



CJI Management Quarterly



Volume V, Issue III

Fall 2000

Published Quarterly by:

**Criminal Justice Institute
Dr. Lee Colwell, Director
University of Arkansas System
7723 Asher Avenue, Suite B
Little Rock, Arkansas 72204**

**SWITCHBOARD
(501) 570-8000
TOLL FREE
(800) 635-6310
<http://www.cji.net>**

*Information compiled and assembled by
Mr. Mike Mashburn,
CJI Law Enforcement Management Specialist*

The **Criminal Justice Institute** provides management and supervision, forensic science, and computer-related education and training, as well as research services and technical assistance to Arkansas' law enforcement and criminal justice community.

This quarterly newsletter is designed to provide current, timely, and useful information to improve the management, leadership, and performance skills of supervisors.

*Your comments and suggestions
are solicited and welcomed.*

*You are encouraged to
make copies of this
publication and
distribute them to
others in your agency.*

The Changing Environment of Law Enforcement

Certain events taking place in society are changing the demographics of the country's labor force and are affecting all workplaces, including those in law enforcement. Studies show an increase in the number of positions held by women; likewise, the number of non-white employees is increasing.

According to reports from the Hudson Institute (Gardenswartz and Rowe, pp. 386-387), it was estimated that by the year 2000, women would make up almost half (47%) of the labor force and would comprise approximately 60% of new entrants. It was also estimated that non-whites would represent approximately 29% of the labor force by the year 2000, partially as a result of the increase in the number of immigrants (predominantly Hispanic and Asian). Based on this information, law enforcement agencies can expect to see an increase in minority applicants and should make plans to ensure that minority applicants are actively recruited.

There is also the issue of the aging of America. The demographic bulge created by the baby boom (1946-1961) is making our labor force older. Generation X represents a smaller grouping, therefore the number of younger entry-level officers is declining as well. Law enforcement agencies will soon be comprised of older individuals who perhaps will stay longer.

These shifts in demographics will affect all law enforcement agencies and

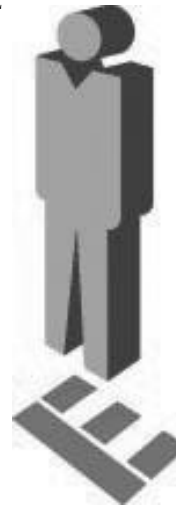
will require equal employment opportunity to be safeguarded. Forward-looking law enforcement executives will want to recruit officers to their agencies who will more accurately mirror the communities they police.

Gardenswartz and Rowe advocate educating workers in an effort to illustrate that diversity in the workplace can be a boon rather than a hindrance.

“Valuing diversity brings with it a paradigm shift, a new way of thinking about differences among people. Rather than arguing about how to cut up the pie and which group gets the largest slice, embracing diversity strives for a workplace where there are not only enough pies but also cakes, churros, and fortune cookies for all.” (Gardenswartz and Rowe, p. 404)

Obviously, the year 2000 has arrived, and mechanisms set in place several years ago will be relied upon in helping to ensure that the interests of these new workers are protected. “Many commentators note that government managers need a particularly high level of tolerance for ambiguity and diversity and must deal frequently with conflicts among diverse groups.” (Rainey, p. 310)

Law enforcement administrators will have to understand the role that the Equal Employment Opportunity Commission will play at their agency if they are not willing to safeguard the rights of their employees. A brief history of the legislative measures creating the safeguards will now be addressed.



Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (CRA '64) is that section of the law that deals explicitly with federal regulation of the employment process. This section, in its original form, guarantees "...equal employment opportunity..." for all Americans regardless of race, creed, color, sex, or national origin. Title VII also established the Equal Employment Opportunity Commission (EEOC) and granted the Commission broad powers of investigation.

A similar entity was created the following year—the OCR (Office for Civil Rights). "Created in 1965 to implement various civil rights laws, the OCR had a great deal of latitude in defining its own task. It is charged with ensuring that no 'program or activity receiving federal financial assistance' shall practice discrimination with regard to race, color, sex, handicap, or national origin." (Wilson, p. 66) In the age of COPPS funding, it is easy to see that a law enforcement agency will fall under the watchful eye of the OCR. It is the EEOC, however, that can actually initiate lawsuits on a complainant's behalf.

It is unfortunate that society has to legislate laws to protect individuals in the workplace, but human experience has taught that it becomes necessary. "For example, if we examine the occupational structures of many Western societies, we find that, on average, minorities and socially disadvantaged groups have a greater chance of having to perform dirty work for relatively low wages with

little security of employment and few fringe benefits." (Morgan, p. 313)

Title VII is only one of several titles in CRA '64, a landmark piece of federal anti-discrimination law. Other titles contained within the act deal with matters ranging from discrimination in places of public accommodation, such as restaurants, movie houses, and hotels, (Title III) to equal access to public education (Title V).

In addition, Section 706 of the act established the concept of deferral states—i.e. states having strong civil rights laws already on their books will be initially deferred to by the EEOC for complaint processing. Arkansas is not a deferral state.

Equal Employment Opportunity Act of 1972

The Equal Employment Opportunity Act amended Title VII of the Civil Rights Act of 1964. With the passage of this act, the following amendments to Title VII were enacted.

Government subdivisions, including city, county, and state agencies, were not covered under the original form of the law. It would not be until the year 1972 that all government subdivisions would be included under the provisions of Title VII. James E. Anderson refers to this, stating, "In 1972, the EEOC was finally empowered to bring court action on its own initiative but not to issue cease-and-desist orders when the conciliation of complaints was not successful. Though perhaps not as much as hoped, this new authority did help strengthen the enforcement and effectiveness of

the anti-job discrimination policy." (Anderson, p. 243)

Now all governments and governmental subdivisions were subject to the provisions of Title VII. Government employers were required to prepare an annual analysis of their workforce with respect to their race, sex, job classification, and annual salary. This analysis was submitted to the EEOC on prescribed federal forms in October of each year.

Equal Pay Act of 1963

The Equal Pay Act was originally passed as an amendment to the 1938 Fair Labor Standards Act. Under the provisions of this law, an obligation is imposed on all employees to pay men and women equal wages for equal work unless the difference in pay is due to factors other than sex.

In order to be considered equal under the law, the jobs being compared must meet all four of the following standards:

1. Equal skills (experience, training, education, and ability),
2. Equal effort (the physical or mental effort to do the job),
3. Equal responsibility (the impact of decisions made by the employee on the employing organization and the degree of autonomy that the employee has in their day-to-day work) and
4. Equal working conditions (actual physical surroundings).

Some notable exceptions under this law were that there would not be



a requirement for different training for similar jobs, geographical market rates would not be affected, and jobs would not necessarily be considered the same if there were additional verifiable duties assigned to them.

Although this law was passed, not all employers abide by its provisions. "Despite nearly three decades of enforcement of civil rights and equal pay laws, the average earnings of full-time female employees are only about 70 percent of the earnings of full-time male employees." (ICMA, p. 427) There is much work that needs to be done in this area. Hopefully, law enforcement agencies can demonstrate that its officers of equal rank and seniority are paid equally as well.

Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act (ADEA) protects all individuals who are age forty (40) and above from age-based discrimination in obtaining or retaining employment or any benefits of current employment. In its original form, the act did not include state and local governments. Congress amended the act in 1974 to include those bodies. Obviously, law enforcement is granted certain latitudes in the age of its officers because of the nature of the tasks involved. Despite this fact, monitoring of the pertinent guidelines will be necessary.

There are certain age-based discrimination tests imposed by the federal government. There has to be direct evidence that the employer committed an overt act with age as the motivation. Patterns of preferential treatment of younger employees or applicants can be a prima facie inference that age is the motivator.

Sexual Harassment in the Workplace

Law enforcement employers face a real challenge in combating and pre-

venting sexual harassment in the workplace. More a product of EEOC rulings than actual law, sexual harassment is something that no employer, private or public, can literally afford to ignore.

Federal guidelines define sexual harassment as "conduct of a sexual nature which is unreasonable, severe, and unwelcome which has the effect of interfering with the individual's work performance." In order for the behavior to be considered sexual harassment, it must meet the following definitions: the submission must have been made an explicit or implicit condition of employment, and the submis-

"Despite nearly three decades of enforcement of civil rights and equal pay laws, the average earnings of full-time female employees are only about 70 percent of the earnings of full-time male employees."

sion or rejection must have formed the basis of an employment decision affecting the individual.

There are three primary ways in which sexual harassment can occur. The first is Quid Pro Quo, which literally means "something for something" and has an explicit sexual overture that conditions actual hire or a particular personnel action. Second, a supervisor may create a hostile environment, or thirdly, coworkers or non-employers may create a hostile environment.

The EEOC has not been as active in this realm as it could be or perhaps should be. There is a tremendous amount of court action, but very little of it is initiated by the EEOC. A study performed by Robert D. Lee, Jr. and

Paul S. Greenlaw attests to this shortcoming. "The argument can readily be made that Congress and/or the Equal Employment Opportunity Commission need to take action, rather than forcing the courts to fill the long-standing void in the area of sexual harassment." (March/April 2000, p. 132)

Civil Rights Act of 1991

President George Bush signed the Civil Rights Act of 1991 into law in November of 1991. The law amended several sections of CRA '64 and reversed a number of findings by the Supreme Court related to the field of civil rights in general. This Act also incorporated monetary damages as awards in lawsuits in cases of intentional employment discrimination, an added incentive for employers to do the right thing.

In addition, the act established the Glass Ceiling Commission, a special study committee created to review and recommend solutions to the problems that have traditionally kept women and other minorities from advancing in their jobs.

There were several other important features of the Act:

1. It added the elements of racial discrimination in the performance of employment contracts to existing prohibitions in the making and enforcing of contracts.
2. It placed a ban on the use of racial norming on pre-employment tests.
3. It extended the protection of CRA '64 to the U.S. House of Representatives, the U.S. Senate, presidential appointees, and to all employees of the elected state officials.

Discriminatory Practices

As one can see, there was a succession of acts enacted in an attempt to rectify some of the discriminatory

practices of some employers. These acts are aimed at specific areas of discrimination, and all of them fall under the jurisdiction of the Equal Employment Opportunity Commission. "Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
 - compensation, assignment, or classification of employees;
 - transfer, promotion, layoff, or recall;
 - job advertisements;
 - recruitment;
 - testing;
 - use of company facilities;
 - training and apprenticeship programs;
 - fringe benefits;
 - pay, retirement plans, and disability leave; or
 - other terms and conditions of employment."
- (<http://www.eeoc.gov>)

There are other discriminatory practices included in these acts that are more concerned with the quality of the workplace environment.

Discrimination laws protect against the harassment of individuals based on the elements of race, color, religion, sex, national origin, disability, or age. These laws prohibit retaliation against an individual who files a charge of discrimination, cooperates in an investigation, or speaks out against discriminatory practices. In addition, they address employment decisions that are based upon stereotypes or assumptions about an individual's abilities and performance formed strictly upon the basis of their sex, race, age, religion, disability, or ethnic group. The laws also address employers who deny employment opportunity to a person because of their marriage to or association with individuals based on the enumerated factors.

Perhaps it is the greater reality at play in law enforcement organizations that make them apprehensive about taking action. Investigation of allegations and making the right decisions involve a great amount of time, effort, and documentation. "More and more diversity, coupled with pressures for accountability but few clear performance measures, breeds a profusion of rules, regulations, clearances, and reporting requirements." (Raine, p. 311) Agency supervisors should realize that the mountain of paperwork necessary to ensure equal employment opportunity is the result of years and years of administrative inaction, just like the inaction at their own organization perhaps.

A complete list of sources cited are available upon request. For information, contact Mike Mashburn at (501) 570-8042.

CJI Management Quarterly

Criminal Justice Institute
University of Arkansas System
7723 Asher Avenue, Suite B