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Affirmative Action Is More Complicated Than It Appears

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Sadly, many Americans don't have a clear understanding of what affirmative action is or why the concept exists. However, even among those who understand it, opinions on affirmative action are strongly divided.

Generally, [polls show that a slight majority of Americans favor the idea of affirmative action](#), although context strongly affects viewpoints. For example, opinions differ substantially regarding the application of affirmative action in hiring and employment versus its application in college admissions.

The aim of this article is not to advocate or criticize the use of affirmative action in general, but rather to demonstrate why the concept requires careful analysis of each unique situation. The obvious intent of affirmative action is to help balance the scales of opportunities for minorities and historically disenfranchised groups. However, the use of affirmative action in broad strokes can create just as much injustice as non-use.

What Is Affirmative Action?

Affirmative action is a social policy dating back to the mid-20th century that essentially requires active steps be taken to create equal opportunities for all people. These steps may include breaking down barriers to opportunity for traditionally disenfranchised groups *and* compensatory measures to promote disadvantaged populations.



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This idea was first put into action by President Kennedy through Executive Order 10925, which prohibited discrimination in government hiring based on race, creed, color or national origin. Later, President Johnson added gender to the list of protected classes.

Supporting lawmakers have always been careful to describe affirmative action as protecting all groups rather than giving special preference to specific disadvantaged groups. But again, part of affirmative action also involves rectifying past indiscretions that have caused an imbalance in opportunities.

A prime example of that imbalance would be the centuries of slavery and oppression that have indisputably put much of the African-American community at a significant social and economic disadvantage. In fact, an implicit focus of the inception of affirmative action was to curb racial discrimination against African-Americans.

In practice, what affirmative action often means is that, wherever applicants from disenfranchised populations are seeking opportunities and are as qualified as other applicants, they should be given special consideration. So if a black person and a white person both apply for the same job and they are equally qualified, affirmative action would suggest that, in the interest of rebalancing the scales of social opportunity, the black person ought to be hired.

How Much Affirmative Action Is Enough?

When affirmative action efforts are sufficient is a matter of debate. For instance, in hiring, how many historically disadvantaged applicants should an employer give preference or special consideration to before the disadvantage is ameliorated?

One commonly accepted way of looking at this issue is through the lens of community demographics. For example, in a community where one-third of the population is African-American, employers might aim to mirror that diversity level in their workforce demographics, assuming other relevant factors such as qualifications would allow such proportionality.

Who Is Required to Embrace Affirmative Action?

Pursuant to the Kennedy and Johnson executive orders, government employers and contractors are still required to adopt affirmative action [in their hiring practices](#). Some state governments have followed this lead with similar legislation as well.

In the private sector, however, affirmative action has always been a choice. As long as private companies do not discriminate against protected classes, they are not required to give them special consideration.

With or without affirmative action, there is potential liability. As a result, employer opinions on this practice are mixed. It's worth noting that [the Equal Employment Opportunity Commission \(EEOC\)](#) may impose a *mandatory* affirmative action program upon an employer to redress past discriminatory employment practices.

Affirmative action is not a requirement for colleges and universities, but many schools give special consideration in their admissions decisions to under-represented groups.

Who Doesn't Like Affirmative Action?

Given the benevolent intent of affirmative action, it might be hard to imagine why anyone other than overt racists and bigots would oppose such a policy. The problem is that hiring and admissions decisions often involve a limited number of opportunities. As such they are, in some sense, zero-sum games. Most times, in order for someone to *get* the job, others must be *denied* the job.

So while we might applaud the efforts of affirmative action to balance the scales of society in general, if you are the non-minority applicant who is turned down in favor of a minority applicant simply because he or she is a minority, it's understandable that you would feel disparaged by such a process. This is how the term "reverse discrimination" came about, denoting the observation that affirmative action has the effect of discriminating against majority groups in such decisions.

In theory, preference or special consideration should be given only to under-represented individuals when applicants' qualifications are truly equivalent. But unless you have two applicants with perfectly identical life experiences, it's hard to parse when such individuals are truly equally qualified. And this ambiguity catalyzes accusations from opponents of affirmative action that decisions are made to promote minorities *even when they are not equally qualified*.

When Is Affirmative Action a Good Idea?

The reality is there are places and times when affirmative action can do a lot of good. In the employment law classes that I teach, I often use the state of Georgia as an example. It so happens that the population of Georgia is approximately 30% black (more than double the national percentage). The other 70% is mostly white, with about 10% consisting of other racial demographics.

Imagine we operate a statewide business in Georgia that relies primarily on unskilled labor such that no special skills or experience are required and the average Georgian is eligible to work for us. And let's suppose we have a nice large workforce of 1,000 employees. If we were to look at our employment demographics and discover that our workforce is 85% white and 15% black, we might be concerned about a hiring problem.

It's important to note that these percentages don't necessarily mean our recruiters are racists. Often, biases in hiring are subconscious and unintentional. For example, [studies have shown](#) that recruiters without any self-awareness of prejudice will nonetheless give less consideration to resumes of applicants with African American-sounding names.

However, notwithstanding the underlying causes, this disparity between our workforce diversity (10% black) and the surrounding community (30% black) would be a strong indication that something isn't right. And assuming we don't find a legitimate reason why our demographics should be as skewed as they are, an affirmative action policy would be useful to rebalance the scales of [diversity](#) within the company.

When Is Affirmative Action Not a Good Idea?

Unfortunately, just because affirmative action can be useful in some circumstances does not mean that it will be useful in all circumstances. Let's go back to our example of Georgia. This time, imagine we operate a statewide hospital system that employs 1,000 doctors. Now, if our physicians' race demographics were 85% white and 15% black, as in the first example, we might reflexively think that we have the same problem.

However, in this scenario we must consider that the average Georgian is *not* eligible for the employment opportunities in our hospital. Rather, we need licensed, board-certified doctors. It turns out that among medical doctors in Georgia, [African-Americans account for less than 13%](#). We now see that, rather than an under-representation of black doctors, we are actually employing slightly *more* than the surrounding community would suggest is appropriate.

How Do We Know When Affirmative Action Makes Sense?

There is no easy or quick way to distinguish a situation when affirmative action will improve the status quo versus a situation in which it will worsen injustice and imbalance. Even in the Georgia examples above, there are additional considerations not discussed here, such as where specifically in Georgia do these businesses operate. Atlanta is very different demographically from rural Georgia, and this must be considered carefully. The point is that each affirmative action situation deserves careful attention to detail and a thorough investigation to understand what action (if any) is most appropriate.

About the Author

Dr. Gary Deel is a Faculty Director with the School of Business at American Public University. He holds a JD in Law and a Ph.D. in Hospitality/Business Management. He teaches human resources and employment law classes for American Public University, the University of Central Florida, Colorado State University, and others.