

PALM SPRINGS HUMAN RIGHTS COMMISSION

ANNUAL REPORT TO CITY COUNCIL

December 31, 1993

The Human Rights Commission first met on December 2, 1992. Since that date the commission has accomplished a great deal. It has grappled with the task of setting goals and objectives, while striving to respond to the needs of the community and follow the spirit of the Human Rights Ordinance.

The Commission's most notable successes include:

- facilitating communication between SunLine and the disability community;
- facilitating an agreement between Warner Cable and Black Entertainment Television;
- aggressively publicizing itself, including the use of Channel 17;
- recommending to City Council recruitment strategies for boards and commissions to increase cultural diversity;
- working in concert with other community groups, such as NOW, the Hispanic Chamber of Commerce and the Desert Council for Aging;
- soliciting support from businesses such as Bird Products Corporation;
- working successfully with the media;
- affiliating with statewide groups, such as the California Association of Human Rights Organizations (CAHRO);
- hosting the CAHRO conference, bringing visitors to Palm Springs from all around the state;
- working to utilize volunteers;
- working in cooperation with the Palm Springs Unified School District;
- participating in cultural diversity training;
- participating in extensive mediation training;
- taking students to the Simon Wiesenthal Museum of Tolerance in L.A.;
- applying for grants and receiving donations;
- having a booth at Villagefest;
- having a logo contest;
- "The Media & Discrimination", a public forum at the Desert Sun;
- speaking to community groups and classes at College of the Desert;
- community meetings at Mizell Senior Center, two to date;
- recommending to City Council a positive philosophy on City hiring;
- "Human Rights Education Day for Leaders", a public forum;
- responding to racial incident at Palm Springs High School;
- "Walk for Unity, Solidarity, Acceptance", co-sponsor.

AWARENESS QUIZ

1. "Anglos" are?
 - a. A North American person of European descent
 - b. A Chicano
 - c. A person of color
 - d. All of the above

2. Martin Luther King, Jr. was assassinated on what date?
 - a. January 15, 1968
 - b. April 4, 1968
 - c. June 5, 1968

3. Who is President of the NAACP.
 - a. Ben Chavis
 - b. Whitney Young Jr.
 - c. Benjamin Hooks

4. Who is President of the National Urban League?
 - a. Rev. Joseph Lowery
 - b. John Jacob
 - c. William Bennett

5. AIDS stands for?
 - a. Anti Immune Deficiency Syndrome
 - b. Acquired Immunodeficiency Syndrome
 - c. Acquired Immune Deficiency Syndrome

6. Above the age of 13, how many students in the United States drop out of school per year?
 - a. 250,000
 - b. 700,000
 - c. 500,000

7. In 1993, which group has the lowest life expectancy, 65 and decreasing, than any other group in American society?

- a. Hispanic males
 - b. Black females
 - c. Black males
8. Asian Americans are:
- a. People of Asian and Pacific Island descent living in the United States
 - b. Japanese
 - c. Chinese
 - d. All of the above
9. NOW stands for:
- a. No On War
 - b. National Organization for Wages
 - c. National Organization for Women
10. African Americans are:
- a. Africans
 - b. Jamaicans
 - c. Specific group of U.S. citizens of African descent
11. A formula for racism is:
- a. Sexism & classism
 - b. Discrimination & sexism
 - c. Prejudice & power
12. Which active representative of the United Farm Workers was allegedly mistreated by the San Francisco Police Department in 1990?
- a. Dolores Huerta
 - b. Maria Felix
 - c. Gloria Estefan
13. Reverse racism is:
- a. Discrimination against "White" people
 - b. A Misnomer
 - c. "White Racism"

14. Between the American Continent, the Caribbean and the European Continent, there are 27 countries which have Spanish as their official language.
- a. True
 - b. False
15. Chicanos are:
- a. People of Mexican descent living in the United States
 - b. Puerto Ricans
 - c. Hispanics
 - d. All of the above
16. African Americans as a group can be racist in American Society?
- a. True
 - b. False
17. The 14th Amendment prohibited voting discrimination for all citizens of the United States. At that time, only men got the right to vote.
- a. True
 - b. False
18. People of color can be prejudiced in American Society?
- a. True
 - b. False
19. Any attitude or institutional practice which subordinates people due to their economic condition is called:
- a. Racism
 - b. Discrimination
 - c. Classism
20. It is common to call "minorities" all those ethnic groups in the United States which are not of white skin, and who do not originate from the European continent (Spain excepted), regardless how numerous they may be in this country.
- a. True
 - b. False
21. Between 1979 and 1989, which group of children living in poverty increased by nearly 33%?
- a. Hispanic
 - b. African American
 - c. Native American

22. Which of the Asian groups mentioned below were historically discriminated against and are, therefore, now considered "protected" under Title VII of the Civil Rights Act of 1964?
- a. Japanese
 - b. Chinese
 - c. Filipino
 - d. All of the above
23. Most immigrants since the 1960's have been primarily from Latin America and Asia. The majority are settling where?
- a. New York
 - b. California
 - c. Texas
 - d. All of the above
24. The group with the most number of teen pregnancies in 1991?
- a. White
 - b. Hispanic
 - c. Black
25. In 1990, Blacks, Hispanics and Native Americans together earned what percent of undergraduate degrees in Engineering?
- a. 10%
 - b. 5%
 - c. 15%
26. What would you estimate is the number of students in the U.S. with limited English proficiency?
- a. 1 to 2 million
 - b. 2.4 to 3.6 million
 - c. 1.5 to 2.3 million
27. A person is disabled under the Americans with Disabilities Act if they are:
- a) Blind
 - b) HIV/AIDS positive
 - c) A wheelchair user
 - d) All of the above

28. Using the ADA definition of Disability, what approximate percentage of the American population are disabled?

- a) 10%
- b) 25%
- c) 5%
- d) 17%

29. Of those who are considered disabled under the laws what percentage are unemployed, and are able to work?

- a) 10%
- b) 25%
- c) 67%
- d) 75%

JH:kd 7/93

ANSWERS 1a, 2b, 3a, 4b, 5c, 6b, 7c, 8a, 9c,
10c, 11c, 12a, 13b, 14a, 15a, 16b, 17a,
18a, 19c, 20a, 21a, 22d, 23d,
24a, 25b, 26b, 27d, 28d, 29c.

HUMAN RIGHTS COMMISSION

POLICIES AND PROCEDURES

The **MISSION** of the Human Rights Commission of Palm Springs is to promote improved relations, civic peace, intergroup understanding, and the full acceptance, respect and participation of all persons in all aspects of community life so that we will be equal in the eyes of each other.

GOALS

1. To develop community education programs;
2. To investigate and mediate instances of discrimination of groups or individuals;
3. To bring persons and groups together in common support of human rights issues;
4. To acquire the fiscal and human resources necessary to support and accomplish the work of the commission;
5. To provide management and coordination for the commission.

HUMAN RIGHTS COMMISSION
POLICIES AND PROCEDURES

PROPOSED ITEMS

December 2, 1993

1. MISSION STATEMENT AND GOALS
2. ROLE OF THE COMMISSION:
TO ACT AS ADVISORY BODY TO THE CITY COUNCIL WITH REGARD TO HUMAN RIGHTS ISSUES (FIRST AMENDMENT), TO ESTABLISH POLICY FOR THE OPERATION OF THE COMMISSION, TO ESTABLISH A BUDGET AND FUNDING SOURCES FOR THE COMMISSION.
3. COMMISSIONERS: EACH MEMBER OF THE COMMISSION IS AN OFFICIALLY APPOINTED REPRESENTATIVE OF THE CITY AND THEREBY IS EXPECTED TO BEHAVE IN A MANNER THAT IS REPRESENTATIVE OF A CITY OFFICIAL.
4. CITY ORDINANCE & TASK FORCE REPORT
5. SUBPOENA POWER: THE MAYOR AND CITY COUNCIL HAVE EXPRESSED A WILLINGNESS TO PROVIDE SUCH AUTHORITY ON A CASE BY CASE BASIS.
6. ROLE OF STAFF: TO PROVIDE COORDINATION AND CLERICAL SUPPORT AND TO ACT AS A LIAISON TO OTHER CITY DEPARTMENTS AND AS A RESOURCE TO THE COMMISSION.

ORGANIZATION STRUCTURE

- A. COMMISSION MEMBERS ARE APPOINTED BY CITY COUNCIL FOR FOUR YEAR TERMS.
- B. REGULAR MEETINGS AND STUDY SESSIONS ARE TO BE HELD ON A REGULAR BASIS AS DETERMINED BY THE COMMISSION. ALL VOTING MEETINGS ARE TO BE OPEN TO THE PUBLIC PER THE REQUIREMENTS OF THE RALPH M. BROWN ACT AND GOVERNMENT CODE SECTION 54950. SPECIAL MEETINGS MAY BE CALLED AS NECESSARY BY THE EXECUTIVE COMMITTEE OR AT THE REQUEST OF THREE MEMBERS OF THE COMMISSION TO THE CHAIR.
- C. THE AGENDA SHALL ALSO BE AVAILABLE TO THE GENERAL PUBLIC, POSTED A MINIMUM OF 72 HOURS PRIOR TO A REGULAR MEETING. ITEMS FOR THE AGENDA MUST BE GIVEN TO THE CHAIR THREE WORKING DAYS PRIOR TO THE MEETING.

AGENDA FORMAT:

- 1. ROLL CALL
- 2. POSTING OF AGENDA
- 3. APPROVAL OF MINUTES
- 4. PUBLIC COMMENTS
- 5. COMMISSIONER COMMENTS (BUSINESS MATTERS NOT ON THE AGENDA)
- 6. STAFF REPORT

7. COMMITTEE REPORTS

8. OLD BUSINESS

9. NEW BUSINESS

- D. ALL MEETINGS MUST BE HELD IN A FACILITY THAT IS ACCESSIBLE TO ALL MEMBERS OF THE COMMUNITY.
- E. ALL DESIGNATED COMMITTEE REPORTS SHALL BE ACTED UPON BY THE COMMISSION OR RETURNED TO THE COMMITTEE FOR REVISION.
- F. MINUTES OF THE COMMISSION AND ITS COMMITTEES BE WILL SUBMITTED TO THE MEMBERSHIP PRIOR TO THE NEXT MEETING FOR APPROVAL AT THAT TIME. ALL RECORDED COPIES OF COMMISSION ACTIVITIES SHALL BE RETAINED AND KEPT ON FILE. THE MINUTES SHALL CONTAIN ALL ACTIONS TAKEN, MOTION MADE AND SECONDED, THE VOTE, COPIES OF ALL COMMITTEE REPORTS, TOPICS OF DISCUSSION, CONSENSUS DECISIONS, AND ALL ACTION ITEMS LISTING WHO, WHAT AND WHEN.
- G. TIME SHALL BE SET ASIDE IN EACH AGENDA FOR PUBLIC COMMENT.
- H. THE COMMISSION WILL SCHEDULE A PLANNING RETREAT ANNUALLY.
- I. STUDY SESSIONS WILL BE THE SECOND MEETING OF THE MONTH.
- J. THE COMMISSION WILL SUBMIT REPORTS TWICE YEARLY TO THE CITY COUNCIL.
- K. STAFF WILL BE ALLOWED TIME TO SPEAK ON ISSUES BEFORE THE COMMISSION AFTER ALL COMMISSION MEMBERS HAVE HAD A CHANCE TO SPEAK.

OFFICERS

THERE SHALL BE TWO OFFICERS OF THE COMMISSION: A CHAIRPERSON AND VICE CHAIRPERSON.

THE ROLE OF THE CHAIR SHALL BE TO CHAIR REGULAR MEETINGS OF THE COMMISSION, CALL SPECIAL MEETINGS, CHAIR THE EXECUTIVE COMMITTEE, LIAISON WITH STAFF AND OTHER DUTIES AS REQUIRED.

THE VICE CHAIRPERSON IS TO ASSIST THE CHAIR IN ALL THE DUTIES OF THE CHAIR AND TO ACT IN THE ABSENCE OF THE CHAIR.

OFFICERS SHALL BE ELECTED ANNUALLY.

NOMINATIONS WILL COME FROM THE COMMISSION AT LARGE.

STANDING COMMITTEES

EXECUTIVE COMMITTEE:

MEMBERS: CHAIR, VICE CHAIR, A ROTATING MEMBER OF THE COMMISSION IS TO BE VOTED UPON EVERY THREE MONTHS.

RESPONSIBILITY: TO SET THE AGENDA, TO COORDINATE COMMISSION ACTIVITIES, TO PROVIDE DIRECTION AND FACILITATE COMMUNICATION, TO PROVIDE ORIENTATION OF NEW MEMBERS, TO DO POLICY IMPLEMENTATION AND PROBLEM SOLVING AND TO NOMINATE COMMITTEE CHAIRS.

COMMUNITY COALITION AND EDUCATION COMMITTEE:

MEMBERS: NOMINATED BY THE COMMISSION CHAIR AND APPROVED BY THE COMMISSION.

RESPONSIBILITY: TO DEVELOP AND INITIATE AN EDUCATION PLAN FOR THE COMMUNITY.

ALTERNATIVE DISPUTE RESOLUTION:

MEMBERS: NOMINATED BY THE COMMISSION CHAIR AND APPROVED BY THE COMMISSION.

RESPONSIBILITY: TO PROVIDE INFORMATION AND CONSULTATION, TO HEAR AND INVESTIGATE COMPLAINTS, TO PROVIDE ALTERNATIVE DISPUTE RESOLUTION AND TO MAINTAIN RECORDS.

RESOURCE DEVELOPMENT:

TO DEVELOP BOTH HUMAN AND FINANCIAL RESOURCES AND TO TRAIN VOLUNTEERS.

NOMINATIONS COMMITTEE:

THE COMMISSION AT LARGE IS TO ACT IN THIS ROLE.

NOTE: COMMISSION CHAIRS ARE ENCOURAGED TO APPOINT ADDITIONAL MEMBERS OF THEIR COMMITTEES FROM OUTSIDE THE COMMISSION.

VOTING

A QUORUM OF THE COMMISSION IS FIFTY PERCENT OF THE MEMBERSHIP PRESENT PLUS ONE (5).

VOTING WILL BE BY SHOW OF HANDS.

A SIMPLE MAJORITY OF THE MEMBERS OF THE COMMISSION PRESENT AT THE TIME OF VOTING IS REQUIRED FOR A FORMAL ACTION, ONCE A QUORUM IS ESTABLISHED.

CONSENSUS IS AN AGREEMENT WITHOUT FORMAL VOTE AND WITHOUT DISSENSION.

PARLIAMENTARY PROCEDURE

MEETINGS OF THE HUMAN RIGHTS COMMISSION ARE GUIDED BY ROBERT'S RULES OF ORDER.

1. COURTESY AND JUSTICE TO ALL.
2. CONSIDER ONE THING AT A TIME.
3. THE MINORITY MUST BE HEARD.
4. THE MAJORITY MUST PREVAIL.

MEDIA POLICY

1. ALL NEWS GENERATED BY THE COMMISSION AND PRESS RELEASES MUST BE REVIEWED BY THE EXECUTIVE COMMITTEE.
2. MEMBERS OF THE EXECUTIVE COMMITTEE ARE PRIMARY SPOKESPERSONS OF THE COMMISSION.
3. STAFF IS RESPONSIBLE FOR THE COORDINATION OF COMMUNICATIONS.
4. ANY MEMBER OF THE COMMISSION MAY ELECT TO RESPOND TO THE MEDIA AS AN INDIVIDUAL. HOWEVER, ANY ISSUE INVOLVING THE HUMAN RIGHTS COMMISSION REQUIRES COMMUNICATION WITH THE SPOKESPERSON.

CONFLICT OF INTEREST

CITY POLICY

REMOVAL AND RESIGNATION OF COMMISSION MEMBERS

FISCAL YEAR

JULY 1 THROUGH JUNE 30.

BUDGET PROCESS

THE COMMISSION SHALL ESTABLISH AN ANNUAL BUDGET.

INDEMNIFICATION

GOAL AND OBJECTIVES FOR EACH COMMITTEE

OTHER DOCUMENTATION

1. BILL OF RIGHTS
2. UNIVERSAL DECLARATION OF HUMAN RIGHTS
3. CIVIL RIGHTS ACT OF 1964 AND 1992
4. AMERICANS WITH DISABILITIES ACT (1992), FAIR HOUSING ACT, AND OTHER PIECES OF LEGISLATION AND COURT DECISIONS.

CONSTITUTION OF THE UNITED STATES
BILL OF RIGHTS

AMENDMENT I

Religious establishment prohibited. Freedom of speech, of the press, and right to petition.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

Right to keep and bear arms.

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT III

Conditions for quarters for soldiers.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

Right of search and seizure regulated.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

Provisions concerning prosecution. Trial and punishment - private property not to be taken for public use without compensation.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

Right to speedy trial, witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to the assistance of counsel for his defense.

AMENDMENT VII

Right of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail or fines and cruel punishment prohibited.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

Rule of construction of Constitution.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

Rights of States under Constitution.

The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people.

THE UNIVERSAL DECLARATION OF
HUMAN RIGHTS

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS, it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS, it is essential to promote the development of friendly relations between nations,

WHEREAS the peoples of the United Nations have in their Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

NOW, THEREFORE, THE GENERAL ASSEMBLY PROCLAIMS this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without and discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violation the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention of exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks..

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has the duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

OVERVIEW OF THE ADA

The Americans with Disabilities Act (ADA) extends federal civil rights protection in several areas to people who are considered "disabled". Built upon a body of existing legislation, particularly the Rehabilitation Act of 1973 and the Civil Rights Act of 1964, the act states its purpose as providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."

The ADA is not an affirmative action statute. Instead, it seeks to dispel stereotypes and assumptions about disabilities, and to assure equality of opportunity, full participation, independent living and economic self-sufficiency for disabled people. To achieve these objectives, the law prohibits covered entities from excluding people from jobs, services, activities or benefits based on disability. The law provides penalties for discrimination.

Not every disabled person is covered by the ADA. Certain standards must be met for a person to qualify for the act's protections. To be considered "disabled" under the ADA, a person must have a condition that impairs a major life activity or a history of such a condition, or be regarded as having such a condition.

A disabled person must also be qualified for the job, program or activity to which he or she seeks access. To be qualified under the ADA, a disabled person must be able to perform the essential functions of a job or meet the essential eligibility requirements of the program or benefit, with or without an accommodation to his or her condition.

Much of the language in the ADA is taken from existing federal civil rights laws and court decisions. Definitions of terms such as employee, employer, commerce, etc., are taken from Title VII of the Civil Rights Act. Other terms, such as "reasonable accommodation," "qualified individual with a disability," "essential functions" and "undue hardship," come directly from Section 504 of the Rehabilitation Act of 1973, which prohibits federal fund recipients from discriminating on the basis of disability in their programs and activities.

The ADA has five titles, which cover employment, public services and transportation, public accommodations, telecommunications, and miscellaneous provisions. The various sections of the act become effective at different times. See Figure 100-A for a simplified version of effective dates and agency responsibilities for each title. An overview of the separate provision follows:

* **Employment (Title I)** - The ADA prohibits employers with 15 or more employees (25 or more workers for the first two years after the effective date) from discriminating against qualified job applicants and workers who are or become disabled. The law covers all aspects of employment, including the application process and hiring, on-the-job training, advancement and wages, benefits, and employer-sponsored social activities.

• A qualified disabled person is someone who, with or without a reasonable accommodation, can perform the essential functions of the job in question. An employer must provide reasonable accommodations for disabled workers, unless that would impose an undue hardship on the employer.

* **Public Service and Transportation (Title II)** - Title II of the ADA prohibits state and local governments from discriminating against disabled people in their programs and activities.

The law requires bus and rail transportation to be accessible to disabled passengers. Air transportation is not covered by the ADA. New public buses and new train cars in commuter, subway, intercity (Amtrak) and light rail systems must be accessible to disabled riders. All new stations and facilities and "key" subway and light rail stations must be made accessible. Where fixed-route and rail bus service is offered, a public transit agency must also offer paratransit service.

* **Public Accommodations (Title III)** - The ADA prohibits privately operated public accommodations from denying goods, programs and services to people based on their disabilities. Covered businesses must accommodate disabled patrons by changing policies and practices, providing auxiliary aids and improving physical accessibility, unless that would impose an undue burden.

New and renovated commercial buildings must be accessible. Existing public accommodations must remove architectural and communications barriers where such removal is "readily achievable."

Title III also requires providers of private transportation services, such as private bus lines and hotel vans, to make their vehicles and facilities accessible.

* **Telecommunications (Title IV)** - Title IV of the ADA requires telephone companies to provide continuous voice transmission relay services that allow hearing- and speech-impaired people to communicate over the phone through telecommunications devices for the deaf. In addition, Title IV requires that federally funded television public service messages be close-captioned for hearing-impaired viewers.

+* **Other Provisions (Title V)** - Miscellaneous provisions in Title V require: the Access Board to issue accessibility standards; attorneys' fees to be awarded to prevailing parties in suits filed under the ADA; and federal agencies to provide technical assistance. Title V states specifically that illegal use of drugs is not a covered disability under the act. It also provides that states are not immune from suits under the ADA and that other federal, state and local laws that provide equal or greater protection to individuals with disabilities are not superseded or limited by the ADA.

+The Architectural and Transportation Barriers Compliance Board was renamed the Access Board by the Rehabilitation Act Amendments of 1992.

Title VII of the 1964 Civil Rights Act

Title VII (Title 42, U.S. Code, Section 2000e) is a federal law that forbids employers, employment agencies and labor organizations from discriminating on the basis of race, color, sex, religion or national origin. It also forbids retaliation against any employee or individual who opposes practices Title VII makes unlawful.

Coverage — An employer is subject to Title VII's requirements if it has 15 employees on the payroll on each working day of at least 20 weeks in the current or preceding calendar year. (An employer with fewer than 15 workers may be subject to state or local antidiscrimination laws.)

Unlawful Practices — Employers are forbidden to discriminate against any worker or job applicant on the basis of race, color, religion, sex, or national origin. This means that an employer may not use these conditions as grounds for:

- ▶ Failing or refusing to hire an individual.
- ▶ Discharging a worker.
- ▶ Discriminating against employees in terms of their compensation, conditions, or privileges of employment.
- ▶ Limiting, segregating, or classifying employees or applicants in any way that tends to deprive them of individual or employment opportunities or adversely affects their status as an employee.
- ▶ Limiting or restricting admission to any program providing apprenticeship or other training, including on-the-job training.
- ▶ Indicating a preference in advertisements related to employment or training opportunities.
- ▶ An employment practice that results in creating a "disparate impact" on a protected class is unlawful if the employer cannot demonstrate that the "challenged practice is job related for the position in question and consistent with business necessity."

Exceptions — Under Title VII it is not unlawful for an employer to:

- ▶ Pay different wages or provide different terms or privileges of employment to workers if such actions are based on a bona-fide merit, seniority, or other system designed to measure quantity or quality of production.
- ▶ Take religion, sex, or national origin into account in making employment decisions about jobs in which these factors are legitimate qualifications. (This exemption does not extend to race.)
- ▶ Base an employment decision on the results of professionally developed ability tests that are not designed, intended, or used to discriminate. (See Uniform Guidelines on Employee Selection Procedures)

Enforcement — Employees or applicants who believe that they have been discriminated against may file a Title VII charge with the Equal Employment Opportunity Commission. Before processing a charge, EEOC must allow state or local fair employment agencies at least 60 days to resolve it, and must notify the employer of the allegations. After the state or local agency has acted or 60 days have elapsed, EEOC investigates the charge. During the investigation, EEOC can require an employer to provide relevant records or evidence. If the investigation does not reveal any discrimination, EEOC will dismiss the charge. If EEOC finds support for the discrimination charge, it must attempt to resolve the dispute informally through "conciliation" proceedings. However, if this conciliation effort is unsuccessful, EEOC may file suit against the employer in a federal district court.

Employees or applicants with Title VII complaints also can independently file a lawsuit in federal court. However, they may sue only after their charges have been on file with EEOC for 180 days, unless the agency dismisses the complaint earlier. Complainants retain their private right to sue even if EEOC determines that discrimination did not occur.

EMPLOYMENT GUIDE

Remedies — If a court finds that discrimination occurred, it may order an employer to:

- ▶ Stop engaging in the unlawful employment practices.
 - ▶ Undertake affirmative action.
 - ▶ Increase the wages or salaries of discrimination victims and pay them back wages with interest.
- An employer's back-pay obligation may cover a period that extends as far as two years before the charge was filed with EEOC; it also may continue until the discrimination victims are earning what they would have been earning if the discrimination had not occurred. A victim's interim earnings may reduce the amount of a back-pay award.

- ▶ Expunge improper entries in the victims' personnel records.
- ▶ Provide other equitable relief.

Records — Title VII requires employers to keep certain records. These include all personnel and employment records relating to applications, hirings, promotions, transfers, layoffs, terminations, pay rates and other compensation terms, and selections for training or apprenticeship programs. Employers also must keep all personnel records related to a discrimination charge until final disposition of the charge.

Reports — Employers with 100 or more workers are required to file annual EEO-1 reports with EEOC.

Notices — All employers are required to post an official EEO notice, which states that equal employment is the law and indicates that EEOC should be contacted if a person feels discriminated against.

Civil Rights Act of 1991

The Civil Rights Act of 1991 was not enacted to stand alone as independent civil rights legislation. The law reverses parts of seven U.S. Supreme Court decisions and amends five existing federal laws, including: Title VII of the Civil Rights Act of 1964 ; Section 1981 of the Civil Rights Act of 1870 (see 70:15); the Attorney Fees Awards Act of 1976; the Americans With Disabilities Act of 1990 (see 70:31); and the Age Discrimination in Employment Act of 1967 A summary of the amendments affecting these laws is reflected in the discussion of each statute in this section.

The law addresses many issues that bear on civil rights in employment relationships. For example, it makes it easier for employees to challenge employment practices that disproportionately exclude women, minorities, or the disabled from the workplace. An employment practice that creates a "disparate impact" on a class of employees protected by one of the federal laws is unlawful if the employer cannot demonstrate that the challenged practice is job related for the position at issue and consistent with business necessity. Unlawful disparate impact also is established if the complainant shows that a less discriminatory alternative is available but the employer refuses to adopt it.

In addition, the Civil Rights Act makes Section 1981 applicable to discrimination that occurs on the job by both private and public employers; it provides that an intentionally discriminatory seniority system may be challenged when the system is adopted, when an individual becomes subject to it, or when a person is actually injured by it; it declares that if a complainant shows that an unlawful discriminatory factor motivated an employment action, bias has occurred, even if other lawful factors also motivated the action; it provides that fees for expert witnesses may be recovered by a winning complainant; it makes Title VII and ADA applicable to American citizens working abroad for American employers; it increases the time for filing Title VII actions against the federal government; it prohibits "race norming" of employment tests; and it extends compensatory and punitive damages to victims of intentional sex, religious, and disability discrimination under Title VII, ADA, and Section 501 of the Rehabilitation Act. Jury trials may be requested by either party when compensatory or punitive damages are sought. Details on the damages provisions are included in the discussion of Section 1981 in this section.

Coverage and Enforcement — The Civil Rights Act of 1991 does not have its own coverage and enforcement mechanisms, rather it amends provisions in other civil rights laws. For coverage and enforcement measures, see the other laws in this section regarding all relevant provisions.

Notices — There is no posting requirement for this law.

Section 1981 — Reconstruction-Era Civil Rights Act

Section 1981 of the Reconstruction-Era Civil Rights Act (Title 42, U.S. Code) declares that everyone in the U.S. and its territories has the same right "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." Because employment is a contractual relationship (even without a written contract), employers are often sued in lawsuits claiming racial discrimination in employment under Section 1981. However, a suit brought under 1981 is independent of the various rights and remedies available in suits brought under Title VII of the Civil Rights Act of 1964

Originally passed by Congress as the Civil Rights Act of 1870, this civil rights law was enacted to give blacks the same right to contract and to have access to the courts for enforcement of contracts as white citizens. The law has been construed by the courts to protect the contract relationship inherent in the employment of a worker and to cover bias against all ethnic minorities.

As amended by the 1991 Civil Rights Act, the law covers all aspects of the employment relationship, including on-the-job harassment, and applies to private as well as public employers. A new section added to the law by the 1991 Civil Rights Act provides for compensatory and punitive damages for victims of sex, religious, and disability discrimination under Title VII, ADA, and Section 501 of the 1973 Rehabilitation Act. Such damages always have been available under Section 1981, but it only applies to race bias.

The compensatory damages added by the 1991 amendment may be recovered in actions against private employers, state and local governments, or the federal government. They are available, however, only in cases of intentional discrimination. Punitive damages may be recovered only when the employer acted with "malice or with reckless indifference to" a victim's federally protected rights.

Furthermore, most compensatory and all punitive damages that each individual complainant can obtain are limited to \$50,000 for employers with 100 or fewer employees; \$100,000 for employers with more than 100 and fewer than 201 workers; \$200,000 for employers with more than 200 and fewer than 501 employees; and \$300,000 for employers with more than 500 workers. Back pay, interest on back pay, and front pay are not included in compensatory damages and the caps do not apply to past pecuniary losses such as medical bills.

When compensatory or punitive damages are sought, any party to the case can demand a jury trial. Courts are prohibited from informing the jury of the limitations on damage amounts.

Coverage — All employers are covered, regardless of size.

Enforcement — By private lawsuit, complainants are not required to file charges with EEOC before filing suit against an employer.

Notices — There is no posting requirement under this law.

Equal Pay Act of 1963

The Equal Pay Act forbids employers to pay different wages to men and women who are performing equal jobs. EPA also prohibits labor organizations from causing employers to pay different wages based on sex.

Coverage — EPA was passed as an amendment to the Fair Labor Standards Act. Basically, EPA applies to employers with 2 or more employees who are engaged either in commerce or the production of goods for commerce. Several coverage exemptions apply to employees in certain industries, including agriculture workers; employees of small newspapers, independent telephone companies, and amusement or recreation facilities; employees of gas stations (with annual sales of less than \$250,000); and certain handicapped or domestic workers.

Unlawful Practices — EPA prohibits sex-based wage discrimination in jobs in which employees perform equal work. Generally, the work of two employees is considered equal when both jobs require equal skill, effort, and responsibility and are performed under similar working conditions. EPA also prohibits employers from reducing the wage of any employee to comply with the Act or retaliating against an employee for asserting rights under the Act.

Exemptions — Employers will not violate the Act if they can demonstrate that wage differentials are the result of a seniority system, merit-pay system, a pay system based on quantity or quality of production, or "any factor other than sex."

Enforcement — Employees claiming an EPA violation may file either a complaint in court or a charge with EEOC. The employee or EEOC must commence a court action within two years of the alleged violation (three years if it is a willful violation). If EEOC brings suit first, the individual's right to sue ceases. Unlike Title VII and the Age Discrimination In Employment Act, EPA does not require the filing of an administrative charge, an investigation, or conciliation efforts before a lawsuit can be filed. EEOC may, on its own and without an employee complaint, conduct an investigation or bring suit.

Remedies — Employers that violate EPA may be ordered to:

- ▶ Stop the unlawful practice.
- ▶ Pay employees back wages, with interest, plus an additional amount equal to the back-pay entitlement.
- ▶ Provide employment, reinstatement, or promotion.
- ▶ Pay the complainant's attorneys' fees and costs.
- ▶ Pay a fine up to \$10,000 for the first offense. For subsequent convictions involving willful and flagrant violations, an employer may be subject to additional fines, as well as a prison term of up to 6 months.

Recordkeeping — Employers subject to the EPA must keep:

- ▶ Records in accordance with FLSA's basic requirements
- ▶ Records made in the regular course of business relating to payment of wages, wage rates, job evaluations, job descriptions, merit or seniority systems, collective bargaining agreements, and descriptions or explanations of wage differentials for employees of opposite sex. These must be kept for at least two years.

Age Discrimination In Employment Act

The Age Discrimination in Employment Act (29 U.S. Code, Section 621) generally prohibits employers from discriminating against workers or applicants who are 40 years of age or over. Like Title VII, ADEA applies to employers, employment agencies, and labor unions, and prohibits retaliation against individuals for exercising their rights under the law.

Coverage — ADEA covers nearly all employers covered by Title VII, except that an employer subject to ADEA must have at least 20 employees, as opposed to Title VII's coverage threshold of 15.

Unlawful Practices — Employers may not use the age of a worker or applicant within the protected age group as grounds for:

- ▶ Failing or refusing to hire an individual;
- ▶ Discriminating against employees with respect to their compensation or terms or conditions of employment;
- ▶ Limiting, segregating, or classifying employees in any way that tends to deprive them of employment opportunities;

ADEA also bars employers from advertising any employment preference that discriminates against those within the protected age group; reducing the wages of any employee to comply with the Act; or discriminating in favor of younger individuals within the protected age group.

Exceptions — Employers will not be held guilty of an ADEA violation if they can show that:

- ▶ A contested employment decision was made on the basis of a factor other than age.
- ▶ Age is a bona-fide occupational qualification (BFOQ) for the position in question. (Note: The BFOQ exception is very limited. To successfully claim it, an employer must be able to show that it has a factual basis for believing that substantially everyone in the protected group is unqualified.)
- ▶ A discharge or disciplinary action was for good cause.
- ▶ An executive or high policymaker who was forced to retire was at least 65 years old and was entitled to annual retirement benefits of at least \$44,000.

Enforcement — Individuals who believe that they have been discriminated against on the basis of age must file a timely charge with EEOC. Sixty days after the filing of a charge, complainants have the right to file their own lawsuit. EEOC may file suit only after it has made a good-faith effort to resolve the discrimination complaint through conciliation proceedings. EEOC is required to give notice to complainants when a charge is terminated. A charging party does not need a "right-to-sue" notice from EEOC before filing a private action in federal court. Complainants then have 90 days to file suit after receiving the notice.

Remedies — The relief available for ADEA victims generally is the same as the remedies that can be awarded in Title VII cases. Additionally, in cases that involve a willful violation, a court may award the victim up to twice the amount of back wages due.

Records — An employer's ADEA recordkeeping requirements include:

- ▶ Payroll records containing each employee's name, address, date of birth, occupation, pay rate, and earnings (must be kept for three years).
- ▶ All personnel records relating to recruitment, hiring, promotion, demotion, transfer, layoff, recall, training, and overtime policies (must be kept for one year after an ADEA action is filed).
- ▶ Benefit plans and written seniority or merit rating systems (must be kept for one year beyond their effective date).

Notices — Covered employers must display the required ADEA notice.

Rehabilitation Act of 1973

The Rehabilitation Act of 1973 (Title 29, U.S. Code, Section 701, et seq.) prohibits federal contractors from discriminating against handicapped individuals. It also requires federal contractors to take affirmative action to employ the handicapped. Another section provides for jointly financed government-employer agreements to expand employment opportunities for the handicapped.

Coverage — A handicapped individual under the Rehabilitation Act is a person who has a physical or mental impairment that substantially limits one or more major life activities, one who has a record of such an impairment, or one who is regarded as having such an impairment. Under 1990 amendments to the Act, the definition of an "individual with handicaps" does not include individuals currently engaging in illegal drug use or alcoholics whose current use of alcohol prevents them from performing job duties. However, the Rehabilitation Act does cover individuals who are participating in or have successfully completed a drug rehabilitation program and are no longer engaging in the illegal use of drugs (Title 29, U.S. Code, Section 706).

The Act applies to all federal contractors and subcontractors that have a federal contract in excess of \$2,500. Within 120 days of beginning a contract, contractors or subcontractors must have a written affirmative action program for each establishment if they have 50 or more workers and a contract of \$50,000 or more.

Affirmative Action Requirements — Written affirmative action programs must be updated at least annually and must include:

- ▶ Procedures for ensuring consideration of handicapped applicants and employees for vacancies and training opportunities.
- ▶ A schedule for the review and elimination of job qualification requirements that screen out the handicapped and are not job-related or justified by a business necessity or safety considerations.
- ▶ Provisions for making reasonable accommodations to the needs of the handicapped.
- ▶ Provisions for outreach and positive recruitment activities including: internal and external policy dissemination; pictures of handicapped with other employees when advertising; and use of appropriate recruitment sources.

Enforcement — The Labor Department's Office of Federal Contract Compliance Programs conducts periodic reviews to ensure compliance with the Act's requirements. Any applicant or employee may file a written complaint with OFCCP alleging a violation. Complaints must be filed within 180 days of the alleged discriminatory act. OFCCP allows contractors that have procedures to handle complaints up to 60 days to resolve the complaint. When complaints are not resolved, OFCCP conducts an investigation. If an OFCCP review or investigation discloses a violation, OFCCP attempts to remedy the violation through conciliation. Should conciliation not resolve the matter, OFCCP's regulations provide for a hearing.

Sanctions — After a hearing, OFCCP may: seek an appropriate court order to enforce the contractual obligation; withhold payments due on the contract; terminate the contract in whole or in part, or debar the contractor from receiving future contracts.

Recordkeeping — Covered contractors must retain complaint and employment records for one year. The full affirmative action program is to be available upon request to any employee or applicant.

Notices — All covered contractors and subcontractors must post a prescribed notice in a conspicuous place. A copy of a consolidated notice with all EEO requirements may be obtained from EEOC.

Vietnam Era Veterans' Readjustment Assistance Act of 1974

Persons who served in the military during the Vietnam War and certain disabled veterans must be hired and promoted under the Vietnam Era Veterans' Readjustment Assistance Act (Title 38, U.S. Code, Section 2011, et seq.). The law also provides reemployment and other job protections for employees who enlist in the U.S. Armed Forces or sign up for the reserves or National Guard.

Coverage — Employers with federal contracts or subcontracts of \$10,000 or more must list job vacancies with state employment services and comply with reporting requirements. VEVRAA requires covered employers with 50 or more workers and contracts or subcontracts of \$50,000 or more to develop affirmative action programs. The Act requires federal contractors and subcontractors to take affirmative action to employ and advance veterans who are either:

- ▶ "Special disabled" (i.e., persons who have a military disability of at least 30 percent or who have been released from active duty under a service-connected disability); or
- ▶ Vietnam-era veterans (i.e., persons who were on active duty for at least 180 days during the Vietnam War period and who were not dishonorably discharged).

Affirmative Action Requirements — These are the same as those required by the Rehabilitation Act of 1973

Enforcement and Sanctions — Enforcement and sanctions are the same as under the Rehabilitation Act, except that applicants or employees file complaints with the local Veterans' employment representative of the Veterans Employment Service.

Reports — Employers receiving \$10,000 or more in federal contracts are required to complete a "Veterans' Employment Report" — the VETS-100 Form — no later than March 31 of each year. Employers must record on the VETS-100 form the number, job category, and hiring location of Vietnam-era and special disabled veterans. Employers also must include on the form the number of employees and of special disabled and Vietnam-era veterans hired during the previous year. The Equal Employment Opportunity Commission will distribute, receive, and process employers' VETS-100 form.

Recordkeeping and Notices — Requirements are the same as those under the Rehabilitation Act

Executive Order 11246

Executive Order 11246 prohibits discrimination in employment and requires federal contractors and subcontractors to implement affirmative action plans to increase minority and female participation in the workplace.

Coverage — E.O. 11246 applies to companies doing business with the federal government under a contract or subcontract whose value amounts to more than \$10,000.

Affirmative Action Requirements — Written affirmative action plans must contain:

- ▶ An analysis of the federal contractor's utilization of minorities and women in all major job classifications;
- ▶ An explanation if minorities or women are underutilized in any job classification;
- ▶ Goals and timetables, to be achieved through good faith efforts, for the employment of additional minorities and females to correct deficiencies;
- ▶ A description of specific steps the contractor will take to meet goals and timetables (e.g., outreach and recruitment programs);
- ▶ Internal auditing and reporting systems to measure the plan's effectiveness;
- ▶ The contractor's commitment to follow the sex discrimination guidelines issued by the Labor Department's Office of Federal Contract Compliance Programs (OFCCP); and
- ▶ A commitment to use employment tests in accordance with the Uniform Guidelines on Employee Selection Procedures (see 70:51).

Enforcement — The E.O. is enforced by OFCCP, which conducts periodic compliance reviews to ensure compliance with the order's requirements. Such reviews can include:

- ▶ An evaluation of the company's employment practices;
- ▶ On-site inspections;
- ▶ Notification of deficiencies found; and
- ▶ Establishment of a timetable for correcting deficiencies.

Individuals may file a written complaint of discrimination alleging a breach of the company's obligation not to discriminate under E.O. 11246. Most often, such charges are processed under Title VII.

Sanctions — E.O. 11246 authorizes the Secretary of Labor, after conciliation or a hearing, to: publish the names of contractors or unions that fail to comply with the order; recommend to the Department of Justice that appropriate proceedings be brought to enforce contractual obligations (or that criminal proceedings be brought when false information is furnished); order the cancellation or suspension of a contract; or prohibit further contracts or extensions.

Reports — Contractors and subcontractors required to have affirmative action plans must file an annual EEO-1 report.

Recordkeeping — Companies subject to the E.O. must retain affirmative action programs and all required supporting documents.

Notices — All contractors and subcontractors must post in conspicuous places a prescribed notice. A copy of a consolidated notice with all EEO requirements may be obtained from EEOC.

Uniform Guidelines on Employee Selection Procedures

The Uniform Guidelines (29 CFR Part 1607) establish a uniform federal government position on the use of employment tests and other selection procedures. The guidelines are designed to provide guidance to employers to help them comply with federal laws prohibiting employment discrimination on the basis of race, color, religion, sex, and national origin.

Coverage — The Equal Employment Opportunity Commission and the Labor, Justice, and Treasury Departments follow the guidelines in exercising their respective authorities. The guidelines apply to employers and others subject to Title VII of the 1964 Civil Rights Act or Executive Order 11246

Discrimination Defined — Under the guidelines, any employment selection procedure that has an adverse impact on the hiring, promotion, or other employment opportunities of any race, sex, or ethnic group is considered discriminatory, unless it can be justified by the employer. The guidelines provide a rule of thumb for determining if a selection procedure has an "adverse impact." This rule says that when the final selection rate for any race, sex, or ethnic group is less than four-fifths (80 percent) of the rate for the group having the highest selection rate, the selection procedure has an adverse impact. The guidelines allow an employer to use a selection procedure that results in an adverse impact if the employer can validate the procedure (i.e., show that it measures a trait related to successful performance on the job) or modifies the procedure to eliminate features that cause the adverse impact.

Enforcement — EEOC is the main federal agency with responsibility for enforcing the guidelines' standards in the private sector.

Recordkeeping — Employers with more than 100 workers are required to keep detailed records of employee selection procedures on a job-by-job basis to aid in determining adverse impact. Employers having 100 or fewer workers must keep records for each job according to sex; for each ethnic group constituting more than 2 percent of the relevant labor market, employers must keep records on race or national origin. These records should include the annual number of persons hired, promoted, and terminated; number of applicants for hire and promotion; and selection procedures used.

Reports and Notices — No requirements are contained in the guidelines.