

EMPLOYMENT LAW SUMMARY

Federal and State Laws

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I. FEDERAL LAWS

The U.S. Equal Employment Opportunity Commission (“EEOC”) enforces federal laws prohibiting job discrimination. Under these laws, it is illegal to discriminate in any aspect of employment, including: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment.

Discriminatory practices under these laws include:

- ❖ harassment on the basis of race, color, religion, sex, national origin, disability, genetic information, or age;
- ❖ retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- ❖ employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities, or based on myths or assumptions about an individual’s genetic information; and
- ❖ denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability, or because of participation in schools or places of worship associated with a particular racial, ethnic or religious group.

Below is a brief summary of each of the federal laws enforced by the EEOC. Please note that Title VII, the ADA and GINA cover all private employers, state and local governments, and education institutions that employ 15 or more individuals. The ADEA covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies and labor organizations. The EPA covers all employers who are covered by the Federal Wage and Hour Law (the Fair Labor Standards Act). Additionally, Title VII, the ADEA, GINA, the EPA, and Sections 501 and 505 of the Rehabilitation Act of 1973 cover the federal government.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. It also makes it illegal to retaliate against an individual for complaining about discrimination, filing a charge of discrimination, or participating in an employment discrimination investigation or lawsuit. This law also requires employers to provide reasonable accommodation to applicants and employees, unless doing so would impose an undue hardship on the operation of the employer’s business. It is important to note that Title VII not only prohibits intentional

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discrimination, but also employment practices that have the effect of discriminating against individuals because of their race, color, national origin, religion or sex.

National Origin Discrimination – It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. For example, a rule requiring that employees speak only English on the job may violate Title VII, unless an employer shows that the requirement is necessary for conducting business.

Religious Accommodation – An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.

Sex Discrimination – Title VII prohibits sexual harassment, including practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender. This includes same sex harassment.

The Pregnancy Discrimination Act - This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

THE EQUAL PAY ACT OF 1963 (“EPA”)

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

It is important to note that employers may not reduce wages of either sex in an effort to equalize pay between men and women employees. Also, it may be a violation of the EPA to pay a different wage to an individual who works in the same job before or after an employee of the opposite sex.

AGE DISCRIMINATION IN EMPLOYMENT ACT (“ADEA”)

The ADEA protects employees who are forty (40) years-old or older from discrimination based on age. The ADEA’s broad ban against discrimination also specifically prohibits: statements or specifications in job notices or advertisements pertaining to age preference or limitations; discrimination on the basis of age by apprenticeship programs; and denial of benefits to older employees. Note that an employer may only specify an age limit for a position if age is proven to be a bona fide occupational qualification.

TITLES I AND V OF THE AMERICANS WITH DISABILITIES ACT (“ADA”)

The ADA prohibits discrimination against a qualified individual on the basis of disability in all employment practices. It also requires employers to reasonably accommodate the known physical or mental limitations of an otherwise qualified employee or applicant with a disability, unless doing so would impose an undue hardship on the operation of the employer’s business.

Americans with Disabilities Act Amendments Act of 2008

On January 1, 2009, the Amendments Act went into effect. The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA. While 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, it changes the way that these statutory terms should be interpreted.

Significantly, the Act expands the definition of “major life activities” to include two non-exhaustive lists. The first list includes many activities that the EEOC has recognized such as walking, as well as activities not previously specifically recognized, such as reading, bending, and communicating. The second list includes major bodily functions, such as functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Act also states that mitigating measures other than ordinary eyeglasses or contact lenses shall not be considered in assessing whether an individual has a disability, and clarifies that an impairment that is episodic in nature or is in remission is still a disability if it would substantially limit a major life activity when active.

The Act 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. Rather, the Act states 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. However, the Act also states that individuals who are covered only under the “regarded as” prong are not entitled to a reasonable accommodation.

THE CIVIL RIGHTS ACT OF 1991

The Civil Rights Act of 1991 amended Title VII and the ADA to permit jury trials and compensatory and punitive damages in cases of intentional discrimination. The Act also provides for obtaining attorney fees.

THE REHABILITATION ACT OF 1973

Sections 501 and 505 of the Rehabilitation Act make it illegal to discriminate against a qualified individual with a disability in the federal government.

TITLE II OF THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (“GINA”)

GINA prohibits discrimination against applicants, employees, and former employees on the basis of genetic information. This includes a prohibition on the use of genetic information in all employment decisions. The Act also restricts the ability of employers and other covered entities to request or to acquire genetic information, and requires that the confidentiality of any genetic information obtained be maintained.

Genetic information includes information about an individual’s genetic tests and the genetic tests of his or her family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history).

II. STATE LAWS

Almost all of the states have adopted discrimination laws related to employment, with protection against discrimination based on factors such as race, gender, age, marital status, national origin, religion, or disability. While many of the state laws are similar in nature to the federal laws, some offer additional protections against employment-related discrimination. Thus, it is important to be familiar with the laws in the states in which you do business.

A. NEW JERSEY

Unlike the federal laws, New Jersey’s antidiscrimination statute covers all employers, regardless of size. Additionally, it provides a broader set of remedies to compensate employees and punish offending employers.

THE NEW JERSEY LAW AGAINST DISCRIMINATION (“LAD”)

The LAD makes it unlawful to subject people to differential treatment based on race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), familial status, marital status, domestic partnership status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability, perceived disability, AIDS, and HIV status. The LAD prohibits unlawful discrimination in employment, housing, places of public accommodation, credit and business contracts. Not all of the foregoing prohibited

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bases for discrimination are protected in all of these areas of activity. For example, familial status is only protected with respect to housing.

Note that the class of employees and applicants protected from age discrimination under the LAD is significantly different than that which is protected under the federal law. Specifically, the LAD prohibits such discrimination against individuals between the ages of 18 and 70. Thus, it does not exclude younger workers from protection.

New Jersey Domestic Partnership Act – Effective July 10, 2004, the Act amended the LAD to include “domestic partner” as a protected status. As a result of the amendment, it is unlawful for an employer to refuse to hire, discharge, require to retire, or otherwise discriminate against any individual because of his or her domestic partnership status.

New Jersey Civil Union Act – Effective February 19, 2007, the Act amended the LAD to protect individuals from discrimination based on civil union status. The amendment is in compliance with the New Jersey Supreme Court’s constitutional mandate set forth in the landmark decision Lewis v. Harris, 188 N.J. 415 (2006), wherein the Court held that denying same-sex couples’ statutory rights granted to their heterosexual counterparts violated the equal protection guarantee of the New Jersey Constitution.

NEW JERSEY EQUAL PAY ACT (“NJEPA”)

The NJEPA prohibits employers from discriminating against employees with respect to the rate or method of pay on the basis of his or her sex. Any employer who violates the NJEPA, or who discriminates against an employee asserting rights under the NJEPA, is guilty of a misdemeanor and is subject to a fine and/or imprisonment. An aggrieved employee under the NJEPA is entitled to bring a civil proceeding against his or her employer and may recover lost wages, costs of suit, and attorney fees if successful.

NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT (“CEPA”)

The CEPA prohibits employers from taking adverse employment actions against employees who disclose, object to, or refuse to participate in certain actions that the employee reasonably believes to be either illegal or in violation of public policy.

NEW JERSEY SMOKERS’ RIGHTS ACT

The New Jersey Smokers’ Rights Act prohibits employers from refusing to hire, discharge, or otherwise discriminate against applicants or employees on the basis of whether or not they smoke.

B. PENNSYLVANIA

Several state statutes prohibit Pennsylvania employers from discriminating against employees and applicants. These statutes cover virtually every employer, private or public, with four or more employees.

THE PENNSYLVANIA HUMAN RELATIONS ACT (“PHRA”)

The PHRA prohibits discrimination based on race, color, religious creed, ancestry, age, sex, national origin, non-job-related handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor. Among the class of persons protected by the Act are employees, applicants for employment, independent contractors, labor organization members, and applicants for labor organization membership.

The PHRA establishes the Pennsylvania Human Relations Commission (“PHRC”), which has broad investigatory and enforcement powers, as well as the ability to create regulations deemed necessary to carry out the purposes of the PHRA. The vast majority of Pennsylvania’s laws concerning discrimination in the workplace are regulations promulgated by the Commission under its rule-making authority.

EQUAL PAY LAW

The Pennsylvania Equal Pay Law requires equal pay irrespective of gender. It prohibits employers from paying employees less than employees of the opposite sex for equal work, skill, effort, or responsibility performed under similar working conditions. Exceptions to the rule are provided for seniority systems, merit systems, systems that measure earnings by quantity or quality of production, or a differential based on any factor other than sex. The Pennsylvania Equal Pay Law imposes civil liability on employers found willfully and knowingly to have violated the Law in the amount of the unpaid wages and an equal amount as liquidated damages.

C. NEW YORK

NEW YORK STATE HUMAN RIGHTS LAW

The New York State Human Rights Law prohibits employers with four or more employees, as well as employment agencies, from discriminating against individuals on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, predisposing genetic characteristic or marital status. Covered employers are also prohibited from discharging or otherwise discriminating or retaliating against any person for opposing an unlawful discriminatory practice under the Human Rights Law, or for filing a complaint, testifying, or assisting in any proceeding under the Law.

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Note that in contrast to Title VII, the New York Court of Appeals has held that punitive damages are not available under the state Human Rights Law. However, in contrast to its federal counterparts, an award of damages for pain and suffering under the state Human Rights Law is not limited by any statutory caps.

Also note that while the state Human Rights Law prohibits discrimination based on age, the class of employees and applicants protected under the Law is much broader than the class protected by the federal Age Discrimination in Employment Act (“ADEA”). Specifically, the state Law provides protection to individuals who are 18 years of age and older, while the federal Act provides protection to only those individuals who are 40 years of age or older.

Also note that the class of impairments which qualify as a “disability” under the state Human Rights Law differs markedly from the standard under the federal Americans with Disabilities Act (“ADA”). Specifically, it is not necessary under the state Law that the impairment substantially limit the individual’s normal activities. As a major life activity need not be impaired to trigger protection under the state Law, the number of disabled individuals protected under the state Law is far larger than that which is protected by the ADA.

NEW YORK CITY HUMAN RIGHTS LAW

In addition to the New York State antidiscrimination statute, the City of New York has its own discrimination law which supplements the existing federal and state statutes. The New York City Human Rights Law prohibits employers with four or more employees from discriminating in employment due to the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation, partnership status, or alienage or citizenship status of an employee or applicant, or of any person with whom an employee or applicant has a known relationship or association, or because of actual or perceived status of an employee or applicant as a victim of domestic violence, sex offenses, or stalking. The New York City Human Rights Law also defines gender broadly to include a person’s gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

Note that unlike the state law, punitive damages are available under the New York City Human Rights Law, and there are no statutory caps imposed on a punitive damages award. Thus, most employees in New York City file suit under the New York City Human Rights Law in addition to the state and federal antidiscrimination statutes.

SECTION 194 OF THE NEW YORK LABOR LAW (Equal Pay)

Similar to the federal Equal Pay Act, this section of the New York Labor Law prohibits employers from paying a wage at a rate less than that which an employee of the opposite sex in the same establishment is paid for equal work that requires equal skill, effort, and responsibility and which is performed under similar working conditions. However, the New York statute provides exceptions to this rule when the differential rate of pay is based on a seniority or merit system or a system that measures earnings by quantity or quality of production, or where the differential is based on any factor other than sex.

SECTION 740 OF THE NEW YORK LABOR LAW (Whistleblowers)

The New York Whistleblowers Law prohibits employers from discriminating against employees who complain or testify about an employer's violation of the state labor laws.