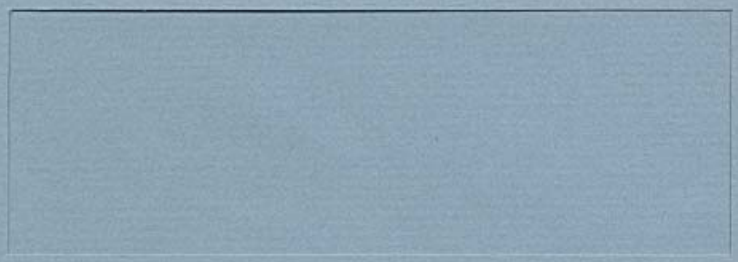
[Sept. 29, 1964]



THE RESEARCH INSTITUTE OF AMERICA, INC.

STAFF RECOMMENDATIONS

Research Institute of America
Staff Recommendations

September 29, 1964
File 22

OPERATING UNDER THE CIVIL RIGHTS LAW

First practical guidelines to the uncharted ground of the new "equal employment" requirements have been hammered out for Members by Institute analysts. The new law has already begun to alter labor markets, personnel practices, union activities and community climate in just about every part of the country. But the law itself leaves many questions unanswered.

Most companies cannot afford to postpone action until official regulations or court rulings provide clearer answers to questions like these: What are my obligations as an employer? What must I do to correct a racial imbalance? What if my union bars Negroes? Must I take active steps to recruit Negroes? And what if I can't find any who are qualified?

This report provides a working set of rules which an employer may safely follow to bring his practices into line with the new requirements. To prepare it, the Institute combined a thorough analysis of the Law, the Committee Reports and Congressional debates, with a wealth of untapped business experience in comparable situations:

... Government contractors and subcontractors who have had to comply with the antidiscrimination provisions of Executive Order 10925 since 1961;

... State and local fair employment laws and the body of precedent established under them.

... Definitions of "discrimination" under the Taft-Hartley Act, as established by the courts, the National Labor Relations Board and arbitrators.

Coverage begins officially in July 1965 for larger companies, in 1968 for the very smalls. But the nature of the changes required and the potential for trouble are such that many companies will want to start rethinking policy now.

What the new Law covers

So far as business is concerned, the most pertinent section of the Civil Rights Law is Title VII, the so-called Employment Section, which requires equal

treatment for all job applicants and all employees. Specifically, the Civil Rights Act prohibits any company, employment agency, or labor union from discriminating against an individual because of his race, color, religion, sex or nationality in the following situations:

1. In hiring or firing;

2. In setting compensation, terms, conditions, or privileges of employment;

3. In segregating, classifying, or otherwise limiting an individual or in some other way adversely affecting his status as an employee;

4. In connection with apprenticeship or other training or retraining programs;

5. In printing or publishing of advertisements or notices: indicating a preference, limitation, specification or discrimination.

Furthermore, an employer may not retaliate against anyone who has opposed employment practices which are illegal under this Act, or because he has testified or participated in any proceedings under the Act.

Who is covered?

Eventually, every employer will be covered if he is in "an industry affecting commerce" and has at least 25 employees. However, the Act will go into effect gradually depending on the size of the employer's operation:

Those with 100 employees or more come under the Law July 2, 1965

" " 75 - 99 employees " " " " " " 1966

" " 50 - 74 " " " " " " 1967

" " 25 - 49 " " " " " " 1968

RIA observation: A company which is growing may have to anticipate coming under the Law sooner than the present size of its work force suggests. For instance, a company now employing 92, but expanding at the rate of 10% per year, may easily reach the 100 employee level -- and coverage -- by July of 1965.

If your payroll fluctuates seasonally, there is a special provision. You are subject to the Act if you have at least 25 employees in each working day for at least 20 calendar weeks in the current or preceding calendar year.

The term "affecting commerce" will be interpreted broadly, since it is

specifically given the same meaning that it has under the Labor-Management Reporting and Disclosure Act of 1959. For all practical purposes, this will mean all companies will be subject to the Civil Rights Law except for those who have already been declared outside the reach of the 1959 Landrum-Griffin Act.

Labor organizations that maintain or operate hiring halls for covered employers will come under the Act July 2, 1965 regardless of their size. Labor organizations that do not maintain hiring halls will be covered gradually -- those with 100 or more members on July 2, 1965 and down to those with 25 or more members on July 2, 1968: if they (a) represent employees under the National Labor Relations Act or the Railway Labor Act, or (b) represent the employees of a company engaged in an industry affecting commerce, or (c) have chartered a labor organization which affects commerce, represents or seeks to represent such employees. Conferences, general committees, joint or system boards or joint councils of labor organizations which meet the test of "affecting commerce" also come under the provisions of the Act.

Employment agencies are covered by the Act whether they perform their services on behalf of employers or employees and whether they do so with or without compensation. The definition includes the U.S. Employment Service and the federally-assisted system of state and local employment services.

Why action now?

"The way I see it," said one company president, "the only legal hazard confronting my company is that a job applicant may come along who feels that he has not been given equal treatment and may bring charges that he was intentionally discriminated against because he belongs to one of the minority groups. Until such an individual is actually standing at my door next July, why do I have to be concerned about compliance?"

Technically, it is true that the Law applies only to future discrimination. But there are many practical reasons for taking action now rather than waiting for the provisions to go into full effect. Consider the following factors in deciding what timetable your own company should follow:

1. This is an area of human relations where changes simply cannot be accomplished overnight. The experience of hundreds of companies in learning to live with non-discrimination shows that changes in customs and long-standing practices require affirmative action. Rather than risk friction, open resistance and disputes, thousands of companies have decided to take first steps now to achieve a gradual transition to the new requirements.

2. Companies whose work forces reflect the racial composition of the local population today may find themselves badly out of step in a year or two. Employ-

ment patterns generally are already being influenced by action of many larger companies (those with 100 employees or more) who want their house in order when they come under the Law on July 2, 1965 -- long before the deadline set by the Law for their smaller competitors.

3. The delay granted to smaller firms will prove largely illusory, as pressures mount from other sources. For instance, employment agencies will have to abide by the rules of the Civil Rights Law starting in July, 1965 even in dealing with the smallest employer. Similarly, most labor unions (except those with less than 100 employees) will have to live up to the new rules beginning in July, 1965.

4. Equal employment opportunity statutes have a tendency to develop "rippling" effects which extend far beyond the companies directly involved. For example, a public utility was startled recently when it received an equal opportunity compliance report form from one of the plants in its area which handled government work. Once so approached, however, the utility has since requested and received technical guidance on non-discriminatory employment from the government procurement agency involved. In another case, a fairly large corporation found that its employment practices became subject to review because one of its small subsidiaries happened to handle government contracts. Interestingly enough, this compliance review, triggered by a relatively unimportant part of the total corporation's facilities, showed up the largest number of "discrepancies" ever uncovered by the particular government office.

Must you "make up for" the past?

Once a rejected job applicant or disgruntled employee brings charges of discrimination, the whole past pattern of company policies and actions will probably be considered as part of the evidence on which to interpret the particular challenge or complaint. Note also that the Attorney General is authorized to file suit for an injunction to halt violations of this section when he has cause to believe there is a "pattern or practice of resistance" to the Act.

Charges of discrimination will sound much more believable if management has been passive and members of minority groups are limited to lowest level jobs. On the other hand, if management has clearly gone on record against discrimination and its employment pattern shows that equal opportunity is available to all, charges from one disgruntled individual will be easily refuted.

A company's record on discrimination may serve as circumstantial evidence in future proceedings, on the assumption that past practice will be continued -- unless management orders and enforces a different set of policies. But there, management's concern with the results of past acts of discrimination ought to stop:

... The mere fact that your work force has a disproportionately small

number of Negroes, possibly confined to menial jobs, does not require you to take any corrective action other than to prevent future discrimination.

... You are not required to stop recruiting white personnel or to reserve all future job openings to Negro applicants or other minority groups. Nor are you required to displace any of your present employees in order to make room for members of minorities.

On the contrary, any such misguided effort to atone for past sins would in all probability be "discrimination in reverse," which is illegal and clearly contrary to the stated aims of the Civil Rights Law.

How much "adjustment" will be required?

Every company must decide for itself whether its employment policies require significant changes in the light of the Civil Rights Law. However, experience with similar requirements imposed by state and local laws, and the President's Executive Order 10925 strongly suggest that most companies will have to make some adjustments.

To help you judge how well prepared you are to live with the employment provisions of the Civil Rights Act, the Institute recommends the following self-audit.

An Audit of Where You Stand

How would your company rate if you had to meet the test which government contractors must pass under the President's Executive Order 10925? Contractors must answer the following questions as proof that they have taken "affirmative action" to end discrimination in employment and to prevent its recurrence. This self-audit will give you a good idea of the adjustments you may soon have to make. (Add the word "sex," where appropriate, in the following questions to make them completely consistent with the language of the Civil Rights Act.)

1. Has a company-wide employment policy been established with procedures put into effect to assure that equal opportunity is given to all persons without regard to race, color, creed, or national origin?

2. If "yes" has it been communicated in writing to all employees and offices? (If by other means, explain.)

3. Are there any educational or formal training programs for employees or prospective employees?

4. If "yes" are all persons given the opportunity to participate without

regard to race, color, creed, or national origin?

5. Have all recruitment sources (other than unions) been notified that all qualified applicants will receive consideration for employment without regard to race, color, creed, or national origin?

6. Has this been done in writing? (If by other means, explain.)

7. Do all employment recruiting advertisements state that all qualified applicants will receive consideration for employment without regard to race, color, creed, or national origin?

8. If the company is operated under a union contract, do all provisions of each collective bargaining agreement or other contract or understanding made with a labor union (or unions) permit full compliance by the company with its obligations under the non-discrimination provisions of government contracts? If "no" explain.

9. Has a notice advising the union of the company's obligations under the non-discrimination provisions of government contracts been sent to each union?

10. Has each such union notified the company that its policies and practices are consistent with these non-discrimination provisions? If "no," identify such union(s) and describe any efforts to obtain such information and commitments.

11. Are there any employee facilities (i.e., drinking fountains, restrooms, recreational areas, lunchrooms, etc.) which are provided for employees on a racially separate basis?

12. List separately the total number of male and female employees in each job category and the number within each category who are members of minority groups. (The categories specified are officials and managers, professionals, technicians, sales workers, office and clerical, craftsmen (skilled), operatives (semi-skilled), laborers (unskilled), service workers, apprentices and on-the-job trainees.)

Planning Your Own Action

Whatever your company's size and past record, you will want to take certain precautionary steps now to be sure that no discrimination occurs in the future. In addition to our own pool of Member experiences, Mr. George Culberson, one of the chief officers administering this Order on behalf of the Air Force, was particularly helpful in sharing with us the experience of hundreds of Air Force contractors. These sources underscore the fact that involuntary discrimination is prob-

ably as widespread as intentional discrimination -- and may be equally difficult to uproot. Under the new law, both will be equally illegal.

Joining forces with other employers in the area can be an effective way to overcome problems which are too big to overcome with a single company's resources. In addition, such an area-wide approach, which has been successfully tried in several localities, offers important incidental advantages: it permits many smaller companies to benefit from the practical experience of the larger employers in the area, it makes it much easier to enlist the active support and assistance of such community facilities as schools, churches, etc., and finally, it takes the onus of "pioneering" off the shoulders of any individual employer.

Ending de facto discrimination

To put an end to de facto discrimination, clear-cut management decision and direction are essential. The experience of companies which accomplished such transitions successfully in the past suggests that a logical starting point is the announcement of an affirmative policy position.

Technically, an obligation to take "affirmative action" is imposed only on government contractors subject to Executive Order 10925. But thousands of other companies will nevertheless find it desirable to take positive action. The reason can best be made clear by the not uncommon experience of one company:

A new personnel director, desperately searching for some new solutions to the labor shortage in critical skills, raised the question of why Negroes had never been considered. The company president's answer was that there had never been any policy against hiring minority groups. Obviously this was not an adequate explanation -- but it did help both men to realize that Negroes had not been considered simply because there had never been a policy for their employment. Where discrimination has long been the community custom or tradition, it will take a strong affirmative management decision to assure equal terms for all job applicants.

The policy announcement

Announcement of a non-discrimination policy requires careful planning. Keep in mind that you're dealing with a subject which closely touches every employee in his work relationships, real or fancied self-interest, prejudices and preferences. Following are the Institute's best answers to some practical questions which may arise in this connection.

- Written or unwritten? Government contractors, who are subject to Executive Order 10925, have often found it helpful to be prepared to communicate their non-discriminatory policy in writing. In fact, many other companies have come to feel that such a written record minimizes the risk of misunderstanding.

Moreover, it can prove valuable if the company is ever called upon to defend itself against charges of discrimination, though the mere existence of such an announcement may not be an adequate defense if other evidence shows that the order has largely been ignored.

RIA caution: Small companies, or companies whose personnel practices have always been informal, may prefer to avoid any written announcement. If none of your personnel policies have ever been so formalized, a written communication of a policy against discrimination may blow the whole subject up out of proportion.

• Self-consciousness is an ever-present hazard and should be avoided at all cost. In today's highly charged atmosphere the adoption of a patronizing tone will not only be resented by Negroes and other minority groups, but will tend to weaken the announcement in the eyes of white employees as well. Nor will a self-righteous or crusading attitude be well received by either group. It is neither necessary nor desirable to be apologetic about past practices or to brag about past achievements in this area. In fact, pretending that a policy announcement against discrimination "simply reiterates what has been the policy of this company right along," may not only provoke snickers but may well be taken as a signal that management doesn't mean what it says, if in reality some discriminatory practices have existed.

• Timing and tone of the announcement should follow your management's normal "style" and practices. While some companies wait until the first Negro is hired or introduced into a high position before making any formal policy announcement, a majority of companies strongly suggest that the policy be announced well in advance of the actual appearance of members of minority groups in formerly all-white groups.

As for the tone of the announcement, one which simply prohibits discrimination based on race, nationality, etc., will undoubtedly satisfy the technical requirements of the Law. But against such an essentially negative posture, more and more companies favor an affirmative statement of the company's intention to provide "equal employment opportunity" to all, based solely on the qualifications of each individual.

Where management anticipates that its announcement may stir up fears or apprehension among present employees, it may also be advisable to include words of reassurance about their status.

• Foremen and other supervisors can play a key role in implementing the company's policy against discrimination. The unhappy experiences of a few companies show that lack of support or understanding at the supervisory level can seriously undermine management's efforts to ban discrimination. For this reason, many executives recommend that supervisors be informed well in advance of the

general announcement to rank-and-file employees. They should also be given an opportunity to raise any questions they may have, since it will be up to them in turn to explain the policy to rank-and-file. Above all: remind all foremen and supervisors of the serious consequences which their actions may have, since the Law specifically applies to "those acting on behalf of the employer."

Whether to go beyond these steps and involve supervisors in the discussion of contemplated policy changes is at best questionable. The majority view seems to be that such consultation in advance of policy decision may unnecessarily stir up resentment and opposition, especially where lower level supervisors may share the same emotional feelings and exaggerated fears as the rank-and-file.

- Union representatives should also be brought into these proceedings at an early stage. Shop stewards will now be more receptive to management suggestions in this area, since the non-discrimination requirements of the Civil Rights Act specifically apply to labor organizations.

- Whether to seek publicity for company policy announcements on discrimination will become largely academic. In the past, where a company was pioneering in opening its doors to Negroes and other minority groups, it may have found it desirable to seek publicity, either as a means of attracting qualified Negro applicants or to earn community recognition for its progressive policy. Except in the increasingly rare situation when non-discrimination by one company still represents a real break with local custom, however, it will be undesirable or even impossible to publicize company action in this area. The number of companies already on record against discrimination and the new impetus given by the Civil Rights Law will make most company announcements in this area mere routine and hardly "news."

Is active recruiting required?

Technically, the answer is no; practically, it may be yes. There is nothing in the Civil Rights Law that requires an employer to make special efforts to recruit Negroes or other minority groups. On the other hand, when the new Law goes into effect, it is practically certain that recruiting and hiring practices will be the most likely target of charges of discrimination. This is clear from the experience in cities and states which have Fair Employment Commissions.

Once a company has decided to open its doors (for the first time or just more widely) to Negroes and other minorities, it will obviously be to its own best interest to have as large and as good a group of applicants to choose from as possible. But achieving this will not be easy. Negroes and members of other minorities have a tendency to avoid companies which have a reputation for having discriminated in the past. What's more, the supply of qualified applicants won't be rising anywhere near as fast as demand. As a result, far more aggressive action may be necessary to bring out the desired number and quality of minority applicants.

Employment agencies and other sources with whom you have been dealing in the past should be notified that your door is now open to applicants regardless of race, color or creed. However, such sources can be counted on for a significant new flow of Negro applicants only if they themselves have had minority-group clients in the past. Much like the companies they serve, employment agencies that have a reputation for discriminating against minorities will have difficulty attracting them now. For this reason, personnel managers with experience in this field are unanimous in recommending that any company desiring to open or widen its doors to minority groups resort to many more sources than those it has traditionally relied upon. Among the avenues which are being successfully pursued by others, the following deserve specific mention:

1. State employment offices which, in the past at least, have had on tap a significant number of non-white applicants, are good sources in the metropolitan centers particularly.

2. Advertising in newspapers with a sizable readership in the Negro and other minority communities can be effective. The mere placement of ads in these media will in itself serve as notification to potential applicants that the company is serious in its intentions to follow an equal employment opportunity policy.

In preparing all future ads and job notices, keep in mind that the Civil Rights Law expressly bars any mention of race, color, religion, sex, or national origin. In fact, the ads may not even indicate a preference for colored applicants. (Though, of course, there's nothing to prevent a company from advertising in papers with a predominant Negro readership.) And note that the company placing the help wanted ad carries full responsibility for the content and its compliance with the Civil Rights Law; it cannot depend on the newspaper to screen out any references or statements which may be illegal under the Civil Rights Law.

3. Recruiting in schools and colleges and other predominantly Negro institutions has also helped companies increase the flow of Negro applicants. This will undoubtedly continue to be true even though predominantly Negro institutions are experiencing such an increase in inquiries that some are hard put to handle them effectively. Still, contacts at such schools will be essential for companies determined to attract qualified minority group applicants for high-skilled jobs especially. Last year, for example, the National Urban League estimated that of the country's 175,000 Negro college students, 85,000 attend predominantly Negro institutions. As a measure of growing competition for Negro college graduates, the National Industrial Conference Board found in a June, 1964 survey of 40 companies, that 37 had interviewed Negroes on college campuses, and 32 of them included all-Negro schools on their recruiting trips.

4. Churches and civil rights organizations interested in promoting the interests of the Negro community, like the NAACP and the Urban League, and

agencies of certain religious groups, like the American Friends Service Committee, can refer qualified people. Here, too, you will have to anticipate, however, that you will face more and more competition from other recruiters. What's more, outfits like the Urban League are primarily interested in helping a company break through the barrier; once the first members of minority groups have been successfully placed, the company is expected to carry on under its own power and through its usual recruitment agencies.

On the other hand, the effectiveness of such organizations as the Urban League has been strengthened in a number of localities where large companies are making available their own skilled personnel technicians to assist the League's programs and specifically their "manpower skills banks."

5. Word of mouth is, of course, still one of the most effective recruiting devices. This is especially true for the Negro and other minority groups where a single contented employee on your payroll can easily attract dozens of other qualified applicants.

One word of caution must be added in this connection. As a company broadens its recruitment efforts and contacts new sources of manpower, it will be especially important to be specific in explaining company policy and standards. Misunderstandings or ignorance of company standards -- which, in turn, result in wholesale rejection of the first applicants -- can quickly sour the relationship with the particular source and frustrate future recruitment efforts.

Agencies which have minority group applicants available are especially wary of so-called "blanket orders" from employers who formerly ignored them entirely. For instance, one company informs an agency that "We always need welders." But when applicants are referred to them, it turns out that no openings will be available for some weeks. Rather than follow such blind leads, the agencies gradually restrict their referrals to companies which indicate specific and immediate openings.

Adjusting your selection procedures

Attracting an adequate number of Negroes and members of other minority groups is merely a preliminary step in integrating your work force. The question of discrimination must be faced in adapting your selection and placement procedures to applicants from minority groups. The best available answers and precautions:

1. What selection standards should be applied? Contrary to widespread impressions, a company is neither required nor expected to lower its standards in order to permit the hiring of Negroes or minority groups. On the contrary, such lowering of standards can only hurt the best interests of both the company and the minority group. In fact, the company that has applied low selection standards in

the past because it hired Negroes for low level jobs only may be well advised to raise its sights and select Negroes who have promotion potential.

2. Should personality traits be emphasized in hiring the first members of minority groups? Obviously this is a very sensitive question, the handling of which requires sound judgment as well as tact. Some companies have found, for example, that neatness in grooming and appearance can facilitate group acceptance of the first Negro to be introduced into a work group. Similarly, some personnel experts confide that Negroes who have already had experience in working in a predominantly white employment situation often possess more than the usual amount of patience and tolerance in the face of tension or prejudice during the initial period of transition.

RIA caution: While it is true that personality traits may play a part in easing initial integration of your work force, beware of going overboard on such factors. Not only are personal traits hard to judge objectively, but an over-emphasis on such qualities may leave you open to charges of discrimination. Safest course is to be certain that Negroes and other minority groups are handled in the same manner and under the same selection procedures as white applicants.

3. Is pre-screening by outside organizations "discrimination"? In the past, companies that pioneered in their communities to open up job opportunities to Negroes have found it helpful to ask outside agencies to pre-screen Negro applicants and refer the most likely ones. The American Friends Service Committee and the Urban League were particularly effective in this area, as were certain consulting firms. There is nothing in the Civil Rights Law that prohibits this practice, provided, of course, that it is not a subterfuge for unfair treatment and so long as all qualified applicants are given an equal opportunity to be chosen.

4. Is it permissible to use selection tests? Some tests have been criticized as being unfair to applicants from the so-called underprivileged communities, and, therefore, some executives are under the mistaken impression that testing itself is no longer permitted. This impression has been reinforced by a widely publicized decision under the Illinois Fair Employment Practices Act. In this case, an Examiner ruled that a test used by the Motorola Corporation couldn't be used as a basis for denying employment to a Negro applicant who had failed to score high enough to qualify. Nevertheless, the Civil Rights Law contains a specific provision permitting use of a "professionally developed ability test, provided that such test is not designed, intended or used to discriminate..." Under this authorization, most of the standard tests and examinations used by personnel offices will be clearly legal.

RIA observation: A word of caution against the indiscriminate use of tests. Quite apart from any special problems which may arise with minority groups, it is generally recognized that in many cases tests are improperly administered and mis-

interpreted. Thus, personnel experts stress the importance of picking tests which measure qualities which have a direct relationship to job functions to be performed. One company was successfully challenged when it was found that a number of raw test scores were simply added up and the resulting meaningless composite used as a basis for acceptance or rejection. In dealing with minority groups there is, of course, the additional factor that many individuals from so-called underprivileged backgrounds don't test as well as their contemporaries from other groups. Interestingly, some of the nation's large employers have taken the initiative in this matter and are cooperating with public schools to provide "practice" in testing to minimize this occupational hazard.

5. Are there new restrictions on questions or application blanks? Anything that touches on an applicant's race, creed, color or national origin will be taboo. All employment questionnaires should be reviewed to make certain they don't contain questions which bear on these subjects. But even that isn't enough. Special care will have to be taken so that those who interview job applicants don't inadvertently stray into areas of inquiry which are barred by law. While the federal government has not yet spelled out the do's and don'ts in this sensitive area, you can get a fairly good indication of what the rules will be from the following summary of questions which the New York Commission Against Discrimination has held to be unlawful:

- Original name of an applicant whose name has been changed by court order or otherwise.
- Birthplace of applicant, applicant's parents, spouse or other relatives.
- Requirement that applicant submit birth certificate, naturalization or baptismal record.
- Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
- An applicant may not be told "This is a Catholic, Protestant or Jewish organization."
- Inquiries regarding complexion, color of skin or coloring.
- Requirement that an applicant affix a photograph to his employment form after interview but before hiring, or at his option.
- Inquiry into whether an applicant's parents or spouse are naturalized or native-born citizens; the date when any of the above acquired citizenship.
- Requirement that applicant produce his naturalization papers or first papers.
- Inquiry into applicant's lineage, ancestry, national origin, descent, parentage or nationality, or the nationality of applicant's parents or spouse.
- Inquiry into language commonly used by applicant.
- Inquiry into how applicant acquired ability to read, write or speak a foreign language.
- Name of any relative of applicant, other than applicant's father and mother, husband or wife and minor dependent children. (This ruling prohibits such

inquiries as "maiden name of applicant's wife," "maiden name of applicant's mother," "names of applicant's relatives," and "names of applicant's close relatives.")

- Address of any relative of applicant, other than address (within the United States) of applicant's father and mother, husband or wife and minor children.
- Inquiry into an applicant's general military experience.
- Requirement that applicant list all clubs, societies and lodges to which he belongs.

RIA caution: In checking your own pre-employment questionnaires, you will want to consult the specific restrictions in your own state. While New York has been a pace-setter in non-discrimination, this list is merely illustrative. On specifics, not all states and jurisdictions agree. Some questions held unlawful in New York may be permitted elsewhere, while some inquiries deemed lawful in New York may be barred in other jurisdictions.

Note that once an applicant has been hired, most of the restraints which apply to pre-employment questionnaires and interviews can be safely ignored. For example, a company is perfectly within its rights to indicate on its personnel records the race, color, sex, and other characteristics of each of its employees. In fact, this type of information will be increasingly important in keeping track of progress in eliminating discrimination. On the other hand, even post-hiring interviewing should be carried out cautiously; there's always the danger that a new employee who fails during an initial trial period may subsequently charge that he was fired because of information extracted from him immediately after he was hired.

6. Should reasons for rejection be explained? Many executives are understandably reluctant to explain to any job applicant why he has been rejected. But it is dangerous to omit such feedback in dealing with a member of a minority group. It may be the only way to prevent him from feeling that he has been rejected because of his race, color, or creed, and thus be tempted to bring charges against your company.

But the delicacy of the feed-back problem is dramatically illustrated in one case where a Negro was rejected because he was far too qualified for the vacancy which existed. His reaction was "over-qualified or not, I want it!" Employers may find that, despite current progress, opportunities open to minority groups are still so limited that many Negroes may seriously apply for jobs that similarly-qualified whites would turn down.

In the more common case, however, an honest explanation of the reasons for rejection can often help the applicant correct obvious deficiencies and be successful in future applications. In any event, the company must be prepared to state its reasons should the rejected applicant file charges of discrimination. Inconsistency between the explanation given to the Commission and that previously offered to the job applicant may well count against the company's good faith.

Pay policy and working conditions

There is practically unanimous agreement on the desirability of special indoctrination and placement when introducing the first individual into a formerly "homogeneous" work group. His acceptance will be made easier if he is put into a job for which he very obviously is fully qualified; if he steps into a vacancy which opened up naturally so that there can be no suspicion that a "place" was especially created for him; and finally, if he can be put under a foreman or other supervisor who is sympathetic to the Civil Rights Act and willing to apply it on the job.

But beyond these general rules, every company will face some practical questions regarding its over-all personnel policy and practices. The Congressional debate which preceded passage of the Civil Rights Law provides some guidance as to what changes, if any, are required by the broad prohibition of the Act. Until such time as official government regulations are issued, the following are the best available answers to some of these key questions:

1. Is pay policy likely to be challenged? Despite the fact that pay is one of the most important "conditions of employment," few difficult questions should arise in interpreting the Civil Rights Law in this area. It would obviously be illegal to maintain different pay scales for colored and white, or to pay a member of a minority group less than a white worker gets for doing the same job. However, it is generally acknowledged that since Negroes and other minority groups are still more heavily represented in lower level jobs, their average pay now and for some time to come will lag behind that of white employees.

2. What if a Negro claims he is entitled to a "white man's wages"? If a job handled by colored workers at one pay rate is very similar to a job performed by whites at higher pay, the company will have a difficult time defending itself. Merely designating two jobs as different will be no protection for different pay scales if white and colored employees are, in fact, doing essentially identical work. With respect to discrimination based on sex, the Law specifically refers to the Equal Pay Act for clarification of questions which may arise. The Equal Pay Act will probably also provide clarification with respect to other definitions of discrimination.

3. What if a job is predominantly handled by Negroes in one of our plants, and whites in another? The Congressional debate made it clear that Congress intended to permit different pay scales to continue in different localities, even if this meant that, for example, a Negro employed in a plant in a rural community would receive a lower wage for the same job that a white worker in a central city installation where all wages are higher. If the purpose or intention of such an arrangement is discriminatory, however, it would be illegal.

4. What about the effects of seniority systems and incentive pay? Some Members have pointed out that under many existing pay arrangements, Negroes and

other minorities may "never catch up" to the average pay of white workers. For instance, most pay scales reflect seniority. Thus, Negroes now being added to the work force obviously will be receiving less than white workers who have been with the company for some time.

All that the law requires, however, is that a Negro now being hired doesn't receive any less than a comparable white worker joining the company at the same time. The incidental results of a seniority system are perfectly legal. Similarly, any bona fide system of pay based on differences in performance will continue to be perfectly legal even if Negroes would, in effect, be taxed for their lack of past experience. So long as the minority group employee actually has less proficiency in the performance of a particular task, he may be paid less than his more experienced and more efficient white co-workers. The only test to be applied is whether there's a discrimination based on a man's color or race rather than on his performance.

5. May we maintain separate seniority lists for Negroes and other minority groups? The answer is unequivocally no -- even if the intent of the company would be to help minority groups by shielding them against layoffs, for example. These questions are most likely to arise because of union pressure rather than on the initiative of the company. In a much discussed decision in June '64, the National Labor Relations Board made it clear that a union which attempted to maintain two separate locals based on color automatically lost its legal rights to represent the workers. Similar vigorous action can be expected in the future against any union which interposes obstacles to a company's effort to operate with a single seniority list.

6. May we set aside certain facilities for use of whites only? In communities where segregation of the races has long been the rule, companies may be tempted to minimize resistance and resentment of white workers by maintaining separate facilities -- at least at first. Even where a company may be contemplating such compromises in order to ease the problem of the first Negro employees, it would be acting illegally under the Civil Rights Law. The Congressional debate made it very clear that the non-discrimination rule is to be applied to every aspect of the employment relationship and that it would specifically bar maintaining segregated facilities in lunchrooms, rest rooms, etc.

RIA caution: Note that the federal statute takes clear precedence over state and local law. No employer can use as his defense the fact that a local ordinance required him to maintain such facilities on a segregated basis.

Promotion and training opportunities

It is not at all uncommon to find that a company which did not intentionally discriminate in the past nevertheless has no Negroes in higher level supervisory

jobs today. Many such companies are concerned that this imbalance leaves them open to charges of discrimination.

Odds are that this fact alone would not be sufficient to sustain a charge of discrimination. But, the fact that Negroes or other minority groups are only represented in the lowest paid jobs might well become one bit of evidence to be considered if a charge of discrimination is leveled against the company. The underlying question is whether promotion opportunities are available at all to minority groups. In some companies where Negroes have been employed for some time, they have never been seriously considered for promotion to higher jobs and consequently they have long since ceased trying for such promotion. Such practices will now be illegal.

The fact is, of course, that among minority groups the number qualified for higher level jobs will continue to be limited for some time to come. For this reason alone, most companies will want to make every effort to use the skills of those already employed. An updating of personnel records may turn up untapped skills. Many Negroes, conscious of the limited opportunities available to them, have often not even bothered giving all of the data on their background on their initial application.

Government contractors may be required, under the Equal Opportunity Order, to list the number of promotions which occurred and the number of members of minority groups as against the number of whites who were actually promoted. If it becomes clear that non-whites have consistently lost out in the competition with whites, the contractor is then asked to check into the reasons and to do what he can to correct the conditions. This procedure may be used as a model by all employers in determining whether discrimination in promotion exists.

In some cases, the fault may indeed lie with the company itself. For example, where a Negro is not loaned out to other departments where he can learn the skills necessary to qualify for promotion, the company would presumably be expected to give specific instructions to its foremen and other supervisors to make sure that Negroes and other minority groups are as frequently given such a chance to learn additional skills as are their white co-workers. Arbitrators have found employers guilty of unfair labor practices where Negro employees were not given job assignments where they could gain experience for higher paying jobs.

But in many more cases, the lack of qualifications for promotion is part of the unhappy result of years of discrimination and cannot be expected to be corrected overnight. Certainly, in most cases, the individual company is not even equipped to overcome such deficiencies. More and more, companies are getting together on a community basis to provide the training which Negroes need to equip themselves for promotion. One particularly impressive recent illustration is a border state city where such a joint effort is helping to upgrade the skills of dozens of

workers, both Negro and white: the local school system provides the physical facilities, industry many of the instructors, the local Human Relations Council the sponsorship and active promotion under the slogan "Learn More -- Earn More."

In other communities, individual companies have taken the lead in correcting deficiencies of education and training. To pick some examples at random, a predominantly Negro high school in a Southern community was persuaded to hire its first shorthand teacher so that its graduates could qualify for steno/typist positions which are beginning to become available to them. Under the leadership of industry, a Texas city has recently dropped racially based admission barriers in its public school vocational classes. This has resulted in an increase in the number of non-whites qualified for higher level industrial assignments. In still other communities, company representatives were able to substantially increase the number and quality of vocational school graduates by working more closely with their local school systems. A visit to local schools frequently shows equipment which is sadly out of date and instructional staffs which are unfamiliar with the methods and needs of modern industry. To correct such deficiencies, companies have started to provide more modern equipment as well as to offer vocational school teachers additional training in their own facilities.

The union's role

Unions are subject to the same restrictions as employers, under the Civil Rights Law. But the fact is that, in the past, many instances of discrimination within a company have been a result of union pressure. Unions have already been scored -- by the courts, the National Labor Relations Board and arbitrators -- for discriminating against members of minority groups. The NLRB has made it clear that it intends to use its full powers against racial discrimination.

Point is, employers will find themselves equally guilty of unfair labor practices if they enter into agreements with a union to discriminate -- either against or in favor of minority groups. Note that although the Civil Rights Law has not yet gone into full effect, the following practices have already been found "unfair labor practices" under the Taft-Hartley Law:

- An agreement between company and union to allocate work on the basis of race: one Negro for every three whites.

- Picketing to persuade an employer to replace white quits with Negroes until the proportion of Negro clerks to white clerks approximated the proportion of Negro to white customers.

- Picketing to persuade an employer to fire a white employee and replace him with a Negro.

• An informal understanding between company and union that promotions to better paying jobs would go to whites only, in disregard of Negroes' qualifications and seniority.

• An agreement between company and union to strip Negroes of seniority.

• A preferential father-son apprenticeship training system which, in effect, barred Negroes from union membership.

Best bet, if your union brings pressure for a job quota setup, discrimination in hiring, firing or promotion -- or even discrimination in reverse -- is to stand firm and refuse to be a party. Remind the union that the penalty for such discrimination is loss of Taft-Hartley protection -- which means loss of certification -- in addition to involvement in Civil Rights charges.

Double-check supervisory compliance

The importance of your supervisory and middle management group, in connection with enforcement of non-discrimination, cannot be over-emphasized. In some cases, there may be honest misunderstanding of their role; just as frequently, however, you may discover some foot-dragging in carrying out your announced policy.

Special meetings at the supervisory level will be of some help. Beyond that, you may want to check periodically to be certain that the full spirit of non-discrimination is being carried out. Here are some situations where middle management definitions of "discrimination" were not strict enough to meet the requirements of the Law:

• Bunching job categories. The management of a large corporation was startled to learn from a review under Executive Order 10925 that a number of its departmental managers were hiding their nonconformance with company policy by lumping certain job categories, regardless of departments in which they were located. While this danger is not likely to exist in smaller companies, physical segregation of non-whites who technically belong to the same department may nevertheless present similar dangers.

• Demanding unreasonable qualifications. In listing the minimum requirements for a job opening in his department, a foreman stated that the applicant must live within a close radius of the plant so as to be available on call in case of emergencies. In effect, this ruled out Negro applicants, since the prescribed residential area was exclusively white. Actually, the nature of the job was such that while close proximity might be convenient, it could not truly be called essential. Thus, if the company's personnel department were to carry out the foreman's instructions, it could be charged with discrimination.

Similarly, setting a promotion requirement of "10 years of merchandising experience" - which no Negro could possibly have because of past discrimination - might also involve you in trouble if the job actually does not require such a background of experience.

• Avoiding insurance headaches. Car insurance rates are higher for Negroes than for whites in some states, because of actual differences in risk experience. However, a sales manager would be guilty of discrimination if he refused to consider a Negro salesman for a job in such a state, on the ground that company costs would be higher than for a white salesman. Some question has already arisen as to the possible effect of substantial numbers of Negro employees on group insurance rates. While there is no indication that insurance premiums would be affected, discrimination in hiring or promotion of qualified Negroes on this basis would undoubtedly be held illegal.

• Creating Negro "islands." Another hazard, illustrated in the experience of companies operating under state statutes or the Executive Order is that management so completely concentrates on introducing a few minority group members into formerly all white departments that they completely overlook the continued existence of all or predominantly Negro work groups. Some supervisors tend to perpetuate the status quo. A determined management effort and some special incentives may be required to attract white applicants into predominantly Negro jobs and to break through the existing biases.

Consider, for example, combining two departments such as a janitorial crew and a maintenance crew. Reexamine job descriptions and see if it is possible to assign some maintenance jobs to lower level porters. This would not only effectively break through your Negro "ghetto," but, by exposing Negroes to jobs with higher skills, make it realistically possible for them to move up to higher paying jobs. But here, too, supervisory cooperation is crucial. Get behind your supervisors and let them know their training efforts are noticed.

Exemptions and exceptions

The Law provides for certain reasonable exceptions. For example, where religion, sex or national origin is a bona fide occupational qualification, discrimination is not illegal. Presumably a Chinese restaurant would not be required to hire French waiters, nor would a men's Turkish bath be required to hire Swedish masseuses. But race may never be a "bona fide occupational qualification."

In addition to employers and labor unions with less than 25 employees or members respectively, certain other exemptions are specifically provided:

• The federal government or corporations wholly owned by the government

of the United States. (The federal government, of course, has its own policy for equal employment opportunity.)

- States and their political subdivisions.

- A bona fide private membership club other than a labor organization which is exempt from taxation under Section 501 of the Internal Revenue Code.

- Indian tribes.

- Employees of a school, college, university or other institution of learning, owned, supported, or managed by a particular religion or religious group, and directed towards the propagation of a particular religion.

- Individuals employed by an educational institution to perform educational activities.

- Individuals employed by a religious corporation, association, or society to carry on religious activities.

- Aliens employed outside any state.

- Members of the Communist Party or other organization designated by the Subversive Activities Control Board are not entitled to protection of the Civil Rights Law.

- Where national security is involved, an individual who has not received security clearance is not entitled to the protection of the Civil Rights Act.

- Where national origin, sex, or religion is a bona fide occupational qualification necessary to the purpose of the business.

- Discrimination in reverse is permitted in the case of businesses on or near an Indian reservation who have a publicly announced employment practice to give preferential treatment to Indians. (This particular exemption has already been challenged by the United Mine Workers.)

How the Law will be administered

The chief purpose of the Civil Rights Law is to win equal treatment for those who in the past may have been discriminated against or refused service, rather than to punish those who have discriminated. Accordingly, much of its enforcement, at first at least, will aim to bring about voluntary compliance, giving state and local authorities first crack before bringing federal power to bear.

For example, a Community Relations Service, established under the Civil Rights Act and operating as part of the Department of Commerce, will play an important part in the area of public accommodations. Operating confidentially and without publicity, it is to provide conciliation services in any argument arising under the law and conduct hearings where necessary.

Similarly, in the area of employment, much of the burden of ensuring initial compliance with the Act will rest with a five-man Equal Employment Opportunity Commission appointed by the President. Its work at first will mainly focus on cooperating with state, local and other agencies and in providing conciliation services. It has no authority to bring suits. However, the Commission may recommend that the Attorney General intervene in civil suits or start a suit of his own. Also, while engaged in an investigation, the Commission may demand access to records, examine witnesses under oath and require that documentary evidence be presented. Such demands are enforceable by court order.

Posting and record keeping

Every company subject to the Employment Section of the Civil Rights Act will be required to post conspicuously notices containing excerpts or summaries of the Law. Such notices will be prepared or approved by the new Equal Opportunities Commission. Posting will also be required of labor unions and employment agencies. Willful violations will carry a fine of up to $100 per offense.

As for record keeping, it will be in the best interest of every company to keep full evidence of its non-discriminatory practices. In addition, the Commission is empowered to require all employers to keep records and to make reports on their employment practices in general, and their training and apprentice programs in particular. The Commission will probably issue orders to this effect before July 2, '65. Note, however, that businesses which already operate under a state fair employment law will, at most, be asked to add certain notations to their present records. Government contractors under Presidential Order 10925 will be excused from filing any additional reports. (Officers and employees of the Commission must keep all data reaching them confidential at the penalty of $1,000 and jail of up to one year.)

How enforcement will work

If an individual believes that he has been discriminated against because of race, color, religion, sex or national origin, he or she may bring written charges before the Equal Employment Opportunity Commission within 90 days. If an individual is reluctant to do so for fear of reprisals from his employer or union, one of the Commissioners will file the charges on his behalf.

Where there is a fair employment law of a state or local political sub-

division, the complaint must first go to the local agency, which will have 60 days in which to act. If the local agency doesn't take action or the complainant is not satisfied with its ruling, the Federal Commission will take over.

The Commission's effort, after due investigation, will first aim at winning voluntary compliance by conciliation and persuasion. If it fails (in 30 days which may be extended to 60), the aggrieved individual will be free to sue in a federal district court. In fact, he may bring suit even if the Commission has failed to find that his initial complaint had merit.

The Attorney General may intervene in any such case. He may even start court action himself if he believes that a person or group of persons (a whole community, for example) is engaged in a "pattern or practice of resistance" to the equal employment opportunity provisions. If he certifies a case to be of general importance, it will be heard by a special three-judge court, whose verdict can then be appealed directly to the Supreme Court.

Penalties. If a court finds an employer guilty of intentional discrimination, it may order an immediate injunction against such discrimination. It may also order that the aggrieved individual be hired or reinstated, possibly with back pay from the day when the discrimination occurred. Failure to comply with a court order in such a proceeding may bring charges of contempt. Where the charge involves criminal contempt, the accused may ask for trial by jury but faces a maximum fine of up to $1,000 and imprisonment of up to six months.

Patterns set by "Public Accommodation" compliance

Some indication of the attitude of the federal government on fair employment may be inferred from experience under the so-called Public Accommodations Section of Title II of the Civil Rights Law, which became effective immediately, on July 2, 1964. Briefly, this section provides that all persons be given "full and equal enjoyment" of the goods, services and facilities offered in places of public accommodation and it prohibits discrimination or segregation on the basis of race, color, religion, or national origin.

For the most part, there were fewer problems when the law went into effect than had been anticipated. Success has been attributed to two factors:

- Business took the initiative, prepared the climate before the law was enacted, recognizing that what's bad for the community is bad for business.

- Federal government representatives checked compliance indirectly, kept largely out of sight, and left things to the local authorities. The role of the Community Relations Service here is typical of government attitude toward Civil Rights enforcement in general. Hope is that problems can be solved locally and informally

before a U. S. attorney gets into the situation. Aim is to settle trouble before it starts.

Businessmen can turn to the Community Relations Service for advice, information, guidance or mediation -- or they can ignore it if they wish. CRS has no power to force itself upon any company, although the courts may refer cases to it.

As under the Employment Section, any individual who feels that he has either been discriminated against or that facilities have been made available to him on a segregated basis only, may go to court seeking an injunction, restraining order, or other remedy designed to win him equal treatment. Where there is a state or local law which also prohibits discrimination in public accommodations, the appropriate authority will be notified of the alleged discrimination and will have 30 days in which to deal with the case before federal authorities take over. Even in the absence of a state or local law, the court may then refer the matter to the Community Relations Service and delay court proceedings for up to 120 days if there is a reasonable expectation that the Service may succeed in getting voluntary compliance.

What about other fair employment laws?

Inevitably there will be a great deal of overlap between existing local, state and federal rules on fair employment. One thing is clear: Government contractors who operate under the more comprehensive requirements of Executive Order 10925 will continue to do so, except where the new Civil Rights Law imposes a new obligation (such as non-discrimination based on sex).

As for state and local laws, much will depend on how their coverage and enforcement compare with the new federal statute. Generally speaking, the federal authorities will always try to give their state or local counterparts first crack at any case that may arise in their jurisdiction. The mere existence of the new federal law will have two important effects: some states without fair employment statutes of their own will now pass them, in order to ward off federal intervention; and many states that already have such laws on the books will probably enforce them more strictly. Thus, all momentum will be behind keeping control in local hands. For this reason it will be important for every employer to recheck the fair employment laws that exist in every locality in which he operates. Many of these statutes differ as to coverage, types of discrimination they prohibit. Thus familiarity with each local law will be a must.