

# State and Federal Employment Laws

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Southwestern Ohio Council of Governments

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# Sources of Employment Law

- ▶ Federal statutes (Congress)
- ▶ State statutes (Ohio General Assembly)
- ▶ Local ordinances (city government)
  - ▶ Statutes must comply with U.S. and Ohio Constitutions

# Sources of Employment Law

- ▶ State or Federal Regulations
  - ▶ At federal level and in Ohio, administrative regulations have the force of law.
  - ▶ Legislative body grants administrative agency right to adopt rules to clarify/amplify statute.
  - ▶ Regulatory bodies are given deference by courts with respect to interpretation of law based upon expertise of agency.

# What protections does employment law offer to an employee?

- ▶ Equal opportunity and non-discrimination
- ▶ Concerted activity and collective bargaining
- ▶ Minimum standards employer must meet

# Remedies for employees

- ▶ Depends on the particular law at issue.
- ▶ If employee prevails, may get the following:
  - ▶ Reinstatement, hiring, promotion
  - ▶ Back pay or front pay
  - ▶ Compensatory and punitive damages
  - ▶ Liquidated damages (generally double wages for willful violations)
  - ▶ Injunctive relief
  - ▶ Attorney's fees

# What does this all mean for company?

- ▶ Know the law
- ▶ Adopt appropriate policies
- ▶ Train management staff and line workers
- ▶ Maintain required records properly
- ▶ Document, document, document
- ▶ Be diligent in resolving issues when they arise
- ▶ Take all complaints seriously and investigate promptly
- ▶ Involve legal counsel

# Age Discrimination in Employment Act (ADEA)

- ▶ Prohibits discrimination in employment based upon age.
- ▶ Applies to employers of 20 or more employees.
- ▶ Only protected group is employees over 40 years old.
- ▶ Must first file a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) within 300 days of the date of discrimination.

# Americans with Disabilities Act (ADA)

- ▶ Applies to employers of 15 or more employees.
- ▶ Prohibits discrimination against a qualified individual with a disability because of such disability in regard to job application procedures, hiring, advancement or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

# Americans with Disabilities Act (ADA)

- ▶ An “otherwise qualified individual” is a person who can, with or without a reasonable accommodation, perform the essential duties of the job in question.
- ▶ Employers are required to make reasonable accommodations for applicants and employees, upon request.

# Americans with Disabilities Act (ADA)

- ▶ “Reasonable accommodations” include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part time or modified work schedules; reassignment to a vacant position; modification of marginal duties; modifications of examinations, training materials or policies; the provision of qualified readers or interpreters; and similar accommodations.
- ▶ Does **not** include changing the nature or essential functions of a job; transfer or reassignment when the employee can no longer perform the essential functions of his job; creating alternative job opportunities; providing preferential treatment; or tolerating workplace misconduct.

# Americans with Disabilities Act (ADA)

- ▶ ADA prohibits **pre-employment** inquiries related to medical information/conditions.
  - ▶ Disability, physical and mental conditions, medications and workers' comp claims.
- ▶ Employer should ask applicant to demonstrate how he/she would do the job.
- ▶ Medical inquiries, including a physical, may be made **after** conditional offer of employment.
  - ▶ Provided all persons hired to perform same type of work are also subjected to same inquiries and examinations.
  - ▶ Still cannot discriminate against a person, if he/she can perform essential functions of the job, with or without a reasonable accommodation.

# Americans with Disabilities Act (ADA)

- ▶ Information regarding employee's medical condition or history must be maintained in a file apart from personnel records and treated as “a confidential medical file”.
- ▶ Available to managers and supervisors need to know basis and even then just that need an accommodation.

# Consolidated Omnibus Reconciliation Act of 1985 (COBRA)

- ▶ Applies to employers who maintain a group health plan and employ 20 or more employees.
- ▶ COBRA requires covered employers to offer employees, their spouses and dependents, an opportunity to continue participation in a group health plan upon the happening of a “qualifying event”.
- ▶ Continuation is at the employee’s, spouse’s or dependent’s cost, but at the group rate (can be required to pay up to 102% of the cost).
- ▶ Depending upon the qualifying event, continuation can be for up to 36 months (fired or reduced and eligible for Medicare).

# Consolidated Omnibus Reconciliation Act of 1985 (COBRA)

- ▶ Initial notice must be furnished to covered employees and spouses, at the time coverage under the plan commences, informing them of their rights under COBRA (must also be in the plan's summary plan description (SPD)).
- ▶ When qualifying event occurs, notice must go to each qualified beneficiary of the right to choose continuation coverage.
  - ▶ Period of at least 60 days to respond.

# Consolidated Omnibus Reconciliation Act of 1985 (COBRA)

- ▶ Covered employee or a family member has the responsibility to inform the plan administrator of a divorce, legal separation, disability or a child losing dependent status.
- ▶ Employers have a responsibility to notify the plan administrator of the employee's death, termination of employment or reduction in hours, or Medicare entitlement.

# Equal Pay Act of 1963

- ▶ Applies to virtually all employers (2 or more employees).
- ▶ Prohibits paying employees disparate wages because of their sex.
- ▶ Pay differential between sexes is unlawful if the employees to be compared are doing equal work on jobs the performance of which requires equal skill, effort and responsibility and are performed under similar conditions.
  - ▶ “Equal” means equal, not just comparable.
- ▶ EPA does not prohibit pay differentials based upon a seniority system, a merit system, a system based upon quality or quantity of production or any other factor other than sex.

# Equal Pay Act of 1963

- ▶ Statute of limitations is 2 years; 3 years for willful violations.
- ▶ Remedies include two times the pay differential, prejudgment interest, costs, attorney fees.

# Equal Pay Act of 1963

- ▶ In addition to records required by FLSA, employer shall preserve any records which it makes in the regular course of its business operation that relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex.
  - ▶ Employer shall preserve such records for at least two years.

# Employee Retirement Income Security Act (ERISA)

- ▶ Governs employee welfare benefit plans and pension plans.
- ▶ ERISA does not require employers to have benefit or pension plans, but regulates those that do.

# Fair Credit Reporting Act (FCRA)

- ▶ Fair Credit Reporting Act governs gathering, sharing and use of a person's credit information.
- ▶ Two types of reports:
  - ▶ Consumer
  - ▶ Investigative

# Fair Credit Reporting Act (FCRA)

- ▶ Need written consent to obtain consumer report:
  - ▶ “Consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, a credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for employment purposes.

# Fair Credit Reporting Act (FCRA)

- ▶ Must be given written notice that employer will use information in hiring process.
- ▶ Have to advise employee that will take adverse action if based in part on report, *prior* to taking action.
  - ▶ Applies to criminal background checks so get consent.

# Fair Labor Standards Act (FLSA)

- ▶ Applies to employers whose annual sales total \$500,000 or more or whose employees are engaged in interstate commerce.
- ▶ Establishes minimum wage, requires overtime pay (at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked over 40 in a week), and identifies recordkeeping requirements.
- ▶ Requires payment of state minimum wage if state's rate is higher than the federal minimum wage:
  - ▶ Ohio (\$8.30) wins out over federal (\$7.25).
- ▶ Requires breaks for nursing mothers.

# Fair Labor Standards Act (FLSA)

- ▶ FLSA does **not** require:
  - ▶ vacation, holiday, severance, or sick pay;
  - ▶ meal or rest periods, holidays off, or vacations;
  - ▶ premium pay for weekend or holiday work;
  - ▶ pay raises or fringe benefits; and
  - ▶ a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

# Fair Labor Standards Act (FLSA)

## ▶ Rest Breaks:

- ▶ Not required, but if have in place, short ones (5-20 minutes) are compensable time.
- ▶ If don't pay for lunch breaks, don't ask employees to work during the lunch break or it will otherwise be compensable time.

# Fair Labor Standards Act (FLSA)

- ▶ Nursing Breaks:
  - ▶ Reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth.
    - ▶ Required to provide breaks as frequently as needed by the nursing mother.
    - ▶ The frequency and duration of breaks needed to express breast milk will likely vary.
    - ▶ Not compensable time.
    - ▶ Only required for hourly employees.

# Fair Labor Standards Act (FLSA)

- ▶ Nursing Breaks:
  - ▶ Location must be functional for expressing breast milk. If not exclusive, must be available when needed.
    - ▶ **Not a bathroom.**
    - ▶ Can be temporary provided that the space is shielded from view and free from any intrusion from co-workers and the public.

# Fair Labor Standards Act (FLSA)

## ▶ Nursing Breaks:

- ▶ Employers with fewer than 50 employees are not subject to the FLSA break time requirement if the employer can demonstrate that compliance with the provision would impose an undue hardship.
- ▶ Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.

# Fair Labor Standards Act (FLSA)

- ▶ Certain employees exempt from payment of overtime:
  - ▶ Executive, administrative, learned professionals.
  - ▶ Must be paid a salary; must be at least \$455.00 per week (\$23,660.00 per year); and perform duties required for the particular exemption.

# Fair Labor Standards Act (FLSA)

- ▶ **Compensable time:**
  - ▶ All hours “suffered or permitted” to work;
  - ▶ Rest periods of 20 minutes or less;
  - ▶ Meal periods if not relieved of duties;
  - ▶ Employer-required training;
  - ▶ Traveling during the day;
  - ▶ Changing clothes or washing up if required by nature of job;
  - ▶ Waiting while on duty;
  - ▶ Overly-restrictive on-call arrangements.

# Fair Labor Standards Act (FLSA)

- ▶ Non-compensable time:
  - ▶ Rest periods of 30 minutes or more;
  - ▶ Meal periods if relieved of duties;
  - ▶ Voluntary training not related to regular duties, outside work, and during which no work is performed;
  - ▶ Commuting to and from work;
  - ▶ Changing clothes or washing up if not required by nature of job;
  - ▶ Waiting to start work;
  - ▶ Permissible on-call arrangements.

# Fair Labor Standards Act (FLSA)

- ▶ Recordkeeping for hourly employees:
  - ▶ Employee's full name, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.
  - ▶ Home address, including zip code.
  - ▶ Birth date, if younger than 19.
  - ▶ Sex and occupation.
  - ▶ Time and day of week when employee's workweek begins.
  - ▶ Hours worked each day.
  - ▶ Total hours worked each workweek.

# Fair Labor Standards Act (FLSA)

- ▶ Recordkeeping for hourly employees:
  - ▶ Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework")
  - ▶ Regular hourly pay rate.
  - ▶ Total daily or weekly straight-time earnings.
  - ▶ Total overtime earnings for the workweek.
  - ▶ All additions to or deductions from the employee's wages.
  - ▶ Total wages paid each pay period.
  - ▶ Date of payment and the pay period covered by the payment.

# Fair Labor Standards Act (FLSA)

- ▶ Recordkeeping for salaried, overtime-exempt employees:
  - ▶ Employee's full name, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.
  - ▶ Home address, including zip code.
  - ▶ Birth date, if younger than 19.
  - ▶ Sex and occupation.

# Fair Labor Standards Act (FLSA)

- ▶ Recordkeeping for salaried, overtime-exempt employees:
  - ▶ Time/day of week when employee's workweek begins.
  - ▶ The basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.
    - ▶ (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as “plus hospitalization and insurance plan A,” “benefit package B,” “2 weeks paid vacation,” etc.)

# Fair Labor Standards Act (FLSA)

- ▶ Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records.
- ▶ Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.
- ▶ These records must be open for inspection by the Wage and Hour Division, who may ask the employer to make extensions, computations, or transcriptions.
- ▶ The records may be kept at the place of employment or in a central records office.

# Fair Labor Standards Act (FLSA)

- ▶ The FLSA Act has a general two (2) year statute of limitations, which can be enlarged to three (3) years for “willful” violations.
  - ▶ U.S. Supreme Court: “The employer either *knew* or *showed reckless disregard* for the matter of whether its conduct was prohibited by the statute . . . .”
- ▶ Either the Secretary of Labor or private individuals can enforce the FLSA.
  - ▶ The usual remedy consists of the back pay award (whether minimum wage or overtime) and liquidated damages in an amount equal to the back pay award.
  - ▶ Employees filing a private lawsuit can recover attorney fees.

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Applies to any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.
- ▶ Employer may be covered, but may not mean employee is eligible for FMLA.

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Entitles eligible employees to take 12 workweeks of unpaid leave in a 12-month period for the following reasons:
  - ▶ the birth of a child and to care for the newborn child within one year of birth;
  - ▶ the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
  - ▶ to care for the employee's spouse, child, or parent who has a serious health condition;
  - ▶ a serious health condition that makes the employee unable to perform the essential functions of his or her job;
  - ▶ any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty".

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Entitles eligible employees to take up to 26 workweeks of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.
- ▶ The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Spouses employed by the same employer are jointly entitled to a combined total of 12 work-weeks of family leave for the birth and care of the newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition,.
- ▶ Spouses employed by the same employer are jointly entitled to a combined total of 26 work-weeks of family leave to care for covered servicemember with serious injury or illness.
  - ▶ “Spouse” now includes same-sex and common-law marriage.

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Employees may take FMLA leave intermittently – which means taking leave in blocks of time, or by reducing their normal weekly or daily work schedule.
- ▶ Intermittent FMLA leave is permissible whenever medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.
- ▶ If leave is for birth and care or placement for adoption or foster care, use of intermittent leave is subject to approval of employer.

# Family and Medical Leave Act of 1993 (FMLA)

- ▶ Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.
- ▶ An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy.
- ▶ Employer is required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave.

# Immigration Reform and Control Act

- ▶ Prohibits employers from knowingly hiring or employing unauthorized aliens.
- ▶ Prohibits discrimination in hiring or firing based upon national origin and citizenship.
- ▶ Employer must verify employment eligibility within three (3) days of hire of all workers.
- ▶ Review documents (driver's license, passport, SS card, green card).
- ▶ Record information on Form I-9.

# National Labor Relations Act (“NLRA”)

- ▶ Federal law allowing employees to form a union.
- ▶ Private Sector covered by NLRA.
  - ▶ Enacted in 1935 to allow employees to join together to improve terms and conditions of employment.
  - ▶ Working together, employees can achieve more than they can individually.
  - ▶ NLRA grants employees a number of rights.

# National Labor Relations Act (“NLRA”)

- ▶ Administered by National Labor Relations Board (NLRB).
  - ▶ NLRB has two principal functions:
    - ▶ Determine, through secret-ballot elections, the free democratic choice by employees as to whether or not they wish to be represented by a union in dealing with their employers and, if so, by which union.
    - ▶ To prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions.

# National Labor Relations Act (“NLRA”)

- ▶ Sets forth the basic rights of employees:
  - ▶ To self-organize;
  - ▶ To form, join, or assist labor organizations;
  - ▶ To bargain collectively about wages and working conditions through representatives of their own choosing;
  - ▶ To go on strike;
  - ▶ To engage in other protected “concerted activities”;
    - ▶ Act together for purposes of collective bargaining or other mutual aid or protection.
  - ▶ To refrain from any of these activities.

# National Labor Relations Act (“NLRA”)

- ▶ “Supervisors” are the exception for the right to collectively bargain:
  - ▶ Individuals who have authority:
    - ▶ to make personnel decisions (hiring, firing, discipline, promotion);
    - ▶ to responsibly direct other employees (supervise and manage, schedule hours);
    - ▶ to settle grievances;
    - ▶ To effectively recommend any of the foregoing;
    - ▶ All require exercise of independent judgment by supervisor.

# National Labor Relations Act (“NLRA”)

- ▶ Section 7 of the NLRA guarantees the right to engage in concerted activity for mutual aid or protection.
- ▶ Section 8 prohibits an employer from interfering with, restraining or coercing employees in the exercise of Section 7 rights.

# National Labor Relations Act (“NLRA”)

- ▶ What is “concerted activity?”
  - ▶ Conduct engaged in with or on authority of other employees.
  - ▶ Section 7 includes actions of single employee, provided he intends to initiate group activity or speaks out on terms and conditions of employment affecting other employees.
  - ▶ Personal complaints about terms or conditions that affect employee only (complaint about denial of vacation request).

# National Labor Relations Act (“NLRA”)

- ▶ What is “concerted activity?”
  - ▶ Actions have to be both concerted and for the purpose of “mutual aid and support”.
  - ▶ Must be related to wages, hours, terms and conditions of employment.
  - ▶ Conduct must not be extreme or abusive.
    - ▶ Abusive or egregious conduct, or malicious or defamatory speech is not protected.

# National Labor Relations Act (“NLRA”)

- ▶ Section 8 prohibits an employer from interfering with, restraining or coercing employees in the exercise of Section 7 rights.
- ▶ Employer rules must bend to this prohibition as they cannot prohibit concerted activity.
  - ▶ Look to whether the rule reasonably tends to chill employees in the exercise’ of their statutory rights.
- ▶ If does not explicitly restrict rights, then employer rule is unlawful if:
  - ▶ Employees reasonably construe rule to prohibit protected activity.
  - ▶ Rule created in response to protected activity.
  - ▶ Rules had been applied to restrict protected activity.

# National Labor Relations Act (“NLRA”)

- ▶ Employer ULPs:
  - ▶ Interfering with, restraining, or coercing employees in exercise of rights;
  - ▶ Dominating or interfering with formulation or administration of a labor organization;
  - ▶ Discriminating against employees for purpose of encouraging or discouraging membership in any labor organization;
  - ▶ Retaliating against employees for filing charges or giving testimony under NLRA;
  - ▶ Refusing to engage in collective bargaining.

# Occupational Safety and Health Act ("OSHA")

- ▶ Applies to private sector employees:
- ▶ “Each employer ... shall furnish to each of his employees employment and a place of employment which are free from **recognized** hazards that are causing or are likely to cause death or serious physical harm to his employees”.
  - ▶ Recognized means awareness that a condition is hazardous to employees.
  - ▶ Must show not that an *accident* is likely, but that *if* an accident occurs, it would lead to death/serious physical harm.

# Occupational Safety and Health Act ("OSHA")

- ▶ Specific safety standards
  - ▶ OSHA has authority to promulgate specific safety standards.
    - ▶ Broken down by industry
  - ▶ Safety standards govern:
    - ▶ Substances (lead, benzene, asbestos, blood-borne pathogens)
    - ▶ Equipment (presses, cranes)
    - ▶ Work processes (welding, paper mills)
    - ▶ Environmental conditions (noise, ventilation)
    - ▶ Safety Practices (respirators, first aid)

# Occupational Safety and Health Act ("OSHA")

- ▶ Employers have to be aware of and comply with all safety standards that apply to their particular industry, unless they obtain:
  - ▶ Temporary variance: employer must show it cannot comply by effective date.
  - ▶ Permanent variance: employer must show it use alternative means that are equally effective.

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

- ▶ Applies to employers of 15 or more employees.
- ▶ Prohibits discrimination in employment on the bases of race, color, religion, sex or national origin.
- ▶ Prohibits retaliation against a person who opposes employment discrimination or participates in a Title VII process.
- ▶ Employee must file charge of discrimination with EEOC within 300 days of the last event of discrimination.

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

- ▶ Harassment is a form of discrimination.
- ▶ Harassment can be based on any of the protected characteristics.
- ▶ Sexual harassment is a special type of sex discrimination which has developed under Title VII.

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

- ▶ Sex discrimination can take two basic forms: “*quid pro quo*” and “hostile environment”.
  - ▶ *Quid Pro Quo* - conduct which explicitly or implicitly conditions a job, a job benefit or the absence of a job detriment, upon an employee’s acceptance of sexual conduct. A supervisor that insists upon sex in exchange for a favorable evaluation commits *quid pro quo* sexual harassment.
  - ▶ Hostile Environment - conduct that is sufficiently severe or pervasive enough to create an objectively hostile or abusive environment so as to change the terms or conditions of employment. A workplace where obscene gestures, comments, conversation and pin-ups are common may constitute a hostile environment.

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

- Adopt a policy that prohibits harassment by any employee, especially supervisors, and third parties.
  - Supervisors can be individually liable under Ohio law.
  - Supervisory sexual harassment accompanied by “tangible employment action” makes Board strictly liable, but harassment by co-worker does not.
    - ✦ Absent tangible employment action, employer will be liable only where the plaintiff can demonstrate that employer knew or should have known of the harassment and failed to take appropriate remedial action.

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

- Policy:
  - Follow the KISS method regarding reporting:
    - ✦ Make the process easy for employee.
      - 800 number, email, open-door.
  - Provide alternatives:
    - ✦ Include a number of options for reporting, because victim will see it as futile to report harassment to the harassing supervisor, or his/her buddy, if a co-worker.

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

- Policy:
  - Advise employees that “off-the-clock” activity is covered and prohibited as well.
  - It is one thing to ask somebody out on a date; it is quite another to step over the line.
    - ✦ Being away from work won’t insulate the employer, especially if supervisor is involved or a supervisor or the employer knows what is going on.

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

- **Training:**
  - **Train all employees on sexual harassment and other harassment.**
    - ✦ **Do it annually and for every new employee.**
    - ✦ **Make it commonplace so that employees recognize it and feel comfortable with reporting it.**

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

- **Training:**
  - Make employees understand that the employer is a professional work environment.
  - Jokes are generally not acceptable, even if everybody engages and no one is offended.
  - If cannot say it, do it, or show it to your kids, leave it at the door, or for friends and not co-workers and subordinates.

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

- It is everybody's responsibility to report and stop unlawful discrimination and harassment.
- If see it, report it.
- If hear it, report it.
- Tell employees not to be afraid to say NO! If it continues, report it!
- Report to anybody listed in the policy that is not the harasser.

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

- Take all complaints seriously.
- Investigate thoroughly: failure to do so can doom the employer.
  - “The most significant immediate measure an employer can take in response to a sexual harassment complaint is to launch a prompt investigation to determine whether the complaint is justified.” By doing so, “the employer puts all employees on notice that it takes such allegations seriously and will not tolerate harassment in the workplace.”

# Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- ▶ Protects civilian job rights and benefits for veterans and members of Armed Forces Reserve components.
- ▶ Employee may be absent from work for up to five (5) years and retain job protection, except:
  - ▶ initial enlistments lasting more than five years;
  - ▶ periodic National Guard and Reserve training duty;
  - ▶ involuntary active duty extensions and recalls, especially during a time of national emergency.
- ▶ Reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

# Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- ▶ Must be reemployed in the job that employee would have attained had he/she not been absent for military service ("escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority.
- ▶ Employer must undertake reasonable efforts (such as training or retraining) to enable employee to refresh or upgrade skills to help him/her qualify for reemployment.
- ▶ Requires alternative reemployment positions if the employee cannot qualify for the "escalator" position.
- ▶ While employee is performing military service, he/she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

## Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- ▶ Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 24 months
  - ▶ May be required to pay *up to* 102 percent of the full premium.
- ▶ For military service of less than 31 days, health care coverage is provided as if the service member had remained employed.
- ▶ All pension plans are protected.

## Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- ▶ Employees must provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances.
- ▶ Employees are able (but are not required) to use accrued vacation or annual leave while performing military duty.

# Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

- ▶ Employees must apply for reemployment:
  - ▶ For service of less than 31 days, employee must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8-hour rest period.
  - ▶ For service of more than 30 days but less than 181 days, the employee must submit an application for reemployment within 14 days of release from service.
  - ▶ For service of more than 180 days, an application for reemployment must be submitted within 90 days of release from service.

# The Worker Adjustment and Retraining Notification Act (WARN)

- ▶ Employers are covered if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months and not counting employees who work an average of less than 20 hours a week.
- ▶ Requires employers to provide written notice 60 days in advance of plant closings/ mass layoffs.
  - ▶ This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government (mayor, commissioners).

# The Worker Adjustment and Retraining Notification Act (WARN)

## ▶ **What Triggers Notice**

- ▶ **Plant Closing:** If an employment site (or one or more facilities or operating units within an employment site) will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period.
  - ▶ This does not count employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week for that employer. These latter groups, however, are entitled to notice.

# The Worker Adjustment and Retraining Notification Act (WARN)

## ▶ **What Triggers Notice**

- ▶ **Mass Layoff:** If there is to be a mass layoff which does not result from a plant closing, but which will result in an employment loss at the employment site during any 30-day period for 500 or more employees, or for 50-499 employees if they make up at least 33% of the employer's active workforce.
- ▶ Does not count employees who have worked less than 6 months in the last 12 months or employees who work an average of less than 20 hours a week for that employer. These latter groups, however, are entitled to notice.

# The Worker Adjustment and Retraining Notification Act (WARN)

## ▶ What Triggers Notice

- ▶ An employer also must give notice if the number of employment losses which occur during a 30-day period fails to meet the threshold requirements of a plant closing or mass layoff, but the number of employment losses for 2 or more groups of workers, each of which is less than the minimum number needed to trigger notice, reaches the threshold level, during any 90-day period, of either a plant closing or mass layoff.
- ▶ Job losses within any 90-day period will count together toward **WARN** threshold levels, unless the employer demonstrates that the employment losses during the 90-day period are the result of separate and distinct actions and causes.

# The Worker Adjustment and Retraining Notification Act (WARN)

- ▶ The term "employment loss" means:
  - ▶ An employment termination, other than a discharge for cause, voluntary departure, or retirement;
  - ▶ A layoff exceeding 6 months; or
  - ▶ A reduction in an employee's hours of work of more than 50% in each month of any 6-month period.

# The Worker Adjustment and Retraining Notification Act (WARN)

- ▶ **Notification Period:**
  - ▶ With three exceptions, notice must be timed to reach the required parties at least 60 days before a closing or layoff.
  - ▶ When the individual employment separations for a closing or layoff occur on more than one day, the notices are due to the representative(s), State dislocated worker unit and local government at least 60 days before each separation.
  - ▶ If the workers are not represented, each worker's notice is due at least 60 days before that worker's separation.

# The Worker Adjustment and Retraining Notification Act (WARN)

- ▶ Notification Period Exceptions:
  - ▶ Faltering company: Covers situations where a company has sought new capital or business in order to stay open and where giving notice would ruin the opportunity to get the new capital or business, and applies only to plant closings;
  - ▶ Unforeseeable business circumstances: Applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required; and
  - ▶ Natural disaster: Applies where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought or storm.

# The Worker Adjustment and Retraining Notification Act (WARN)

## ▶ Remedies/Liability:

- ▶ Employer is liable to each aggrieved employee for an amount including back pay and benefits for the period of violation, up to 60 days. Liability may be reduced by such items as wages paid by the employer to the employee during the period of the violation and voluntary and unconditional payments made by the employer to the employee.
- ▶ An employer who fails to provide notice as required to a unit of local government is subject to a civil penalty not to exceed \$500 **for each day** of violation. Penalty may be avoided if employer satisfies the liability to each aggrieved employee **within 3 weeks** after the closing or layoff is ordered by the employer.

# ORC Chapter 4112

- ▶ Ohio law that encompasses ADEA, ADA, Title VII, and USERRA (in part) all in one statute.
  - ▶ “Employer” means any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer.
- ▶ Prohibits employer from discharging, refusing to hire, or otherwise discriminating against a person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of that person.

# Workers Compensation ORC Chapter 4123

- ▶ "Employer" means any individual or type of organization (business entity) who have in employment at least one individual, or in the case of a nonprofit organization, not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day.
- ▶ Provides employee compensation for workplace injuries.
- ▶ Mandatory for employees.

# Unemployment Compensation ORC

## Chapter 4141

- ▶ "Employer" means any individual or type of organization (business entity) who have in employment at least one individual, or in the case of a nonprofit organization, not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day.
- ▶ Provides compensation to employees fired through no fault of their own.
- ▶ Mandatory.

## Veterans' Rights ORC §5903.02

- ▶ "Veteran" means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces, who has been discharged under honorable conditions from the armed forces or who has been transferred to the reserve with evidence of satisfactory service.
- ▶ Applies to public and private employers.

## Veterans' Rights ORC §5903.02

- ▶ Any person whose absence from a position of employment is necessitated by reason of service in the uniformed services, in the Ohio organized militia, or in the organized militia of another state has the same reinstatement and reemployment rights in this state that a person has under USERRA.
- ▶ A person who is denied a reinstatement or reemployment right pursuant to this section has a cause of action for the same remedies as a person has under USERRA.

## Veterans' Rights ORC §5903.02

- ▶ The court shall require the defendant to pay the court costs if the plaintiff is the prevailing party. If the plaintiff is not the prevailing party, the court may use its discretion in allocating court costs among the parties to the action.
- ▶ The court may award to a plaintiff who prevails in such action or proceeding reasonable attorney's fees, expert witness fees, and other litigation expenses. If the plaintiff does not receive a favorable judgment from the court in that action, the court shall not require the plaintiff to reimburse the defendant for attorney's fees.

# Ohio Military Family Medical Leave Act

## ORC §§5906.01-5906.03

- ▶ “Employer” means "a person who employs fifty or more employees.
- ▶ Once per calendar year, employer must allow an employee to take leave up to 10 days or 80 hours, whichever is less, if all of the following conditions are satisfied:
  - ▶ Employed at least twelve consecutive months with employer and for at least 1,250 hours in the twelve months immediately preceding commencement of the leave.
  - ▶ Employee is the parent, spouse, or a person who has or had legal custody of a person who is a member of the uniformed services and who is called into active duty in the uniformed services for a period longer than 30 days or is injured, wounded, or hospitalized while serving on active duty in the uniformed services.

# Ohio Military Family Medical Leave Act

## ORC §§5906.01-5906.03

- ▶ Employee gives notice to employer that employee intends to take leave at least 14 days prior to taking the leave if the leave is being taken because of a call to active duty or at least 2 days prior to taking the leave if the leave is being taken because of an injury, wound, or hospitalization.
  - ▶ If employee receives notice from uniformed services that the injury, wound, or hospitalization is of a critical or life-threatening nature, employee may take the leave without providing notice to the employer.
- ▶ The dates on which the employee takes leave occur no more than 2 weeks prior to or 1 week after the deployment date of the employee's spouse, child, or ward or former ward.
- ▶ Employee does not have any other leave available for the employee's use except sick leave or disability leave.

# Ohio Military Family Medical Leave Act (ORC §§5906.01-5906.03)

- ▶ Employer must continue to provide benefits to the employee during the period of leave. Employee is responsible for the same proportion of the cost of the benefits as the employee regularly pays.
- ▶ Employer is not required to pay salary or wages to the employee during leave.
- ▶ Upon completion of leave, employer must restore employee to the position employee held prior to taking leave or a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.
- ▶ Employer may require an employee requesting leave to provide certification from the appropriate military authority.

# Ohio Military Family Medical Leave Act

## ORC §§5906.01-5906.03

- ▶ Employer cannot interfere with, restrain, or deny exercise or attempted exercise of a right provided by law.
- ▶ Employer cannot discharge, fine, suspend, expel, discipline, or discriminate against employee with respect to any term or condition of employment because of employee's actual or potential exercise, or support for another employee's exercise, of any right established provided by law.
  - ▶ Does not prevent an employment action that is independent of the exercise of a right under the law.

# Ohio Constitution/ORC Chapter 4111

- ▶ Ohio's minimum wage and overtime law.
- ▶ Does not allow FLSA exemptions from minimum wage but does recognize FLSA exemptions from overtime.

# Ohio Constitution/ORC Chapter 4111

- ▶ ORC §4111.02 and Section 34a of Article II, Ohio Constitution require payment of Ohio minimum wage by employer except:
  - ▶ Employees under the age of sixteen and
  - ▶ Employees of businesses with annual gross receipts of two hundred fifty thousand dollars or less for the preceding calendar year shall be paid not less than the federal minimum wage.

# Ohio Constitution/ORC Chapter 4111

- ▶ Employer shall, at the time of hire, provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes.
- ▶ Employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed.
  - ▶ Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request.

# Ohio Constitution/ORC Chapter 4111

- ▶ If found liable by Ohio Department of Commerce or a court, the employer shall **within thirty days** of the finding pay the employee back wages, damages, and the employee's costs and reasonable attorney's fees.
- ▶ Damages shall be calculated as:
  - ▶ An additional two times the amount of the back wages
  - ▶ In the case of a violation of an anti-retaliation provision, an amount set by the State or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued.
- ▶ An employee has no liability for costs or attorney's fees except upon a finding that such action was frivolous.

# Ohio's Whistleblower statute ORC §4113.52

- ▶ Establishes reporting mechanisms for employees.
- ▶ Protects employees who make reports in good faith from retaliation or adverse action.
- ▶ Permit employee to file civil action if subject to retaliation

# New Hire Reporting ORC §§3121.891-3121.8910

- ▶ Requires "every employer" to "make a new hire report to the department of job and family services regarding a newly hired employee or a contractor of a person who resides, works, or will be assigned to work in this state to whom the employer anticipates paying compensation."
- ▶ ORC §3121.893 requires an employer to "make the new hire report not later than twenty days after the date on which the employer hires an employee ..."
  - ▶ The information in the report regarding the employee is then compared to the information that ODJFS has regarding persons who owe child support.
  - ▶ If the comparison conducted by ODJFS results in a match, ODJFS will notify the child support enforcement agency administering the support order.

# New Hire Reporting ORC §§3121.891-3121.8910

- ▶ ORC §3121.8910 establishes penalties for not filing the new hire report:
  - ▶ An employer that fails to make a new hire report shall be liable to the department of job and family services for a civil penalty of twenty-five dollars for each failure to make a report.
  - ▶ If the failure to make a new hire report is the result of a conspiracy between the employer and the employee not to supply the report or to supply a false or incomplete report, the employer shall be liable for a civil penalty of five hundred dollars for each such failure.

QUESTIONS?

**THANKS!**