# The MLS In Danger: The Difference Between Equal Employment Opportunity and Affirmative Action

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The provisions of existing equal employment opportunity and affirmati action regulations have been used in various libraries throughout the nation prohibit the use of an MLS from an ALA accredited school as the s minimum criteria for screening entry level librarians. In certain instances, t degree requirement has been abolished and replaced with other criteria; e the Ohio State Library now requires only that candidates for entry le librarian positions have a 7th grade education and two courses in librariansh In other libraries, the MLS is retained and along with it career ladders ha been constructed which allow clerical and support staff to vie with M holders for entry level librarian positions based on experience or a combi tion of experience and training of various formal and informal kinds. Both t Orange County and Sacramento City-County Libraries in California v versions of this screening criterion.

The history of equal employment opportunity and affirmative acti regulations goes back to the Civil Rights Acts of 1866 and to the 14 Amendment to the Constitution. Recently two of the most significant events this history were the December 1977 publication in the Federal Register of t latest draft of the Equal Employment Opportunity Commission's propos Uniform Guidelines and also the restructuring of the EEOC itself as part President Carter's 1978 Federal Reorganization Plan. But the documer which are most significant in the history of equal employment opportunity a affirmative action are Title VII of the Civil Rights Act of 1964, as amended, a the 1965 Executive Order 11246, as amended.

Both the law, Title VII, and the Executive Order 11246 are the bases many and varied guidelines with which employers are required to comply. T VII and its regulations are associated with the term "equal opportunity," wh Executive Order 11246 and its guidelines are associated with the term "affir ative action." The various equal employment opportunity and affirmati action regulations make different demands. Many employers may fail to reali that by complying with the letter of affirmative action regulations they do n satisfy the requirements of equal employment opportunity regulations, and a more than likely opening themselves to suits against which they have lit defense. It is equally true that compliance with each jot and tittle of equ employment opportunity regulations will not protect them from disbarme under affirmative action regulations. Indeed only when the letter and the sp

of both sets of regulations are put into effect will an employer have a good margin of security from the threat of suit or cancellation of federal contracts. Only when the spirit and letter of equal employment opportunity and affirmative action regulations are in effect will an employer confidently be able to hire and promote the most qualified people through the use of the most stringent applicable standards.

## Title VII and EO 11246: Differences

There are four significant differences between Title VII and EO 11246: Title VII and its regulations:

1. focus on job qualification,
2. reserve the establishment of quotas to the courts,
3. state the people protected by their authority to be the members of defined "protected classes," and
4. are enforced through litigation by the Equal Employment Opportunity Commission or a state agency to which it defers.

On the other hand, EO 11246 and its regulations:

1. emphasize results which are statistically demonstrable,
2. require employers who contract with the federal government to design written programs which state statistical goals and time-tables,
3. have shifted from the use of "protected classes" to "affected classes" or "affected groups" to indicate those people protected under their authority, and
4. are enforced through threat of cancellation of federal contracts by the compliance divisions of various federal agencies.

Despite these differences, both Title VII and EO 11246 and their resulting regulations use a definition of discrimination which disregards an employer's intent and focuses on the statistical results of an employer's various employment practices, requiring that all employment practices be demonstrably related to on-the-job performance. Both require validation as the means of demonstrating job relatedness. Both disallow preferential treatment of people on the basis of their race, religion, sex, national origin, or age or handicap as defined.

Affirmative action and the regulations resulting from EO 11246 have made direct impact on the awareness of the nation's employers. This is the result of affirmative action effect on federal contract compliance. Employers are subject to affirmative action mandates with each writing of a grant or other contract request or renewal. In many instances this is an annual process which includes periodic, monthly or quarterly, reporting—all of which is reviewed by the compliance staff in the various federal agencies. The potentially negative financial impact of affirmative action has a here-and-now reality everywhere it is applicable since the 1965 issuance of EO 11246. The contracts which have been cancelled and the many more costly written affirmative action plans which have been mandated in the last 13 years have earned affirmative action some degree of consideration in the thinking of executive personnel.

Employers are now all too ready to comply with EO 11246, but they are not sufficiently aware of the legal and business necessity for compliance with Title VII and its regulations. The empowering legislation provided the Equal Employment Opportunity Commission with insufficient legal staff to handle the number of suits which have arisen. The timetable for individual and class actions is well over two years. However, plaintiffs have been winning and winning big. Indeed the back pay settlement imposed on the Bell Telephone Company was the largest civil settlement in U. S. history. The additional award of lawyers' fees has meant hundreds of thousands of dollars to unsuccessful employers, and it is notably all too easy to be unsuccessful when all an employee need produce to get into court is statistical evidence that an employment practice has adverse effect. That is, employees must demonstrate that members of a protected class are unsuccessful under that practice to a greater degree than they are represented in the available work force. Once they demonstrate this, the burden of proof shifts to the employer. The employer's only defense is demonstration of the job relatedness, i.e. validity, of the questioned practice. If this is shown, there is no discrimination. If the employer cannot satisfy the court that the practice is related to success on the job, the practice will be ruled discriminatory and employees awarded back pay and lawyers' fees even if the employer has an exemplary affirmative action plan in operation and can demonstrate no intent to discriminate. During the next ten years, there will be more Title VII suits in U. S. courts than any other type of litigation. Therefore, failure to comply with equal employment opportunity regulations has had and will continue to have profound economic ramifications.

## Questions in pursuit of a standard minimum qualificati

Given this brief summary of the reality created by equal employment opportunity and affirmative action regulations, you can see that the use of MLS from an ALA accredited school as the sole minimum criterion for entry level librarian is legally permissible only if each factor of the criterion can be demonstrated to be job related, i.e. the ALA accreditation of the degree conferring institution as well as the degree itself. The exclusive use of this criterion is possible under Title VII and in light of the Griggs decision only if no other equally applicable or superior screening method can be shown to exist.

If ALA wishes to work toward the establishment of a standard minimum qualification for librarians in light of equal employment opportunity and affirmative action regulations, it must make the same commitment as an employer wishing to establish a given employment practice must make. There must be ALA executive commitment to the project as a major difficult organizational priority which is therefore to be given great time, money, and creative effort. Both legal counsel and the services of an industrial psychologist must be retained.

Each of these consultants must be chosen with great care. The ALA members and ALA staff who will be working on this project must have primary source knowledge of the legal and psychometric principles involved not just to enable them to deal effectively with, but perhaps, more importantly, as a ba

of selecting each of these consultants. Our legal and psychometric consultants must be selected after certain considerations have been taken into account. Those candidates for the industrial psychologist consultant position should be asked if they can comply with the Federal Executive Agency Testing Guidelines and the Proposed Equal Employment Opportunity Commission Uniform Guidelines as well as the testing standards of the American Psychological Association. They should be members of Division 14 of the APA and licensed to practice in the jurisdiction in which they, as consultant, will be asked to act as an expert witness. The lawyers, likewise, must be licensed to practice in those same jurisdictions.

We must determine what experience each has had with Title VII and EO 11246. We need to know the success each has had in defending his position in court. We must know if any candidate is associated in the mind of any court with a position antithetical to our cause. If any candidate has an association, for example, with arguments against the use of degree requirements, he or she would be a poor choice. The court would more than likely find the arguments suspicious and suspect and at least insulting. We need, therefore, to find consultants who are sympathetic with our cause and somewhat understanding of librarianship and willing to increase that understanding.

In order to gauge the knowledge and sympathies of potential consultants their opinions regarding the *Spurlock vs. United Air Lines* case must be solicited. In this decision the court upheld the airlines requirement that pilots have undergraduate degrees. The decision was based on the nature of the training program the airline required and on the employment necessity that the pilots be able to handle a type of emergency estimated to represent 1% of the job but with which they must deal without recourse to emergency or supervisory staff or manuals.

We must find out what ramifications for librarians each candidate sees in the fact that despite the Griggs decision the Justice Department has never questioned police departments' practice of requiring new officers to have high school diplomas because this criterion has been recommended by a federal commission on police standards. We must solicit the candidates' opinions on the applicability of *Tyler vs. Vickery* in which the court upheld the Georgia Bar Examination as a valid employment practice despite its adverse impact.

Also, candidates must be asked their opinion on the trend toward cooperative studies and their usefulness to our project. They must also be given a chance to review the SCC study to date and comment on its implications for any national or local cooperative study ALA may sponsor or support.

They must be asked to discuss how we can advise library administrators to upgrade their entry level positions if it is found that this is necessary to justify the degree. In particular, we must discuss with candidates the need to train incumbents who are without the MLS, or whatever minimum qualification ALA establishes.

Since we are a profession composed primarily of women and our salaries are resultingly lower, candidates ought to be asked their opinion concerning the advantages to us of filing sex discrimination suits or involving this reality in our minimum qualification project. We must discuss with them the probable

need for equivalencies to the MLS experience and the form this docum ought to take. We should also discuss with them the effects ALA's proac involvement in this area will have on courts in future litigation. We must a discuss with the candidates the advisability of ALA's dealing directly with EEOC and the various federal compliance agencies in order to estab contact and open lines of personal communication.

Finally, we ought to discuss with potential consultants their views on unique position of the Library of Congress vis-a-vis equal employment opp tunity and affirmative action regulations and its potential effect on natio employment criteria for librarians. This is a particularly important area explore since the Library of Congress is the only employer in the nation the only federal agency or department designated by the various regulation establish its own equal employment opportunity, affirmative action and, m importantly, its own testing guidelines. The Library of Congress co seemingly therefore be a unique and useful ally.

Once we have hired our consultants, we can proceed in working w them on the design and implementation of our minimum qualification proj

The inclusion of certification in such a project will depend not just on ability to work within the equal opportunity and affirmative action regulatio but also on the evolution of our professional project. That is, in persuading various state legislatures of the need for our certification based on minimum qualifications we define as necessary, we must have the polit connections and acumen to use our demonstrable conformance with demands of Title VII and EO 11246 as part of an effective argument assert our request for certification.

## We must act

My statements here are meant to form an overview of the differen between equal employment opportunity regulations and affirmative act regulations as they apply to minimum qualifications for librarians. They meant to alert you, and the various national and state organizations c cerned, to the need for extensive primary source education in this a beyond that which is possible in 20 minutes or even two hours. A m detailed report with legal citations appears in the *California Librar* October, 1975. Extensive meeting and workshop time and publication sp must be provided for in-depth information on this subject. Also, the ove ramifications of the differences between these regulations to the professio librarianship should be explored. Library administrators need to underst the proper way to write contracts with psychologists for the production validation studies which are useful in court, and they need to understand h to deal with their library's written affirmative action plan as a liab document.

It is already fourteen years later. We must proceed with dispatch. must commit our time and our money, and we must prepare to make ideo ical sacrifices for the sake of unity. We must act.