

The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission

Background

In the 1960s, Americans who knew only the potential of "equal protection of the laws" expected the president, the Congress, and the courts to fulfill the promise of the 14th Amendment. In response, all three branches of the federal government--as well as the public at large--debated a fundamental constitutional question: Does the Constitution's prohibition of denying equal protection always ban the use of racial, ethnic, or gender criteria in an attempt to bring social justice and social benefits?

In 1964 Congress passed Public Law 88-352 (78 Stat. 241). The provisions of this civil rights act forbade discrimination on the basis of sex as well as race in hiring, promoting, and firing. The word "sex" was added at the last moment. According to the *West Encyclopedia of American Law*, Representative Howard W. Smith (D-VA) added the word. His critics argued that Smith, a conservative Southern opponent of federal civil rights, did so to kill the entire bill. Smith, however, argued that he had amended the bill in keeping with his support of Alice Paul and the National Women's Party with whom he had been working. Martha W. Griffiths (D-MI) led the effort to keep the word "sex" in the bill. In the final legislation, Section 703 (a) made it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin." The final bill also allowed sex to be a consideration when sex is a bona fide occupational qualification for the job. Title VII of the act created the Equal Employment Opportunity Commission (EEOC) to implement the law.

Subsequent legislation expanded the role of the EEOC. Today, according to the *U. S. Government Manual of 1998-99*, the EEOC enforces laws that prohibit discrimination based on race, color, religion, sex, national origin, disability, or age in hiring, promoting, firing, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment. Race, color, sex, creed, and age are now protected classes. The proposal to add each group to protected-class status unleashed furious debate. But no words stimulate the passion of the debate more than "affirmative action."

As West defines the term, affirmative action "refers to both mandatory and voluntary programs intended to affirm the civil rights of designated classes of individuals by taking positive action to protect them" from discrimination. The issue for most Americans is fairness: Should the equal protection clause of the 14th Amendment be used to advance the liberty of one class of individuals for good reasons when that action may infringe on the liberty of another?

The EEOC, as an independent regulatory body, plays a major role in dealing with this issue. Since its creation in 1964, Congress has gradually extended EEOC powers to include investigatory authority, creating conciliation programs, filing lawsuits, and conducting voluntary assistance programs. While the Civil Rights Act of 1964 did not mention the words affirmative action, it did authorize the bureaucracy to make rules to help end discrimination. The EEOC has done so.

Today the regulatory authority of the EEOC includes enforcing a range of federal statutes prohibiting employment discrimination. According to the [EEOC's own Web site](#), these include Title VII of the Civil Rights Act of 1964 that prohibits employment discrimination on the basis of race, color, religion, sex, or national origin; the Age Discrimination in Employment Act of 1967, and its amendments, that prohibits employment discrimination against individuals 40 years of age or older; the Equal Pay Act of 1963 that prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions; Title I of the Americans with Disabilities Act of 1990 that prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government; the Civil Rights Act of 1991 that provides for monetary damages in case of intentional discrimination; and Section 501 of the Rehabilitation Act of 1973, as amended, that prohibits employment discrimination against

federal employees with disabilities. Title IX of the Education Act of 1972 forbade gender discrimination in education programs, including athletics that received federal dollars. In the late 1970s Congress passed the Pregnancy Discrimination Act. This made it illegal for employers to exclude pregnancy and childbirth from their sick leave and health benefits plans.

Presidents also weighed in, employing a series of executive orders. The first use of the phrase "affirmative action" in an executive order appeared in March 1961, when President John F. Kennedy signed E.O. 10925. President Lyndon B. Johnson ordered all executive agencies to require federal contractors to "take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, or national origin." A 1969 executive order required that every level of federal service offer equal opportunities for women, and established a program to implement that action. President Richard Nixon's Department of Labor adopted a plan requiring federal contractors to assess their employees to identify gender and race and to set goals to end any under-representation of women and minorities. By the 1990s Democratic and Republican administrations had taken a variety of actions that resulted in 160 different affirmative action federal programs. State and local governments were following suit.

The courts also addressed affirmative action. In addition to dealing with race, color, creed, and age, from the 1970s forward, the court dealt with gender questions. It voided arbitrary weight and height requirements (*Dothard v. Rawlinson*), erased mandatory pregnancy leaves (*Cleveland Board of Education v. LaFleur*), allowed public employers to use carefully constructed affirmative action plans to remedy specific past discrimination that resulted in women and minorities being under-represented in the workplace (*Johnson v. Transportation Agency, Santa Clara County*), and upheld state and local laws prohibiting gender discrimination.

By the late 1970s all branches of the federal government and most state governments had taken at least some action to fulfill the promise of equal protection under the law. The EEOC served as the agent of implementation and complaint. Its activism divided liberals and conservatives, illuminating their differing views about the proper scope of government. In general, the political liberals embraced the creation of the EEOC as the birth of a federal regulatory authority that could promote the goal of equality by designing policies to help the historically disadvantaged, including women and minorities. In contrast, political conservatives saw the EEOC as a violation of their belief in fewer government regulations and fewer federal policies. To them, creating a strong economy, free from government intervention, would produce gains that would benefit the historically disadvantaged. Even the nonideological segment of the American population asked: What should government do, if anything, to ensure equal protection under the law? In fiscal year 1997, the EEOC collected \$111 million dollars in financial benefits for people who filed claims of discrimination. Its recent successful efforts include a \$34 million settlement in a sexual harassment case with Mitsubishi Motor Manufacturing of America, resulting in the company's adoption of changes to its sexual harassment prevention policy. Working with state and local programs, the EEOC processes 48,000 claims annually.