

## Part I

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To borrow a phrase, workplace diversity has had a long past but a short history. Concerns about and efforts to address equal employment opportunity have been part of the American business milieu for 40 years, and debated in public and private forums for many years before. But recognition that diversity could be a valuable asset for organizational growth and development has only been articulated in the last decade and a half. The landmark, but often misunderstood, study by the Hudson Institute, *Workforce 2000* (Johnston and Packer, 1987), has been cited as the impetus for starting the “diversity craze” in both the United States and abroad. Since then, scholars in many disciplines, including management, psychology, sociology, economics, and others, have helped to articulate important concepts needed to better understand and manage the dynamics of workplace diversity, as well as to conduct empirical research that helps to inform these practices.

The chapters in this section elucidate the current state of knowledge about the forces that shape workplace diversity scholarship and management. Chapter 1 examines definitions of diversity, as well as demographic, economic, legislative, and business realities that help explain why workplace diversity scholarship and management has become a modern imperative. Chapter 2 takes a critical look at the backlash against diversity scholarship and management. Myths and misguided metaphors are exposed and re-examined under the lens of modern prejudice. Taken together, these chapters prepare both the student and the seasoned scholar for a more in-depth examination of the exciting domain of diversity in the workplace.



# WHY NOW? THE CONTEMPORARY FOCUS ON MANAGING DIVERSITY

*Rosemary Hays-Thomas*

This chapter introduces the concepts of diversity and its management, reviewing several factors that have brought these issues to prominence in business and scholarship. It reviews narrow and broad definitions of diversity and the implications of each, distinguishing diversity from the concepts of equal employment opportunity and affirmative action. Diversity management has become a concern because of real and perceived changes in the demographic makeup of the workforce. Other important changes in the economy and the nature and context of work include globalization, growth of the service sector, increased use of electronic technology and team approaches, frequent organizational mergers, and the dramatic increase in contingent employment. The chapter also reviews the impact of federal law and regulation, including Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, affirmative action policies, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and sexual harassment law. In sum, good diversity management has emerged as a “bottom line” issue that many believe is critical to the productivity and effectiveness of contemporary organizations.

“It’s hard to define what diversity is because everyone has an opinion.”

(From an advertisement for Goldman Sachs found in the now-defunct *Working Woman* magazine, October 2000: 37)

During the last decade of the twentieth century, the term “diversity” grew in frequency in business magazines, the popular media, trade books, and eventually in scholarly journals and texts. The cover of the June, 1990 *HR Magazine* announced

its feature article, "Diversity in the Workplace" (Lewan, 1990) by stating that leadership by human resources professionals could turn the "perceived disadvantage" of diversity into an "organizational strength." Subsequently a survey conducted by the Society for Human Resource Management (SHRM) found that among Fortune 500 firms, three out of four reported they had "diversity programs" and 8 percent more were planning to implement them within the next year ("SHRM releases new survey," 1998). The American Management Association published a popular trade book, *Beyond Race and Gender*, in which the noted consultant Dr. R. Roosevelt Thomas, Jr., maintained that "diversity includes everyone" (Thomas 1991: 10). A book called *Diversity in the Workplace* by industrial/organizational psychologist Dr. Susan Jackson and Associates (1992) described a range of diversity-related programs in business and public sector agencies, set in perspective by scholarly introductory and concluding chapters. And the number of empirical studies addressing the effects of homogeneity/heterogeneity on workplace outcomes showed a dramatic fourfold increase in the last quarter of the century. According to Wise and Tschirhart (2000: 390), "Although it is still relatively sparse, scholarly research on diversity appears to have gained legitimacy, appearing in top-ranked journals in the 1990s."

What is this thing called "diversity," and how did it come to be such a popular topic in psychology, management, and public discourse? Furthermore, what is diversity management? And why is it so highly touted at a time when there appears to be increasing backlash against one program that has effectively increased diversity: affirmative action (Chavez, 2000)? Panel 1.1 addresses the relationship of equal employment opportunity, affirmative action, and diversity management and presents a thought-provoking case that illustrates the controversial nature of these matters in a contemporary university.

### 1.1 *Sorting out terms: EEO, affirmative action, and diversity*

Many people are not sure whether and how these three terms differ. Sometimes they are used together or interchangeably in the media or everyday conversation (Cox, 1997). In fact, they are quite distinct in meaning and should be distinct in application. Although related, the three terms differ in origin, referents, and underlying assumptions.

The phrase "equal employment opportunity" (EEO) comes from US federal law and regulation and can be considered a *goal state* in which everyone has an equal chance at employment regardless of race, sex, religion, national origin, or other specified attributes that are not job related. Discrimination is prohibited, but proactive procedures are not required. In theory, this condition could be reached; however, in actuality this condition does not now exist. EEO assumes that different groups of people should be treated "equally," that rewards should be based on "merit," and that decision-makers should be blind to the sex or ethnicity of applicants and employees (Yakura, 1996).

Affirmative action originated in executive orders and federal regulation (see chapter 13 for affirmative action-type programs in other nations). It is a *tool* that can be used to attain equal employment opportunity. In contradiction to EEO, affirmative action proactively *requires* decision-makers to pay attention to characteristics like sex or ethnicity to determine if they affect employment consequences. Special actions, such as hiring the ethnic minority candidate when applicants appear to have equal qualifications, are considered appropriate requirements to remedy the effects of past discrimination and thus attain equal opportunity.

The terms “valuing” and “managing diversity” are rooted in scholarship and practice rather than law. Academic researchers, consultants, and human resource professionals use this term in discussing attitudes, behaviors, intergroup relations, and the procedures and culture of organizations as they relate to significant differences among people. This framework assumes that individuals are unique, and that differences are (or can be) a bottom-line asset to organizations. It does not focus only on those target attributes or group memberships that are listed in law or regulation, but aims at the inclusion of everyone (Yakura, 1996). “Valuing” diversity usually pertains to activities designed to increase information and acceptance of cultural differences. “Managing diversity” is a broader term, which refers to a variety of interventions aimed at overcoming the potential costs of workplace differences so that they become a source of strength for the organization. See below for a fuller explanation of the meaning of diversity.

*What’s wrong with this picture?*

“Diversity at What Cost?” shouts the headline on the first page of the *Chronicle of Higher Education*, a weekly publication for and about universities and colleges. The article (Wilson, 2002) describes the “aggressive push” of new procedures at a southern public university with a military and technical tradition, aimed at “diversifying” the faculty by increasing the proportion of hires who are female or members of ethnic minorities. The associate dean of the college of arts and sciences is pictured next to a caption that proclaims, “Under (her) leadership, nearly all faculty hires in . . . Arts and Sciences this year were female or minority scholars” (p. A1). The feature article, “Stacking the Deck for Minority Candidates?” tells us about the first Black man to be appointed to a tenure-track position in the foreign language and literature department at the university. The first line of the article says that if it were not for efforts to increase the diversity of the faculty, he probably would not be at this university.

The article’s first description of the associate dean says that she attended a segregated high school, mentions her “deep-red fingernail polish, long curly hair, jangling earrings, and chain-link belt” (p. A11), and describes

her as “part cheerleader and part bulldozer.” The first information about the Black faculty member describes “gaffes” that occurred in his campus interview. His “demands for perfect pronunciation” as guest instructor in a Spanish class “intimidated” some female students who left in tears. He made a “factual error” about the date of publication of another scholar’s work – although this may have resulted from a question beyond his area of expertise. Other department faculty are quoted as saying that before the new rules, he would have been eliminated after this experience. “The reason (he) got the job is because he’s black” (p. A10). There also were concerns about one journal in which the candidate had frequently published, and about the fact that he had been tenured but not promoted at his previous university.

The hiring rules which the associate dean “helped push through” include a requirement that each search committee must itself include women and/or minorities. If the dean determines that the committee lacks diversity, it can be reconstituted by including persons from other departments or even other universities. The search committee chair must review information from candidates to ensure that minority and female applicants are in the pool. If there are too few, the committee may be asked to search more extensively. The dean’s office reviews applications of “diverse” candidates; if none of them appears among the search committee’s choices of candidates to be interviewed, the committee must provide an explanation. Finally, the dean and the department chairman (*sic*) choose the top candidates and make the job offer. A graph accompanying the article shows that 88 percent of tenure-track hires in the last academic year were “diversity hires,” that is, not White males. Over the last five years, 54 hires were White males and 52 (almost half) were women and/or people of color.

The new Black faculty member is quoted as saying, “I don’t want anyone giving me any crap or thinking, he got the job because he’s black. You hire me because of my color, and I find that out, I’m out of here tomorrow. Period” (p. A10).

#### *Midpoint thought questions*

- 1 What do you think of “diversity” from this case example?
- 2 What does “diversity” mean? Is this fair? Is it legal? Who benefits from these procedures? Is this how universities ought to operate?
- 3 What do you think of the associate dean? What do you think of the Black faculty member? And why does our introduction to the associate dean comment on her appearance?

After you have answered these questions, please turn to p. 7 for more information about the associate dean, the Black faculty member, and the diversity culture at this university.

*The rest of the picture*

To develop a fuller understanding of this situation, you should understand that provisions for diverse search committees and certification of applicant pools are fairly standard hiring procedures at most universities. A second chart in the *Chronicle* article shows that over the last four years, faculty of the college of arts and sciences have numbered between 437 and 473. Women have only increased from 20 percent to 23.5 percent of the faculty during this time, despite the new “diversity” rules and the fact that most retirees in those years would certainly have been White men. Non-Whites (of either sex) increased from 7.7 percent to only 10.8 percent – only 47 of 437 faculty members. Comparison of the two charts shows that in four of the last five years, White males were the largest group of new hires. In a typical year, 25–8 faculty would be hired in the college, but only eight faculty were hired in total in the last year when 88 percent of new faculty were “diversity hires.” The “88 percent” consisted of only seven people: two White females, two Blacks (one of each sex), two Asian males, and one Hispanic male.

The associate dean, who holds a doctorate in psychology, helped to set up multicultural affairs offices at two other universities before moving to this one. She has just been hired as the associate provost (a higher level than associate dean) for diversity and dual careers at a large midwestern state university. In response to criticisms from White male department chairmen that she attends to color over quality of job applicants, she says, “Every white man that holds a position (here) is not a rocket scientist . . . They have been privileged by their maleness and their whiteness, while others were being discriminated against and excluded” (p. A11). Her picture on the first page of the *Chronicle* shows a pleasant-faced woman of color, wearing a crisp white tailored jacket and black top, pearl necklace, and stylish earrings that can just barely be seen, sheltered by her thick dark hair. Her belt cannot be seen in the photograph.

Later in the article, we learn that when the Black faculty member was hired, the job was first offered to a White woman who turned it down. The third and only other finalist was a White man whose doctoral degree was not yet completed. However, he was “received very well and people were very comfortable with him.”

A later edition of the *Chronicle* contains an informative letter from the department chair who supervised the Black faculty member at his previous university (Doyle-Anderson, 2002). She explains that he is a native of the African country of Ghana and is expert not only in Spanish but also in African languages. She also explains that his scholarship appears in the journal for which it is most appropriate, and that at his previous university most faculty are tenured and then promoted at a later date – exactly the pattern followed by the minority faculty member. His former chair says she

was “appalled” by the “misleading” statements about the Black faculty member that appeared in the original article.

So: the Black faculty member’s credentials included a completed doctorate, prior successful teaching experience, publications, and expertise in more than one modern language – including African languages. He won out over a White candidate who had not yet graduated or previously held a faculty position, presumably had less teaching experience, but with whom the current faculty were “comfortable.”

And what do we learn about the environment at this university that might help us to understand the context surrounding these new hiring procedures? In another department a faculty member of Hispanic ethnicity was asked to add a hyphen to his name and to make this alteration with the Social Security Administration (SSA) in order for the university’s computer system to process it. (He did put in the hyphen with the university, but not with the SSA.)

One of the science departments has no Black faculty. The chair of the department, after the associate dean “lowered the boom,” acted to diversify search committees but was still unable to identify and hire minority faculty. Out of “desperation,” he arranged a lunch at the Cracker Barrel restaurant with a scientist from a historically Black university who was traveling through the area in order to “feel (him) out . . . about a possible job” but found him to have “no charisma and (be) totally self-absorbed” (p. A12). Perhaps this department chair was unaware that this restaurant chain was the target of federal lawsuits alleging systematic racial discrimination against African-American employees (Battaglia, 1999) and customers (“Cracker Barrel customers sue,” 2001).

#### *More thought questions*

- 1 What might the African-American science professor think about being asked to stop for lunch at this particular restaurant by a department chair he had never met, for an unspecified purpose?
- 2 Would you change the ethnic spelling of your name in order to accommodate the computer system of a university?
- 3 Did your images of the associate dean and the Black faculty member change after reading the second half of this commentary?

#### *Discussion questions*

- 1 Identify elements of affirmative action in this example. Is there justification for developing proactive measures to diversify the faculty at this university? If so, what is it?

- 2 How is “merit” defined in this situation? By the associate dean? By the science department chair? By the faculty just after the language professor’s interview?
- 3 What should be the focus of “managing diversity” efforts in this context? Have efforts been targeted at the organization’s culture? Should they be?
- 4 Does the diversity of the student body imply anything about the diversity of the faculty at a university? (Note: the Supreme Court is currently wrestling with this question.)
- 5 If you were working with departments to assist them in becoming more inclusive, what strategies might you recommend?

## DEFINING BASIC TERMS

It doesn’t take much reading or much conversation with managers, employees, consultants, and scholars to discover that the words “diversity” and “diversity management” connote different things to different people. Some definitions stress specific groups, while others do not. Some definitions emphasize power differentials, whereas others remain mute on the issue of power.

Definitions that focus on differences among employees (or potential employees) in terms of membership in particular demographic groups such as racial, ethnic, or gender categories have long been popular among diversity consultants. When Cox (1994: 6) says, “cultural diversity means the representation, in one social system, of people with distinctly different group affiliations of cultural significance,” he focuses on racioethnicity, gender, and nationality as the bases for difference. He does so because he believes these dimensions to be particularly important in social interaction, because these bases of identity (unlike religion or age) do not change, and because there is substantial social science research on on these dimensions.

Others of the same orientation as Cox also focus on differences between specific groups to draw attention to the harsh consequences of power imbalances. Such imbalances historically have been quite severe and have affected large numbers of people in our society; they also have been sensitive to discuss and extremely difficult to alter. Thus, the diversity consultant Elsie Cross, who identifies herself as a small black woman, says, “When people today tell me that managing diversity is about ‘all kinds of difference’ I just look at them with amazement. Obviously, all difference is not treated the same” (Cross 2000: 23). Similarly, Linnehan and Konrad (1999) argue powerfully against the tendency to treat all dimensions of difference as if they were equivalent, for they are opposed to any loss of focus on the contamination of intergroup relations by privilege, power inequality, and stigmatization. An emphasis on demographic group membership in

understanding diversity has also come about because many “managing diversity” programs have developed in the context of the social policy of affirmative action, or of civil rights laws such as Title VII of the Civil Rights Act of 1964. In many organizations the individuals charged with managing diversity are also the EEO/AA managers, or the two functions may be located in the same office. The legal context emphasizes membership in “protected categories,” that is, groups enumerated in and covered by law or regulation, as the basis for recourse. Thus most legal remedies for unfair discrimination at work require that we identify people in terms of their demographic group memberships. It is ironic that in order to use legal means to reach a condition of equal treatment regardless of group membership, we must begin by categorizing people into groups.

Recently, a number of scholars and consultants have moved away from the focus on specific definitions toward more abstract conceptualizations. Jackson, May, and Whitney (1995: 217) define diversity as “the presence of differences among members of a social unit.” For Roosevelt Thomas (1996), diversity refers to the similarities and differences among individuals in a collection, whether they are employees, jelly beans, competitor companies, organizational products or functions, strategic priorities, or any other complex mixture. Diversity increases as the number and variety of the elements in the mixture increase.

Advocates of the broader definition of diversity tend also to define “diversity management” in inclusive ways. In the spirit of inclusiveness, and also to gain the support of White men, researchers and practitioners like diversity consultant Roosevelt Thomas note that effective diversity management does not benefit one group over others. “Managing diversity,” says Thomas, “is a comprehensive managerial process for developing an environment that works for all employees” (1991: 10).

Inclusive definitions may help people remember that diversity is not a code word for affirmative action (Ivancevich and Gilbert, 2000; SHRM, 2002). In a survey of employees in a regional office of a federal agency, fully 45 percent of White men believed that “Diversity management is the current terminology for affirmative action” (Soni, 2000: 399). Surprisingly, 18–28 percent of minority and/or female respondents shared that view! When diversity management appears to be a way of sneaking quotas into business, resentment and backlash are likely to be common responses (Hemphill and Haines, 1997).

The broad definitions of diversity and of diversity management also lead us to consider the relevance of social science research that might otherwise be overlooked. For example, there is a long history of research in the field of group dynamics on the effects of heterogeneity within small groups (e.g., Jackson, 1992; McGrath, 1998). Usually the basis of difference in these studies is a non-demographic variable such as ability level, personality, or informational resources. However, what has been learned about effective management of these differences is certainly relevant to contemporary diversity management. Jackson, May, and Whitney (1995) present the example of a team of White men who cannot reach consensus on solutions to organizational problems. “An organization that

recognizes only sex and ethnicity as important dimensions of diversity may not consider diversity as a possible cause for the team's problems" (p. 248).

A broad definition also encourages us to recognize that the law is only one factor leading us to attend to organizational diversity. For example, in organizational theory, the differences among functional departments are seen as important sources of both innovation and conflict for organizations; they are certainly significant in understanding organizational effectiveness. Federal law does not protect people from being treated differently because of their weight (Roehling, 1999), their looks, their age (if old enough to work but under 40), their sexual orientation (Kovach and Millspaugh, 1996), their personality, or their preferences in music or in office lighting. Yet differences such as these can certainly be the source of many problems or of many valuable perspectives in the workplace.

It is also useful to remind ourselves that categories are socially constructed rather than inherent essential properties of the things around us. Constructivism assumes that we actively create our reality as we give meaning to the world we encounter. This process is inherently social and relies on language. Those in power in a society have greater influence than others on the development of language, the communication of ideas through the media, and the sharing of ideas that we call education (Hare-Mustin and Marecek, 1988).

For example, although most US citizens and the US Census Bureau have until recently thought of people as being White, Black, Hispanic, Asian/Pacific Islander, or Native American, with each generation it becomes more obvious that these categories do not fit the tremendous variety among our citizens. Multiracial citizens are beginning to object that no category describes them (Finn, 1997), and the 2000 census revised its racial and ethnic categories to take this into account (Rockquemore and Brunsma, 2002). The professional golfer Tiger Woods is the son of a Thai mother and an African-American father; he is said to have described himself as "Cablinasian," or Caucasian, Black, Indian, and Asian (Leland and Beals, 1997).

A final rationale for the inclusive definition of diversity and diversity management derives from its link to other processes of management. Indeed, Thomas (1996) sees diversity management as one aspect of the kind of cognitive task required in contemporary organizations. When there are many items and the differences among them are great, more cognitive and behavioral resources are required to deal with them. We must pay closer attention to our environment and make larger or faster changes in our behavior in order to adapt successfully. The greatest challenge is to consider simultaneously both the similarities and the differences among the elements, especially when many different dimensions simultaneously define this variation.

By conceptualizing diversity in terms of environmental complexity and change, Thomas takes a powerful conceptual leap. He shows us that the challenges posed by diversity management are just one aspect of life in an increasingly complex organizational world. Complexity of thought and flexibility of behavior are required for success in contemporary organizations. An important consequence of

this perspective is that diversity management is seen as a form of organizational development and change as well as a set of processes for increasing effectiveness and harmony in a workforce that varies along important dimensions.

In sum, scholars and practitioners take two different approaches to defining “diversity” and “diversity management.” One approach emphasizes the position of groups who have traditionally been victims of discrimination. It acknowledges power differentials among groups. The newer approach downplays power differentials and treats all bases of difference as more or less equivalent in terms of systemic analyses. Both approaches have strengths.

## OUR WORKING DEFINITION

Because this volume addresses diversity management in the workplace from a psychological perspective, we will use the term “diversity” to refer to differences among people that are likely to affect their acceptance, work performance, satisfaction, or progress in an organization. When we speak of “managing diversity” we mean the purposeful use of processes and strategies that make these differences among people into an asset rather than a liability for the organization. Thus, “diversity management” involves systematic and planned programs or procedures that are designed (a) to improve interaction among diverse people, especially people of different ethnicities, sexes, or cultures; and (b) to make this diversity a source of creativity, complementarity, and greater organizational effectiveness, rather than a source of tension, conflict, miscommunication, or constraint on the effectiveness, progress, and satisfaction of employees.

## THE DIVERSITY ZEITGEIST

Several factors have converged to bring the concept of diversity management to the fore in the discourse on contemporary organizations. The USA continues to experience large demographic changes, and there is a widespread perception of a rapidly changing workforce. We are also undergoing changes in the economy having to do with globalization, the rapid growth in the service sector and decline of manufacturing, the growth in technology, and other related changes in work functions. Finally, almost 40 years of legal initiatives are now coming to fruition.

### *Demographic changes*

#### *Real changes*

The figures from the 2000 census show a country that is becoming ever more ethnically diverse. Over the decade since the 1990 census, the proportions of the population identified as Hispanic or Asian have grown, while the proportion of

non-Hispanic Whites has dropped and that of Blacks/African Americans has remained fairly constant. Of course, the absolute number of persons in every group has increased, which means that each of us will encounter a more diverse demographic environment.

Persons identified as Hispanic, who may be of any race, have increased about 58 percent over the last decade, from 22.4 million in 1990 to 35.3 million in 2000. Non-Hispanic Blacks have increased over 20 percent to about 35.4 million. Thus across the nation the relative size of these two minority groups is now approximately the same ("Diversity in US on upswing," 2001). The smaller population of Asian descent, now about 11.6 million, has grown faster at over 70 percent, but from a smaller base. The population of non-Hispanic Whites, although still the majority at over 198 million, has grown much more slowly at just over 5 percent.

With the latest census, although there was no "multiracial" category, for the first time respondents could indicate more than one race (Rockquemore and Brunsma, 2002). This in itself is an indicator of increasing demographic complexity. About 2.5 percent of respondents, or 6.8 million persons, chose two or more races, with the most common choice being "White" and "some other race" ("Diversity in US on upswing," 2001). According to Census Bureau estimates, between 11 and 12 million immigrants entered the US in the last decade. Furthermore, about 30 million residents or 11 percent of the population are foreign-born ("Census: 12 million immigrants," 2001).

Current trends are projected to continue in the near future. Based on the current population and assumptions about growth, the Census Bureau makes estimates of the size of various age cohorts for various dates in the future. By July 1, 2015, the 16–64 age group that represents most employed persons is estimated to be about 65 percent White (non-Hispanic); about 15.4 percent Hispanic (of any race); about 13 percent Black; about 5.4 percent Asian/Pacific Islander; and only 0.8 percent American Indian (Population Projections Program, 2000).

### *Perceptions of change*

A major stimulus for the diversity movement was the publication in 1987 of a book by the non-profit Hudson Institute (Johnston and Packer, 1987). Ironically, part of the impact of this report stemmed from a widespread misinterpretation of some of its statistics, which captured the attention of the media around the country. The report outlined four trends expected to impact on employment: (a) the economy was expected to grow; (b) manufacturing was expected to decrease and service industries to increase; (c) new jobs in service industries were expected to require increasing levels of skill; and (d) the workforce was expected to grow slowly, become older, more female, and less White. The publication of *Workforce 2000* was followed by a deluge of books, articles, training catalogs, and workshops on the topic of "managing diversity."

*Workforce 2000* included an illustration with one bar graph portraying the 1985 labor force percentages of six demographic groups, and next to it, a bar graph

labeled "Increase, 1985–2000" for the same six groups (Johnston and Packer, 1987: figure 3-7, p. 95). The second graph indicated the *net* new entrants in each group, that is, those who enter the labor force minus those who leave due to retirement, death, or other factors. Neither graph actually showed the percentage of the projected 2000 workforce estimated to fall in each category. Unfortunately, misinterpretations of these graphs in the media were widespread, and many concluded that the proportion of White males in the workforce would drop precipitously, perhaps from 47 percent to 15 percent, by the turn of the century.

As later pointed out by DiTomaso and Friedman (1995), direct comparison of the two graphs was erroneous. Because White men made up 47 percent of the labor force in 1985, and because the majority of this group were already in the labor force, most White male entrants would simply replace others who were leaving. The other gender/ethnic groups each constituted smaller percentages in 1985 but would provide the majority of the net new workers. However, White men would still be a strong presence even if only a small percentage of net new entrants were White men. According to calculations made by DiTomaso and Friedman, even if only 15 percent of the net new workers were White males, White men would constitute 41 percent of the workforce in 2000.

In 1997 the Hudson Institute published a sequel, *Workforce 2020*. The authors of the later report noted how the first publication had stimulated "a diversity craze" (Judy and D'Amico, 1997: xiv) and were cautious to note that their new projections should be seen as tentative, being based on assumptions about fertility, mortality, and immigration and subject to large regional variations. The report predicted three changes in workforce demographics. First, the average age of the workforce was expected to rise until about 2020, when it would reach a plateau as many of the baby boomers reached retirement age. Second, the size of the workforce was expected to increase only slowly, barring significant changes in the rate of labor force participation or of immigration. And third, the workforce was expected to become more ethnically diverse and more female, but only incrementally so. Women were expected to constitute about half the workforce. By 2020 about two-thirds of workers were projected to be non-Hispanic Whites, about 14 percent Hispanic (of any race), 6 percent Asian, and about 11 percent Black. (American Indians, a very small percentage of the population, were not mentioned.)

### *Changes in the economy and work*

In addition to changes in the composition of the workforce, the last several decades have brought alterations in how work is accomplished. Changes in workforce demographics may be easy for managers to see as they interact with employees. Less visible but equally important changes have also come about in the nature of work, the way it is structured, and the social context in which it is performed.

### *Globalization*

Many companies today are “global,” or at least international (Jackson and Alvarez, 1992; Judy and D’Amico, 1997). Treaties such as the North American Free Trade Alliance (NAFTA) and structures such as the European Union (EU) are breaking down commercial barriers among nations. On January 1, 2002, 12 countries in Europe completed the switch to a common currency, the Euro. Collectively these countries constitute one-sixth of the world’s economy (“After years of planning,” 2002). Labor pools, consumer preferences, and standards for products, services, and communication are increasingly global (SHRM, 2000).

Companies compete and form strategic alliances across national boundaries. According to Cascio (1995: 928), “global competition is the single most powerful economic fact of life in the 1990s . . . there is no going back.” In 1999 there were more than 10,000 acquisitions of foreign companies by US firms, and over 7,000 purchases of US companies by interests in other countries (Harrison, 2000; Sikora, 2000). For example, in the financial sector a London firm, Old Mutual, agreed in June 2000 to buy the US investment firm United Asset Management, and Pioneer Group was purchased by an Italian bank (Boitano, 2000). At the turn of the century, 12 percent of US manufacturing employees worked for foreign-owned firms, and US business interests invested heavily overseas, particularly in Europe, Asia, and Latin America (SHRM, 2000).

The fact of globalization highlights the increasing need to understand how culture, language, and history affect present-day interactions. In addition, the need for effective interaction skills across geographic boundaries will only increase in the future. This recognition is one stimulus for the recent and growing interest in the management of diversity at work.

### *Growth of the service sector*

The part of our economy that is growing most rapidly involves service jobs, including “services hidden within manufacturing,” such as the human resources and other support staff in a company that makes a tangible product (Jackson and Alvarez, 1992: 14; Judy and D’Amico, 1997). The proportion of US workers employed in service industries rose from just over half in 1950 to 80 percent at the end of the century (“Current labor statistics,” 1999; McCammon and Griffin, 2000), and three-quarters of the gross domestic product comes from the service sector of our economy (US Department of Commerce, 1999).

Manufacturing is often done at a distance by people who never see the customers who use their products. However, when services are provided, there is direct interaction between the provider and the consumer of services (Gutek, 1995). The provider must be able to understand the needs of customers, communicate well with them, and leave them satisfied with the interaction. If you have ever been a student challenged by an instructor’s accent or vocabulary, a taxi rider struggling to communicate with the driver who only speaks a different language, or a

patient speaking a language different from that of your healthcare provider, you can easily understand the importance of bridging diversity when services are provided. Cultural, language, or personality differences between provider and customer may impair understanding, communication, and the provision of high-quality service; thus, the importance of good management of demographic and other diversity is highlighted in service occupations.

### *Electronic revolution*

The possibilities for communication across the boundaries of time and space have increased enormously just in the last decade. Large amounts of data can be widely and rapidly shared, the flow of information depends not only on physical proximity but on electronic access and technological savvy, and time zones become less relevant as services are provided 24 hours a day (Casco, 1995; SHRM, 2000). This means that workers are communicating with people from vastly different backgrounds, across regions, nations, and language groups. Managers may be responsible for the work of people they have never met. There is more opportunity for collaboration with people who are widely separated geographically but less opportunity for the face-to-face development of group norms, working procedures, and interpersonal trust. The normal cues of appearance and speech upon which we rely in direct communication are absent in cybertalk. Some have heralded the "race-free" nature of electronic communication, but others have noted a "default whiteness" that may be offensive to minority individuals (Young, 2001). Even among workers who see each other frequently, the reliance on electronic mail for communication creates new challenges for effective interaction. And finally, although there are non-hierarchical aspects to electronic communication, it is clear that there is a class-based "digital divide" both at home and at work as a function of income levels and type of work. Thus information and other technology have much relevance for the management of diversity.

### *Other aspects of restructured work*

The contemporary focus on the diversity issue arises from other aspects of group work as well. Groups or teams of employees are increasingly used to accomplish work that formerly was organized around individual workers or accomplished by assembly lines (Ilgen, 1999). Some of these teams are diverse in terms of demographic characteristics like gender or ethnic background, but most of them include persons of varying skills and prior work experience. For example, cross-functional teams are often used to improve coordination across areas of an organization and to increase speed and innovation in work (Denison, Hart, and Kahn, 1996). People are increasingly required to interact effectively with others in order to get their work done.

In addition, recent years have seen increased numbers of mergers among companies. Corporations have formed new combinations for what they have

seen as strategic advantage. During the 1970s an average of 1,200 completed mergers and acquisitions was recorded each year. During the 1990s the average was more than 6,200 yearly, and over 10,000 mergers occurred in 1998 alone ("35-year profile," 2000). Although this number dropped to about 9,000 annually during 1999 and 2000, this is a remarkable increase in a ten-year period ("2000 M&A profile," 2001). Every time two companies merge, their different cultures, technologies, and ways of working pose challenges to management and to employees. Struggling through this process of blending two entities calls attention to the difficulty of dealing effectively with differences.

Another change in the work scene that affects diversity initiatives is the increase in contingent workers. These are individuals who do not have a specific or implied contract for conventional long-term employment; the term includes temporary workers and sometimes those who work part-time. During the last two decades of the twentieth century, when total employment increased 41 percent, part-time, temporary, and contract employment rose 577 percent (Robinson, 2000). A survey by the US Bureau of Labor Statistics (BLS) in February 1999 found that 5.6 million workers held "contingent" jobs, and perhaps 8 million more worked as independent contractors or in some other form of alternative arrangement. Although some contingent employees are long term, the increase in the proportion of workers with somewhat tenuous attachment to their employers has been dramatic. The inevitable result is greater diversity in the identities and indeed the very presence of the individuals who are at work from day to day. In addition, companies may have different policies, wage scales, and benefit structures for contingent employees and the core workforce of longer-term, full-time employees. Variations may occur even when the same or very similar work is being done by both groups, and is a possible source of frustration and resentment.

To make matters even less stable, "permanent" employees do not stay in one organization as long as workers did in earlier generations. According to the US Bureau of Labor Statistics (2000), from ages 18 to 34 the average worker in the US holds 9.2 different jobs. In February 2000, government data showed that approximately one quarter of all employees had been with their present employer for a year or less, and the median employee tenure was only about 3.5 years (Employee tenure summary, 2000). The combined effects of downsizing, decreases in employee loyalty accompanying new organizational cultures, increasing technological change leading to skill obsolescence, and the tight labor market at the turn of the century produced lower job tenure and more frequent career or job changes. As workers move through jobs more rapidly, everyone will have to adapt to new people and new faces at work more often than before.

### *Legal issues*

Both the progress and the dilemmas of diversity are rooted in the civil rights legislation and policy of the 1960s and the changes in the legal climate that have

resulted from politics, elections, and the development of case law. There is widespread public misunderstanding about just what is legally required in the area of fair employment. For example, in a study of affirmative action beliefs and attitudes, Kravitz and Platania (1993) found that many undergraduates at their multicultural university held incorrect beliefs about requirements for the use of "quotas," the hiring of minorities regardless of qualifications, and the circumstances in which affirmative action is legally required. Although "real" legal requirements may prevail in regulation and the courts, what people believe to be true will affect their motivation, their judgment and decision-making, and their behavior in organizations.

Over the last 40 years a number of laws and regulations have been enacted to make the American workplace more open to women and to people of color than was true in the era before the civil rights movement. According to Paskoff (1996), the corporate focus on diversity began during a period in the 1980s when early progress under fair employment law was stalled by conservative judicial appointments, unfavorable court decisions, and disincentives in procedures and remedies. "Diversity programs came into being in part as a response to this legal vacuum. Astute business people realized there were problems of discrimination in the workplace, and the law was not then a significant force in addressing them" (Paskoff, 1996: 47). Thus, directly and indirectly, legal factors have contributed to the contemporary interest in the management of diversity. Although the application of fair employment law is extremely complex, and a detailed account of all the laws is beyond the scope of this book, here we outline several important pieces of legislation and of case law.

#### *Title VII of the Civil Rights Act (CRA) of 1964*

Title VII was the first major piece of federal legislation to prohibit discrimination in employment for those in specified groups called "protected classes." It also established the Equal Employment Opportunity Commission (EEOC) to monitor and enforce the law. Under Title VII employers cannot discriminate against or segregate workers on the basis of their sex, national origin, religion, color, or race, and the law is broadly written to cover hiring, pay, promotion, and other conditions of employment. Covered entities include federal, state, and local governments, educational institutions, employers with more than 15 employees, labor unions, and employment agencies. Private clubs and Indian reservations are exempt, as are religious organizations in the case of faith-based discrimination.

Over the years, the CRA has been extended to become more inclusive. In 1978 Congress amended the 1964 CRA with the Pregnancy Discrimination Act, clarifying that pregnancy, childbirth, and related medical conditions should be treated the same as other temporary disabilities to prevent differential treatment of women. Two years later the 1980 EEOC Guidelines defined sexual harassment as a form of sex-based discrimination and thus a violation of Title VII (EEOC, 1980a). The Civil Rights Act does not address discrimination on the basis of sexual

orientation, a topic that is introduced in panel 1.2 and covered in more detail in chapter 10 of this volume.

## 1.2 *Sexual orientation as a dimension of diversity*

One of the most fundamental aspects of our identity is our sexual orientation. According to Zuckerman and Simons (1996), this term encompasses a variety of factors that are associated with being attracted to individuals of one's own or of the other sex. Unlike other bases of diversity such as gender, ethnicity, age, and even disability, sexual orientation is not a visible attribute of employees, and thus co-workers are usually unaware of someone's sexual orientation unless that individual chooses to disclose it. Furthermore, employees who are tolerant of other differences among their co-workers may hold very strong negative attitudes towards gay, lesbian, or bisexual individuals, perhaps based in their own religious and moral beliefs; they may also feel free to express their negative views more openly than they would towards other minorities.

According to Zuckerman and Simons (1996), in larger organizations it is likely that between 3 percent and 12 percent of employees are gay, lesbian, or bisexual persons. Others report that from 4 percent to 17 percent of the workforce is gay or lesbian (Gonsiorek and Weinrich, 1991). These percentages are higher than those for some other minorities and indicate that sexual orientation is a relatively common diversity dimension within work organizations.

Neither Title VII nor the ADA nor any other federal statute at this time provides protection against discrimination based on sexual orientation. In 2001 there were only 12 states (California and Nevada in the west, Minnesota and Wisconsin in the midwest, east coast states from Delaware and New Jersey to Vermont and New Hampshire, Hawaii, and the District of Columbia) with laws barring workplace sexual orientation discrimination (Barrier, 2001). However, ordinances in certain municipalities (e.g., Atlanta) and voluntary policies in many large companies (e.g., IBM, Marriott Corporation) have provided some protection (Gray, 2001; Kovach and Millspaugh, 1996).

The political resistance to legislation such as the Employment Non-discrimination Act (ENDA; Kovach and Millspaugh, 1996) and the relative lack of attention to this issue in the diversity literature attest to the contradictory nature of attitudes about sexual orientation and the difficulty of studying this form of discrimination. Because sexual orientation is not directly observable, gay or lesbian employees may experience hostile environment harassment even if co-workers do not know or suspect their sexual orientation.

Organizations differ in diversity climate with respect to sexual orientation. Zuckerman and Simons (1996: 21) developed a quick “thermometer” that employees can use to assess their organizations. Your organization would have a “warm and receptive” climate if you answered positively to items such as these:

Partners of gays, lesbians, bisexuals, and straight people are always recognized on company invitations and so on.

We offer health and other benefits to non-married, live-in partners or employees, regardless of sexual orientation.

In contrast, a positive response to items such as these would indicate a “cold and forbidding” environment:

One or two people are known to be gay, but no one talks about it.

People often tell antigay and AIDS jokes.

Persons who came out as gay, lesbian, or bisexual have been shunned, harassed, fired, or physically injured.

In contrast to other dimensions, sexual orientation has been addressed very little in the diversity literature (but see chapter 10, this volume). The workbook by Zuckerman and Simons (1996) contains exercises, information, and case studies for individuals or groups who wish to learn about sexual orientation as a diversity dimension. Ragins and Cornwell (2001) developed and tested a model of the antecedents and consequences of workplace sexual orientation discrimination. They mailed surveys to more than 2,900 members of national gay rights organizations; the researchers were eventually able to analyze the responses provided by an ethnically diverse sample of 534 gay men and women to determine the variables most related to participants’ perceptions of workplace discrimination and the degree of their disclosure of sexual orientation at work. The existence of supportive organizational policies and practices was by far the most important factor, although the existence of protective legislation and the presence of other gay co-workers were also significant. The most impactful organizational practice was welcoming same-sex partners at social events. Also important were policies that forbade sexual orientation discrimination, inclusion of sexual orientation in organizational definitions of diversity, and domestic partner benefits.

Confirmation of the importance of organizational policies was found in another survey of 537 lesbian and gay employees in 38 different organizations (Button, 2001). Employees who perceived more sexual orientation discrimination were likely to manage this aspect of their identities by *counterfeiting*

(communicating to others an inaccurate heterosexual identity) or by *avoidance* (revealing as little as possible and staying away from conversations and situations in which sexual orientation might become apparent). When less discrimination was perceived, employees were more likely to adopt an *integration* strategy of revealing sexual orientation directly or indirectly and dealing with the consequences of that revelation.

Both studies showed, not surprisingly, that gay employees who perceived more discrimination also held more negative attitudes toward job and career. They reported lower job satisfaction and organizational commitment (Button, 2001), lower satisfaction with promotion opportunities and career commitment, and higher intentions to leave the organization. Those who perceived discrimination also reported fewer promotions but not lower levels of compensation (Ragins and Cornwell, 2001).

Many people have never considered sexual orientation to be important for the management of diversity, or believe that sexual orientation should not be mentioned at all in the workplace. It is easy to overlook the degree to which sexual orientation is *already* part of the culture of most organizations, simply because the predominant orientation is heterosexual and this seems so *normal*. Desk photos of spouses, discussions of dating and other social activities, the jokes that are told at work – these are indications of sexual orientation, which is generally presumed to be heterosexual (Zuckerman and Simons, 1996). For many gay, lesbian, or bisexual individuals, considerable mental energy may be required to suppress a part of the individuality that heterosexual employees can express freely. In some cases this may divert energy away from more productive work-related goals.

Often when a program or policy is altered for the benefit of a workplace minority, it is later found to be to the benefit of others as well. Domestic partner benefits are one such program; this term refers to the extension of health, leave, and other benefits of employment that are available to spouses. Employees who share households and financial responsibilities on a long-term basis with others to whom they are not married (e.g., a relative, partner, or good friend) thus have access to health and leave benefits on the same basis as married employees.

In Montana, a female faculty member became the lead plaintiff in a lawsuit against her university, claiming that denial of health and other benefits to same-sex partners violated the state constitution. Two days after the suit was filed, she received a piece of anonymous hate mail containing a powdery substance. Two days later, her home was set on fire during the night; she escaped through a window with her partner and their infant child but the house was gutted (Morgan, 2002).

If her employer had routinely provided domestic partner benefits on the same terms as spousal benefits, this lawsuit would not have been necessary

and this crime might not have occurred. In addition, the employer would have created a more inclusive climate that “works for everyone.”

*Discussion questions*

- 1 How does your school or work environment measure up on questions like those of Zuckerman and Simons?
- 2 List examples of policies or customs in your work or school organization that presume everyone is heterosexual.
- 3 What arguments can be made *against* domestic partner benefits? Do you find these arguments convincing?
- 4 In Ragins and Cornwell’s study, gay employees did not report lower levels of compensation than their heterosexual colleagues. What might account for this apparent non-discrimination in pay, even though the employees report other forms of sexual orientation discrimination?

As suits were brought and case law developed under Title VII, two legal scenarios were distinguished: *disparate treatment* and *adverse impact* (Gutman, 2000). Under disparate treatment analysis, the plaintiff (the person complaining of discrimination and bringing the suit) claims that he or she was treated differently because of membership in a protected class. Because the treatment is alleged to be explicitly different, this is sometimes referred to as “intentional discrimination.” Thus advertisements specifying applicant sex, use of different cutoff scores or methods of selection as a function of race or sex, or clear preferential treatment on the basis of sex, race, or religion would likely be found a violation of the law. Evidence might consist of documents or statements showing discriminatory policies or intent to discriminate. Disparate treatment cases are usually brought by individuals (though class action suits are possible) and usually involve only the most egregious discrimination because the standards of evidence are so high.

In the second scenario, adverse or disparate impact cases involve a claim that an apparently neutral employment policy or procedure in fact has a different and negative impact on members of a protected category. For example, requiring a high school diploma, a minimum height, or a particular passing score on an employment test would be suspect if it screened out disproportionate numbers of minority or female applicants or employees. In such cases the plaintiff making a claim of discrimination uses statistical evidence to show that the success rate (e.g., the percent who are hired or promoted) of majority individuals is significantly higher than that of minorities. The defendant (employer) must then show either that the plaintiff is in error, or that the practice, though discriminatory, is justified because it is job-related or a business necessity. In early Title VII adverse

impact cases, this was generally interpreted to mean that the procedure must be shown to be valid as a predictor of job performance. To prevail, the plaintiff must then show that an equally valid alternative procedure with less adverse impact could have been used. Thus the plaintiff must show adverse impact at step one, and the defendant must provide evidence of validity or business necessity at step two.

What does all this imply for the management of diversity? It should be noted that fair employment laws often have the positive effect of alerting organizations to examine and sometimes change practices that directly or indirectly disadvantage various groups. There are pitfalls and unintended consequences, however. First, the entire basis for recourse under the law rests on proof of membership in a class of people on a dimension that proscribes discrimination (sex, national origin, religion, color, and race). The law does not protect against discrimination on the basis of other dimensions including appearance, social class, personality, political belief, or sexual orientation. Furthermore, any diversity practices that appear to give preferential treatment to members of one covered demographic group are suspect as disparate treatment. Finally, validity is only an issue if adverse impact is first shown; the law does not prohibit the use of invalid practices per se. Thus a company that can avoid the appearance of discrimination, perhaps by hiring women or minorities "by the numbers" without concern for qualifications, may never be challenged even if its decision rules are completely invalid and unrelated to job performance. By the same token, an employer may be hesitant to use a well-validated procedure that does have adverse impact (such as most cognitive ability tests; Bobko, Roth, and Potosky, 1999) in order to avoid legal challenge.

### *The Civil Rights Act of 1991 (CRA '91)*

With the American system of checks and balances, the legislature can provide as many corrections to the courts as the courts provide to legislative statutes. And both the courts and the legislature can shape the outcomes of regulations made by the executive branch. In the Civil Rights Act of 1991 the legislative branch passed a law that they saw as providing correction for some of the overly conservative rulings of the Supreme Court, while simultaneously correcting for some overly liberal consequences of affirmative action. In response to Supreme Court decisions (e.g., *Wards Cove v. Atonio*, 1989) that contradicted earlier Title VII case law and made the plaintiff's burden much more difficult, Congress reinstated the pre-*Wards Cove* standards for adverse impact cases. CRA '91 also provided for jury trials and expanded monetary damages in cases of intentional discrimination and unlawful harassment. Because juries are thought to be more sympathetic than judges to plaintiffs' arguments, and because plaintiffs can now win compensatory and punitive damages (not merely back pay and appropriate remedy), the number of Title VII cases has increased (Paskoff, 1996).

The 1991 Civil Rights Act also contained a provision that many saw as an attempt to curtail affirmative action. After the Civil Rights Act of 1964 and the establishment of affirmative action in 1965, a very progressive Supreme Court rendered an important decision in the case of *Griggs v. Duke Power Company* (1971). *Griggs* in effect prohibited employers from using employment-screening tests, educational requirements, or other measures that eliminated disproportionately more applicants from the protected classes than majority applicants (i.e., procedures with adverse impact) unless the employer could demonstrate a compelling business need. This was generally interpreted as requiring demonstration that the procedure was a valid predictor of job performance. To reduce the threat of lawsuits and ensure more opportunity to underrepresented groups while retaining some of the advantages of selection through valid measures, the practice of within-group scoring was developed. When within-group scoring is used, one selects a certain number of the highest scorers among one group (e.g., White applicants) and a comparable proportion of the highest scorers among another group (e.g., people of color). Thus, two candidates might have the same within-group score but different absolute levels of performance on the selection device. This procedure was used by the US Employment Service in screening applicants for blue collar jobs (Hartigan and Wigdor, 1989) and the practice came to be called "race-norming" (or "two-list cutoff").

Perceptions of unfairness can arise when those selected from the minority group have scores below the scores of some rejected from the majority group. Even the recognition that the tests have limited powers of prediction, or that all candidates are "qualified," does not seem to eradicate the perceptions of unfairness if the predictive power of the tests is similar for majority and minority applicants (Sackett and Wilk, 1994). CRA '91 prohibited employers from adjusting or altering scores or from using different cutoff scores on employment tests on the basis of race, color, religion, sex, or national origin; such practices may be psychometrically appropriate for optimal prediction but now are legally forbidden. The challenge for employers is to use measures that without any score adjustment provide sufficient screening and valid prediction but do not cause disparate impact. An unexpected dilemma has also developed in the use of personality tests for selection because these tests have commonly been scored differently for women and men (Saad and Sackett, 2002).

Finally, Title II of the 1991 Civil Rights Act called attention to the relative absence of women and minorities at higher levels of organizations and set up a commission to study this "Glass Ceiling." The 21-member bipartisan commission was charged with studying business policies for advancement and employee development, compensation and reward systems, and existing law, and with making recommendations for increasing the advancement of minorities and women in business and government organizations. After preparing its final report published in 1996, the commission was disbanded (US Department of Labor, 1996).

### Affirmative action

Perhaps the most contentious and misunderstood aspect of the legal context for diversity management is the policy of affirmative action. Most employment-related affirmative action stems from Executive Order 11246, signed by President Johnson in 1965, and later extended by other executive orders. This policy requires federal contractors above a certain size to develop plans that will ensure that no one is discriminated against on the basis of sex or race.

Affirmative action was originally intended to be a remedial procedure to overcome the lingering effects of past discrimination. A simple prohibition of future discrimination was thought to be ineffective in reversing the effects of many years of explicit exclusion and differential treatment. Therefore, "affirmative" or proactive steps were recommended or required of those who wished to contract with the federal government. Affirmative action requires that a contractor examine its workforce and the relevant labor market to determine if the proportion of qualified people from gender and ethnic groups roughly matches their availability in the workforce. If discrepancies occur, the employer must develop a plan for moving toward a workforce that is demographically representative of those qualified for employment. Goals or targets should be set and steps should be articulated for moving toward them. Underrepresented groups may be targeted for recruitment, and discriminatory obstacles (such as lack of transportation or childcare or word-of-mouth job advertising) may be reduced or removed. When two equally qualified applicants are being considered for a job or a promotion, a relative lack in the numbers of women or people of color may be used to justify the preferential selection of the woman or the person of color.

Some people have confused affirmative action with quotas, and many believe that affirmative action requires hiring "unqualified" women or minorities. In fact, preferential treatment and quotas are generally prohibited as disparate treatment under Title VII. They are legal *only* when a company loses or agrees to a settlement in a lawsuit, and a judge imposes this action as a penalty or consent decree. Otherwise quotas and preferential treatment are not permitted.

In some cases, "voluntary" affirmative action may be undertaken by a company that has not (yet) been sued. The Supreme Court in *United Steelworkers v. Weber* (1979) set forth a four-part test for a voluntary affirmative action plan: (1) its purpose must be remedial in nature; (2) it must not unnecessarily trammel the interests of other employees; (3) it must not bar absolutely members of the majority group as a class; and (4) it must be "reasonable," usually understood to mean temporary (Kleiman and Faley, 1988).

The complexities of affirmative action have been the subject of numerous books and articles (e.g., Blanchard and Crosby, 1989; Crosby and VanDeVeer, 2000; Skedsvold and Mann, 1996) and a full discussion here is beyond the scope of this chapter. In a nutshell, it is relevant for the management of diversity because it provides one process by which previously homogeneous or internally segregated

organizations become more demographically diverse. To the extent that affirmative action succeeds in increasing diversity, it provides the context in which the effective management of diversity becomes critical to the health of the organization and the productivity and satisfaction of its members.

#### *The Age Discrimination in Employment Act (ADEA) of 1967*

Employees and potential employees 40 years of age or older are protected from age discrimination in employment such as hiring, discharge, forced retirement, layoffs, training, wages, or benefits. In its current form, the ADEA contains no maximum age limit, and covers private and public employers as well as overseas subsidiaries of American companies with 20 or more employees. Three exemptions exist for mandatory retirement: certain executives at age 65, law enforcement officers and firefighters, and elected or appointed high-level public officials (Gutman, 2000).

Most ADEA cases involve allegations of age discrimination in layoffs or retirement; older employees are likely to have higher salaries and thus companies' salary costs will be reduced more when they leave the rolls. Employers are permitted to provide financial retirement incentives to employees in return for voluntary waiver of the right to sue under ADEA. However, the rules for this provision are technical and specific, and programs must be carefully crafted to comply with the law. Most ADEA cases involve elements of intentional discrimination. For example, hostile environment claims (modeled on sexual harassment claims that the work environment is abusive) have also been supported under ADEA (e.g., *EEOC v. Massey*, 1997). Adverse or disparate impact arguments were made successfully in early ADEA cases, but the increasingly conservative Supreme Court stated in *Hazen v. Biggins* (1993) that it had never decided that disparate impact analysis could be applied in ADEA cases. Lower courts since that time have generally rejected adverse impact ADEA claims (Gutman, 2000). The Supreme Court has also recently (in *Kimel v. FL BOR*, 2000) restricted the application of the ADEA when the employer is a state government.

With the aging of the US workforce, the protections of the ADEA will continue to grow in significance (Judy and D'Amico, 1997). Casual age-based stereotypic or prejudicial comments may provide the basis for intentional discrimination or hostile environment suits. According to Gutman (2000), Congress perceived age discrimination to be the result of mistaken beliefs about the capabilities of older workers. The ADEA may encourage us to judge individuals on the basis of their individual characteristics rather than our stereotypes. This is a significant accomplishment in the context of diversity management.

#### *The Americans with Disabilities Act (ADA) of 1990*

Another important law for those concerned with diversity is the ADA. The Rehabilitation Act of 1973 provided for affirmative action and non-discrimination on

the basis of disability for federal employees. In contrast, Title I of the ADA covers the private sector and the non-federal public sector, protecting qualified individuals with disabilities from discrimination in employment but not requiring affirmative action. Under the ADA, disability refers to a current and relatively permanent condition of physical or mental impairment that substantially limits the individual in an important activity such as seeing, walking, or working. Protections extend to those perceived to be disabled, such as the caretaker of an AIDS patient or a person in remission from a serious illness, and to those with a record of impairment, such as past drug abusers. Specific provisions cover AIDS/HIV patients (who are protected by the law) and current drug abusers or those whose conditions pose a threat to the safety of others (who are not protected). Sexual preference is excluded, as well as transvestism, transsexualism, and other sexual behavior or gender identity disorders, compulsive gambling, kleptomania, and pyromania (Gutman, 2000).

Employers are not permitted to inquire about disabilities – it is up to the applicant or employee to suggest what accommodation in testing, equipment, or other conditions will be suitable or necessary. The level of accommodation that is reasonable is determined on a case-by-case basis considering factors such as the cost, feasibility, and size of the company. Accommodations might include special testing conditions, physical alterations of working space or equipment, or restructuring of non-essential aspects of the job or the work schedule. To prevent discrimination, medical examinations cannot be required prior to a hiring offer and cannot be required only of a disabled individual. Pre-employment drug testing is not considered a “medical exam,” but the more clinical forms of psychological testing, if used, cannot be required before an offer is made.

In the early 1990s many employers worried that the ADA had too broad a reach. Their early concerns have been tempered by developing case law. To gain redress under ADA the plaintiff must show two things: that she or he is disabled, and that he or she is qualified, with or without accommodation, to perform the essential functions of the job in question (Gutman, 2000). It has proven to be surprisingly difficult to show these two things in court. Especially limiting have been some recent Supreme Court decisions about correctable conditions (e.g., myopia in *Sutton v. United Airlines*, 1999) and regarding suits against state governments (*University of Alabama v. Garrett*, 2001), causing some to wonder about the effectiveness of the ADA in protecting the employment rights of the disabled. A 1999 study by the American Bar Association revealed that court decisions favored employers in over 95 percent of cases (“Employers win,” 2000).

What are the implications of the ADA for those interested in the more effective management of diversity? First, it calls attention to the need to base hiring decisions on demonstrated qualifications rather than stereotypic notions of suitability, and for accommodation by the employment setting – not just by the individual – on a case-by-case basis. The ADA also raises difficult questions about perceptions of fairness when objective methods, such as validated employment tests, are altered for some individuals but not for others. The broad definition of disability invites

controversy. Although the courts have to date favored employers, some fear that individuals will attempt to use ADA law and the threat of litigation to gain unfair advantage. Recent court decisions have raised the possibility that other federal statutes may be lost as the basis for challenges to discrimination by state agencies, but have extended the Title VII theory of hostile environment discrimination to cases under the ADA (Clark, 2001).

### *Sexual harassment*

The legal prohibition against sexual harassment dates from EEOC regulations written in 1980 that defined sexual harassment as a form of sex discrimination prohibited by Title VII. In 1986 in the case of *Meritor Savings Bank v. Vinson*, the court distinguished between two types of sexual harassment: *quid pro quo*, in which sexual favors are required in exchange for employment-related consequences; and hostile environment, in which the perpetrator's "severe or pervasive" behavior changes the employment conditions into abusive ones, and the victim indicates that the conduct is "unwelcome." In later cases, the court has ruled that the victim need not prove serious psychological damage in order for harassment to be considered unlawful (*Harris v. Forklift*, 1993); and that same-sex heterosexual harassment violates the law (*Oncale v. Sundowner*, 1998). In addition, employers may be held liable for harassment if they "knew or should have known" about the behavior and did nothing to stop it. These and two other cases (*Burlington v. Ellerth*, 1998, and *Faragher v. Boca Raton*, 1998) have led to the conclusion that employers *will* be held liable in *quid pro quo* harassment, *may* be held liable in hostile environment harassment by supervisors, and probably will not be liable in cases of harassment by non-supervisory co-workers, unless supervisors knew or should have known of the harassment but did not act to address it (Gutman, 2000).

Finally, in hostile environment cases, the courts have not been consistent in their evaluations of the alleged offensive behavior. Some courts (e.g., the Sixth Circuit in *Rabidue v. Osceola*, 1986) have considered behavior to be harassing if it rises to the level that a "reasonable person" would find offensive. Other courts (e.g., the Ninth Circuit in *Ellison v. Brady*, 1991), believing that men and women differ in their opinions about what is considered harassing, have judged on the basis of what would be seen as offensive by a "reasonable woman." Gutek and O'Connor (1995) reviewed the legal and psychological evidence about the reasonable woman standard and concluded that although women define sexual harassment "more broadly and inclusively" (p. 151) than men, this difference is not large.

Sexual harassment provides a microcosm of what makes diversity management so complex and difficult, and so important and rewarding. Power differentials, variations in normative expectations by different groups whose social interactions are constrained by experience and convention, misinterpretation and misunderstanding, unwillingness to confront and engage in honest communication, ambiguity and avoidance, victim blame, and shifting standards for appropriate behavior

are some of the diversity themes that can be seen in scenarios involving sexual harassment. Despite all the problems, however, people of good will can use the law to change behavioral norms.

## **THE BUSINESS CASE FOR DIVERSITY: PROTECTING THE BOTTOM LINE**

As the diversity movement has matured, some proponents have articulated rationales for managing diversity that are thought to be persuasive to those “powerful stakeholders” who control organizational resources (Linnehan and Konrad, 1999). The “business case” for diversity management essentially states that good diversity management leads to increased profitability for a company.

The trends reviewed in this chapter have been used to support this argument. Some believe that as our economy becomes more complex, businesses must become more innovative and creative in order to survive and thrive (Cox and Blake, 1991; Robinson and Dechant, 1997). Diversification of the workforce is thought to be one way to increase innovation and creativity (e.g., McLeod, Lobel, and Cox, 1996). It has also been argued that effective management of diversity will result in lower costs to the organization in terms of grievances, lawsuits, employee turnover, and ineffectiveness due to poor communication and dissatisfaction (Cox, 1997). Finally, many companies recognize the consumer dollars that are controlled by members of ethnic minority groups, and believe that by hiring employees who come from growing sectors of the economy they will better appeal to these increasingly profitable markets.

The “business case” for diversity management has gained a great deal of credibility in the business community. According to Bowl (2001), a survey of HR professionals conducted by SHRM and *Fortune* magazine reported that a majority believed their diversity initiatives had improved the organization’s culture, employee recruitment, and relations with clients, as well as creativity and productivity. Reduced interpersonal conflict was also reported. Although social scientists might criticize the study’s low response rate and targeted sample, the survey’s report does indicate that some stakeholders are reinforcing the argument that good diversity management is good for business.

## **SUMMARY AND CONCLUSIONS**

This introductory chapter began by distinguishing two different ways of defining diversity, one in terms of group membership and the other a more inclusive definition that considers many dimensions of difference among people in organizations. The rationale and implications of each were explored. Among the factors that have made diversity a popular topic in psychology and in business are the

demographic changes occurring in the labor force, which in perception may appear more extreme than they are in reality. Several changes in the socioeconomic context and the very nature of work were reviewed. Global influences and increases in the service sector have been accompanied by dramatic increases in the use of electronic communication. Work is more often performed in team environments, mergers have become more common, and many more workers are temporary, part-time, or moving more rapidly through a series of jobs. The fair employment legislation and regulation of the last 40 years, in particular Title VII of the 1964 Civil Rights Act and affirmative action, have succeeded in increasing the workforce diversity of many employment settings.

As contemporary organizations acknowledge the importance of effective diversity management, it becomes increasingly necessary to understand the processes that operate when organizations become more diverse. While businesses are interested in profits, scholars are invested in knowledge. Scholarly researchers want to understand the processes by which differences among people have their beneficial or deleterious effects. The following chapters move us toward a greater understanding of these processes.