

2012 Employment Law **TOOL BOX**

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ALPHABET SOUP GLOSSARY

AAA American Arbitration Association
ADA Americans with Disabilities Act
ADEA Age Discrimination in Employment Act
ADR Alternative Dispute Resolution
BFOQ Bona Fide Occupational Qualification
CBA Collective Bargaining Agreement
CDHP Consumer Driven Health Plan
COBRA Consolidated Omnibus Budget
Reconciliation Act
DHS Department of Homeland Security
DOL Department of Labor
DOT Department of Transportation
EAP Employee Assistance Program
EBSA Employee Benefits Security Administration
EEOC Equal Employment Opportunity Commission
EPA Equal Pay Act
EPPA Employee Polygraph Protection Act
ERISA Employee Retirement Income Security Act
ESOP Employee Stock Ownership Plan
FCRA Fair Credit Reporting Act
FLSA Fair Labor Standards Act
FMLA Family and Medical Leave Act

FSA Flexible Spending Account
FTC Federal Trade Commission
HHS Department of Health & Human Services
HIPAA Health Insurance Portability & Accountability Act
I-9 = Employment Eligibility & Verification Form
ICE Immigration & Customs Enforcement
IRCA Immigration Reform and Control Act
JAN Job Accommodation Network
NLRA National Labor Relations Act
NLRB National Labor Relations Board
OFCCP Office of Federal Contract Compliance Programs
OSHA Occupational Safety & Health Administration
OWBPA Older Workers Benefit Protection Act
PDA Pregnancy Discrimination Act
SOX Sarbanes-Oxley Act
SSA Social Security Administration
ULP Unfair Labor Practice
USCIS U.S. Citizenship & Immigration Services
USERRA Uniformed Services Employment &
Reemployment Rights Act
WARN Worker Adjustment & Restraining Notification Act

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CHEAT SHEETS

What Employers Are Covered?

Those with 15 or more employees

Effective Date?

60 days after the publication of the regulations on March 25, 2011.

Easier to Establish a Covered “Disability”

The ADAAA overturned several Supreme Court decisions that Congress believed interpreted the ADA disability definition too narrowly. The ADAAA expressly states that the definition of “disability” and “regarded as” should be interpreted in favor of broad coverage.

Same “Disability” Definition but Broader Interpretation

The basic definition of a covered disability remains the same – a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. However, the EEOC stresses that the ADAAA and new regulations are designed to ensure broad interpretation of each of those key terms.

Rules of Construction

According to the EEOC, the regulations “implement Congress’ intent to set forth predictable, consistent and workable standards by adopting ‘rules of construction’ to use when determining if an individual is substantially limited in performing a major life activity.” Those rules include:

- “Substantially limits” construed broadly.** “Substantially limits” requires a lower degree of functional limitation than the standard previously required by courts. A condition need not prevent or significantly restrict a major life activity to be considered “substantially limiting.”

- Individualized assessment.** The determination of whether a condition substantially limits a major life activity requires an individualized assessment, as was true prior to the ADAAA.

- Don’t consider mitigating measures.** With the exception of “ordinary eyeglasses or contact lenses,” “without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.”

- Do consider episodic or remission conditions.** Such conditions are covered disabilities if they substantially limit a major life activity.

- No extensive analysis required.** The EEOC says that, “in keeping with Congress’ direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis.”

Reasonable Accommodation

The regulations clarify that an individual must be covered under the ADA’s first prong (“actual disability”) or second prong (“record of disability”) to qualify for reasonable accommodation.

Conditions That “Virtually Always Constitute a Disability”

The regulations provide examples of conditions that “should easily be concluded to be disabilities,” including bipolar disorder, cancer, diabetes, epilepsy and HIV infection.

What Employers Are Covered?

Those with 15 or more employees

What Employees Are Eligible?

Persons:

- with a physical or mental impairment that substantially limits one or more major life activities
- with a record of such an impairment
- regarded as having such an impairment

What's Prohibited?

- Discrimination against individuals with (or perceived to have) disabilities
- Discrimination based on a person's relationship to a disabled individual
- Retaliation or harassment for exercising ADA rights

What Are "Major Life Activities"?

Breathing, seeing, hearing, sitting, standing, walking, learning, caring for oneself, performing manual tasks and working, among other things.

What's Required?

- Employers must provide a reasonable accommodation to a disabled individual upon request
- What's a "reasonable accommodation?"
 - A modification that allows the person to perform the job's essential functions
 - An accommodation that would cause "undue hardship" for the employer need not be provided

What About Drug and Alcohol Users?

The ADA protects:

- Rehabilitated drug users
- Drug users currently in rehabilitation
- Alcoholics

The employer may still hold the above to the same performance standards as other employees.

The ADA does not protect current users of illegal drugs.

What are the Potential Penalties?

- Back pay
- Compensatory damages
- Punitive damages
- Attorneys' fees

Top ADA Tips

- Ensure that all facilities are accessible by disabled individuals
- Job descriptions should clearly identify essential functions, including physical requirements
- Pre-offer: No medical exams and no inquiries regarding disability, perceived disability, workers' comp history, absence related to illness or prior drug/alcohol use
- Post-offer: medical exams are acceptable only if required of similarly situated employees
- Focus on results rather than means of accomplishing them
- Engage in an interactive process to determine the needs of an employee who requests an accommodation
- Contact the Job Accommodation Network (JAN) for accommodation assistance

What Employers are Covered?

Those with 20 or more employees

What's Prohibited?

- Discrimination against individuals age 40 and over in all aspects of employment for reasons based on age, unless based on a valid BFOQ
- Hostile work environment base on age
- Retaliation or harassment for exercising ADEA rights

What Employees are Covered?

Persons age 40 and older

What is a "BFOQ"?

A BFOQ is a bona fide occupational qualification. In general, an employer cannot demonstrate that age is a BFOQ unless it can establish that all or almost all members over the age it selects cannot safely perform the essential functions of the job.

- Note: A BFOQ is ordinarily difficult to prove unless the employee is working in a position that directly affects public safety

What's not Prohibited?

An employer may still take adverse action against an employee who is protected by the ADEA for a non-discriminatory reason unrelated to age

How to Obtain a Waiver of ADEA Rights?

- Obtain a written release executed by the employee that specifically refers to the ADEA

- Provide 21 days for the employee to consider the waiver and advise the employee to consult an attorney

- Provide 7 days for employee to revoke the waiver after signing
- Note: In RIF situations, provide 45 days for the employee to consider the waiver and an attachment to the waiver that contains the following:
 - The selection criteria for the RIF and any applicable time limits
 - A list of job titles and ages of each person subject to the RIF and those employees who fall into the same organizational unit but were not subject to the RIF

What are the Potential Penalties?

- Back pay
- Reinstatement or front pay
- Retroactive seniority
- Compensatory damages
- Punitive damages
- Attorneys' fees

Top ADEA Tips

- Do not ask for an applicant's age at any point during the application process
- Prohibit all age-related comments from the workplace pursuant to an effective anti-harassment policy
- Base any adverse employment actions on factors other than age (or other protected characteristics)
- Apply performance standards, policies and procedures, and access to benefits uniformly without regard to age
- Document poor performance and disciplinary measures taken against employees

What Health Plans are Covered?

Those for employers that employ 20 or more employees

What's Does COBRA Provide to Employees?

- Continued health care coverage to employees, former employees and/or qualified beneficiaries after the loss of previous coverage as a result of certain “qualifying events”
- Coverage continues at the same level provided before the qualifying event

What Are Examples of “Qualifying Events”?

- Termination
- Reduction of hours
- Participant becomes disabled
- Death or divorce
- Dependent child loses dependent status

How Long Does Coverage Generally Continue?

- 18 months in cases involving termination and/or a reduction in hours
- 29 months in certain cases involving disability
- 36 months in cases involving the death of a covered employee or divorce

What Notice Requirements Are There?

- General notice describing COBRA rights must be provided to participants within 90 days after participation in a health care plan begins
- Employers generally must provide plan administrators with notice within 30 days of the occurrence of a qualifying event
- Plan administrator must provide participants with an election notice of COBRA rights within 14 days of a qualifying event (44 days if the plan administrator is also the employer)

How Long Does a Participant Have to Elect Coverage?

60 days from the date of the qualifying event or the date the election notice is provided, whichever is later

Can the Plan Require the Participant to Cover the Cost of Premiums?

Yes, including any portion of the premium generally by the employer on behalf of active employees

When Can Coverage Be Cut Off?

- A participant fails to pay required premiums
- The employer discontinues the plan
- Under certain circumstances, where the participant obtains subsequent coverage

What are the Potential Penalties for failing to comply?

- Monetary penalties

Top COBRA Tips

- Ensure that all notices go out to employees and participants within the time required
- Notify all participants about any changes in health benefits

What Employers Are Covered?

Those with 2 or more employees

What's Prohibited?

The Equal Pay Act (EPA) prohibits discrimination between men and women who work in substantially equal positions with respect to pay unless based on factors other than gender

What Is a "Substantially Equal Position"?

A position that requires equal skill, effort and responsibility and is performed under similar working conditions

When Can an Employer Pay Employees Differently?

- Pursuant to a seniority-based or merit-based pay system
- Pursuant to a system that pays wages based on quantity or quality produced
- Pursuant to other factors not based on gender, including differences in the amount paid by shift, differences in employee qualifications, etc.

What are Some Examples of Potentially Discriminatory Reasons for Pay Differentials?

- Overhead costs to employer
- Industry practice
- Applicant's prior salary

What's Included in an Employee's "Pay"?

Wages, employment benefits and work-related expenses

What Are the Potential Penalties?

- Back pay
- Reinstatement or promotion
- Front pay
- Monetary penalties
- Injunctive relief
- Imprisonment
- Attorneys' fees

Top EPA Tips

- Don't rely solely on different job titles to justify differences in pay
- Maintain current and accurate job descriptions
- Apply wage payment structures uniformly by gender
- An employer cannot cure an existing wage differential by reducing the pay of any employee

What Employers Are Covered?

Those that offer “employee benefit plans” to their employees

What’s an “Employee Benefit Plan”?

- *Employee Welfare Benefit Plan*: a plan or fund through which an employer or employee organization provides participants with health care coverage
- *Employee Pension Benefit Plan*: a plan or fund through which an employer or employee organization provides participants with retirement or deferred income

What’s Required?

Certain minimum standards for both types of plans regarding employee and beneficiary participation, funding, administration, benefit accrual, disclosure, survivor benefits and plan termination

Who’s Eligible to Participate in Pension Plans?

In general, employers must allow every employee who is at least 21 years old and has worked for them for at least 1,000 hours over the last 12 months to participate

What Kinds of Pension Plans Are There?

- *Defined benefit plans*: promises a specific monthly benefit upon retirement (or retirement age)
- *Defined contribution*: the employer and/or employee contributes to the plan during employment and the employee receives the balance upon retirement (or retirement age)

What Are the Employer’s Notification Requirements?

- Provide a Summary Plan Description (SPD) to each plan participant
- Provide a summary of the plan’s annual financial information to each participant
- Provide an annual accounting of the benefits earned by each participant
- Provide a copy of the plan upon a participant’s request

What Are the Potential Penalties?

- Outstanding plan benefits
- Civil and criminal fines
- Imprisonment
- Attorneys’ fees

Top ERISA Tips

- Employers are not required to maintain employee benefit plans; however, if they do, such plans must comply with ERISA
- When faced with an employee’s question regarding benefits, always defer to the plan administrator
- Maintain confidentiality of all employee medical information
- Do not discriminate with regard to benefit plans based upon an employee’s membership in a protected class
- Reserve, in writing, the option to amend any plan
- Employers may be required to maintain medical coverage of an individual after separation from employment pursuant to COBRA

What Employers Are Covered?

All employers who order consumer reports from a consumer reporting agency

What Does the FCRA Provide?

The Fair Credit Reporting Act (FCRA) imposes strict rules on an employer's ordering and use of consumer reports for employment purposes

What's a "Consumer Report"?

A report of information relating to an individual's credit, general reputation, criminal history or personal characteristics

What Steps Must Be Taken Before Obtaining a Consumer Report?

- Notify the employee or applicant in writing about your intent to obtain a report
- Obtain the employee's or applicant's written permission prior to requesting the report

What Steps Must Be Taken Before an Adverse Action Based on a Consumer Report?

- Provide the individual with a copy of the report
- Provide the individual with a copy of the Summary of FCRA Rights available at www.ftc.gov

What Steps Must Be Taken After an Adverse Action?

Provide written, oral or electronic notice of the adverse action to the individual. The notice must include:

- the name, address and phone number of the consumer reporting agency that provided the report
- a statement that the consumer reporting agency did not make the decision to take the adverse action and will not be able to provide the individual with the specific reasons for the decision
- a statement that the individual has the right to dispute the accuracy or completeness of the information provided
- a statement that the individual can get an additional free consumer report from the consumer reporting agency used by the employer upon a request made within 60 days

What Are the Potential Penalties?

- Actual damages
- Punitive damages
- Attorneys' fees

Top FCRA Tips

- Ensure that you take the steps outlined above before obtaining a report or taking adverse action
- The request for permission should not be included in the employment application

What Employers Are Covered?

Those with 2 or more employees

What Does the FLSA Provide?

- Requires employers to pay employees at a rate no less than the minimum wage
- Requires employers to pay employees an amount equal to 1.5 times their regular rate of pay for all hours worked over 40 in a given week, unless an exemption applies
- Restricts employers from employing minors in certain jobs and for longer than certain periods of time

What Is the “Regular Rate”?

The total amount of money earned by an employee in a particular workweek divided by the number of hours worked

When Is an Employee Exempt?

- *Executive*: must be primarily engaged in management, direct the work of 2 or more full-time employees and be authorized to affect the terms and conditions of other employees through hiring, firing, etc.
- *Administrative*: must be engaged in office or non-manual work related to general business operations and must use independent judgment and discretion with regard to significant matters
- *Professional*: must perform functions that require advanced knowledge in a field of science or learning
- *Computer*: must perform functions that require the application of systems analysis techniques, the design or development of computer systems or programs, or the creation or modification of programs relating to operating systems
- *Outside Sales*: must make sales and regularly work away from the employer’s business
- *Note*: Employees must be paid the minimum amount specified in the statute and (except for the computer exemption) be paid on a salary basis for an exemption to apply

What Records Must Be Kept?

- Must maintain records of wages paid to non-exempt employees
- Must maintain records of hours worked by non-exempt employees
- Must keep records for 3 years

What are the Potential Penalties?

- Back pay
- Overtime pay
- Monetary fines
- Punitive damages
- Injunctive relief
- Criminal penalties
- Attorneys’ fees

Top FLSA Tips

- Job titles, job descriptions and the fact that an employee is paid on a salary basis aren’t conclusive evidence that an employee is exempt – the above tests must be met
- Be aware that state laws may impose greater obligations
- Non-exempt employees cannot agree to receive less than time-and-a-half their wage rate for overtime work
- Keep accurate records for all employees
- FLSA compliance is key – class actions and substantial punitive damage awards have grown exponentially over the past few years

What Employers Are Covered?

Those with 50 or more employees

What Employees Are Eligible?

Employees who have worked for at least 12 months and at least 1250 hours during the previous 12 months

What's Provided to Employees?

- Up to 12 weeks of unpaid leave in a 12-month period for the serious health condition of the employee or a family member, for the birth or adoption of a child, or because a child, parent or spouse of the employee has been called to active duty in the military
- Up to 26 weeks of unpaid leave during a 12-month period to care for a spouse, child or parent who is an injured member of the military

What's a "Serious Health Condition"?

- Pregnancy or prenatal care
- Chronic, long term or permanent medical conditions
- Any condition that causes at least 3 consecutive days of absence combined with 2 or more treatments by a health care provider
- Any condition that causes a period of incapacity of any length combined with inpatient care

What Are an Employer's Responsibilities?

- Inform employees of FMLA rights
- Grant intermittent leave where requested
- Restore an employee returning from leave to the same or a substantially equivalent position held before the leave
- Don't retaliate against employee for taking leave

Can an Employee Substitute Paid Leave?

Yes. An employer can require or an employee can voluntarily elect to use paid leave benefits during FMLA leave.

What Are the Potential Penalties?

- Back pay
- Reinstatement
- Benefits
- Attorneys' fees

Top FMLA Tips

- Post the required FMLA poster
- Notify employees of FMLA rights in employee handbook
- Provide written documentation addressing leave obligations and consequences for failing to satisfy those obligations
- Provide employees with the medical certification required for leave and, if necessary, the certification required to return to work following leave
- FMLA leave can't count towards no-fault attendance policies
- An FMLA "serious health condition" is not the same as a "disability" under the Americans with Disabilities Act (ADA) – check out the ADA Cheat Sheet for more

What Employers Are Covered?

Those with 15 or more employees

What Are GINA's Basics?

- Prohibits discrimination based on genetic information
- Prohibits employers from collecting genetic information, with limited exceptions
- Prohibits health insurers and plans from requiring genetic testing and from discriminating based on genetic information
- Imposes strict confidentiality rules

Does GINA Prohibit Retaliation?

Yes

What About Disparate Impact?

Specifically exempted from GINA

When Does It Go Into Effect?

Fall 2009

What Are the Potential Penalties?

Same as Title VII

What Employers are Covered?

Those with 15 or more employees are covered by the primary anti-harassment law (Title VII)

What Types of Harassment Are Prohibited?

Harassment is a form of discrimination prohibited by Title VII and other laws. Generally, the law prohibits two types of harassment: quid pro quo and hostile work environment.

What is “Quid Pro Quo” Harassment?

Quid pro quo (QPQ) harassment occurs when employment terms, conditions or benefits are conditioned on the victim’s submission to unwelcome sexual advances made by his or her supervisor

Important notes:

- A victim who eventually succumbs to the advances still may have a claim
- The perpetrator of the harassment must be a person with managerial authority
- The employer is strictly liable for any proven harassment

What Is a “Hostile Work Environment”?

A workplace that is sufficiently permeated with severe and pervasive insult, intimidation and/or ridicule based on a person’s race, national origin, disability, religion, age or sex such that a reasonable person would find it hostile or abusive

Important notes:

- The environment can be caused by vulgar comments, stories or jokes, offensive documents or postings, leering, or inappropriate physical conduct
- The environment can be created or contributed to by managerial staff, co-workers and/or customers

How can an Employer Avoid Liability for a Hostile Work Environment?

If the offensive conduct was by a supervisor:

- The employer must prove that it exercised reasonable care to prevent and then promptly correct the harassing behavior
- The victim must have unreasonably failed to take advantage of the corrective measures provided by the employer

If the offensive conduct was by a co-worker:

The employee must prove that the employer knew or had reason to know about the behavior but failed to take proper corrective action

What are the Potential Penalties?

- Back and front pay
- Compensatory damages
- Reinstatement
- Punitive damages
- Attorneys’ fees

Top Anti-harassment Tips

- Implement and consistently enforce an anti-harassment policy
- Provide anti-harassment training for all managerial employees
- Provide multiple avenues by which victims of harassment can complain and ensure that employees are aware of the complaint procedure
- Promptly and thoroughly investigate all claims of harassment in a manner that is fair to both the alleged victim(s) and the alleged perpetrator(s)
- If harassment is proven, take steps to prevent further harassment, including disciplinary action against the perpetrator(s)
- Refrain from taking any adverse action against the person complaining about harassment

What Does HIPAA Do?

The Health Insurance Portability and Accountability Act (HIPAA) protects the privacy of medical records and personal health information.

What Information is Protected?

Information created or received by a health care provider, health plan, employer, etc., that relates to the past, present or future physical or mental health of an individual, the provision of health care to an individual or the payment for provision of health care to an individual.

When Does HIPAA Impact Employers?

- When they need to obtain and use protected information
- If they administer their own health care plan or review benefits decisions

Note: Additional restrictions/obligations apply to health care plans and other health care-related entities under HIPAA.

What Are Some Circumstances Where an Employer May Need to Obtain Protected Information?

- When obtaining medical information for FMLA purposes:
 - To determine whether an employee has a serious medical condition
 - To determine whether an employee is able to return to work
- When trying to determine the parameters of a reasonable accommodation under the ADA
- When trying to determine an appropriate modified work schedule for an employee returning to work after suffering a work-related injury

How May an Employer Obtain Protected Information?

The employer must obtain a valid authorization that includes the following:

- A description of the information
- The identity of the person/entity authorized to make the disclosure
- The identity of the person/entity to which the disclosure may be made
- A description of each purpose of the requested information
- The signature of the individual whose information is sought
- Certain statements notifying the individual of his or her rights, including that he/she is entitled to revoke the authorization and receive a copy of the requested information
- An expiration date

What Are the Potential Penalties?

- Civil and criminal fees
- Imprisonment

Top HIPAA Tips

- Keep all health information confidential and separate from other employee files
- Limit use of any protected information to those specifically provided in the authorization signed by the employee
- Request and use only the minimum amount of medical information necessary for your purpose

Who's Covered?

All employers and all employees

What does it Prohibit?

- Employment of individuals who are present in the U.S. without authorization to work
- Discrimination on the basis of national origin or citizenship by employers with 4 or more employees
- Selective use of I-9 IRS forms to prescreen employment applicants

Documentation Requirements:

- Applicants must provide documentation sufficient to verify identity and eligibility to work in the U.S.
 - This documentation must be drawn from Lists A-C located on the INS web site (www.uscis.gov)
- Applicants and employers must complete their respective sections of I-9 IRS forms

Specific Employer Requirements relating to Documentation?

- Complete Sections 2 and 3 of applicants' I-9 IRS forms
- Examine the qualified documentation provided by a new employee within 3 days of the beginning of person's employment
- Must review documents provided by applicants to determine authenticity

What are an Employer's Recordkeeping Responsibilities?

- Keep I-9 form for 3 years following date of hire or one year following termination
- Keep a physical copy of the I-9 Form (not in electronic format)
- Must make form available to INS within 3 days of any request

What are the Potential Penalties?

- Monetary fines
- Back pay
- Attorney's fees
- Criminal penalties, including imprisonment

Top IRCA Tips

- Be vigilant and look for potential document fraud
- Do not ask for specific documents – The employee may provide any of the types of documentation noted on the INS website
- Follow all recordkeeping requirements
- Do not use I-9 documentation for any purpose other than verification
- Keep any photocopies made of I-9 documentation with the I-9 Form itself

INDEPENDENT CONTRACTOR CHECKLIST

This list is a guide to help you determine whether an individual is an independent contractor. Generally, the more “yes” answers you have to the questions below, the more likely it is that the individual is an independent contractor. Please consult with your legal counsel before making any final decisions.

1. Is the individual being hired to do work for a discrete project that is limited in time (as opposed to work that is ongoing and integral to the company's normal business functions)?
___Yes ___No
2. Does the work involve special skill and training not currently possessed by company employees?
___Yes ___No
3. Does the work involve skills and training which the individual already possesses (as opposed to skills for which the individual will need to receive training from the company)?
___Yes ___No
4. Does the individual pay for his or her own business expenses?
___Yes ___No
5. Does the individual pay for his or her own travel expenses?
___Yes ___No
6. Is the individual responsible for his or her own federal and state tax obligations (*i.e.*, the company is not paying payroll taxes for the individual)?
___Yes ___No
7. Is the individual being paid a set price per project or on a straight commission basis (as opposed to on a set schedule in the form of a salary, regular wage, or piece-rate)?
___Yes ___No
8. Does the individual provide the company with invoices for fees (as opposed to timesheets)?
___Yes ___No
9. Does the individual offer his or her services to entities other than the company or to the general public at the same time he or she is performing services for the company?
___Yes ___No
10. Is the individual free to accept projects from other entities at the same time he or she is performing services for the company?
___Yes ___No
11. Does the individual have a distinct occupation?
___Yes ___No
12. Is the individual self-employed?
___Yes ___No
13. Will the individual be performing services for the company as part of his or her own independently-established business?
___Yes ___No
14. Will the manner and means for achieving the specified result be left to the individual's discretion?
___Yes ___No
15. Will the individual's hours, places, and order and sequencing of the work be left to the individual's discretion?
___Yes ___No
16. Is the individual free of extensive supervision, especially in regards to the means and manner of performance?
___Yes ___No
17. Is the work going to be performed at a location separate from the company premises?
___Yes ___No
18. Does the individual have a significant investment in the facilities or equipment which will be used in performing the work? That is, is the individual responsible for providing the necessary tools, equipment, and material for the performance of the work?
___Yes ___No
19. Is the individual permitted to select, direct, and pay anyone who will assist in achieving the desired results?
___Yes ___No
20. Is dismissal of the individual premised on some type of failure to comply with an agreement, such as a failure to perform work (as opposed to the individual being subject to “dismissal at any time for any reason”)?
___Yes ___No
21. Is there an understood consequence to the individual for quitting prior to the completion of the project?
___Yes ___No
22. Is the individual free to reject additional projects from the company?
___Yes ___No

What does it Do?

Regulates the relationship between labor and management and provides employees with the following rights:

- To form and join unions
- Assist unions
- Engage in collective bargaining

Who's Covered?

The majority of private employers

What does it Prohibit an Employer from Doing?

- Interfering with an employee's exercise of NLRA rights, including making threats of adverse action or bribing with benefits
- Discriminating against an employee because he or she exercised rights

What Rights does it provide to an Employer?

- Can prohibit solicitation during working time
- Can prohibit leafleting at the workplace
- Can prohibit non-employees from coming onto workplace property during the workday

Note: Any such policies must be uniformly enforced without regard to whether or not they are union-related

What is a "Collective Bargaining Agreement"?

An agreement between an employer and a union regarding the terms and conditions of the employees' work and employment benefits.

What are some of the Mandatory Subjects of a CBA?

- Hours
- Rate of pay
- Health insurance and retirement benefits
- Seniority
- Assignments
- Time off
- Rules of promotion
- Discipline

How is a CBA Enforced?

Through a grievance and arbitration process in which the union and employer first try to resolve any complaint in collective negotiations. If those negotiations fail, the complaint will go in front of a neutral arbitrator.

What are the Potential Penalties?

- Reinstatement
- Back Wages
- Monetary fines
- Injunctive relief
- Attorneys' fees

Top NLRA Tips

- Must bargain in good faith
- Once a CBA is executed, the employer cannot unilaterally change terms and conditions of employment
- If dealing with unionized employees, employer can bargain only with the union
- Employment of employees pursuant to a CBA limits the employment-at-will doctrine; in general, employers can terminate unionized employees only for just cause

Who's Covered?

The majority of private employers

What's the purpose of the Act?

To ensure that every employee works in a safe and healthy environment

What are its Requirements on Employers?

- Provide a workplace that is free from recognized hazards that are likely to cause death or serious physical harm to employees
- Comply with the safety and health regulations promulgated by OSHA
- Keep a log and summary of all workplace injuries and illnesses
- Keep records of safety training sessions
- Retain records for period of time specified by statute

What types of Hazards does OSHA Regulate?

- Exposure to hazardous chemicals
- Noise levels
- Protective gear
- Safety training
- Etc.

Does an Employer have specific Obligations with regard to Serious Accidents?

Yes. Employers must notify OSHA within 8 hours of learning of any workplace accident resulting in the death of at least one employee or the hospitalization of three or more employees

What are the Potential Penalties?

- Monetary fines
- Criminal penalties, including imprisonment

Top OSHA Tips

- Keep track of the safety regulations promulgated by the States
- Post the "Job Safety and Health Protection" poster, available from OSHA
- OSHA inspectors have the authority to show up and inspect certain workplaces without notice
- Inspections will frequently occur after serious accidents
- Have a plan in place regarding how to deal with OSHA inspections
- It is illegal to retaliate against employees that have complained to OSHA about unsafe or unhealthy conditions
- Employers with 10 or fewer employees do not have to comply with certain obligations otherwise imposed by the Act
- For additional questions, go to www.osha.gov

What Employers Are Covered?

Those with 15 or more employees.

What Employees Are Covered?

Applicants and employees who are pregnant, give birth, or have related medical conditions.

What's Prohibited?

Discrimination against women in any aspect of employment because of pregnancy, childbirth or related medical conditions.

What's Required?

That women who are pregnant or affected by related conditions be treated in the same manner as other applicants or employees with similar abilities or limitations.

What's the Effect on Insurance Plans?

- Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions.
- Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.
- Pregnancy-related expenses must be reimbursed in the same manner as those incurred for other medical conditions.
- Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees.

What's the Effect on Fringe Benefits?

- Pregnancy-related benefits cannot be limited to married employees.
- If an employer provides benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy-related conditions.

Does the PDA Provide Leave?

No. However, employers should be aware that:

- The FMLA allows unpaid leave for childbirth, adoptions and foster care placements and for an employee's serious health condition, which can include complications or conditions relating to pregnancy and childbirth.
- The ADA may provide for leave for pregnant employees or employees with a pregnancy-related condition in limited circumstances.

Top Tips for the PDA

- The PDA is an amendment to Title VII of the Civil Rights Act of 1964.
- Pregnant employees cannot be forced to take leave, or remain on leave, while pregnant as long as they are able to perform their jobs.
- Employers cannot have a rule that prohibits an employee from returning to work for a predetermined period after childbirth.
- Employers must hold open a job for a pregnant employee for the same length of time it would hold open a job for employees on sick or disability leave.
- The PDA does not prohibit employment practices that favor pregnant women. Employers should consider their obligations under the PDA as a floor, not a ceiling.
- Generally, pregnancy is not covered under the ADA, but where an employee experiences substantial complications that limit a major life activity, she may be considered disabled under the ADA and entitled to an accommodation.

What Does Section 409A Cover?

section 409A of the Internal Revenue Code regulates any employment plan that provides for the “deferral of compensation”

When Does a Plan Provide for “Deferral of Compensation?”

When a participant has a legally binding right to compensation that is or may be payable in a later tax year.

What Kind of Deferrals Are There?

- Elective: made at the election of the participant through salary reduction
- Non-elective: contributions made by the employer without any salary reduction

What Are the Requirements for a 409A-compliant Plan?

- Must be in writing
- Must provide that deferred compensation may not be distributed to a participant earlier than:
 - Separation from employment
 - Disability
 - Death
 - a time specified under the plan at the date of the deferral
 - A change in the ownership or effective control of the business
OR
 - The occurrence of an unforeseeable emergency
- In the case of any “specified employee” (generally the top 50 paid officers), distributions on account of service may not be made earlier than 6 months post-separation
- In general, compensation for services performed in a taxable year may be deferred at a participant’s election only if the election to defer is made no later than the close of the preceding taxable year

- If a participant can make a subsequent election to delay payment:
 - The election may not take effect until at least 12 months after the date of election
 - If the election relates to a payment that is not made due to disability, death or unforeseen emergency, the payment must be deferred for a period of time not less than 5 years from the date the payment would have otherwise been made
 - Any election related to a payment as of a specified time or pursuant to a fixed schedule may not be made less than 12 months prior to the date of the first scheduled payment

Top Section 409A tips

- Section 409A applies to any agreement that provides for the deferral of compensation, even if it is between the employer and only one participant.
- Acceleration of the time or schedule of any payment under the plan is not permitted unless specifically authorized by federal regulations
- Noncompliance has no direct adverse effect on employers; however, participants may be subject to tax penalties

Who's Subject to § 1981?

In addition to state and federal actors, all employers, regardless of how many employees they have, are subject to § 1981.

Who's Protected by § 1981?

All races (including whites), ethnic groups, ancestries, and alienages.

What Does § 1981 Provide?

All persons shall have the same right to make and enforce contracts, to sue, to be parties, to give evidence, and to the full and equal benefit of all laws and proceedings as is enjoyed by white citizens.

What Does "Make and Enforce Contracts" Mean?

Congress has provided that "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." This language has been interpreted by courts to make §1981 and Title VII coextensive, and most courts have held that §1981 also covers claims of retaliation.

Are There Exhaustion Requirements?

No. There are no administrative procedures to exhaust under §1981, meaning an action can be brought directly in federal or state court.

What Remedies Are Available?

All the remedies that are available under Title VII are also available under §1981 (including reinstatement, back pay, injunctive relief, attorneys' fees, etc.). However, unlike Title VII, compensatory and punitive damages under §1981 are not subject to a statutory cap.

Top Tips for § 1981:

- Section 1981 covers intentional discrimination only, not claims of disparate impact.
- Include anti-discrimination/harassment policies in your employee handbook
- Apply employment policies consistently to all employees and applicants
- Document all disciplinary action taken against employees
- Do not provide inflated ratings in performance reviews
- Do not provide an employee with contradictory reasons for an adverse employment action

Some Differences - Title VII v. § 1981:

- Title VII:** compensatory and punitive damages are capped v. **§1981:** damages are not capped.
- Title VII:** administrative exhaustion requirements v. **§1981:** no exhaustion requirements.
- Title VII:** applies to employers with 15 employees or more v. **§1981:** applies to all employers.
- Title VII:** protects against discrimination based on race, sex, national origin, color or religion v. **§1981:** applies to race only (interpreted to include all races, ethnic groups, ancestries, and alienages).

What Employers are Covered?

Those with 15 or more employees

What's Prohibited?

- Termination or failure to hire an individual on account of their race, sex, national origin, color or religion
- Discrimination against an employee with respect to any term or condition of employment
- Retaliation against an individual who engages in protected activity
- Harassment
- Adverse impacts against a protected class

What is an “Adverse Impact”?

A policy or action that is facially neutral but nevertheless adversely affects a protected class

What about a BFOQ?

If an employer can demonstrate that all or substantially all of a protected class cannot perform a specific function, it may discriminate on that basis

What are some examples of “Terms or Conditions” of Employment?

- Promotions
- Wages
- Employment Benefits

May an Employer take Adverse Action against Protected Individuals?

Yes, so long as it bases its decision on a legitimate nondiscriminatory reason

What type of Harassment is Prohibited?

- Quid pro quo – Certain benefits of employment are conditioned on sexual demands by the victim's supervisor
- Hostile work environment – Workplace is permeated with severe and pervasive insult, intimidation and ridicule

Examples of “Protected Activity”:

- Filing of a charge of discrimination with the EEOC or a State-equivalent
- Complaining to employer about purported discrimination
- Acting as a witness in connection with a discrimination investigation

What are the Potential Penalties?

- Back and/or Front pay
- Compensatory damages
- Reinstatement
- Punitive damages
- Attorneys' fees

Top Title VII Tips

- Include anti-discrimination/harassment policies in your employee handbook
- Apply employment policies consistently to all employees and applicants
- Provide regular harassment training
- Document all disciplinary action taken against employees
- Do not provide inflated ratings in performance reviews
- Take all complaints of discrimination and harassment seriously
- Take prompt remedial action if discrimination or harassment is proven
- Recognize that some State anti-discrimination laws provide greater protection
- Do not provide an employee with contradictory reasons for an adverse employment action

Who's Covered?

Employees who serve or have served in, or applied to, the uniformed services.

What's Provided?

- Reemployment Rights
- Benefits Rights
- Retention Rights

What's Prohibited?

- Discrimination based on service, past or present, in the uniformed services.
- Retaliation based on the exercise of rights under USERRA.

What are an Employee's Reemployment Rights?

An employee who is absent due to service in the uniformed services is entitled to reemployment into the same or a comparable position, as though he or she had been continuously employed.

What are an Employee's Benefits Rights?

An employee who is absent due to service in the uniformed services is entitled to:

- The same rights and benefits as the employee had as of the date of the commencement of service, plus additional seniority-based rights and benefits as though he or she had been continuously employed.
- Be treated as though he or she is on a leave of absence, and is entitled to the same rights and benefits as other employees on leaves of absence. An employee may, but cannot be required to, use accrued vacation or paid leave during a period of absence due to service.
- Elect to continue health insurance coverage for up to 24 months, at no more than 102% of the cost of the full premium under the plan.
- The same pension benefits as though he or she had been continuously employed.

What are an Employee's Retention Rights?

An employee who is absent due to service in the uniformed services cannot be terminated except for cause within:

- 1 year of reemployment if employee's period of military service prior to the reemployment lasted more than 180 days; or,
- 180 days of reemployment if employee's period of service prior to the reemployment lasted more than 30 days but less than 181 days

What are an Employee's Obligations?

- To provide advance notice of the service obligation, unless such notice is impossible or unreasonable
- To submit an application for reemployment in a timely manner after the conclusion of service
- An employee is entitled to reemployment rights if he or she has 5 years or less of cumulative service in the uniformed services

Are Employers Required to Provide Notice?

Employers are required to provide notice of the rights and benefits provided under USERRA.

What are the Potential Penalties?

- Reinstatement
- Back pay
- Liquidated damages
- Attorney's fees

What Employers are Covered?

Employers with 100 or more full-time employees

What does it Require?

Employers must provide 60 days advance notice of mass layoffs or plant closings

What is a “Plant Closing”?

The shut down of an employment location with the loss of:

- 50 or more employees in 30 days or
- 50 or more employees in two or more events over the course of 90 days

What is a “Mass Layoff”?

A workforce reduction that results in either of the following:

- A reduction of an employer’s total workforce by at least 33% and at least 50 employees
- A loss of 500 or more employees

What is “Employment Loss”?

- Termination, other than for cause or a voluntary resignation
- Layoffs exceeding 6 months
- A reduction in hours by more than 50% over a 6 month period

What are the Notice Requirements?

An employer must provide written notice to affected employees and/or union representatives that is received by those individuals at least 60 days before the event. Notice must also be provided to local government and the appropriate State dislocated worker unit.

Exceptions:

In the following circumstance, an employer may avoid the 60-day notice requirement and provide notice as soon as practicable:

- Natural disasters
- Unforeseeable business circumstances
- Faltering company

What are the Potential Penalties?

- Back pay
- Monetary penalties

Top WARN Tips

- Provide notice of mass layoffs and plant closings as soon as possible
- Employer must provide additional notice if the scheduled event is delayed
- Pre-sale of business: Seller must provide required notice
- Post-sale: Buyer must provide notice
- A sale does not require notice unless it triggers a plant closing or mass layoff
- Some states have similar laws that impose different obligations on employers

**Employment
Law
TOOL BOX**

ADA, FMLA & WC INTERPLAY

General Purpose

ADA: Prohibits discrimination against disabled individuals

FMLA: Provides leave to employees

Who Is Eligible?

ADA: Individuals with a qualifying disability

FMLA: Employees who have worked for at least 12 months and at least 1250 hours during the previous 12 months at a location within a 75-mile radius of where at least 50 employees work

What Conditions are Covered?

ADA: “Disability” that substantially limits one or more major life activities (or a history or perception of having such a disability)

FMLA: “Serious health condition” of employee or certain family members of employee. Birth, adoption and foster care placement of employee’s child. Certain types of military-related leave.

What Leave is Required?

ADA: Leave for employee may be required if it would constitute a reasonable accommodation that doesn’t impose undue hardship on the employer. Leave typically must be for a defined period and is unpaid unless employer pays for other similar leaves.

FMLA: Up to 12 weeks/year for serious health condition-related leave. Up to 26 weeks/year for certain military-related leave. Leave may be intermittent and is unpaid but the employer can require or the employee can choose to use accrued paid benefits.

What About Benefits?

ADA: No specifics under the law, other than the prohibition of discrimination based on disability.

FMLA: Benefits typically don’t accrue during leave, but seniority, service and vesting continue. May require use of certain paid leaves depending on type of FMLA leave.

What About Reinstatement?

ADA: If leave is required as a reasonable accommodation, the employer generally must keep the employee’s position open during the leave.

FMLA: Generally, employees must be reinstated to the same or a substantially equivalent position.

What About Light Duty?

ADA: Employers are not required to remove essential job functions as an accommodation, but if an employer reserves light duty jobs for workers’ compensation purposes, it may have to offer such jobs to disabled individuals.

FMLA: An employer can’t require FMLA-qualifying employees to work light duty.

Potential Penalties

ADA: Back pay, compensatory damages, punitive damages and attorneys’ fees

FMLA: Back pay, reinstatement, benefits and attorneys’ fees.

General Purpose

ADA: Prohibits discrimination against disabled individuals

FMLA: Provides leave to employees

WC: Provides compensatory benefits for illnesses or injuries incurred in the course and scope of employment

Who Is Eligible?

ADA: Employees with a qualifying disability

FMLA: Employees who have worked for at least 12 months and at least 1250 hours during the previous 12 months at a location within a 75-mile radius of where at least 50 employees work

WC: Employees who experience an illness or injury in the course and scope of employment

What Conditions are Covered?

ADA: "Disability" that substantially limits one or more major life activities (or a history or perception of having such a disability)

FMLA: "Serious health condition" of employee or certain family members of employee. Birth, adoption and foster care placement of employee's child. Certain types of military-related leave

WC.: Any job related injury that is in the course and scope of employment

What Leave is Required?

ADA: Leave for employee may be required if it would constitute a reasonable accommodation that doesn't impose undue hardship on the employer. Leave typically must be for a defined period and is unpaid unless employer pays for other similar leaves

FMLA: Up to 12 weeks/year for serious health condition-related leave. Up to 26 weeks/year for certain military-related leave. Leave may be intermittent and is unpaid but the employer can require or the employee can choose to use accrued paid benefits

WC: Varies, depends on length of incapacity. Some states have statutory prohibitions against terminating employees on workers' compensation leave

What About Benefits?

ADA: No specifics under the law, other than the prohibition of discrimination based on disability

FMLA: Benefits typically don't accrue during leave, but seniority, service and vesting continue. May require use of certain paid leaves depending on type of FMLA leave

WC: State workers' compensation will compensate the employee for the temporary period he or she is unable to work

What About Reinstatement?

ADA: If leave is required as a reasonable accommodation, the employer generally must keep the employee's position open during the leave

FMLA: Generally, employees must be reinstated to the same or a substantially equivalent position

WC: There are no statutory reinstatement rights under state workers' compensation law. Most states prohibit employers from retaliating against an employee for exercising his/her workers' compensation rights. Additionally, some states have statutory prohibitions against terminating an employee on workers' compensation leave

What About Light Duty?

ADA: Employers are not required to remove essential job functions as an accommodation, but if an employer reserves light duty jobs for workers' compensation purposes, it may have to offer such jobs to disabled individuals

FMLA: An employer can't require FMLA-qualifying employees to work light duty

WC: In most states, if a physician certifies that an employee may return to work under some restrictions that require a light duty position, the employee must generally accept such a position or risk losing workers' compensation benefits

Potential Penalties

ADA: Back pay, compensatory damages, punitive damages and attorneys' fees

FMLA: Back pay, reinstatement, benefits and attorneys' fees

WC: Back pay, compensatory damages and punitive damages

**Employment
Law
TOOL BOX**

INVESTIGATION CHECKLIST

STEP 1: PREPARE

- P**lan the investigation strategy
- R**eview relevant policies and handbook provisions
- E**valuate pros and cons of investigation
- P**ick a competent and impartial investigator
- A**nalyze potential risk factors
- R**eview allegations and prep list of witnesses and ?s
- E**stablish a confidential investigation file

STEP 2: INVESTIGATE

- I**nterview the complaining employee first
- N**ow – don't procrastinate
- V**iew the site of the alleged incident
- E**ach relevant witness identified by the complaining party should be interviewed
- S**upervisors should be involved to provide context
- T**ake the time to gather all potentially relevant evidence
- I**nterview the accused
- G**ather potentially mitigating evidence and talk to witnesses named by accused
- A**nalyze all the evidence objectively
- T**alk to an attorney about any potential legal issues
- E**nd the investigation with a written report and appropriate communication

**Employment
Law
TOOL BOX**

TERMINATION TOOLS

Top Ten Termination Troubles

10. Not telling real reasons
9. Poorly planned termination meeting
8. Ignoring policies and contracts
7. Bad post-termination communication
6. Ignoring past practice
5. Emotion instead of facts
4. Not getting a release
3. Inadequate documentation
2. Not treating with dignity and respect
1. NOT firing someone who should be fired

Termination Test

Notice: Reasonable notice of consequences?

Proof: Sufficient evidence that guilty as charged?

Rule: Related to (a) efficient and safe operations and (b) performance company should reasonably expect?

Consistency: Rule consistently applied to all?

Investigation: Full, fair and timely?

Penalty: Punishment fit the crime, considering (a) seriousness of offense and (b) service record?

Termination Review

Employee Handbook

Employment Agreement

Personnel File

Collective Bargaining Agreement

Performance Appraisals

Discipline Notices

Manager Notes

ALL other relevant docs (emails, texts, tweets, etc.)

Termination Meeting

Who? Manager, HR, no 3rd parties (except union rep). Security? Outplacement?

What? Manager: decision. HR: all else. Final pay + notice (some states).

Where? In person. Not manager's office. No projectiles

When? Mid-week #1, Friday #2, Monday worst. End of day #1, morning #2. Avoid holidays.

How? Compassionate.

**Employment
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TOOL BOX**

WAGE & HOUR

FLSA Basics

What Does the FLSA Require?

- Minimum wage
- Overtime unless exempt
- 1.5 times regular rate for 40+ hours
- Restriction of minors' jobs/hours

What Is the “Regular Rate”?

- The total amount earned in a particular workweek divided by the number of hours worked

What Records Must Be Kept?

- Wages paid and hours worked by non-exempt employees
- Keep for 3 years

What Are the Potential Penalties?

- Class action
- Back pay
- Overtime pay
- Monetary fines
- Punitive damages
- Injunctive relief
- Criminal penalties
- Attorneys' fees

Exemption Basics

Executive

- Primarily engaged in management
- Direct 2 or more FTEs
- Authorized to affect terms and conditions of other employees
- through hiring, firing, etc.

Administrative

- Office or non-manual work related
- to general business operations
- Independent judgment and discretion in significant matters

Professional

- Functions that require advanced knowledge in a field of science or learning

Computer

- Functions that require application of systems analysis techniques, design or development of computer systems or programs, or the creation or modification of programs relating to operating systems

Outside Sales

- Make sales and regularly work away from the employer's business

Wage & Hour Solutions

Know the Law

Train managers and employees on time-keeping

Complaint system: investigate promptly & thoroughly

Audit classifications and records

Address any discrepancies immediately

Remote Device Policy

- Limit during non-work hours, vacations and leaves of absence
- Limit to exempt employees or at express manager direction
- Regular acknowledgments that recorded all time worked
- Periodic audit of hours spent on company phones and computers

**Employment
Law
TOOL BOX**

RETALIATION

What's “Retaliation”?

Negative performance evaluation

Discipline

Investigation into character instead of complaint

Suspension

Assignment change or transfer

Denial of promotion

Threats

Termination

What's Not?

“Trivial” actions

Performance improvement plan

Rude (but not unlawful) comments

Retaliation Prevention

Enforce policies consistently

Train managers

Beware suspicious timing

Remember 3rd parties & internal/verbal complaints

Investigate, investigate, investigate

Review entire employee history before acting

Take action if appropriate

**Employment
Law
TOOL BOX**

SAMPLE SOCIAL MEDIA POLICY

Social media (including personal and professional websites, blogs, chat rooms and bulletin boards; social networks, such as Facebook, LinkedIn, Twitter and MySpace; video-sharing sites such as YouTube; and email) are a common means of communication and self-expression. Because online postings can conflict with the interests of _____ (“Company”) and its customers, the Company has adopted the following policy. Breach of this policy may result in counseling and disciplinary action, including termination of employment.

Confidentiality and Privacy

- Do not disclose the Company’s confidential or proprietary information, or personal identifying information of anyone at the Company, in online postings or publications. Sharing these types of information, even unintentionally, could result in harm to the Company and legal action against you or the Company.

Your Identity Online

- You are personally liable for all communications and information you publish online. The Company may be liable for online activity that uses company assets, a company email address or any email address that can be traced back to the Company’s domain, which generally is any internet address affiliated with the Company. Using your name and a Company email address may imply that you are acting on the Company’s behalf. Because social media and networking activities are public, your Company email address and Company assets should be used only to perform job-related activities, which may include professional networking but do not include personal social networking.
- Outside the workplace, you have a right to participate in social media and networks using your personal email address. However, information and communications that you publish on personal online sites should never be attributed to the Company or appear to be endorsed by, or to have originated from, the Company.
- If you choose to disclose your affiliation with the Company in an online communication, then you must treat all communications associated with the disclosure as professional communications governed by this and other Company policies.

Limitations on Online Publications

- Never identify a customer or coworker in an online posting without his or her prior written permission.
- Obey the law and ethics rules. Do not post any information or engage in any online activity that violates applicable local, state or federal laws, or professional rules of conduct.
- Identify all copyrighted or borrowed material with citations and links. When publishing direct or paraphrased quotes, thoughts, ideas, photos or videos, give credit to the original publisher or author.
- Direct all requests for references for current or former Company employees to the Human Resources Department. Comments you post about current and former employees can have legal consequences, even if you make the comments personally and not on the Company’s behalf.

Creating and Managing Content

- The _____ Department must approve any website, blog, chat room, video-sharing site, bulletin board or other social media that promotes the Company. No employee may incorporate the Company’s logo or other intellectual property in a website, blog, chat room, video-sharing site, bulletin board or other social media without the Company’s written permission.
- If you maintain a website, blog, chat room, video-sharing site, bulletin board or other social media that promotes the Company, you are responsible for reviewing responses to online posts and resolving any concerns about the propriety of the responses before they are posted.
- If a blogger or any other online participant posts an inaccurate, accusatory or negative comment about the Company or any of its employees, do not respond to the post without the approval of the _____ Department.
- Refrain from publishing comments about controversial or potentially inflammatory subjects, including politics, sex, religion or any other non-business related subjects in any posts or other online communications involving the Company.
- Avoid hostile or harassing communications in any posts or other online communications involving the Company. Harassment is any offensive conduct based on a person’s race, sex, gender, gender identity, national origin, color, disability, age, sexual orientation, veteran status, marital status, religion or any other status protected by law.

*Nothing in this Policy is intended to or will be applied in a manner that limits employees’ rights to engage in protected concerted activity as prescribed by the National Labor Relations Act.

**Employment
Law
TOOL BOX**

**REDUCING
LEGAL FEES**

Law Firm Guidelines

Initial Information

Please contact [NAME] promptly at the outset of each matter to discuss: (1) your proposed strategy; (2) the Company's potential liability, if any; and (3) an estimate of fees and expenses, including the billing rates of each attorney or paralegal expected to work on the matter.

If you are handling a litigation matter; please provide the following additional information: (1) all key dates, including trial; (2) anticipated discovery; (3) whether mediation or arbitration may be appropriate; and (4) settlement potential, including estimated settlement value.

Staffing

We expect your firm to work jointly with the Company to determine how the matter will be staffed. No changes in staffing or billing rates may be made without the Company's prior approval.

Budgets

A written budget is required on all matters. Please use the attached form. Budgets may not be changed or exceeded without the Company's approval.

Unauthorized Expenses

The Company will not pay for any of the following without prior approval: (1) legal memoranda; (2) deposition summaries; (3) computer legal research exceeding \$500; (4) travel expenses exceeding \$500 or first-class travel; (5) attendance by more than one person at any meeting, deposition or hearing; (6) expert witnesses, consultants or local counsel; (7) work done by local counsel other than routine filings; (8) legal research to educate your staff in a substantive area; (9) time for attorneys or paralegals to get up-to-speed on a matter due to staffing changes; (10) filing, word processing, proofreading, librarian or other clerical costs; (11) photocopy expenses exceeding ten cents per page or \$250 for a single job; (12) fax charges exceeding actual phone charges; (13) local phone charges; (14) special/rush messengers; (15) office supplies; (16) entertainment expenses; (17) work caused by your firm's error; (18) time spent preparing, reviewing or discussing budgets or invoices; and (19) any other disbursements other than at cost.

Law Firm Guidelines (continued)

Litigation

The Company's approval is required prior to: (1) filing any claim or lawsuit; (2) taking any significant legal position; (3) requesting or responding to discovery; (4) making any substantive motion; (5) settling any matter; or (6) appealing any ruling or judgment. No significant communication or court document should be sent without the Company's prior approval. We expect you to keep the Company informed of all significant developments and key dates.

The Company seeks to balance the need to resolve matters expeditiously with the need to protect the Company's policies, practices and positions on significant legal issues. We expect you to work with the Company to identify matters that are appropriate for early resolution or for alternative dispute resolution through mediation, arbitration or other means.

Do not engage experts, consultants or local counsel without the Company's prior approval. We expect you to supervise and monitor the expenses related to such persons and to notify the Company if any such services are expected to exceed \$1,000.

Confidentiality

Do not discuss any matter or any aspect of your representation of the Company with any media or any other person outside your firm without the Company's prior approval. Forward all media inquiries to [NAME] immediately. We expect your firm to take all necessary steps to protect the attorney-client privilege, including protecting these guidelines and all related documents from disclosure.

Conflicts of Interest

Notify the Company immediately of any potential conflicts of interest or ethical concerns. Your firm may not continue in its representation of the Company until the conflict or concern has been resolved or waived in writing by the Company.

Immediately notify the Company of any of the following: (1) your firm's representation of any parties or related entities that are potentially adverse to the Company in any matter; (2) any litigation in which your firm is asserting any issue opposed to the Company's interests; (3) any representation by your firm of any competitor of the Company; and (4) any other issue that could potentially result in a conflict of interest or ethical concern..

Law Firm Guidelines (continued)

Invoices

Please submit invoices on a monthly basis to [NAME]. Each invoice must include: (1) the date and name of the person who performed each task; (2) the hourly rate; (3) a detailed description of each task; (4) the amount of time expended on each task; and (5) total cost per day. For example:

<u>Date</u>	<u>Name</u>	<u>Rate</u>	<u>Description</u>	<u>Time</u>	<u>Cost</u>
01/01/08	J Law	\$145	Telephone conference with D. Miller to prepare for deposition (0.3); draft J. Wilson affidavit (0.2); review settlement demand from opposing counsel (0.2)	0.7	\$101.50

For each matter, also include: (1) total hours and fees billed that month by each person; total fees, costs and disbursements for the month; and (3) total fees, costs and disbursements to date. In addition, provide copies of all vendor invoices (e.g., transcripts, expert witnesses, outside copying, etc.).

Report Card

To help improve the working relationship, the Company will periodically provide feedback to your firm using the attached report card. Areas rated include cost, results, responsiveness, practicality, expertise, knowledge of the Company and its industry and adherence to these guidelines.

Thank you for your service on behalf of the Company and attention to these guidelines.

Agreed to by:

Date: _____

Law Firm Report Card

Firm Name:

Subject Area(s) (e.g., litigation)

Criteria	Grade	Comments
Cost		
Results		
Responsiveness		
Subject matter expertise		
Practicality of advice		
Knowledge of [COMPANY NAME] & industry		
Adherence to Outside Counsel Guidelines		

Overall Grade:

Additional Comments:

Budget

Case Name: _____

File Number: _____

Partner Hourly Rate: \$ _____

Paralegal Hourly Rate: \$ _____

Associate Hourly Rate: \$ _____

Task	Approximate Hours	Amount
Fact Investigation		
Answer		
Removal/Remand		
Discovery Interrogatories Document Production Depositions Motions		
Dispositive Motions Dismissal Summary Judgment		
Mediation (if mandated or otherwise anticipated)		
Pretrial Prep		
Trial		
Experts		
Research (to the extent not included above)		
Other (specify)		

Date: _____

Prepared by: _____

Law Firm Request for Proposal (RFP) Guidelines

Introduction

To maintain the integrity of its law firm selection and retention process, [COMPANY NAME] adheres to the following request for proposal (RFP) policy.

Circumstances Where An RFP May Be Appropriate

- The Company is faced with a new or unique legal issue.
- The Company is faced with a legal issue that may have an unusually large spend or cost.
- The Company does not have a current relationship with legal counsel that has the expertise or skills to handle a particular issue or believes that current legal counsel should reduce fees for this particular project.
- Every three years for all law firms with more than \$10,000 in annual fees.

RFP Process

- RFPs are overseen by a Selection Review Team (SRT) consisting of [IDENTIFY TEAM, e.g., reps from HR, Legal, Procurement, etc.].
- The SRT will coordinate the RFP and communicate with each competing firm regarding the steps in the process.
- Participating law firms may be required to submit budget estimates, provide references and/or visit the Company's headquarters for an interview.