

## **The Need for Legal Knowledge in the Modern Business Environment**

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Under what circumstances can I pay my employees less than the federal minimum wage? Can I refuse to hire disabled people if they can do the job but their disabilities make them a bit less productive than non-disabled workers? Do I have to hire an employee with tattoos if the tattoos are part of a religious adherence? When does an affirmative action program go from being a good idea to a legal requirement? All of these questions require a knowledge of employment law.

The modern American body of employment law is complex, to say the least. The concept of states as testing grounds for new and different ideas is what makes our governmental model so great.

But it also means that large, nationwide businesses have to understand and adhere to 50 different systems of employment law (no two states are perfectly aligned). In addition, there are federal laws that take precedence across the entire country.

To make things even more difficult, employment laws are in a state of constant fluctuation. They change with the ebb and flow of political power shifts and ideological movements from state to state and region to region.

Knowledge of employment law is of particular importance for the leaders of business and industry today. Everyone makes mistakes, but in the world of employment litigation, even a small oversight can lead to class-action lawsuits and tremendous financial expenses.

### **Finding the Right Focus for Employment Law Expertise**

Some businesses focus all of their employment law expertise in the central hub of employment affairs: human resources. In these organizations, a manager with a question involving employment affairs consults the HR “experts” before taking action.

However, many times managers simply don’t know what they don’t know. They don’t know when to ask questions, because managers lack the fundamental understanding necessary to identify potential risks or concerns. This type of organizational model can lead to disaster.

Years ago, I served as the head of security for a large hotel. One day, I interviewed a young lady of Korean nationality for an officer position. After a thorough evaluation, I decided not to hire her. Her proficiency in English was so poor that she would have been unable to function in any customer-facing position within my department.

When word of my decision made its way to the company’s human resources team, I received an anxious phone call from an HR executive who demanded that I explain myself. She was

concerned because refusing to hire someone on the basis of his or her race, ethnicity or national origin is illegal discrimination under Title VII of the Civil Rights Act of 1964. Further, a person's accent has been determined in historical case law to be part and parcel of that person's identity in terms of race, ethnicity, and/or national origin (depending on the circumstances).

As an attorney, I knew (and the executive did not) is that there is an exception to Title VII for what is called "business necessity". If an employer can articulate a good-faith reason that making an adverse employment decision based on a protected class is necessary to the business's continuity, then such decisions generally are legally permissible.

### **The Business Necessity Defense**

In this case, there is a genuine question as to whether the "business necessity" defense would even be necessary. The issue was not the candidate's accent but rather her fluency in English, which is distinct from badges of race, ethnicity or national origin.

Even assuming that such a connection could be established, it would not be difficult for a business such as a hotel to defend a policy which requires security personnel to be fluent in English. Security personnel are responsible for responding to emergencies and communicating very serious and important information (e.g. evacuating a building, effecting arrests, etc.). Businesses cannot afford to risk that these types of critical messages might not be delivered clearly and effectively. After a thorough conversation, I reassured my counterpart that my decision created less legal liability for the hotel than the alternative of hiring someone who could not perform critical duties competently.

This is just one simple example, but these types of situations occur all the time. This is why it is so important that managers at all levels in organizations have at least a cursory knowledge of relevant employment laws at federal, state and local levels.

Knowledge truly is power, and this power should not be restricted to a select few within an organization. The more information that is shared and the more people with whom that information is shared, the less likely a business is to have to mitigate legal damage after a problem.

### **About the Author**

Dr. Gary Deel is an associate professor of Human Resource Management with American Public University. He holds a JD in law and a Ph.D. in Hospitality/Business Management. Gary spent more than 10 years in the hospitality industry, working in leadership within various areas including operations, sales, risk management and training.