



It's What We Do.

# HR Role & Regulatory Compliance Fundamentals

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Human Resources Elements

Hire ❖ Develop ❖ Retain

# Legal & Regulatory Compliance

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## The Role of HR in the Organization

The role HR plays in a company depends largely on these four factors:

- The type of company
- The size of the company in terms of number of employees
- The culture of the company
- The number, skill and expertise of HR incumbent(s)

Generally, HR plays five major roles in the organization:

### **Advisory**

- As a staff function.
- Role and responsibility is to advise.
- Source of power comes from the credibility developed as result of expertise.

In the advisory or counseling role, HR personnel are perceived as internal consultants who gather information, diagnose problems, prescribe solutions, and offer assistance and guidance in resolving human resources problems. This relationship between line and staff is similar to that which exists between a professional consultant and a client. It is the responsibility of the HR manager to give advice regarding staffing, performance evaluation, training programs, and job redesign. In this situation, the HR department provides input that assists line managers in making good business decisions.

Where do your responsibilities lie in the advisory area?

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**Service**

- As an operating department.
- Provides service to the organization, its employees and the public.
- As a service function, HR has diverse customers with varying agendas.

In the service role, staff personnel perform activities that can be provided more effectively through a centralized staff than through the independent efforts of several different units. These activities are a direct service for line management or for other staff departments. Recruiting, orientation training, record keeping and reporting duties are examples of the HR department's service role.

Where do your responsibilities lie in the service area? Who are your customers?

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**Control**

- Control mechanism in the organization through the establishment of policies and procedures.

The HR department is required to control certain important policies and functions within the organization. This staff role is sometimes called "functional authority." In performing this role, the HR department establishes policies and procedures and monitors compliance with them. In exercising this role, the HR staff members are perceived as representatives or agents of top management. Because of legislation, the control role has become increasingly important in the areas of safety, equal employment opportunity, labor relations, and compensation.

What are your responsibilities in the control area?

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## Change Agent

- Lead in planning for and bringing about progressive change.

HR managers fill this role when they are supervising or guiding, an organizational development intervention. Because HR managers are members of the organization, they are called internal change agents. They have the advantage of being familiar with the organization and its personnel and can develop the long-term relationship and feeling of trust needed for successful change. However, sometimes HR managers who assume the role of change agent are seen as representatives of management who are interested in the good of the company . . . not the good of the workers.

How does this role apply to you?

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## Strategic Business Partner

The dynamic environments an organization faces require that HR play a major role in strategic planning. The HR manager must be knowledgeable about business in general as well as the industry in which s/he operates. HR knowledge alone is insufficient for HR to fulfill this important contemporary role. The question facing the HR manager is "how to get invited to the strategic party," and "how to make an impact at the party."

Organizations often view HR from an operational perspective alone, not from the strategic perspective. However, significant change has been made in this area in the last ten years, due to:

- a realization of the importance human resources plays in the organization
- an increase in professionalism and credibility of the HR practitioners, and
- HR functions better aligning themselves with line functions.

Many organizations are coming to the realization that a skilled HR function is like oxygen. You may not stop to focus on the fact that it's there for you, but you can't survive without it.





## The Types of HR Practitioners

HR "types" come in four varieties:

### **Generalist**

This is a person responsible for (and knowledgeable in) a variety of activities in more than one HR specialty area, such as staffing, training, compensation, employee/labor relations, safety, etc. A bona fide generalist is involved in design, administration and maintenance functions.

Typical HR generalist titles include: HR Director, HR Manager, HR Generalist, VP of Human Resources, CHRO

### **Specialist**

This is a person with an in-depth knowledge or expertise in one HR specialty area. The individual is equipped to design systems and processes, and to advise management in area of expertise. S/he may also perform maintenance in area of specialty.

Typical specialist titles include: Compensation Analyst, Safety Manager, Labor Relations Manager, HRIS Analyst

### **Administrator**

Generally, this is a person whose focus is predominantly on accomplishment of tasks and maintenance functions in HR.

Typical titles may include: Benefits Administrator, HR Representative, HR Administrator

### **Clerical or Support**

This individual is focused on maintaining the myriad of required records, processing claims, relaying information on policies and procedures. May also pick up tasks involving payroll processing, employee events, and benefits. Provides general assistance and support to the activities and mission of the department.

The typical title for a clerical or support position might be HR Assistant, Payroll Assistant



# Human Resource Functions and Responsibilities

Below is a list of functions and activities commonly associated with human resource departments.

## **Employment and Recruiting**

- Employment interviews
- Recruiting (other than college recruiting)
- Temporary labor coordination
- Pre-employment testing (except drug tests)
- College recruiting

## **Training and Development**

- Orientation of new employees
- Supervisory training/management development
- Performance appraisal, management
- Performance appraisal, non-management
- Skills training, non-management
- Tuition aid/scholarships
- Career planning/development
- Productivity/quality enhancement programs

## **Compensation**

- Wage/salary administration
- Job descriptions
- Job evaluation
- Payroll administration
- Job analysis
- Executive compensation
- Incentive pay plans



### **Benefits**

- Vacation/leave policies and administration
- Insurance benefits administration
- Unemployment compensation
- Pension/retirement plan administration
- Flexible spending account administration
- Cafeteria benefits plan administration
- Profit sharing plan administration
- Stock plan administration

### **Employee Services**

- Recreation/social programs
- Employee assistance plan/counseling
- Relocation services
- Pre-retirement counseling/retirement planning
- Outplacement services

### **Employee and Community Relations**

- Disciplinary procedures
- Complaint procedures
- Exit interviews
- Award/recognition programs
- EEO compliance/affirmative action programs
- Employee communications/publications
- Community relations/contribution programs
- Suggestion systems
- Attitude surveys
- Union/labor relations

### **Personnel Records**

- Personnel recordkeeping
- Promotion/transfer/separation processing
- Human resource information systems



### **Health and Safety**

- Workers' compensation administration
- Safety training
- Safety inspections/OSHA compliance
- Drug testing
- Health/wellness program

### **Strategic Planning**

- Human resource forecasting/planning
- Organization development
- Mergers and acquisitions
- International personnel/HR administration

### **HR Information Systems (HRIS)**

- Applicant Tracking System
- Payroll System
- Employee Self-Service
- Manager Self-Service
- Learning Management System
- Performance Management System
- Employee Information
- Benefits/Onboarding System
- Time & Attendance System
- Compensation Planning System
- HR Analytics



## Human Resources Vision and Ground Rules

International Paper has developed a Human Resources Vision Statement and set of Ground Rules to help guide the many decisions to be made and activities to be undertaken by its HR staff members. These core principles may help you chart your course in this complex field. (Provided courtesy of Employers Resource Association)

### **Vision**

Our customers acknowledge us as a world-class team of professionals in a great company. They value our participation in achieving business objectives.

We have a challenging and rewarding environment in which people realize their full potential.

We support each other professionally and personally. We communicate openly and honestly. We enjoy working together.

People are proud to be a part of our team.

### **Ground Rules**

I take 100% responsibility.

I manage by agreement.

I am open, honest and supporting.

I listen for understanding.

I avoid no issue.

I deal directly with the person with whom I have an issue.

I offer a possible solution when I criticize.

When you fail, I fail.

We have fun together.



## Overview of Primary Legal & Regulatory Requirements

### What is the impact on you and what you do?

Familiarity with federal and state laws is the job of top management and the attorney on staff, isn't it? But, the human resource practitioner also must gain a working knowledge of this complex information.

With what types of activities, responsibilities, and tasks are you (or your company) involved that may be impacted by some law?

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.



## Which federal laws apply?

These laws generally apply to all employers regardless of the number of employees:

- Occupational Safety and Health Act (OSHA)
- Employee Right-to-Know Laws (HAZCOM/HAZMAT)
- Fair Labor Standards Act
- Equal Pay Act
- Federal Income Tax Withholding
- Federal Insurance Contributions Act (FICA)
- Federal Unemployment Tax Act (FUTA)
- Immigration Reform and Control Act (IRCA)
- Consumer Credit Protection Act (CCPA)
- Fair Credit Reporting Act (FCRA)
- National Labor Relations Act (NLRA)
- Employee Polygraph Protection Act (EPPA)
- Employee protection (whistleblower) provisions of various environmental acts
- Uniformed Services Employment and Reemployment Rights Act of 1994

These federal laws apply to certain employers who have government contracts and/or a minimum number of employees:

	<u># of Employees</u>
• Americans with Disabilities Act (ADA)	15
• Title VII of/and the Civil Rights Act (CRA)**	15
• Age Discrimination in Employment Act (ADEA)	20
• Consolidated Omnibus Benefits Reconciliation Act (COBRA)	20
• Drug-free Workplace Act***	
• Executive Order 11246 (Affirmative Action)*	50
• Family and Medical Leave Act (FMLA)	50
• Vietnam Veterans Readjustment Assistance Act of 1998***	
• Rehabilitation Act of 1973*	50
• Worker Adjustment and Retraining Notification Act (WARN)	100

\*Federal contractors or sub-contractors, with one or more contracts of \$50K per year must prepare a written Affirmative Action Plan.

\*\*Employers with 100 or more employees are required to file form EEO-1 annually.

\*\*\*Federal contractors with contracts exceeding \$25K per year.



## Employment at Will

Employment at will is a common-law principle stating that employers have the right to hire, fire, demote, and promote whomever they choose for any reason unless there is a law or contract to the contrary.

- Public policy. Example: jury duty, commit perjury
- Express oral contract. Example: job promises
- Implied contract. Example: employee handbook outlining steps to progressive discipline
- Implied covenant. Example: termination before retirement

## Types of Damages Awarded in Lawsuits

**Compensatory Damages:** These are payments designed to compensate the worker for emotional pain, suffering, and mental anguish.

**Punitive Damages:** These are payments above compensatory damages serving to punish an employer for wrongdoing. Punitive damages can be awarded only if the employer acted with malice or reckless indifference.





## Federal Employment Laws

### **Title VII of The Civil Rights Act of 1964**

—as amended by the Equal Employment Opportunities Act of 1972

Enforcement Agency: Equal Employment Opportunity Commission and Justice Department

Coverage: Employers who employ 15 or more employees for each working day of the week, for twenty or more weeks in a calendar year.

#### **Overview:**

- An employer is prohibited from failing or refusing to hire, discharging, or otherwise discriminating against, any individual with respect to compensation, terms, conditions, or privileges of employment or limiting, segregating, or classifying any employees in a way that would deprive or tend to deprive any individual of employment opportunity or otherwise adversely affect the individual's status as an employee due to race, color, religion, sex, or national origin. Employer must be familiar with the state as it may override if more restrictive.

#### **Two types of unlawful discrimination:**

**Disparate Treatment:** When an employer directly treats some employees unfairly because of their race, color, religion, sex, or national origin. This involves overt and intentional acts of discrimination. Occurs when the company treats one person differently from others on the basis of some impermissible characteristic.

**Disparate Impact:** When an employer's policy or practice is facially neutral, but has the practical and statistical effect of excluding or depriving classes of "protected" persons from employment opportunities. May be unintentional. Any employment requirements or practices that operate to exclude members of protected classes in disproportionate numbers, AND which cannot be shown to be specifically required for job performance.



## The Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Fair Pay Act of 2009 (Pub.L.111-2,S.181) is a federal statute in the United States that was the first bill signed into law by President Barack Obama on January 29, 2009. The Act amends the Civil Rights Act of 1964 stating that the 180 – day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action.

## Civil Rights Act of 1991

Signed into law on November 21, 1991, this act provides additional remedies to deter unlawful harassment and intentional discrimination in the workplace.

In particular, this act, provided:

That plaintiffs only need to show that protected class status *played some role in their treatment*. Therefore for employers, this requirement means that protected class status *must play no role* in their employment practices

Plaintiffs may now receive both compensatory and punitive damages.

One provision relates to how US laws on EEO are applied globally.

## Equal Pay Act of 1963

—Section 6(d) of the Fair Labor Standards Act

**Enforcement Agency:** EEOC

**Coverage:** All employers in interstate commerce

**Overview:**

- Prohibits employers from discriminating against employees covered by the minimum wage provisions of the FLSA by paying lower wages to employees of one sex than the rate paid employees of the opposite sex for equal work in the same establishment on jobs that *require equal skill, effort, and responsibility* and are *performed under similar working conditions*.
- Variations in wages may be based on four exceptions:
  1. Seniority systems
  2. Merit systems
  3. Systems that measures earnings by quantity or quality of production
  4. Any factor other than sex

**Penalties:** Back pay (double pay for willful violations) plus criminal penalties. Also includes payment of reasonable attorneys' fees.



## **Pregnancy Discrimination Act of 1978**

**Enforcement Agency:** EEOC

**Coverage:** Same as Title VII

**Overview:**

This Act was added to Title VII in 1978.

- Employers may not terminate or refuse to hire or to promote a female employee on the basis of pregnancy, childbirth, or because she has had an abortion.
- Anything prohibited on the basis of gender in Title VII is then prohibited in this Act on the basis of pregnancy or related conditions.
- Pregnant women are entitled to the same treatment in the workplace as non-pregnant women or men. (Pregnancy is also an area protected under the Family and Medical Leave Act.)
- Requiring pregnant women to take leave must be related to their inability to do the job. When leave must be taken, the employer must hold open her job for her return on the same basis as for any other sick or disabled worker.

## **Age Discrimination in Employment Act of 1967**

**Enforcement Agency:** EEOC

**Coverage:** All employers engaged in interstate commerce with 20 employees or more.

**Overview:**

- Prohibits age discrimination in employment against employees and applicants for employment who are 40 years of age or older.
- Employers are forbidden to fail or refuse to hire, to discharge, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individuals' age; also prohibited to limit, segregate, or classify an employee in any way that deprives the employee of job opportunities or adversely affects employment status because of age.
- *As amended by the Older Worker Benefit Protection Act of 1990:* allows an employer to obtain a waiver from an employee regarding his potential claim of age discrimination, usually in lieu of an increased severance package at separation.

**Penalties:** Reinstatement with back pay (double pay for willful violations), and fringe benefits plus reasonable attorneys' fees.



## **Age Discrimination in Employment Act of 1996**

### **Overview:**

Amends ADEA to permanently permit state and local governments to set mandatory retirement ages for public safety officers, including police and firefighters, retroactive to 12/31/93.

## **Americans with Disabilities Act of 1990**

### **Enforcement Agency:**

Part of the Act is enforced by the EEOC, part by the Department of Justice for Federal level enforcement. DOL coordinates the enforcement effort with EEOC and DOJ in conjunction with the Rehabilitation Act of 1973.

### **Overview:**

- Prohibits discrimination against qualified individuals with disabilities in employment, public services and transportation, public accommodations, and telecommunications services.
- Title I, the employment section, covers employers with 15 or more employees.
- "Reasonable accommodations" under Title I may include the reconstruction or remodeling of the workplace to remove architectural or communication barriers set forth in Title III.
- Prohibits employers from retaliating against an applicant or employee for asserting his or her rights under ADA.
- Makes it unlawful to discriminate against an applicant or employee, whether disabled or not, because of the individual's family, business, social or other relationship or association with an individual with a disability.
- Requires employers to set out in writing the "essential functions" of each job, have the essential functions list available in the interview, and to give full consideration to any individual with a disability who is qualified to perform those functions with or without reasonable accommodation.
- Limits physical exams unless an offer of employment has already been extended to the applicant.



## **The ADA was expanded under the American with Disabilities Act Amendments Act of 2009 (ADAAA) effective 1/1/2009**

The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- expands the definition of "major life activities" by including two non-exhaustive lists:
  1. the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
  2. the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- changes the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.



## Executive Order 11246

**Enforcement Agency:** Office of Federal Contract Compliance Programs (OFCCP)

**Overview:**

- Requires all contracts by employers with government contracts or subcontracts of more than \$10,000 or projects financed in whole or part by the federal government to contain a clause against discrimination because of race, color, religion, sex, or national origin.
- Revised Order No. 4, based on Executive Order 11246, requires contractors and subcontractors with 50 or more employees and \$50,000 or more of contracts to develop and administer a written Affirmative Action Program.
- Requires that all job openings be posted with the state employment service, except key executive positions, positions that will be filled internally, and positions lasting less than three days.

**Note:** Covered companies' managers and supervisors must be trained annually in Affirmative Action guidelines, and each manager is expected to be familiar with his or her department's goals and timetables.

## Rehabilitation Act of 1973

**Enforcement Agencies:** DOL and OFCCP

**Coverage:** Employers with government contracts or subcontracts in excess of \$10,000.

**Overview:**

- Section 501 requires the federal government as an employer to develop and implement affirmative action plans on behalf of disabled persons.
- Section 503 requires all federal contractors having federal contracts in excess of \$10,000 to take affirmative action to employ the disabled.
- Section 504 prohibits federally funded programs and government agencies from excluding from employment an otherwise qualified disabled individual solely by reason of his or her disability.
- For purposes of this Act, a protected individual has "a physical or mental impairment which substantially limits one or more of such person's major life activities".

**Note:** Employers with 50+ employees and contracts or subcontracts exceeding \$50,000 must prepare a separate written Affirmative Action Plan dealing with disabled individuals.



## **Vietnam Era Veterans' Readjustment Assistance Act of 1974**

**Enforcement Agency:** OFCCP

**Coverage:**

- Employers that have single contracts or subcontracts in the amount of \$25,000 or more with the federal government are required to take affirmative action to employ and to advance in employment qualified "special disabled veterans" and veterans of the Vietnam era.
- 1982 amendments require federal contractors and subcontractors to report annually (due 9/30) to the Secretary of Labor on the number of Vietnam era veterans employed in contractor's work force, the total number of new employees hired during contracting period, and the number of Vietnam era veterans hired during this same period. (VETS-100 report). Electronic filing is strongly encouraged by the government.

**Note:** Veterans of the Vietnam-era are persons who:(a) served on active duty for at least 180 days between 8/5/64 and 5/7/75, and who were discharged or released therefrom with other than a dishonorable discharge, or (b) were discharged or released from active duty for a service-connected disability if any part of such active duty was performed between the required dates. (Note: Veterans' Benefits Improvement Act of 1996 changed Vietnam-era to 2/28/61 – 5/7/75 IF person actually served in Vietnam.)

Visit the Federal Contractor Program homepage for FAQs at [www.dol.gov/vets/contractor/main.htm](http://www.dol.gov/vets/contractor/main.htm) or send email to [helpdesk@vets100.com](mailto:helpdesk@vets100.com) for information on the VETS-100 report.

## **Uniformed Services Employment and Reemployment Rights Act of 1994**

**Enforcement Agency:** U. S. Department of Labor, Office of Veterans' Re-employment Rights

**Coverage:** All employers in interstate commerce.

**Overview:**

- Reemployment rights must be extended to certain persons who have been absent from work because of "service in the uniformed services." List includes Army, Navy, Marine Corps, Air Force, Coast Guard, Reserves, National Guard, Public Health Service or any other category designed by the President in time of war or emergency.



- Covers voluntary and involuntary service, including active duty, active duty training (ADT), initial ADT, full-time National guard duty, absence from work for examination to determine fitness for any of the above.
- Excluded are those persons who were employed in positions that are "brief or non-recurrent and that cannot reasonably be expected to continue indefinitely or for a significant period."
- Requires employees to give advance notice to employers unless military necessity prevents it or it is otherwise impossible or unreasonable.
- Limits cumulative length of absence to five years. Excludes required training for reservists and National Guard that occurs monthly, and seven other conditions that create exceptions.
- Leave from work or reemployment can't be refused because company finds the situation unreasonable.
- To be entitled to reemployment, individual must be released with a discharge other than dishonorable, and report back to work (with supporting documentation of same) based on a pre-established table derived from duration of military service performed, need for fitness exam, and/or presence of a service-connected injury or illness.

**Re-employment:** Duty less than 31 days must return next scheduled workday following completion of service and up to 8 hours of travel time. Greater than 30 days, but less than 181 - 14 days to return. Duty longer than 180 days - 90 days to return.

## **Immigration Reform and Control Act of 1986**

The Immigration Reform and Control Act of 1986 amended the Immigration and Nationality Law. This law is set out in the United States Code of Federal Regulations (8 USC) with IRCA codified in sections 1324a and 1324b.

**Enforcement Agency:** Special Counsel's Office, U.S. Department of Justice

**Coverage:** All employers operating in the U.S.A.

### **Overview:**

- Requires employers to hire only U.S. citizens or aliens authorized to work in the United States
- All new employees must complete and sign an I-9 verification form that the company must retain for 3 years or one year after termination, whichever is later.
- Company must present form for inspection upon request to an Immigration and Naturalization Service or Department of Labor officer for all new hires after November 6, 1986.





- There is no requirement to verify status of employees hired before November 7, 1986 and no sanctions may be imposed for merely retaining an unauthorized alien hired before this same date.

**Penalties:** Fines can be several thousand dollars per form that is missing or completed with mistakes, per day. DOL auditors have been empowered to check these records during the course of their visits on unrelated business.

**Note:** For rehires within 3 years, a new form may be completed or information updated in Section 3.

## **Immigration Act of 1990**

**Note:** On November 29, 1990, the President signed into law the Immigration Act of 1990, which amended the Immigration and Nationality Act. You should be aware of several provisions in this law, which affect your responsibilities as an employer.

### **Overview:**

- An employer cannot request that an employee present more or different documents than are required (for the purpose of satisfying the employment eligibility verification requirements);
- An employer cannot refuse to honor documents, which on their face reasonably appear to be genuine and to relate to the person presenting them; and
- It is unlawful for anyone knowingly to engage in any of the following activities for the purpose of satisfying a requirement of the Act:

to forge, counterfeit, alter, or falsely make any document;

to use, attempt to use, possess, obtain, accept, or received any forged, counterfeit, altered, or falsely made document;

to use or attempt to use any document lawfully issued to a person other than the possessor (including a deceased individual); or

to accept or receive any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with the employment eligibility verification requirements.



## **Illegal Immigration Reform and Immigrant Responsibility Act of 1997**

### **Overview:**

Established a Basic Pilot/Employment Eligibility Verification Program which evolved into E-Verify.

On June 6, 2008, President George W. Bush signed an amendment to Executive Order 12989 requiring federal contractors to use E-Verify. As of September 8, 2009 employers with federal contractors or subcontracts that contain the Federal Acquisition Regulations (FAR) E-Verify clause are required to use E-Verify to determine the employment eligibility of 1) Employees performing direct, substantial work under those federal contracts and 2) New hires organization wide-regardless of whether they are working on a federal contract.

## **Jury Service and Selection Act of 1968**

**Enforcement Agency:** U.S. District Court

**Coverage:** All employers in interstate commerce

### **Overview:**

- Employers may not discharge, discriminate against or coerce any full-time employee for serving on a jury.
- Time off for jury duty must be treated as a leave of absence, and employees must be reinstated without loss of seniority, insurance or other benefits.
- Applicable pay practices are at the option of the employer.

**Penalties:** A Civil penalty of up to \$1,000 may be imposed and an injunction issued against employers who discharge or threaten an employee for serving on a federal jury.



## **Employee Polygraph Protection Act of 1988**

**Enforcement Agency:** U. S. Department of Labor, Wage and Hour Division

**Coverage:** Most employers with interstate commerce.

**Overview:**

- Prohibits employers from using lie detector tests either for pre-employment screening or during the course of employment.
- In some cases, use of polygraph testing is permitted if unauthorized removal of property is suspected.

**Penalties:** DOL Wage and Hour may bring court action and civil penalties up to \$10,000 against violators. Employee or job applicants may also bring their own court actions.

## **Genetic Information Nondiscrimination Act (GINA)**

**Enforcement Agency:** EEOC

**Coverage:** Private employers with 15 or more employees.

**Overview:**

- Prohibits health insurers from using genetic information to deny insurance coverage or determine premiums.
- Prohibits employers from making employment decisions based on an applicant or employee's genetic information and it requires employers to keep employee genetic information confidential.

## **Sarbanes-Oxley Act of 2002 (SOX)**

**Enforcement Agency:** Occupational Safety & Health Administration (OSHA)

**Coverage:** Generally only public companies.

**Overview:**

- Creates employee whistle-blower protection for employees who complain of, or provide information about, actions they believe to be shareholder fraud are protected from discrimination and retaliation.
- Requires companies to create procedures by which employees can report concerns about audits of accounting procedures.



## Federal Wage & Hour Laws

### Fair Labor Standards Act of 1938

—as amended in 1966, 1974, 1977, 1985, 1989, 1996 and 2004

**Enforcement Agency:** U.S. Department of Labor, Wage and Hour, and Public Contractors Division

#### Overview:

- Establishes federal minimum wage: currently \$7.25 per hour.
- States child labor laws. A person must be 18 years of age or older to be employed in a hazardous occupation and either 14 or 16 years of age for all others, depending upon the industry and occupation. Minors may be subject to limitations regarding the number of hours and the times they are permitted to work.
- Sets overtime standards. Employees covered by the Act are entitled to pay equal to 1 and 1/2 times the normal rate for all hours in excess of 40 worked per week.
- Provides exemptions from coverage of the Act or parts of the Act to employers entirely or to specific classes of employees.
- Includes rules on granting of compensatory time off for public entities.

**Statute of Limitations:** Claims must be filed within two years of employer's action. May go back three years for willful violation.

#### Impact and Penalties:

- Violations may result in civil and criminal actions against the employer. For overtime and minimum wage violations, employer must pay an amount equal to underpayments to employees PLUS an equal amount in liquidated damages PLUS reasonable attorneys' fees and costs for willful violation.
- May include a fine of up to \$10,000 (child labor law portion), and imprisonment up to six months, or both. Minimum wage violations may also result in \$1,000 penalty per violation. Civil suits to enforce wage liability must be brought within 2 years for non-willful violation and three years for willful violation.
- Exempt positions must be properly classified: executive, professional, administrative, outside sales, and certain computer professionals.
- Non-exempt positions can be hourly or salaried; positions that do not pass the tests for exempt status.
- Employers who contract with federal and state governments should be aware of additional wage-hour laws that may be applicable to them.



## Walsh-Healey Public Contracts Act

### Overview:

- Covered employers are those who have contracted with a government agency to manufacture or supply any goods in any amount exceeding \$10,000.
- Requires payment of prevailing minimum wage rates as set by Secretary of Labor for straight time hours, 1 and 1/2 times the basic rate for hours in excess of 40 per week, and payroll records must be maintained.
- Employers must maintain sanitary and non-hazardous working conditions.
- Employers may not hire minors under the age of sixteen.
- No non-exempt work may be done at home except by "handicapped" workers.
- Does NOT cover bona fide exempt employees.

**Impact of Violation:** May be barred from further contract awards for three years.

## Davis-Bacon Act

### Overview:

- Applies to laborers, mechanics and helpers in the construction of government buildings and public works costing more than \$2,000.
- Requires payment of at least the prevailing minimum wage, as set by the Secretary of Labor.
- Requires payment of overtime for time worked in excess of forty hours per week.

**Impact of Violation:** May be barred from further contract awards for three years.



## Service Contract Act

### Overview:

- Where government service contracts are valued at more than \$2,500, it requires payment of wages and benefits similar to those found to be prevailing locally or in a previously existing contract, but in no event less than the federal minimum wage under the FLSA, to employees engaged in performance of service contracts for government agencies.
- Specifically applies to government agencies.
- Secretary of Labor determines wage rates for different industries and particular classes of employees, but employer may request a particular exemption.

**Impact of Violation:** May be barred from further contract awards for three years.

**Enforcement:** The Wage and Hour Division of the Department of Labor is authorized to inspect records and gather information to enforce the wage-hour laws. Investigations occur in response to individual complaints or by spot checks on firms in industries with high rates of violations.

## Consumer Credit Protection Act, Title III

### Overview:

- States that the amount of wages subject to garnishment by the company may not exceed 25% of an employee's "disposable earnings" for any work week or the amount by which his disposable earnings are greater than 30 times the minimum wage, whichever is less.
- Prohibits employers from terminating or refusing to hire an employee or applicant for one single indebtedness.
- Covers all employees.

## Fair Credit Reporting Act

### Overview:

Requirements for employers utilizing consumer reports for employment purposes must:

- Make a clear written disclosure to employees or job applicants, in a document that consists "solely" of the disclosure, that a credit report may be obtained.
- Obtain written authorization from employees (or prospective employees) before obtaining the report.
- Provide a copy of the report and a summary of consumers' rights to the employee (or prospective employee) before taking any adverse action based on a credit report - e.g. terminating a candidate from the hiring pool.



## **Child Support Enforcement Amendment of 1984**

### **Overview:**

- Requires employers to withhold from employee's wages amounts determined to be due under support orders issued by a court or administrative body.
- Limit is 50% of "disposable" earnings for a person supporting a second family as well, and 60% for a person who is not.
- Employers may not discipline, discharge, or refuse to hire any individual because of a withholding order for child support.



## Federal Benefit Administration Laws

### Employee Retirement Income Security Act of 1974 (ERISA)

#### Overview:

- Requires health and welfare plan administrators to provide each plan participant and beneficiary with a summary description of the plan (SPD) and, if requested, a copy of the statements and schedules from the annual report.
- A welfare plan is defined as any plan, fund, or program established or maintained by an employer or an employee organization, or both, for purpose of providing, through insurance or otherwise, medical, surgical, or hospital benefits; sickness, disability, death, unemployment, or vacation benefits; apprenticeship or other training programs; day care centers; scholarship funds; or prepaid legal services. Here defined benefit plans are differentiated from defined contribution plans.
- Requires employers with qualified defined benefit or defined contribution plans to extend coverage of plan to any "otherwise qualified" employee who works 1000 or more hours in any calendar year.
- Plan administrators are also required to file specific reports (Form 5500) with the Secretary of Labor and the Internal Revenue Service.

### Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)

—as amended by the Revenue Reconciliation Act of 1989, and HIPAA of 1997

**Enforcement Agency:** DOL, Office of Labor-Management and Welfare Pension Reports

**Coverage:** Employers with 20 or more employees on at least 50% of its working days during the prior calendar year and who sponsor group health plans.

#### Overview:

- Employers must provide qualified beneficiaries of group health plans who would otherwise lose coverage as the result of a "qualifying event" the opportunity to elect continuation coverage. A qualified beneficiary is an employee and his or her spouse or dependent child who, on the day before a qualifying event, is covered under a group health plan subject to COBRA. HIPAA adds any child born to or placed for adoption with the covered employee during the COBRA coverage period.





Qualifying Event	Qualifying Beneficiary	Coverage Duration
Employee's death	Spouse and/or children	36 months
Termination of employment or reduction in hours (except "gross misconduct")	EE and covered dependent(s)	18 months**
Divorce or legal separation	Spouse or children losing coverage	36 months
EE entitled to Medicare	Spouse and/or children	36 months
Child not eligible dependent	The ineligible child	36 months

- Each covered employee and spouse must be notified of their right to elect continuation coverage, by mail, when they first enroll in the plan.
- Effective 11/1/96, all employers had to notify all qualified beneficiaries of the new HIPAA changes to COBRA rules.
- ER must notify Plan Administrator (may be your co.) within 30 days of the qualifying event. Plan Administrator must notify qualified beneficiary within 14 days.

\*\*This 18 month period may be extended for all qualified beneficiaries if certain conditions are met in cases where a qualified beneficiary is determined to be disabled for purposes of COBRA

**Penalties:** \$100 per day for each day of late notice non-compliance for each beneficiary. An excise tax of \$100 per day for each day of non-compliance for each qualified beneficiary who is harmed by the violation, with a maximum of \$200 per day for families.

- A beneficiary must notify the employer of a divorce, legal separation, or child ceasing to be a "dependent" within 60 days of occurrence. This triggers the employer's notice obligations.
- A qualified beneficiary must elect coverage within 60 days after the latter of date coverage terminates because of a qualifying event; or date notice is received from Plan Administrator. Payment is due within 45 days *after election*.

**Additional penalties:** An aggrieved individual may sue for equitable relief to make him or her whole. This can be very costly as the employer may be responsible for the qualified beneficiaries' medical bills incurred during the period that continuation coverage was available.



## Health Insurance Portability and Accountability Act of 1996 (HIPAA)

**Enforcement Agency:** DOL

**Coverage:** Companies sponsoring health plans, including self-insured plans that are exempt from state, but not federal, regulation. Effective 1/1/97 regardless of whether the qualifying event occurred before, on, or after that date.

### The “portability” portion of HIPAA:

- Limits the ability of a new employer plan to exclude coverage for preexisting conditions;
- Provides additional opportunities to enroll in a group health plan if you lose other coverage or experience certain life events;
- Prohibits discrimination against employees and their dependent family members based on any health factors they may have, including prior medical conditions, previous claims experience, and genetic information; and
- Guarantees that certain individuals will have access to, and can renew, individual health insurance policies.

Although HIPAA adds protections and makes it easier to switch jobs without fear of losing health coverage for a preexisting condition, the law has limitations. For instance, HIPAA:

- Does not require that employers offer health coverage;
- Does not guarantee that any conditions you now have (or have had in the past) are covered by your new employer's health plan; and
- Does not prohibit an employer from imposing a preexisting condition exclusion period if you have been treated for a condition during the past 6 months.

### The “privacy” portion of HIPAA:

The HIPAA Privacy Rule provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.

The Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities to use to assure the confidentiality, integrity, and availability of electronic protected health information.

**Penalties:** Plan participants and DOL may bring suit. IRS can impose tax of \$100 per day per person except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.



## **Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)**

The Department of Health and Human Services, the Department of Labor, and the Treasury Department have jointly issued new rules providing parity for employees enrolled in group health plans who need treatment for mental health or substance use disorders.

The rules implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The new law requires that any group health plan that includes mental health and substance use disorder benefits along with standard medical and surgical coverage must treat them equally in terms of out-of-pocket costs, benefit limits, and practices such as prior authorization and utilization review. These practices must be based on the same level of scientific evidence used by the insurer for medical and surgical benefits. For example, a plan may not apply separate deductibles for treatment related to mental health or substance use disorders and medical or surgical benefits—they must be calculated as one limit.

MHPAEA applies to employers with 50 or more workers whose group health plan chooses to offer mental health or substance use disorder benefits. The new rules are effective for plan years beginning on or after July 1, 2010.

MHPAEA greatly expands on an earlier law, the Mental Health Parity Act of 1996 which required parity only in aggregate lifetime and annual dollar limits between the categories of benefits and did not extend to substance use disorder benefits. The new law expands parity to include deductibles, co-payments, out-of-pocket expenses, co-insurance, covered hospital stays, and covered out-patient visits.

## **Newborns' and Mothers Health Protection Act—amends HIPAA, effective 1/1/98**

### **Overview:**

- Requires health plans offering maternity coverage to allow 48-hour post-delivery hospital stays after normal births and provide coverage for 96-hour stays for births by cesarean section.
- Prohibits insurers from offering incentive to mothers or providers to encourage shorter stays.

## **Family and Medical Leave Act of 1993 (FMLA)**

**Enforcement Agency:** DOL

### **Coverage and Overview:**

- The Family and Medical Leave Act (FMLA) requires private sector employers of 50 or more employees, and public agencies to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are "eligible" if they have worked for a covered employer



for at least twelve months (which don't have to be consecutive) for at least 1,250 hours, and if there are at least 50 employees within 75 surface miles. (50 employees includes part-time, temps from an agency, employees on disability leave as well as regular employees). Count of employees/miles is based on date leave is requested.

- An employer now has five business days to notify employee of eligibility. The employee only needs to verbally request leave, not FMLA. It's the employer's responsibility to obtain the necessary information to determine if the leave qualifies for FMLA leave.
- An employer must grant unpaid leave to an eligible employee for one or more of the following reasons:

for the care of the employee's child (birth, or placement for adoption or foster care);

for the care of the employee's spouse, son or daughter, or parent, who has a serious health condition; or,

for a serious health condition that makes the employee unable to perform one or more of their essential job functions.

- Leave may be taken on an intermittent basis if medically necessary.
- At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.
- Leave cannot be counted in "no fault" attendance policies and employees may not receive unfavorable performance evaluations due to FMLA protected absences. An employee may not be penalized under programs that reward perfect attendance or safety.
- The employer cannot compel someone on FMLA leave to return to "light duty" if s/he chooses not to, and a work-related compensable injury can be counted towards the twelve weeks. A company may run FMLA leave and workers' compensation leave concurrently.
- The employee should complete a medical certification form within 15 days of the employer's request.
- An employee should not be disciplined for absences, which are FMLA protected. An absence of even one hour may be FMLA qualifying and an employee is not required to expressly request FMLA leave. It is up to the company to determine if the leave qualifies.
- Time taken off work due to pregnancy complications can be counted against the 12 weeks of family and medical leave.



- A final rule effective on January 16, 2009, updates the FMLA regulations to implement new military family leave entitlements enacted under the National Defense Authorization Act for FY 2008.

**Example:** Sally (an employee) called in sick on a Monday. On Tuesday, Sally called in sick again, and stated that she had been examined by her doctor, who gave her a prescription and told her to not return to work until Friday. Sally received sick pay for the four days of absence but was assessed an attendance "point." Later, Sally is discharged for exceeding the allowable number of attendance points. She claims that she cannot be discharged because the four-day absence (which occurred six months ago) was protected by the FMLA. (*The DOL will agree!*)

- An employee who is unable to return to work at the end of FMLA leave *may* be entitled to additional accommodation under the ADA.

### **What is a “Serious Health Condition” according to the FMLA?**

A serious health condition under the Family and Medical Leave Act is an illness, injury, impairment, or physical or mental condition that involves one of the following:

- Inpatient Care

Inpatient care in a hospital, hospice or residential medical care facility.

Any period of incapacity or subsequent treatment in connection with the inpatient care.

### **More Than Three Days & Continuing Treatment**

- Incapacity lasting more than three consecutive calendar days that also involves two or more treatments by, or under supervision of, a health care provider.
- Incapacity lasting more than three consecutive calendar days that also involves one treatment by a health care provider followed by a regimen of continuing treatment. (Note: “Continuing treatment” may be prescription medication or therapy with specialized equipment. Over-the-counter medications, bed rest, fluid intake or exercise do not constitute “treatment” under the FMLA.)
- Any period of incapacity or subsequent treatment in connection with the above condition.

### **Prenatal Care/Pregnancy**

- Incapacity due to pregnancy (including morning sickness) or for prenatal care.

### **Chronic Conditions**

- Incapacity or treatment for a chronic serious health condition that (a) requires periodic visits for treatment by or under the direct supervision of a health care provider; (b) continues over an extended period of time, including recurring episodes of a single underlying condition; and c) may be episodic (e.g., asthma, diabetes, migraine headaches, and epilepsy).



### Permanent/Long Term Conditions

- Permanent or long term incapacity for which treatment may be ineffective and which requires the supervision of, but not necessarily treatment by, a health care provider (e.g., Alzheimer's, severe stroke, and terminal stages of disease).

### Multiple Treatments

- Absence to receive multiple treatments by or under the supervision, orders, or referral of a health care provider for restorative surgery after an accident or injury.
- Absence to receive multiple treatments by or under the supervision, orders, or referral of a health care provider for a condition that is likely to result in incapacity of more than three consecutive calendar days without medical intervention or treatment (e.g., chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).
- Any period of recovery relating to the above treatments.

**Note:** The following conditions/treatments have *generally not* been considered serious health conditions under the FMLA unless complications arise: routine physical and dental exams, common cold, flu, earaches, routine dental problems, upset stomach, minor ulcers, and headaches other than migraines.

### Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12 month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.



## FMLA Audit Checklist

The U.S. DOL has produced a checklist to help employers develop and implement proper FMLA procedures. Use this checklist to evaluate your company's current level of compliance. You are not required to use the checklist, but we believe you will find it helpful in preventing problems and achieving compliance with the FMLA. If you answer NO to any question, you may not be in compliance. To know what you should be doing, refer to the cited section of the regulations, Part 825.

**YES    NO**

**Eligibility**

- For leave request qualifying under FMLA, do we determine whether the employee meets the eligibility requirements? (825.110-111)
- Have we ever selected the method we'll use to determine the FMLA leave years? (825.200)

**Reasons for FMLA**

- Are we aware of the types of leave that qualify under FMLA? (825.112)
- Do we allow employees who want to take parental leave the opportunity to take the leave anytime within 12 months of the birth or adoption of a child? (825.201)

**Notification**

- Have we posted the FMLA poster in a location used by employees and applicants for employment? (825.301 & Appendix C)
- Does our employee handbook have information on FMLA rights and employee obligations? (825.301(a))
- If subject to a collective bargaining agreement, has it been updated to conform to the FMLA? If not, do we comply with the FMLA provisions nevertheless? (825.301(b)(1))
- Do we provide employees requesting leave with a written notice detailing the specific expectations and obligations of the employee? (825.301(b)(1))
- Do we begin counting leave against an employee's 12-week entitlement only after we have notified the employee that this will occur? (825.208(b)(1)-b(2)-(c))
- If we require the employee to provide medical certification, do we allow the employee at least 15 days to submit it? (825.305(b))
- Are we aware of the procedures that must be followed in the event we question the validity of the employee's medical certification? (825.307)



## Small Business Job Protection Act

(FLSA Provisions - P.L. 104-188)

### Overview of main provisions:

- 401(k) safe harbors, effective 1/1/97, provide plan exemption from non-discrimination rules if the plan meets certain requirements.
- Adoption assistance, effective 1/1/97, permits employees to exclude from income up to \$5,000 per child in employer-provided adoption assistance; \$6,000 for adopting a "special needs" child.
- Commuting time clarification (effective 8/20/96) clarified that under the FLSA, time spent by an employee in home-to-work travel in a company-provided vehicle, or in activities performed by an employee that are incidental to the use of the vehicle for commuting, are not "hours worked" and are not compensable, IF the travel is within the normal commuting area of the employer's business and the use of the vehicle is subject to an agreement between employer and employee.
- Computer Professionals Overtime Exemptions (effective 8/20/96), amends the FLSA to retain the threshold rate for computer professionals at \$27.63 per hour, but no longer requires their rates to rise with increases in the minimum wage.
- Tip credit (8/20/96) requires employers to pay a fixed dollar amount of \$2.13 per hour to satisfy the employer's minimum wage obligation towards a tipped employee.
- Creates a new type of pension plan, SIMPLE, effective 1/1/97, for businesses with less than 100 employees that permits employees to contribute up to \$6,000 annually to an IRA or other tax-deferred pension plan.





## Federal Safety and Health Laws

### Occupational Safety and Health Act of 1970

#### Overview:

- Requires employers to provide safe and healthful working conditions for virtually every employee in the United States.
- Establishes the Occupational Safety and Health Administration under the direction of an Assistant Secretary of the Department of Labor, The National Institute for Occupational Safety and Health (NIOSH) under the Department of Health and Human Services, and the Occupational Safety and Health Review Commission, an independent federal agency that reviews enforcement actions.
- Specific standards to be met are listed in 29 CFR 1910.
- Injuries and illnesses must be posted during the month of February on OSHA Form 200. Form 101, or information containing the equivalent information, must be completed or compiled within 6 workdays of the time the employer learns of the injury or illness and retained for 5 years. Material Safety Data Sheets (MSDS) must be compiled for all hazardous chemicals under the "Right to Know" legislation.
- Employee accidents involving one death or the hospitalization of three or more employees must be reported to OSHA within eight (8) hours from the time of occurrence.

**Penalties:** Changes in the last couple of years made violations extremely expensive...depending on infraction and number of employees potentially exposed to infraction. May also include imprisonment.

Effective October 1, 2010 – New penalty policy increases the amount of the base penalties set forth under OSHA's gravity-based penalty determination system. Under the old regime, the base penalty for a low gravity violation was \$1,500. Under the new policy the base penalty for such a violation doubles to \$3,000. The base penalty for each level of severity and probability under the old gravity-based penalty determination system similarly increases by \$2,000 or \$2,500 under the new policy, up to a maximum base penalty of \$7,000 for a high gravity serious violation.

Additionally, the new penalty structure expands the time period OSHA will consider when determining whether an employer's past compliance history justifies a penalty adjustment.



## **Omnibus Budget Reconciliation Act of 1990**

### **Overview:**

Increased OSHA's penalty structure. OSHA is required to propose a minimum \$5000 penalty for each willful violation.

## **Drug-free Workplace Act of 1988**

**Enforcement Agency:** Administrator for Federal Procurement Policy in the OMB

**Coverage:** Any government contractor or subcontractor with \$25,000 or more in government contract or subcontract business.

### **Overview:**

- Requires certification that a drug-free workplace exists through employee notification (distributed policy) statement, drug-free awareness program, notice to agency of convictions, employee sanctions or rehabilitation and demonstration of a good faith effort to comply.
- Government's attempt to have business help in the "war on drugs."



## Federal Labor Laws

In the private sector, the rights of employees to join together to seek redress of their grievances and bargain collectively with their employer are guaranteed.

### **Labor Management Relations Act of 1947—amended the National Labor Relations Act of 1935**

**Note:** This Act is commonly referred to as the Taft-Hartley Act of 1947)

**Enforcement Agency:** U. S. National Labor Relations Board (NLRB)

#### **Overview:**

Covers most employees in interstate commerce, excluding airline and railroad workers. Does not cover agricultural laborers, domestic servants in the home, individuals employed by a parent or spouse, ICs, supervisors, and any employees who act in a confidential capacity to persons who formulate management labor relations policies.

- Section 7 establishes the right of employees to bargain collectively as well as the right to refrain from such activities.
- Section 8 establishes employer and union unfair labor practices, regulates employers and unions in: "interfering" with employee rights, discriminating against applicants or employees for past or present union membership, collective bargaining procedures, and strikes and lockouts.
- Section 9 regulates union representation elections.
- Section 10 regulates the enforcement of unfair labor practice violations.

**Statute of Limitations:** Six months for an unfair labor practice.

**Penalties for Violation:** The NLRB can direct that union elections be held, issue cease-and-desist orders, compel bargaining or take other remedial actions, such as requiring company to reinstate workers who were unjustly discharged and pay back wages to them. It cannot take punitive steps.



## **Worker Adjustment and Retraining Notification Act of 1988 (WARN)**

### **Overview:**

- WARN provides that, with three exceptions, an employer of 100 or more employees must give 60 calendar days' advance notification of a planned layoff or shutdown that results in loss of work (affecting 50 or more employees) for more than six months, termination, or a certain reduction in work hours. A mass layoff involves a single site layoff of at least 33% of workforce equating to a minimum of 50 employees affected (excluding part time employees) during any 30-day period, or a minimum of 500 employees regardless of percent of workforce affected.
- An employee is not considered to have experienced an employment loss if the closing/layoff is the result of the relocation or consolidation of part or all of the business and prior to the closing/layoff, the company offers to transfer the employee to a different site within a reasonable commuting distance with no more than a six-month break in service, or the company offers to transfer the employee to any other site with no more than a six-month break in employment and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.
- Exceptions to the 60-day rule include "faltering company," "unforeseeable business circumstances," and "natural disasters."

**Penalties:** Damages and civil penalties.



## State Agency Contacts - Illinois

There are four key Illinois agencies to be aware of:

### **Illinois Department of Labor (IDOL):**

Enforces laws relating to pay and the small number of Illinois laws relating to working conditions. It also enforces the School Visitation Rights Act, the Prevailing Wage Act and the Private Employment Agencies Act.

160 N. LaSalle Street  
13th Floor  
Chicago, Illinois 60601  
(312) 793-2800

900 S. Spring Street  
Springfield, Illinois 62704  
(217) 782-6206

<http://www.state.il.us/agency/idol/>

### **Illinois Department of Human Rights (IDHR):**

Investigates discrimination claims relating to the Illinois Human Rights Act.

100 West Randolph Street, Suite 10-100  
Chicago, Illinois 60601  
(312) 814-6200

222 South College Street  
Springfield, Illinois 62704  
(217) 785-5100

<http://www.state.il.us/dhr/>



**Illinois Department of Employment Security (IDES):**

Administers unemployment compensation claims, collection of the unemployment insurance tax, job placement services, and compiling workforce data.

Employer hotline - (312) 793-4880,  
or (800) 247-4984

33 South State Street  
Chicago, Illinois 60603

Employment Security Offices  
850 E. Madison St.  
Springfield, Illinois 62702-5603

<http://www.ides.state.il.us/>

**Industrial Commission of Illinois:**

Enforces the provisions of the Workers' Compensation Act and Occupational Diseases Act.

100 West Randolph Street, Suite 8-200  
Chicago, Illinois 60601  
(312) 814-6611

4500 S. Sixth St. Frontage Rd  
Springfield, Illinois 62703  
(217) 785-7084

<http://www.state.il.us/agency/iic>



## State Laws - Illinois

### Illinois Minimum Wage and Overtime Law

**Enforcement Agency:** Illinois Department of Labor

**Overview:**

- Illinois minimum wage became \$8.25 on July1, 2010.
- February 19, 2019 law passed to increase as follows:

New Rate	Effective Date
\$9.25	January 1, 2020
\$10.00	July 1, 2020
\$11.00	January 1, 2021
\$12.00	January 1, 2022
\$13.00	January 1, 2023
\$14.00	January 1, 2024
\$15.00	January 1, 2025

- Under Illinois law an employee under age 18 can be paid 50 cents less than the adult minimum wage, but the federal law only permits a youth differential for the first 90 consecutive days of employment with an employer.

**Burden of Proof and Accountability:** Employers must be able to demonstrate compliance and all records presented by the employer are accurate and were made in the ordinary course of business. Inconsistencies may be an indication of lack of records.

**Tip - Rounding hours worked:**

- Increments of 15 minutes.
- Practice is posted and understood.
- Employees are paid for the time they actually work.

:53 through :07 = :00

:08 through :22 = :15

:23 through :37 = :30

:38 through :52 = :45



## Illinois Wage Payment and Collection Act

Ensures the payment of wages, final compensation, vacation pay and other employee benefits to which they are entitled.

**Enforcement Agency:** Illinois Department of Employment Security

### Overview:

- Covers wages, earned bonuses, earned commissions, and final compensation.
- Employers are required to give notice of pay rate and payday at the time of hire.
- Controls direct deposit, and the timely payment of wages.
- Lays out the deductions from wages or final compensation.
- Payment of earned, unused vacation pay to be included in final pay.

## Prevailing Wage Act

Employees of contractors working on public works projects are entitled to be paid the wages that prevail in that locality.

**Enforcement Agency:** Conciliation and Mediation Division of the Illinois Department of Labor

## Legally Ordered Deductions

- Wage deductions (garnishments): Withholdings from an employee's wages that have been Court ordered for the benefit of the employee's creditors.
- Wage assignments: A written agreement between a creditor and an employee where the employee consents to a deduction from his or her wages, if payments on a debt are not made in a timely fashion. The wage assignment allows a creditor to extend credit with some extra "insurance" against non-payment or delinquent payment of the debt. A creditor may collect the employee's debt according to a valid wage assignment without a Court order.
- Child support withholding orders: An involuntary deduction from wages ordered by a Court for the benefit of a child or former spouse. In Illinois, a withholding order will always be immediately filed upon entry of an order for child support. Child support orders take priority over all other withholdings, except prior federal tax levies.





- Defaulted student loans: Under the Higher Educational Assistance Act, the U.S. Department of Education is allowed to garnish up to 10% of an employee's disposable pay, or more with the employee's permission, to satisfy a defaulted student loan. No judicial order is needed.
- Tax levies: Incurred by an employee when they fail to pay the proper amount of state taxes.
- Bankruptcy: The U.S. Bankruptcy Code stays the enforcement of all civil judgments obtained before the employee filed for bankruptcy with the exception of child support, spousal support, and student loans, which are not dischargeable in bankruptcy.

## Illinois Human Rights Act

Includes employers, private and public, with 15 or more employees working during 20 or more weeks in the calendar year or in the year preceding the violation. Handicap and sexual harassment provisions apply to those with one or more employees.

**Enforcement Agency:** Illinois Human Rights Commission and Illinois Department of Human Rights

Receives charges of alleged discrimination, investigates, and determines whether a charge has merit. IDHR files complaint with IHRC if no settlement is reached.

Illinois employers need to prepare. Effective January 1, 2008, the Illinois Human Rights Act ("IHRA") was amended to allow employees and applicants for the first time ever to have their cases tried before juries in state court. Among the many obvious disadvantages of allowing employees and applicants to litigate their claims in court, are protracted discovery and the potential for large damage awards and potential individual liability for supervisory employees and business owners.

### Remedies:

- Cease and desist orders.
- Actual damages, also emotional distress damages.
- Hiring, reinstatement, promotion, back pay, and employee benefits.
- Attorney's fees and costs.
- Compliance reports.
- Posting of compliance notices.
- Loss of state contracts for up to three years.



- Payment to the state treasurer of any profits acquired through a civil rights violation.

## **Equal Pay Act of 2003**

**Enforcement Agency:** Illinois Department of Labor

Prohibits employers with four or more employees from paying unequal wages to men and women doing the same or similar work. Employers are prohibited from discharging or otherwise discriminating against any employee exercising his/her rights under this Act and may not remedy violations by reducing the wages of other employees.

## **Right to Privacy in the Workplace Act**

**Enforcement Agency:** Illinois Department of Labor

Covers employee's use of lawful product off the employer's premises and outside the normal working hours. Inquiries into worker's compensation history prohibits employer inquiring, orally or in writing, if an applicant or employee has ever filed a claim for benefits under workers' compensation laws.

Effective 1/2013 as amended it shall be unlawful for an employer to ask any prospective employee to provide any username password, or other related account information in order to gain access to a social networking website where that prospective employee maintains an account or profile.

## **Victims' Economic Security and Safety Act**

**Enforcement Agency:** Illinois Department of Labor

Provides that employers may not discharge or discriminate against an employee who is a victim of or who has a family member who is a victim of domestic violence for taking up to a total of 12 workweeks of leave from work during any 12-month period to address the domestic violence.

## **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, section 313**

Chief purpose of this act is to locate absent parents to enforce child support orders. Illinois will match the New Hire reports against Illinois child support records, establish an order, or enforce an existing order. Secondary purpose will be to track anyone receiving unemployment compensation.



**Requirements:** Employers must report new employee information with 20 days of their first day of work.

**Enforcement Agency:** Illinois Department of Employment Security

**Forms for Reporting:**

- IDES New Hire Reporting Form  
Employee's name, address and social security number  
Employer's name, address, and FEIN

Illinois New Hire Directory  
P.O. Box 19473  
Springfield, IL 62794-9473  
Fax data to: (217) 557-1947

## **Illinois Employment Record Disclosure Act**

Protects from civil actions an employer who provides truthful, performance-related information about an employee or former employee to an employment reference inquiry.

## **Illinois Child Labor Law**

Includes all private-sector employers, regardless of size.

**Enforcement Agency:** Illinois Department of Labor

**Overview:**

- Minors 14 and 15 years old:  
Working Conditions- non-hazardous  
Meal Period - 30 minutes after five hours.  
Identifies Hazardous Occupations  
Agriculture - Limits age to 12 (10 if on school vacations or outside of school hours).
- Minors 16 and 17 years old:  
Hazardous occupations identified

**Penalties:** \$10,000 maximum for each willful violation or second offense.  
Imprisonment for not more than 6 months.



## One Day of Rest in Seven Act

Provides for at least one day of rest in every calendar week, in order to promote the public health and comfort of persons employed.

**Enforcement Agency:** Illinois Department of Labor

### Overview:

- Defines exceptions for voluntary work
- Allows for permits
- Allows for exemptions
- Sets up meal periods

**Note:** There is no requirement for breaks or rest periods, either under Illinois or federal law. This is true regardless of sex, age, nature of work, or any other reason. If you do give breaks, any break or rest period of less than 20 minutes must be counted as work time and paid as such. The meal period is a different matter, as covered in this law. It states that a minimum of a 20-minute meal period be given to certain employees, but it does not require that it be paid time. Generally, federal law requires that a meal period be of at least 30 minutes of uninterrupted duration before it can be deducted from hours worked.

**Penalties:** Each violation carries a potential fine of \$25 to \$100 for each employee each week.

## Illinois Personnel Records Review Act

Intended to: permit employees to review their own personnel records, provide criteria for the review, indicate which information may be obtained in personnel records, provide penalties, and permit employees to add their statements to their record.

The employer shall grant at least 2 inspections request by an employee in a calendar year when requests are made to reasonable intervals, unless otherwise provided in a collective bargaining agreement. The employer shall provide the employee with the inspection opportunity within 7 working days after the employee makes the request or if the employer can reasonably show that such deadline cannot be met. The employer shall have an additional 7 days to comply.



## **Illinois Clean Indoor Air Act**

Prohibits smoking in public places except in designated areas. Obligates employers to provide an environment where non-smokers can engage in normal and necessary work activities without ever having to inhale second hand smoke, and “make reasonable efforts” to designate smoking areas for smoker.

## **Illinois Drug Free Workplace Act**

Requires that employers with 25 or more employees and with contracts or grants of \$5000 or more with the State of Illinois establish a drug free workplace policy.

## **Smoke Free Illinois Act**

Prohibits smoking in public places, places of employment and governmental vehicles. An owner shall reasonably assure that smoking is prohibited in indoor public places and workplaces unless specifically exempted by Section 35 of the Act.

## **Illinois Health Insurance Portability and Accountability Act**

Follows the example set by federal law. Employers who provide their employees with insurance plans that are governed by the Illinois Department of Insurance are required to offer certain mandated benefits.

## **Illinois Group Insurance for Terminated Employees**

Upon voluntary or involuntary termination, employees who have been covered by a group insurance plan for at least three months prior to termination must be given the option to continue hospital, surgical, and major medical coverage for nine months for themselves and their dependents. Administered by: Illinois Department of Insurance.

## **Illinois Spousal Health Insurance Rights Act**

Provides option for continuation of coverage to widowed and divorced spouses and dependent children, and covered spouses (55 and older) and dependent children of retirees. Administered by Illinois Department of Insurance.

## **Illinois Workers Compensation Act**

Requires employers to provide compensation, in the form of wage replacement, and the cost of all reasonable and necessary hospital, surgical and medical expenses, for all accidental injuries or illnesses and death “arising out of” and “in the course of” employment. Many injuries may also result in some permanent disability, or disfigurement or wage reduction for which the employee may also be entitled to compensation. Administered by Illinois Industrial Commission.



## **Illinois Unemployment Insurance Act**

Purpose is to provide partial protection to workers against the loss of wages when they are out of work because of lack of opportunities. Administered by Illinois Department of Employment Security.

## **Illinois Nursing Mothers in the Workplace Act**

Effective 7/12/01, requires employers with five or more employees (excluding immediate family members) to provide reasonable unpaid break time each day to females needing to express breast milk for their infant child. Additionally, the employer should make a reasonable effort to provide a room or other location (other than a toilet stall) in close proximity to the work area where the employee can express milk in privacy. The law does clarify that the break time must, if possible, run concurrently with any break time already provided to the employee. Additionally, the employer is not required to provide the break time if, by doing so, it would unduly disrupt their operation.

## **Equal Pay Act starting January 1, 2013**

The Illinois Department of labor (IDOL) is highlighting a recent change to the State's Equal Pay Act that will now hold officers and agents of a company accountable when an employer is found to have failed to pay workers equal wages for equal work. Governor Pat Quinn recently signed legislation (P.A. 97-0903) that adds individual liability under the Act, effective January 1, 2013. This amendment will strengthen the Department's enforcement authority towards ensuring pay equity in the workplace.

## **Ban the Box**

The "Job Opportunities for Qualified Applicants Act", effective, January 1, 2015, prohibits an employer from inquiring into a job applicants criminal record or history until they have been deemed qualified for the position and been notified of a pending interview. Or, if no interview will be performed, the inquiry can not take place until a conditional offer of employment has been made.

The Act does not apply under the following circumstances:

- If the employer is required to exclude individuals with certain criminal convictions from employment under Federal or State law;
- If a standard fidelity bond or an equivalent bond is required and a conviction of a certain nature would disqualify the applicant from obtaining the bond;
- If the employer hires individuals under the Emergency Medical Services (EMS) Systems Act.



## **Pregnant Workers Fairness Act (PWFA)**

Provides it is the duty of the employer to provide reasonable accommodations to an employee or applicant due to pregnancy, defined as pregnancy, childbirth or any medical condition related to pregnancy or childbirth, unless the employer can demonstrate an undue hardship. This requirement and interactive process requirement is similar to the duty imposed on employers under the American with Disabilities Act, as Amended (ADAAA).



## State Agency Contacts - Missouri

### Missouri Commission on Human Rights:

Requires the Commission to receive, investigate, settle or conciliate complaints of alleged discrimination and conduct public hearings. The Commission is enabled to certify local commissions, establish relationships with federal and local civil and human rights agencies, implement educational or research programs and develop ways to prevent discrimination. The Commission responds to complaints of alleged discrimination in employment, housing and public accommodations based on race, color, religion, national origin, ancestry, sex, physical/mental disability handicap, age (40-70 employment only) and familial status (housing only).

573-751-3325

E-Mail: [mchr@labor.mo.gov](mailto:mchr@labor.mo.gov)

Jefferson City: 573-751-3325

St. Louis: 314-340-7590

Toll Free Complaint Hotline: 877-781-4236

Relay Missouri: 711

Relay Missouri: 800-735-2966 (TDD) 800-735-2466 (voice)

### Division of Employment Security:

Collects tax contributions from employers and pays unemployment benefits to individuals who are determined eligible under the law. State unemployment contributions paid by Missouri employers into the Missouri Trust Fund are set aside for the sole purpose of providing for the payment of weekly unemployment benefits to qualified claimants. The unemployment benefits paid to insured workers help to maintain the economy of the state during periods of economic downturn by helping preserve the level of consumer purchasing power.

The Division's contributions section ensures that employers are properly classifying their workers, reporting their workers' wages and paying the correct tax contributions on wages.

Toll Free: 800-320-2519

Jefferson City: 573-751-9040

Kansas City: 816-889-3101

Springfield: 417-895-6851

St. Louis: 314-340-4950

Claimants E-mail: [esuiclaims@labor.mo.gov](mailto:esuiclaims@labor.mo.gov)

Employers E-mail: [esemptax@labor.mo.gov](mailto:esemptax@labor.mo.gov)

Appeals E-mail: [appealstribunal@labor.mo.gov](mailto:appealstribunal@labor.mo.gov)

### Division of Workers' Compensation:

Administers the programs which provide for Missouri workers who are injured on the job or develop occupational diseases. The Division focuses on making sure that those who can return to work do so as soon as possible, having received adequate treatment and





benefits. For those who cannot return to work because of their injury or injuries, the Division ensures that they receive the permanent benefits allowed by Missouri law.

The Division has eight offices throughout Missouri with the main office being in Jefferson City. Missouri employers are required to report workplace injuries within 30 days of occurrence. The Division processes approximately 120,000 reports of injury each year.

E-mail: [workerscinp@labor.mo.gov](mailto:workerscinp@labor.mo.gov)  
Information Line: 800-775-2667  
Dispute Management Unit: 573-526-5951  
Case Administration Review and Evaluation Unit (C.A.R.E.): 573-526-3542  
Insurance Unit: 573-526-3692  
Physical Rehabilitation: 573-526-3876  
Second Injury Fund – Benefits: 573-526-3543  
Second Injury Fund – Collections: 573-526-5756  
Fraud and Non Compliance Unit: 800-592-6003  
Medical Fee Disputes Unit: 573-526-5610  
Religious Exception: 573-522-2546

### **Division of Labor Standards:**

Currently consists of four sections: Wage and Hour, On-Site Safety and Health Consultation Service, Mine and Cave Safety and Health, and the Workers' Safety Program.

The Division determines and enforces the Prevailing Wage, administers and enforces Missouri's Child Labor Law and Missouri's Minimum Wage Law.

The Division offers a free confidential, consultation service to employers to ensure they comply with federal Occupational Safety and Health Administration (OSHA) regulations.

The Division inspects mine and cave sites, trains miners in the practice of implementing safe and healthy working habits.

The Division certifies and audits safety consultants, engineers, and programs used by employers.

573-751-3403  
E-mail: [laborstandards@labor.mo.gov](mailto:laborstandards@labor.mo.gov)  
Wage and Hour: 573-751-3403  
On-Site Safety and Health Consultations: 573-522-SAFE (7233)  
Mine and Cave Safety and Health: 573-751-1422  
Missouri Workers' Safety Program" 573-522 SAFE (7233)



## State Laws - Missouri

### Wage and Hour

**Enforcement Agency:** Department of Labor Standards

#### Minimum Wage

- Missouri minimum wage became \$8.60 per hour effective January 1, 2019. The minimum wage rate is calculated once per year and may increase or decrease based on the cost of living as measured by the prior year Consumer Price Index. The Missouri minimum wage rate cannot be lower than the Federal minimum wage rate.
- Under Missouri law, retail and service businesses are not required to pay minimum wage if their gross annual sales are less than \$500,000.
- Compensation for tipped employees must also total \$8.60 per hour. Employers are required to pay tipped employees at least 50% of the minimum wage (\$4.30 per hour) or an amount necessary to bring the employee's total compensation to at least \$8.60 per hour.

#### Prevailing Wage

Missouri's Prevailing Wage Law establishes a minimum wage rate that must be paid to workers on public works construction projects in Missouri, such as bridges, roads and government buildings. The prevailing wage rate differs by county and for different types of work.

The Prevailing Wage Law applies to all public works projects constructed by or on behalf of state and local public bodies.

#### Payment of Wages

All corporations doing business in Missouri must pay their employees as least as often as semi-monthly. At the discretion of the employer, executive, administrative, professional, sales, and other employees compensated in whole or in part on a commission basis may be paid on a monthly basis. At least once per month, employers must provide each employee with an itemized pay statement showing the total amount of deductions for the period.

#### Proper Wage Deductions

An employer may deduct the fair market value of the following as a credit toward the payment of the minimum wage to an employee:

- Tools and equipment



- Uniforms worn by the employee as a condition of employment
- Laundry or cleaning of uniforms
- Maintenance of tools, equipment or uniforms
- Breakage or loss of tools, equipment or uniforms
- Any other items required by the employer to be worn or used by the employee as a condition of employment; and
- Transportation furnished to the employee as an incident of and necessary to the employment (i.e. travel costs of railroad maintenance-of-way workers)

### **Wage Discrimination Based on Sex Prohibited**

No employer shall pay a female a wage rate less than the wage paid to male employees in the same establishment for the same quantity and quality of the same classification of work. Wage rates may vary if based on seniority, length of service, ability, skill, duties or service performed, difference in the shift, hours of work, restrictions prohibiting lifting or moving objects, or any other reasonable differentiation or factor that is not based on sex, when exercised in good faith.

### **Wage Reduction Notice**

An employer must give a thirty (30) day notice if it is going to reduce employee wages. The notice may be mailed to the employee or posted in a conspicuous place where the employees work.

### **Assignment Of Wages**

An employee may assign his/her wages to another person provided that the assignment is done in writing, dated correctly, states the amount assigned and includes the name of the party to whom the wages are to be assigned. Missouri law prohibits the assignment of wages, salaries and earnings not earned at the time of the assignment. An exception to this is the assignment of future wages upon a court order to enforce an order for support or maintenance.

### **Payment of Wages At Termination**

For employees discharged by an employer conducting business in Missouri, all unpaid wages become due and payable on the date of discharge. A penalty will be assessed if wages are not paid within seven days of a written request from the employee. If an employer does not pay wages within seven days of the written request of an employee, wages will continue to accrue until the employee is paid, but not longer than 60 days.

Accrued and unused vacation time does not have to be paid at termination and are not considered wages. Unused and accrued vacation time is payable at termination if the employer has contractually agreed, or has a policy/practice of paying accrued vacation.



## Work Hours

Most employers in Missouri must pay their employees overtime equal to time and one half of their regular pay for hours worked in excess of 40 per week. Employees exempt from the standard overtime laws include those who work in agriculture, executive, administrative, professional occupations, salespersons paid mainly by commission, and individuals employed in retail or service business with gross volume under \$500,000 per year. Employees in the amusement or recreation industry are to be paid overtime wages for hours worked in excess of 52 hours per week.

## Legally Ordered Deductions

- Wage deductions (garnishments): Withholdings from an employee's wages that have been Court ordered for the benefit of the employee's creditors.
- Child support withholding orders: An involuntary deduction from wages ordered by a Court for the benefit of a child or former spouse. In Missouri, a withholding order will always be immediately filed upon entry of an order for child support. Child support orders take priority over all other withholdings, except prior federal tax levies.
- Defaulted student loans: Under the Higher Educational Assistance Act, the U.S. Department of Education is allowed to garnish up to 10% of an employee's disposable pay, or more with the employee's permission, to satisfy a defaulted student loan. No judicial order is needed.
- Tax levies: Incurred by an employee when they fail to pay the proper amount of state taxes.
- Bankruptcy: The U.S. Bankruptcy Code stays the enforcement of all civil judgments obtained before the employee filed for bankruptcy with the exception of child support, spousal support, and student loans, which are not dischargeable in bankruptcy.

## Discrimination Law

### Missouri Human Rights Act (MHRA)

Covers employment practices of employers, public and private, which employ six or more people within the state of Missouri. The MHRA does not apply to corporations and associations owned and operated by religious or sectarian groups.

**Enforcement Agency:** Missouri Commission on Human Rights

The MHRA makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, national origin, sex ancestry, age (older than 40 but less than 70 years of age) or disability. Some cities also have local ordinances that outlaw



discrimination based on sexual preference. Those cities are: Kansas City, Columbia and Saint Louis.

It is unlawful for an employer or labor organization to limit, segregate, or classify its employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status because of a protected category.

It is not unlawful for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment which are pursuant to bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided the differences or systems are not the result of an intention to discriminate and are not used to discriminate.

The MHRA does not require an employer preferential treatment to any individual because of a protected category because an imbalance may exist in regards to the total number or percent of persons in a protected category who are employed by a company in comparison to the number or percent of persons in a protected category in the employable population.

To bring a complaint, the aggrieved person must file a complaint with the Missouri Commission on Human Rights, in writing within 180 days of the alleged discriminatory act. The aggrieved person has 300 days to file a complaint with the Equal Employment Opportunity Commission (EEOC).

### **Remedies:**

- Reinstatement
- Front Pay
- Back Pay
- Compensatory damages (for intentional violations)
- Punitive (for intentional violations)

Unlike Title VII which has caps on the amount of compensatory and punitive damages, the MHRA has no cap on damages.

### **Jury Duty**

An employer is not required to pay for wages lost because of jury duty. An employee may not be required to take sick, personal or vacation time because of jury duty. If an employer has five or fewer employees and two or more are summoned for jury duty during the same period, then the court shall postpone that employee's jury duty.



## Leave of Absence for Voting

Any employee who is entitled to vote at any election in the state is allowed three hours between the time of the opening and closing of the polls to vote. Employers are not required to release an employee to vote if there are three consecutive hours while the polls are open where the employee is not working. If there are two consecutive hours while the polls are open in which the employee is not working, the employer need only grant one hour off of work. The employee must make the leave request at least the day prior to voting. The employer can choose which hours to grant off for the employee to vote. An employer may not deduct wages if the employee takes the time to vote.

## Political Activities

An employer may not prevent an employee from engaging in political activities, holding a political office, being a member of a political committee, soliciting or receiving funds for political purposes or signing petitions relating to law.

## Smoking

Missouri law restricts smoking to designated areas in public places. Public places are defined as any indoor area used by the general public or serving as a place of work. The following list of locations is exempt from the no smoking statute:

- Taxicabs or limousines
- Any place where more than 50% of revenue is derived from tobacco
- Bars, taverns and restaurants serving fewer than 50 people
- Bowling alleys and billiard halls
- Private residences
- Any area used for sporting events that seats more than 15,000 people and
- Other areas that are legally designated for smoking

Those having control and custody over public places can designate certain areas as “smoking areas”. Appropriate signage must also be displayed indicating the “smoking” and “nonsmoking” areas. Not more than 30% of the available space may be designated as a smoking area.

Smoking is prohibited in any child care facility when there are children present.

## Breastfeeding in The Workplace

There is no Missouri law that specifically addresses an employer’s obligation regarding breast feeding in the workplace. The law does state that any mother may not be prohibited from breast feeding her child in any location, public or private, where the mother and child are authorized to be present.



## **Concealed Weapons**

Missouri residents 23 years of age or older may apply for a concealed weapon endorsement allowing them to carry a concealed weapon. The law permits certain public and private property owners to post a notice that concealed weapons are not permitted on the premises.

A private employer must post a notice advising that concealed weapons cannot be carried onto the premises to lawfully protect against weapons in the workplace. Possession of a firearm in a vehicle on the employer's premises is not unlawful so long as the firearm is not removed from the vehicle or brandished while on the employer property. An employer can restrict a person from carrying a concealed weapon in a company owned vehicle.

## **Pre-Employment Inquiries**

Employers in Missouri may only make inquiries of applicants during interviews that are necessary to determine the applicant's qualifications and eligibility for employment. It is the employer's right to establish job-related requirements and select the most qualified applicant for the position. Pre-employment inquiries that express a limitation, specification or preference due to race, color, religion, national origin, sex ancestry, handicap or age violates the Missouri Human Rights Act unless they are based on a bona fide occupational qualification (BFOQ).

## **Criminal Background Checks and Inquiries**

An employer may not make an inquiry into an applicant's arrest record. An employer should not take action based on convictions unless reason for the conviction is substantially related to the applicant's ability to perform a specific job.

## **References**

Missouri law states that an employer may respond in writing to a written request concerning a current or former employee from an entity or person which the employer reasonably believes to be a prospective employer. The employer may disclose the nature and character of service rendered by the employee and the duration of employment. The employer may also truly state for what cause, if any, such employee was discharged or voluntarily quit service for the employer. The employer shall provide a copy of any letter to the current or former employer at their last known address. The current or former employee can request a copy of the letter up to one year from the date of the letter.

The employer shall be immune from civil liability for any response made pursuant this this law for any consequences of such response, unless the response was false and made with knowledge that was false or with reckless disregard for whether the response was true or false.



## **New Hire Reporting**

All employers in Missouri must report each newly hired employee to the Department of Revenue within twenty (20) calendar days of hire. The date of hire is defined as the date the employee reports to work on their first day or the date they signed their W-4 form, whichever is earlier. The purpose of New Hire Reporting is used by Child Support to locate parents and alleged fathers and to establish, enforce and modify support orders.

You may choose the form you use to report new hires. You can either send a copy of the completed form W-4 or a different form that contains the following information:

- Employee name, address and social security number
- Employer's name, address and federal employer identification number (FEIN)
- Either the employee's date of hire or the date the employee signed the form W-4

You may report this information using one of the following methods:

- Mail the form W-4 or your own form with the required information to Missouri Department of Revenue, P.O. Box 3340, Jefferson City, MO 65105-3340;
- Fax copies of the form W-4 or your own form with the required information to 573-526-8079;
- Electronically report employees via Secure File Transfer. If you want to report employees using Secure File Transfer, please contact Child Support at 1-888-663-5751.

The law states an employer who intentionally fails to submit information on an employee is guilty of an infraction and will be fined not more than \$25. If the failure to report is a result of a conspiracy between the employer and employee to not supply the required information, the employer will be fined \$350 for each failure to report or each incomplete report.





## **Child Labor**

### **Missouri Child Labor Law**

Includes all private-sector employers, regardless of size.

**Enforcement Agency:** Division of Labor Standards

#### **Overview:**

Minors 14, 15 and 16 years old

Working Conditions- non-hazardous

Identifies Hazardous Occupations

Identifies Acceptable Occupations

Work permits

Work Hours

Exemptions



## What Do You Know About Federal Law?

Federal Law	Employers Covered (Private)	Overview of Law	Notes
Title VII of the Civil Rights Act			
Americans with Disabilities Act			
Immigration Reform & Control Act			
Fair Labor Standards Act			
Consolidated Omnibus Budget Reconciliation Act			
Family Medical Leave Act			
Occupational Safety & Health Act			
Equal Pay Act			
Pregnancy Discrimination Act			
Age Discrimination in Employment Act			
Uniformed Services Employment & Reemployment Rights Act			



## Learning the Talk

Acronym	What Does It Stand For?
AAA	
AAP	
ACA	
AD&D	
ADA	
ADEA	
ADR	
AIDS	
ATS	
BFOQ	
BLS	
BNA	
CCPA	
COBRA	
COLA	
CPI	
CRA	
DOL	
DOT	



<b>EAP</b>	
<b>EE/ER</b>	
<b>EO</b>	
<b>EEO-1</b>	
<b>EEOC</b>	
<b>EH&amp;S</b>	
<b>EOS</b>	
<b>EPA</b>	
<b>EPPA</b>	
<b>ERISA</b>	
<b>ESOP</b>	
<b>ESS</b>	
<b>FASB</b>	
<b>FCRA</b>	
<b>FICA</b>	
<b>FLSA</b>	
<b>FMCS</b>	
<b>FMLA</b>	
<b>FSA</b>	
<b>FTE</b>	
<b>FUTA</b>	
<b>GINA</b>	
<b>HAZCOM/ HAZMAT</b>	
<b>HIPAA</b>	
<b>HIV</b>	
<b>HMO</b>	



<b>HR</b>	
<b>HRIN</b>	
<b>HRIS</b>	
<b>HRM</b>	
<b>I-9</b>	
<b>INS</b>	
<b>IRA</b>	
<b>IRCA</b>	
<b>JSSA</b>	
<b>KSA</b>	
<b>LMRA</b>	
<b>LMS</b>	
<b>LOA</b>	
<b>LTD</b>	
<b>MBO</b>	
<b>MFVD</b>	
<b>MIS</b>	
<b>MSA</b>	
<b>MSDS</b>	
<b>MSS</b>	
<b>NIOSH</b>	
<b>NLRA</b>	
<b>NLRB</b>	
<b>OBRA</b>	
<b>OD</b>	
<b>OFCCP</b>	
<b>OJT</b>	



<b>OSHA</b>	
<b>OWBPA</b>	
<b>P&amp;L</b>	
<b>PHR</b>	
<b>PPD</b>	
<b>PPO</b>	
<b>RTW</b>	
<b>SHRM</b>	
<b>SOX</b>	
<b>SPD</b>	
<b>SPHR</b>	
<b>SSA</b>	
<b>SSN</b>	
<b>STD</b>	
<b>TNA</b>	
<b>TPD</b>	
<b>TQM</b>	
<b>UC</b>	
<b>UI</b>	
<b>ULP</b>	
<b>USERRA</b>	
<b>VEVRA</b>	
<b>WARN</b>	



**Membership**



**Talent Acquisition**



**HR Consulting**



**Background Checks**



**Training**



**Organizational Development**

