



# **Head Start/ ECEAP Training Consortium**


## **Employment Law Overview**

**October 9, 2007**

**presented by**

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- I. Introduction
  - II. Overview of Employment and Discrimination Laws
  - III. Hiring & Interviewing Practices
  - IV. Wage & Hour Issues
  - V. Attendance and Leave Issues
  - VI. Corrective Action and Discipline
  - VII. Termination Issues and Practices

- Address current legal issues employers face
- Provide overview of federal & state employment laws affecting everyday decisions made by employers
- Create general awareness of legal obligations
- Know when to seek assistance in dealing with issues

## **Title VII of the Civil Rights Act of 1964 (Title VII)**

- Prohibits discrimination based on race, color, religion, sex, and national origin
- 15 or more employees

## **Americans With Disabilities Act (ADA)**

- Prohibits discrimination against qualified applicants/employees who have physical or mental disabilities
- 15 or more employees

## **Pregnancy Discrimination Act (PDA)**

- Prohibits discrimination on the basis of pregnancy or childbirth
- 15 or more employees

## **Age Discrimination in Employment Act (ADEA)**

- Prohibits discrimination against individuals over the age of 40
- 20 or more employees

## **Fair Labor Standards Act (FLSA)**

- Applies to employers engaged in interstate commerce
- Establishes minimum wage & overtime requirements

## **National Labor Relations Act (NLRA)**

- Applies to all private employers whose business affects interstate commerce
- Applies to all employees, except supervisors, independent contractors, and agricultural workers

## **Immigration Reform and Control Act (IRCA)**

- Prohibits discrimination against any applicant/employee (other than an unauthorized alien) because of national origin or citizenship status
- 4 or more employees

## **Uniform Services Employment and Re-employment Rights Act (USERRA)**

- Prohibits discrimination due to military service or intent to serve
- Applies to all employers, regardless of size
- Establishes reemployment rights

# Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

- Provides opportunity to continue group health coverage following termination of employment
- 20 or more employees

## Washington Law Against Discrimination (WLAD)

- Prohibits employers from discriminating because of age, sex (including pregnancy), sexual orientation, marital status, race, religion, creed, color, national origin, honorably discharged veteran or military status, presence of a sensory, mental, or physical disability, or use of trained service dog
- 8 or more employees (age & pregnancy discrimination are prohibited for all employers regardless of size)

Sexual orientation, honorably discharged veteran or military status, and the use of a trained dog guide or service animal by a disabled person are new categories that were recently added to the list of protected classes in Washington. Sexual orientation is defined to include, among other things, heterosexuality, homosexuality, bisexuality, and gender expression or identity.

The use of a trained dog guide or service animal is only protected if the individual is disabled.

“Honorably discharged veteran or military status” means a person who is defined as a veteran under Washington law or is an active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

## Key Points for Employers

Under the Washington Law Against Discrimination, even if you do not employ 8 or more employees, if you act in a discriminatory manner towards an employee in violation of a clear public policy, you can still be held liable for discrimination in violation of public policy.

## **Disability Discrimination**

An employee is considered to have a disability when he/she has the presence of a sensory, physical or mental impairment that is medically cognizable or diagnosable, exists as a record or history, or is perceived to exist whether or not it exists in fact.

## **Disability Discrimination**

Disabilities protected under the WLAD may be temporary or permanent, common or uncommon, mitigated or unmitigated, and may or may not limit the ability of an individual to do a particular job or activity. This definition was created anew by the 2007 Legislative Session. The new definition is retroactive to all causes of action occurring before July 6, 2006.

## **Pregnancy Discrimination**

WAC 162-30-020 prohibits any adverse employment action, including refusing to hire or promote, terminating, demoting, or re-employing a woman because of pregnancy or childbirth.

## **Washington Minimum Wage Act (MWA)**

- Establishes minimum wage, overtime, and meal & rest break requirements
- Applies to all employers, regardless of size

## **Wage Payment Act (“WPA”)**

- Authorizes the Department of Labor and Industries to issue citations to employers for violations of any wage payment statute or requirement (i.e. Minimum Wage Act)
- Creates administrative procedure to promptly investigate wage complaints
- Applies to all employers regardless of size

## **Family Care Leave Act (FCA)**

- Applies to all employees who accrue and are eligible to use paid sick leave
- Allows employee to use sick leave or other paid leave to care for a family member with a serious health or emergency condition, or to care for a child with a health condition requiring treatment or supervision

## Washington Family Leave Insurance Program

- Provides up to \$250/week for five weeks of paid leave to care for a newborn or newly adopted child.
- Employee must have worked at least 680 hours during his or her qualifying year.
- Benefit will be prorated for part time employees
- Leave is job-protected for employers with 25 or more employees

## Family Leave Act (WFLA)

- Provides 12 weeks unpaid leave during 24-month period to care for newborn or adopted child under age 6, or a child under 18 with a terminal health condition
- Leave is in addition to pregnancy leave
- Applies to employers with 50 or more employees

## Parental Leave

- If an employer provides child care leave, the employer is required to grant the same amount of leave to fathers, adoptive parents, and step-parents to care for a newborn or newly-adopted child under the age of six.
- Employers may restrict leave to those living with the child at the time of the birth or initial placement.

## **Industrial Insurance Act (Worker's Compensation)**

- Establishes eligibility & criteria for worker's compensation for workplace injuries
- Shields employers from further liability for workplace injuries

## **Washington Veterans Employment and Reemployment Act ("WVERA")**

- Prohibits discrimination due to military service
- Parallels Federal USERRA, except:
  - Employer under WVERA must provide up to 4 years of Leave
  - WVERA makes distinctions between public and private entities
- Military leave is in addition to any vacation or sick leave the employee is already entitled

## **Negligent Hiring**

- Duty to exercise reasonable care in hiring process
- Consider nature of job
- Carefully review applications/resumes
- Reasonable investigation of applicant's background
- Reference checking

# Applicant Screening

## Interviews

- Permissible/impermissible questions

## Interviewing tips

- Open-ended job related questions
- Job descriptions identifying essential functions
- Careful choice of words
- Avoid inappropriate comments or promises

## Obtaining references

- Ability to release reference information (RCW 4.24.730)
- Use consent form
- Prior to job offer
- Job-related questions

## **Providing references**

- Require consent form
- Identify reference checker
- Identify who is authorized to provide references
- Keep written record
- Be objective

## Background checks

- Required for all individuals with unsupervised access to minor children, financially vulnerable adults, or developmentally disabled persons
- Obtain written disclosure
- Verify with Washington State Patrol

## **Exempt v. Non-exempt**

- Duties & responsibilities
- Level of pay (\$455/week)
- Paid on a “salaried” basis (different than being paid a salary)
- Paid same amount regardless of number of hours worked

## Overtime

- Non-exempt
  - Overtime for all hours worked over 40 hours in a work week
  - Can exclude sick, vacation (PTO), and holiday pay
  - Must pay if employee works, even if unauthorized
- Exempt
  - Four main exemptions: executive, administrative, professional and outside salesperson
  - Complex - consult with legal counsel.

## Compensatory Time

- Non-exempt employees
  - FLSA – not allowed in private sector
  - Washington – only in public sector
  - 1-1/2 times hours worked
- Exempt employees
  - Permissible because of exempt status
  - Allowed in public sector without affecting exempt status

## Meal & Rest Periods

- Meal period – 30 minutes
  - 2–5 hours after beginning of employee’s shift
  - 3+ hours longer than normal shift
  - Can be waived (in writing)
- Rest period
  - 10 minutes for each 4 hours worked
  - Can be on an intermittent basis

## New Payroll Deduction Rules

- Deductions from final wages can reduce the employee's final gross wages below the state minimum wage in specific instances.
- WAC 296-126-028 governs wage deductions during on-going employment.
- WAC 296-126-030 governs adjustments for wage overpayments

- Attendance Policies
- Disability Leaves
  - Introduction
  - Identifying essential functions and possible reasonable accommodations
  - Implementing accommodations
  - Handling co-worker resistance
  - Disciplining employees with disabilities
  - Documentation

- Pregnancy Leave
- Washington Family Care and Family Leave Acts
- Worker's Compensation

*When the need for a disciplinary action arises:*

- Documentation is key.
- Keep the documentation objective, leave your emotions out.
- Be as broad as possible when discussing the basis for the discipline.

## *When enacting disciplinary measures:*

- Describe the specific conduct or performance deficiency.
- Be clear about the consequences, present and future.
- Be evenhanded and consistent, enact the same disciplinary measures for all violations.

## ***Types of discipline to document include:***

- Transfers
- Changes in responsibilities or assignments
- Limitations on privileges
- Ineligibility for promotion or transfer
- Verbal warnings
- Demotions

## ***Documentation should include:***

- The date the discipline was imposed;
- A thorough description of the incident (including date);
- Rules violated by employee conduct;
- Description of the discipline;
- Future consequences if behavior persists.

## **General Rule: Employment is “at will”**

“At will” means that you may terminate an employee at any time at your discretion, with or without notice, and with or without cause.

## Exceptions

- Collective bargaining agreements
- Written or oral contracts
  - Specific promises of specific treatment
- Employee manuals/ personnel policies
- Statutory Exceptions

## Exceptions (cont.)

- Termination in violation of public policy
  - For performing a public duty
  - For exercising a legal right
  - For reporting employer misconduct
  - For refusing to commit an illegal act
  - Contrary to public policy

## **Ways to Reduce Wrongful Discharge Claims**

- Document warnings
- Decide adequate reasons for dismissal
- Consider employee characteristics
- Review personnel file
- Ensure consistency with past practice

## **Ways to Reduce Wrongful Discharge Claims**

- Evaluate for cause
- Investigate circumstances
- Two company representatives present
- Tactful/ courteous/ confident/ firm
- Factual/ truthful

## Prepare for meeting

- Practice
- Get to the point
- Truthful
- Avoid references to personal characteristics
- Avoid arguing
- Avoid apologies
- Explain separation benefits
- Take responsibility

- **After the Discharge Meeting**

- Carefully communicate the termination to co-workers and clients.
- Consider exploring with the employee a strategy about notice to colleagues and customers.
- Consider a voluntary resignation and possible severance agreement

- **Document**

**Thank you for attending.**