EMPLOYMENT LAWS SUMMARY

The following are some of the most pertinent federal laws relating to employment practices. The information contained herein is provided as a very brief summary of the respective laws and should not be used as the final authority regarding such laws.

It is important to note that most states also have laws that pertain to the workplace. State laws often address additional subjects not addressed in the federal laws, and they often address the same topics, but with more stringent requirements or prohibitions. Therefore, with every action you take or decision you make as an employer, always consider whether there is a state law that may also apply.

Laws Relating to Discrimination in the Workplace.

Title VII of the Civil Rights Act of 1964 [as amended]: This statute is considered the cornerstone of modern day federal anti-discrimination legislation. It forbids employers, labor unions, and employment agencies from discriminating against individuals on the basis of race, color, religion, sex (including sexual harassment), or national origin and ancestry, in hiring, promotion, discharge, pay, fringe benefits, or any phase of the employment process. Applies to employers with 15 or more employees.

Civil Rights Act of 1991: Provides a complainant with the right to a jury trial and compensatory and punitive damages for claims of discrimination based on race, color, religion, sex, national origin and ancestry, and disability.

Civil Rights Act of 1866: This post-Civil War error statute prohibits employment discrimination on the basis of race.

Americans with Disabilities Act of 1990 [as amended] (“ADA”): Provides that an employer shall not discriminate against a qualified individual with a disability because of that disability in regard to job application procedures, hiring, termination, advancement, compensation, job training, recruitment, advertising, layoff, leave, benefits, and other terms, conditions, and privileges of employment. The statute also provides that an employer must provide “reasonable accommodations” to a qualified disabled employee in order to assist the employee in performing his or her essential job functions. As a result of amendments to the ADA in 2009, a disability is defined very broadly as any impairment that substantially impairs any major life activity. This statute is very complex, and may require expert advice in navigating its requirements. The ADA applies to employers of 15 or more employees.

Rehabilitation Act of 1973: Requires certain government contractors to take affirmative steps to employ and advance in employment qualified individuals with disabilities.

Pregnancy Discrimination Act of 1978: Prohibits discrimination in all areas of employment, including hiring, promotion, seniority rights, and fringe benefits, against women because of pregnancy, childbirth, or related medical conditions.

Equal Pay Act of 1963: Prohibits discrimination in the payment of wages to employees of one sex at a rate that is less than the wages paid to employees of the opposite sex for equal work in jobs the performance of which requires equal skill, effort, and responsibility and that are performed under similar working conditions, except where such payment is made pursuant to [i] a seniority system; [ii] a merit system; [iii] a system which measures earnings by quantity or quality of production; or [iv] a differential based on any other factor other than sex. The EPA applies to employers of 2 or more employees.
Age Discrimination in Employment Act ("ADEA"): Protects applicants and employees 40 years of age or older from discrimination in hiring, promotion, discharge, pay, fringe benefits, and other aspects of employment. The ADEA applies to employers of 20 or more employees.

Older Workers Benefit Protection Act of 1990: Forbids age discrimination in employee benefits and establishes minimum standards for determining the validity of waivers of age discrimination claims under the Age Discrimination in Employment Act (e.g., where such waivers are included in separation or settlement agreement).

Genetic Information Nondiscrimination Act (GINA): Prohibits employers from using or considering genetic information or family history in making employment decisions. GINA applies to employers of 15 or more employees.

Laws Related to Workplace Safety.

Occupational Safety and Health Act ("OSHA"): Requires that employers (i) maintain conditions or adopt practices reasonably necessary and appropriate to protect workers on the job; (ii) be familiar with and comply with safety and health standards applicable to their establishments; (iii) ensure that employees have and use personal protective equipment when required for safety and health; and (iv) furnish a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm to their employees. It also prohibits employers from retaliating against employees who file safety complaints, participate in OSHA investigations, or otherwise avail themselves of the protections under the OSH Act.

Laws Related to Reductions in Force and Closings.

Worker Adjustment and Retraining Notification Act ("WARN Act"): Requires employers with 100 or more employees to provide at least 60 days' written notice to affected workers, their representatives (e.g., labor unions), the state dislocated worker unit, and the appropriate unit of local government of any covered “plant closing” or “mass layoff.”

Whistleblower Laws.

Sarbanes-Oxley Act: Prohibits publicly-traded companies and their officers, employees, contractors, subcontractors, or agents from retaliating (e.g., termination, demotion, threats, harassment, etc.) or discriminating against employees who provide information, cause information to be provided, or assist in any investigation relating to allegations of fraud, violations of Security Exchange Commission regulations, or federal laws relating to fraud against shareholders.

The False Claims Act. Prohibits retaliation (termination, demotion, threats, harassment, etc.) against any employee who participates in a qui tam action under the False Claims Act (a claim alleging that an employer made false or fraudulent claims for payment from the U.S. government).

Laws Related to Immigration.

Immigration Reform and Control Act of 1986: Prohibits an employer from knowingly hiring or continuing to employ an individual who is not eligible to work in the United States. The IRCA further requires employers to make certain pre-employment inquiries and to document the work eligibility of newly hired employees. For employers with more than 3 employees, the IRCA prohibits discrimination on the basis of national origin or on the basis of citizenship for persons who are citizens or “intending citizens” of the United States.

Laws Related to Benefits, Leave, and Wages.

Fair Labor Standards Act ("FLSA"): Establishes minimum wage, overtime pay, recordkeeping, and child labor standards for workers in the private sector and in federal, state, and local government employment. The FLSA applies to employers of 2 or more employees.

Family and Medical Leave Act of 1993 ("FMLA"): Provides eligible employees with up to 12 weeks of unpaid leave per year for their own serious health condition; the serious health condition of a parent, spouse, or child; or the birth, adoption, or foster placement of a child. The FMLA applies to employers of 50 or more employees.

Employee Retirement Income Security Act of 1974 ("ERISA"): Sets forth standards for most pension and healthcare plans in private industry by requiring the plans to provide participants with plan information, including features and funding, minimum participation standards, accrual and vesting information, explanation of fiduciary responsibilities, and disclosure of benefits.
Consolidated Omnibus Budget Reconciliation Act ("COBRA"): Provides for continued health care coverage under group health plans for eligible employees and former employees and their eligible dependents in particular circumstances, including retirement or other separation from employment.

Laws Related to Labor Unions and Concerted Activity in the Workplace.

National Labor Relations Act ("NLRA"): Guarantees workers the right to form, join, or assist a labor organization and to bargain collectively through representatives of their own choosing or, alternatively, to refrain from such activity.

Laws Related to Veterans and Active Service Members.

Uniformed Services Employment and Reemployment Rights Act (USERRA): Prohibits discrimination against individuals based on their service in the uniformed services and provides for the prompt reemployment of such persons and reinstatement of seniority-based benefits upon their completion of service and return to the workplace.

Vietnam Era Veterans Readjustment Assistance Act of 1974: Requires certain government contractors to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other veterans who served on active duty.

Laws Applying to Federal Contractors.

Executive Order 11246 and 11375: Prohibits employment discrimination by federal contractors and requires that federal contractors take affirmative action to ensure that all employment decisions are made without regard to race, color, religion, sex, or national origin.

Executive Order 11141: Declares it to be against federal policy for contractors and subcontractors, in the performance of federal government contracts, to discriminate against employees or job applicants on account of age.

Drug-Free Workplace Act of 1988: Requires federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a contract or grant from a federal agency.

Laws Pertaining to Jury Duty.

Jury Systems Improvement Act: Prohibits an employer from retaliating (e.g., by termination, demotion, threats, harassment, etc.) against an employee because of the employee’s jury service or attendance or scheduled attendance in connection with such service, in a court of the United States.

Privacy-Related Protections.

Health Insurance Portability and Accountability Act (HIPAA): Prohibits employer-provided benefits plans from disclosing employees’ medical information without employees’ consent.

Employee Polygraph Protection Act of 1988: Greatly restricts, and in most cases prohibits, the use of polygraph examinations in the employment context. Generally prohibits employers from disciplining, discharging, or discriminating against any employee or applicant who refuses to take a lie-detector test or based on the results of a test (but there are several exceptions).

Fair Credit Reporting Act ("FCRA"): Requires notification to and consent from an applicant or employee before the Employer obtains information regarding credit history.

State Employment-Related Laws

Many states have enacted laws that govern various aspects of the employment relationship and the workplace environment. With every action or decision, an employer should always consider whether a state law also may apply. Typical state statutes address such areas as:

- Restrictive Covenants [e.g., covenants prohibiting competitive activity, solicitation of customers, recruitment of employees, and disclosure of confidential information]
- Jury duty protections
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- Business Torts (e.g., unfair competition)
- Trade Secrets
- Computer theft and trespass
- Workers Compensation
- Unemployment Compensation
- Minimum Wage and Overtime
- Child Labor
- Anti-Discrimination (i.e., similar to the federal anti-discrimination laws, but at the state level)
- Invasion of Privacy (e.g., workplace monitoring; disclosure of medical information)
- Drug-Testing
- Access to and maintenance of Personnel Files

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