



Head Start/ ECEAP

Employment Law Overview

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ATTORNEYS AT LAW

Topics

- 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

Introduction

- 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

Key Federal Laws

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

- Prohibits discrimination base 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

Key Federal Laws

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

Key Federal Laws

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

Key Federal Laws

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
- New I-9 Form to verify employment authorization for all employees, regardless of citizenship
- M-274: Handbook for Employers, Instructions for Completing the Form I-9
- 1-800-870-3676
- www.uscis.gov

Key Federal Laws

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

Key Federal Laws

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

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

Key State Laws

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)

Key State Laws

Key Point 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.

Key State Laws

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.

Key State Laws

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.

Key State Laws

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.

Key State Laws

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

Key State Laws

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

Key State Laws

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

Key State Laws

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

Key State Laws

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.

Key State Laws

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

Interviewing & Hiring Practices

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

Interviewing & Hiring Practices

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

Interviewing & Hiring Practices

Obtaining references

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

Interviewing & Hiring Practices

Providing references

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

Interviewing & Hiring Practices

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

Wage & Hour Issues

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

Wage & Hour Issues

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.

Wage & Hour Issues

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

Wage & Hour Issues

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

Wage & Hour Issues

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 and Leave Issues

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

Attendance and Leave Issues

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

Corrective Action and Discipline

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.

Corrective Action and 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.

Corrective Action and Discipline

Types of discipline to document include:

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

Corrective Action and Discipline

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.

At-Will Employment

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.

At-Will Employment

Exceptions

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

At-Will Employment

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

Handling Terminations

Ways to Reduce Wrongful Discharge Claims

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

Handling Terminations

Ways to Reduce Wrongful Discharge Claims

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

Handling Terminations

Prepare for meeting

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

Handling Terminations

- **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.