

Putting On Your Human Resources Hat

Employment Law Basics

Employment law covers all rights and obligations with the employer/employee relationship – whether current employees, former employees or job applicants.

Basics Include

- › Recruiting/Hiring
- › At Will Employment
- › Discrimination/Retaliation
- › Harassment
- › Disabilities
- › Leave/Wage Issues
- › Record Keeping
- › Terminations

Rules to Live by

- › Be aware of legal landmines
- › Establish policies and procedures
- › Consistently apply policies and procedures
- › Communicate
- › Manage risk

Practical Do's & Don'ts

DO

- › Be prepared
- › Monitor/be aware
- › Document, document, document
- › Consult with firm counsel
- › Use discretion/ be sensitive
- › Maintain confidentiality
- › Act promptly/ be responsive
- › Be clear
- › Follow up
- › Train partners/ managers to come to HR

DON'T

- › Rely on memory
- › Forget to document and file
- › Treat similarly situated employees differently
- › Be indiscreet
- › Show frustration or anger
- › React without a plan
- › Be vague
- › Make commitments or promises that you cannot keep

NALP 2014 Annual Education Conference

Presenters

Colleen O'Hara

Arent Fox LLP

Director of Attorney

Recruitment & Professional Development

Margaret A. Suender, Esq.

Pepper Hamilton

Senior Director of Professional Development & Recruitment

Be Aware of the Employment Laws

Federal Laws Prohibiting Discrimination in Employment

- **Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.**
 Title VII of the Civil Rights Act of 1964, as amended, prohibits employers from discriminating in employment based on race, color, religion, gender, age, disability and national origin.
- **The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 et seq.**
 The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals aged 40 years or older from job discrimination based on age.
- **Pregnancy Discrimination Act of 1978**
 The Pregnancy Discrimination Act amended Title VII to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- **Laws Prohibiting Discrimination on the Basis of Sexual Orientation or Gender Identity**
 There currently is no federal law prohibiting sexual orientation or gender identity discrimination in private employment. The Equal Employment Opportunity Commission has held, however, that discrimination on the basis of sexual orientation or gender identity is discrimination because of sex under Title VII of the Civil Rights Act of 1964. Many states, counties, and cities have laws or ordinances prohibiting discrimination in employment on the basis of sexual orientation or gender identity discrimination.
- **The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.**
 Title I of the Americans with Disabilities Act (ADA) of 1990 prohibits private employers from discriminating against qualified individuals with disabilities. An individual with a disability is a person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job. An employer is required to offer reasonable accommodations for the disability of a qualified applicant or employee if it would not impose an “undue hardship,” defined as significant difficulty or expense, on the operation of the employer’s business.

Federal Job-Protected Leave of Absence Law

The Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601 et seq.
 The Family and Medical Leave Act (FMLA) entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons including the birth and care of the employee’s newborn child; adoption or foster care; care for a spouse, son, daughter, or parent with a serious health condition; medical leave for the employee’s own serious health condition; or for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation. The FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a “single 12-month period” to care for a covered service member with a serious injury or illness. Under certain conditions, leave may be taken intermittently. Upon return from FMLA leave, an employee must be restored to the employee’s original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

Other Laws that Apply to Employment

- Equal Pay Act of 1963, 29 U.S.C. § 206 (d)
- Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq.
- The Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301–4335
- Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.
- The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq.
- Occupational Safety & Health Act (OSHA), 29 U.S.C. § 651 et seq.
- The Consolidated Omnibus Budget Reconciliation Act of 1985 (Cobra), 29 U.S.C. 31161 et seq.
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., 42 U.S.C. § 1320d et seq.