

## DISCUSSION QUESTIONS

1. Do you agree that the employer usually has the upper hand when it comes to establishing the employment relationship? When might the employee have maximum power over the employer?
2. What are the limitations of disparate impact statistics as indicators of potential staffing discrimination?
3. Why is each of the four situational factors necessary for establishing a claim of disparate treatment?
4. What factors would lead an organization to enter into a consent agreement rather than continue pursuing a suit in court?
5. What are the differences between staffing in the private sector and staffing in the public sector? Why would private employers probably resist adopting many of the characteristics of public staffing systems?

## ETHICAL ISSUES

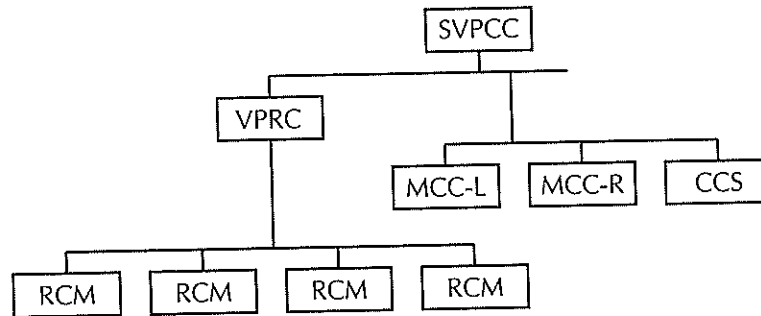
1. Assume that you're the staffing manager in an organization that informally, but strongly, discourages you and other managers from hiring people with disabilities. The organization's rationale is that people with disabilities are unlikely to be high performers or long-term employees and are costly to train, insure, and integrate into the work unit. What is your ethical assessment of the organization's stance? Do you have any ethical obligations to try to change the stance, and if so, how might you go about that?
2. Assume the organization you work for strictly adheres to the law in its relationships with employees and job applicants. The organization calls it "staffing by the book." But beyond that it seems anything goes in terms of tolerated staffing practices. What is your assessment of this approach?

## APPLICATIONS

### Age Discrimination in a Promotion?

The Best Protection Insurance Company (BPIC) handles a massive volume of claims each year in the corporate claims function, as well as in its four regional claims centers. Corporate claims is headed by the senior vice president of corporate claims (SVPCC); reporting to the SVPCC are two managers of corporate claims (MCC-Life and MCC-Residential) and a highly skilled corporate claims specialist (CCS). Each regional office is headed by a regional center manager (RCM): the

RCM is responsible for both supervisors and claims specialists within the regional office. The RCMs report to the vice president of regional claims (VPRC). Here is the structure of the organization:



BPIC decided to reorganize its claims function by eliminating the four regional offices (and the RCM position) and establishing numerous small field offices throughout the country. The other part of the reorganization involved creating five new CCS positions. The CCS job itself was to be redesigned and upgraded in terms of knowledge and skill requirements. These new CCS positions would be staffed through internal promotions from within the claims function.

The SVPCC asked Gus Tavus, a 52-year-old RCM, to apply for one of the new CCS positions since his job was being eliminated. The other RCMs, all of whom were over 40 years of age, were also asked to apply. Neither Gus nor the other RCMs were promoted to the CCS positions. Other candidates, some of whom were also over age 40, were also bypassed. The promotions went to five claims specialists and supervisors from within the former regional offices, all of whom were under age 40. Two of these newly promoted employees had worked for, and reported to, Gus as RCM.

Upon learning of his failure to be promoted, Gus sought to find out why. What he learned led him to believe that he had been discriminated against because of his age. He then retained legal counsel, attorney Bruce Davis. Bruce met informally with the SVPCC to try to determine what had happened in the promotion process and why his client had not been promoted. He was told that there were numerous candidates who were better qualified than Gus and that Gus lacked adequate technical and communication skills for the new job of CCS. The SVPCC refused to reconsider Gus for the job and said that all decisions were etched in stone. Gus and Bruce then filed suit in federal district court, claiming a violation of the Age Discrimination in Employment Act. They also subpoenaed numerous BPIC documents, including the personnel files of all applicants for the CCS positions.

After reviewing the documents and discussing things with Gus, Bruce learned more about the promotion process actually used by BPIC. The SVPCC and the two MCCs conducted the entire process; they received no input from the VPRC

or the HR department. There was no formal, written job description for the new CCS position, nor was there a formal internal job posting as required by company policy. The SVPCC and the MCCs developed a list of employees they thought might be interested in the job, including Gus, and then met to consider the list of candidates. At that meeting, the personnel files and previous performance appraisals of the candidates were not consulted. After deciding on the five candidates who would be offered the promotion (all five accepted), the SVPCC and MCCs scanned the personnel files and appraisals of these five (only) to check for any disconfirming information. None was found. Bruce's inspection of the files revealed no written comments suggesting age bias in past performance appraisals for any of the candidates, including Gus. Also, there was no indication that Gus lacked technical and communication skills. All of Gus's previous appraisal ratings were above average, and there was no evidence of decline in the favorability of the ratings. Finally, an interview with the VPRC (Gus's boss) revealed that he had not been consulted at all during the promotion process, that he was "shocked beyond belief" that Gus had not been promoted, and that there was "no question" but that Gus was qualified in all respects for the CCS job.

1. Prepare a written report that presents a convincing disparate treatment claim that Gus had been intentionally discriminated against on the basis of his age. Do not address the claim as one of disparate impact.
2. Present a convincing rebuttal, from the viewpoint of BPIC, to this disparate treatment claim.

### **Disparate Impact: What Do the Statistics Mean?**

Claims of discrimination can be pursued under an allegation of disparate impact. According to this approach, the effect or impact of staffing practices can be discriminatory and thus in violation of the Civil Rights Act. Such an impact could occur even though there may be no underlying intention to discriminate against members of a protected group or class (e.g., women or minorities). Pursuit of a disparate impact claim requires the use of various statistics to show that, in effect, women or minorities are being treated differently than men or nonminorities under the law.

Exhibit 2.5 shows three types of disparate impact statistics: flow statistics, stock statistics, and concentration statistics. Also shown is a statistical example of disparate impact for each type. For each of these three types of statistics, prepare a report in which you discuss the following:

1. How can an organization collect and report these statistics in the form shown in Exhibit 2.5?