

IN CHAPTER FIVE:

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■ It's the Law

In earlier sections of this handbook we highlighted and summarized key legal and regulatory items. As we noted in Chapter 1, and depicted in Table 1-11, the volume of federal laws as well as legal and regulatory compliance considerations owners and managers are to deal with is increasing at an accelerated rate. Here we will summarize 33 federal employment laws. Following the summaries, information is provided for dealing with aspects of the laws in the practice of human resource management.

It is understood that stores are operated across the United States and that numerous state and local laws come into play. However, owing to the number, diversity and continuing changes in state and local legal and regulatory guidelines, we cannot go into greater detail in this handbook. We will cover the key points, issues and actions that are important for all employers. Owners and managers are referred to the following Internet resources for detailed and current information.

<http://www.dol.gov/esa/programs/whd/state/state.htm>

http://www.law.cornell.edu/topics/Table_Labor.htm

<http://www.dol.gov/elaws/>

This chapter summarizes federal laws. The State Resources Appendix provides state-by-state contact information and resources for state requirements, postings and general state-specific human resource management information.

We caution that the following information is designed to be accurate and authoritative on the federal legislation covered. We also caution that federal laws can be – and frequently are – changed by Congress. The information here is as current as publishing schedules permitted.

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FEDERAL LAW SUMMARY

In preparing an updated summary, we chose to present information in concise tabular format. In Table 5-1 federal laws are listed in alphabetical order. The table comprises:

- A reference number to locate

additional information in the summaries in column 1.

- The title of the law
- The year of inception in column 3. Readers may sort the cited laws by date.
- The workforce size by number of employees where the law applies. Readers may sort the cited laws by workforce size with this electronic format of the handbook.

On the following pages, in Table 5-2, are the selected laws by reference number and in alphabetical order. The table is current at this writing; however, users are encouraged to check for updates.

Information for each federal law includes:

- The law's title, date of enactment and number of employees at which the law becomes effective (EE).
- A concise summary of the law
- Consequences for non-compliance
- Applicable materials to be kept in support of the law

Table 5-1

REF. #	LAW	DATE ENACTED	EFFECTIVE AT NUMBER EMPLOYEES
1	Age Discrimination in Employment Act (ADEA),	1967	20 - 49
2	Americans with Disabilities Act (ADA)	1990	15 - 19
3	Consolidated Omnibus Budget Reconciliation Act (COBRA)	1986	20 - 49
4	Consumer Credit Protection Act	1968	1 - 14
5	Contract Work Hours and Safety Standards Act (CWHSSA)	1986	50+
6	Copeland Act	1934	50+
7	Davis Bacon Act	1931	50+
8	Drug Free Workplace Act	1988	50+
9	Employee Polygraph Protection Act	1988	1 - 14
10	Employee Retirement Income Security Act (ERISA) (if company offers benefits)	1974	1 - 14
11	Equal Pay Act	1963	1 - 14
12	Executive Order 11246	1965	50+
13	Fair and Accurate Credit Transactions Act (FACT)	2003	1 - 14
14	Fair Credit Reporting Act	1969	1 - 14
15	Fair Labor Standards Act	1938	1 - 14
16	Family and Medical Leave Act	1993	50+
17	Federal Insurance Contributions Act (FICA) (Social Security)	1935	1 - 14
18	Health Insurance Portability and Accountability Act (HIPAA) (if company offers benefits),	1996	1 - 14
19	Immigration Reform and Control Act	1986	1 - 14
20	Mental Health Parity Act (for employers who offer mental health benefits)	1996	50+
21	National Labor Relations Act	1947	1 - 14
22	Newborns' and Mothers' Health Protection Act	1996	1 - 14
23	Pregnancy Discrimination Act	1978	15 - 19
24	Occupational Safety and Health Act	1970	1 - 14
25	Sarbanes-Oxley Act	2002	1 - 14
26	Service Contract Act	1965	50+
27	Title VII of the Civil Rights Act	1964	15 - 19
28	Uniform Guidelines on Employee Selection Procedures	1978	1 - 14
29	Uniformed Services Employment and Reemployment Rights Act	1994	1 - 14
30	Vietnam-Era Veterans Readjustment Act	1974	1 - 14
31	Vocational Rehabilitation Act	1973	50+
32	Walsh-Healy Act	1936	50+
33	Worker Adjustment and Retraining Notification Act (WARN)	1988	50+

- Duration of retention of materials to be kept in support of the law
- Key human resource management areas which may be affected by the law.

There are seven fundamental HR areas comprising:

- *Employment practices* (considerations in hiring and employee placement)
- *Management practices* (considerations in policies and operating the business)
- *Health, safety and security* (self-explanatory)

- *Compensation and benefits* (considerations of pay, health care benefits and social benefits such as vacation time)
- *Employee and labor relations* (day-to-day dealing with personnel and considerations pertaining to union activity)

- *Human resource development* (often generically referred to as “training”)
- *Staffing and recruitment practices* (considerations of sourcing, screening, interviewing, selecting and recruiting)

A smaller number of businesses may have involvement with government contracts and union contracts. However, because of the changing workforce, the growth of business and expansion of markets served, several applicable laws are included. The HR areas involved are included to alert owners

and managers to the fact a law may have broad impact on an organization and that, in HR management, a variety of areas can be involved in one situation.

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		Table 5-2
1	Age Discrimination in Employment Act (ADEA) of 1967, 20-49EE	
1.1	Summary: Protects workers age 40 and over by prohibiting discrimination against workers 40 and over in any employment or employment-related decision. Key provision is that employers, with few exceptions, may no longer force an employee to retire. Voluntary retirements are permitted; however, specific conditions must be met in order to avoid violation.	
1.2	Non-compliance penalty: Employees may be awarded back pay, reinstatement, retroactive seniority and attorney’s fees. If willful, liquidated damages equal to the amount of back pay may be awarded.	
1.3	Relevant records: Payroll or other, including temporary positions, showing employees’ names, addresses, birth dates, occupations, pay rates and weekly pay. Applications (including temporary employment), personnel records relating to promotion, demotion, transfer, selection for training, layoff, recall or discharge; job advertisements and postings; copies of employee benefit plans, seniority system and merit systems.	
1.4	Records retention: 3yr = payroll or other records with basic employee information. 1yr = applications and other personnel records. Until “final disposition” = all relevant records if charges or lawsuit.	
1.5	HR area(s) impacted: Employment practices Compensation & benefits Human resource development Staffing & recruitment practices	
2	Americans with Disabilities Act (ADA) of 1990, 15 - 19EE	
2.1	Summary: Prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment. Intended to remove barriers which prevent qualified individuals with disabilities from like employment opportunities that are available to persons without disabilities. If an individual’s disability creates a barrier to employment opportunities, the ADA requires employers to consider whether a reasonable accommodation could remove the barrier. Persons have a disability under ADA when they 1) have a physical or mental impairment that substantially limits one or more major life activities, 2) have a record of such impairment or 3) are regarded as having such impairment. A qualified person is one who, with or without a reasonable accommodation, can perform the essential functions of a job. Reasonable accommodations are modifications to a job which allow a person with a disability to perform the job’s essential functions. An employer is required to make a reasonable accommodation to a known disability of a qualified applicant or employee. A reasonable accommodation does not include lower production and quality standards. Also the employer need not provide an accommodation that would impose an “undue hardship” on the business.	
2.2	Non-compliance penalty: With intentional discrimination, employees may seek a jury trial, with compensatory and punitive damages up to the maximum limitations established by the Civil Rights Act of 1991 according the employer’s number of employees: 15-100 employees, a maximum of \$50,000; for 101-200 employees, a maximum of \$100,000; for 201-500 employees, a maximum of \$200,000; and for over 500 employees, a maximum of \$300,000. Remedies of back pay, reinstatement, and retroactive seniority are available for all types of discrimination, whether intentional or disparate impact.	
		<i>Continued on page 5-4</i>

2.3	Relevant records: Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations); requests for reasonable accommodation.
2.4	Records retention: 1yr = from making the record or taking the personnel action. Until “final disposition” = all relevant records if charges or lawsuit.
2.5	HR area(s) impacted: Employment practices Health, safety & security Compensation & benefits Human resource development Staffing & recruitment practices
3	Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, 20-49EE
3.1	Summary: When employees terminate employment, the employee is entitled to continue participating in the company’s group health plan for a prescribed period of time, usually 18 months. (In certain circumstances, such as an employee’s divorce or death, the length of coverage period may be longer for qualified dependents). COBRA is not extended to employees terminated for gross misconduct. If a former employee chooses to continue group benefits under COBRA, s/he must pay the total applicable premium plus a 2% administrative fee. Coverage ceases if the employee fails to make premium payments as scheduled, becomes covered by another group plan that does not exclude pre-existing conditions or becomes eligible for Medicare.
3.2	Non-compliance penalty: Investigate individual state requirements in states where the company does business.
3.3	Relevant records: Provide written notice to employees and their dependents of their option to continue group health plan coverage following certain “qualifying events,” such as the employee’s termination, layoff or reduction in working hours,
3.4	Records retention: Investigate individual state requirements in states where the company does business.
3.5	HR area(s) impacted: Employment practices Management practices Health, safety & security Compensation & benefits Employee & labor relations Human resource development Staffing & recruitment practices
4	Consumer Credit Protection Act of 1968, 1 - 14EE
4.1	Summary: Prohibits employees from being terminated for garnishments for any one indebtedness. Two or more do allow an employer to terminate; however, care should be exercised to prevent disparate impact if the employees being terminated are mostly women and minorities.
4.2	Non-compliance penalty: Fine of up to \$1,000, 1 year imprisonment or both.

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4.3	Relevant records: Investigate individual state requirements in states where the company does business.
4.4	Records retention: Investigate individual state requirements in states where the company does business.
4.5	HR area(s) impacted: Employment practices Management practices Compensation & benefits Staffing & recruitment practices
5	Contract Work Hours and Safety Standards Act (CWHSSA), 50+EE
5.1	Summary: Requires employers with government contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. Prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects. Applies to contracts and federal and federally assisted construction contracts over \$100,000.
5.2	Non-compliance penalty: The Wage and Hour Division (WHD) of the Employment Standards Administration (ESA) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.
5.3	Relevant records: Investigate individual state requirements in states where the company does business.
5.4	Records retention: Investigate individual state requirements in states where the company does business.
5.5	HR area(s) impacted: Health, safety & security Compensation & benefits
6	Copeland Act of 1934, 50+EE
6.1	Summary: Pertains to kickbacks from public works employees. "Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined..."
6.2	Non-compliance penalty: Fines not to exceed more than \$5,000 or imprisonment of not more than five years, or both.
6.3	Relevant records: Investigate individual state requirements in states where the company does business.
6.4	Records retention: Investigate individual state requirements in states where the company does business.

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6.5	<p>HR area(s) impacted: Employment practices Management practices Compensation & benefits Employee & labor relations</p>
7	<p>Davis Bacon Act of 1931, 50+EE</p>
7.1	<p>Summary: Contracts in amounts of more than \$2,000 to which the U. S. or the District of Columbia is a party involving construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. Congress added prevailing wage provisions to approximately 60 statutes which assist construction projects through grants, loans, loan guarantees and insurance. These involve construction in such areas as transportation, housing, air and water pollution reduction and health. If a construction project is funded or assisted under more than one federal statute, the act's prevailing wage provisions may apply to the project if any of the applicable statutes requires payment of Davis-Bacon wage rates.</p>
7.2	<p>Non-compliance penalty: Determined in case</p>
7.3	<p>Relevant records: For each employee: 1) basic employee data to include name, address, Social Security number, gender, date of birth, occupation and job classification; 2) compensation records to include amounts and dates of actual payment, period of service covered, daily and weekly hours, straight time and overtime hours/pay, fringe benefits paid, deductions and additions.</p>
7.4	<p>Records retention: Three years from the end of the contract.</p>
7.5	<p>HR area(s) impacted: Employment practices Compensation & benefits</p>
8	<p>Drug Free Workplace Act of 1988, 50+EE</p>
8.1	<p>Summary: Act applies to each contract or grant on a case-by-case basis. Requires some federal contractors and all federal grantees to agree they will provide drug-free workplaces as a condition of receiving a contract or grant from a federal agency. This does not apply to those who do not have, nor intend to apply for, contracts/grants from the federal government. This does not apply to subcontractors or subgrantees. Employers need to determine coverage for each federal contract or grant. If the employer has a grant that is covered under the act and a contract that is not, the act does not cover the entire company – only employees working on the covered grant must comply.</p>
8.2	<p>Non-compliance penalty: Contractors or grantees failing to carry out the requirements of the act can be penalized in one or more of the following ways: 1) payments for contract or grant activities may be suspended, 2) contract or grant may be suspended or terminated, 3) contractor or grantee may be prohibited from receiving, or participating in, any future contracts or grants awarded by any federal agency for a specified period, not to exceed five years.</p>
8.3	<p>Relevant records: Investigate individual state requirements in states where the company does business.</p>

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8.4	Records retention: Investigate individual state requirements in states where the company does business.
8.5	HR area(s) impacted: Employment practices Management practices Health, safety & security Staffing & recruitment practices
9	Employee Polygraph Protection Act of 1988, 1 - 14EE
9.1	Summary: Prohibits most private employers from requiring employees or candidates for employment to submit to a lie detector test. Exception: an employer may ask (but not require) an employee to take a polygraph test during conduct of an ongoing investigation into theft, embezzlement or a similar economic loss; or if the employee had access to property that was lost and the employer has a reasonable suspicion that the employee was involved. Employees taking a polygraph test may not be discharged or suffer any other negative consequences solely on the basis of the test, without other supporting evidence.
9.2	Non-compliance penalty: Aggrieved candidates for employment may be re-employed. Aggrieved employees may be awarded reinstatement, promotion, back pay, and benefits. An aggrieved action must be brought within 3 years of the alleged violation.
9.3	Relevant records: Polygraph test results and the reasons for administering.
9.4	Records retention: 3yr = polygraph test results and the reasons for administering.
9.5	HR area(s) impacted: Employment practices Management practices Employee & labor relations Staffing & recruitment practices
10	Employee Retirement Income Security Act (ERISA) of 1974 (if offer benefits), 1 - 14EE
10.1	Summary: Sets requirements for the provision and administration of employee benefit plans. These plans include health care benefits, profit sharing and pension plans. ERISA requires organizations meeting certain criteria to file Form 5500 annually disclosing basic information about each benefit plan, such as plan expenses, income, assets and liabilities. Filing is with the Internal Revenue Service.
10.2	Non-compliance penalty: Willful violations result in criminal and civil penalties.
10.3	Relevant records: Related records including summary plan descriptions, annual reports and reports of plan termination.
10.4	Records retention: 6yr = related records, summary plan descriptions, annual reports and reports of plan termination.
10.5	HR area(s) impacted: Compensation & benefits

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11	Equal Pay Act of 1963, 1 - 14EE
11.1	Summary: Prohibits discriminating between men and women by paying one gender more than the other “for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.”
11.2	Non-compliance penalty: 2yr = back pay and liquidated damages in an amount equal to back pay 3yr = back pay if action was willful, and liquidated damages in an amount equal to back pay
11.3	Relevant records: Investigate individual state requirements in states where the company does business.
11.4	Records retention: Investigate individual state requirements in states where the company does business.
11.5	HR area(s) impacted: Employment practices Management practices Compensation & benefits Employee & labor relations Staffing & recruitment practices
12	Executive Order 11246 of 1965, 50+EE
12.1	Summary: Prohibits federal contractors from discriminating against employees on the basis of race, color, religion, gender or national origin. Similar to the Civil Rights Act and has the further requirement that federal contractors with contracts exceeding \$50,000 and a workforce of more than 50 employees maintain an affirmative action plan regarding the utilization of people in the protected classes.
12.2	Non-compliance penalty: Employer’s contract may be suspended or cancelled and employer may be declared ineligible to compete for future federal contracts.
12.3	Relevant records: Preparation of an affirmative action plan (AAP) for minorities and women. Applications and other personnel records that support employment decisions (e.g. hires, promotions, and terminations) are considered “support data” and are to be maintained.
12.4	Records retention: Annual = AAPs must be updated. 1yr = if less than 150 employees or contract is less than \$150,000. 2yr = AAPs and documentation of good faith efforts. 2yr = personnel or employment records.
12.5	HR area(s) impacted: Employment practices Compensation & benefits Human resource development Staffing & recruitment practices

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13	Fair and Accurate Credit Transactions Act (FACT) of 2003, 1 - 14EE
13.1	Summary: Provisions impacting the credit reporting system and prevention of identity theft require that any persons who maintain or otherwise possess consumer information coming from consumer reports for a business purpose must properly dispose of such information by taking “reasonable measures” to protect against unauthorized access to or use of the information in connection with its disposal. “Prescreened” solicitations sent to consumers are required to contain a simple and easy-to-understand notice providing information about the offer and instructions on how consumers can opt out of receiving future offers by calling a toll-free telephone number or writing to a specified address.
13.2	Non-compliance penalty: Organizations may be examined for compliance to protect the safety and soundness of system institutions and to assist the Federal Trade Commission if material non-compliance is evident. Failing to obey the shredding provisions can result 1) in civil liability where an employee can recover actual damages from his/her employer for all damages incurred from identity theft, 2) statutory damages of up to \$1,000 per employee, 3) an employer may open itself to class action liability if a large number of employees are affected, 4) federal fines of up to \$2,500 for each violation and 5) state fines of up to \$1,000 per employee.
13.3	Relevant records: Consumer credit reports.
13.4	Records retention: Employers with one or more employees are to shred any and all documents that contain information derived from a credit report.
13.5	HR area(s) impacted: Employment practices Compensation & benefits Staffing & recruitment practices
14	Fair Credit Reporting Act of 1969, 1 - 14EE
14.1	Summary: Employers need to evaluate and monitor employee credit problems. If they use credit reports to do so and deny employment on the basis of a credit report, employers are to notify the applicant and to provide the name and address of the consumer reporting agency used.
14.2	Non-compliance penalty: Penalties include actual damages, punitive damages and attorneys’ fees.
14.3	Relevant records: Investigate individual state requirements in states where the company does business.
14.4	Records retention: Investigate individual state requirements in states where the company does business.
14.5	HR area(s) impacted: Employment practices Compensation & benefits Staffing & recruitment practices

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15	Fair Labor Standards Act (FLSA) of 1938, 1 - 14EE
15.1	Summary: Covers public agencies and businesses engaged in interstate commerce or providing goods and services for commerce. Provides guidelines on employment status, child labor, minimum wage, overtime pay and recordkeeping requirements. Determines which employees are exempt from the act (not covered by it) and which are non-exempt (covered by the act). Establishes wage and time requirements when minors can work. Sets the minimum wage that must be paid. Mandates when overtime must be paid.
15.2	Non-compliance penalty: Employers willfully or repeatedly violating the act may be penalized up to \$10,000 per violation. Second convictions can impose \$10,000 and/or imprisonment up to 6 months.
15.3	Relevant records: Payroll or other records containing following for each employee: 1) employee's name, home address, date of birth (if under 19 years of age), gender and occupation; 2) time of day/day of week for beginning of workweek; 3) regular hourly rate of pay or other basis of payment (hourly, daily, weekly, piece rate, commission on sales, etc.); 4) daily hours worked and total hours for each workweek; 5) total daily or weekly straight-time earnings (exclusive of overtime premiums); 6) total additions to and deductions from wages for each pay period; 7) total wages per paid period; 8) date of each payment of wages and the period covered by the payment; 9) basic employee data such as name, address, occupation, rate of pay, terms of compensation, daily and weekly hours worked per pay period, additions to/deductions from wages and total compensation; 10) dates of leave taken by eligible employees (appropriate leave must be designated as FMLA leave); 11) for intermittent leave taken, the hours of leave; 12) copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave; 13) records of premium payments of employee benefits; 14) records of any dispute regarding the designation of leave; 15) for executive, administrative and professional employees or those employed in outside sales, employers are to maintain records showing the basis on which wages are paid in enough detail to permit calculations of the employee's total remuneration and perquisites, including fringe benefits.
15.4	Records retention: 3yr = for above collateral.
15.5	HR area(s) impacted: Employment practices Management practices Compensation & benefits Staffing & recruitment practices
16	Family and Medical Leave Act (FMLA) of 1993, 50+EE
16.1	Summary: Employees who meet minimum service requirements (12 months employed by the company with 1,250 hours of service in the preceding 12 months) may take up to 12 weeks of unpaid leave for: (1) a serious health condition, (2) to care for a family member with a serious health condition, (3) the birth of a child or (4) the placement of a child for adoption or foster care. There are 6 general categories to consider to determine if an employee (or their family member) has a serious health condition. Selection of the category is made by the employee's (or family member's) doctor on the "Certification of Health Care Provider" form. Reasons #3 and #4 are considered family leave; therefore, there is no medical issue attached to the request for leave. In such case the certification form does not need to be completed, although the employee must usually provide at least 30 days advance notice before the leave is to begin.

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	<p>FMALA extends leave coverage to families of service members under certain circumstances. Covered employers must extend FMLA protected leave to: 1) family members caring for injured service members and 2) family members who face a “qualifying exigency” (to be defined by the Department of Labor) arising out of a spouse, child, or parent being called to active duty in the Armed Forces. An employee who qualifies for leave to care for an ill or injured family service member may take up to six months off. Employees who qualify for leave because an immediate family member has been called to active duty may take up to 12 weeks off from work. Service member FMLA runs concurrent with traditional FMLA leave and any other leave entitlements provided under federal, state or local law.</p> <p>Employers are to: 1) permit eligible employees to take up to 12 weeks of unpaid leave for identified circumstances; 2) provide continued health benefits during leave; 3) restore employees to the same position upon return from leave (or to a position with the same pay, benefits and terms and conditions of employment) and 4) appropriately notify employees of their rights and responsibilities under the act. Employees may take 12 weeks of leave in 1) one block of time, 2) in smaller blocks as needed (intermittent leave), or 3) on a reduced work schedule (i.e. part-time for 24 weeks). Employers may need to rearrange the duties of other workers or hire a temporary to cover the responsibilities of a worker on leave.</p> <p>Employers are entitled to reasonable notice and may exercise some control in cases of intermittent or reduced work schedule leave. Employers have responsibility to designate leave as FMLA leave, whether the employee mentions FMLA or not. Employees are to be promptly notified that leave will be counted as FMLA leave so as to limit the total amount of time the employee may be away from work. Employees are responsible to notify the employer of the need for leave and to provide sufficient information so the employer can determine if the leave qualifies. When employees are ready to return from leave, as long as it has not exceeded the 12 week maximum, they are to be restored to an equivalent position with equivalent pay, benefits and terms and conditions of employment (such as work schedule, eligibility for promotions, bonuses, etc.). Normally employers restore the employee to their original position.</p> <p>Employers may not interfere with, restrain or deny any rights provided by the federal FMLA. They may not discharge or otherwise discriminate against anyone who seeks to take or takes FMLA leave, files a proceeding or a lawsuit under FMLA or testifies or otherwise participates in FMLA-related proceedings.</p>
16.2	<p>Non-compliance penalty: Employees may recover back pay and benefits with interest and be granted reinstatement and/or promotion. Attorney’s fees and costs may be awarded.</p>
16.3	<p>Relevant records: Employee data including 1) name, address, occupation, rate of pay, terms of compensation, daily and weekly hours worked per pay period, additions to/deductions from wages and total compensation; 2) dates of leave used where leave is designated as FMLA leave; 3) in cases of intermittent leave, the hours of leave; 4) copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave; 5) records of premium payments of employee benefits and 6) records of any dispute regarding the designation of leave.</p>
16.4	<p>Records retention: 3yr = collateral above.</p>
16.5	<p>HR area(s) impacted: Employment practices Health, safety & security Compensation & benefits</p> <p style="text-align: right;"><i>Continued on page 5-12</i></p>

17	Federal Insurance Contributions Act (FICA) of 1935 (Social Security), 1 - 14EE
17.1	<p>Summary: Employers are responsible for several federal, state, and local taxes and must withhold certain taxes from the employees' pay checks: federal income tax withholding (FITW), Social Security and Medicare taxes (FICA) as well as federal unemployment taxes (FUTA). Employers are to withhold and deposit the employee's part of the taxes and pay a matching amount. Employers are to report federal income taxes, Social Security, and Medicare taxes on Form 941, Employer's Quarterly Federal Tax Return. Federal unemployment tax is part of the federal and state program under the Federal Unemployment Tax Act (FUTA) that pays unemployment compensation to workers who lose their jobs. FUTA tax is reported and paid separately from FICA and FITW. FUTA tax is paid only from an organization's own fund. Employees do not pay this tax or have it withheld from their pay.</p>
17.2	<p>Non-compliance penalty: Investigate individual state requirements in states where the company does business.</p>
17.3	<p>Relevant records: Records containing the following for each employee: 1) employee data to include name, address, Social Security number, gender, date of birth, occupation and job classification; 2) compensation collateral including amounts and dates of actual payment, period of service covered, daily and weekly hours, straight time and overtime hours/pay, annuity and pension payments, fringe benefits paid, tips, as well as deductions and additions; 3) tax records to include amounts of wages subject to withholding, agreements with employees to withhold additional tax, actual taxes withheld and dates withheld, reasons for any difference between total tax payments and actual tax payments and withholding forms such as W-4, W4-E.</p>
17.4	<p>Records retention: 4yr = from date tax is due or tax is paid.</p>
17.5	<p>HR area(s) impacted: Management practices Compensation & benefits</p>
18	Management Practices and Accountability Act (HIPAA) of 1996 (if company offers benefits), 1 - 14EE
18.1	<p>Summary: Enhances health care "portability" from one employer to another via procedures for new hires and for existing employees who are leaving the company. New employees may use evidence of previous health care coverage provided by their former employer to reduce or eliminate the new employer's pre-existing condition requirements (within 63 days of the loss of prior coverage). Employees leaving a company must be provided a certificate of prior creditable health care coverage to use similarly. Provisions regarding restrictions on pre-existing conditions, special enrollment rights and protections against discrimination are included. Subject employers are required to provide a notice of the patient's privacy rights as well as a notice of the privacy practices of a covered entity. Providers who are providing treatment to patients are to make a good faith effort to obtain the patient's written acknowledgment of the notice.</p>
18.2	<p>Non-compliance penalty: Penalties for non-compliance are \$100 per day for each affected employee. Actions against non-complying plans may be brought both by participants and by the Department of Labor.</p>
18.3	<p>Relevant records: Investigate individual state requirements in states where the company does business.</p>
18.4	<p>Records retention: Investigate individual state requirements in states where the company does business.</p>

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18.5	HR area(s) impacted: Employment practices Health, safety & security Compensation & benefits
19	Immigration Reform and Control Act of 1986, 1 - 14EE
19.1	Summary: Prohibits employment of persons not legally authorized to work in the United States or in an employment classification that they are not authorized to fill. Using the I-9 form, employers must certify within three days of employment the identity and eligibility to work of all employees hired. Prohibits discrimination in employment-related matters on the basis of national origin or citizenship. Discriminatory actions include, but are not limited to, requesting additional documents beyond those required, refusing to accept valid documents or consider an applicant who is suspected of being an illegal alien or harassing or retaliating against employees for exercising their rights under the law.
19.2	Non-compliance penalty: Civil fines of \$100 to \$10,000 per violation for recordkeeping and employment violations. Back pay/front pay and attorney's fees for discriminatory actions. Criminal penalties may be imposed for repeated violations.
19.3	Relevant records: I-9 form.
19.4	Records retention: 1yr = I-9 forms following termination. 3yr = I-9 forms following and during employment.
19.5	HR area(s) impacted: Employment practices Compensation & benefits Human resource development Staffing & recruitment practices
20	Mental Health Parity Act of 1996 (for employers who offer mental health benefits), 50+EE
20.1	Summary: For employers with mental health benefits: prohibits group health plans and insurance companies offering mental health benefits from setting annual or lifetime limits on mental health benefits which are lower than those limits set for other conditions. Two exemptions to this law are: 1) it does not apply to employers with 2 to 50 employees or 2) to group health plans where costs would increase one percent or more as a result of compliance.
20.2	Non-compliance penalty: \$100 per day for each day a failure occurs.
20.3	Relevant records: Investigate individual state requirements in states where the company does business.
20.4	Records retention: Investigate individual state requirements in states where the company does business.
20.5	HR area(s) impacted: Compensation & benefits

Continued on page 5-14

21	National Labor Relations Act (NRLA) of 1947, 1 - 14EE
21.1	Summary: Establishes employees' right to form, join, and assist labor organizations and to bargain collectively with their employers. Enforced by the National Labor Relations Board (NLRB) with a body of decisions and regulations from the board which form an extensive set of standards for electing and decertifying unions, for negotiating bargaining agreements and for defining activities as fair or unfair labor practices.
21.2	Non-compliance penalty: Violations are addressed by the National Labor Relations Board, and a wide variety of penalties may be applied, depending on the type of violation.
21.3	Relevant records: Consult bargaining agreements and collateral materials.
21.4	Records retention: Investigate individual state requirements in states where the company does business.
21.5	HR area(s) impacted: Employment practices Management practices Health, safety & security Compensation & benefits Employee & labor relations Human resource development Staffing & recruitment practices
22	Newborns' and Mothers' Health Protection Act of 1996, 1 - 14EE
22.1	Summary: Requires a minimum length of hospital confinement associated with childbirth. Applies to health plans and health insurance companies that provide hospital stays for childbirth in their policies. Provides that coverage for a hospital stay following a normal delivery may not be limited to less than 48 hours for both the mother and newborn and for a Cesarean section not less than 96 hours. Prevents health plans from charging greater deductibles, coinsurance or other cost sharing measures for benefits relating to hospital stays for childbirth.
22.2	Non-compliance penalty: \$100 per day for each day a failure occurs.
22.3	Relevant records: Investigate individual state requirements in states where the company does business.
22.4	Records retention: Investigate individual state requirements in states where the company does business.
22.5	HR area(s) impacted: Compensation & benefits
23	Pregnancy Discrimination Act of 1978, 1-14EE
23.1	Summary: Amended Title VII such that pregnant women are treated the same as other employees who are disabled. Employer policies for taking leave, health benefits during leaves and reinstatement after leave are to apply equally to pregnant women and other employees. <i>Continued on page 5-15</i>

23.2	<p>Non-compliance penalty: Intentional discrimination = employees may seek a jury trial, with compensatory and punitive damages up to the maximum limitations established by the Civil Rights Act of 1991 according the employer's number of employees: 15-100 employees, a maximum of \$50,000; for 101-200 employees, a maximum of \$100,000; for 201-500 employees, a maximum of \$200,000; and for over 500 employees, a maximum of \$300,000. Remedies of back pay, reinstatement and retroactive seniority are available for all types of discrimination, whether intentional or disparate impact.</p>
23.3	<p>Relevant records: Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations), including records for temporary or seasonal positions. See Title VII.</p>
23.4	<p>Records retention: 1yr = from making the record or taking a personnel action. See Title VII.</p>
23.5	<p>HR area(s) impacted: Employment practices Health, safety & security Compensation & benefits Staffing & recruitment practices</p>
24	<p>Occupational Safety and Health Act (OSHA) of 1970, 1 - 14EE</p>
24.1	<p>Summary: "General duty clause" guideline requires most employers to maintain a workplace that is free from recognized hazards that would cause injury or death to employees. Covered employers must comply with OSHA workplace safety and health standards that apply to their workplaces. Employers are to 1) maintain a log of certain injuries and illnesses, 2) report certain deaths and multiple hospitalizations and 3) post supplementary records on an annual basis. Employers may not discharge employees who refuse to do a job that, by their reasonable apprehension, places them at risk of injury or exposes them to a hazardous workplace condition.</p>
24.2	<p>Non-compliance penalty: Civil penalties up to \$1,000 for individual violations; up to \$10,000 for repeated and willful violations; back pay and reinstatement for employees who suffered discrimination.</p>
24.3	<p>Relevant records: 1) Records related to medical exams along with toxic substances and blood-borne pathogen exposure, 2) log of occupational injuries and illnesses, 3) supplementary record of injuries and illnesses, 4) post a completed annual summary of injuries and illnesses (OSHA No. 300A). Note: In general, hardware stores are not required to keep workplace injury and illness records; lumber and building material stores, distributors and manufacturers are; state OSH laws may have other requirements.</p>
24.4	<p>Records retention: 5yr = records of job-related injuries and illnesses. 30yr + employee job tenure = records related to medical exams along with toxic substances and blood-borne pathogen exposure.</p>
24.5	<p>HR area(s) impacted: Health, safety & security</p>
25	<p>Sarbanes-Oxley Act of 2002, 1 - 14EE</p>
25.1	<p>Summary: Increases accountability of corporations to their shareholders as a result of accounting scandals. Many financial</p> <p style="text-align: right;"><i>Continued on page 5-16</i></p>

	<p>considerations are not relevant to HR matters; however, two have impact. 1) Whistleblower protection provisions prevent public companies from discriminating against whistleblowing employees and give whistleblowers a private right of legal action. Employees are protected if they reasonably believe a violation of federal securities law, rules or regulations of the Securities and Exchange Commission or any provision of federal law relating to fraud against shareholders has been committed. For employee protection, the employee must report the violation to a federal agency, a member of Congress, any person with supervisory authority over the employee or any person working for the company who has the authority to investigate, discover, or terminate misconduct.</p> <p>2) The 401(k) blackout provision is intended to give plan participants and beneficiaries 30 days notice when they cannot a) direct or diversify assets credited to their accounts or b) obtain loans or distributions for a period of three consecutive business days. If the blackout period prevents at least 50% of the plan participants from engaging in transactions involving company stock held in their accounts, directors and executive officers of the company may not engage in trading involving company stock held outside the plan during the blackout period. Notice is to include a) the reason for the blackout, b) identification of the investments, c) participant rights that are affected, d) expected beginning date, e) length of the blackout period and f) a statement that participants should review their investment decisions in light of their inability to direct or diversify their accounts during the blackout period.</p>
25.2	<p>Non-compliance penalty: Whistleblowers = violators subject to criminal penalties including fines and imprisonment to 10 years. 401(k) = plan administrators failing to provide the blackout notice may be fined up to \$100 a day per affected participant or beneficiary.</p>
25.3	<p>Relevant records: Investigate individual state requirements in states where the company does business.</p>
25.4	<p>Records retention: Investigate individual state requirements in states where the company does business.</p>
25.5	<p>HR area(s) impacted: Management practices Compensation & benefits</p>
26	<p>Service Contract Act (1965), 50+EE</p>
26.1	<p>Summary: Provides labor standards for certain persons employed by federal contractors to furnish services to federal agencies and for other purposes.</p>
26.2	<p>Non-compliance penalty: Enforcement proceedings may be instituted by the associate solicitor for fair labor standards or a regional solicitor by issuing a complaint and causing the complaint to be served upon the respondent. An administrative law judge will notify parties of the time and place for a hearing</p>
26.3	<p>Relevant records: Investigate individual state requirements in states where the company does business.</p>
26.4	<p>Records retention: Investigate individual state requirements in states where the company does business.</p>
26.5	<p>HR area(s) impacted: Management practices</p>

Continued on page 5-17

27	Title VII of the Civil Rights Act of 1964 15 - 19EE
27.1	Summary: Prohibits discrimination in almost every employment circumstance on the basis of race, color, religion, gender, pregnancy or national origin. In general, encourages employers to consider only objective job-related criteria in making employment decisions. Noted classes of individuals are considered “protected” under Title VII because of the history of unequal treatment which has been identified in each class.
27.2	Non-compliance penalty: Intentional discrimination = employees may seek a jury trial, with compensatory and punitive damages up to the maximum limitations established by the Civil Rights Act of 1991 according the employer’s number of employees: 15-100 employees, a maximum of \$50,000; for 101-200 employees, a maximum of \$100,000; for 201-500 employees, a maximum of \$200,000; and for over 500 employees, a maximum of \$300,000. Remedies of back pay, reinstatement and retroactive seniority are available for all types of discrimination, whether intentional or disparate impact.
27.3	Relevant records: Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations), including records for temporary or seasonal positions. Filing of an annual EEO-1 Report (for federal contractors with 50 or more employees, non-contract employers with 100 or more) is required.
27.4	Records retention: 1yr = from making the record or taking a personnel action. Current = EEO-1 Report must be retained. Until “final disposition.” = where a charge or lawsuit is filed, all relevant records must be kept
27.5	HR area(s) impacted: Employment practices Health, safety & security Compensation & benefits Staffing & recruitment practices
28	Uniform Guidelines on Employee Selection Procedures of 1978, 1 - 14EE
28.1	Summary: Pertains to use of interviewing, testing, training and other employee selection tools and their impact on discrimination based on race, color, religion, sex or national origin. Focus is adverse impact, measured by the 80% test, which states that if a selection practice yields less than 80% of a protected group as compared to the most frequently selected group, there may be evidence of discrimination.
28.2	Non-compliance penalty:
28.3	Relevant records: Employers are required to maintain records on their selection procedures and any adverse impact noted, as well as records of the employer’s workforce broken down by race and ethnic groups.
28.4	Records retention: Unspecified time = records on their selection procedures and any adverse impact noted, as well as records of the employer’s workforce broken down by race and ethnic groups.
28.5	HR area(s) impacted: Employment practices

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	<p>Management practices Health, safety & security Compensation & benefits Employee & labor relations Human resource development Staffing & recruitment practices</p>
29	Uniformed Services Employment and Reemployment Rights Act of 1994, 1 - 14EE
29.1	<p>Summary: Replaces the Veterans' Reemployment Rights Act and generally prohibits employers from discriminating based upon past, present or future membership in a uniformed service (including periods of voluntary training and service). Specifically: 1) prohibited is discrimination in employment, job retention and advancement; 2) employers are to provide retraining opportunities; 3) requires health care and pension benefits to continue during leave; 4) permits an employee to take military leave up to five years; 5) provides additional protection for disabled veterans; 6) requires employees to provide notice of their need for leave; and 7) requires service members to notify their employers of their intention to return to work. Persons reemployed after military service are generally required to a) be allowed to return to work, b) returned to all the benefits and c) credited with seniority they would have had if they had remained continuously employed.</p>
29.2	<p>Non-compliance penalty: Back pay and benefits and liquidated damages (if conduct was willful).</p>
29.3	<p>Relevant records: Investigate individual state requirements in states where the company does business.</p>
29.4	<p>Records retention: Investigate individual state requirements in states where the company does business.</p>
29.5	<p>HR area(s) impacted: Employment practices Management practices Compensation & benefits Human resource development</p>
30	Vietnam-Era Veterans Readjustment Act of 1974, 1 - 14EE
30.1	<p>Summary: Contracts in the amount of \$25,000 or more entered into by employers with any department or agency for the procurement of personal property and non-personal services (including construction) for the United States are to contain a requirement that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States.</p>
30.2	<p>Non-compliance penalty: Eligible personnel who believe their rights under any law or regulation relating to veterans' preference have been violated may seek information or file a complaint with the Department of Labor's Veterans' Employment and Training Service (VETS). Complaints must be filed in writing and within 60 days after the date of the alleged violation.</p>

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30.3	Relevant records: VETS-100 form must be filled out annually by all contractors and subcontractors with a federal contract that exceeds \$25,000. This form shows the number of targeted veterans in their work force by job category, hiring location and number of new hires, including targeted veterans hired during the reporting period and the maximum number of employees of such contractor during the period covered by the report.
30.4	Records retention: Annual = VETS-100 form update.
30.5	HR area(s) impacted: Employment practices Compensation & benefits Human resource development Staffing & recruitment practices
31	Vocational Rehabilitation Act of 1973, 50+EE
31.1	Summary: Contracts in excess of \$10,000 entered into by employers with any federal department or agency for the procurement of personal property and non-personal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities.
31.2	Non-compliance penalty: Employees may file DOL complaints. DOL will investigate and interview. Mediation may be utilized. Consequences may be specific to complaint findings.
31.3	Relevant records: Investigate individual state requirements in states where the company does business.
31.4	Records retention: Investigate individual state requirements in states where the company does business.
31.5	HR area(s) impacted: Management practices Health, safety & security Compensation & benefits
32	Walsh-Healy Act of 1936, 50+EE
32.1	Summary: In any contract (contracts for materials, etc., exceeding \$10,000) made and entered into by any executive department, independent establishment or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation there shall be included the following representations and stipulations: 1) minimum wages, 2) fringe benefits, 3) overtime, 4) child labor, 5) safety and health, 6) union dues and 7) complaints.
32.2	Non-compliance penalty: Contract terminations and liability for any resulting costs to the government, withholding of contract payments in sufficient amounts to cover wage and fringe benefit underpayments, legal action to recover the underpayments and debarment from future contracts for up to three years.
32.3	Relevant records: Investigate individual state requirements in states where the company does business. <i>Continued on page 5-20</i>

32.4	Records retention: Investigate individual state requirements in states where the company does business.
32.5	HR area(s) impacted: Management practices Health, safety & security Compensation & benefits
33	Worker Adjustment and Retraining Notification (WARN) Act of 1988, 50+EE
33.1	Summary: Requires employers with 100 or more full-time employees to provide 60 days written advance notification of plant closings and mass layoffs to employees, bargaining unit(s) and state and local government officials. Plant closings are defined as 1) single site of employment that is permanently or temporarily shut down; 2) shutdown must result in an employment loss of 6 months or a 50% reduction in hours over a 6-month period; and 3) shutdown must impact 50 or more full-time employees during any 30-day period. Mass layoffs are defined as a workforce reduction at a single employment site that impacts either 1) at least 33% of full-time employees and 2) at least 50 full-time employees; or 3) at least 500 employees. Notice is to be in writing and provided 60 days in advance to employees (mailed to their last known address or enclosed with their paycheck), the employees' bargaining unit, the state dislocated worker unit and the chief elected official of the governmental body where the plant closing or layoff will occur. Limited circumstances exemptions to WARN may be available.
33.2	Non-compliance penalty: Employers are liable for back pay and lost benefits, including medical expenses which would have otherwise been paid, for up to 60 days, as well as attorneys' fees. Class action suits are specifically allowed; however, punitive damages will not be awarded.
33.3	Relevant records: Investigate individual state requirements in states where the company does business.
33.4	Records retention: Investigate individual state requirements in states where the company does business.
33.5	HR area(s) impacted: Employment practices Compensation & benefits

Continued from page 5-3

DISABILITIES

Americans with Disabilities Act (ADA)

- Most complaints are filed by current employees as opposed to new applicants.
- Common disabilities cited include back-related issues, diabetes and heart, mental and neurological issues.
- Disability means a mental or physical impairment that substantially limits one or more of the major life activities of a person, or a record of such impairment; or being regarded as having such an impairment (for example, being obese, cosmetically disfigured or perceived as being at high risk of having a work-related injury).
- Persons with AIDS are protected under the act. Persons with contagious diseases who do not pose a direct threat to others are protected.
- Persons with infectious or communicable diseases that are transmitted through handling of food and which cannot be reasonably accommodated

- may be refused an assignment or continued assignment where food is handled.
- Rehabilitated drug addicts and alcoholics are considered disabled under the law.
- Excluded disabilities comprise current use of illegal drugs, bisexuality, compulsive gambling, exhibitionism, homosexuality, kleptomania, pedophilia, pyromania, transsexuality, transvestitism and voyeurism.
- ADA does not preempt any existing state or federal laws.
- Employers are not permitted to use employment tests or similar selection tools which tend to screen out persons with disabilities unless the test is related to the job and consistent with business necessity.
- Applicants or employees are expected to advise employers of their need for accommodation. Employers are required to make reasonable accommodations to the known physical or mental limitations of a qualified person unless such would impose an undue hardship (significant difficulty or expense) on the organization.
- Reasonable accommodation may include making existing facilities used by employees readily accessible to the disabled. Also included are reassignment, flexible work schedules, obtaining or modifying equipment or devices, examination modifications, training materials and policy modifications, qualified readers and interpreters provisions.
- If a person requires reassignment to another position, the incumbent on that job need not be “bumped.”
- Pre-employment inquiries about a person’s disability status are prohibited by ADA. Employers may give a conditional offer of employment and evaluate suitability for the job if all entering employees are treated the same, medical information gathered is held confidential and examination results are handled in accordance with the ADA.
- Pre-employment drug screening examinations are permitted under the ADA. They are not considered medical examinations.
- Employers may conduct medical examinations of current employees and inquire about their disability status as long as the questions and examinations can be shown to be job related and proven as a business necessity. Again, information should be

Sample Letter to the EEOC

(YOUR COMPANY) LETTERHEAD PAPER

Date

Name of person sending you the charge

Title

Address

City, State, ZIP

Re: (Cite the charge and any identifying information)

Dear Mr./Ms. (Name of person sending you the charge)

I am representing (your company) in this matter. I will investigate the allegations indicated in the charge and respond on behalf of (your company). All communications regarding this case should be directed to me. (Please make sure mail addresses, phone and/or fax numbers or other means of contact are included.)

Respectfully

(Your name)

(Your title)

kept confidential and not used to discriminate.

- Employers are required to alert applicants and employees of the provisions of the ADA. Posting of federal notices is required and there may be local and state provisions for certain postings. It is strongly recommended that employers seek competent advice from appropriate sources to determine what postings may be required.

We have emphasized the ADA. What do employers need to do to comply with the law? Here are the key points:

- Look for, identify and evaluate physical impediments. Possible physical barriers should be removed or altered in a manner to grant access to all persons.
- Review and redefine existing job descriptions. Disabled persons are considered qualified if, with or without a reasonable accommodation, they can perform the essential elements of the job.
- Review the essential functions in job descriptions and evaluate them with the following in mind:
 - *Evaluate exactly what skills are required for the job.*
 - *Determine what specific duties go along with those jobs.*
 - *Establish how much flexibility is required of a specific job.*

Ensure that job descriptions:

- *Include the most consistent and important aspects of the job.*

- *Are not exaggerated.*
- *Are realistic.*
- Review application forms making sure there is no discriminatory language.
- Follow closely and consistently guidelines for medical examinations.
- Determine if in-use pre-employment tests should be eliminated or used differently under the ADA.
- Put in place a communications and training program to address employee issues.
- Make sure training programs are equally accessible to all participants.
- Consider carefully how reasonable accommodations are handled.

For assistance, you may contact the Job Accommodation Network (JAN) which is a federally funded service giving advice concerning available accommodations. They can be reached at (800) 526-7234.

DISCRIMINATION

Title VII and others

Try though we may, sometimes we are not able to avoid charges of discrimination. There are some important actions and considerations for employers when charges are brought. The best plan of action is to check with a legal adviser. Before doing so, you might want to prepare yourself by considering:

- All relevant documents should be collected and reviewed.
- As appropriate, consult an attorney.

- Be attentive to all facts and details.
- Be business-like and professional in all dealings with the EEOC, state and similar agencies.
- Do assert your rights.
- Investigate the matter thoroughly. Facts to determine when we receive a charge:
 - Decide if the charge was filed in a timely manner. If not, alert the EEOC in writing.
 - Determine if the charge specifies the person complaining and the specific nature of the alleged discrimination. If not, then ask the EEOC to give you more information. Make sure you understand the full extent of the complaint. If you do not, ask the EEOC for specifics on the complaint, get answers to who, what, where, when, how and why in the complaint.
 - Note the date of the communication to you and respond promptly. Respond to the EEOC in writing. (See sample letter in this chapter.)
 - Consider certified or similar mail for this kind of letter. Keep a copy of this letter and all correspondence.
 - Determine if you are able to resolve the matter to the satisfaction of the parties. The EEOC often is cooperative in resolving matters to settle the case.
 - Determine what alternatives the EEOC can offer for resolution of the matter.

- Gather your evidence:
 - Assemble and review the complainant's complete personnel file.
 - Gather all other records in the case before any action is taken.
 - Objectively read and review the files and information.
 - Collect all materials written by company representatives including notes and correspondence between the representatives and the person bringing the charge.
 - Collect and review all of your organization's relevant policies and procedures.
 - Determine if there is any additional important information relevant to the case and gather it.
 - Once notice of a charge is received, all records which are relevant must be preserved as a matter of law.
 - Learn about those persons in your organization who made the decisions being cited in the charge and the reasons for their decisions.
- If evidence is gathered by testimony:
 - Assess the credibility of witnesses.
 - Carefully listen to the facts given. Determine if the facts make sense. Clarify the statements until they are clear and make sense.
 - Determine exactly why the person is giving information and what s/he said and did. Collect details and not just characterizations or opinions.
 - Determine if the witnesses were in positions to see and hear what was claimed.
 - Note if there are conflicts in the testimony and attempt to resolve them.
 - When speaking with witnesses, find out if there were others who also could possibly be a witness and who can clarify discrepancies.
- About signed statements:
 - Get them whenever possible.
 - If a written statement is not obtained, take detailed notes.
- Evaluating evidence relating to similar matters:
 - Was the complainant in this case treated differently than others in similar situations?
 - If there was different treatment, why was it so?
 - Find out the type of decision being challenged by the complainant and gather statistics about all relevant decisions.
- Evaluate the motives of the decision-maker:
 - Does anything indicate the decision-maker was discriminatory in other actions?
 - Does anything indicate the decision-maker was discriminatory in other decisions?
- Is there anything in other writing or comments by the decision-maker that indicates s/he demonstrates clear or even subtle discriminatory behavior?
- Regarding confidentiality in the matter:
 - Clarify to witnesses that statements made by them cannot be kept confidential. Regardless, strive to maintain as much confidentiality in handling information and statements as is possible.
- Making formal statements to investigating agencies:
 - Collect documentation for each point made by the complainant. Copy it as appropriate and include it with your response.
 - Give a concise background of your organization indicating the type of business, the number of employees (including full- and part-time, outside salespeople, etc.) and how your business is organized.
 - Give brief information pertaining to the complainant including job title, employment dates, pay history, job descriptions and discipline history in general.
 - Identify and review other instances where the same and/or other decision-makers treated the complainant favorably while employed.
 - Review the matters that led up to the personnel action that brought about the

claim. Based upon your findings, end your statement with a firm denial of the allegations.

- Support your case by comparing it with other situations and actions in your organization where persons were treated similarly.

Women who are pregnant and/or have related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work.

Women are protected against practices such as being fired or being refused a job or promotion merely because of pregnancy or abortion. Normally, women cannot be forced to go on leave as long as they can still work. (A competent medical professional should make such a determination.)

If other employees who take disability leave are entitled to return to their jobs when they are able to return to work, so are women who have been unable to work because of pregnancy.

Women unable to work for pregnancy-related reasons are entitled to the same disability benefits or sick leave as employees unable to work for other medical reasons.

Health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other coverage.

Under the employment provisions of the ADA, there may be several defenses if a case arises. As example, the organization may be deemed a religious corporation, association or educational institution or organization where individuals of a particular religion are preferred as employees to perform work in

connection with the mission of the religious entity.

It may be possible to demonstrate that the application of tests, qualification standards and similar selection criteria do not screen out or discriminate against individuals. We need to show that the contested item is consistent with business necessity, is job related and that the job cannot be performed by a reasonable accommodation.

We may show that the employee handles food in his or her work and suffers from an infectious or communicable disease. If the U.S. secretary of Health and Human Services has identified the disease to be one transmitted by handling of food, we may be upheld in disallowing the employee to perform the work.

We might show that the alleging employee poses a direct threat to the safety and health of other individuals in the workplace.

We need to be attentive to the potential for discrimination in hiring. Advise staffing, recruiting and executive search firms of affirmative action and EEO requirements if they are set out for the specific organization.

Do not rely solely upon employee networking and word-of-mouth recruiting.

Make sure minorities and women are considered for accountability assignments. Make sure senior management and executives are accountable and responsible for EEO.

DOWNSIZING

Worker Adjustment and Retraining Notification (WARN) Act

When dealing with the WARN Act (Ref. 33), *disparate impact* is a

hazard and a form of age discrimination where employers appear neutral in the treatment of different groups but are found to have practices that fall more harshly on one group than another and are not a business necessity. This situation does not require proof of discriminatory motive.

Disparate treatment is a form of age discrimination where employers treat some workers better than others based upon, for example, age. If a claim is brought, a plaintiff must prove the employer had discriminatory motives. Downsizing organizations can have devastating effects if mishandled for age discrimination. Employers must plan carefully and evaluate all alternatives to downsizing.

Consider the following when downsizing:

- Be considerate in handling the reduction in force.
- Consider outplacement assistance, severance pay, etc.
- Develop a fair and effective method to appraise employee performance and to rank employees for selecting those to leave.
- Select employees for jobs based only upon their knowledge, skill and ability to perform the specific requirements of the job.
- Identify the job functions which are surplus or unnecessary without naming the employees working in the affected positions.
- If not all employees in the unit are expected to be affected by the reduction in force, still evaluate all employees of the unit before selecting anyone to leave.
- Inside the organization, develop a written list of selection criteria

that is objective, performance-based and well defined.

- Ensure the people responsible for making the decisions understand the policies for your reduction in force and follow set procedures.
- Make out a written list of the business reasons why you will downsize. Include efficiency improvements and economic savings.
- Plan out the people responsible for selecting employees to be affected and establish a decision sequence.

INJURIES

OSHA, ADA and Workers' Compensation

As employers review the legal and regulatory requirements for running their businesses and information summarized in this manual, it may seem that the ADA and workers' compensation guidelines are at odds. ADA says that an employee with a disability may work. Workers' compensation is an avenue for the same employee to not work. ADA is an anti-discrimination law while workers' compensation is a benefits law. As managers, we are left to integrate the two.

Here are a few suggestions:

- As a result of these laws, we may no longer require that an employee returning to work be 100% able to perform the job (note importance of job descriptions.)
- Consider other legal and regulatory factors which may interact with ADA such as FMLA and OSHA.
- Fairly and objectively monitor workers' compensation "light duty" assignments by setting target dates for completion to

ensure they do not become ADA long-term "reasonable accommodation" situations.

- Injured or ill employees who can do the tasks and duties required should be at work, get to work and stay at work. Take the initiative to share the job description with the physician and ask specifically what the employee cannot perform and what restrictions are required. Don't ask merely when the employee can return to work.
- Employers should be prepared to promptly and effectively provide claims personnel with the specific, essential functions of jobs via job descriptions and the company's written policy for return-to-work.
- Remember that employees with an occupational injury are not to be considered disabled automatically under the ADA.
- Understand that both laws are different systems. Awarding an employee a permanent disability does not mean that obligations under ADA disappear.
- We must be familiar with the ADA and be prepared to deal with ADA matters as they come up. The adage "Ignorance is no excuse" applies here.
- We should actively strive to integrate ADA and workers' compensation for compliance, improved employee relations and any possible impact on unions, if they are involved.
- With any employee injury or illness, be prepared to address the ADA with reasonable accommodation in terms of light duty, modified return-to-work, reassigned jobs and similar options.

HARASSMENT

Title VII and related legal and regulatory guidelines

Harassment violates non-discrimination laws. Employers are responsible to maintain a workplace free of harassment. Where necessary, positive action must be taken to eliminate the harassment.

In harassment cases the perspective of the individual claimant's race, color, religion, gender, national origin, age or disability is given consideration. Recently, sexual harassment gained considerable attention. The state of California has enacted assertive laws and procedures for sexual harassment. Owners and managers should investigate local legal and regulatory requirements on harassment. With harassment, the standard is if a reasonable person in the same or similar circumstances would find the challenged conduct intimidating, hostile or abusive.

Unlawful harassment includes creating an intimidating, hostile or offensive working environment. It includes unreasonably interfering with a person's work performance or otherwise adversely affecting a person's employment opportunities.

Employers are liable for supervisors causing harassment regardless of whether the employer knew or should have known of the harassment.

Employers are liable when they knew or should have known of the conduct and failed to take immediate and appropriate action.

Employers are responsible for acts of harassment by co-workers if the employer or supervisor knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

Employers may have liability with non-employees where employers knew or should have known of the conduct and failed to take immediate and appropriate action.

Keeping abreast of and applying legal and regulatory requirements can be a daunting task. However, with the brief summaries in this handbook, resources available via the Internet and competent legal and similar advice, management can effectively work within the legal framework. Laws are path markers to keep us in compliance, to protect us and our employees.

The importance of up-to-date knowledge of laws and regulations is emphasized by a common rule-of-thumb that owners and managers as well as employees are protected by whichever legal or regulatory guideline is more in favor of the company or the employee. A common example is minimum wages. State and municipal “living wage” amounts may be higher than the federal minimum wage. In such cases, the higher, local minimum wage applies.

Initial and continuing training can be a means to keep up-to-date on compliance. We move into Chapter 6 now to explore the fundamentals of training. ■