served by female attendants. A lower court accepted the airlines' argument that "an airline cabin represents a unique [and stressful] environment in which an air carrier is required to take account of the special psychological needs of its passengers. Those needs are better attended to by females."[4] The appeals court reversed that decision, however, citing that Pan Am's data on the relative effectiveness of male and female flight attendants was not compelling and that customer preference was not relevant because no evidence existed that hiring male flight attendants would substantially affect the business performance of the airlines. Although this may seem clear, consider that Asian restaurants are allowed to hire only Asian waiters because they add to the authenticity of the dining experience, and establishments such as Hooters are allowed to hire only attractive female waitresses because they are really selling the experience rather than the food; thus, these are considered business necessities.

A **bona fide occupational qualification (BFOQ)** states that a condition such as race, sex, or other personal characteristic legitimately affects a person's ability to perform the job and therefore can be used as a legal requirement for selection.

A **business necessity** is a practice that is important for the safe and efficient operation of the business.

DISPARATE IMPACT A second form of discrimination is **disparate impact** discrimination that occurs when an apparently neutral employment practice disproportionately excludes a protected group from employment opportunities. This argument is the most common for charges of discrimination brought under the Civil Rights Act. Examples include a rule that, in order to maintain cleanliness in a food service organization, no employee can have hair covering his or her ears (which will affect female applicants more than male applicants), or a rule that, in order to reach items on a high shelf, all employees must be at least 6 feet tall (which will also affect female applicants more severely, as well as applicants from certain ethnic groups). Note that even if an organization instituted these rules with no intention of discriminating against anyone, the intent to discriminate is irrelevant, and these would both be cases of disparate impact. Furthermore, any real concerns could be dealt with by rules that employees wear hairnets or use stepladders, respectively.

One of the first instances in which disparate impact was defined involved a landmark legal case, *Griggs* v. *Duke Power*. Following passage of Title VII, Duke Power initiated a new selection system that required new employees to have either a high school education or a minimum cutoff score on two specific personality tests. Griggs, a black male, filed a lawsuit against Duke Power after he was denied employment based on these criteria. His argument was that neither criterion was a necessary qualification for performing the work he was seeking. After his attorneys demonstrated that those criteria disproportionately affected blacks and that the company had no documentation to support the validity of the criteria, the courts ruled that the firm had to change its selection criteria on the basis of disparate impact.[5]

The important criterion in this situation is that the consequences of the employment practice are discriminatory, and thus the practice in question has disparate (sometimes referred to as *adverse*) impact. In fact, if a plaintiff can establish what is called a *prima facie case* of discrimination, the company is considered to be at fault unless it can demonstrate another legal basis for the decision.[6] This finding doesn't mean that the company automatically loses the case, but it does mean that the burden of proof rests with the company to defend itself rather than with the plaintiff trying to prove discrimination. Therefore, it is extremely important to understand how one establishes a prima facie case.

Disparate impact discrimination occurs when an apparently neutral employment practice disproportionately excludes a protected group from employment opportunities.

The **four-fifths rule** suggests that disparate impact exists if a selection criterion (e.g., a test score) results in a selection rate for a protected class that is less than four-fifths (80 percent) of that for the majority group.

wavebreakmedia/Shutterstock.com

Several avenues can be used to establish a prima facie case, but the most common approach relies on the so-called **four-fifths rule**. Specifically, the courts have ruled that disparate impact exists if a selection criterion (e.g., a test score) results in a selection rate for a protected class that is less than four-fifths (80 percent) of that for the majority group. For example, assume that an organization is considering 100 white applicants and 100 Hispanic applicants for the same job. If an employment test used to select among these applicants results in 60 white applicants (60 percent) being hired, but only 30 Hispanic applicants (30 percent) being hired, then disparate impact is likely to be ruled because Hispanics are being hired at a rate that is less than four-fifths that of whites. At this point, the organization using the test would be required to prove that its differential selection rate of whites versus Hispanics could be justified (the basis for this justification will be explained below).

But demonstrating that an organization's policies have violated the four-fifths rule can sometimes be complicated. In the case of *Ward's Cove Packing* v. *Antonio*, the defendant, a salmon cannery in Alaska, had two distinct types of jobs for which people were hired.[7] Cannery jobs were seen as skilled (administrative and engineering), whereas noncannery jobs were viewed as unskilled. The plaintiff's attorneys argued that because the noncannery jobs were predominantly filled by Filipino and Native Alaskans, and the cannery

jobs were held predominantly by whites, the company had violated the four-fifths rule and had therefore established a prima facie case for disparate impact. The defendant did not dispute the statistics but argued that the policies in place did not lead to apparent disparate impact and therefore there was no prima facie case. The Supreme Court agreed with the defendant, ruling that the statistical proof alone was not sufficient for establishing a prima facie case. Therefore, the burden of proof did not shift to the defendant but rested with the employee involved. Ward's Cove won the case. In addition to illustrating the problems with establishing a violation of the four-fifths rule, the Ward's Cove case was also widely seen as dealing a major blow to the enforcement of the Civil Rights Act of 1964—a topic to which we will return shortly.

A plaintiff might be able to demonstrate disparate impact by relying on **geographical comparisons**. These involve comparing the characteristics of the potential pool of qualified applicants for a job (focusing on characteristics such as race, ethnicity, and gender) with those same characteristics of current employees in the job. Thus, if the potential pool of qualified applicants in the labor market for the job of bank teller is 50 percent African American, then a bank hiring from that market should have approximately 50 percent African American tellers. Failure to achieve this degree of representation is considered a basis for a prima facie case of disparate impact discrimination. This comparison requires a clear understanding of the labor market from which the organization typically recruits employees for this job because different jobs within the same organization might draw on different relevant labor markets with different characteristics. For instance, a university might rely on a national labor market for new faculty members, a regional labor market for professional staff employees, and a local labor market for custodial and food-service employees. It is also important to note that the definition of the "potential pool of qualified applicants" draws heavily on census data for the area.

Gts/Shutterstock.com

Demonstrating that an organization's policies have violated the four-fifths rule can sometimes be complicated as was the case with *Ward's Cove Packing* v. *Antonio*.

Finally, the **McDonnell-Douglas test**, named for a Supreme Court ruling in *McDonnell-Douglas* v. *Green*, is another basis for establishing a prima facie case.[8] Four steps are part of the McDonnell-Douglas test:

1. The applicant is a member of a protected class (see discussion to follow).
2. The applicant was qualified for the job for which he or she applied.
3. The individual was turned down for the job.
4. The company continued to seek other applicants with the same qualifications.

PATTERN OR PRACTICE DISCRIMINATION The third kind of discrimination that can be identified is **pattern or practice discrimination**. This form of disparate treatment occurs on a classwide or systemic basis. Although an individual can bring charges of practice discrimination, the question is whether the organization engages in a pattern or practice of discrimination against all members of a protected class instead of against one particular member. Title VII of the 1964 Civil Rights Act gives the attorney general of the United States express powers to bring lawsuits against organizations thought to be guilty of pattern or practice discrimination. Specifically, Section 707 of Title VII states that such a lawsuit can be brought if there is reasonable cause to believe that an employer is engaging in pattern or practice discrimination.

Geographical comparisons involve comparing the characteristics of the potential pool of qualified applicants for a job (focusing on characteristics such as race, ethnicity, and gender) with those same characteristics of the present employees in the job.

The **McDonnell-Douglas test** is used as the basis for establishing a prima facie case of disparate impact discrimination.

Pattern or practice discrimination is similar to disparate treatment but occurs on a classwide basis.

A good example of pattern or practice discrimination allegedly occurred several years ago at Shoney's, a popular family-oriented restaurant chain with operations and locations throughout the South. A former assistant manager at the firm alleged that she was told by her supervisor to use a pencil to color in the "o" in the Shoney's logo printed on its employment application blanks for all African American applicants. The presumed intent of this coding scheme was to eliminate all those applicants from further consideration.[9]

To demonstrate pattern or practice discrimination, the plaintiff must prove that the organization intended to discriminate against a particular class of individuals. A critical issue in practice or pattern discrimination lawsuits is the definition of a statistical comparison group or a definition of the relevant labor market. A labor market consists of workers who have the skills needed to perform the work and who are within a reasonable commuting distance from the organization. The definition of labor market is a major issue in resolving lawsuits brought under pattern or practice discrimination claims.

RETALIATION A final form of discrimination that has become more prevalent in recent years is retaliation. Retaliation refers to an organization taking some action against an employee who has opposed an illegal employment practice or has filed suit against the company for illegal discrimination. Retaliation is expressly forbidden by Title VII of the Civil Rights Act, but several Supreme Court decisions have made it much less clear exactly how this protection might work.


hbas/Shutterstock.com

In 2011, the Supreme Court, noting the sharp rise in claims filed with the EEOC by employees who allege retaliation for filing discrimination charges, handed down an important ruling that expanded protection against this type of retaliation. In *Thompson* v. *North American Stainless Steel*, the Court ruled unanimously that an employee could collect monetary awards from an employer for retaliating against her for her sexual harassment claim, broadening protection under the 1964 Civil Rights Act. What made the case more interesting is that the company didn't fire the woman who filed the charges but did fire her husband, and the ruling stipulated that he was covered against retaliation as well.

However, two years later, the Court handed down another ruling (this time 5-4) that seemed to make it more difficult for someone to bring suit over retaliation. In *Texas Southwestern Medical Center* v. *Nassar*, the Court ruled that in order for an employee to successfully sue for discrimination, the employee had to prove that "but-for" that retaliation, the person would have suffered no penalty. In other words, even if retaliation were part of the motivation for an action, the case would be successful only if retaliation were the only (or primary) motivation for the action.

This most recent decision seems to place such a serious burden of proof requirement upon the person claiming retaliation that few would be able to pursue such a complaint. It will be interesting to see if Congress reacts by passing additional legislation, but this seems unlikely given the gridlock in Congress. Thus, worker protection against retaliation seems to be compromised.

EMPLOYER DEFENSE Our discussion so far has focused on the types of illegal discrimination and the ways in which a plaintiff can establish a case of discrimination. As noted earlier, however, once a prima facie case has been established, the burden of proof shifts to the defendant; that is, the defendant has to provide evidence for nondiscriminatory bases for the decisions made. Therefore, it is critical to understand that just because a prima facie case has been established, the defendant (typically the company) will not necessarily be found liable. The company can defend itself by providing evidence that the selection decision (or employment decision of any type) was based on criteria that are job related. In other words, the defendant (usually an organization) must be able to prove that decisions were made so that the persons most likely to be selected (or promoted or given a pay raise) are those who are most likely to perform best on the job (or who have already performed best on the job). This situation is also referred to as *validation* of the practice in question. In Chapter 7, we will discuss how one validates a selection technique and therefore establishes that it is job related. Many of these issues are also based on the court ruling in the *Albemarle Paper Company* case, which is also discussed in Chapter 5.

2-2b Protected Classes in the Workforce

Now we turn our attention to what the term *protected classes* means in practice. Many of the discriminatory practices described earlier stemmed from stereotypes, beliefs, or prejudice about classes of individuals. For example, common stereotypes at one time were that African American employees were less dependable than white employees, that disabled individuals could not be productive employees, and that certain jobs were inappropriate for women or people who were overweight. Relying on these stereotypes, organizations routinely discriminated against African Americans, disabled people, women, and overweight individuals. Although such blatant cases of discrimination are now rare, it is clear that stereotypes persevere and discrimination continues, even if it is more subtle.

To combat this past discrimination, various laws have been passed to protect different classes or categories of individuals. Although it varies from law to law, a **protected class** consists of all individuals who share one or more common characteristics as indicated by that law. The most common characteristics used to define protected classes include race, color, religion, gender, age, national origin, disability status, and status as a military veteran. As we will see, some laws pertain to several protected classes, while others pertain to a single protected class. Class definition generally involves first specifying the basis of distinction and then specifying which degree or category of that distinction is protected. For example, a law may prohibit discrimination on the basis of gender—a basis of distinction—and then define the protected class as females. This distinction does not mean that an organization can discriminate against men, of course, and in some cases, men could even be considered members of a protected class. But the law was almost certainly passed on the assumption that most gender-based discrimination has been directed against women, and thus it is women who need to be protected in the future.

As the world becomes more complex, and different issues become more salient, questions of protected classes based on religion have become more important. A good case in point was the Supreme Court decision in *EEOC* v. *Abercrombie & Fitch*.[10] The company failed to hire Samantha Elauf, a 17-year-old Muslim girl, for a sales position because she wore a hijab, or head scarf, in observance of her deeply held religious beliefs. The store argued this violated its "look policy," which bans any head coverings. The company also argued that the plaintiff had not informed them of the reason for her wearing the "scarf." But the company *had* made other exceptions, and the court ruled that a company's corporate image does not relieve a company's obligation to provide reasonable religious accommodations, even if they were not aware of the need for an accommodation, as long as the plaintiff could show that the accommodation was the reason for the failure to be hired.

> "Wide differences of opinion in matters of religious, political, and social belief must exist if conscience and intellect alike are not to be stunted, if there is to be room for healthy growth."
>
> —THEODORE ROOSEVELT, 26TH PRESIDENT OF THE UNITED STATES

Finally, an Executive Order passed in late 2015 and a New York City law passed in June 2015 have led discussions about discrimination against a group not usually considered as "protected." A proposed Federal Fair Chance Act, also referred to as the "Ban the Box" bill, prohibits employers from inquiring about a candidate's criminal records until they have been offered a conditional offer of employment. There are exceptions to the NYC law, including police and fire jobs, as well as jobs requiring certain types of licenses. Under this legislation, after a conditional offer of employment has been made, employers can conduct background checks but can only deny employment on the basis of criminal records in narrow cases (i.e., where it is proven to be job related). Nationwide, over 150 cities and counties have adopted what is widely known as "Ban the Box" so that employers consider a job candidate's qualifications first, without the stigma of a criminal record. There are a total of 29 states representing nearly every region of the country that have adopted the policies. The "box" in question is the box for checking if you have ever been convicted of a crime. Congress has continued to debate whether or not the Federal Fair Chance Act should be passed, modified, or dropped from consideration.

At the same time, an important issue is to what extent an organization can give preferential treatment to members of a protected class. Although exceptions can be made in certain circumstances, by and large, the intent of most equal employment opportunity legislation is to provide fair and equitable treatment for everyone, as opposed to stipulating preferential treatment for members of a protected

A **protected class** consists of all individuals who share one or more common characteristics as indicated by that law.

class.[11] This interpretation becomes a bit complicated, though, and can result in charges of reverse discrimination, our next topic.

2-2c Affirmative Action and Reverse Discrimination

When charges of illegal discrimination have been supported, courts sometimes impose remedies that try to reverse the effects of past discrimination. Most frequently, these remedies have taken the form of some type of affirmative action. (As we will see below, some organizations are also required to file affirmative action plans even without charges of illegal discrimination.) **Affirmative action** refers to positive steps taken by an organization to seek qualified employees from underrepresented groups in the workforce. When affirmative action is part of a remedy in a discrimination case, the plan takes on additional urgency, and the steps are somewhat clearer. Three elements make up any affirmative action program.

The first element is called the **utilization analysis** and is a comparison of the racial, sex, and ethnic composition of the employer's workforce compared to that of the available labor supply. For each group of jobs, the organization needs to identify the percentage of its workforce with that characteristic (i.e., African American, female, etc.) and identify the percentage of workers in the relevant labor market with that characteristic. If the percentage in the employer's workforce is considerably less than the percentage in the external labor supply, then that minority group is characterized as being underutilized. Much of this analysis takes place as part of the discrimination case, if one is involved, and the affected groups are defined by the specifics of the case.

The second part of an affirmative action plan is the development of goals and timetables for achieving balance in the workforce concerning those characteristics, especially where underutilization exists. Goals and timetables generally specify the percentage of protected classes of employees that the organization seeks to have in each group and the targeted date by which that percentage should be attained; however, these are much more flexible than quotas, which are illegal (except in rare cases when these have been imposed by courts). The idea underlying goals and timetables is that if no discriminatory hiring practices exist, then underutilization should be eliminated over time.

Affirmative action represents a set of steps taken by an organization to actively seek qualified applicants from groups underrepresented in the workforce.

A **utilization analysis** is a comparison of the racial, sex, and ethnic composition of the employer's workforce compared to that of the available labor supply.

The third part of the affirmative action program is the development of a list of action steps. These steps specify what the organization will do to work toward attaining its goals to reduce underutilization. Common action steps include increased communication of job openings to underrepresented groups, recruiting at schools that predominantly cater to a particular protected class, participating in programs designed to improve employment opportunities for underemployed groups, and taking all steps to remove inappropriate barriers to employment. In some cases, this third part might also include preferential hiring; that is, given two equally qualified applicants for a job, the organization would be required to hire the member of the underrepresented group in every case until its goals and targets are met.

In the late 1990s, the courts began to impose many more restrictions on what was acceptable (or required) in the way of preferential hiring and quotas. We will discuss representative relevant court decisions shortly, but the impetus for some of these decisions was the concern that affirmative action *could* in some cases appear to be a form of *reverse discrimination*, or a practice that has a disparate impact on members of *nonprotected* classes. Thus, charges of reverse discrimination typically stem from the belief by white males that they have suffered because of preferential treatment given to other groups.

The two most famous court cases in this area help to illustrate how complicated this issue can be. In one case, Allan Bakke, a white male, applied to medical school at the University of California Davis but was denied admission.[12] At issue was the fact that the university had set aside 16 of its 100 seats for an incoming class for minority students to promote diversity and affirmative action at the school. Bakke's attorneys argued that he was not necessarily more qualified than those admitted for the 84 "white" openings, but that he was more qualified than those admitted to the 16 openings set aside for minorities. Because the school had imposed this system on its own (to correct past injustice), the Court ruled that this "set-aside" program constituted reverse discrimination because it clearly favored one race over another and ruled in favor of Bakke.

In another case, Brian Weber, also a white male, applied for a temporary training program that would lead to a higher-paying skilled job at a Kaiser Aluminum facility.[13] He was not admitted into the program; he then sued because he claimed that African American applicants with less seniority were admitted into the program strictly due to their race. In fact, Kaiser and United Steelworkers had agreed to a contract whereby 50 percent of the

openings for these programs would be reserved for African Americans in an attempt to address the fact that African Americans had been systematically excluded from these programs in the past. The Supreme Court found in favor of Kaiser and the union, acknowledging that a collective-bargaining agreement such as this one was binding and was a reasonable means of addressing past discrimination.

Given these two legal decisions, one might question the current status of reverse-discrimination cases. In fact, it is by no means clear. Within the space of a few years, the Supreme Court:

- ruled against an organization giving preferential treatment to minority workers during a layoff;[14]
- ruled in support of temporary preferential hiring and promotion practices as part of a settlement of a lawsuit;[15]
- ruled in support of the establishment of quotas as a remedy for past discrimination;[16] and
- ruled that any form of affirmative action is inherently discriminatory and could be used only as a temporary measure.[17]

It would appear that the future of affirmative action is unclear, suggesting that the courts will be leaning more toward interpretations in line with reverse discrimination in the future.

Indeed, the concept of affirmative action is increasingly being called into question. In 1998, California voters ratified a proposition called the California Civil Rights Initiative, which outlawed any preferential treatment on the basis of race, gender, color, ethnicity, or national origin for all public employment, education, and contracting activities. However, in 2003, the Supreme Court ruled that the University of Michigan could use diversity as one of several factors in making its admissions decisions, although it disallowed explicit rules that awarded extra points to underrepresented groups in the student population.

In *Ricci* v. *Stefano, 2009*, the Supreme Court ruled that the city of New Haven, Connecticut, violated the rights of a group of white firefighters when it decided to discard the results of a recent promotion exam that was shown to have disparate impact. The city developed and validated this test and administered it to group of candidates. Based on the test scores and corresponding job openings, no non-white firefighters would be promoted. This caused the city to throw out the results of the test and to order a new exam. The white firefighters subsequently sued the city for reverse discrimination. The city of New Haven argued that the test did not really measure what was needed to be successful as a lieutenant, but

Arisha Singh/Shutterstock.com

In *Ricci* v. *Stefano, 2009*, the Supreme Court ruled that the city of New Haven, Connecticut, violated the rights of a group of white firefighters when it decided to discard the results of a recent promotion exam that was shown to have disparate impact.

the Supreme Court, in a 5–4 decision, ruled that if the city did not believe the test measured the right thing, it should not have been used and that the decision to throw out the results was simply a reaction to "racial statistics."

But there is a more interesting history involving various attempts by the University of Texas to include some type of affirmative action plan in the admission process. For many years, the university made admission decisions on the basis of a score based on standardized tests scores and high school academic performance, as well as applicant race. This plan was ruled unconstitutional in 1996, in *Hopwood* v. *Texas*,[18] because the Supreme Court ruled it violated equal protection laws and did not further any compelling government interests.

To comply with the *Hopwood* decision, the university then introduced a plan where, instead of considering race, the university considered a holistic measure of a candidate's potential contribution to the university, which would be used in conjunction with their academic achievements as above. This new "Personal Achievement Index" considered such factors as leadership, work experience, and community service, but also considered growing up in a single-parent home, speaking a language other than English at home, and the general socioeconomic conditions in the candidate's family. The university also expanded its outreach efforts to attract minority applicants. In addition, during this time, Texas passed a law stating that any student graduating in the top 10 percent of his or her high school class was automatically admitted to any public state college or university.

After the Supreme Court decision on the University of Michigan plan mentioned earlier,[19] the university adopted a new plan where race was again explicitly made part of the process as a "plus factor" in an overall admissions policy that considered an applicant's potential contribution to the university. This plan was implemented in 2004. However, the University of Michigan decision also included many restrictions on how the policy could be implemented, ultimately giving a great deal of weight to the university and its mission, but requiring the school to provide clear evidence of how their plan furthered government interests.

Ms. Fisher applied to the University of Texas in 2008, was denied admission, and sued for discrimination on account of her race (white). An appeals court upheld the university's plan, but, in 2013, the Supreme Court ruled that the University of Texas had not provided sufficient evidence that its plan furthered any government interests and so was not allowable, and the case was remanded back to a lower court for further consideration.[20] The lower court again sided with the University of Texas, and the case was sent back to the Supreme Court in late 2015.[21] All indications were that the Court was sharply divided on this issue, but, with the death of Justice Scalia in February of 2016, things changed. Justice Kagan recused herself because of earlier involvement in the case, and the Supreme Court then handed down a 4-3 decision upholding the admission plan from the University of Texas, which considers race as one factor in helping to increase diversity. The decision keeps limited affirmative action in university admissions alive, for the present.

> "But the issue of sexual harassment is not the end of it. There are other issues: political issues, gender issues, etc., that people need to be educated about."
>
> —ANITA HILL, AMERICAN ATTORNEY AND ACADEMIC

2-2d Sexual Harassment at Work

One final area of coverage for the Civil Rights Act that is critical to the human resource manager is sexual harassment. This area is particularly important in this context because much of the litigation and the organization's liability in these cases depend on the initial responses to charges of sexual harassment, and these responses are typically the responsibility of someone in HR. Sexual harassment is defined by the EEOC as unwelcome sexual advances in the work environment. If the conduct is indeed unwelcome and occurs with sufficient frequency to create an abusive work environment, the employer is responsible for changing the environment by warning, reprimanding, or perhaps firing the harasser.[22]

The courts have ruled that there are two types of sexual harassment and have defined both types. One type of sexual harassment is **quid pro quo harassment**. In this case, the harasser offers to exchange something of value for sexual favors. For example, a male supervisor might tell or imply to a female subordinate that he will recommend her for promotion or provide her with a salary increase, but only if she sleeps with him. Although this type of situation definitely occurs, organizations generally have no problem in understanding that it is illegal and in knowing how to respond.

But a more subtle (and probably more common) type of sexual harassment is the creation of a **hostile work environment**, and this situation is not always so easy to define. For example, a group of male employees who continually make off-color jokes and lewd comments and perhaps decorate the work environment with inappropriate photographs may create a hostile work environment for a female colleague to the point where she is uncomfortable working in that job setting. Most experts would agree that this situation constitutes sexual harassment. But the situation becomes more complicated if an employee walks by a colleague's workstation and sees a suggestive website or photo on their computer screen.

In *Meritor Savings Bank* v. *Vinson,* the Supreme Court noted that a hostile work environment constitutes sexual harassment, even if the employee did not suffer any economic penalties or was not threatened with any such penalties.[23] In *Harris* v. *Forklift Systems*, the Court ruled that the plaintiff did not have to suffer substantial mental distress to receive a jury settlement.[24] Hence, it is critical that organizations monitor the situation and be alert for these instances because, as noted, it is the organization's responsibility to deal with this sort of problem.[25]

Quid pro quo harassment is sexual harassment in which the harasser offers to exchange something of value for sexual favors.

A **hostile work environment** is one that produces sexual harassment because of a climate or culture that is punitive toward people of a different gender.

It is also worth noting that the courts have indicated that a firm has differential liability for sexual harassment depending on the relationship between the parties involved. Basically, the firm's level of liability increases significantly if the harassing employee is a supervisor; if the harassing employee is a coworker, the employer is only liable if it was negligent in controlling working conditions. In 2012, in the case of *Vance* v. *Ball State University*, however, the Supreme Court (in a split decision) ruled that an employee would be considered as a supervisor only if he or she is empowered by the employer to take tangible employment actions against the victim. This decision has been widely viewed as limiting a firm's liability for sexual harassment and potentially dampening employee willingness to file such charges.

Therefore, the HR manager must play a major role in investigating any hint of sexual harassment in the organization. The manager cannot simply wait for an employee to complain. Although the Court had ruled in the case of *Scott* v. *Sears Roebuck*[26] that the employer was not liable for the sexual harassment because the plaintiff did not complain to supervisors, the ruling in the *Meritor* case makes it much more difficult for the organization to avoid liability by claiming ignorance (although this liability is not automatic). This responsibility is further complicated by the fact that although most sexual harassment cases involve men harassing women, there are, of course, many other situations of sexual harassment that can be identified. Females can harass men, and in the case of *Oncale* v. *Sundowner,* the Supreme Court ruled unanimously that a male oil rigger who claimed to be harassed by his coworkers and supervisor on an offshore oil rig was indeed the victim of sexual harassment.[27] Several recent cases involving same-sex harassment have focused new attention on this form of sexual harassment.[28] Regardless of the pattern, however, the same rules apply: sexual harassment is illegal, and it is the organization's responsibility to control it.

An interesting issue related to sexual harassment suits came to light in a case at Northwestern University in 2014. An undergraduate student (Student A) brought charges against a faculty member, alleging that the (male) Professor B, sexually assaulted the (female) student during an evening that started out at an art exhibit. The university found the faculty member guilty of violating its sexual harassment policy, but the faculty member was not fired. Instead he had to forgo a pay raise and avoid social contacts with students. The student involved then brought suit against the university arguing that it had not done enough to deal with harassment. During this process, another faculty member (Professor C) reported to the university that she had been informed about another case of harassment by a different student (Student D). As a result, Professor B sued both Student A and Professor C for defamation. The interesting angle here is that Professor C is indemnified by the university because she is an employee, but Student A is not, so she will be liable if the defamation charges are substantiated. Although we do not know the final outcome, the case raises interesting issues about the willingness of a student (or other low power individual) to file sexual harassment charges if he or she might then be open to defamation charges. In this regard, it is also interesting to note that the University of Notre Dame has been under recent investigation by the Department of Education for allegations that sexual harassment victims were tormented by the university's complicated system for handling such cases.[29]

Sexual harassment in the workplace gained new attention in 2017 when allegations surfaced about powerful Hollywood producer Harvey Weinstein. In October 2017, actress Alyssa Milano urged other women in Hollywood who had been sexually harassed or assaulted to start spreading their stories with the hashtag #MeToo. In short order, hundreds of women had offered credible evidence of both harassment and assaults by Weinstein and other prominent entertainment industry executives and actors. The #MeToo movement has now spread to other industries and to over 85 other countries.

2-2e Other Equal Employment Opportunity Legislation

In addition to the Civil Rights Act of 1964, a large body of supporting legal regulations has also been created in an effort to provide equal employment opportunity for various protected classes of individuals. Although the 1964 act is probably the best known and most influential piece of legislation in this area, a new civil rights act was passed in 1991, and numerous other laws deal with different aspects of equal employment or are concerned with specific areas of work; these are discussed in this section. Some of them apply only to federal contractors, and these are discussed separately, whereas others apply more widely. We will discuss each one briefly here and again in the chapters where they are most relevant.

THE LILLY LEDBETTER FAIR PAY ACT OF 2009 The **Equal Pay Act** clearly outlaws differential pay for male and female employees doing essentially the same job. But, in 2007, the U.S. Supreme Court ruled against Lilly Ledbetter, overturning a lower court finding in her favor. Ms. Ledbetter was a production supervisor at Goodyear

Dirk Ercken/Shutterstock.com

for many years, but she came to realize that she was being paid 40 percent less than the lowest paid male supervisor. She sued in 1998, and, when her case finally came up for trial, a jury found that she had suffered from sex discrimination in her compensation and awarded her $3 million in back pay (this was reduced to $300,000 in accordance to a damages cap). But Goodyear appealed to the Supreme Court, where the company acknowledged that Ms. Ledbetter had been discriminated against *but* that the discrimination took place more than 180 days before the charges were filed. Thus, the case could not be raised because there was a 180-day limitation as part of the law. Goodyear furthermore argued that the 180-day limitation began when the discriminatory decision was actually made, rather than beginning when the employee received a paycheck. The Supreme Court agreed with Goodyear and took away Ms. Ledbetter's award. In a dissenting opinion, Judge Ginsburg pointed out that, after this decision, any firm, even admitting it was guilty of discrimination, would be free from suit if the discrimination occurred more than six months earlier. The new law corrected this and states that the clock for limitation begins with each paycheck—making it easier for employees to bring charges of discrimination. The new law also applies the same timetable to cases involving age discrimination or discrimination based on disability.[30]

THE EQUAL PAY ACT OF 1963 The **Equal Pay Act of 1963** requires that organizations provide the same pay to men and women who are doing equal work. The law defines equality in terms of skill, responsibility, effort, and working conditions. Thus, an organization cannot pay a man more than it pays a woman for the same job on the grounds that, say, the male employee needs the money more because his wife is sick and is incurring large medical bills. Similarly, organizations cannot circumvent the law by using different job titles for essentially the same work: if the work is essentially the same, then the pay should be the same as well. The law does allow for pay differences when there are legitimate, job-related reasons for pay differences, such as difference in seniority or merit.[31]

The Equal Pay Act of 1963 requires that organizations provide men and women who are doing equal work the same pay.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT The **Age Discrimination in Employment Act** (**ADEA**) was passed in 1967 and amended in 1986. The ADEA prohibits discrimination against employees 40 years of age and older. The ADEA is similar to Title VII of the 1964 Civil Rights Act in terms of both its major provisions and the procedures that are followed in pursuing a case of discrimination. Like Title VII, enforcement of the ADEA is the responsibility of the EEOC.

The ADEA was felt necessary because of a disquieting trend in some organizations in the early 1960s. Specifically, these firms were beginning to discriminate against older employees when they had to lay people off or otherwise scale back their workforce. By targeting older workers—who tended to have higher pay because of their seniority and experience with the firm—companies were substantially cutting their labor costs. In addition, there was some feeling that organizations were also discriminating against older workers in their hiring decisions. The specific concern here was that organizations

The Age Discrimination in Employment Act (ADEA) prohibits discrimination against employees age 40 and older.

would not hire people in their forties or fifties because (1) they would have to pay those individuals more based on their experience and salary history, and (2) they would have a shorter potential career with the organization. Consequently, some organizations were found guilty of giving preferential treatment to younger workers over older workers. These concerns have been raised again as firms deal with the economic downturn by reducing the size of their workforce. Firms that are downsizing must be aware of the implications of this legislation to ensure that their efforts are not differentially affecting older workers.

Mandatory retirement ages is the other area in which the ADEA has generated a fair amount of controversy. The Supreme Court has indicated that an agency or an organization may require mandatory retirement at a given age only if an organization could demonstrate the inability of persons beyond a certain age to perform a given job safely. However, in several decisions, the Court has indicated that it will interpret this BFOQ exception very narrowly. In fact, in *Johnson* v. *Mayor and City of Baltimore*, the Court ruled that not even a federal statute requiring firefighters to retire at age 55 would qualify as an exception to the law.[32]

As the workforce continues to age, the number of age-discrimination complaints seems to be growing rapidly.[33] Statistics released by the EEOC, for instance, indicate that age-discrimination complaints increased from 19,000 in 2007 to more than 24,000 in 2008; they are now almost as common as race-discrimination complaints (the most common type of complaint filed with the EEOC). Thus, it is interesting to note that the Supreme Court recently ruled that in age-discrimination cases, it is up to the worker to prove that age was the decisive factor in a decision made by the employer—even if there is evidence that age played some role in the decision (*Gross* v. *FBL Financial Services 08-441*, in June 2009). By making it more difficult to file these so-called mixed motive cases in ADEA charges, the Court has essentially made it much more difficult to demonstrate age discrimination. Leaders in Congress soon began working on a revised ADEA to deal with this issue, but that new legislation is a long way from becoming law.

THE PREGNANCY DISCRIMINATION ACT OF 1979

As its name suggests, the **Pregnancy Discrimination Act of 1979** was passed to protect pregnant women from discrimination in the workplace. The law requires that the pregnant woman be treated like any other employee in the workplace. Therefore, the act specifies that a woman cannot be refused a job or promotion, fired, or otherwise discriminated against simply because she is pregnant (or has had an abortion). She also cannot be forced to leave employment with the organization as long as she is physically able to work. A doctor in Pennsylvania was recently fired by her employer (a clinic) after missing several days of work because of pregnancy-related complications. She filed suit under this act, while the clinic countersued using other laws as a basis.[34]

The Civil Rights Act of 1991 makes it easier for individuals who feel they have been discriminated against to take legal action against organizations and provides for the payment of compensatory and punitive damages in cases of discrimination under Title VII.

THE CIVIL RIGHTS ACT OF 1991

The **Civil Rights Act of 1991** was passed as a direct amendment of Title VII of the Civil Rights Act of 1964. During the 25 years following the passage of the original act, the U.S. Supreme Court handed down several rulings that helped define how the Civil Rights Act would be administered. But in the course of its 1989 Supreme Court session, several decisions were handed down that many people felt seriously limited the viability of the Civil Rights Act of 1964.[35] In response to this development, the Civil Rights Act of 1991 was passed essentially to restore the force of the original act. Although some new aspects of the law were introduced as part of the Civil Rights Act of 1991, the primary purpose of this new law was to make it easier for individuals who feel they have been discriminated against to take legal action against organizations. As a result, this law also reinforced the idea that a firm must remain within the limits of the law when engaging in various HRM practices.

Specifically, the Civil Rights Act of 1991 prohibits discrimination on the job and makes it easier for the burden of proof to shift to employers (to demonstrate that they did not discriminate). It also reinforces the illegality of making hiring, firing, or promotion decisions on the basis of race, gender, color, religion, or national origin; it also includes the Glass Ceiling Act, which established a commission to investigate practices that limited the access of protected class members (especially women) to the top levels of management in organizations. For the first time, the act provides the potential payment of compensatory

and punitive damages in cases of discrimination under Title VII. Although the law limited the amount of punitive damages that could be paid to no more than nine times the amount of compensatory damages, it also allowed juries rather than federal judges to hear these cases.

This law also makes it possible for employees of U.S. companies working in foreign countries to bring suit against those companies for violation of the Civil Rights Act. The only exception to this provision is the situation in which a country has laws that specifically contradict some aspect of the Civil Rights Act. For example, Muslim countries often have laws limiting the rights of women. Foreign companies with operations in such countries would almost certainly be required to abide by local laws. As a result, a female employee of a U.S. company working in such a setting would not be directly protected under the Civil Rights Act. However, her employer would still need to inform her fully of the kinds of discriminatory practices she might face as a result of transferring to the foreign site and then ensure that when this particular foreign assignment was completed, her career opportunities would not have been compromised in any way.[36]

THE AMERICANS WITH DISABILITIES ACT OF 1990

The **Americans with Disabilities Act of 1990** (**ADA**) is another piece of equal employment legislation that has greatly affected HRM. The ADA was passed in response to growing criticisms and concerns about employment opportunities denied to people with various disabilities. For example, one survey found that of 12.2 million Americans not working because of disabilities, 8.2 million would have preferred to work. Similarly, another survey found that almost 80 percent of all managers surveyed found the overall performance of their disabled workers to be good to excellent. In response to these trends and pressures, the ADA was passed to protect individuals with disabilities from being discriminated against in the workplace.[37]

Specifically, the ADA prohibits discrimination based on disability in all aspects of the employment relationship such as job application procedures, hiring, firing, promotion, compensation, and training, as well as other employment activities such as advertising, recruiting, tenure, layoffs, leave, and benefits. In addition, the ADA requires that organizations make reasonable accommodations for disabled employees as long as they do not pose an undue burden on the organization. The act initially went into effect in 1992 and covered employers with 25 or more employees. It was expanded in July 1994 to cover employers with 15 or more employees.

The ADA defines a *disability* as (1) a mental or physical impairment that limits one or more major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment. Clearly included within the domain of the ADA are individuals with disabilities such as blindness, deafness, paralysis, and similar disabilities. In addition, the ADA covers employees with cancer, a history of mental illness, or a history of heart disease. Finally, the act also covers employees regarded as having a disability, such as individuals who are disfigured or who for some other reason an employer feels will prompt a negative reaction from others. In addition, the ADA covers mental and psychological disorders such as mental retardation, emotional or mental illness (including depression), and learning disabilities.

On the other hand, individuals with substance-abuse problems, obesity, and similar non-work-related

Goodluz/Shutterstock.com

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability in all aspects of the employment relationship such as job application procedures, hiring, firing, promotion, compensation, and training, as well as other employment activities such as advertising, recruiting, tenure, layoffs, and leave and fringe benefits.

characteristics may not be covered by the ADA.[38] But because the ADA defines disabilities in terms of limitations on life activities, myriad cases continue to be filed. For example, in recent years, workers have attempted to claim protection under the ADA on the basis of ailments ranging from alcoholism to dental problems! These activities have led some critics to question whether the ADA is being abused by workers rather than protecting their rights.[39]

The ADA Amendments Act (or ADAAA) of 2008 broadens the protection offered to persons with disabilities at work by defining certain disabilities as "presumptive," thus negating several court cases that had ruled certain persons having disabilities as not qualifying for coverage under the ADA.

In fact, the definition of a disability and what constitutes a "reasonable accommodation" pose the greatest potential problems for the HR manager. Individuals who are confined to wheelchairs, visually impaired, or have similar physical disabilities are usually quite easy to identify, but many employees may suffer from "invisible" disabilities that might include physical problems (e.g., someone needing dialysis) as well as psychological problems (e.g., acute anxiety) and learning disabilities (e.g., dyslexia). It is not always obvious who among a group of employees is actually eligible for protection under the ADA.[40]

One area of coverage where the courts and the EEOC (the agency charged with the administration of the ADA) have taken a fairly clear position deals with AIDS and HIV in the workplace. Both AIDS and HIV are considered disabilities under the ADA, and employers cannot legally require an HIV test or any other medical examination as a condition for making an offer of employment. In addition, organizations must maintain confidentiality of all medical records, strive to educate coworkers about AIDS, and accommodate or try to accommodate AIDS victims.

In addition, the reasonable accommodation stipulation adds considerable complexity to the job of human resource manager and other executives in organizations. Clearly, for example, organizations must provide ramps and automatic door-opening systems to accommodate individuals confined to a wheelchair.

At the same time, however, providing accommodations for other disabilities may be more complex. If an applicant for a job takes an employment test, fails the test (and so is not offered employment), and *then* indicates that he or she has a learning disability (for example) that makes it difficult to take paper-and-pencil tests, the applicant probably can demand an accommodation. Specifically, the organization would likely be required either to find a different way to administer the test or provide the applicant with additional time to take the test a second time before making a final decision. Likewise, an existing employee diagnosed with a psychological disorder may be able to request on-site psychological support.

Recently, another issue involved with granting accommodations has been identified.[41] The nature of many accommodations granted to employees is such that other employees who are not disabled and not requesting an accommodation are unlikely to be envious or resentful about the accommodation. But this is not the case for all requested accommodations. For example, a woman claimed that having every Friday off was the only accommodation that would help to reduce her stress at work.[42] What if the organization granted her that accommodation? Surely other employees would wonder why they could not have Fridays off, especially since stress is not typically a visible disability. This situation would lead to resentment and potentially to other problems. Therefore, although the ADA does not consider coworker reactions as relevant to determining whether or not an accommodation is reasonable, the knowledgeable human resource manager will at least think about how others might react to an accommodation when trying to deal with the legal requests of employees with disabilities.

But a series of court decisions have worked to actually narrow the protection offered by the ADA.[43] For example, in 1999, the U.S. Supreme Court ruled that individuals who can correct or overcome their disabilities through medication or other means are not protected by the ADA. Similarly, in 1999 (*Sutton* v. *United Airlines*), the Court ruled that a person suffering from heart disease who was taking medication to control that heart disease was not covered by the ADA. In 2002, in *Toyota Motor Manufacturing Company, Kentucky Inc.* v. *Williams*, the Court ruled that for persons to be disabled, they had to have conditions that precluded them from doing activities central to one's daily life. Thus, they ruled that Ella Williams was not disabled, even though her carpal tunnel syndrome and tendinitis prevented her from performing the assembly-line job she was transferred to because she was able to attend to her personal hygiene.

In an attempt to return to the original intent of the ADA, in September 2008, President Bush signed into law the new **Americans with Disabilities Amendments Act (ADAAA)**. In June 2009, the EEOC finally voted on a set of guidelines to be used with the new law. The new guidelines broaden the definition of disability for the ADA, countering recent court decisions that have tended to narrow the definition of disability for cases brought forward (which was the original impetus for the law). For example, the changes would include specifying major life activities to include walking, seeing, bending, reading, and concentrating. The new guidelines also include a list of presumptive disabilities that will always meet the definition of disability under the AADA, including blindness, deafness, cancer, multiple sclerosis, limb loss, and HIV and AIDS. Also, under the new guidelines, persons will be "regarded as having a disability" if they can show that they have been discriminated against because of real or perceived disabilities. There has also been an interesting development in this area, relative to federal contractors and subcontractors, which will be discussed shortly.

THE FAMILY AND MEDICAL LEAVE ACT OF 1993 The **Family and Medical Leave Act of 1993** was passed in part to remedy weaknesses in the Pregnancy Discrimination Act of 1979. The law requires employers with more than 50 employees to provide as many as 12 weeks of unpaid leave for employees (1) after the birth or adoption of a child; (2) to care for a seriously ill child, spouse, or parent; or (3) if the employee is seriously ill. The organization must also provide the employee with the same or comparable job on the employee's return.[44]

The law also requires the organization to pay the health-care coverage of the employee during the leave. However, the employer can require the employee to reimburse these health-care premiums if the employee fails to return to work after the absence. Organizations are also allowed to exclude certain key employees from coverage (specifically defined as the highest paid 10 percent), on the grounds that granting leave to these individuals would cause serious economic harm to the organization. The law also does not apply to employees who have not worked an average of 25 hours a week in the previous 12 months.[45] The FMLA was also amended in 2009 with the passage of the Supporting Military Families Act, which mandates emergency leave for all covered active-duty members.

The Family and Medical Leave Act of 1993 requires employers having more than 50 employees to provide as many as 12 weeks unpaid leave for employees after the birth or adoption of a child; to care for a seriously ill child, spouse, or parent; or if the employee is seriously ill.

Recently, there has been renewed interest in the provisions of the FMLA. Some of this has been generated by activists who argue that few employees can afford to take any meaningful time off work without pay, with some arguing that having a baby is the leading cause of "poverty spells" (times when income dips below the level needed to pay for basics) in the United States.[46] Furthermore, among 21 high-income economies, the United States is alone in not having mandated paid leave for maternity.[47] Much of this new interest was generated by Netflix when, in August 2015, the firm announced that it would offer up to one year *paid* leave for both parents when a child is born or adopted. This time could be taken on any schedule the employee wanted, and the emphasis here was that the leave was paid. Virgin Airlines had already offered a one-year paid leave at two European offices, but, following the Netflix announcement, other firms in the United States followed suit. For example, by November 2015, Google, Microsoft, YouTube, and Amazon all introduced or increased paid maternity leave—for both parents.

THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 The act was signed into law by President Clinton, sponsored by Senators Edward Kennedy and Orin Hatch, and was acclaimed by individuals on all sides of religious rights arguments as an important piece of legislation. The law[48] was passed, in essence, to reverse a 1990 Supreme Court ruling that set a looser standard for laws that restrict religious practices. The Constitution stated that the government must present a "compelling state interest" before it could take any action that restricted religious practices. The 1990 decision ruling stated that such restrictions were acceptable as long as they were not aimed at religious groups alone. The law restored the old standard preventing the federal government and the states from substantially burdening a person's exercise of religion unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. This law was critical for the Supreme Court decision in the Hobby Lobby case (discussed below), where the Court also ruled that a closely

held firm could be considered a person under the law. This law is likely to be much more important in the coming years as there are a number of pending court cases involving a clash between religious beliefs and government mandates in various areas. It is also likely to impact the HRM function as rules or policies implemented by firms might be challenged as restricting an employee's religious beliefs.

REGULATIONS FOR FEDERAL CONTRACTORS In addition to the various laws just described, numerous other regulations apply only to federal contractors. Note, however, that the definition of a federal contractor is quite broad. For instance, all banks (that participate in the U.S. Federal Reserve system) and most universities (that have federal research grants or that accept federal loans for their students) qualify as federal contractors. Executive Order 11246 was issued by President Johnson who believed that Title VII of the 1964 Civil Rights Act was not comprehensive enough. The order mirrors the Civil Rights Act in terms of outlawing discrimination but also requires federal contractors and subcontractors with contracts greater than $50,000 to file written affirmative action plans.

Executive Order 11478 was issued by President Nixon and required the federal government to base all employment policies and decisions on merit and fitness, specifying that race, color, sex, national origin, and religion should not be considered. The threshold for this order was all contracts over $10,000.

The **Vocational Rehabilitation Act of 1973** requires that all federal agencies, as well as federal contractors and subcontractors receiving $2,500 a year or more from the federal government, are required to engage in affirmative action for persons with disabilities. A new wrinkle was introduced in 2013, however, when the Office of Federal Contract Compliance Procedures (OFCCP), which oversees and enforces all these regulations, issued new guidelines, under Section 503 of the Vocational Rehabilitation Act. These new guidelines, which took effect in March of 2014, *only* apply to federal contractors and subcontractors (the definitions of which are also changing, as discussed later), but they require such contractors to implement affirmative action plans to recruit, hire, and improve job opportunities for individuals with disabilities. The guidelines also include a utilization goal of 7 percent individuals with disabilities for all job classifications. While these goals are not quotas, and there are no financial penalties if a firm does not meet these goals, any contractor not meeting the guidelines will be subject to closer scrutiny by the OFFCP. Finally, the guidelines stipulate that all employees can self-identify as having a disability at any time, before or after the employment offer. This information cannot be used for decision making and it cannot be used against the employer in any legal action. This information should be updated at least once every 5 years. The real challenge for contractors under these guidelines will be how to deal with persons with invisible disabilities, which were discussed earlier. These individuals are less likely to identify themselves as having a disability, and yet their doing so is critical for firms trying to reach the 7 percent utilization goals. It is interesting to note how these regulations move contractors in such a different direction than that which has been mandated by recent court decisions regarding other employers.

> The Vocational Rehabilitation Act of 1973 requires that executive agencies and subcontractors and contractors of the federal government receiving more than $2,500 a year from the government engage in affirmative action for disabled individuals.

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION Sexual orientation discrimination refers to being treated differently because of one's real or perceived sexual orientation—whether gay, lesbian, bisexual, or heterosexual. There is no federal law that prohibits discrimination on the basis of sexual orientation. Although federal employees are protected against such discrimination, any attempt to pass a law regarding all employees has failed.

Several states, however, do have laws against this type of discrimination. California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, as well as the District of Columbia, all have laws prohibiting discrimination on the basis of sexual orientation for both public- and private-sector jobs. In addition, many city and county ordinances are dealing with this issue.

Recent Supreme Court decisions dealing with same-sex marriage, discussed in Chapter 1, may signal some changes in the situation—most critically in the case of *Windsor* v. *U.S.* regarding the Defense of Marriage Act (DOMA). In that case, Edith Windsor was the major beneficiary and executor of the estate of her late wife, Thea Clara Spyer. The IRS told her that she owed more than $350,000 in estate taxes because she could not inherit the

way a spouse could in a traditional marriage (she would have paid nothing if she had been married to a man), citing the provision of DOMA as the basis for their decision. DOMA, signed into law in 1996 by Bill Clinton, states that for the purposes of deciding who receives federal benefits, marriage is defined as only between a man and a woman. The Supreme Court in a 5-4 decision ruled that DOMA placed an unfair burden on same-sex married couples and made a subset of state-sanctioned marriages unequal.

This decision did not make same-sex marriages legal in all states, but it did ensure that same-sex couples were entitled to all federal benefits (including tax benefits, pensions, and insurance benefits) afforded traditional couples. However, in June 2015, the Supreme Court ruled in *Obergefell* v. *Hodges*[49] that it is illegal for any state to refuse to allow, or to fully recognize same-sex marriages, this making the United States the 21st country to legalize same-sex marriages nationwide. The Supreme Court decision was split (5-4), with the late Justice Scalia calling the decision a "threat to American democracy," and reactions are also playing a role in the presidential race. Although much is still not clear, it seems as though pension rights and insurance benefits are two areas where this decision will have a significant impact upon HRM departments.

Currently, same-sex marriages are recognized in 13 states, plus the District of Columbia, and same-sex partnerships and unions are allowed in 10 more states, but 35 states still limit marriage to opposite-sex couples (New Mexico has no laws regarding same-sex marriages but recognizes out-of-state marriages). It is clear that public opinion has swung (slightly) in favor of recognizing same-sex marriages, and the Supreme Court decisions open the door to more states recognizing these marriages and perhaps to federal equal rights protection on the basis of sexual orientation. We will discuss this final implication later in Chapter 9.

But there are also issues beyond marriage for LBGTQ individuals. As noted in the last chapter, in June 2018, the Supreme Court ruled on whether a baker could refuse to bake a wedding cake for a gay couple.[50] Although the Supreme Court ruled in favor of the baker, their decision was quite narrow and, with several other cases awaiting Supreme Court decisions, the question of religious rights versus the rights of LBGTQ individuals, remains unsettled.

Transgendered individuals have faced an especially difficult time in our legal system. On March 23, 2016, the Public Facilities Privacy & Security Act, officially called An Act to Provide for Single-sex Multiple Occupancy Bathroom and Changing Facilities in Schools and Public Agencies and to Create Statewide Consistency in Regulation of Employment and Public Accommodations but commonly known as HB2, was signed into law in North Carolina. The law stated that in government buildings, individuals (such as students at state-operated schools) may only use restrooms and changing facilities consistent with the gender on their birth certificate. A new law revoking HB2 was passed in March of 2017, but this was only after major public outcry and boycotts from several businesses and the NBA.

But, in revoking the controversial bill, the North Carolina legislature stated that the regulation of public bathrooms and locker rooms would remain the purview of the state, and that no entity could pass antidiscrimination legislation that was contrary to decision by the state government. This was direct repudiation of the antidiscrimination bill passed by the city of Charlotte, which started the entire discussion and led to the passage of HB2. It is also noteworthy that, although North Carolina is the only state thus far that has enacted this type of legislation, Arizona tried (unsuccessfully) to pass a similar law in 2013, a number of other states have considered bathroom bills in 2015, and in 2017, 14 Republican state lawmakers in Texas introduced a bill that states nondiscrimination laws do not prohibit public and private institutions from limiting bathroom access based on someone's genitals.

Furthermore, in 2017, President Trump's Department of Justice argued that the Civil Rights Act of 1964 did not outlaw discrimination against transgendered persons per se.[51] This memo ran contrary to EEOC guidelines (and the EEOC had recently taken up a case of a transgendered man whose offer of employment was rescinded after his prospective employer became aware of his transgender identity, arguing that this conduct did violate Title VII of the Civil Rights Act of 1964), and also directly contradicted a memo issued by former Attorney General Eric Holder, which made explicit the DOJ's position that Title VII does protect transgendered employees.

This was after, earlier in the year, President Trump stated (via Twitter) that he had decided to bar transgender individuals from serving "in any capacity" in the U.S. armed forces, reversing a policy begun by the Obama administration last year.[52] His statement that the military would not allow or accept transgender service members was not based on any argument that these individuals were incapable of carrying out the mission of the military. Instead, the reason given was that the military could not be burdened with the tremendous medical costs and disruption that transgenders in the military would entail. It wasn't immediately clear what would happen to transgender service members now in the Army, Navy, Air Force, and Marines. Estimates vary widely that from about 1,300 to 16,000 members of the armed services are transgender.

But the year ended on a more positive note for transgendered individuals. After the president's social

media posts set off months of lawsuits and court cases, including 10 federal judges blocking his attempted ban, the Justice Department said the administration would not challenge the rulings,[53] but wait until an independent study by the Pentagon "of these issues" was released. Thus, as of January 1, the transgender ban was put on hold and is unlikely to be revived in the near future. This prediction about the future of the ban is based on the fact that Trump's proposal went against the military's own recommendations regarding transgender service members, which were arrived at as part of policy review that began in 2015 by the secretary of defense at the time, Ashton Carter. Under Carter, a Pentagon-commissioned study concluded that there were no reasons to exclude transgendered individuals from military service. The Obama administration then lifted the ban on transgender people serving in the military, permitting those already in the armed forces to be open about their gender identities and setting a date to allow the recruitment of openly transgender individuals. So, at least for now, transgendered individuals can remain.

2-2f Enforcing Equal Employment Opportunity

The enforcement of equal opportunity legislation generally is handled by two agencies. As noted earlier, one agency is the Equal Employment Opportunity Commission, and the other is the Office of Federal Contract Compliance Procedures. The EEOC is a division of the Department of Justice. It was created by Title VII of the 1964 Civil Rights Act and today is given specific responsibility for enforcing Title VII, the Equal Pay Act, and the Americans with Disabilities Act. The EEOC has three major functions: (1) investigating and resolving complaints about alleged discrimination, (2) gathering information regarding employment patterns and trends in U.S. businesses, and (3) issuing information about new employment guidelines as they become relevant.

Executive Order 11478 requires the federal government to base all of its own employment policies on merit and fitness and specifies that race, color, sex, religion, and national origin should not be considered.

The first function is illustrated in Figure 2.3, which depicts the basic steps that an individual who thinks she has been discriminated against in a promotion decision might follow to get her complaint addressed. In general, if an individual believes that she or he has been discriminated against, the first step in reaching a resolution is to file a complaint with the EEOC or a corresponding state agency. The individual has 180 days from the date of the incident to file the complaint. The EEOC will dismiss out of hand almost all complaints that exceed the 180-day time frame for filing. After the complaint has been filed, the EEOC assumes responsibility for investigating the claim itself. The EEOC can take as many as 60 days to investigate a complaint. If the EEOC either finds that the complaint is not valid or does not complete the investigation within a 60-day period, then the individual has the right to sue in a federal court.

If the EEOC believes that discrimination has occurred, then its representative will first try to negotiate a reconciliation between the two parties without taking the case to court. Occasionally, the EEOC may enter into a consent decree with the discriminating organization. This consent decree is essentially an agreement between the EEOC and the organization stipulating that the organization will cease certain discriminatory practices and perhaps implement new affirmative action procedures to rectify its history of discrimination.

On the other hand, if the EEOC cannot reach an agreement with the organization, then two courses of action may be pursued. First, the EEOC can issue a right-to-sue letter to the victim; the letter simply certifies that the agency has investigated the complaint and found potential validity in the victim's allegations. Essentially, that course of action involves the EEOC giving its blessings to the individual to file suit on his or her own behalf. Alternatively, in certain limited cases, the EEOC itself may assist the victim in bringing suit in federal court. In either event, however, the lawsuit must be filed in federal court within 300 days of the alleged discriminatory act. The courts strictly follow this guideline, and many valid complaints have lost standing in court because lawsuits were not filed on time. As already noted, the EEOC has recently become backlogged with complaints stemming primarily from the passage of the newer civil rights act. One recent court case that involved the implementation of a discriminatory seniority system was settled in such a way that it helped provide the grounds for amending Title VII to provide exceptions to the 300-day deadline for filing a lawsuit. In recent years, the EEOC has been working to better prioritize its caseload, giving the highest priority to cases that appear to have the potential for widespread or classwide effects.[54]