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Title VII Violations at Starship Recreational Vehicles

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GBUS 674 Culminating Project

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Section 1: Research

Starship Recreational Vehicles is a family owned company that has been producing a high quality product for 40 years. In recent years, Starship has experienced difficulties in recruiting and retaining employees which in turn has affected the company's bottom line. Profits have been low or nonexistent with a deficit totaling three million being seen in 2006. Some of this can be directly attributed to staffing and high turnover, a situation that promulgates high expenditures due to the need to train so many new employees to replace those that leave the company. Company culture and demographics can be important factors when examining causes for high turnover and a quick look at Starship's demographics' will show that cultural diversity is lacking. The company is managed exclusively by white males and almost all (91%) of the company's professional workforce, such as engineers and salespersons, are white males as well. All office/clerical positions are held by female workers and the remaining positions in the company are 43% white male. It is obvious that Starship's hiring and promotion policies and practices badly need an overhaul. Before further discussion regarding Starship and the company's need for change it is important to understand the facts regarding anti-discrimination laws and the problems that could arise as a result of Starship's skewed staffing demographics.

Federal Anti-Discriminatory Oversight

The Equal Employment Opportunity Commission (EEOC) is the federal agency that investigates and administers Title VII of the Civil Rights Act of 1964, most commonly known as "Title VII". Title VII is primarily pointed at protecting workers from discrimination based on race, color, religion, sex, or national origin. The EEOC also enforces the Equal Pay Act of 1963 (EPA), the Age Discrimination in Employment Act of 1967 (ADEA), Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), Sections 501 and 505 of the Rehabilitation Act of 1973, and the Civil Rights Act of 1991. The EEOC consists of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners have five year terms which are staggered and the General Counsel has a four year term.

Title VII states that it is unlawful to *"to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, sex, or national origin..."* (SEC. 2000-e-2 [Section 703] of Title VII of the Civil Rights Act of 1964). The Civil Rights Act of 1964 was a hard won victory for supporters of equal rights. Preceded by the Civil Rights Act of 1957 and the Civil Rights Act of 1960, both were considered "watered down" and were not effective in assuring equal treatment. In early 1963, President John F. Kennedy sent a message to Congress that called for new civil rights legislation. Kennedy said, "The Negro baby born in America today...has about one-half as much chance of completing high school as a white baby born in the same place on the same day; one-third as much chance of completing college; one third as much chance of becoming a professional man; twice as much chance of becoming unemployed...a life expectancy which is seven years less; and the prospects of earning only half as much." (Loevy 1985) There was a great deal of resistance to passing the act. President Kennedy needed southern Democratic

support for the 1964 election and had to be careful not to antagonize them. It seemed that the bill had little chance of success until Martin Luther King and the Southern Christian Leadership Conference began public protests to show the extent of segregation in public facility use in Birmingham, Alabama. The local law enforcement reaction to the nonviolent demonstrations gave the country a view of the oppression of the African American people of the Southern United States. The White House immediately came under a great deal of pressure for civil rights reform leading the President to have his brother Robert Kennedy, the U.S. Attorney General, to start work on a bill that would prove to be the broadest civil rights legislation that had ever been before Congress. Democrats and Republicans of the Judiciary Committee also began to apply pressure for the bill to contain measures that would prevent racial discrimination in hiring practices by private companies. Although the Kennedy assassination was feared to also be the death of the civil rights bill, in fact Johnson used civil rights as much of his platform for reelection as a "civil rights president". The only major amendment to the bill was the addition of an amendment that made discrimination based on sex illegal which in fact only strengthened the bill. On July 2, 1964 after signing by President Johnson, the Civil Rights Act of 1964 was signed into law.

Title VII of the act defines an employer as a person "engaged in an industry affecting commerce" (Section 701) that employs fifteen or more employees for every working day in twenty or more calendar weeks in the current or preceding year. Although technically Title VII excludes the federal government, Indians tribes, and certain other entities from definition as an employer, protection for employees of those entities has been afforded through other legislation and statutes.

An early Title VII case that had great significance for future discrimination complaints, *Griggs vs. Duke Power Company*, the decision of the U.S. Supreme Court was important in that it set a parameter for future discrimination cases. According to Nelson and Kleiner, *Griggs vs. Duke* is one of the most important cases in discrimination law because it required the court to define "discriminate" as part of its decision. Prior to the passing of Title VII of the Civil Rights Act of 1964, Duke Power Company segregated employees according to race. In a particular power plant, the Dan River plant, African Americans only worked in the Labor Department which included the lowest paying positions in the company. After Title VII was passed, Duke implemented a policy that required workers seeking positions outside the Labor Department to both pass an exam and hold a high school diploma, a practice which had an adverse affect on African Americans ability to qualify for other positions. African Americans were selected at a significantly lower rate than white applicants. The Court ruled that if specific job requirements had a "disparate" effect on ethnic minority groups, organizations must be able to show that the requirements, in this case testing and a high school diploma, are "reasonably related" to the job for which they are required. The requirement for the exam and high school diploma for certain jobs at Duke Power wasn't related to any ability or knowledge needed to perform the work. In fact, the policy requiring applicants to have a high school diploma and pass aptitude tests in the departments that were primarily staffed with white employees, was implemented on the day that Title VII became effective (July 2, 1965). The Supreme Court's decision was in part based on the argument that neutral, non-essential practices are not compliant with

Title VII if they serve to maintain the effects of past discrimination. The Court ruled that Duke Power was not in compliance with Title VII of the Civil Rights Act of 1964. In the Court's opinion the testing policy at Duke Power represented an "artificial, arbitrary, and unnecessary barrier to employment..." because it fostered discrimination on a racial level (Chase 1972).

In Section 703, **Unlawful Employment Practices** of Title VII, subsection (k) **Burden of proof in disparate impact cases, (1)(A)** states that "An unlawful employment practice based on disparate impact is established under this subchapter only if-" and goes on to list situations that demonstrate what constitutes a disparate impact, leaving the burden of proof on the complainant. This section has significance in recent litigation such as *Ricci v. DeStefano*, a case in which involved possible disparate impact concerns on the part of the City of New Haven, Connecticut.

Ricci vs. DeStefano involved a lawsuit by white firefighters against the City of New Haven, Connecticut in which the firefighters alleged that the city committed racial discrimination when it did not accept exam results that showed a negative impact on African-American and Hispanic firefighters. The test results showed that white firefighters had done better in the exam, causing the city concern that the minority firefighters might file an adverse impact claim against the City. In 2003 the City of New Haven needed to fill captain and lieutenant vacancies in the fire department. Following the City charter and civil service regulations that require promotion be based solely on merit, the city contracted an outside organization experienced in public safety testing to develop an exam that measured the job-related knowledge of the applicants. The company proceeded to develop testing criteria that they thought would accurately gauge knowledge, skills, and abilities of applicants to assess their suitability for the captain and lieutenant positions that were vacant. The City of New Haven "had seen racial disparities in the results of previous exams" and wanted the testing firm to avoid racial impact while assuring the exams indicated the best candidates for the positions. After the exams were administered and analyzed, it was indicated that the high scores were from non-Hispanic white test takers with the exception of one or two Hispanic, higher scorers. Even with the consideration supposedly given to the content of the exams by the testing company, the results still showed racial disparity. The test company has stated that their test does not include any questions that measure leadership abilities. An expert in testing for firefighters has told the City that there are firefighter promotion tests available that have results with less racial disparity. At the urging of a local clergyman and the city's counsel, the New Haven Civil Service Board met several times to deliberate whether to certify the test results. With the risk of a possible Title VII violation the board deadlocked in their vote on certification of the scores and because of the deadlock, did not certify the scores. The firefighters that were denied promotions sued the City of New Haven under Title VII and the Equal Protection Clause. The district court ruled that the City did not commit intentional discrimination under the Equal Protection Clause because it had refused to certify the test scores on the concern that using the exam results would create a basis for adverse impact claims and subject the City to Title VII lawsuits. The Second Circuit Court agreed with the district court's decision and added that "under the District Court's rationale, it appears that any race-based employment decision undertaken to avoid a threatened or perceived Title VII lawsuit is immune from scrutiny under Title VII". With the evidence that the test in

question may not be suitable for assessing the leadership KSAs of applicants and the resulting racial disparity of the test scores, it seems likely that the Supreme Court will agree with the lower courts on this case. On Wednesday, April 22, 2009, the Supreme Court heard the arguments for *Ricci vs. De Stefano*.

Employee claims of employment discrimination are not just a problem in the private sector. Discrimination concerns and employee claims of discriminatory hiring and promotion practices are the concern of public employers, as well. Local and state governments must contend with allegations of employment discrimination based on race, sex, or age and disparate impact claims from applicants with protected status. Several employment discrimination cases that were filed against local agencies in the State of Tennessee were examined in a review of lawsuits directed at local governments. (French 2009)

Andrews vs. City of Cookeville was a case in which the plaintiff filed suit against the city claiming age and sex discrimination after the individual was not offered employment for a police officer vacancy. The plaintiff had overall ranked as number eight on the list of applicants. Previously the plaintiff had twice resigned from employment with the city and the city claimed that he was ineligible for rehire. Although the plaintiff claimed that a female applicant had been offered the position, the city claimed that her overall score was higher than the plaintiff. The plaintiff also claimed that the city hired one applicant that had a lower oral interview score than the applicant. In addition, the police chief had apparently made a comment during the plaintiff's physical agility test comparing the plaintiff to George Foreman and stating that he did not know when to quit. Originally the district court granted the City of Cookeville its request for summary judgment and dismissed the case. The plaintiff appealed the case and the appeals court found that the district court had not considered the comment/comparison to George Foreman and the hiring of the applicant with the lower oral interview score. The appeals court remanded the case for further proceedings on the age discrimination case. This case demonstrates the need for employers to carefully consider comments and dialogue in all situations. The comment by the police chief, whether taken out of context or portrayed precisely as uttered was a strong part of the plaintiff's case.

In *Tant vs. City of Clarksville* the plaintiff claimed that the city had discriminated when it had not rehired him after having resigned three months previously. The plaintiff had resigned when the city had started disciplinary action to terminate him because of reprimands and neglect of duty. When the police chief refused to rehire him, the plaintiff alleged racial discrimination because other Caucasian officers had been rehired within a year after resigning. Although the plaintiff had sufficient evidence to take his claim to court, he did not present sufficient evidence to support his claim that rehire did not occur due to discriminatory practices. In fact, the Caucasian rehires did not have a history of disciplinary problems as did the plaintiff. The district court granted summary judgment to the city. This case demonstrates the importance of documentation that supports the decisions of an employer when making hiring decisions, especially those that may appear to have an adverse affect on an applicant that is not hired, or in this case, rehired. In the case *Johnson et al vs. City of Memphis*, African American, Hispanic, and Caucasian plaintiffs argued that the city had discriminated against them when the city implemented a promotion process for patrol officers to attain the rank of sergeant. The

promotion process consisted of a written test, a practical exercise, performance evaluations, and seniority points. The local press made a claim that study materials for the practical exercise had been given to certain individuals supporting the claim with a copy of the test materials. The city decided to eliminate that part of the process and weighted the written test and performance evaluation portion of the promotion process higher to compensate. As a result of this situation, the African American and Hispanic officers claimed discrimination because of the elimination of the practical exercise and the Caucasian officers claimed discrimination saying that the city had discriminated against them by giving certain African American officers the unauthorized study material. 52 officers filed in the suit under Title VII against the City of Memphis. Two plaintiffs filing under both racial discrimination and violation of the Fourteenth Amendment asked that promotions using the disputed process be ended, asked that the city implement a new promotion process, asked that someone be appointed to oversee the new process, and asked that all candidates be allowed to review their scores before a promotion list is issued. The court denied this request and the City of Memphis then used the altered process (without the practical test) and promoted the top scorers to the rank of sergeant. At that point, the plaintiffs added an additional fifty officers that had not been promoted using the previous process. The district court invalidated the city's granting the city permission to implement a new promotion process. 51 sergeants whose promotions had been rescinded then filed a complaint against the city asking that the city not be allowed to demote them or lower their pay. This case aptly demonstrates the need for an organization to thoroughly plan its promotion process and to use a transparent and well thought out plan for evaluating candidates. By following the original or the second promotion process, the City of Memphis was treating some demographic segment of the candidates unfairly.

The EEOC handles thousands of Title VII complaints each year, some of which are concurrent with Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act (ADA), and Equal Pay Act (EPA) complaints. Although back pay is the most prevalent form of award by the courts, damages are also awarded for future loss, pain and suffering, emotional distress, and others. Awards for compensatory damages in employment discrimination cases can be as much as \$50,000 to \$300,000 depending on the size of the company, which is the cap set by federal statute (42 U.S.C. sec 1981a(b)(3)). An employer with up to 100 employees can be required to pay \$50,000, an employer with 101 to 200 employees can be required to pay \$100,000, and employer with 201 to 500 employees can be required to pay \$200,000, and an employer with over 500 employees can be required to pay compensatory damages of up to \$300,000. The caps apply to each individual complainant which makes it possible for a group in a class action suit to receive much more overall. Starship, with a workforce of 446 employees, could potentially be put out of business if the complainants in a class action suit were awarded the maximum allowable compensatory and/or punitive damages. Punitive damages can also be awarded for cases in which it is proven that the employer intentionally discriminated or behaved with reckless indifference in employment practices. Other forms of awards are front pay which is designed to put complainants where they should be in pay status and injunctive relief where a complainant is restored to their position and the employer is ordered to prevent further discrimination (Employment Law Information Network 2009).

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Receipts	59,631	61,459	59,075	58,328	55,976	56,155	61,159	69,064
Resolutions	54,549	56,392	52,227	51,355	46,885	44,228	53,631	58,104
Settlements	4,493	5,362	5,215	5,365	4,991	5,165	6,423	6,416
Withdrawals w/Benefits	2,201	2,188	2,188	2,151	2,405	2,373	2,907	3,427
Administrative Closures	10,766	9,791	9,225	8,563	7,255	7,143	9,475	9,827
No Reasonable Cause	32,075	34,671	32,418	32,646	29,344	27,178	32,123	35,695
Reasonable Cause	5,014	4,380	3,181	2,630	2,890	2,426	2,703	2,739
Successful Conciliations	1,177	1,060	747	697	788	618	840	841
Unsuccessful Conciliations	3,837	3,320	2,434	1,933	2,102	1,808	1,863	1,898
Merit Resolutions	11,708	11,930	10,584	10,146	10,286	9,964	12,033	12,582
Monetary Benefits (Millions) *	\$141.1	\$141.7	\$138.7	\$128.6	\$146.0	\$126.5	\$220.0	\$201.4

Table 1 Charge Receipts Filed and Resolved Under TitleVII FY 2001-2009

State of Kansas Anti-Discriminatory Oversight

The State of Kansas has discrimination legislation in place to address employment discrimination based on race, religion, color, sex, disability, ancestry, national origin, age, or retaliation. The Kansas Human Rights Commission (KHRC) is tasked with enforcing the Kansas anti-discrimination statutes and is similar to the EEOC in scope and authority but on the state level. In the State of Kansas, an employer is defined as one who does business within the state and employs four or more persons, which is a broader inclusion of business entities. The EEOC defines an employer as a person engaged in commerce that employs fifteen or more persons each day of twenty

or more calendar weeks of the year. The KHRC investigates allegations of discrimination, provides a third party mediation for voluntary resolution of disputes, prosecutes violations of anti-discrimination laws through public hearing processes, and implements education programs as a preventive of discriminations practices. The KHRC has been successful in resolving more than 800 discrimination related cases each year since 2001 and has recovered more than \$1,000,000 in the last four years. This includes discriminations allegations in employment, public accommodations, and housing complaints. In Kansas, complaints for employment related discrimination must be filed within six months of the date of the last discriminatory act. This is the same timeframe specified by Title VII.

As is illustrated in the case *Woods vs. Midwest Conveyor Company*, the State of Kansas adopted the practice of requiring the complainant to present evidence of the employer's discriminatory practices by building a *prima facie* case, in other words "at first sight" the case must appear to be a bona fide discrimination case. It is then up to the respondent to show evidence of a nondiscriminatory reason for the employment practices in question.

Fiscal Year	Number of Resolved Cases	Monetary Recovery Amount
2008	820	\$685,601
2007	1,001	\$581,018
2006	1,011	\$927,285
2005	879	\$993,892
2004	841	\$1,435,616
2003	966	\$741,810
2002	888	\$712,437
2001	975	\$1,059,066

Table 2 Kansas Human Rights Commission Cases

Strategies for Avoiding Discrimination Complaints

There are strategies that can be used to help an organization avoid discrimination complaints and suits. Many involve employee awareness and the need for the organization to clearly state policies and implement/enforce them at all levels of the organization including all levels of management. Human Resources Management, as a primary stakeholder in this effort, is responsible for many of the policies. Much of the training that may be needed to avoid costly court ordered awards to complainants in Title VII or state cases also falls within the scope of the HRM function.

The human resource management department of any organization, large or small, should perform a comprehensive survey of the organization to pinpoint problem areas or deficits in policies and programs. The survey should be an ongoing examination of the organization, performed at least yearly if not more often. The areas scrutinized should include wage and salary compliance with the Fair Labor and

Standards Act and Title VII, job descriptions and specifications that meet the Americans with Disabilities Act, effective grievance and alternative dispute procedures, workplace violence, sexual harassment, and affirmative action policies, a performance appraisal system that assures fair and equitable distribution of rewards, and a clear understanding of how the organization compares with other similar organizations with regard to compensation and turnover.

A critical area of concern is whether employer wages meet the requirements of the Fair Labor Standards Act (FLSA) and Title VII. It is unlawful for an employer to adopt a discriminatory pay practice that doesn't provide for compensation to be fairly distributed in an equitable manner. In June of this year the NAACP and nine class representatives filed for class action status against Eli Lilly Company in United States District Court in Indianapolis. This class action suit would represent 2,000 former and present employees of the company that experienced "pervasive and longstanding" discriminatory pay practices at Eli Lilly. Eli Lilly was founded in 1876 and is the tenth largest pharmaceutical company in the world placing the company at the forefront in its field. Any relief awarded by the courts could theoretically reach into millions of dollars. The complainants are seeking declaratory and injunctive relief, back pay, front pay, attorney fees, and against Lilly for its past discriminatory employment practices. The complainants allege that the company advances its white employees faster than African American employees denying them equal pay for work performed, promotion opportunities, training, and other compensation benefits afforded white employees.

New legislation, signed into law by President Obama in January of 2009, the Lilly Ledbetter Fair Pay Act amends Title VII as well as the ADEA, ADA, and others by stating that the period for filing charges of discrimination reset each time an employer compensates an employee. Before the Lilly Ledbetter Fair Pay Act, the time limit on filing charges began when the employer made a discriminatory decision. The act only allows for possible damages to go back for two years. Opponents of the act feel that it will result in a great deal of unimportant or "trivial" litigation and will allow complainants to file charges on incidents from years in the past. Proponents of the act feel that it will be of benefit to employees that discover pay disparity too late after the pay decision was made to file charges or receive damages. The case of *Ledbetter vs. Goodyear Tire and Rubber Company* in which Lilly Ledbetter sued her employer, Goodyear Tire and Rubber Company in Gadsden, Alabama. Ms. Ledbetter found that her pay in the position of supervisor was less than that of her male peers. The complainant sued under the Equal Pay Act after the original decision that said that her Title VII case was outside the statute of limitations. Ms. Ledbetter worked as a supervisor in the plant from 1979 until 1998. When she began the job, her salary was comparable to her male counterparts performing roughly the same duties. Over the span of her career, the salary of her peers increased to higher levels than hers. Due to the confidentiality of salary information, Ms. Ledbetter was unaware that her salary was less than other management personnel of similar seniority and responsibility until an anonymous note made her aware of the disparity. Although the pay decisions made by her employer left Ms. Ledbetter's claims outside the statute of limitations for her claim, she claimed that those earlier decisions were still affecting her within the 180 day limitation through her regular paycheck compensation. Originally, the Supreme Court ruled that her claim was

outside the time limitations but the law amended the time limitations (Cummings 2009 and Anonymous 2009).

Nepotism

Nepotism is defined as favoritism based on kinship. The practice is often accompanied by the implication that the relative is under experienced or lacks needed qualifications. Nepotism in companies in the U.S is fairly common with around 35 percent of the country's 500 largest industrial business being family owned and have had a continuous family leadership presence for multiple generations (Wong and Kleiner 1994). The practice is criticized as contrary to the needs of operating a business as efficiently as possible. The aim of management in any organization that seeks to make a profit is to use human resources as effectively as possible which implies that personnel that do not meet minimum requirements for performing optimally would not be utilized. Nepotism advocates the use of "inside" connections through kinship that negate the worth of skills and accomplishments. Some companies that advocate nepotism at upper management levels may find that middle and lower level management personnel lack drive knowing that they are not a part of the "family" and therefore have less opportunity to rise to the highest levels of the organization. It is a consideration for highly competitive employees in such an organization that their careers might be better served at a company that is not populated at higher levels by family members. According to Arasli, Bavik, and Ekiz in *The effects of nepotism on human resource management* published in the International Journal of Sociology and Social Policy in 2006, there are several behavioral intent hypotheses that have been formed for employees in organizations with the presence of nepotism. Nepotism will have the following effects:

- There will be a significant negative influence on human resource management
- There will be a significant negative influence on job satisfaction
- There will be a significant positive influence on quitting behavior
- There will be a significant positive influence on negative word of mouth

They further posit that satisfied employees, those being well satisfied by their situation will be more productive and will have no intention to exit, no negative word of mouth comments on their employer, and will be more productive. Another offshoot of nepotism that may affect organizational performance is the possibility of non-relatives in an organization that practices nepotism may try to develop close relationships with family members as method of advancement but without increasing performance levels. Again, this type of behavior would be detrimental to the company overall by allowing employees who are contributing to the success of the company to gain key positions within the infrastructure.

Many organizations implemented anti-nepotism rules in the middle of the twentieth century to prevent the hiring of males that were not capable of competent performance. No spouse rules also became a part of some company's anti-nepotism rules when more women started entering the workforce in the 60's and 70's. Although the validity of prohibiting the hiring of incompetent family members is still of importance

to companies, the no spouse rule might actually be detrimental in recruiting new employees. There are several reasons that hiring a couple might be attractive from a human resources standpoint. First of all, if a couple is hired, they might be reticent about leaving an organization because of the need to find two jobs instead of one. Also, one employee of a married pair working for one company might be less likely to accept another position that would involve a transfer in order not to affect her/his spouses career. Inversely, there are valid reasons to curtail or eliminate spousal hiring/employment. For example, often married couples are unable separate their home/family concerns from work concerns and often bring their arguments to work with them. Married couples usually wish to take off-time together which can cause staffing problems, especially in smaller work units.

Employment and Discrimination

In the 1950s and 1960s there began to be a change in employment discrimination that was brought about by the Civil Rights Movement with “anti-black prejudice” declining a great deal, more in the South than the rest of the United States (Lichter 1989). The sweeping changes ushered in by federal discrimination legislation made great progress towards reducing the rampant overt discrimination against African-American workers both in the northern and Southern United States. Good progress has been made to improve the treatment of minorities in the workplace but employers cannot rest on their intention to follow guidelines and discrimination law. It is important for employers to implement training programs, campaigns, and informational programs in order to insure that employees are aware of what is considered unacceptable behavior with regard to employment discrimination. An employer may be very conscientious and have in place many policies designed to prevent or eliminate discrimination but staff must be trained sufficiently to understand that often simple situations can lead to discrimination. Also, it is important for employees to understand that any act of discrimination that is perpetuated is the responsibility of the employer. The liability for such acts falls to the employer whether or not there is foreknowledge. It is actually not difficult to prevent discrimination if care is taken.

A good training program should cover the basic areas of discrimination law, that of race, color, religion, national origin, gender, age, disability, sex, and sexual orientation. These are the “protected” classes that cannot be any part of employment related decisions such as hiring, promotion, or termination. Also of concern are areas which might not at first seem like discrimination concerns, such as employees with medical conditions or long-term illnesses. Reverse discrimination, sometimes a factor when management is overzealous in its attempts at leveling the field, must also be recognized and avoided. Throughout the employment process all personnel involved must be cognizant of the pitfalls that could lead to employment related discrimination charges.

During the hiring, it is important for the interviewers and others involved in the process to avoid certain pitfalls when asking prospective employees questions. Interviews should always be well planned and controlled. Consistency during the interview process from one applicant to another will help avoid charges of discrimination. Questions that are pertinent in determining an applicant’s suitability for

the job are important. Inquiries about a person's knowledge, skills, and abilities without any direct or oblique references to any of the "protected" classes are essential. For example, any question or comment regarding an applicant's national origin or sex should be avoided unless such information is related to a Bona Fide Occupational Qualification (BFOQ). BFOQs for a position that seems to be discriminatory, it is necessary for the employer to prove the claim that all members of the excluded class cannot perform the duties of the position (Thompson 2009). For example, in the case *Western Airlines vs. Criswell* where the airlines excluded flight engineers over 60 years of age. The airline was unable to prove that all members of the excluded class were unable to perform the duties of flight engineer.

In order to avoid costly litigation and the possibility of adverse decisions in favor of a complainant, it is important for any organization to address the issue of discrimination before it becomes a problem. For example, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) has extensive involvement in assuring that employees and contacts in the industry they regulate are treated fairly and with respect (FSIS 2009). FSIS incorporates a "Personal Contacts" element in the performance standards of all non-management employees and gives that element a designation of "Critical" which means that element is weighted more than "Non-critical" elements. Supervisors and managers with FSIS have the performance element "Equal Opportunity and Civil Rights" as a mandatory "Critical" performance standard that must be met. The agency requires that each employee receive annual civil rights training. The courses address particular EO and CR concerns with such titles as "Reinventing Diversity", "No Fear Act", and "Reasonable Accommodation". The FSIS *Equal Opportunity Policy Statement* states, "*All Agency employees and applicants for employment must be treated with respect, dignity, fairness, and equality regardless of race; color; national origin; religion; age (40 and over); gender; mental or physical disability; sexual orientation; marital, family, or parental status; political beliefs; protected genetic information; or reprisal (retaliation) for prior EEO activity. Employees must abide by this policy regardless of personal opinions.*" The policy statement further says that supervisors and managers are to insure that their management decisions comply with EEO laws and policies. Management at FSIS is responsible for educating and updating employees on civil rights issues, providing leadership and taking responsibility for ensuring equal access to all services and information. Management personnel are further tasked with assuring that lines of communication are open that will allow employees to voice any complaints. The policy statement further states that discriminatory actions in the workplace will not be tolerated. This statement is covered in new hire orientations and a copy is provided to each employee in addition to other directives and the Employee Resource Handbook which also includes a section on civil rights policy. From the entry date into the agency, the employee is well informed as to discriminatory behavior that is unacceptable and that will not be tolerated. Using the Food Safety and Inspection Service as an example, the methods for preventing discrimination are straightforward:

- Implement an equal employment opportunity policy throughout the organization
- Assure that each employee receives a copy of the EEO policy (whether through an employee handbook or as a separate document)

- Implement an employee grievance or complaint process that includes a policy of non-retaliation
- Implement an employee training program that assures ongoing reinforcement of nondiscrimination policy and that promotes good interpersonal skills
- Recruiting efforts should reflect a concerted attempt to attract a diverse group of applicants

By implementing and applying these policies, an employer can often head off problems before they escalate. If an employee does file a discrimination suit, an employer that can show the court that they are serious about eliminating discrimination and that a well designed anti-discrimination program is in effect can minimize punitive damages awarded.

Affirmative Action

Affirmative action is a policy of taking race, gender, or ethnic background into account when forming policy with regard to such areas as employment, health care, and education in order to make services and opportunities available to the full range of diverse backgrounds. The proponents of affirmative action believe it is necessary in order to avoid cultural stereotypes when making hiring decisions or performing evaluations of employee performance. Some feel that affirmative action is vital due to subconscious tendencies towards bias (LeBeauf et al 2007). They believe that mandatory affirmative action policies must remain in effect in order to avoid the subconscious biases that exist. Opponents feel that employment decisions should be wholly on merit and not influenced by the consideration of gender, race, or ethnicity.

The Federal government is the largest employer in the U.S. with around 4,206,000 workers including executive, legislative, and judicial branch employees and members of the uniformed services (OPM 2009). The Federal government has strong policies of affirmative action to work towards the ideal that all minorities and ethnicities are represented proportionally. In 1998 minorities comprised 26.4 percent of the Civilian Labor Force while in that same year minorities made up 29.4 percent of the Federal workforce. Even with strong policies and initiatives in place, 55 percent of Black participants in a U.S. Merit Systems Protection Board (MSPB) study in 1996 believed that "Blacks are subjected to 'flagrant or obviously discriminatory practices' in the Federal workplace." Only 4 percent of White respondents in the survey were in agreement. The MSPB did not find evidence of any widespread insidious discrimination but it did find that minorities and non-minorities have difficulty in understanding and accepting each other's perspectives. It is obvious that keeping open strong lines communications is important in situations such as these. Open and transparent dialogue and interaction between minorities and non-minorities, between different ethnic culture groups, and between genders can assist in dispelling misconceptions and misunderstandings.

Demographics of Hays and Ellis County

The City of Hays and Ellis County, Kansas is considered by some to be the official German Capital of Kansas due to the German immigrants who settled there in the 1870s and 1880s (Midwest Deutsche Oktoberfest 2009). The percentage of white persons living in Ellis County is 96.4 of which a large number are of German ancestry. This figure as compared with 88.7 percent in the rest of Kansas, makes recruiting for diversity difficult. The following table contains figures of the culture makeup of Ellis County taken from U.S. Census Bureau information:

	Ellis County	Kansas overall
White persons, percent, 2008	96.4%	88.7%
Black persons, percent, 2008	1.0%	6.2%
American Indian and Alaska Native persons, percent, 2008	0.3%	1.0%
Asian persons, percent, 2008	1.2%	2.2%
Native Hawaiian and Other Pacific Islander, percent, 2008	*	0.1%
Persons reporting two or more races, percent, 2008	1.0%	1.8%
Persons of Hispanic or Latino origin, percent, 2008	3.1%	9.1%
White persons not Hispanic, percent, 2008	93.6%	80.3%

* Value greater than zero but less than half unit of measure shown

Often a good place to start when recruiting for diversity is at colleges and universities. Employers often participate in career days and job fairs to recruit for prospective applicants. Fort Hays State University in Hays is a liberal arts institution with an enrollment of around 10,000 students. FHSU's demographics are similar in makeup to the Ellis County averages.

White persons	76.2 %
Asian Pacific persons	1.3%
Hispanic, Native American, and Black persons	4.8%
Undisclosed	5.7%

Advantages in Recruiting for Diversity

Representing diverse cultural perspectives through hiring presents an employer with many challenges but inversely employee diversity also represents advantages that can be beneficial to the organization. In business and government the ability of an organization to approach problems from a cross-cultural standpoint allows creative and otherwise unseen solutions for many problems. Any entity engaged in global operations can realize significant gains in efficiency when interacting with customers or contacts using members of the organization that have similar cultural backgrounds. Diversity in

the workplace can lead to an increase in productivity as well as a decrease in lawsuits for discrimination related reasons. In an organization such as Starship, workforce diversity could also result in increased sales due to the opening of alternative markets. Cultural diversity could accomplish this and more through expanded perspectives. For the advantages of workplace diversity to be accessible, the members of the organization must buy into it. There must be an atmosphere of respect between members of a diverse work group. In today's ever changing global economy, it is important to find and accept new ways of accomplishing organizational missions and meeting important goals. A diverse workforce with new perspectives can avoid the traditional "that's the way we have always done it" mentality. This seems to be a serious problem at Starship with some managers, especially those that are family members, wanting to maintain the status quo and avoid new approaches and ideas.

Women in the Workforce and the Glass Ceiling

A "Glass Ceiling" is the term used to describe an organization's policy of not allowing a particular class to advance past a certain level or "ceiling". This unofficial restriction has been applied to some or all of the Title VII protected classes and is a deliberate form of discrimination. Women and minorities often have difficulty in rising to top level executive positions with minority women having a double minority role and a greater difficulty in climbing the corporate ladder (Dean et al 2009). In the past fifteen to twenty years women have begun to make many advances, partially through their efforts to educate themselves. More women are enrolling in and completing programs in business to better prepare themselves for careers in the corporate world. At present women are represented at just 2.6 percent as CEOs in Fortune 500 companies and as 6.7 percent as highest earners although they hold 50.6 percent of the management, professional, and related jobs in organizations (Eisner and Harvey 2009).

Another interesting factor in the wage gap between men and women rests in education. Women who attend very selective colleges earn about what men earn who attend less selective institutions. Men's wages seem to be affected less than women's when considering since men who attend less selective schools do not earn a great deal less than those men who attend very selective schools. One advantage that seems to be growing for women is their prevalence to be more educated in urban areas. Of women in their 20s working in New York City in 2005 53 percent were college graduates, while 38 percent of men the same age had degrees.

The advent of Generation Y with its greater "share" of women educated and equipped with the knowhow to excel in the business world may provide additional pressure for equitable wages. Amid many predictions of workforce shortages due to more and more Baby Boomers reaching retirement age, the women of Generation Y may see more opportunity to rise to the top levels of management, if the shortage predictions are as severe as some estimate.

Women primarily work in health care, education, finance, insurance, and real estate as well as other retail and service industries. Men often work in higher paying occupations than women, such as engineering, where they earned 82 percent of the degrees. A field that is primarily staffed by women (96%), that of child care, is one of

the lowest paying fields dominated by women with an average annual salary of \$18,500.

One possible avenue for women to achieve higher positions and salaries has been suggested. Mentoring provides women with the possibility of learning to achieve higher levels of performance and positions of greater authority but mentoring also has inherent difficulties. Many female executives list male mentors among those that gave them what they needed to succeed. Some male mentors have concerns about "perceived flirtation and personal relationships" and feel discouragement towards being a part of mentoring programs. This may leave women pairing with women in some cases and thusly may be less effective than "gender blind" programs.

Conclusion

Future recruitment activities at Starship should reflect a heightened awareness of the demographics and the need to balance inequalities if suitable candidates for vacant positions meet qualification requirements. Nepotism, while a touchy subject in a family owned business, must be considered an unattractive method of staffing key positions within the organization. Strategic positions should be filled by the most qualified and experienced personnel available in order to assure the future success of the company. Promotions at Starship must be opened to all qualified applicants/candidates. The shortage of women and other minorities in management positions at Starship is an obvious result of the shortcomings of the company's review and employee development process.

Starship has experienced several years of depressed profits and sales. The cost of litigation from a complaint of employment discrimination by a single employee could deplete Starship's resources to the extent that the company could become insolvent. Awards by courts can now include punitive damages that could amount to as much as \$300,000 dollars. Starship's projected profits for 2008 will be little more than that.

Employment discrimination is an ongoing problem in its many forms but it can be minimized through effective communications and employee education. Assuring that employees have a safe and non-hostile work environment is the responsibility of management. It is incumbent upon all supervisors and managers to accept that responsibility and balance the needs of the organization with the needs of the workforce. It is not only that Title VII discrimination is illegal, there is also a moral responsibility placed on each employee in the organization to treat others with respect and fairness.

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Section 3: Communiqué

To: Executive Team

From: Ron Dotson, Human Resource Manager

Subject: Title VII Violations

Date: October 16,
2009

The demographic breakdown of the employees of Starship shows a serious disparity that could be violations of Title VII of the Civil Rights Act of 1968. If the present situation is not rectified, the company could be involved in litigation and liable for damages. The cost to Starship could be thousands of dollars and could, theoretically bankrupt the company.

Nature of Problem

The Managers and Foremen of Starship are 100% white males and the Professional staff is 91% white male, which includes engineers, accountants, purchasing personnel, sales and marketing personnel, and human resource management personnel.

Although the demographics of the Ellis County area does not indicate that Starship has the employment pool to meet national levels of diversity employment, it seems likely that there are qualified minority applicants that could have been placed in management positions.

Employment discrimination litigation could incur expenses that Starship is unable to cover. Punitive damages of up to \$300,000 are possible if a complainant can show deliberate discriminatory policies.

Solution

I recommend a thorough review of all employment policies and procedures. The recruitment/hiring process should be thoroughly overhauled to identify questionable practices. In addition, the promotion process should be updated to reflect the need to consider all qualified applicants. The first course of action should be a training presentation to make all management personnel fully aware of their responsibilities in preventing employment discrimination.

Section 4: Culminating Project Question

Identify and explain what the most important idea you gleaned from this project and how it will likely shape your view on the human resource function in organizations. We are not looking for what you learned about a specific law, but rather the integration and ramifications of implementation within a culture such as Starship's.

In the company culture of Starship there are obvious shortcomings in policy or policy implementation. In order to implement the significant change required, it is necessary to perform extensive research and to determine what needs must be met to shift the company into a modern, workable strategy that will eliminate the risks identified. The broad range of Federal laws that cover various types of employment discrimination must be reviewed to assimilate the information that will be integrated into training scenarios. In order to change the company's culture from top to bottom, it is first necessary to convince upper level management that changes are required. Case law and court decisions can be used to illustrate the risks in ignoring the problems inherent in the Starship management system as it presently operates. Case studies of successful organizations that have implemented broad strategies of diversity promotion can prove the feasibility of success if these changes are accepted. The plethora of information available can be integrated into a training program that will effectively realign management strategy and avoid the pitfalls of employment discrimination litigation. This project emphasized the importance of assimilating information from multiple sources to support proposed changes through policy review and update and through increased training activities. The most important idea gleaned from this project was the importance of pulling together all elements of a situation, researching information to support theories, and using that information to support the need for change.

Section 5: Training Presentation

Script for Use by trainer when presenting “Employment Discrimination: Recognize It, Eradicate It!”

Trainer: *“Good Morning/Evening Ladies and Gentlemen. Welcome to “Employment Discrimination: Recognize It, Eradicate It!” During this training session we will examine the problem of employment discrimination, how to recognize it, and what to do if you become aware of it. I encourage you to take notes and ask questions. There will be a quiz that requires a 70% pass rate for each employee. In addition, there will be a survey for you to complete to let us know what you think about the training session.*

The trainer then advances to slide 2 in the presentation

Trainer: *“The target audience for this training is all management and professional personnel at Starship. From the CEO to each Shift Foreman, it is management’s responsibility to assure that all employment decisions are made without regard to race, color, religion, sex, or national origin.*

The trainer then advances to slide 3 in the presentation

Trainer: *“First I would like to examine the facts with you. The Equal Employment Opportunity Commission is the federal agency tasked with the mission of eliminating discriminatory employment practices.*

Advance to slide 4

Trainer: *The EEOC’s authority is mandated by Title VII of the Civil Rights Act of 1964. Other legislation that protects workers against employment discrimination include:*

- *The Equal Pay Act of 1963*
- *Title I and Title V of the Americans with Disabilities Act of 1990*
- *The Civil Rights Act of 1991*
- *The Age Discrimination in Employment Act of 1967*

Advance to slide 5

Trainer: *“In Fiscal Year 2007, 12,510 charges of sexual harassment were received by the EEOC. Resolution of these cases resulted in awards of 49.9 million to plaintiffs*

“The effects of employment discrimination on organizations are significant. Employment discrimination creates situations in the workplace in which include lowering of employee satisfaction, negative impact on employer public image, increased turnover and a decrease in productivity and quality of work. These problems result in immediate decreases in profit and can also lead to employment discrimination suits filed by employees.”

Advance through slides 6, 7, 8, and 9

Trainer: *“What actually constitutes employment discrimination? Title VII of the Civil Rights Act of 1964 states, ‘It shall be an unlawful employment practice for an employer -*

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, age, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.’

It is extremely important to avoid discriminatory practices when hiring, promoting, providing training opportunities, and termination of employees. I cannot emphasize this enough. You must always treat all employees equitably without regard to race, color, religion, sex, age, or national origin.

Only Bona Fide Occupational Qualifications (BFOQ) that are reasonably necessary to continue normal business operations can be considered exceptions to what might otherwise be considered discriminatory practices. Only BFOQ that are considered

necessary to a profession can be considered as exceptions, such as membership in a particular religious sect for teaching faculty a denominational school.

Advance to slide 10

Trainer: “Two important terms to remember are **disparate treatment** and **disparate impact**. Disparate treatment is the deliberate discrimination of a protected class by an employer. An example of this would be an employer hiring a man instead of a more qualified woman because he doesn’t like working with women. But, employment discrimination is not always deliberate. **Disparate impact** can occur when policies have an unintentional effect on members of a protected class. An example would be height requirements for a particular job that would screen out a disproportionate number of women or people of certain ethnic origins.

Advance to slide 11

Trainer: “The ‘relief’ or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include: back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will make an individual "whole" (in the condition s/he would have been but for the discrimination). Remedies also may include payment of attorneys' fees, expert witness fees, and court costs.

According to the EEOC, ‘Under most EEOC-enforced laws, compensatory and punitive damages also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference.’

In addition to monetary relief, employees are also protected from retaliation by the employer for making a complaint whatever the outcome.

Advance to slide 12

Trainer: “The most effective method of dealing with employment discrimination is prevention. An extensively implemented and organization-wide equal employment opportunity policy should be developed and supported by all levels of management. Implementation and maintenance of an internal grievance policy that encourages employees to report discrimination or harassment without fear of retaliation is of vital importance. There should always be open lines of communication between the workforce and management. Development of an effective diversity training program is vital in understanding the significance of a diverse workforce. Tracking the demographics to try to maintain an employee mix which reflects the pool of potential employees in the area would give the company up to date information of possible deficiencies in hiring practices. Remember, your Human Resource Management Office can assist you in avoiding situations that might constitute employment discrimination. If you have a question or concern regarding a Starship policy, practice, or employment decision, please contact your HRM Manager for consultation. When an employee files a complaint against their employer, the courts take into consideration the programs and initiatives that the organization has in place and how effectively they are implemented. I cannot emphasize enough the importance of good communications and the need for close adherence to Starship employment policies.

Advance to slide 13

Trainer: “If we are diligent, I feel certain that we here at Starship can treat each other with respect, dignity, and equality and in doing so, eradicate employment discrimination. That concludes the presentation portion of the training. I will now take any questions that you have.

I have provided references for those of you who are interested in doing further research. Please complete the quiz and the Training Effectiveness Survey before leaving the training room. Thank you for your participation.

Employment Discrimination Quiz

(Circle the correct answer.)

1. If no one complains about employment discrimination it isn't a problem. True or False
2. In a lawsuit, employees can receive back pay but no other compensation. True or False
3. Employees can't file a complaint if the employment discrimination wasn't deliberate. True or False
4. What federal agency enforces anti-discrimination laws?
 - a) USDA
 - b) NASA
 - c) EEOC
 - d) FEMA
5. What act prohibits employment discrimination?
 - a) The Equal Pay Act of 1963
 - b) Title VII of the Civil Rights Act of 1964
 - c) Title I and Title V of the Americans with Disabilities Act of 1990
 - d) The Civil Rights Act of 1991
 - e) The Age Discrimination in Employment Act of 1967
 - f) All of the above
6. Disparate impact is where an employer purposely discriminates in employment practices. True or False
7. What is disparate treatment?
 - a) The deliberate discrimination of a protected class by an employer.

b) Can occur when policies have an unintentional effect on members of a protected class.

8. Employees who file lawsuits can be fired later after legal proceedings are finished. True or False

9. Bona Fide Occupational Qualifications have no bearing on employment discrimination. True or False

10. If an employer has anti-discrimination policies and programs in place, they are not responsible for assuring that they are followed. True or False

Employment Discrimination Quiz Answer Key

1. False
2. False
3. False
4. c)
5. f)
6. False
7. a)
8. False
9. False
10. False

TRAINING EFFECTIVENESS SURVEY

Mark each statement by circling a number that corresponds to your level of agreement.

Example: If you strongly disagree with the statement you would mark 1. If you strongly agree with the statement you should mark 10.

	Strongly disagree	Neutral					Strongly Agree			
	1	2	3	4	5	6	7	8	9	10
Before attending the employment discrimination presentation I didn't realize it could be a serious problem.	1	2	3	4	5	6	7	8	9	10
I learned several facts about employment discrimination that I didn't know before.	1	2	3	4	5	6	7	8	9	10
I didn't realize that employment discrimination had any effect on the employer.	1	2	3	4	5	6	7	8	9	10
I will be more aware in the future of any decisions or recommendations that I make that might be considered discriminatory.	1	2	3	4	5	6	7	8	9	10
Because of what I learned in the training presentation, I will be more aware of employment discrimination concerns.	1	2	3	4	5	6	7	8	9	10
The presentation was boring and I couldn't wait for it to be over.	1	2	3	4	5	6	7	8	9	10
The trainer was able to answer all my questions about employment discrimination not covered in the presentation.	1	2	3	4	5	6	7	8	9	10