(WORKING PAPER SERIES - 141)

PUBLIC POLICY

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DRAFT: September 1987

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LOS ANGELES

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Public Policy

Draft chapter for "Human Resource Management: An Economic Approach"

r1chap13.hrm

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Chapter 13: Public Policy

By this point in the text, the reader will be well aware of the central role played by public policy, i.e., governmental regulation, in the American labor market. Indeed, as the next chapter will point out, this characteristic is not uniquely American; in all developed countries, governments have seen fit to intervene heavily in determining the nature of the employment relationship. The laws and regulations which emerge in the U.S., however, are the product of the nation's complex system of legislative-executive-judicial interaction. What makes the American system unique is not the existence of substantial labor market regulation, but rather the way it is developed and enforced.

Whether he/she approves of a particular regulatory program or not, no HRM professional can afford to be uninformed of the many legal requirements affecting the labor market. And no general manager, in seeking to evaluate the effectiveness of the HRM function within a firm or organization, should do so unaware of the constraints which legal regulation places on that function. On the other hand, as has been stressed earlier in this volume, simply complying with the law's multiple strictures is not a complete HRM strategy. Nor should HRM professionals view their task as merely acting as internal police officers for outside regulatory authorities. There is sufficient latitude within the constraints of public policy to permit the firm to adopt HRM approaches suited to its needs.

Teachers and administrators in public schools often bemoan the fact that they are called upon to deal with social problems that are outside the immediate concerns of educators. Behavioral and other problems which should be dealt with in the home, it is said, are left to the schools. Similar laments are sometimes heard in HRM circles; society, so the complaint goes, is expecting -- and requiring -- that employers resolve grand social and economic issues that ought to be handled "elsewhere." And, of course, there is an element of truth to this charge. But the lament overlooks the centrality of work and employment to the larger social and economic structure.

Perhaps nothing illustrates this point more directly than the expected working life estimates issued by the U.S. Bureau of Labor Statistics (BLS). As Table 1 shows, a typical American male at birth could expect to spend 55% of the years of his life active in the labor market, based on 1979-80 information. For a typical women, the BLS estimate was 38%. The estimates for adults are, of course, higher, especially for men, since most of childhood is spent outside the labor market. Thus, working is a major life activity for most people and many broad social and economic problems will inexorably be connected to employment.

Table 1

Worklife Expectancies Based on 1979-80 Data

Sex & Age	Life Expectancy (Years)	Worklife Expectancy (Years)	Ratio: Worklife to Life Expectancy (Percent)
Males:			
At birth	70.0	38.8	55%
At age 25	47.3	33.1	70
Females:			
At birth	77.6	29.4	38%
At age 25	54.2	24.0	44

Source: Shirley J. Smith, "Revised Worklife Tables Reflect 1979-80 Experience," Monthly Labor Review, vol. 108 (August 1985), p. 27.

Even those who are not employed -- children, homemakers, the disabled, retired persons, and the unemployed -- generally receive a major proportion of their income as a byproduct of the labor market, in the form of support from working members of their families, from Social Security, from pensions, from work-related insurance payments, and from unemployment benefits. It is inevitable that social and economic issues related to income distribution will be connected in the public mind with the labor market, and with the employer-employee relationship.

Indeed, it is difficult to draw a sharp line between those economic policies which are labor market programs, and those which are not. Economic policies which are not generally viewed as examples of labor market regulation nevertheless often have an important impact on employment. Almost any policy which affects the product market will also have an impact on the labor market. Thus, the politics of public policy in the product market often revolve around particular programs which are being advocated will "create jobs" or "destroy jobs."

I. Macro Policy.

Macroeconomic policy -- monetary and fiscal policy -- is usually viewed as regulating "aggregate demand" for the purpose of influencing the rate of unemployment and the rate of inflation. Through tax cuts and increased government spending, fiscal policy can stimulate the economy, expanding production and employment -- but also, perhaps, raising the inflation rate. Expansion of the money supply by Federal Reserve open market operations is also stimulatory to real economic activity and potentially inflationary. A fuller discussion of macro policy is best left to other texts and to courses in macroeconomics. However, the interaction between macroeconomic policy and the labor market should be quite clear.

To the extent that macro policy either raises or lowers the general level of economic activity, it changes the level of labor market demand. Pulses of aggregate demand are translated into HRM policies of increased or decreased intensity of utilization of the existing workforce, e.g., more or less use of overtime, and into hiring or layoff decisions. Compensation policy is also influenced by induced labor shortages or surpluses, as earlier chapters have noted.

If macroeconomic policy causes an acceleration or deceleration in price inflation, that, too, will have HRM implications. In unionized settings, for example, there may be demands for cost-of-living escalator clauses where none currently exist, or improved escalation formulas where they already do. And in both union and nonunion settings, compensation adjustments may be made by employers to protect the real wage.

Apart from wage determination, inflation induced by macro policy has implications for deferred benefit programs such as pensions and life insurance. Thus, issues may arise concerning the status of already-retired workers whose (unindexed) retirement benefits are deteriorating in real terms. As discussed in a previous chapter, inflation may also have a distorting influence on such HRM practices as determining pay increases through evaluation of employee "merit."

In short, the conduct of macroeconomic policy has obvious effects on HRM policy at the firm level. But the reverse is also true, even if it is less self evident. The conduct of HRM policy at the firm level affects -- and, many economists would say, is the motivation for -- implementation of active macro policy. If the labor market functioned as a classical economic auction, smoothly and quickly adjusting wages up or down in response to demand, the economy would stay at full employment. Inflation could be painlessly avoided by appropriate monetary policy. And even if inflation did occur, it is not clear that anyone would much care in the context of an auction-type labor market, since no real wage effects would result.[1]

II. Product Market Regulation and Deregulation.

Labor demand is ultimately derived from product demand. Firms want labor in order to produce goods and services.

Government regulation of the product market in ways which influence product demand will inevitably influence labor demand. Even if the "intent" of regulation initially has nothing to do with any resulting employment effects, those effects will soon enough become evident and will create constituencies for or against particular programs.

Consider, for example, the "environmental" issue of requiring soft drinks to be sold in returnable deposit containers, rather than in throw-away bottles and cans. Environmentalists tend to favor such requirements on the grounds that deposit laws will discourage discarding of empty bottles and cans on roadsides, in public parks, etc. Whatever the merits of such regulation, typically unions representing supermarket employees -- for whom extra work will be created to process and sort the bottles -- <u>favor</u> laws requiring return containers. In contrast, unions involved in glass bottle production <u>oppose</u> deposit/return laws, since the demand for bottles -- and, therefore, bottle makers -- will be reduced by recycling.

Some forms of regulation, rather than creating more demand for a service, may instead restrict competition between suppliers. Even though such restrictions can result in higher prices and -- therefore -- less production and employment, reduced competition can raise the bargaining power of unions in the protected sector. Similarly, deregulation can reduce that power. Thus, in the airline industry (deregulated beginning in the late 1970s), post-deregulation employment rose more rapidly than in the economy as a whole, but wages fell relative to other sectors.[8] Airline industry unions have been critical of deregulation since it was introduced, generally hoping to enlist public support through arguments related to safety and service to sparsely populated destinations. The employment gains -- which sometimes went to nonunion airlines and workers -- have mattered less to them than the compensation losses and deterioration in working conditions which accompanied declining union bargaining power.

The HRM implications of changes in product market regulation for the employment relationship go beyond unions and bargaining. Employers will adopt different HRM strategies, depending on the nature of product market competition to which they are exposed. Companies with secure, relatively noncompetitive, regulated product markets -- such as utilities -- are likely to tilt towards HRM policies favoring long-term, career employment, and job security. Their managers know that demand for their firms' output will continue without substantial interruption, and so have every reason to invest both in their employees and in their relationship with their employees. With predictable long-term employment stability will probably go comprehensive fringe benefit packages. In contrast, firms in volatile, competitive industries may stress temporary, less-assured, "flexible" employment arrangements. And benefit packages are likely to be more spotty and will reflect the more transitory nature of the employer-employee relationship.

Although the connection between the product market and the labor market make it difficult to draw a precise line around labor market regulation, certain kinds of programs are generally viewed as falling into that category. Some of these programs have already been discussed in earlier chapters. The sections which follow take up social insurance programs (such as Social Security), minimum standard programs (such as the federal minimum wage), and prohibitions (such as the ban on racial discrimination).

III. Social Insurance.

Life poses risks and uncertainties, and those which threaten a cut-off of income -- or a heavy drain on income -- are often seen as related to the labor market. Since the labor market-- directly or indirectly -- is the major source of most people's income, this public perception is not surprising. The result has been adoption of "social insurance" programs, specifically workers' compensation, Social Security, and unemployment compensation.[3] Much American social insurance dates back to the New Deal era of the 1930s.[4] However, there are elements which pre-date that period, and others which have been added more recently. The three major social insurance programs are described briefly below.

i. Workers' Compensation.

Workers' compensation is not a federal program. It is composed state-enacted laws providing benefits to workers who are injured on the job or become ill from occupational diseases.[5] State laws vary in scope. Employment coverage is generally very extensive with exemptions sometimes provided for very small employers, domestic servants, farm labor, and charitable organizations. Generally, employers obtain their mandatory insurance coverage from private carriers. Most jurisdictions permit self insurance. A few states operate state-run insurance funds to provide the compulsory coverage.[6] As Table 2 shows, almost nine out of ten wage and salary earners are covered by workers' compensation.

Program History.

Programs of workers' compensation arose in the early part of the twentieth century, an era in which industrial accidents were of great concern. Injured workers could sue their employers for damages, but they had to show that the employer was at fault. The employer could claim in defense that the worker was at fault, or the worker knowingly assumed the risk entailed in the job, or

Table 2

Coverage of Social Insurance Programs: 1984

Program	Population Covered by Program (millions)	Ratio: Covered Population to Wage and Salary Workers (percent)
Workers' Compensation	84.5	88%
Unemployment Insurance	95.4	99
Social Security	89.0	92

Source: U.S. Social Security Administration, U.S. Department of Health and Human Services, Social Security Bulletin: Annual Supplement 1986 (Washington: GPO, 1986), p. 68.

that some other worker was at fault. These defenses were initially very effective in fending off claims.

However, as jurors became less receptive to these defenses, the management community opted for the present day "no fault"/limited liability insurance system.[7] Under this system, workers need show only that their injury/illness was caused at, or by, the job to receive benefits. In exchange, suits for damages against employers are not permitted and employees must accept state-designated benefit schedules.

New Types of Claims.

Although the no-fault aspect of workers' compensation was intended to eliminate litigation, in fact litigation occurs--not in court, but instead before state-operated tribunals. Issues adjudicated can involve whether an injury/illness was or was not work related and the severity of the injury/illness. As noted in an earlier chapter, employers have become concerned about a tendency to widen the definition of work-related injury/illness, particularly in regard to claims of "occupational stress." Under stress claims, the employee argues that medical or psychological problems such as heart attacks, strokes, or incapacitating anxiety were induced by job pressures.

Safety Incentives.

Since workers' compensation premiums for many employers vary depending on claims experience, some incentives may be present to reduce employee exposure to risk of injury or disease.[8] Thus, the growth in interest by employers in establishing "Employee Assistance Plans" (EAPs) -- discussed in an earlier chapter-- seems associated with concerns about workers' compensation costs. In addition, students of occupational stress have suggested approaches to job design that can improve working conditions. These suggestions run from making jobs more predictable to reducing physical stressors such as loud noise and bright light.[9]

However, the fact that workers' compensation limits claims liability to state-specified benefit schedules may reduce employer incentives to invest in safety, relative to the old common-law system of litigation. In addition, since only the employer is liable under workers' compensation, there may be a misallocation of responsibility between employer and employee in situations when it would have been cheaper for the worker to undertake precautions.[10] Since employees cannot sue for damages resulting from job-related injuries and illnesses through the regular court system, there is no way to know what costs of such a system would be, nor how employers would react to it in terms of expenditures for risk mitigation.[11] Employers have not pressed, however, for a return to the common law system of court litigation, suggesting they view the current workers' compensation approach -- whatever its defects -- as the cheaper alternative.

Still, premiums for workers' compensation accounted for about 1% of total private-sector compensation in the mid 1980s,[12] a proportion which leveled out in and declined slightly during the first half of the decade, after rising rapidly. The earlier increased cost trend seems to have been accelerated in the early 1970s, after a federal commission recommended benefit improvements to the states.[13] However, benefits for workers and costs to employers vary substantially between state systems, as do administrative procedures.

Information Sources.

Detailed information about the various state systems can be found in Analysis of Workers' Compensation Laws, an annual publication of the U.S. Chamber of Commerce. Updates on state programs are also reported annually in the Monthly Labor Review. Special publications of the U.S. Department of Labor also review the highlights of state programs.[14]

ii. Unemployment Insurance.

Most paid employees are covered by unemployment insurance (UI), a state operated, but federally-induced program which originated with the Social Security Act of 1935.[15] Under the various state UI programs, workers who are laid off and meet certain standards of eligibility are entitled to weekly benefits for a specified maximum period, generally 26 weeks. These benefits are based on prior earnings of the claimant, but are subject to a cap. UI benefits are financed by payroll taxes which are experience rated. However, caps and floors on the tax rates facing employers mean that taxes paid by some employers effectively subsidize high rates of layoffs by others.[16] Because UI was discussed in an earlier chapter, only brief highlights are provided here.

Typical HRM concerns with UI involve monitoring claims of laid off or terminated employees. It may be to the employer's advantage to challenge such claims if, for example, they involve a worker discharged for misconduct. UI may also have an influence on employer strategy in collective bargaining, since two states pay benefits to strikers and some states will pay benefits to workers deemed to be unemployed due to an employer lockout. Finally, because of its incomplete experience rating provisions noted above, UI may indirectly lower wages and raise the propensity to lay off workers by employers in volatile or seasonal industries.[17]

As in the case of workers' compensation, the precise administrative procedures, employer costs, and employee benefits under UI vary from state to state, and can be complex. Annual summaries of the state programs can be found in Highlights of State Unemployment Compensation Laws, a publication of the National Foundation for Unemployment Compensation and Workers' Compensation. Other sources of data include the Social Security Bulletin and Unemployment Insurance Statistics.[18] Updates of state UI programs are reported annually in the Monthly Labor Review.

iii. Social Security.

Social Security is known primarily as a government-run pension system for workers and their survivors. It is indeed the most important element in the nation's retirement system. But there are also two other key components of Social Security: disability insurance and health insurance. With the exception of certain public sector employees, virtually all American workers are covered by these three programs. As can be seen on Table 3, in the mid 1980s, monthly Social Security benefits stood at roughly one third the income level of the average private-sector nonsupervisory worker.[19] The increase in relative benefits over

Table 3

Social Security Benefits Relative to Monthly Earnings, 1950-85

Year	Average Benefit for Retiree	Average Benefit for Disabled Worker Worker	Average Benefit as Percent of Average Monthly Earnings[1]	
			Retireee	Disabled Worker
1950	$30.43	-	13%	-
1960	81.73	$91.16	23	26%
1970	123.82	139.79	24	27
1975	205.05	232.04	29	33
1980	340.45	374.30	33	37
1985	432.93	460.73	33	35

[1]Average monthly earnings are calculated by multiplying average weekly earnings for production and nonsupervisory workers in the private nonagricultural economy by 4.3452381, i.e., (365/12)/7.

Note: In years in which different averages applied for differently months, monthly averages were weighted by the proportion of months in the year.

Source: U.S. Social Security Administration, U.S. Department of Health and Human Services, Social Security Bulletin: Annual Statistical Supplement, 1986 (Washington: GPO, 1986), p. 103; U.S. President, Economic Report of the President, January 1987 (Washington: GPO, 1987), p. 293.

the period shown, and the widening coverage of older individuals by Social Security, produced a significant decrease in poverty among the elderly.[20]

Social Security retirement payments are similar in form to those under private defined-benefit plans. Benefits are based on past earnings history and age, and become vested after a specified period. But unlike most private pension arrangements, Social Security is financed on a "pay-as-you-go," rather than an actuarial basis. As a legal matter, the Social Security payroll tax is evenly split between the employer and worker. Thus, currently active workers and their employers are taxed to pay for the benefits of current retirees and their dependents. The so-called trust funds for Social Security function more as "petty cash" accounts -- cushions between tax inflows and benefit outflows -- rather than as accumulated assets held in reserve to pay future benefits.

<u>Saving, Deficits, and HRM Policy</u>.

It has been argued by some economists that Social Security promises of future benefits substitute for private retirement saving that would otherwise occur. Due to the pay-as-you-go approach to funding, and to Congressional generosity, workers (and their employers) have historically been required to pay less in taxes (actuarially adjusted) than they have received in benefits. The gap between lifetime taxes and eventual benefits was funded by increased tax rates and by a widening labor force base which paid into the system. But although there have been empirical attempts to pin down the effect of Social Security on national saving, the results have not been at all conclusive.[21]

A major difficulty in trying to estimate the saving effect is establishing what workers would be saving if Social Security had not been created. Would there be an intergenerational "understanding," whereby children would support their aging parents? Such arrangements exist in traditional societies and functioned, albeit imperfectly, in the past in the U.S. If Social Security has simply "nationalized" a within-family pay-as-you-go understanding, and no net saving effect should be expected. If not -- if each person would otherwise be putting aside funding for retirement personally or through private pensions -- then Social Security could lower saving.

There is unlikely to be any resolution of this issue in the near future. And from the viewpoint of firm-level HRM, the effect of Social Security on overall saving it is only of marginal significance. Its main impact on the firm's HRM function comes only if Congress -- in the hope of either fostering saving generally or simply trimming the federal budget deficit -- restricts Social Security benefits and/or encourages the creation or expansion of "offsetting" private work-related savings plans. Although there have been proposals that it should do so, Congress is unlikely to require establishment of private pension plans.[22] Hence, its main means of encouraging such arrangements is the traditional one of providing favored tax treatment for them. But such tax incentives reduce government revenue losses. Thus, the same budgetary constraint that affects Social Security is likely to restrict additional tax-based encouragement of private savings and pensions.

Indexation.

Social Security retirement benefits -- unlike those of private pension plans -- are formally adjusted to reflect changes in the Consumer Price Index.[23] Indeed for a period ending in the mid 1970s, an "error" in the escalation formula resulted in "over-indexing," i.e., a systematic rise of benefits faster than that warranted by CPI-measured inflation. As Table 3 shows, the result was that the economic welfare of retirees rose faster than that of the active working population. And the importance of Social Security as a source of retirement income relative to private pensions and other sources was enhanced.

The fact that Social Security benefits are indexed to inflation has the effect of lessening pressure on employers to place escalators in their own pension plans. It is extremely difficult to index a private pension plan, and virtually none are directly geared to the CPI.[24] Employers, however, sometimes make _ad hoc_ adjustments for retirees during inflationary periods.[25] Since retirees generally receive a significant fraction of their retirement income from Social Security, employers know that their former workers and dependents have automatically received some inflation-linked benefit increases.

Tax and Benefit Reforms.

Although the over-indexing problem was eventually corrected, stagnant real wages (on which payroll tax revenues are based) in the late 1970s and early 1980s led to a sequence of deficits and a funding crisis for the Social Security System.[26] A series of reforms were enacted in 1983, hiking payroll taxes, gradually raising the retirement age (from 65 to 67 by 2027), making benefits for higher income persons partially taxable, reducing early retirement benefits, and expanding workforce coverage of the system.[27] The changes produced a diversity of results, but seemed on balance to worsen the retirement income outlook for single individuals relative to married couples and for higher-income two-earner families relative to single-earner and lower-income families.[28] As a result, even though Congress has not granted further encouragement to private work-related savings arrangements, employers can expect that workers will see greater value in pensions, 401(k) plans, and similar devices.

Portability.

From the employee viewpoint, belonging to Social Security has an advantage not found in other defined-benefit pension plans. The benefits are portable from employer to employer, and even carry over into self employment. Although private defined benefit plans become quasi-portable once the employee has met the vesting requirements, there are typically substantial losses in net pension wealth entailed in job changing for long-service workers. And, of course, employees who change jobs after short spells of employment may never vest in plans under which they are nominally covered at all.

However, from the employer perspective, the portability of Social Security may be a disadvantage when compared with alternative private retirement systems. Lack of portability and limited vesting help reduce turnover costs for employers. The presence of Social Security thus reduces the degree to which pensions can be used for turnover control. And its portability lessens the degree to which pensions can be used for the "efficiency wage" incentive purposes discussed in an earlier chapter.[27]

Labor Supply.

Social Security may reduce the supply of labor in various ways.[30] For older workers, the availability of retirement benefits makes withdrawal from the workforce more feasible than it otherwise would be. In addition, Social Security has a feature which discourages work for benefit recipients. Until the attainment of age 70, earnings above a specified floor result in partially offsetting benefit reductions. These reductions constitute a de facto heavy marginal "tax" on wages and work, which may discourage substantial employment. Finally, the disability provisions of Social Security make it more possible for workers with illnesses or injuries to withdraw more readily from labor force participation.

"Normal" retirement age under Social Security is 65 years. An early retirement option -- with reduced monthly benefits -- is available between ages 62 and 65. Table 4 shows that participation of males aged 65 and over has dropped dramatically since the early 1950s. Early retirement for males was introduced in the early 1960s. Thereafter, participation in the 55-64 year old group also began to decline.

Of course, retirement and labor force withdrawal of older men was influenced by forces other than the presence of Social Security. Among these forces are higher real pre-retirement

Table 4

Civilian Labor Force Participation Rates of Older Persons, 1950-86

Year	Males: 55-64 Years	Males: 65 Years and Older	Females: 55-64 Years	Females: 65 Years and Older
1950	87%	46%	27%	10%
1960	87	33	37	11
1970	83	27	43	10
1980	72	19	41	8
1986	67	16	42	7

Source: U.S. Bureau of Labor Statistics, _Handbook of Labor Statistics_, bulletin 2217 (Washington: GPO, 1985), pp. 18-19; _Employment and Earnings_, vol. 34 (January 1987), p. 158.

incomes and -- beginning in the 1970s -- generally higher unemployment rates. Yet, retiring workers cluster around ages 62 and 65, the Social Security early and normal retirement ages.[31] It is hard to believe, therefore, that the Social Security system did not play an important role in the decisions of these workers to leave the labor market.

For women, the story is more complex, since there has been a rising trend in general female labor force participation. But older women, caught between the increased propensity to participate and the availability of Social Security (which has the opposite effect) have exhibited declining participation since 1960. The availability of early retirement for women has produced participation stagnation for the 55-64 year old group in the 1970s and 1980s.

Workers can qualify for disability benefits under Social Security, even if the illness or injury is not job related (unlike workers' compensation). The qualifying disability can be mental as well as physical. To be eligible, recipients must have met prior work tests and must be medically precluded by their disability from "substantial gainful work." The degree of generosity or restrictiveness in administering this standard has varied.

In the early to mid 1970s, the number of disability recipients increased rapidly, and appeared to reduce labor force participation for groups below normal or early retirement ages. More restrictive standards, especially during the initial years of the Reagan administration, reduced the number of recipients. However, litigation and pressure from Congress led to a subsequent increase in disability recipients.

The Social Security incentives for labor force withdrawal at certain ages change the demographic structure within firms. Despite an end to mandatory retirement, Social Security limits the workforce accretion of older workers. As noted in an earlier chapter, if the employer-employee relationship is viewed as an ongoing implicit contract, with low pay at the beginning and higher pay at the end, some means of ending the relationship is needed. In the absence of mandatory retirement, the incentives from Social Security and private pensions may be that means.

A related issue is the demographic bulge caused by the "baby boom" generation born in the late 1940s through the early 1960s. There will be a larger-than-steady-state fraction of middle aged workers pressing for advancement opportunities by the mid 1990s. The labor force withdrawal incentives from Social Security--even though they have been reduced by a budget-minded Congress--will dovetail with the needs of this middle-aged group by opening opportunities as still-older workers retire.[32]

However, despite pressures from younger cohorts in the firm, employers will not necessarily want to shed all of their older workers, or -- at least -- not shed them at the ages that they choose to retire, given the Social Security incentives. To retain older workers, some accommodations to these incentives need to be made in HRM policy. For example, the earnings test for workers under age 70 means that firms who wish to retain their older workers may need to arrange for part-time employment options.

Integration of Private Benefits.

The presence of Social Security needs to be considered by employers in benefit administration and design. HRM professionals in firms which offer disability insurance, for example, must consider what their disabled workers will receive from Social Security in formulating their firms' own plans. In general, it can be assumed that if Social Security offers a benefit, employees will place lower value on increments of that benefit from the employer. Thus, Social Security tends to replace benefits employers might otherwise offer.

Congress also takes account of the presence of similar benefits from private employers and Social Security. For example, firms typically provided for reductions in private health insurance for older workers who became eligible for health insurance ("Medicare") from Social Security. However, in an effort to reduce budgetary outlays, Congress effectively required employers to provide the first-dollar of protection for older workers under Medicare, a reversal of past practice.[33] Even so, firms may continue to provide Medicare supplements to their pensioners. For retirees and dependents, Medicare -- not the supplement -- pays for the first dollar of coverage.

The most dramatic cases of integration of private benefits with Social Security involve pension plans.[34] There are three chief methods by which private pension designs take account of Social Security. First, there are plans which do not officially include any recognition of Social Security in their formulas, but nevertheless contain benefit levels established in the knowledge that retirees would also draw Social Security benefits. Defined contribution plans typically fall into this category. But among workers under defined benefit plans in medium and large firms in the mid 1980s, almost 4 out of 10 were under plans with no formal tie to Social Security.[35]

Second, there are "excess plans" which provide benefits based on earnings above a specified level (or which provide a higher rate of benefits for earnings above the level). Such plans effectively recognize that Social Security benefits will be paid for those with lower earnings. In some of these plans, the specified level is the Social Security tax ceiling, since workers earning more than the ceiling effectively do not get credit from Social Security for their above-ceiling earnings.

Third, "offset plans" reduce plan benefits by an amount related to Social Security benefits received by the retiree. The reduction is less than dollar-per-dollar under these plans, and the precise formula may also involve years of service. Once the offset is calculated upon retirement, it is not changed to reflect changes in Social Security benefits.[36]

Nonunion pensions are substantially more likely than union plans to contain formal Social Security integration provisions. Part of the reason may be that nonunion plans will contain higher paid white collar, professional, and managerial workers for whom the ceilings on Social Security are important. Also a factor in the lower propensity of the union sector to integrate with Social Security may be the median voter political process within unions. This process may reduce the influence of the minority of high paid union workers in union decision making.

iv. Income Redistribution and Social Insurance.

Although the term "insurance" connotes reduction of risk, social insurance often involves more than simply dealing with economic uncertainty. Also involved is income redistribution. A longstanding theme in American economic policy -- reflected, for example, in the sixteenth amendment to the Constitution permitting a progressive income tax -- is a notion that government should foster economic "equality." Not surprisingly, however, given the political processes which enact economic policy, the social programs that result from this theme are often aimed more at benefits for the middle class rather than at benefits for those at the very bottom of the income scale. The same "median voter" model used to describe the political process in union decision making can also be applied to the larger polity as well. Median voters will be interested in benefits aimed at mid-range incomes.

Despite the interest in the idea of equality, American public opinion has never favored outright confiscation and transfer of wealth. Robin Hood -- taking from the rich and giving to the poor -- is a more popular figure among children than among voting adults. While a simple economic theory of democracy might suggest that coalitions of 51% of the electorate should form and vote themselves the wealth of the remaining 49%, such bald economic transfers have not been seriously attempted.

Generally, when transfers do occur, e.g., through the progressive income tax, the rationale is couched in terms of fairness and equality of burden sharing.[37] The rich "should" pay more in taxes, it is argued, because the money they pay in taxes is "worth less" to them since they have more of it than the average taxpayer. According to this view, income is subject to diminishing marginal utility. Pure theorists have long had problems with such arguments -- it is not really possible to make interpersonal utility comparisons and demonstrate what incremental income is actually "worth."[30] But the general public has not been bothered by such fine points of reasoning.

Similar to the notion that taxpayers should pay what they can "afford" is the idea that employers ought to ensure and provide -- or be compelled to ensure and provide -- certain minimum standards for their employees. "They" (employers) can afford to do so, it is argued, in comparison to the average employee who is likely to be more vulnerable to life's vicissitudes. No one will win a prize in pure economic theory for these propositions, but politicians are not competing for such prizes.

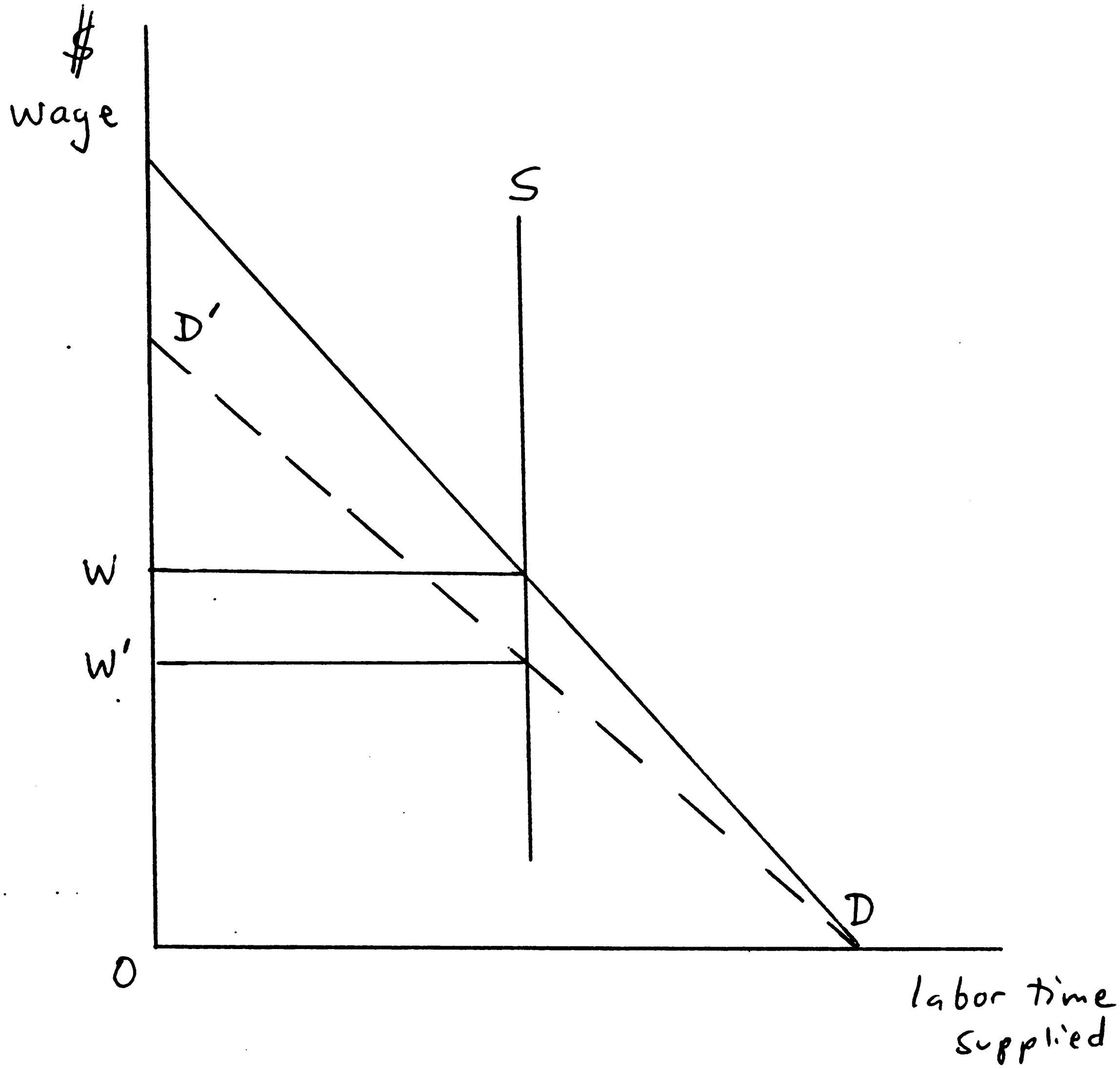
v. The Incidence of Social Insurance Costs.

In any case, even though the public -- probably including most employers -- may feel that job-related social insurance is being paid partially or fully by firms rather than workers, the standard method of social insurance finance raises questions about this popular perception. Presumably, the idea that the firm pays for something must really be understood to mean that the firm's <u>owners</u> ultimately have their profits reduced by the cost of the insurance. But social insurance is generally financed by payroll taxes or premiums related to employment. Profit or income taxes are not the method of choice. Hence, there is reason to suspect that the "incidence" or burden of the cost of social insurance falls on employees, not owners.

It is true that when payroll taxes are increased, the official total compensation-per-hour numbers issued by the U.S. Bureau of Labor Statistics tend to "blip" up. This tendency suggests that in the very short run, the tax is simply added to (not subtracted from) the wage. Such an observation is in keeping with the implicit contract/sticky wage model of pay setting developed in earlier chapters.[39] But the basic issue is what occurs in the long run. What is the long run tax incidence?

The answer depends heavily on the elasticity of labor supply, which is often assumed to be relatively inelastic with respect to the wage.[40] And in the face of relatively inelastic labor supply curves, economic theory predicts, and empirical evidence suggests, that the incidence of payroll tax and similar payments will fall largely on wages over the long haul.[41] That is, real wages will ultimately be reduced to "pay for" the costs of social insurance programs.

Figure 1



Note: $W = W'(1+t)$

$D = D'(1+t)$

Consider Figure 1. A payroll tax proportional to pay is levied on employers in a labor market characterized by demand curve D and (perfectly) inelastic supply curve S. The tax shifts the effective demand curve down to D', where $D' = D/(1+t)$, and t is the tax rate, e.g., .1 or 10%. As a result, the wage falls from W to W'.[42] Effectively, labor "pays" all of the tax on Figure 1, even though it is officially levied on the employer. Apart from this tax analysis, there are two other reasons to suspect that labor ends up paying indirectly for its own social insurance.

First, the payroll tax payment entitles the employee to benefits which are of some value, even if the employee might prefer the cash to the benefits. Just as payments for voluntary benefits, such as pensions, can be viewed as part of the wage-- and, hence, deductions from the take-home wage -- so can social insurance benefits.[43] Second, to the extent that social insurance does raise net costs to the employer, these costs may be passed into product prices, cutting into real wages.

Thus, while there is an income redistribution aspect to social insurance, it is more a matter of transfers between groups of employees rather than rich-to-poor transfers <u>per se</u>. Younger workers contribute to the support of retired persons. Employed persons contribute to the support of the unemployed. Able-bodied employees help support the disabled.

There is some tilting of the benefits of social insurance to the lower-paid. Retirement benefits under Social Security, workers' compensation benefits, and unemployment insurance benefits replace a larger fraction of the incomes of low-wage workers than high wage. And UI and Social Security benefits are subject to personal income taxation when received by higher income persons, but not when received by those with lower incomes.

Nevertheless, U.S. social insurance programs cannot be characterized as "soak the rich" schemes. Perhaps the best evidence of this proposition is that unemployment insurance and Social Security are financed by <u>regressive</u> taxation schedules. Both are funded by payroll taxes up to an annual wage ceiling. Thus, higher wage workers (or their employers) pay no tax above the ceiling, making the tax collected a lower proportion of their wage than for lower wage workers.

As in other tax/transfer programs, social insurance will have behavioral effects that go beyond simple income redistribution. There are incentives to undertake steps which minimize taxation and maximize benefits. Since payroll taxes are collected on the basis of wages, not total compensation, there is added incentive for workers to be paid in the form of nonwage benefits rather than cash. On the benefit side, examples can also be found. For example, as already noted, certain employers have an incentive to rely more heavily on layoffs than on other means to adapt to fluctuations in demand, since their laid-off workers receive an unemployment compensation subsidy.

Because of the behavioral effects induced, social insurance may engender various "inefficiencies." Hence, apart from the use of administrative resources, these programs entail a variety of economic costs. The late economist Arthur M. Okun once referred to public policies involving income redistribution as "leaky buckets." A dollar transferred produces less than a dollar's worth of benefits for the recipient.[44] The inefficiency leakage is not necessarily an argument that the programs should not be undertaken. Rather it simply says that "society," through the political process, must make a collective decision about whether the social benefits from the programs are worth the costs.

vi. Employer Resistance to Social Insurance Costs.

Particularly in the 1930s, as the various New Deal social insurance programs were being adopted, there was resistance within the management community to these new arrangements. However, there is today little management objection to the basic social insurance arrangements in principle. But there is resistance to <u>increases</u> in benefits and taxes. If, as economic theory suggests, workers ultimately pay for their own benefits, why should management be concerned with these matters?

Variable Cost Burdens.

Several reasons may be given. First, certain kinds of social insurance impose variable cost burdens across employers. Specifically, workers' compensation and unemployment insurance are "experience rated." Thus, the more claims there are against the employer, the higher the cost. Even if the average cost of these programs is shifted to employees over time in the form of lower wages, particular employers with above-average (below-average) claims and costs will bear extra costs (or benefit from lower costs) relative to competitors.

It pays for employers -- subject to the rules of the programs -- to "administer" the workers' compensation and unemployment insurance aspects of their HRM system. Holding down costs will benefit the firm. Proposed legislative changes in these programs which make such administration more difficult from the employer perspective will be opposed by management organizations. On the other hand, it might be expected that the management community would be less concerned about Social Security taxes -- which are not experience rated, and which are assessed on all employers uniformly -- than about other forms of social insurance. And, indeed, there has been less ongoing concern expressed by employers about the Social Security program than about unemployment insurance and workers' compensation.

The behavioral responses induced by changes in social insurance programs -- especially by changes which make them more generous -- can also be costly to employers. And the costs may not be evenly spread across all employers. For example, workers' compensation benefits are relatively low, compared to the wages earned by higher paid workers. Firms employing a high-paid workforce may be little troubled by claims for benefits based on assertions of "occupational stress." But firms with lower paid workforces might find that a loosening of standards for occupational stress claims would have a more important impact on their costs of operation.

Short-Run Effects.

A second reason for management opposition to social insurance cost increases may relate to short run effects. As noted above, in the short run, when payroll taxes increase, total compensation figures tend to blip up, indicating that the tax is initially added to the wage. Wages are not reduced in the short term to cover the added tax burden. Thus, in the short run, increased payroll taxes may cut into profits, creating obvious management incentives for opposition.[48]

Tax Illusion?

Finally, there is a third possible reason for management concern about social insurance cost increases, even if the costs are absorbed by employees. A "tax-illusion" effect may be present; employers are legally obligated to pay the tax, even if its burdens are ultimately shifted completely or partially to employees by the workings of the labor market. The situation depicted on Figure 1 involved labor market demand and supply curves, not demand curves of individual firms or workers. An individual employer would "see" only a wage of W' prevailing in the labor market plus the tax rate t. The total labor cost to the employer would be W'(1+t).

Such an employer might reason (incorrectly) that if t were lower, total compensation would fall accordingly. While it is true that if the tax rate were reduced just for that employer, its profits would be higher, the profit gain will not occur if the tax rate is reduced for all employers in the labor market. As drawn on Figure 1, each dollar "saved" by employers through a tax reduction would be "lost" to them due to resultant wage increases. With a somewhat more elastic supply curve for labor, reducing taxes would reduce total compensation, but each tax reduction of $1 would produce less than a $1 net cost saving.

The idea of tax illusion will bother theorists who insist that actors in the economic system have perfect insight. But as already noted in the case of unions, union members -- and employees generally -- often reason on a personal basis with regard to wages. They reason that if <u>their</u> wages were higher, they would be better off, and have trouble appreciating the side effects that might ensue if wages in their firm <u>all</u> rose. Employers, in thinking about taxes, may well reason in the same manner.

IV. Other Minimum Standards Regulation.

Social insurance can be regarded as part of a national program of minimum workplace labor standards. Employers must offer at least those benefits contained in federal/state social insurance arrangements. For example, employers <u>must</u> be part of Social Security's retirement income and disability programs. But they can -- <u>if they choose</u> -- offer private supplements, such as pensions or more generous permanent and temporary disability plans. Employers must be part of the unemployment insurance system of the state in which they operate. But they can choose to offer Supplement Unemployment Benefit plans, as some unionized firms do.

There are other forms of minimum standards regulation which do not involve a government-run or sponsored program. At the federal level, some of these regulations involve wages and hours. State-level regulation may involve higher-than-federal standards regarding wages and hours, or more specialized regulation dealing with such matters as the minimum frequency of pay, e.g., California requires that most workers must be paid at least every other week. Apart from social insurance and wages and hours, the other major form of minimum standards regulation involves occupational safety and health.

i. FLSA Wage and Hour Standards.

Earlier chapters have discussed the establishment of a minimum wage and "time-and-a-half" for weekly overtime above 40 hours under the federal Fair Labor Standards Act (FLSA) of 1938 as amended. Like federal social insurance, the FLSA was a product of the New Deal economic policies of the Great Depression era. The enactment of the FLSA came three years after a much more elaborate New Deal attempt to regulate wages and hours on an industry-by-industry level was declared unconstitutional by the U.S. Supreme Court.[46]

<u>The Minimum Wage</u>.

Because the economic analysis of the minimum wage was discussed in a previous chapter, only a brief review will be presented here. Table 5 shows the federal minimum wage standards

Table 5

Federal Minimum Wage Rates as Percent of Average Hourly Earnings, 1967-87

	Basic Minimum		Minimum for Workers Covered since 1966	
Effective Date of Minimum Wage Imposition	Wage Rate	Percent of Average Hourly Earnings[1]	Wage Rate	Percent of Average Hourly Earnings[1]
Feb. 1967	$1.40	53%	$1.00	38%
Feb. 1968	1.60	58	1.15	41
Feb. 1969	1.60	54	1.30	44
Feb. 1970	1.60	51	1.45	46
Feb. 1971	1.60	48	1.60	48
May 1974	2.00	48	1.90	45
Jan. 1975	2.10	48	2.00	45
Jan. 1976	2.30	49	2.20	47
Jan. 1977	2.30	45	2.30	45
Jan. 1978	2.65	48	2.65	48
Jan. 1979	2.90	49	2.90	49
Jan. 1980	3.10	48	3.10	48
Jan. 1981	3.35	48	3.35	48
Note: Jan. 1987	3.35	38	3.35	38

[1]Average hourly earnings data apply to nonsupervisory workers in the private, nonagricultural sector.

Note: Lower minimum wage rates applied to farm workers during 1970-77.

Source: U.S. Bureau of the Census, Statistical Abstract of the United States: 1987 (Washington: GPO, 1987), p. 404; U.S. Bureau of Labor Statistics, Employment, Hours, and Earnings, United States, 1909-84, bulletin 1312-12, vol. 1 (Washington: GPO, 1985), pp. 5-6.

in place during 1967-87. As can be seen, the minimum wage was moved up regularly during that period, pursuant to various legislative amendments to the FLSA.

Apart from minimum wage increases, minimum wage <u>coverage</u> of new groups of workers was expanded. Although the law contains many specialized exemptions, over 85% of nonsupervisory, private sector wage and salary earners were covered by the mid 1980s.[47] (Managers and professionals -- who would earn more than the minimum anyway -- are not covered). Public sector employees are also subject to FLSA standards.[48] Generally, until 1981, the basic federal minimum approximated about half the level of average hourly earnings for nonsupervisory workers in the private, nonfarm sector. No change was made in the minimum wage under the Reagan administration, resulting in a gradual decline in its real and relative value.

The minimum wage has never enjoyed the favor of economists as a group; economic theory suggests that raising a relative wage will diminish the demand for the labor affected, resulting in employment displacement.[49] Those displaced may not officially appear in the national statistics as unemployed; some may drop out of the labor market and not be counted. Nevertheless, the income losses of the displaced need to be offset against the gains of those who remain employed at the higher wage. In addition, to the extent that they have the latitude to do so, employers may reduce nonwage conditions -- such as the provision of training -- for those minimum wage workers who retain their jobs.[50]

There is a tendency for opponents of the minimum wage to seize on such arguments, and overstate them. For example, the high black, teenage unemployment rates which are often cited in connection with minimum wages seem more closely linked to the shift in the black population to urban areas and away from the agricultural pursuits which once absorbed black teens.[51] Child labor laws, as applied to teenagers, remove certain job opportunities in manufacturing and construction which might otherwise absorb relatively unskilled young workers.[52] These laws also contribute to reduced teen job possibilities.

Issues of potential employment displacement by the minimum wage -- even if overstated -- are compounded by the teenage vs. adult division of the low-paid workforce. In the mid 1980s, about 22% of all hourly paid workers who earned the minimum wage of $3.35 or less fell under the government's official "poverty line" on the basis of their total family income. But for teenagers, the rate was under 13%, mainly because teenagers are likely to be in families with one or more adult workers.[53] Thus, the minimum wage seems to be a blunt anti-poverty instrument; most workers at or near the minimum wage are not below the poverty line. And the minimum may hurt some of those who are below the poverty line while benefiting others.

From the HRM viewpoint, however, these arguments over the basic premise of the minimum wage are of little import. The concept of the minimum has been part of American public policy for so long that it can be safely assumed to remain in effect. Indeed, in many respects, the basic argument is really non-economic. There are other examples of private labor-market contracts which are forbidden, even if voluntarily arranged. The law forbids slavery, even in hypothetical cases in which persons were willing to sell themselves.[54] And prostitution is generally outlawed. It appears that much the same attitude has formed about working below some minimum wage. Very low wages are a symptom the public would rather not observe.

Thus, HRM professionals must assume that minimum wage legislation will remain on the books, both at the federal and state levels. The magnitude of the wage, and the frequency of its adjustment, however, will be of special concern to employers in low paying industries such as fast-food restaurants, car washes, and certain retailers. However, any firm with some minimum wage workers will have an interest in minimum wage developments.

One issue for HRM professionals in situations where there is a mix of minimum wage workers and higher paid workers is the impact of a minimum wage increase on the pay of the latter group. Given the norms of equitable treatment which influence pay setting, a hike at the bottom of the pay scale will compress the wage gap between those at the bottom and those higher up, and lead to pressure on employers to restore the previous differential. Firms are unlikely simply to boost the entire pay scale up with the minimum; if they did, the federal minimum wage would effectively set pay for the entire workforce. But employers may grant some pay increases -- in order to lessen, not eliminate, compression -- to workers whose wages are above the new minimum.[55]

Concern over adverse employment effects of the minimum wage has resulted in special arrangements for sub-minimum wages for such groups as full-time students, student-learners, and the handicapped.[56] A perennial issue -- raised whenever the minimum wage is hiked -- is the possibility of adding a provision permitting a general subminimum wage for teenagers.[57] Still another proposal is the suggestion to index the minimum wage to average hourly earnings, thus avoiding periods -- such as the 1980s -- of relative minimum wage erosion. It is over these incremental issues, rather than over the basic principle of having a minimum wage, that HRM professionals in affected industries must be concerned.

Hours Regulation.

As an earlier chapter noted, the FLSA has a much more pervasive effect on American employers through its overtime provisions than through its minimum wage requirements. Yet, these provisions are virtually never debated, in Congress or anywhere else, in striking comparison to the continuous debate over the minimum wage. The overtime provision was originally a product of the Great Depression and the problem of widespread unemployment the depression created. It was thought that by encouraging employers to add shifts, rather than pay their current workers for overtime at a stiff premium, existing work could be "spread around" to more employees. Since passage of the FLSA in 1938, the U.S. economy has experienced booms and busts. But the notion of a 40 hour standard workweek, with overtime thereafter, seems to have become an immovable norm in the labor market.[58]

The overtime provisions have important implications for employment practices. There is an incentive -- as the framers of the FLSA planned -- to add workers rather than hours, once the 40 hour hurdle is reached. But this incentive is not sufficiently strong to end the use of overtime hours. Adding a shift is a lumpy decision with fixed costs, both in terms of obligations to the new employees and the need for rearranging schedules. In addition, there may be premiums to be paid for night work or weekend work -- not because of federal law, but because of worker time preferences. Estimates of overtime hours per employee in manufacturing suggest that once aggregate average overtime/worker reaches about 3½ hours, further demand for labor is channeled mainly into the hiring of more employees.[59]

Despite the dormancy of the overtime issue, publicized successes in reducing the workweek below 40 hours in some European industries may re-ignite interest in the working-week standard in the U.S. Much depends on the course and trend of unemployment. Overtime as a work spreading device is an issue that is more potent in a slack economy with high, persistent unemployment, than in a tight one.

ii. Labor Standards for Federal Contractors.

The federal government is a major consumer of goods and services from the private sector. As a consumer, it can require its private suppliers to meet the minimum labor standards of the FLSA. Under the Walsh-Healey Act, for example, suppliers of goods to the federal government can lose their contracts, and even be blacklisted from future contracts, for labor standard violations.[60]

As a consumer, the federal government can also require minimum labor standards which are <u>higher</u> than those of the FLSA for private federal contractors. Of course, to the extent that such standards raise the cost of producing for the government, the government will have to pay more for its contracts. Two pieces of legislation, the Davis-Bacon Act of 1931 -- applicable to federal construction contractors -- and the Service Contract Act of 1965 (for services such as equipment repair, building maintenance, food preparation, etc.) require the payment to employees hired under federal contracts of wages "prevailing" in the local area. The level of prevailing wages is determined by U.S. Department of Labor surveys.[61]

Generally, public debate about such requirements has focused mainly on the cost issue and secondarily on administrative practice. Proponents of prevailing wage standards (chiefly affected unions) argue that federal contracts should not be won by competitive wage cutting. They argue that federal costs are not actually raised by the prevailing wage requirement because more productive workers are employed by higher-wage contractors.[62] These two arguments, however, are potentially in conflict; if the productivity effect offset the wage effect, low-wage contractors would not be able to underbid high-wage contractors.

A more sophisticated, theoretically-based economic argument is sometimes made that the federal government might act as a monopsonist in the absence of a legal constraint on such behavior. That is, the government would be tempted to "take advantage" of its dominance in certain markets for goods and services, push down prices of the goods and services it buys, and thus depress wages. Opponents of prevailing wage standards--most notably the U.S. General Accounting Office -- have cited higher costs to the federal government and tendencies by the Labor Department to select upward biased wage samples in determining what wage was prevailing.[63]

Under the Reagan administration, the procedures for determining prevailing wages under Davis-Bacon were changed in ways likely to produce lower wage determinations.[64] Similar changes were made in administration of the Service Contract Act. Although political swings could halt the shift toward reduced minimum labor standards for federal contractors, concern about federal spending and the budget deficit works in the opposite direction.

iii. Occupational Safety and Health.

The federal government imposes minimum workplace occupational safety and health standards primarily through mechanisms established by the Occupational Safety and Health Act of 1970 (OSHA).[65] Prior to OSHA, such regulation was mainly in the hands of the states, pursuant to laws dating back to the 1870s. The new law created the Occupational Safety and Health Administration in the U.S. Department of Labor to administer the Act and conduct worksite inspections, the Occupational Safety and Health Review Commission to hear appeals of citations and fines from employers, and the National Institute for Occupational Safety and Health (NIOSH) to conduct research and recommend safety and health standards.

Under OSHA, state governments have the option of having their own enforcement programs, so long as state standards are at least as strict as the federal rules. States which meet the requirements of OSHA can receive a federal subsidy for their administrative costs. Of course, from the employer perspective, higher state standards means the potential of inconsistent requirements for worksites in different regions of the country.

The Union Role.

Unions played a key role in obtaining Congressional enactment of OSHA. It is not surprising that unions would have a special interest in occupational safety and health, since their members are more likely to be in hazardous jobs than nonunion workers.[66] But why would unions have wanted a special statute?

The answer might seem obvious; with a statute unions could bargain as they traditionally had for wages and benefits, and then let OSHA provide the safety umbrella "on top of" what had been negotiated. But this answer is not entirely satisfactory. To the extent that providing safety and health is costly, and to the extent that workers value safety and health, OSHA-induced costs may be shifted back to workers by employers, like other fringe benefits. Just as more pension means less wages, so more safety could also mean less wages. Why wouldn't unions prefer to make the trade-off themselves through bargaining, rather than have the federal government impose it?

There could be several answers. First, it may have appeared to unions that OSHA-imposed safety standards would have been added, like gravy, on top of their traditional wage and benefit packages.[67] That is, they may not have perceived the possibility of a backward shift in costs, even if economic theory suggests its potential. After all, unions could see that employers opposed a federal statute; if the backward shift had been assured, employers presumably would have been indifferent towards the law's passage. As in other areas of public policy in the labor market, the parties involved often focus on the direct effects and play down (or do not perceive) possible indirect consequences.

A second reason why unions may have pushed for OSHA is that bargaining intelligently for health and safety involves costly technical expertise. Proposing safety standards requires knowledge of industrial engineering and chemistry; proposing health standards requires knowledge of industrial medicine. Moreover, as technology changes, new equipment appears at the workplace with new hazards. New chemicals are developed with potential dangers of exposure. A heavy investment in expertise is involved in simply keeping up with new processes and their consequences, let alone conducting a research program. Under OSHA, these costs are federally-borne and centralized.

A third possibility is that OSHA standards, as typically applied, have the effect of increasing employment. The "engineering" controls needed to reduce noise or chemical exposure may act as a "tax" on capital (not labor), thus raising the demand for employees. A net increase in employment is possible if the substitution effect of higher effective capital costs outweighs the negative effect of higher costs on output. There is limited evidence that OSHA standards have an employment-raising effect.[60]

Finally, the existence of OSHA standards has sometimes proved to be a useful tool for unions in recognition or negotiating disputes with employers. Charges of unsafe working conditions are of obvious concern to workers, and can rally their support. Moreover, as part of the general environmental movement which developed in the 1970s, the public is sympathetic to workers who are exposed to health hazards.

Compensating Wage Differentials.

Economic theory predicts that wages would adjust to known differential risk. Other things equal, high risk jobs should pay more than low risk jobs. These hypothetical wage premiums are termed "compensating wage differentials" by economists. However, demonstrating the existence of such differentials empirically is made difficult by the observed gross negative correlation between wage level and occupational risk. Within blue collar occupations, for example, (low-wage) laborers face greater hazards than (middle-wage) semi-skilled operatives, who -- on average -- face greater risk than (high-wage) skilled trades.[69]

The negative gross correlation does not mean that the theoretical proposition is necessarily wrong. It may simply be that worker preferences for safety, like other fringes, rise with income levels. Some studies have used statistical controls in examining job-related risks, and found evidence of positive compensating differentials for work hazards. However, the evidence has sometimes been ambiguous and, to the extent that positive differentials are found, they seem to be concentrated in the union sector.[70] A complicating factor is that the existence of workers' compensation, by offering injured employees financial compensation, can be expected to weaken the link between riskiness and pay.[71]

As noted at the outset of this section, for job risk to affect wages, there must be worker knowledge of the hazards involved. Evidence exists that workers -- if given accurate information on employment hazards -- will respond appropriately; risk averse individuals will exit risky jobs.[72] Undoubtedly, firefighters and roofers are aware that they are in risky occupations. But their risks involve injuries which are readily observed, and connected with the job. Occupational diseases, however, often have long incubation period and their connection with the job may not be at all obvious, even to health professionals. Thus, there is evidence to suggest that to the extent that compensating wage differentials exist, they relate to injury risk, not to disease risk.[73]

The complex nature of the employer-employee relationship also suggests difficulties with complete reliance on the labor market to deal with safety and health issues. Employees may come to the job with expectations about "reasonable" levels of workplace safety. Yet, like other aspects of the relationship, the exact nature of reasonable behavior on the part of the employer is not clearly defined. OSHA is a case in which public policy has been called in to define that behavior.

Regulations vs. Incentives.

Although a case can be made for public policy in the job safety and health area, the particular regulatory system created by OSHA is not necessarily ideal. OSHA standards tend to be specific, i.e., indicating precisely what steps, equipment, etc, should be undertaken or installed to mitigate a particular hazard. On the other hand, the resources available for OSHA safety inspections are small, as are the fines typically imposed. Economists have criticized this approach to regulation.[74] Two basic issues are raised.

First, there may be more than one way to mitigate a hazard, and it may be more efficient to leave the method chosen to the employer. But if the employer is allowed discretion, there must be assurance that the method picked is effective. So the second issue is the need for expected financial penalties -- tied to the occurrence of injuries or illness -- which are large enough to provide deterrence. A mix of more elaborate inspection resources -- but to check on occurrences rather than equipment -- and larger fines would be needed.

Unfortunately, the disease aspect of occupational safety and health poses hurdles for such an incentive-based system. Just as workers may have difficulty recognizing the disease risk, so would inspectors assessing fines on the basis of occurrences. The occurrence might take place 20 or more years after exposure to the job hazard. Would the employer be assessed retroactively? What if the employer no longer existed? If the employee had worked for more than one employer, how would the fine be allocated? What kind of appeals process could be provided to examine events of the distant past?

A Bargaining Alternative?

It has been suggested that the federal government should supplant the OSHA model of regulation with private bargaining. Although, as noted above, unions favored the creation of OSHA, the argument has been made that they could be induced to bargain on safety matters and, effectively, replace OSHA by doing so. What would be needed, according to this view, is a sufficient subsidy to be given to unions to develop the necessary health and safety expertise. Additionally, some kind of a limit on union liability to injured workers.[75]

In fact, OSHA has distributed some funds for training of union officials in safety matters. And unions do engage in safety bargaining, even in the absence of a subsidy. But they do not have typically have the kind of expertise that the enforcement and research arms of OSHA can provide. At any rate, unions a minority of workers, even in high-hazard sectors such as manufacturing and construction. How would bargaining be applied in nonunion situations?

Cost/Benefit Analysis?

Even within the basic OSHA model of rulemaking, it has been suggested that economic analysis should play a larger role. For example, one possibility would be to subject new rules to some kind of cost/benefit analysis. While courts have not demanded complete avoidance of economic considerations in the standard-setting process, they have not accepted a strict cost/benefit approach either, since the statute does not call for it. Costs of regulation enter in court review of proposed OSHA standards indirectly through general judicial insistence that <u>some</u> benefits of the rules be demonstrated and that achieving zero risk is not a feasible goal.[76]

At any rate, it is easier to call for cost/benefit analyses than to implement a procedure for conducting them. The cost side is more readily handled than the benefit side. And even the cost side has ambiguities, since -- as noted earlier -- some of the costs to the employer may be shifted back to workers.

To value the benefits of a proposed rule, the likely reduction in injuries or illness must be calculated. For occupational diseases, this step is difficult because of long incubation periods and lack of knowledge about the functional relationships involved. As an example, it is often not known whether disease reduction related to chemical exposure is proportionate to exposure reduction, or whether there is a hurdle level of safe exposure, below which no hazard is involved.

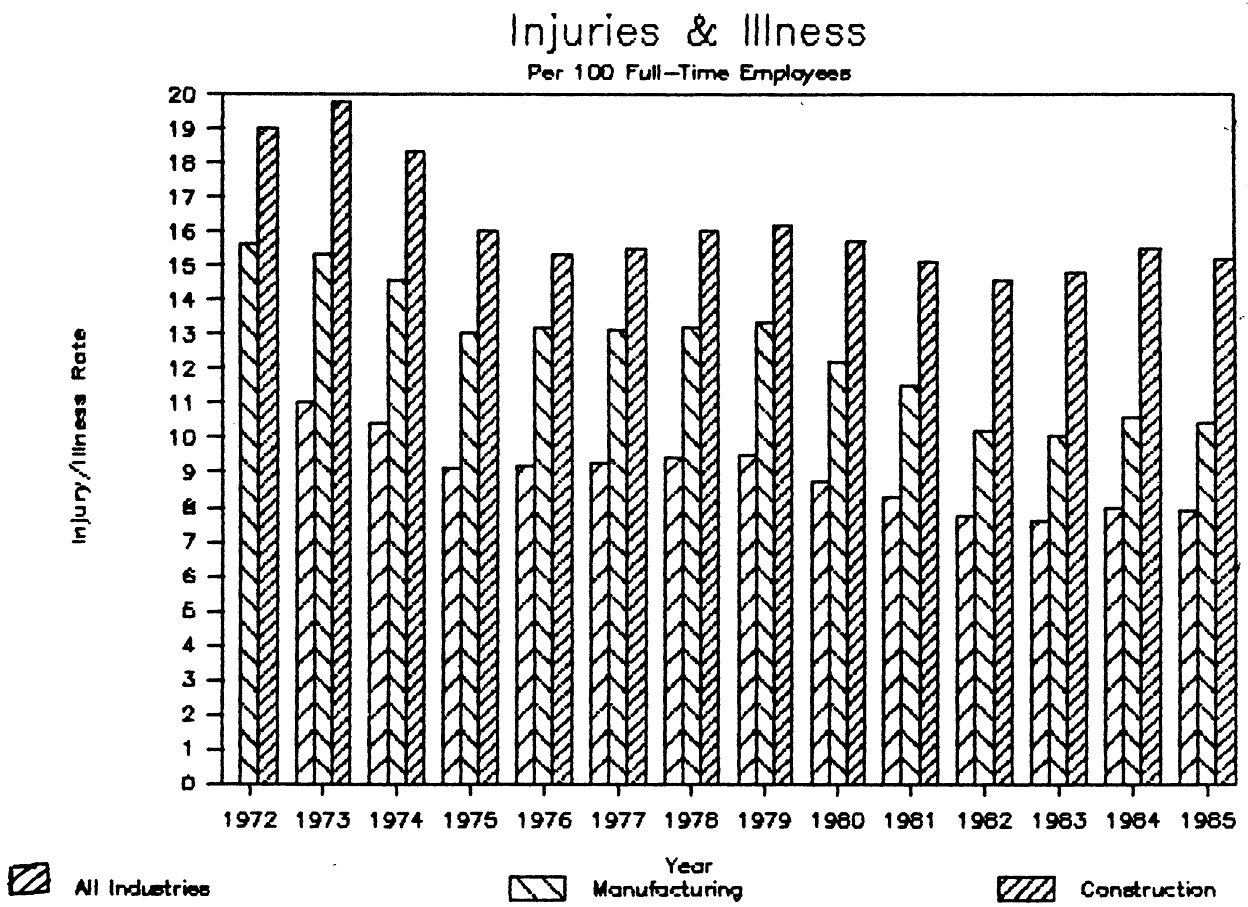
Given these difficulties of implementation, suggestions have been made for relying on costs alone. The OSHA authorities might be given an annual "budget" of costs they could impose on employers. Within that budget, presumably, the regulations felt to be most beneficial would be implemented, although precise calculations of benefit would not be needed.[77]

The Safety and Health Record.

OSHA established a new data series concerning injuries and illness. As Figure 2 illustrates, reported injury and illness fell after the early 1970s. However, the decline was centered in minor injuries; so-called lost-workday cases, i.e., occurrences that led to absence from work, show no trend. On the other hand, death rates do appear to have fallen.[78]

Establishing cause and effect relationships from these data is difficult. Some detailed studies have suggested that OSHA regulations do reduce certain types of injuries.[79] Others find, however, that the cost of noncompliance is not sufficiently high

Figure 2



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to have had a significant effect on injury rates.[80] Apart from the injury-deterrence question is the issue of occupational disease. Data problems related to occupational disease make study of that facet of the OSHA program especially complicated. Employees who contract a disease long after exposure to the workplace hazard may not even be recorded as suffering from a work-related illness. And even if good data were readily available, the full effect of OSHA might not be felt for many years.

<u>The OSHA Outlook</u>.

OSHA's effectiveness is difficult to assess, a fact which paradoxically has insulated the program from criticism. And the proposed alternatives to OSHA founder on practical difficulties of implementation. Thus, HRM specialists would not be well advised to anticipate fundamental changes in the OSHA approach to job safety and health. There may well be experimentation within the basic model. For example, OSHA has developed approaches which target high risk industries and employers, in order to economize on limited inspection resources. The absence of an effective alternative suggests the OSHA model will be retained.

V. Programs Banning Certain HRM Practices.

Some forms of labor market regulation demand that employers not do something, rather than establishing minimum standards for what they must do. Two major federal programs fall primarily into this category. These are immigration control policy and equal employment opportunity policy.

i. Immigration Control.

There are many aspect of immigration policy which are not directly related to labor market concerns. Foreign policy questions and humanitarian considerations have always been present. However, the U.S. has historically been a high wage country relative to most of the world, so that its labor market was (and is) an enticement to immigration.

During the second half of the 19th century, and up until World War I, large numbers of immigrants came to the U.S. Annual flows of immigrants often exceeding 1% of the domestic population. Thereafter, legal immigration was tightly restricted. Thus, much of the concern about immigration in the 1970s and 1980s has been about illegal immigration.

Illegal Immigration.

Illegal immigrants enter the country either by simply crossing the border illicitly or entering legally but overstaying visas or by violating restrictions on working. For obvious reasons, such persons are not readily counted. However, recent estimates by the U.S. Bureau of the Census suggest that the stock of illegal immigrants in the U.S. stood at 4-6 million as of the mid 1980s. A rough estimate by the Bureau is that there is was a net illegal inflow of about 200,000 persons. However, a much larger number enter the country and depart in a single year.[81]

Much of the motivation for illegal immigration is the availability of jobs in the U.S. at better terms and conditions than provided by the immigrant's home country. The immediate proximity of the developed U.S. and third-world Mexico provides an opportunity for a significant illegal flow. As will be noted in the next chapter, wages in third-world countries are only a fraction of U.S. levels.

In the Mexican case, thanks to peso depreciation and deteriorating internal conditions, the average Mexican wage in manufacturing -- translated into U.S. dollars -- fell from 30% to 11% of U.S. levels during 1980-86.[82] Moreover, high unemployment means that even those jobs may not be available domestically to potential young entrants into the Mexican labor force. Thus, it is hardly surprising that a flow of labor is set in motion by this large pay and opportunity differential.

Impact on the U.S.

The impact of immigration, both legal and illegal, has been much debated. In a simple static model of the economy, adding labor, while holding other factors constant, would depress real wages. However, dynamic growth models do not necessarily produce such results; the additional labor supply may create sufficient saving to generate the capital needed to hold constant the capital-to-labor ratio. Thus, real wages need not fall despite the increase in labor supply.

Still more complex models recognize the variegated nature of the U.S. workforce. As in other cases of economic change, immigration can create winners and losers within the existing population. Low-skilled workers, who compete directly with the immigrants, may suffer lower real wages and/or job displacement. But more skilled workers may be complements in production to the immigrants. Demand for, and real wages of, the higher skilled group may thus increase. There is a general consensus in the economic literature that such mixed effects occur.[83]

Employer Obligations.

Until 1987, there were no sanctions against employers who knowingly hired illegal immigrants. Employers were under no obligation to ascertain the legal status of any workers. The penalty for working illegally -- essentially deportation -- fell entirely on the employee, not the employer. Indeed, instances have been reported of employers calling for raids on their own premises by the Immigration and Naturalization Service (INS) during union organizing drives among their employees.

The obligation of employers with regard to illegal workers was changed radically by the Immigration Reform and Control Act of 1986. Under this legislation, which began to be enforced in mid 1987, employers are obligated not to employ any illegals who were not on their payrolls when the law was passed. On first impression, the new law might seem to have important effects only in certain low-wage industries (such as agriculture, apparel production, and restaurants) and in certain regions of the country (especially the Mexican border states of California and Texas). But studies of employment patterns of illegal workers indicate that despite the concentration in certain regions and industries, their usage is surprisingly widespread.

In any case, the 1986 law creates obligations for <u>all</u> employers, not just those with prior propensities to hire illegals. Beginning in mid 1987, employers were required to obtain documents from new hires "proving" their legal employment status. Employers also are required to retain these documents for an extended period and to be able to present them to INS agents. At the least, therefore, even employers in industries with low usage rates of illegals will have to cope with significant record keeping burdens. The new law thus presents HRM professionals with new -- if routine -- responsibilities. Employers discovered to be employing illegals are subject to an escalating set of fines, with criminal penalties for employers determined to have a pattern or practice of illegal employment.

Impact of Immigration Controls.

The impact of the immigration law -- if effectively enforced -- presumably will be the reverse of those found in the past for immigration. Competing domestic workers will benefit through higher wages and/or more job opportunities. Workers for whom demand is complementary to immigrant labor may suffer economic losses.

However, there are important qualifications to be made to this prediction. First, only limited resources will be applied to enforcement; not every violator will be found. Second, the employer penalties are low for initial offenses, suggesting that some employers will take the risk of being caught hiring illegals. Third, the documentation that employers are required to obtain from new hires can be forged. It is doubtful that employers will be held accountable for accepting forged documents that look genuine.

Years must pass before the impact of the immigration controls can be fully evaluated. However, one estimate -- taking account of the limits of enforcement resources -- suggests that nonfarm illegal employment might be cut by 15-25 percent.[84] Because of the uncertainty created about the degree of enforcement, the early impact of the program on employment may be greater than the eventual effect.

ii. Equal Employment Opportunity.

Equal employment opportunity (EEO) law had its roots in black-white race relations. Although race relations are an ongoing social problem, not just a labor market issue, it is a problem which ultimately had labor market origins. Most American blacks are descended from slaves, involuntary immigrants, brought to this country because wages of free labor were high relative to European levels. High American wages, in turn, provided the incentive for slavers to kidnap Africans and sell them to employers as an alternative to free labor.

On the eve of the Civil War, slaves accounted for over one fifth of the U.S. workforce.[85] In the south, the proportion was much higher. To maintain a slave labor force, a infrastructure of legal and policing mechanisms was required. Since such measures were not applied to free labor, and since such measures violated prevailing norms of treatment which applied to whites, a variety of rationalizations was required to support the institution of slavery. Blacks were viewed as inferior to whites, as preferring menial work, as benefiting from their treatment, etc. These ideas from the era of slavery form the basis of modern day racial prejudice.

In the post-Civil War period, competition between freed black labor and white labor pl·yed an important part in establishing legal segregation in the south. Notions of appropriate white/black relationships which had arisen under slavery continued as rationales for segregation. Segregation applied to the labor market as well as public facilities such as transportation and schools. Under segregation, formal and informal, blacks were barred from skilled crafts and other forms of employment.

Much of the black workforce remained in southern agriculture until World War I. The ongoing migration of blacks to the north, where voting was permitted and political influence could be wielded, began to shift public policy. Although the armed forces remained segregated by race during World War II, a Presidential executive order promoted antidiscrimination in federally-funded defense plants. While this measure was not considered especially effective, the postwar period saw continued change in the legal and political climate. Segregation in public schools and transportation was struck down by a series of Supreme Court decisions.

Initial Federal Regulation in the EEO Area.

Discrimination in the workplace was not attacked in legislation until the passage of the Civil Rights Act of 1964. Title 7 of the Act forbids discrimination in employment practices on the basis of race, sex, religion, or national origin. Further significant extensions of the law were made in 1972.

As in the case of other labor standards, the federal government can place special requirements on its contractors as a condition of doing business with the government. Under Presidential executive order 11246 of 1965, federal contractors were required to eliminate the kinds of discrimination forbidden by Title 7. In addition, contractors were required to implement "affirmative action" plans, a concept discussed below.

Policy Toward Other Forms of Discrimination.

It is often noted that the issue of sex discrimination, which subsequently became a major concern of EEO policy, was dropped into Title 7 as a political ploy. Southern Congressional representatives added sex discrimination to the bill in the hopes of either making it more controversial and thus killing it, or alternatively, diluting its concentration on the race issue. However, Congress had shown prior interest in sex-related issues at the workplace. The Equal Pay Act of 1963, for example, outlawed sex-based wage differentials established by an employer for individuals performing essentially the same jobs.

Viewed with hindsight, the inclusion of sex discrimination in the final version of Title 7 can be seen as the product of rising female participation in the workforce. Although female labor force participation rates were not as high in the 1960s as they were in the 1980s, the trend was upwards. The traditional pattern of female withdrawal from employment upon marriage was breaking down. Women received the right to vote in 1920 through Constitutional amendment. They have since shown a higher propensity to participate in elections than men, a fact well known to political representatives. Had sex discrimination not been included in Title 7 as originally enacted, it would have been added at a later date.

Age discrimination is a more complex issue, since -- as an earlier chapter noted -- age and seniority are often correlated. Complaints about improper treatment of older employees at the workplace often relate to social norms about management obligations to long-service employees. Under the Age Discrimination Act of 1967 (as subsequently amended), discrimination against person age 40 and older is outlawed and mandatory retirement for most employees is forbidden.

Apart from their obligations under Title 7 and Executive Order 11246, federal contractors are forbidden to discriminate against the handicapped pursuant to the Rehabilitation Act of 1973. Discrimination by contractors is also forbidden against disabled veterans and Vietnam War veterans under the Vietnam Era Veterans Readjustment Act of 1974. As part of their obligations under these various laws and orders, federal contractors are subject to closer scrutiny than other employers. And because of the large volume of federal purchases and funding, virtually all large firms are federal contractors, as are state and federal governments and many private, nonprofit organizations.

Administration and Enforcement.

The Equal Employment Opportunity Commission (EEOC), established by Title 7, handles complaints pursuant to that title (race, sex, religion, and national origin) plus age discrimination and Equal Pay Act complaints. Compared to other federal agencies, such as the NLRB, the EEOC is not a powerful agency -- a characteristic resulting from the compromises reached to obtain passage of the original Civil Rights Act. It primarily investigates and mediates; most EEO complaints -- if they are pursued -- are either settled privately or litigated in the courts. On the other hand, the reach of Title 7 is very broad; it covers all but the smallest employers (public and private) plus unions, union hiring halls, employment agencies, and apprenticeship programs.

Employers, unions, and others who are found to have violated EEO requirements can be required to pay damages to victims, to hire them, to promote them, or to make changes in HRM policies. Where large numbers of individuals are involved in class action suits, awards or settlements may run into the millions of dollars, apart from litigation expenses. The potential costs involved, the bad publicity that can result from EEO litigation, and the possible extensive court involvement in internal firm policy, are sufficient to attract the attention of HRM specialists. Indeed, as will be argued below, EEO has had a profound effect on the practice of HRM, similar to that of the rise of unions as a challenge to management during the 1930s.

Pursuant to amendments to Title 7 enacted in 1972, the EEOC can support suits filed by individuals or, in certain cases, litigate on its own. But the courts have final authority in determining remedies, not the EEOC. In contrast, the NLRB in the labor relations field can issue its own cease and desist orders and fashion its own remedies. The EEOC is also obligated to defer to state and local agencies which have EEO jurisdiction, if such agencies exist and meet designated standards.

The other major federal agency is the Labor Department's Office of Federal Contract Compliance Programs (OFCCP) which monitors federal contractors, pursuant to the various applicable orders and laws. As noted, federal contractors are subject to more detailed scrutiny than other employers. And it is the OFCCP which carries out this monitoring function. Failure to meet federal EEO requirements can mean loss of government contracts and debarment from future bidding on contracts.

Impact of Anti-Discrimination Rules on HRM Policy.

It is important to stress that "discrimination" in the EEO context is a very broad term. Any action that might be taken with regard to employees could potentially be taken in a discriminatory manner. Thus, charges could be made that the firm has a discriminatory recruitment policy, a discriminatory screening and testing policy, a discriminatory pay policy, a discriminatory benefit plan, a discriminatory evaluation program, a discriminatory promotion system, and that it discriminates in the manner it provides training, or in the way it conducts layoffs. Thus, the entire array of HRM policies is subject to EEO review.

Any employee can file EEO charges, as can rejected job applicants or discharged former workers. Although most EEO policy is centered on blacks, Hispanics, and women, white males can file suits alleging "reverse discrimination." It is not necessary to prove that a discriminatory "intent" was involved for a plaintiff to win an EEO case. A showing of discriminatory <u>results</u> -- intended or not -- may be sufficient. A seemingly-neutral HRM policy which has an "adverse impact" on minorities or women, even if not purposefully designed to do so, is regarded as discriminatory. Methods of establishing discriminatory impact often involve statistical analysis of firm and local labor market data. Remedies are generally of the "make whole" variety for affected individuals; hiring or reinstatement, back pay, promotion, and credit for lost seniority could be ordered.

EEO cases can involve multiple interests. The workforce may be divided by EEO charges, with resultant workplace tensions, particularly if the remedy sought by the plaintiff(s) would disadvantage some other employee or employees. Because of the extensiveness of EEO regulation, some examples of its impact on selected HRM functions are provided below.

*<u>Help-Wanted Advertising</u>: Prior to the enactment of EEO legislation, help-wanted ads sometimes specified the race of the applicants being sought, e.g., "whites only." Newspapers typically divided their ads into separate sections for men's and for women's jobs. Such blatant practices are extremely rare today. However, consider the implications of an ad seeking "recent college grads" or one requesting the services of a "gal Friday." Might not age or sex discrimination be inferred from these phrases? There are not many recent college grads over age 40. Thus, "recent college grads" may be a code phrase indicating older workers need not apply. And many men might be reluctant to apply for a position as a "gal Friday."

Sound policy with regard to advertising suggests that an HRM specialist sensitive to EEO requirements should screen advertising for hidden messages.

*<u>Screening</u>: Applicants for jobs may be required to take a test of some type. A higher than average failure rate of minorities or women may lead to the test being considered discriminatory <u>unless</u> the test can be "validated." A test can be validated if it can be shown that higher scores predict better job performance.

Proving the connection between scores and performance, particularly in the case of general verbal/math aptitude tests, may be difficult. Statistical methodology may be required to validate general tests. However, tests which ask for demonstration of a job-specific skill, e.g., typing for a typist, are generally valid.

Apart from tests, employers may require presentation of credentials, such as a high school diploma. Again, it is not always evident that such credentials are predictive of job performance. Is a high school diploma, for example, needed to function as a janitor? Credentials which are closely related to skills, e.g., a medical degree for a doctor, a driver's license for a trucker, are unlikely to be challenged.

The interviewing process necessarily involves subjective judgments on the part of the person conducting the interview. A firm in which the interview process results in a disproportionate rejection rate of minorities or women may find its practices challenged by persons not hired. There is an obvious bias in EEO regulation for the application of objective, relevant measures. Subjective judgments are certainly not forbidden, but their outcomes need to be monitored.

Title 7 includes a very limited possibility of legitimately excluding persons on the basis of sex from particular jobs. It provides for such exclusion only when sex is a "bona fide occupational qualification" (BFOQ) for the job. Occupations such as restroom attendant fall under this exception. However, defenses such as customer preference are not accepted. Thus, airlines -- which once barred males from jobs as flight attendants on the grounds that passengers preferred stewardesses to stewards -- were not permitted to continue the practice.

*Pay Policy: The Equal Pay Act of 1963 requires that separate male and female wage rates not apply to substantially equivalent work.[86] Prior to this legislation, different male and female wage rates for the same job were sometimes found in company practices and union contracts. (The female rate was inevitably lower). As in the case of overtly-discriminatory help-wanted advertising, such blatant practices rarely occur today. However, issues can arise over whether two job titles -- one containing mostly men and the other mostly women -- involve basically the same tasks. If they do, the pay schedule must be the same, regardless of job title. It is function -- not title -- that matters.

An earlier chapter described the comparable worth issue (sometimes also known as "pay equity").[87] In its usual formulation, comparable worth goes beyond equal pay for the same work. It asks that disparate jobs to be compared by some uniform standard. The resulting evaluation of "worth" should then be applied to the various jobs. Typically, job evaluation plans, which are designed to make such interoccupational comparisons, are advocated as the tool for determining comparable worth.

As a legal matter, comparable worth has <u>not</u> emerged as an EEO requirement in litigation which has occurred so far. Courts have accepted the outside labor market as a legitimate guide for setting pay. But there have been some private settlements of pay equity cases, mainly in the public sector. Employers may be vulnerable to comparable worth litigation if it can be demonstrated that they deliberately set wages for predominantly female jobs lower than in male jobs merely because women were in those jobs (as opposed to market reasons).[88]

The Canadian province of Ontario passed a law in 1987 requiring employers to apply comparable worth in pay setting through job evaluation. And Australia implemented a version of comparable worth through its compulsory arbitration system in the early 1970s. A comparable worth law is not in the offing in the U.S. But foreign developments may eventually influence American law makers and judges. HRM specialists need to be sensitive to the issue, even though its current legal status is dubious.

*<u>Benefits</u>: The design of benefit plans has been influenced by EEO policy, especially with regard to pregnancy. Until the late 1970s, it was not uncommon for employers to remove benefits for pregnancy from programs such as disability insurance and sick leave. Reversing a Supreme Court decision, Congress made such pregnancy exclusions illegal under Title 7. Employers are not required to have disability or sick leave plans. But if they do, pregnancy must be treated the same as other medical conditions.

Retirement and life insurance plans have also been affected by EEO regulation. Female life expectancy is notably longer than male. Based on 1983 data, a white female at birth could expect to live about 79 years, compared with 72 for a white male; the figures for nonwhites were 75 and 67. At age 65, a women could expect to live about 4 years longer than a male.[89] The result is that a given amount of life insurance is actuarially cheaper for females than for males. But a defined benefit pension for females is more expensive to fund.[90]

At one time, some employers adjusted benefits to reflect these sex-based differences or -- if they had contributory plans -- adjusted the contributions employees were required to make. However, such practices are now viewed as illegal generalizations about the sexes by the U.S. Supreme Court. Employers may not charge different sex-based contribution rates, nor provide unequal monthly pensions or life insurance policies.[91]

Federal contractor obligations with regard to the handicapped have influenced the trend toward establishment of Employee Assistance Programs (EAPs) for alcohol and drug abusers. Although substance abuse and addiction is a handicap, current alcohol or drug abusers whose problem hinders job performance or safety are not protected by the handicapped requirements. However, employers may find it wise to provide an EAP vehicle to permit the affected employee a chance to resolve his/her problem.

*Job Design: Title 7's ban on religious discrimination and the Rehabilitation Act's requirements for federal contractors regarding the handicapped may influence the way jobs are designed. Employers must make "reasonable accommodation" with regard to job requirements that may conflict with religious beliefs. Issues may involve scheduling of work on the Sabbath, time off for religious holidays, and dress and appearance standards. However, employers may cite "undue hardship" as a defense against demands for such accommodations.

Federal contractors must also make reasonable accommodation to the physical needs and abilities of the handicapped. Included here may be access arrangements for work stations and restrooms, special equipment, and task reallocation between members of a work group. Substantial costs of making such accommodation may be a defense for not doing so. Generally, however, a wider view of accommodation has been taken regarding handicapped needs as opposed to religious needs.

*Working Conditions and Evaluation: The issue of "sexual harassment" has arisen both in connection with the general tone of work group relations and the process of employee evaluation. Most typically in such cases, male supervisors are accused of harassing female subordinates. The supervisor may hold out the promise of favorable merit reviews or promotions in exchange for sexual favors. Alternatively, threats of making negative evaluations may be used to obtain sexual favors. Since such conduct is aimed only at one sex, it violates EEO regulations, even if the employer has explicit rules against sexual harassment.

Employers may also be held liable for harassment (sexual or racial) of nonsupervisory employees against other nonsupervisors. In effect, the employer is responsible for the climate of working relationships. Indeed, even harassment by outsiders -- by customers or by employees of subcontractors who are working on the premises -- may lead to employer liability.

Because ignorance by the employer of incidents may not be an excuse when harassment occurs, HRM professionals need to establish both systems of monitoring (of supervisors and nonsupervisors), systems of complaint (for use by individuals who are harassed), and mechanisms of workplace training and sensitization about the harassment issue. Although explicit anti-harassment policies which are not enforced do not offer legal protection to the employer, it is important nevertheless that anti-harassment policies be formulated. Enforcement systems -- with penalties where warranted -- work best where explicit rules are in place and where information on the rules has been promulgated.

<u>Affirmative Action and HRM Policy</u>.

Although this section began by including EEO under the heading of policies which ban certain HRM practices, some EEO elements require that the employer do something rather than not do something. The "reasonable accommodation requirements for religious minorities and the handicapped are examples. However, the major example, and the one which has provoked the greatest controversy, is "affirmative action" (AA).

Affirmative action is a requirement for federal contractors. In addition, it is sometimes ordered as a remedy for past discrimination by courts, included in "voluntary" labor-management agreements, company policies, or out-of-court settlements. AA can mean simply reaching out to attract applicant pools of women or minorities where these groups are underrepresented in the employer's workforce. For example, a firm might place help-wanted advertisements in a minority newspaper or open up an employment office in a minority neighborhood.

The controversy over affirmative action comes from its requirement of the establishment of employer "goals and timetables." Such schedules specify numerical objectives of greater minority and female representation within the workforce, or within particular sectors of the workforce (such as skilled crafts or professional occupations). And they include a time frame in which the objectives should be met. The employer may fall short of these goals -- such discrepancies are not infrequent -- but in such cases reasons for the shortfall may be requested.

Under the Reagan administration, affirmative action was criticized as producing reverse discrimination through job quotas and as giving preference on a basis other than merit. However, the administration never moved to end the affirmative action requirements which previous Presidents had established.[72] And, although divided by the issue, the Supreme Court has continued to endorse the AA concept within limits.

Essentially, it appears that affirmative action programs will be permitted in situations in which access to <u>new opportunities</u> is involved. Thus, affirmative action in hiring, promotions, or training is accepted as appropriate. In situations where application of affirmative action results in <u>job loss</u> for existing employees, however, it may not be permitted.

Thus, a _bona fide_ union seniority system might include a provision requiring layoffs by reverse order of seniority. An employer which had raised the proportion of minorities or women in the recent past pursuant to an affirmative action program might see its efforts undone if the most junior people were laid off. But it is not free simply to override its contractual seniority system obligations.

Because of the sensitive political nature of affirmative action, it is possible that future Supreme Courts will see the issue quite differently. Generally, employers who have such plans have not been anxious to see substantial changes in the rules, let alone more uncertainty about them. The establishment of numerical standards, and the achievement of those standards, is something that can be "managed." An employer that achieves its OFCCP-approved goals under the current system is certain of compliance with federal standards. But a looser, less-defined standard would create a management problem. As a result, conservatives who deplore affirmative action find themselves at odds with the management community on this issue.

Social Discrimination and Employer Policy.

It is important to distinguish between social discrimination, which affects the characteristics of potential employees, and discrimination <u>within</u> the firm. Social discrimination may manifest itself by making individuals less productive to employers than they otherwise would be. For example, provision of inferior schooling to minority children, leading to less education or lower quality education, might reduce employee value.[73] So might a less stable family background. Nondiscriminatory employers would pay less to the affected individuals (or not hire them) because these persons are worth less to the firm.

Social discrimination may also take more subtle forms, such as creating expectations about sex roles in careers and marriages in individuals. These expectations cause them to invest in different levels of education, to search for particular kinds of jobs, and to follow different patterns of workforce attachment. The key characteristic of social discrimination is that it changes the "endowments" or job-related characteristics of individuals before they arrive at the employer's door. As a result of their endowment -- but not necessarily because of employer prejudice -- the individuals experience different treatment in the labor market in terms of success in finding work, attaining occupational status, and wage level. To some extent, affirmative action is aimed at social discrimination.

Employer Discrimination.

However, the roots of EEO policy developed out of concern about employer discrimination. Employer discrimination consists of unequal treatment of individuals, by virtue of race, sex, etc., despite their equal endowments of job-related attributes. In empirical tests of discrimination, which are now often found as part of EEO litigation as well as academic research, a statistical relationship might be developed of the general form:

(1) Job Outcome = f(Job-Related Endowments)

where job outcomes might be the probability of hire or the pay level, and job-related endowments might include education, years of experience, or other relevant characteristics. If the function f() differs by race or sex, discrimination might be inferred.

As can be readily seen from equation (1), the concept of discrimination is more easily conceived than measured. The use of statistical evidence in EEO cases has created a growth industry for economic and statistical consultants. Issues arise over the appropriate variables to include, measurement techniques, and biases in particular estimation methods.[74]

For example, a relevant job characteristic might appear to be the numerical performance appraisal ratings received by employees in the course of their employment. In principle, these ratings are measures of on-the-job output, rather than just background endowments. But if there is prejudice in the rating process, equivalently productive individuals will not receive the same ratings. On the other hand, excluding the ratings will cause omission of actual performance information. Such methodological disputes may end up being decided by judges, who are not always masters of econometric technique.

Economic Models of Discrimination.

An important reason why statistical approaches to employer discrimination produce uncertain results is that discrimination is difficult to fit into a simple economic model. Without a clear model, it is hard to justify a particular tool of measurement. The difficulty arises from the basic question of *why* employers should discriminate in the first place.

Note first that if *only one* employer discriminated in a large, classical labor market, there would be no practical effect. An individual employer who did not hire blacks or females for certain jobs would hire whites or males instead. But other (unprejudiced) employers would hire the rejected blacks or females not employed by the prejudiced employer. Thus, the biases of a single employer would result simply in a reshuffle of the race or sex composition of the labor force between firms. But no noticeable impact on wages or anything else would follow from this isolated discrimination.

If <u>all or most</u> firms discriminate, however, then the group against which the discrimination is directed will suffer economic loss. Wages will be lower for the affected workers. In effect, employers require a (negative) compensating pay differential to hire members of the target group. Adding search costs to the model may lead to higher unemployment rates and other real-world symptoms of employer discrimination. But another paradox then enters the picture. With lower wages for otherwise comparable workers, profit maximizing employers should rush to hire the affected group in place of other workers. Thus, a model of discrimination would seem to imply that firms are not profit maximizing, in violation of the usual classical assumption.

Two basic routes out of this dilemma can be proposed. One is to suggest that employers maximize their "utility," not profits. Profits are an input into the employer's utility function, but so is satisfying prejudice. Hence, widespread employer "tastes" for discrimination are said to explain the phenomenon.[75] A second possibility is to find reasons why discriminatory behavior might foster profit maximization, and, hence, be rationale within the classical economic model.

Employer Tastes.

A major problem with the tastes explanation is the separation of ownership and control in the modern firm. Shareholders do not come in contact with the firm's workforce, so it is difficult to understand why they should be concerned with anything but profitability. Of course, salaried managers might have discriminatory tastes. But if these tastes are exercised, a principal/agent problem is created. Management -- the agent for the shareholders -- is not maximizing profits for its principals. Rather it is diverting potential profits, by not hiring the cheaper adversely-affected group, to satisfy management's own preferences.

A second conceptual problem is that even if employer preferences in existing firms are dominated by prejudiced tastes -- which push the firms away from profit maximization -- new firms could enter the market and out-earn their older competitors. In particular, it is not clear -- within the context of the classical model -- why the victims of discrimination do not form their own firms and compete against prejudiced firms. Ultimately, models of discrimination due to employer prejudice must be sustained by background social discrimination which inhibits entrepreneurship and access to capital markets.[76]

Alternative Explanations.

Discrimination could be compatible with profit maximization under certain assumptions. One possibility is that employers are "made" to discriminate by unions. Union discrimination can certainly be documented historically, particularly among skilled crafts.[77] Prior to EEO regulation, blacks and Asians were excluded from certain trades; separate male and female job classifications and pay grades were found in some union contracts. And although the most overt forms of discrimination have ended, some of elements of earlier practices linger on. But the union explanation of general discrimination in the labor market founders on three facts.

First, historically, important unions -- particularly industrial unions -- opposed discriminatory employer practices. The opposition stemmed from radical ideology in some unions, which viewed themselves as uniting the working class. And it also stemmed from the practical need to organize all workers in a firm in order to gain recognition and bargaining power. Second, statistical studies suggest that -- at least with regard to blacks -- unions have tended to promote greater equality of wage distribution by pushing up wages in industries in which blacks are concentrated.[78] Third, most of the workforce is nonunion.[79]

The presence of unions may have had effects on employer behavior with regard to hiring, apart from the direct preferences of unions or of their members. Employers in the past found it in their interests to use racial divisions to weaken unions, which might otherwise have had greater bargaining power. In the early part of this century, black workers from the south were sometimes recruited to northern factories as strike breakers. Some of the subsequent tension between white and black labor stemmed from such incidents.

Despite the past history, a union or union-relations story is not a satisfactory explanation of employer discrimination. Meshing discrimination with profit maximization requires other explanations. One possibility is customer preference. Firms that are in retail trade might find it to discriminate in hiring if their customers are prejudiced. If, for example, white customers are uncomfortable with black sales clerks or black bank tellers, employers might accommodate to customer preference -- as they do in other aspects of marketing. And, indeed, blacks do tend to be underrepresented in sales occupations and retail employment. Even non-retail firms might find it in their economic interests to adjust to prevailing social prejudices in the communities and neighborhoods in which they operate.

Employee preference might also play a role in determining employer policy. A firm with a significant investment in its existing workforce members is likely to cater to their views. If these views are prejudiced, the firm may want to avoid adverse productivity effects that might be engendered by, say, racial tensions.[100]

There are many examples of resistance of workers in traditionally white or male occupations to the introduction of blacks, other minorities, or women. The problem is compounded by the team production mode often found in the work setting; all members of the team must cooperate and trust each other. Introduction of persons into the team who are not trusted by the the incumbents could lower productivity.[101]

Finally, the notion of <u>statistical discrimination</u>[i] may explain employer discrimination. As noted in an earlier chapter, employers might be unable to measure the productivity of prospective employees. Detecting and removing low productivity workers after hiring can be costly. Thus, firms look for "clues" about future performance before hiring workers (or before promoting workers into new jobs).

Accordingly, if belonging to a particular race/sex group is correlated in the experience of the firm with lower productivity, the firm may follow a strategy of generalizing to all members of that group. Insurance companies find that it pays to generalize about risk in establishing insurance premiums. For example, teenage males as a group have above-average rates of traffic accidents and so all teenage males are charged above-average rates for automobile coverage. It is too costly for the carriers to make individual assessments of each boy's likely risk, and thus rational to generalize. If generalizing about potential employees is cheaper than making detailed individual investigations, employers might also make "actuarial-type" decisions in hiring and promotions.

With statistical discrimination, the accuracy of the generalization may not be the key element in determining its rationality. Suppose there are two groups with identical distributions of productivity, but that there are costs of determining or predicting the productivity of any individual within the group. Suppose further that employers are more familiar with predictors of productivity in one group compared to the other. They might rationally tilt their hiring and promotion decisions toward the known group in which assessments are less costly.[102]

<u>EEO Costs</u>.

The cost impact on the firm of imposing EEO regulations will vary, depending on the nature of the discrimination process. It might appear that if discrimination is profit-maximizing, as most of the models described above suggested, than removing discrimination would be profit reducing. But that is not necessarily the case.

If, for example, employer discrimination is due to customer preference, and if EEO anti-discrimination provisions are uniformly enforced, no one firm is likely to lose any business by following EEO rules. When all firms are forced simultaneously to end discriminatory practices, prejudiced customers cannot take their trade elsewhere. Short of not consuming at all, they must accept the new situation. In effect, coordinated EEO enforcement acts as a monopsony element in the product market.

Suppose alternatively that discrimination is statistical and due to the fact that employers are less able to determine the future productivity of potential recruits from certain groups. Suppose further that the productivity distributions are the same for all groups. Forced use of the unknown group will, in fact, raise the marginal products of those previously excluded. A net gain in social efficiency could result.[103]

Much depends on the sequence of events. If employee preferences for discrimination were driving employer policy, there may be initial frictions and loss of output during the period of integration. But if a learning process takes place, after which prejudices recede, the employer will have a wider labor market from which to select future employees. EEO policy, enforced over a period of time, could change attitudes, expectations, and labor market institutions. Thus, while discrimination might be rational for unconstrained employers initially, it might be irrational (not profit maximizing) at a later date after EEO policy has been enforced.

Despite the uncertainties involved in modeling discrimination in the workplace, there is a lesson to be drawn for EEO policy. All models ultimately require an interaction of social and employer discrimination. The two types of discrimination may reinforce each other so that over time, discriminatory policies and attitudes become entrenched.

It is likely, therefore, that discrimination cannot be overcome except by widespread pressure from public policy. Reliance on The Market alone will not by itself change deeply embedded HRM practices. Discriminatory practices can exist comfortably within a market system. An external push may be required to change these practices. But once changed, market forces need not push for the resurrection of past practices.

Labor Market Trends.

Labor market data from the 1970s and 1980s suggest that aggregate indicators were improving for females relative to males, but not blacks versus whites. Figure 3 shows the

Figure 3

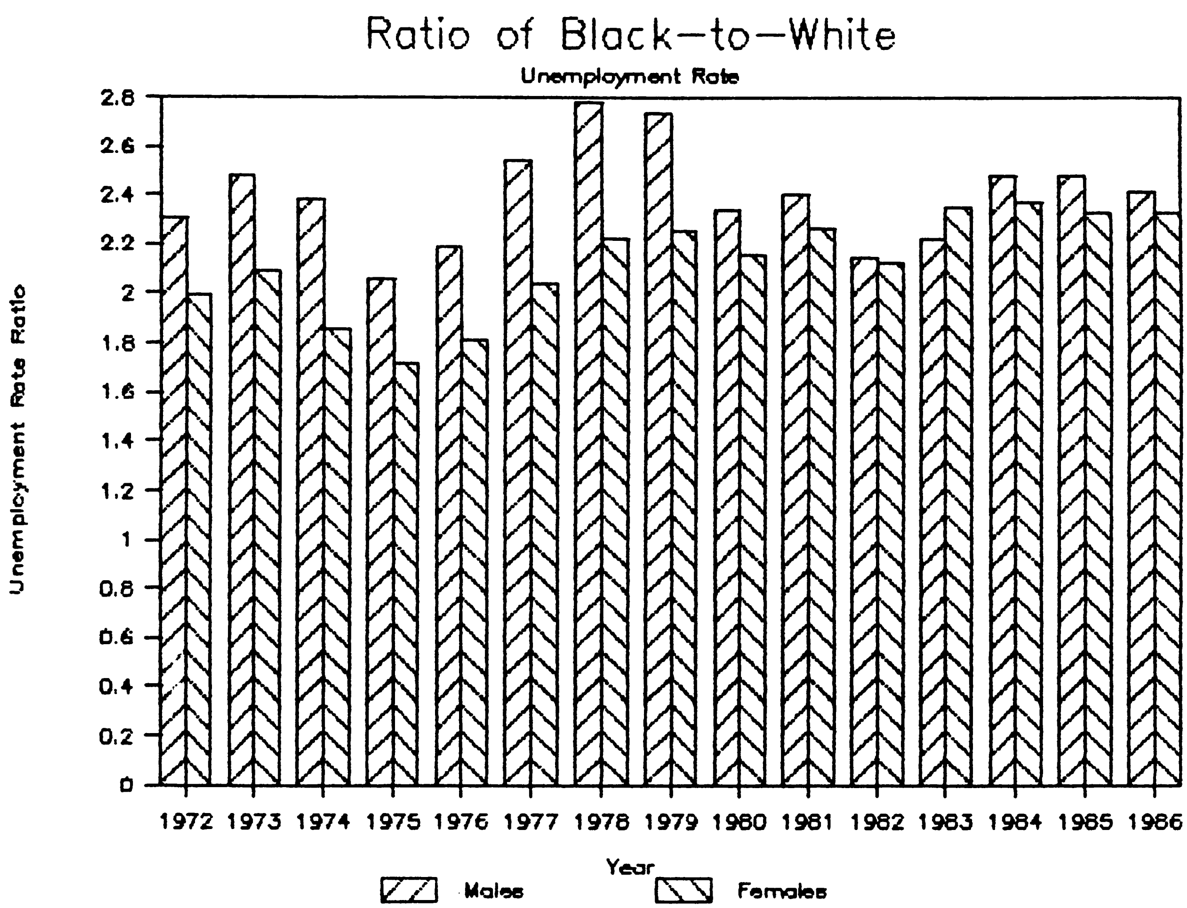
emppop.pic

employment-to-population ratios by race and sex. For all groups, the business cycle impact is clearly evident; employment falls relative to population during the recessions of the mid 1970s and early 1980s. It rebounds during recoveries. But apart from these cyclical effects, male employment has been falling relative to female. Employment dips during recessions are most severe for black males and least severe for white females. White females as a group have made the most dramatic employment gains.

Unemployment data show a similar pattern. There are regular cyclical patterns of relative unemployment by race and sex. Figure 4 depicts the ratio of black-to-white unemployment rates. Black female rates have risen relative to white female rates over the period shown while black male rates show little trend. Yet as Figure 5 illustrates, female unemployment rates have fallen relative to male rates. This tendency resulted in part because the labor market for males worsened during the 1980s, due to structural shifts in industry employment patterns.

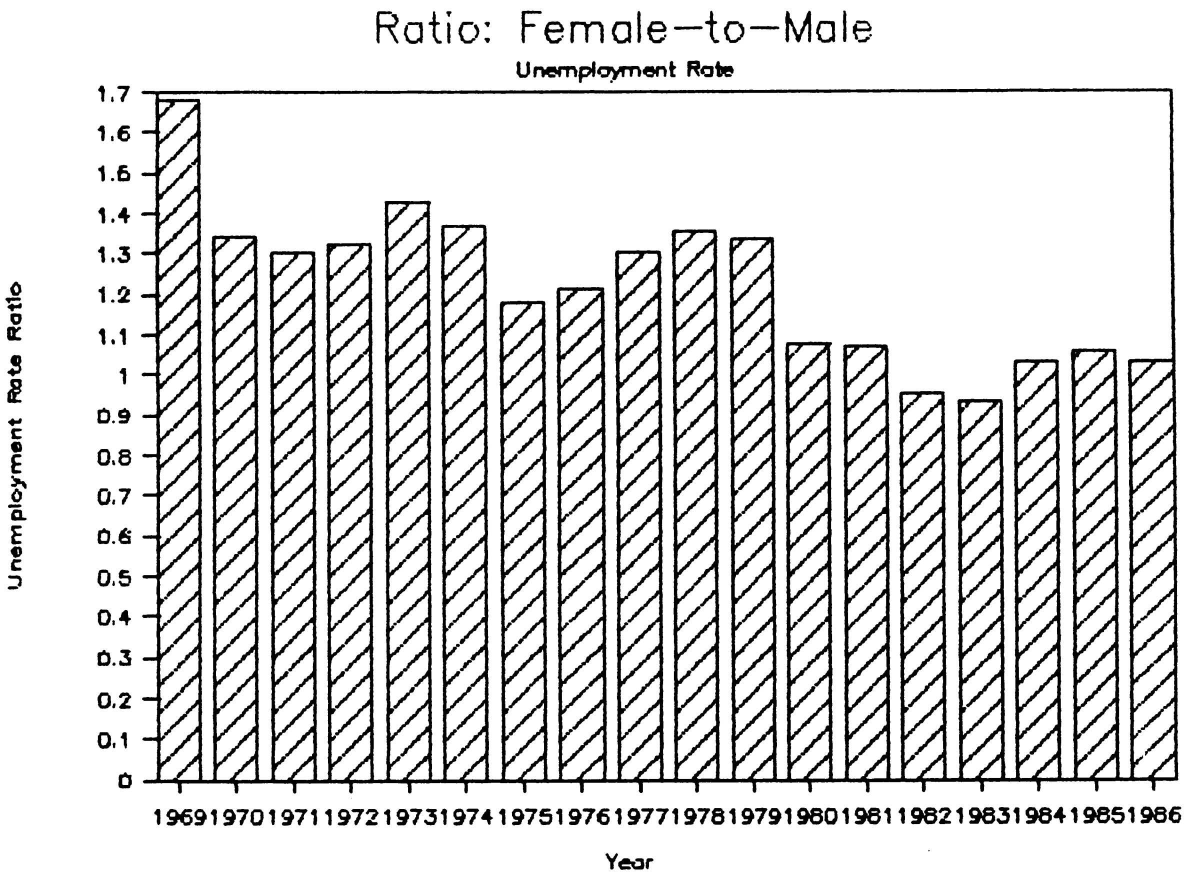
While employment and unemployment data measure gross success in job finding, earnings data provide information on the quality of work, once it is found. Earnings data will reflect a mix of influences such as occupation, industry, firm size, and unionization. They will also reflect changes in relative wage rates between occupations which deviate from the average proportions of male and female, or black and white, employees in

Figure 4



ublack.pic

Figure 5



ufem.pic

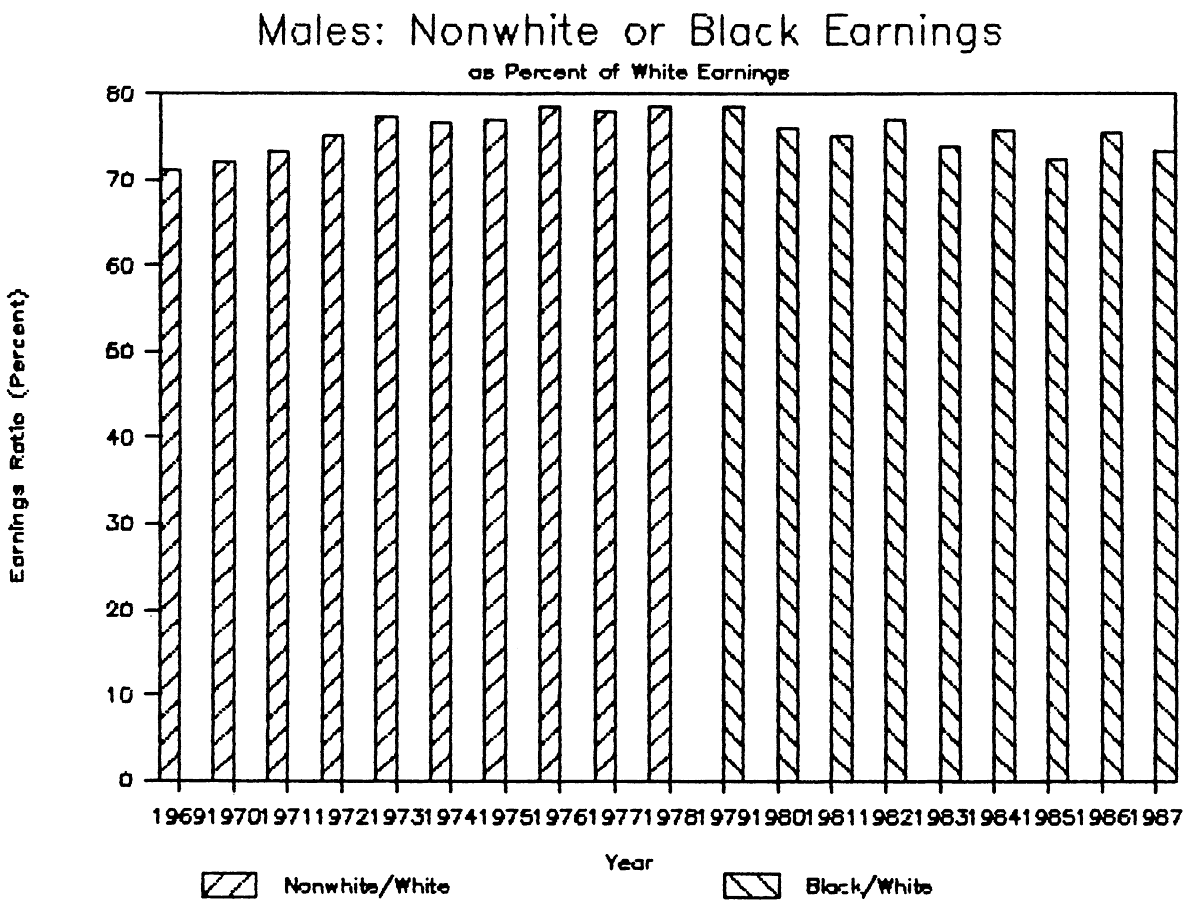
the workforce. In general, an improvement in the pay ratio of blacks to whites, or females to males, represents an improvement in the employment situation for blacks or females.

Figures 6 and 7 show the black-to-white earnings ratios for males and females (respectively) during the 1970s and 1980s.[104] Some improvement occurred for both groups in the earlier years, but there is little trend thereafter for black females and a slight deterioration for black males. In contrast, the female-to-male earnings ratio (Figure 8) began to rise in the late 1970s, roughly the period when agitation over the comparable worth issue began to swell.[105]

Obviously, many forces -- especially the tightness or slackness of the labor market and changes in industrial structure -- influence the aggregate data just reviewed. For example, it has been argued that the rising female/male earnings ratio in the 1980s was the resulting of a deteriorating job market for males, rather than an improved one for females.[106] Moreover, a substantial fraction of the female/male and black/white discrepancies in labor market treatment results from different job-related endowments rather than from employment discrimination.[107]

One factor stressed by many economists is job-market experience. Generally, this factor augurs well for female/male

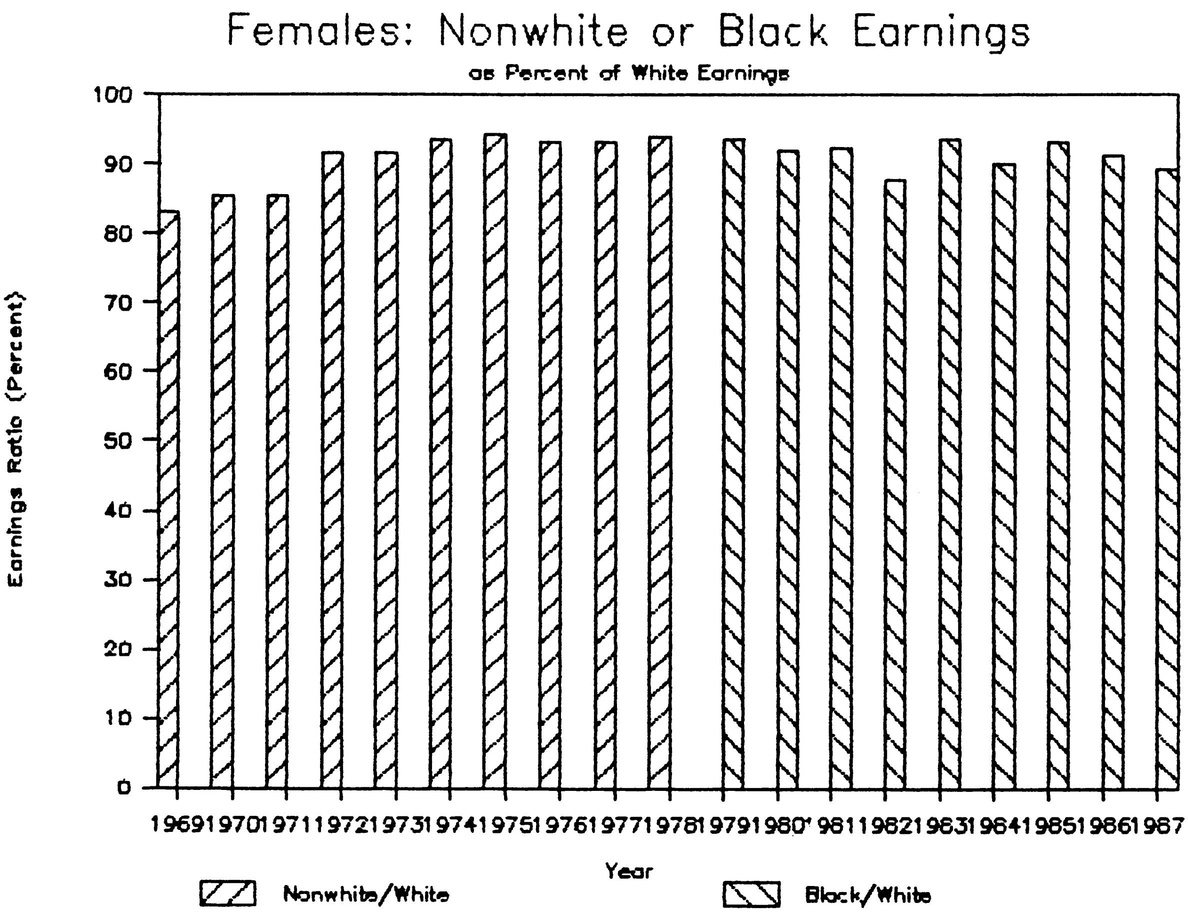
Figure 6



Note: Data refer to usual weekly earnings for full-time workers. Estimates as of May, 1969-78; as of 2nd quarter thereafter.

blackmal.pic

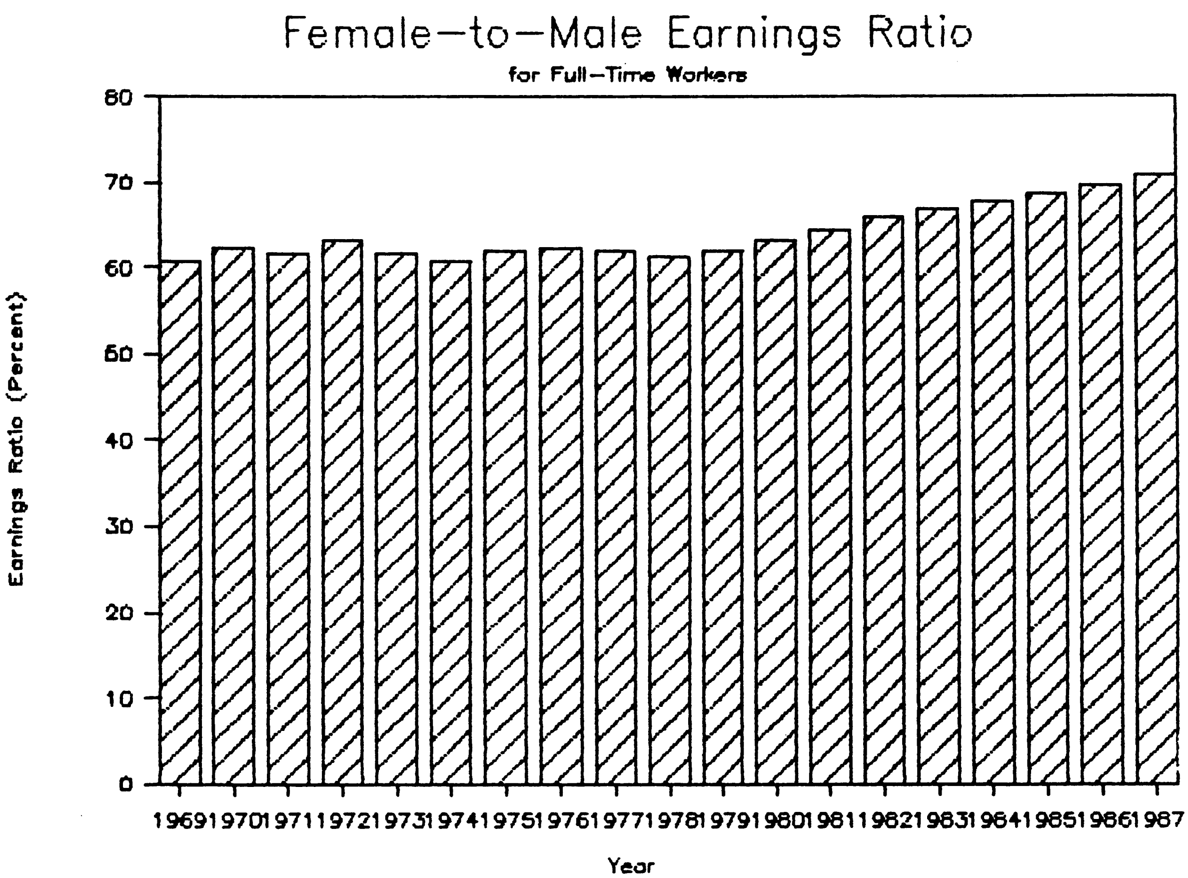
Figure 7



See note, Figure 6.

blackfem.pic

Figure 8



See note, figure 6.

female.pic

wage comparisons in the future, since women have been gaining in labor market experience. With rising participation rates, women will be using that experience more fully in the labor market.[108] During the 1970s, young women showed a dramatic increase in expectations that they would be working later in life.[109] On the other hand, falling workforce participation among black males is an omen of future difficulties.

Effects of EEO Policy.

Although there were broad social and economic trends which seemed more favorable to females than blacks in the 1970s and 1980s, it is still important to ask whether EEO policy had a noticeable impact in making the labor market different from what it otherwise would have been. In fact, research studies suggest that EEO and affirmative action have had an effect and in the expected direction. Yet the timing of the impact of EEO policy does not necessarily correlate with the intensity of enforcement nor with the administrative efficiency of the enforcement agencies.

Significant improvements for black workers, for example, seemed to come in the late 1960s, shortly after EEO policy went into effect. The lesson appears to be that EEO policy has worked as much or more by getting the attention of management to race/sex problems as it has by implementation of any particular policy or procedure.[110] This pattern may be reflected in the upward drift of the female/male pay ratio after the comparable worth issue surfaced. Although the comparable worth doctrine has not received court endorsement, the focus on the issue may have convinced HRM specialists to address the question before it became a problem for their employers.

EEO and the Status of Human Resource Management.

EEO policy, like other federal regulatory programs adopted in the 1960s and 1970s, put added stress on the HRM function within firms. When regulatory policies are created, firms must adjust by hiring experts to keep up with the new requirements. In that respect, all of the regulatory programs discussed in this chapter have raised the status of HRM departments and HRM specialists.

But EEO is something special. It is not just a creator of a demand for experts. Its impact can be compared with the effect of the rise of unionization in the 1930s and later, since EEO touched all elements of HRM practice within firms. Moreover, it pushed internal firm policy toward formalization and central control or monitoring.

When a firm is challenged in court, or by a regulatory agency, with regard to an EEO matter, the firm will generally be better off showing that it follows centralized, controlled, and objective HRM policies. In the case of hiring, for example, a firm which leaves such decisions entirely in the hands of line managers runs a risk. Line managers are under pressure to meet production targets; they may well hire through informal networks of friends or through referrals by current employees. Such hiring procedures will not generally be neutral with regard to race and sex; they will bias the applicant pool towards people similar to those already in the firm's employ.

Similarly, firms who leave it to line managers to discharge unsatisfactory employees may create problems for themselves. Detailed documentation on the reasons for discharges may not be kept. Without such documentation, charges that the actions were really taken for discriminatory reasons will be hard to refute.

The fact that EEO policy pushes the firm toward centralized and formalized HRM policies does not mean that all firms adopt such management styles. There are obvious advantages in decentralization and in leaving decisions with line managers, who are close to the production scene, and who have an incentive to meet firm production goals. As with everything else in economic life, EEO pressures create a tradeoff for the firm. Different firms select different points along the tradeoff.

Even decentralized styles of management, however, can be influenced by EEO objectives. Line managers can be trained to recognize the potential costs which incorrect decisions on their part can inflict on the firm. The reward and penalty system can be designed to reflect the firm's EEO, as well as production, objectives. In such situations, HRM specialists operate as trainers, monitors, and evaluators of line decisions; they do not make such decisions themselves.

VI. The Public Policy Environment.

Some readers at this point must wonder whether the list of regulatory programs which affect the HRM function is exhausted. The answer is "no." For example, there a e specialized programs which affect fringe benefits. An earlier chapter mentioned the influence of the tax code on the kinds of benefits offered. These incentives reflect a Congressional desire to foster a private system of health and welfare programs run by employers.

Because of federal concerns about retiree security, firms that offer pension plans and similar arrangements are subject to the Employee Retirement Income Security Act of 1974 (ERISA). Those with defined benefit pensions must insure their plans against bankruptcy with the federal Pension Benefit Guarantee Corporation (PBGC). And they must meet various standards of funding and vesting.

The federal government has an interest in controlling health care costs, because of its involvement in Medicare and other medical programs. Thus, under federal legislation, companies which offer health insurance must generally provide employees with the option of belonging to a Health Maintenance Organization (HMO), if an HMO is available in their area.[111] Partly as a result of federal involvement, and partly because their own health insurance costs have been rising, many firms have active health care cost containment programs of their own.

Federal policy is concerned about unemployment, particularly high youth unemployment and unemployment among welfare recipients. As a resulted it has fostered various programs aimed at subsidizing employers who hire targeted groups, through tax credits and other means. State and local governments have related programs.

As these examples illustrate, the list of public policies which affect the workplace is virtually endless. Where a government interest is felt, a labor market solution is often sought. Some resulting programs impose burdens on firms; others provide financial inducements to modify HRM practices that would otherwise be followed.

Thus, if future predictions about public policies which will affect HRM are to be made, it is necessary to consider likely future public concerns. The aging of the population, which will occur over the next few decades, will place added stress on income security. Income security and job security are closely related. As a result, proposals for restricting employer freedom to layoff and discharge employees are surfacing.

The growing proportion of women in the workforce will continue to raise issues concerning comparable worth, pregnancy leaves, sexual harassment, and similar matters. Changes in industrial structure, and the resulting job displacement, have renewed public interest in job training and vocational education. The degree to which the regula· educational system prepares students for the transition to the workforce will also be a key concern.

Forward-looking HRM specialists attempt to monitor social trends which can lead eventually to pressures on internal firm policy. But futurology is risky. The overused term "flexibility" best describes the posture HRM specialists should take with regard to future developments. An ability to quantify the effects of potential programs, and alert management to their internal consequences is important.

Where the firm has severe problems with regulatory proposals or actual programs, it may have recourse. The firm may find outlets for expression through trade associations and business groups. Forecasting future public policies with confidence may not be possible. But firm survival may rest on with coping with those policies, and even influencing them.

FOOTNOTES

1. Many economists would want to qualify the statements in the text. Some would argue that deviations in the product market from the auction model are just as important as those of the labor market, e.g., Olivier Jean Blanchard, "Aggregate and Individual Price Adjustment," Brookings Papers on Economic Activity (1:1987), pp. 57-109. Others might question the dynamic implications of freely-adjustable wages. And, regarding inflation, still others would note that unanticipated inflation (or deflation) could cause income redistribution between debtors and creditors, even if real wages were unaffected.

2. According to the national income accounts, full-time equivalent employment in air transportation rose by a third between 1977 and 1985, about double the national rate of employment growth. But the ratio of wages per full-time equivalent employee in air transportation to the overall domestic economy fell from 1.63 to 1.46.

3. There are special programs which can be classified as social insurance applicable to particular sectors. Worthy of mention are Railroad Retirement -- a sort of Social Security system for railroad employees -- and black lung compensation, an occupational disease program for coal miners. These programs are not discussed below because of their limited applicability.

4. For an historical background, see Irving Bernstein, A Caring Society: The New Deal, the Worker, and the Great Depression (Boston: Houghton Mifflin Co., 1985), chapter 2.

5. Programs exist for the District of Columbia, American territories, and federal employees. There is also a federally-operated program for maritime workers.

6. States have various special funds which provide certain kinds of supplementary benefits. The most common is a "second injury" fund for workers who have been previously injured and whose earlier injury is aggravated by a subsequent injury. Such funds are designed to avoid disincentives to employers to the hiring of injured workers on the grounds that their previous injuries will increase employer exposure to the risk of additional claims. Apart from supplements to workers' compensation, a few states have temporary disability funds. Under these programs, workers are able to collect benefits for injuries not covered by workers' compensation (not caused at work) which prevent them from working.

7. Nicholas Askounes Ashford, Crisis in the Workplace: Occupational Disease and Injury (Cambridge, Mass.: MIT Press, 1976), pp. 388-389.

8. A self-insured employer obviously bears the risk of claims on a dollar-for-dollar basis. Employers covered through insurance carriers face more complex situations. Very small employers may not be experience rated, since their claims are too few for a carrier to evaluate their riskiness. Instead, they pay state-designated rates based on their industry. Larger firms can arrange for experience rated coverage. However, the formulas used seem to provide more than a dollar's premium reduction for each dollar of claims saved by accident avoidance. In a competitive insurance market, the cross subsidy from high risk to low risk employers would not occur. High risk firms would be quoted lower rates than under the current system, and therefore the cross subsidy would be eliminated. However, the cross subsidy prevails because the insurance is sold under detailed state regulation. See Richard B. Victor, Workers' Compensation and Workplace Safety: The Nature of Employer Financial Incentives, report R-2979-ICJ (Santa Monica, Calif.: Rand Corporation, 1982).

9. Robert L. Kahn, "Work, Stress, and Health" in Barbara D. Dennis, ed., Proceedings of the Thirty-Third Annual Meeting, Industrial Relations Research Association, September 5-7, 1980 (Madison, Wisc.: IRRA, 1981), pp. 257-267.

10. Daniel M. Kasper, "An Alternative to Workmen's Compensation," Industrial and Labor Relations Review, vol. 28 (July 1975), pp. 535-548. Kasper argues for a system under which both the employer and employee carry insurance and fault is determined by courts.

11. For example, under workers' compensation, there are no damages for "pain and suffering."

12. Survey of Current Business, vol. 66 (July 1986), pp. 65, 85.

13. Martin W. Elson and John F. Burton, Jr., "Workers' Compensation Insurance: Recent Trends in Employer Costs," Monthly Labor Review, vol. 104 (March 1981), pp. 45-50.

14. U.S. Employment Standards Administration, U.S. Department of Labor, State Workers' Compensation: Administration Profiles (Washington: ESA, 1985).

15. The State of Wisconsin had initiated, but had not implemented, an unemployment insurance plan prior to 1935. Some unions had informal unemployment benefit plans for members prior to the 1930s. And a few companies had initiated plans for their employees. The joint federal-state nature of unemployment insurance means that the system's taxes and benefits are part of the federal budget, despite the major role played by states in administering the programs. Proponents of the UI system have called for its removal from the federal budget because its

inclusion allegedly causes Congress to restrict the program out of concern with the overall federal deficit. See National Commission on Unemployment Compensation, Unemployment Compensation: Final Report (Washington: GPO, 1980), pp. 103-104.

16. Denton Marks, "Incomplete Experience Rating in State Unemployment Insurance," Monthly Labor Review, vol. 107 (November 1984), pp. 45-49. The net subsidy goes to industries such as construction and agriculture with strong seasonal unemployment patterns. See Clair Vickery, "Unemployment Insurance: A Positive Appraisal," Industrial Relations, vol. 18 (Winter 1979), pp. 1-17, especially pp. 6-8.

17. If layoffs are subsidized through incomplete experience rating, employees will view the UI payments they receive as part of their normal compensation, but employers will not fully fund these benefits. The result is a net increase in supply, i.e., higher employment levels at somewhat lower employer-paid wages.

18. The Social Security Bulletin is published by the U.S. Social Security Administration. Unemployment Insurance Statistics is published by the U.S. Employment and Training Administration of the U.S. Department of Labor.

19. Because Social Security benefits are nontaxable for low income recipients and only partially taxable for higher income recipients, the after-tax ratios of benefits to active wages would be higher. In addition, married couples receive two payments, typically based on the husband as retiree and the wife as spouse. The average husband-plus-wife benefit was about half of active worker monthly earnings.

20. Sar A. Levitan, Peter E. Carlson, and Isaac Shapiro, Protecting American Workers (Washington: Bureau of National Affairs, 1986), pp. 192-193; Laurence J. Kotlikoff, Avia Spivak, and Lawrence H. Summers, "The Adequacy of Savings," American Economic Review, vol. 72 (December 1982), pp. 1056-1069.

21. Henry J. Aaron, Economic Effects of Social Security (Washington: Brookings Institution, 1982), chapter 4.

22. A Presidential commission appointed by the Carter administration recommended a system of mandatory minimum pensions. Under this proposal, employers would have either set up their own pension plans or contributed to a federally-operated supplement to Social Security. See President's Commission on Pension Policy, Coming of Age: Toward a National Retirement Income Policy, February 1981, pp. 42-45.

23. Because of the indexing feature of Social Security, the popular image of a retired person living on a "fixed income" is misleading. Social Security is likely to be an important part of a retiree's income, and it is not fixed in nominal dollars.

24. The requirements of the Employee Retirement Income Security Act (ERISA) for full funding are a barrier to indexing. Actuarially determined funding needs under indexing will be very sensitive to the assumed rate of price inflation, relative to assumed portfolio earnings and future wage growth. Conservative assumptions would require substantial current funding which trustees are reluctant to commit.

25. Because these payments are treated as one-shot increases in the plan's obligation, the actuarial impact of *ad hoc* inflation adjustments are relatively small, compared to what formal escalation would entail. Firms which make *ad hoc* adjustments tend only partially to offset inflation. In the inflationary 1970s, one study showed such adjustments offset roughly one third of the inflation which occurred. See Steven G. Allen, Robert L. Clark, and Daniel A. Sumner, "A Comparison of Pension Benefit Increases and Inflation, 1973-79," *Monthly Labor Review*, vol. 107 (May 1984), pp. 42-46.

26. Alicia H. Munnell, "Social Security" in Joseph A. Pechman, ed., *Setting National Priorities: The 1984 Budget* (Washington: Brookings Institution, 1984), pp. 86-87.

27. Newly-hired federal employees and employees of private, nonprofit institutions were brought into the system. Those state and local governments which were already in the system were denied the option of leaving.

28. Anthony Pellechio and Gordon Goodfellow, "Individual Gains and Losses from Social Security Before and After the 1983 Amendments," *Cato Journal*, vol. 3 (Fall 1983), pp. 417-442.

29. Under the efficiency wage model, the firm pays a lower-than-productivity wage early in a worker's career, compensated by a higher-than-productivity wage at the end. The higher pay later in the career functions as a reward for loyal and satisfactory service, and as a "bond" which the worker can lose (through dismissal for unsatisfactory performance). Defined benefit pension plans could function as efficiency wages, since their value to the worker increases with service. It is difficult to confirm the presence of efficiency wages directly, since employee marginal productivity must be measured. One study finds a lack of evidence for the efficiency wage model, in terms of cash wages, but raises the possibility that benefits (such as pensions) could be the efficiency wage/bond. See Katharine G. Abraham and Henry S. Farber, "Job Duration, Seniority, and Earnings," *American Economic Review*, vol. 77 (June 1987), pp.

278-297, especially p. 295.

30. A review of this issue can be found in Aaron, Economic Effects of Social Security, op. cit., chapter 5.

31. Gary Burtless, "Social Security, Unanticipated Benefit Increases, and the Timing of Retirement," Review of Economic Studies, vol. 53 (October 1986), pp. 781-805.

32. Malcolm H. Morrison, "The Aging of the U.S. Population: Human Resource Implications," Monthly Labor Review, vol. 106 (May 1983), pp. 13-19.

33. Under federal regulations, providing less than first-dollar coverage to older, Medicare-covered workers is considered to be illegal age discrimination, if the firm offers health insurance to younger workers.

34. Material in this section is drawn from Donald Bell and Diane Hill, "How Social Security Payments Affect Private Pensions," Monthly Labor Review, vol. 107 (May 1984), pp. 15-20.

35. U.S. Bureau of Labor Statistics, Employee Benefits in Medium and Large Firms, 1986, bulletin 2281 (Washington: GPO, 1987), p. 65.

36. The complex integration formulas partially reflect tax code restrictions. To qualify for tax-favored treatment, pensions are not supposed to be biased towards higher paid workers. Social Security, however, tilts its benefits toward the lower paid. Formulas used for integration effectively reverse some of this tilt, but are designed not to do so in a manner offensive to the tax code.

37. A progressive tax is one under which higher income individuals pay a greater proportion of their income in taxes. A "regressive" tax is the opposite; higher income individuals pay a lower proportion of their income in taxes. As will be noted below in the text, the payroll taxes supporting UI and Social Security are regressive.

38. Walter J. Blum and Harry Kalven, Jr., The Uneasy Case for Progressive Taxation (Chicago: University of Chicago Press, 1953).

39. Wages are set relatively infrequently -- yearly or longer-- and, hence, do not immediately shift in response to a payroll tax increase. In a long-duration model of wage setting, however, the employer can recoup the tax in some future round of pay setting.

40. There can be various explanations of a low elasticity of labor supply with respect to the wage. It could be that employees see little substitution between wages and "leisure," i.e., hours not supplied to the labor market. If the income effect of the tax imposed is low, the lack of substitution and income reactions will produce a low supply elasticity. However, it is also possible to have a high level of substitutability between wages and leisure whose effect is offset by a large positive income effect. When the payroll tax is imposed, the leisure effect tends to reduce hours supplied to the labor market, but the income effect (less leisure demanded as income falls) works in the opposite direction. One study concludes that the inelasticity of labor supply is the result of just such an offset. See Jerry A. Hausman, "Labor Supply" in Henry J. Aaron and Joseph A. Pechman, eds., <u>How Taxes Affect Economic Behavior</u> (Washington: Brookings Institution, 1981), pp. 27-83.

41. John A. Brittain, <u>The Payroll Tax for Social Security</u> (Washington: Brookings Institution, 1972); Richard F. Dye, "Payroll Tax Effects on Wage Growth," <u>Eastern Economic Journal</u>, vol. 11 (April-June 1985), pp. 89-100.

42. The tax rate is calculated on the after-tax wage which lies along the demand curve D'. Hence, the old demand curve D can be expressed as D' + D't or D'(1+t). And, therefore, D' = D/(1+t). Thus, if in the absence of the tax, the wage would be $10 per hour, a tax rate of 10% would lead to a take-home wage of $10/1.1 = $9.09.

43. One empirical study asserts that workers' compensation premiums reduce nonunion wages on a dollar-for-dollar basis, but found no such tradeoff for union workers. The argument made was that for nonunion workers, the presence of (value of) workers' compensation payments offsets the job hazard premiums that employers would otherwise have had to pay. See Stuart Dorsey and Norman Walzer, "Workers' Compensation, Job Hazards, and Wages," <u>Industrial and Labor Relations Review</u>, vol. 36 (July 1983), pp. 642-654.

44. Arthur M. Okun, <u>Equality and Efficiency: The Big Tradeoff</u> (Washington: Brookings Institution, 1975), pp. 91-95.

45. There is an issue of whether employers -- in the context of implicit contracting and infrequently adjusted wages-- anticipate payroll tax increases in setting pay. If they do, even though compensation may blip up when the tax is first imposed, the tax burden may still fall on wages. Suppose, for example, a firm sets its wage each July 1 for the next 12 months. Suppose further that it knows that on the next January 1, payroll taxes will be increased by 1%. It might set its July-to-June wage 0.5% lower than otherwise, e.g., grant a 3.5% increase rather than a 4% increase, to "cover" the tax burden. (One

percent over 6 months is equivalent to 0.5% over 12 months). On January 1, the firm's compensation would still blip up when the added tax was imposed, but the firm is not absorbing the tax.

46. The National Industrial Recovery Act of 1933 (NIRA) organized firms into industrial groupings which worked out "codes" of conduct with governmental approval. These NIRA codes contained minimum wage and hour standards, pursuant to an economic theory prevalent at the time that pushing up nominal wages would raise consumption and speed recovery from the depression. The wage-consumption theory was controversial among economists of the time and would not be widely accepted today, although for different reasons. For discussion, see Daniel J.B. Mitchell, "Wages and Keynes: Lessons from the Past," Eastern Economic Journal, vol. 12 (July-September 1986), pp. 199-208.

47. U.S. Bureau of the Census, Statistical Abstract of the United States: 1987 (Washington: GPO, 1987), p. 404.

48. Congress covered certain state and local workers in the 1966 FLSA amendments. The bulk of the others were covered in 1974. However, a U.S. Supreme Court decision prevented coverage of state and local employees until the Court reversed itself in 1985.

49. Reviews of the economic literature can be found in Charles Brown, Curtis Gilroy, and Andrew Cohen, "The Effect of the Minimum Wage on Employment and Unemployment," Journal of Economic Literature, vol. 20 (June 1982), pp. 487-528; Finis Welch, Minimum Wages: Issues and Evidence (Washington: American Enterprise Institute, 1978); Donald O. Parsons, Poverty and the Minimum Wage (Washington: American Enterprise Institute, 1980); U.S. General Accounting Office, Minimum Wage Policy Questions Persist, GAO/PAD-83-7 (Washington, GAO, 1983).

50. Masanori Hashimoto, "Minimum Wage Effects on Training on the Job," American Economic Review, vol. 72 (December 1982), pp. 1070-1087.

51. John F. Cogan, "The Decline in Black Teenage Employment: 1950-1970," American Economic Review, vol. 72 (September 1982), pp. 621-638. Cogan emphasizes the decline in agriculture but does indicate that the minimum wage interfered with finding alternative (nonfarm) employment.

52. Teenagers are barred from designated occupations involving potential work hazards. Some states, however, have special school-supervised programs approved by the U.S. Department of Labor permitting such work for 14-15 year olds identified as potential dropouts. More information on child labor laws can be found in Daniel J.B. Mitchell and John Clapp, Legal Constraints on Teenage Employment: A New Look at Child Labor and School

Leaving Laws (Los Angeles: UCLA Institute of Industrial Relations, 1979).

53. Ralph E. Smith and Bruce Vavrichek, "The Minimum Wage: Its Relation to Incomes and Poverty," Monthly Labor Review, vol. 110 (June 1987), pp. 24-30.

54. The idea is less preposterous than it seems. Individuals who contract to perform a service, and then refuse to do so, cannot be compelled by law to perform the service. But they can be sued for damages resulting from nonperformance. Although strict slavery is a lifetime arrangement, even short-term contracts involving performance of work will not be enforced.

55. Jean Baldwin Grossman, "The Impact of the Minimum Wage on Other Wages," Journal of Human Resources, vol. 18 (Summer 1983), pp. 359-378.

56. Employers must obtain certificates from the U.S. Department of Labor to pay sub-minimum wages to such groups.

57. The U.S. Chamber of Commerce has supported a youth differential. However, a difficulty -- from the public policy viewpoint -- is that such a differential would encourage substitution of teenagers for low-wage adults, although -- as noted in the text -- the latter group has a much higher poverty rate. In a book sponsored by a Chamber-affiliated foundation, economist Belton M. Fleisher disagreed with the Chamber's view on this issue. See Belton M. Fleisher, Minimum Wage Regulation in the United States (Washington: National Chamber Foundation, 1983), p. 4.

58. State and local workers can be paid in "comp time," rather than cash, at a rate of time-and-a-half for overtime. Comp time means time off for personal leave. Thus, a state and local worker with two hours of overtime in a given week can take off 3 hours at a later date.

59. Of course, the aggregate average overtime/worker figure includes some firms which make extensive use of overtime and others which do not use it at all.

60. Until 1985, federal contractors under Walsh-Healey had to pay overtime after 8 hours per day, rather than the looser FLSA standard of 40 hours per week. Legislation passed in late 1985 ended the requirement.

61. Some state governments have similar laws for their contractors.

62. Steven G. Allen and David Reich, Prevailing Wage Laws Are Not Inflationary: A Case Study of Public School Construction Costs (Washington: Center to Protect Workers' Rights, 1980); The GAO on Davis-Bacon: A Fatally Flawed Study (Washington: Center to Protect Workers' Rights, 1979).

63. U.S. General Accounting Office, The Davis-Bacon Act Should Be Repealed, HRD-79-18 (Washington: GAO, 1979); U.S. General Accounting Office, The Congress Should Consider Repeal of the Service Contract Act, GAO/HRD-83-4 (Washington: GAO, 1983). Relatively few research studies of such laws have been completed. Among them are Armand J. Thieblot Jr., The Davis-Bacon Act, Industrial Research Unit, Wharton School (Philadelphia: University of Pennsylvania Press, 1975); John P. Gould and George Bittlingmayer, The Economics of the Davis-Bacon Act: An Analysis of Prevailing-Wage Laws (Washington: American Enterprise Institute, 1980); Armand J. Thieblot Jr., Prevailing Wage Legislation: The Davis-Bacon Act, State "Little Davis-Bacon" Acts, and the Service Contract Act (Philadelphia: Industrial Research Unit, Wharton School, University of Pennsylvania, 1986).

64. For example, past practice by the U.S. Department of Labor had been to designate as "prevailing" any wage earned by 30% or more of workers in the construction craft in a local area. Generally, such a wage would have been a union rate, since it is unlikely to find large blocks of nonunion workers all earning exactly the same wage. The Reagan administration raised the standard to require that a majority of workers earn the rate. Otherwise, a weighted average rate is used.

65. For a history of the enactment of OSHA, see Judson MacLaury, "The Job Safety Law of 1970: Its Passage Was Perilous," Monthly Labor Review, vol. 104 (March 1981), pp. 18-24.

66. John D. Worall and Richard J. Butler, "Health Conditions and Job Hazards: Union and Nonunion Jobs," Journal of Labor Research, vol. 4 (Fall 1983), pp. 339-347.

67. This notion has been called the "ratcheting" approach. See James C. Miller III, "Is Organized Labor Rational in Supporting OSHA?," Southern Economic Journal, vol. 50 (January 1984), pp. 881-885.

68. Miller, "Is Organized Labor Rational in Supporting OSHA?," op. cit., pp. 881-885. Miller notes that unions share OSHA's preference for engineering controls (modifications to equipment) rather than personal protective devices (such as earplugs). The latter would act as a "tax" on labor, rather than capital, thus reducing the demand for labor through both the substitution and output effects. (Usually, the preference for equipment modification is defended on the grounds that workers may fail to wear the protective devices given to them).

69. Norman Root and Deborah Sebastian, "BLS Develops Measure of Job Risk by Occupation," Monthly Labor Review, vol. 104 (October 1981), pp. 26-30.

70. Various empirical studies are reviewed in William T. Dickens, "Differences Between Risk Premiums in Union and Nonunion Wages and the Case for Occupational Safety Regulation," American Economic Review, vol. 74 (May 1984), pp. 320-323.

71. Stuart Dorsey and Norman Walzer, "Workers' Compensation, Job Hazard, and Wages," Industrial and Labor Relations Review, vol. 36 (July 1983), pp. 642-654.

72. W. Kip Viscusi and Charles J. O'Connor, "Adaptive Responses to Chemical Labeling: Are Workers Bayesian Decision Makers?," American Economic Review, vol. 74 (December 1984), pp. 942-956.

73. J. Paul Leigh, "Compensating Wages for Occupational Injuries and Diseases," Social Science Quarterly, vol. 62 (December 1981), pp. 772-778.

74. Charles L. Schultze, The Public Use of Private Interest (Washington: Brookings Institution, 1977), pp. 55-57; John Mendeloff, Regulating Safety: An Economic and Political Analysis of Occupational Safety and Health Policy (Cambridge, Mass.: MIT Press, 1979).

75. Lawrence S. Bacow, "Private Bargaining and Public Regulation" in Eugene Bardach and Robert A. Kagan, eds., Social Regulation: Strategies for Reform (San Francisco: Institute for Contemporary Studies, 1982), pp. 201-220.

76. Lester B. Lave, The Strategy of Social Regulation: Decision Frameworks for Policy (Washington: Brookings Institution, 1981), pp. 99-101.

77. Suggestions along these lines can be found in John Mendelhoff, "Regulatory Reform and OSHA Policy," Journal of Policy Analysis and Management, vol. 5 (Spring 1986), pp. 440-468.

78. Levitan, Carlson, and Shapiro, Protecting American Workers, op. cit., pp. 119-123. Death rates reported by the survey established by OSHA have also declined. See Diane M. Cotter and Janet A. Macon, "Deaths in Industry, 1985: BLS Survey Findings," Monthly Labor Review, vol. 110 (April 1987), pp. 45-47. Highway accidents are the most common form of occupational fatality, accounting for 29% of such deaths during 1984-85.

79. William P. Curington, "Safety Regulations and Workplace Injuries," Southern Economic Journal, vol. 53 (July 1986), pp. 51-72.

80. Michael L. Marlow, "The Economics of Enforcement: The Case of OSHA," Journal of Economics and Business, vol. 34 (2:1982), pp. 165-171.

81. Jeffrey S. Passel, "Estimating the Number of Undocumented Aliens," Monthly Labor Review, vol. 109 (September 1986), p. 33; U.S. President, Economic Report of the President, February 1986 (Washington: GPO, 1986), pp. 218-219.

82. Source: Unpublished data provided to the author by the U.S. Bureau of Labor Statistics.

83. For reviews of these issues, see Michael J. Greenwood and John M. McDowell, "The Factor Market Consequences of U.S. Immigration," Journal of Economic Literature, vol. 24 (December 1986), pp. 1738-1772; U.S. President, Economic Report of the President, February 1986, op. cit., chapter 7.

84. John K. Hill and James E. Pearce, "Enforcing Sanctions Against Employers of Illegal Aliens," Economic Review, Federal Reserve Bank of Dallas (May 1987), pp. 1-15. The law provides for importation of foreign workers in agriculture under certain conditions. A special "adverse effect wage rate" is established by the U.S. Department of Labor -- in effect a minimum wage for farmers -- for employers of immigrant labor under this program to avert a depression of domestic wages by the immigrants.

85. U.S. Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Part 1 (Washington: GPO, 1975), p. 139.

86. Differences between males and females on the same job which result from merit awards, progression plans, and piece rates are not forbidden.

87. See also Henry J. Aaron and Cameran M. Lougy, The Comparable Worth Controversy (Washington: Brookings Institution, 1986).

88. In the cases of firms which have been in business for long periods of time, there may be a history of pay differentials which -- if unearthed -- could be taken as evidence of pay discrimination. For example, there may be memos written years ago which justify low female pay rates for certain jobs on the grounds that women don't "need" as much money as men.

89. U.S. Bureau of the Census, Statistical Abstract of the United States: 1987 (Washington: GPO, 1987), p. 70.

90. The pension cost differential is cushioned by the inclusion of survivor's benefits. A short-lived male employee is likely to be married to a younger, long-lived female. The extra costs for her tend to offset the lower costs for him. Similarly, a long-lived female employee is likely to have an older, short-lived husband.

91. Estimates of the differential costs the unisex benefit decisions have made for the pay of men and women have not been made. There are many complicating factors including the dependent issue cited in the previous footnote. In addition, with regard to pensions, women--although more expensive if they reach retirement age--have shorter average job tenures than men. So they are less likely to vest their pension benefits and are likely to have shorter service periods, if they do vest. It is interesting to note that blacks have shorter life expectancies than whites, but employers did not make racial adjustments in their benefit plans to reflect this difference.

92. In principle, President Reagan could have revoked earlier executive orders and ended the affirmative action requirement for federal contractors.

93. In the early 1950s, at around the time of the Supreme Court's school desegregation decision, instructional expenditures per pupil in southern white schools was about two thirds higher than in black schools. See Finis Welch, "Black-White Differences in Returns to Schooling," American Economic Review, vol. 63 (December 1973), pp. 893-907, especially p. 900.

94. See, for example, the symposium on the subject of statistical tests for employment discrimination (part of a volume devoted to "Statistical Inference in Litigation") appearing in Law and Contemporary Problems, vol. 46 (Autumn 1983), pp. 171-267; Masanori Hashimoto and Levis Kochin, "A Bias in the Statistical Estimation of the Effects of Discrimination," Economic Inquiry, vol. 18 (July 1980), pp. 478-486; Walter Fogel, "Class Pay Discrimination and Multiple Regression Proofs," Nebraska Law Review, vol. 65 (2:1986), pp. 289-329; Joseph L. Gastwirth, "Statistical Methods for Analyzing Claims of Employment Discrimination," Industrial and Labor Relations Review, vol. 38 (October 1984), pp. 75-86.

95. An early statement of this approach can be found in Gary S. Becker, The Economics of Discrimination, 2nd edition (Chicago: University of Chicago Press, 1971 [1957]), pp. 16-17.

96. It might be noted that international trade theory -- some of which is described in the next chapter -- suggests that even barriers to factor acquisition (such as limits in obtaining capital) would not necessarily prevent real wages from being equal in an economy composed of, say, all-male and all-female firms. If female firms in the aggregate had lower capital-to-labor ratios than the aggregate of male firms, they would specialize in labor intensive goods, exporting them to the male economy in exchange for capital intensive goods. Under certain assumptions, the capital-to-labor ratios at the firm level would equalize within the two sectors, thus equalizing productivity and real wages.

97. A criticism of unions with regard to treatment of blacks, with historical references, can be found in Herbert Hill, "The AFL-CIO and the Black Worker: Twenty-Five Years After the Merger," Journal of Intergroup Relations, vol. 10 (Spring 1982), pp. 5-78.

98. Orley C. Ashenfelter, "Racial Discrimination and Trade Unionism," Journal of Political Economy, vol. 80, part 1 (May-June 1972), pp. 435-64; Orley C. Ashenfelter and Lamond I. Goodwin, "Some Evidence on the Effect of Unionism on the Average Wage of Black Workers Relative to White Workers, 1900-67" in Gerald G. Somers, ed., Proceedings of the Twenty-Fourth Annual Winter Meeting, Industrial Relations Research Association, December 27-28, 1971 (Madison, Wisc.: IRRA, 1972), pp. 217-224.

99. A comparison of union and nonunion plants in California suggested that unions did not hinder employment opportunities of women and minorities. See Jonathan S. Leonard, "The Effects of Unions on the Employment of Blacks, Hispanics, and Women," Industrial and Labor Relations Review, vol. 39 (October 1985), pp. 115-132.

100. It has been argued, for example, that once it becomes obvious that female-dominated jobs are lower paid, males will have an incentive to act as "gatekeepers," resisting the entrance of women into "their" occupations. In addition, socialization might keep women from applying for better-paying male jobs, even if wage premiums could be obtained. See Myra H. Strober and Carolyn L. Arnold, "The Dynamics of Occupational Segregation among Bank Tellers" in Clair Brown and Joseph A. Pechman, eds., Gender in the Workplace (Washington: Brookings Institution, 1987), pp. 107-148, especially pp. 110-119. The authors note parallels between how real estate markets are able to maintain separate neighborhoods for whites and blacks, even without legal support for doing so. If everyone knows where they "belong," and if there is a sense that hostility might ensue if unwritten borders are crossed, the separate neighborhoods can maintain themselves, even if land prices and rents differ between them.

101. Ouchi notes that the highly successful American "theory Z" firms he identified had top management teams composed of "unremittingly white, male, middle class" membership and the firms tend to be racist and sexist. He found even greater racism and sexism among successful Japanese firms. These characteristics are attributed to the high degree of trust among managers on which the firms rely. See William G. Ouchi, Theory Z: How American Business Can Meet the Japanese Challenge (New York: Avon Books, 1982), pp. 77-79.

102. Shelly J. Lundberg and Richard Startz, "Private Discrimination and Social Intervention in Competitive Labor Markets," American Economic Review, vol. 73 (June 1983), pp. 340-347.

103. ibid.

104. Available data provide nonwhite (rather than black) earnings information until the late 1970s, and black data thereafter. Nonwhites are roughly 90% black.

105. Thus, one of the first statements of comparable worth as a legal issue appeared in early 1979. See Ruth G. Blumrosen, "Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964," University of Michigan Journal of Law Reform, vol. 12 (Spring 1979), pp. 399-502.

106. Lester C. Thurow, "The New American Family," Technology Review, vol. 90 (August/September 1987), pp. 26-27.

107. Randall K. Filer, "Male-Female Wage Differences: The Importance of Compensating Differentials," Industrial and Labor Relations Review, vol. 38 (April 1985), pp. 426-437.

108. One study argues that female job experience has been rising over a long period, but -- paradoxically -- not for working women. That is, the gains have been among women who are not currently working, but have worked in the past. As participation rates rise, however, the probability increases that nonworking women will convert to working status. See James P. Smith and Michael P. Ward, Women's Wages and Work in the Twentieth Century (Santa Monica, Calif.: Rand Corp., 1984). See also June O'Neill, "The Trend in the Male-Female Wage Gap in the United States," Journal of Labor Economics, vol. 3, Part 2 (January 1985), pp. S91-S116.

109. U.S. President, Economic Report of the President, January 1987 (Washington: GPO, 1987), pp. 215-216.

110. Jonathan S. Leonard, "Employment and Occupational Advance under Affirmative Action," Review of Economics and Statistics, vol. 66 (August 1984), pp. 377-385; Jonathan S. Leonard, "What

Promises are Worth: The Impact of Affirmative Action Goals," Journal of Human Resources, vol. 20 (Winter 1985), pp. 3-20; Jonathan S. Leonard, "The Impact of Affirmative Action on Employment," Journal of Labor Economics, vol. 4 (October 1984), pp. 439-463; Jonathan S. Leonard, "The Effectiveness of Equal Employment Law and Affirmative Action Regulation" in Ronald G. Ehrenberg, ed., Research in Labor Economics, vol. 8, Part B (Greenwich, Conn.: JAI Press, 1986), pp. 319-350; Paul Osterman, "Affirmative Action and Opportunity: A Study of Female Quit Rates," Review of Economics and Statistics, vol. 64 (November 1982), pp. 604-12; Orley Ashenfelter and James Heckman, "Measuring the Effect of an Antidiscrimination Program" in Orley Ashenfelter and James Blum, eds., Evaluating the Labor-Market Effects of Social Programs (Princeton, N.J.: Industrial Relations Section, Dept. of Economics, Princeton University, 1976), pp. 46-84; Richard B. Freeman, "Changes in the Labor Market for Black Americans: 1948-72," Brookings Papers on Economic Activity (1:1973), pp. 67-120.

111. These requirements are spelled out in the Health Maintenance Organization Act of 1973. HMOs are health care providers who charge a flat monthly fee, regardless of usage. Thus, they have a strong incentive to hold down costs.