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Fourteenth Amendment: A Definition

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Available labor market:

- Male = 81.2
- Female = 69.8
- or, 86 percent male

Example of a “No Adverse Impact” calculation:

African American

- 100 tested; 75 passed
- $75/100 = .75$

White

- 100 tested; 80 passed
- $80/100 = .80$

Adverse impact calculation

- $.75/.80 = .94$

USDOL, Bureau of Labor statistics:

- African American = .57
- White = .43
- or, 75 percent African American

Three points to consider when using the four-fifths rule to evaluate whether an adverse impact situation exists:

- Applying the four-fifths rule may prove to be inaccurate and misrepresent the rates of selections when sample populations are very small or extremely large.
- When no contention of adverse impact is made, the *Guidelines* do not require the employer to reveal the method or style of the assessment procedure(s) used.
- If a situation of adverse impact is found during the assessment process, the employer is required to eliminate the disparity or justify why the adverse impact cannot be eliminated.

See also Civil Rights Act of 1964 and 1991; Disparate Treatment/Disparate Impact;

Employment Testing; Harassment

Resources:

Edison Electric Institute, Adverse Impact, Dr. Robert Ramos, and Dr. Wanda Campbell.

HR-Guide.com. <http://www.hr-guide.com>.

U.S. Department of Labor, Bureau of Labor Statistics. <http://www.bls.gov>.

NOTES

1. Uniform Guidelines on Employee Selection Procedures, Sec 1607.3D
2. U.S. Department of Labor, Bureau of Labor Statistics, 41 CFR 60-3.3, February 2, 2007.

Dean Nelson

FOURTEENTH AMENDMENT

The Fourteenth Amendment was added to the U.S. Constitution in 1868. The initial intent of this amendment was to establish and guarantee equal rights after the Civil War. The Fourteenth Amendment prohibits discriminatory and unfair actions by the

government. Three specific areas of the Fourteenth Amendment are applicable to organizations today—the Privileges and Immunities Clause, the Equal Protection Clause, and the Due Process Clause.¹

Privileges and Immunities Clause

The Privileges and Immunities Clause prohibits individual states from establishing laws that discriminate against citizens of other states. For example, it is unconstitutional for one state to establish a law that would prevent a citizen of another state to establish a business in the state. The purpose of this clause was to promote a national allegiance rather than solely a state allegiance.²

Equal Protection Clause

The Equal Protection Clause focuses on equal legal protection of persons within a state. A state cannot discriminate or “deny to any person within its jurisdiction equal protection of the laws.” It should be noted that this clause protects against states establishing different laws for “similarly situated” persons. The term similarly situated means people in like situations.³

Due Process Clause

Both the Fifth and Fourteenth amendments describe and protect due process. The Due Process Clause ensures that no one shall be deprived of “life, liberty, and/or property” without following the process as outlined in the law. There are two types of due process. Substantive due process refers to due process with regard to laws, ordinances or other regulations as they are written. These types of legal codes must be written in specific, not general, terms. The second type of due process relates to procedural process. Procedural process requires notice and proper steps being followed.⁴

Section 1 of the Fourteenth Amendment

“Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁵

Applicability to the Workplace

Section 1 above most directly relates to the workplace and human resources today. The Fourteenth Amendment made it a requirement that states could not deprive any person of “life, liberty, or property without due process of law;” or, deny any person equal protection. While this amendment was initially written as a response to the abolition of slavery, it has come to be a founding principle of many work practices. Under the Liberty of Contract tenet, labor laws were founded and supported with precedent-setting cases. Such laws regulate hours of labor, labor in mines, payment of wages, minimum wage, workers’ compensation, and collective bargaining, each of which has its basis in the due process

clause of the Fourteenth Amendment.⁶ While due process has its origins in the Fifth Amendment, the Fourteenth Amendment actually requires the states to ensure due process.

Conclusion

The Fourteenth Amendment contains multiple foci, as it outlines certain freedoms and restrictions. Specifically, the Fourteenth Amendment was established to protect freedom of individuals after the Civil War. It has been applied, over time, to represent and protect individual freedoms relating to due process, equal protection, and privileges and immunities in the workplace.

See also Fifth Amendment; Privacy Rights

NOTES

1. FindLaw, “Fourteenth Amendment,” <http://caselaw.lp.findlaw.com/data/constitution/amendment14/> (accessed January 15, 2008).

2. Constance E. Bagley, *Managers and the Legal Environment*, 4th ed. (Mason, OH: Thomson South-Western, 2006).

3. Henry Cheeseman, *Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues*, 6th ed.; Bagley, *Managers and the Legal Environment*.

4. *Ibid.*

5. Findlaw, “Fourteenth Amendment.”

6. *Ibid.*

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FOURTH AMENDMENT

The Fourth Amendment guarantees “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹

The Fourth Amendment is part of the Bill of Rights. It was originally established as a result of colonial Americans being searched and property seized by the British. The Fourth Amendment focuses on reasonable expectations of privacy, searches and seizures, and searches incidental to arrest. It should be noted that searches and seizures relate to government officials, usually peace officers, and are not binding upon other organizations or citizens.

Reasonable Searches and Seizures, and Expectations of Privacy

The Fourth Amendment only applies to criminal law. Civil law is excluded under this amendment (*Murray v. Hoboken Land*, 1855). Reasonable expectation of privacy relates to “what a reasonable person would expect to be kept private.” This previous phrase is the litmus test for establishing privacy. For example, would it be reasonable for a person to expect privacy sitting in an open park? Would this person’s expectation of privacy be