

Types of Sex Discrimination

Gender as a Job Requirement

Employers are prohibited from using gender as a job requirement. Total exclusion of one sex from employment is the clearest form of using gender as a job requirement. Civil Rights principles require that job requirements must be based on job-related factors and not upon gender. The Civil Rights Act of 1964 does not allow management automatically to indulge traditional notions of what work is appropriate for men or for women. For instance, management cannot exclude women from heavy manual labor because those positions are traditionally men's positions. Similarly, management cannot exclude men from secretarial positions because such work is traditionally done by women. Generally, management bears a heavy burden of justification for any policy of excluding one sex or the other from any position.

The Supreme Court, when reviewing such cases, has stressed the importance of making judgements about people as individuals rather than as members of a gender classification.

Sex-Plus Discrimination

Another type of discrimination is the exclusion not of one sex entirely, but of a subset of one sex: "sex-plus" some other attribute. For instance, it is illegal to discriminate against women with children or women who are pregnant for fear that their child-rearing responsibilities will interfere with their work performance. In these instances, a generalization is being made about the likely behavior of one sex as compared with the other sex.

Generalization Based on Sex

Many valid generalizations guide personnel decisions, so an absolute legal prohibition of decisions based on generalizations would be impractical. Only certain kinds of generalizations are illegal - those based on one of the prohibited classes (race, national origin, color, religion, sex, age, disability, and marital status). One of the most common examples of illegal generalizations are those based on sex. To use a person's sex as a basis for deciding whether to hire that person is clearly a form of unequal treatment based on sex; it is illegal discrimination.

The U.S. Supreme Court has made many decisions prohibiting employment decisions based on sex generalizations. Managers cannot even use facts about sex differences as a basis for employment decision-making. It has been common to encounter assertions that women are less aggressive than men, more inclined to take maternity leave, and the like. Some managers have protested, citing research and strenuously asserting that such generalizations are based on fact. But the Supreme Court has made it clear that it is illegal for managers to operate on the basis of those generalizations, valid or not.