

From Hire to Fire: The ABCs of Employment Law

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What Laws Apply to Employment?

- Title VII
- American with Disabilities Act (ADA)
- Age Discrimination in Employment (ADEA)
- Fair Labor Standards Act (FLSA)
- Family Medical Leave Act (FMLA)
- Pregnancy Discrimination Act (PDA)
- Fair Credit Reporting Act
- Equal Pay Act
- Uniformed Service Employment and Re-Employment Rights (USERRA)
- ERISA
- Occupational Health and Safety Act (OSHA)
- COBRA
- HIPPA
- Louisiana Wage Laws
- Louisiana Commission on Human Rights

AT-WILL EMPLOYMENT

- Definition
- Written Contract
 - Is your handbook a contract?
- Some Restrictions to Termination of Employment
 - Discrimination
 - Retaliation
 - Unlawful Reasons



Louisiana Wage Laws

- How often are you required to pay employees?
 - What can you deduct from a paycheck?
- What happens if you don't pay employees?



Fair Labor Standards Act

- Minimum Wage & Overtime
 - Minimum Wage
 - Overtime: 1 ½ times the regular rate of pay for all hours worked over 40 in a work week

- “Covered” Employers and Employees



FLSA – Are you “Covered”?

- Covered Employers
 - \$500,000 in annual sales/revenue
 - Public agencies, schools, hospitals, etc. (no revenue requirement)
 - “Interstate Commerce”
 - Communications
 - Transportation

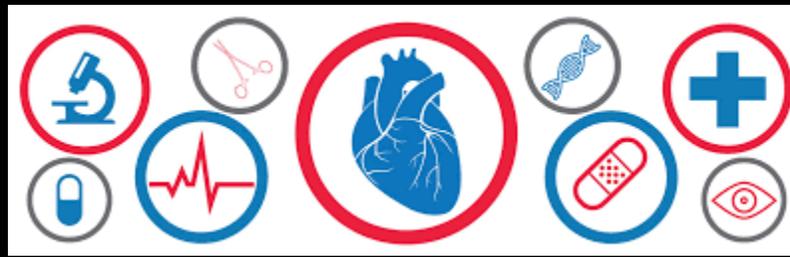
FLSA – Exempt v. Non-Exempt

- Regularly litigated issue in federal court
 - Approximately 30 separate exemptions from minimum wage and/or overtime requirements
- Often require a complex case-by-case analysis



Why do you care about the FLSA?

- Penalties
 - Amount of unpaid minimum wages and overtime
 - “Liquidated Damages” = amount of unpaid wages
 - When do courts award liquidated damages?
 - “Good faith” and “reasonable grounds”
 - Attorney’s fees
 - Court costs
 - 2 years versus 3 years?



Family Medical Leave Act

- Qualifying employees are granted family or medical leave
- Employers with 50+ employees working each work day during 20 or more calendar weeks
- Applies to employees who:
 - 12 months employment
 - Worked at least 1,250 hours during last 12 months
 - Location with 50 employees within 75 miles

What Qualifies for Leave?

- Birth of child
- Placement of child with employee for adoption/foster care
- “Exigencies” relating to a family member who is on active military duty
- Care for a Serious Health Condition
 - Child, spouse, or parent
 - Employee
 - Next of kin (armed forces)
- Documentation

How Much Leave is Allowed?

- 12 weeks of leave per 12 month period
- Not responsible for pay
- Employee may use accrued sick time, vacation, or personal leave



Why do you care about FMLA?

- Economic Damages: Lost wages or salary, benefits, out-of-pocket expenses, interest;
- Liquidated Damages: Equal to actual damages
- Equitable Relief: Reinstatement, promotion or other relief
- Attorney's fees
- Court costs



HIPPA

- Privacy Protections – Law limits the release of private health care information, provides safeguards for that information, requires disclosures by providers of privacy policies, and allows patients access to their own medical records
- Non-Discrimination Provisions – Prohibits group health plans from discriminating (in determining eligibility or setting premiums) against those seeking coverage based on:
 - Health status
 - Medical Condition (physical or mental)
 - Genetic Information
 - Evidence of Insurability
- Discounts can be provided for wellness programs or incentives to promote health and prevent disease

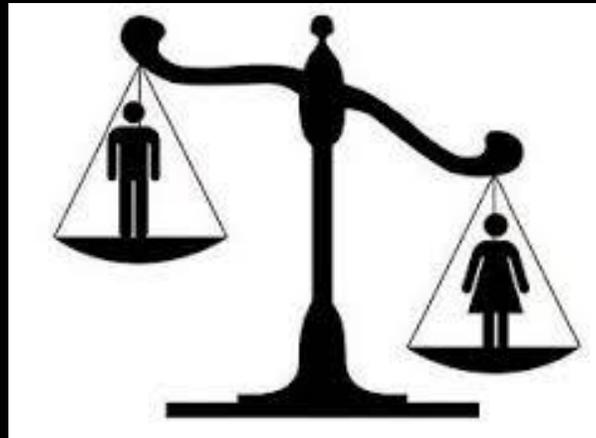
Discrimination & Harassment

- Three main types of prohibited conduct:
 - Discrimination
 - Harassment
 - Retaliation



Discrimination

- Unlawful to refuse to hire, to fire, or to treat differently in compensation or work conditions based upon protected class
 - Protected Classes: Race, color, national origin, gender, disability, age, religion
 - Disparate Treatment v. Disparate Impact
 - Defense: Legitimate, non-discriminatory business reasons



Title VII

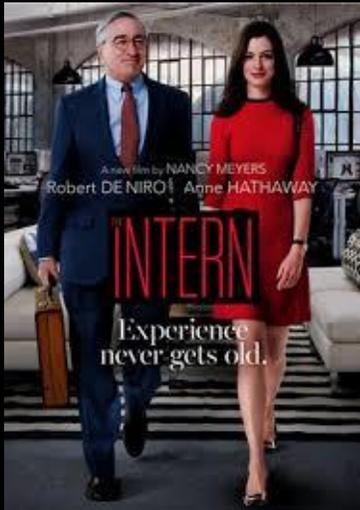
- Louisiana Commission on Human Rights essentially mirrors Title VII
- Applies to all employers with 15 or more employees
- Prohibits discrimination and harassment based upon race, color, religion, national origin, gender, or religion
- Exhaustion of Administrative Remedies
 - EEOC may investigate a claim or issue a “right to sue” letter

Remedies under Title VII

- Lost wages, promotions, etc.
- Mental Anguish
- Attorney's fees
- Court Costs
- Court may also award reinstatement, promotion or other equitable remedy.
- Court may award punitive damages if the employer acted with malice or reckless indifference.

Age Discrimination in Employment Act

- May not discriminate against employees on the basis of age (40 and over)
- Applies to employer with 20+ employees for each working day for twenty weeks in current or preceding year
- BFOQ (Bona Fide Occupational Qualifications)



Americans with Disabilities Act

- Protects “qualified individual with a disability” from discrimination
- An individual with a disability is a person who:
 - Has a physical or mental impairment that substantially limits one or more major life activities;
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.
- Major Life Activities: Walking, seeing, hearing, speaking, working, sitting, standing, lifting, sleeping, thinking or concentrating
 - Temporary, non-chronic conditions are not disabilities
 - Question of who is “disabled” under the law is a case-by-case and fact intensive analysis

Reasonable Accommodation

- Employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business
 - Undue Hardship: Action requiring significant difficulty or expense when considered in light of factors such as employer’s size, financial resources, and the nature and structure of its operation
 - Not lower quality or production standards to make an accommodation
 - Not obligated to provide personal use items (glasses or hearing aids)
 - Not required to appoint a disabled person to a new job that does not already exist
- Examples of Reasonable Accommodation
 - Making existing facilities used by employees readily accessible to and usable by persons with disabilities
 - Job restructuring, modifying work schedules, reassignment to a vacant position
 - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies

Harassment

- Two Types:
 - Quid pro quo
 - Unwelcome sexual advances, requests, or conduct where submission to the conduct is used as the basis for an “employment decision” or is explicitly or implicitly made a condition of employment
 - Forced to choose between submission to sexual advances and employment benefits
 - Hostile Work Environment
 - Looks to the atmosphere of workplace
 - Physical and/or verbal conduct that unreasonably interferes with an individual’s work or performance or creates an intimidating, hostile or offensive work environment
 - Not limited to sex – It is possible to have hostile work environment based upon race, age, disability, etc.
 - Severe and Pervasive Conduct

What does Severe and Pervasive Mean?

- Unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally do not create an abusive environment.
- Factors to Consider:
 - Frequency of the conduct;
 - Severity of the conduct;
 - Whether or not the conduct is physically threatening or humiliating;
 - What context the conduct occurs in; and
 - Totality of all the circumstances.

Retaliation

- When an employer takes an adverse action against a covered individual because he or she engaged in a protected activity
 - Covered Individual: Person who have opposed unlawful practices, participated in proceedings, or requested accommodations related to employment discrimination based on race, color, sex, religion, national origin, age, or disability
 - Adverse Action: Action taken to try to keep someone from opposing a discriminatory practice or from participating in an employment discrimination proceeding
 - Employment Actions: Termination, Refusal to Hire, Denial of Promotion, unjustified negative evaluations, and unjustified negative references
 - Protected Activity: Opposition to a practice reasonably believed to be unlawful discrimination
 - Complaining to anyone about alleged discrimination against oneself or others;
 - Threatening to file a charge of discrimination;
 - Picketing in opposition to discrimination; or
 - Refusing to obey an order reasonably believed to be discriminatory.