

## **SUMMARIES OF FEDERAL LAWS AND FEDERAL REGULATIONS**

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## TITLE VII OF THE 1964 CIVIL RIGHTS ACT

Title VII (Title 42, U.S. Code, Section 2000e) is a federal law that forbids employers, employment agencies and labor organizations from discriminating on the basis of race, color, sex, religion or national origin. It also forbids retaliation against any employee or individual who opposes practices Title VII makes unlawful.

Unlawful Practices -- Employers are forbidden to discriminate against any worker or job applicant on the basis of race, color, religion, sex, or national origin. This means that an employer may not use these conditions as grounds for:

- Failing or refusing to hire an individual.
- Discharging a worker.
- Discriminating against employees in terms of their compensation, conditions, or privileges of employment.
- Limiting, segregating, or classifying employees or applicants in any way that tends to deprive them of individual or employment opportunities or adversely affects their status as an employee.
- Limiting or restricting admission to any program providing apprenticeship or other training, including on-the-job training.
- Indicating a preference in advertisements related to employment or training opportunities.
- An employment practice that results in creating a "disparate impact" on a protected class is unlawful if the employer cannot demonstrate that the "challenged practice is job related for the position in question and consistent with business necessity."

## AGE DISCRIMINATION IN EMPLOYMENT ACT

The Age Discrimination in Employment Act (29 U.S. Code, Section 621) generally prohibits employers from discriminating against workers or applicants who are 40 years of age or over. Like Title VII, ADEA applies to employers, employment agencies, and labor unions. and prohibits retaliation against individuals for exercising their rights under the law.

Unlawful Practices -- Employers may not use the age of a worker or applicant within the protected age group as grounds for:

- Failing or refusing to hire an individual;
- Discriminating against employees with respect to their compensation or terms or conditions of employment;
- Limiting, segregating, or classifying employees in any way that tends to deprive them of employment opportunities;

ADEA also bars employers from advertising any employment preference that discriminates against those within the protected age group; reducing the wages of any employee to comply with the Act; or discriminating in favor of younger individuals within the protected age group.

## AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act (Title 42, U.S. Code, Section 12101, et. seq.) prohibits discrimination against individuals with disabilities in employment, public services, public accommodations, and telecommunications. The following discusses the relevant prohibitions against discrimination due to disability in employment, as provided in Title I of ADA. Individuals with disabilities are defined under ADA as persons who either have or are regarded as having a record of a physical or mental impairment that substantially limits one or more major life activities.

**Requirements** -- ADA's employment provisions require employers to extend equal opportunities in all aspects of employment including hiring, advancement, compensation, and training, to individuals with disabilities. More specifically, ADA requires employers to provide reasonable accommodations for persons with disabilities who are otherwise qualified for the job, unless making the accommodation poses an "undue hardship" for the employer or the individual poses a direct threat to the health or safety of others in the workplace. Persons who can perform the "essential functions" of a job, with or without reasonable accommodation, are considered qualified and protected from employment discrimination under the law.

**Exemptions** -- ADA excludes from its protections persons who are current users of illegal drugs. The law also states that homosexuality, bisexuality, and certain psychological or behavioral disorders are not considered disabilities under the Act. In addition, it provides that persons with infectious diseases listed by the Secretary of Health and Human Services as being communicable through the handling of food can be transferred to other jobs if the danger to public health cannot be eliminated by some other reasonable accommodation. Also, employers may hold alcoholics to the same standards as other employees, even if unsatisfactory job performance is related to alcoholism, and use or possession of alcohol on the job can be prohibited.

## EQUAL PAY ACT OF 1963

The Equal Pay Act forbids employers to pay different wages to men and women who are performing equal jobs. EPA also prohibits labor organizations from causing' employers to pay different wages based on sex.

**Unlawful Practices** -- EPA prohibits sex-based wage discrimination in jobs in which employees perform equal work. Generally, the work of two employees is considered equal when both jobs require equal skill, effort, and responsibility and are performed under similar working conditions. EPA also prohibits employers from reducing the wage of any employee to comply with the Act or retaliating against an employee for asserting rights under the Act.

## EXECUTIVE ORDER 11246

Executive Order 11246 prohibits discrimination in employment and requires federal contractors and subcontractors to implement affirmative action plans to increase minority and female participation in the workplace.

Affirmative Action Requirements -- Written affirmative action plans must contain:

- An analysis of the federal contractor's utilization of minorities and women in all major job classifications;
- An explanation if minorities or women are underutilized in any job classification;
- Goals and timetables, to be achieved through good faith efforts, for the employment of additional minorities and females to correct deficiencies;
- A description of specific steps the contractor will take to meet goals and timetables (e.g., outreach and recruitment programs);
- Internal auditing and reporting systems to measure the plan's effectiveness;
- The contractor's commitment to follow the sex discrimination guidelines issued by the Labor Department's Office of Federal Contract Compliance Programs (OFCCP); and
- A commitment to use employment tests in accordance with the Uniform Guidelines on Employee Selection Procedures.

## REHABILITATION ACT OF 1973

The Rehabilitation Act of 1973 (Title 29, U.S. Code, Section 701, et seq.) prohibits federal contractors from discriminating against handicapped individuals. It also requires federal contractors to take affirmative action to employ the handicapped. Another section provides for jointly financed government-employer agreements to expand employment opportunities for the handicapped.

Coverage -- A handicapped individual under the Rehabilitation Act is a person who has a physical or mental impairment that substantially limits one or more major life activities, one who has a record of such an impairment, or one who is regarded as having such an impairment. Under 1990 amendments to the Act, the definition of an "individual with handicaps" does not include individuals currently engaging in illegal drug use or alcoholics whose current use of alcohol prevents them from performing job duties. However, the Rehabilitation Act does cover individuals who are participating in or have successfully completed a drug rehabilitation program and are no longer engaging in the illegal use of drugs (Title 29, U.S. Code, Section 706).

Affirmative Action Requirements -- Written affirmative action programs must be updated at least annually and must include:

- Procedures for ensuring consideration of handicapped applicants and employees for vacancies and training opportunities.
- A schedule for the review and elimination of job qualification requirements that screen out the handicapped and are not job-related or justified by a business necessity or safety considerations.

- Provisions for making reasonable accommodations to the needs of the handicapped.
- Provisions for outreach and positive recruitment activities including: internal and external policy dissemination; pictures of handicapped with other employees when advertising; and use of appropriate recruitment sources.

## Summary of FAIR LABOR STANDARDS ACT

### ■ What is FLSA?

The Fair Labor Standards Act was originally enacted in 1938. It requires most public and private employers to:

- a. Pay at least the minimum wage to all employees
- b. Pay overtime to employees who work more than 40 hours in a week
- c. Avoid discrimination on the basis of age
- d. Avoid employing children in dangerous occupations

### ■ Who administers FLSA?

The FLSA is administered by the Wage and Hour division of the US Department of Labor.

### ■ Exemptions from FLSA

The law allows employers to *exempt* certain employees from the overtime provisions of FLSA. Basically, exempt employees are "salaried" employees who meet one or more of the following tests:

#### a. Administrative:

- Primary duty is office work directly related to management policies or general business operations
- Customarily exercises discretionary powers
- Regularly assists an executive, performs specialized or technical work, or executes special assignments
- No more than 20 percent of work is nonexempt in nature

#### b. Executive:

- Primary duty is management of enterprise or a recognized department
- Regularly directs work of two or more employees
- Has hire-and-fire authority
- Customarily exercises discretionary powers
- No more than 20 percent of work is nonexempt in nature

#### c. Professional:

- Primary duty requires advanced knowledge in field where learning is customarily acquired by specialized study (or)
- Work is original and creative (or)
- Primary duty is teaching
- Work requires discretion and judgement
- Work is intellectual and varied

- No more than 20 percent of work is nonexempt in nature

The above exemptions also require that the employee be paid at least \$250 per week and that his/her pay not be reduced due to number of hours worked. At Auburn University all jobs below grade 7 are nonexempt and all above grade 10 are exempt, and all exempt. Exempt employees in the above categories are not required to keep records of hours worked and are not eligible for overtime or "compensatory time".

A partial exemption is also available for agricultural workers; they must be paid overtime, but at straight time instead of time-and-one-half. Ag exempt employees must keep records of time worked.

- Minimum wage

All covered employees must be paid at least \$5.15 per hour (as of September 1, 1997).

- Overtime

All employees (except those *exempted*) must be paid at one-and-one-half times ("time and a half") their regular rate for all work hours over 40 in a work week. Auburn University's work week runs Sunday through Saturday.

- Annual leave, sick leave and LWOP do not count as hours worked
- Auburn University considers holidays to be time worked
- Overtime is not due for working over 8 hours a day

- Compensatory time

Compensatory time is an alternate means of satisfying the employer's overtime obligation to employees. As such, it must be on a time-and-a-half basis. FLSA limits comp time accrual to 240 hours. Supervisors should be aware that a comp time balance is a liability; employees should be discouraged from keeping a large balance. Unused comp time must be paid for upon the employee's termination.

- Record keeping

Accurate records must be kept of all hours worked by nonexempt employees. Records of time worked must be maintained at least two (2) years. Time may be recorded on a time sheet or time clock.

- Penalties

Wage and Hour can audit the University at any time to ensure compliance with FLSA. Records of time worked must be produced upon request. Audits usually come as a result of employee complaints to Wage and Hour and are usually directed at one department. An audit will cover all employees in the department, not just the complaining party.

## EMPLOYEE RETIREMENT INCOME SECURITY ACT

The Employee Retirement Income Security Act (Title 29, U.S. Code, Section 1001, et seq.) establishes a number of requirements for tax qualified, employer-sponsored pension and retirement plans. The Act's requirements also extend to certain welfare benefit plans that provide medical, hospital, accidental death, disability, and unemployment benefits to participants.

Requirements -- ERISA requirements vary by type of pension plan. The two basic types are: defined benefit plans, which specify the pension benefit employees will receive or provide a formula to determine such benefits; and defined contribution plans, which call for a fixed employer contribution or provide a formula for determining the employer's contribution. Defined contribution plans include profit-sharing, savings, thrift, and employee stock plans. ERISA contains a number of requirements governing plan participation, vesting, funding, and benefit rules.

## IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Immigration Reform Act, which is designed to control illegal immigration to the U.S., prohibits the employment of unauthorized foreign nationals.

Coverage -- All employers and employment agencies are barred from hiring, continuing to employ, or referring aliens who are not authorized to work in the U.S.

Requirements -- Employers must verify that job applicants are either U.S. citizens or aliens authorized to work in the U.S. by examining a document or combination of documents that attest to an individual's employment eligibility and identity. Documents that employers may accept as proof of both an applicant's identity and authorization to work in the U.S. include any one of the following: a U.S. passport; certificate of U.S. citizenship; naturalization certificate; unexpired foreign passport that contains an unexpired employment authorization stamp; or a resident alien card with a photograph of the individual or other personal identifying information that would satisfy the Attorney General. Applicants also may provide proof of their employment eligibility by submitting either a social security card or a certificate of birth issued by any state or the State Department, along with a driver's license or state-issued ID card containing a photograph. The employer is not responsible for verifying the accuracy of documents submitted by an applicant as long as they appear to be genuine.

Record keeping -- Once an applicant is hired, both the employer and the new-hire must sign government form verifying that the individual properly established U.S. citizenship or authorization to work in the country. Under final rules issued by the Immigration and Naturalization Service, employers have three days to complete INS's employment verification form -- Form I-9 which certifies a worker's identity and job eligibility. Employers must retain the I-9 form for at least three years after the applicant is hired, or one year beyond the date of termination. Employment agencies and other organizations that recruit or refer applicants for a fee also must fill out I-9 forms.

According to the final rules, INS or the Labor Department must give employers three days' advance notice before inspecting the verification forms. However, inspection officials are not required to obtain warrants or subpoenas to gain access to the records. Fines from \$100 to \$1,000 will be levied for verification and record keeping violations.

Sanctions -- The law, which became effective November 6, 1986, specifies that for each illegal alien hired, employers may be subject to a fine of \$250 to \$12,000 for the first offense, \$52,000 to \$5,000 for a second offense, and \$3,000 to \$510,000 for subsequent offenses. A "pattern" of hiring illegal aliens could earn an employer a \$153,000 fine and six months in jail. Between July 1, 1987, and May 31, 1988, INS will contact employers, either in person or by telephone, about their responsibilities before issuing fines for violations. However, INS will make an exception of employers that "willfully and knowingly show wanton disrespect for the law." The agency will make an initial contact to provide information and consultation about hiring and record keeping requirements. Employers will be given a written warning, but no fine, if, upon a second visit, they are not complying with the law. A fine will be assessed after two contacts by immigration officials. Beginning June 1, 1988, INS will fully enforce the employer sanctions provisions of the Act.

#### CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT

Employers must offer continued health insurance coverage at group rates to terminated employees or laid-off workers whose reduced hours normally would result in loss of health care coverage, under provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended. However, COBRA stipulates that employers may require workers to pay the premiums -- plus a surcharge of up to 2 percent -- to cover the cost of extended coverage.

Requirements -- Under COBRA, employers are required to offer workers continued health insurance coverage, including dental and vision care, for 18 months (29 months for disabled workers) upon the occurrence of certain "qualifying events" -- e.g., the employee retires, resigns, is laid off, changes from full-time to part-time status with a resultant loss of coverage, or is discharged for any reason other than gross misconduct. Divorced, surviving, or Medicare-ineligible spouses of such workers, as well as their dependent children, also are entitled to extended health care coverage, usually for three years. However, employers may charge eligible individuals up to 102 percent of the premium -- the entire cost plus 2 percent for administrative expenses. Employers must notify workers and their spouses of their health care continuation rights when they become plan participants and when an event triggers continuation of coverage. The Department of Labor has issued a model statement that employers can use to comply with the Act's notification requirements. The continued coverage must be identical to coverage provided under the employer's plan to similarly situated employees and family members. The maximum period of continuation coverage is 36 months, even if beneficiaries have more than one qualifying event that entitles them to continuation coverage.

Exceptions -- Employers may cut short the required 18-month or three-year period for continuation coverage under certain conditions. These conditions include: a failure by the covered individual to make the required payments; enrollment of the covered individual in another group plan as a result of employment, reemployment, or remarriage; eligibility of the covered individual for Medicare benefits; or the employer's termination of its group health plan.

## FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act of 1993 (P.L. 103-3) requires employers with 50 or more workers to provide up to 12 weeks of unpaid, job-protected leave to care for a newborn or adopted child, an immediate family member (child, spouse or parent) with a serious health condition, or the employee's own serious health condition. The law allows employees to take leave intermittently or on a reduced schedule "when medically necessary." An employer may require that an employee's family leave request be supported by proper medical certification.

Covered Events -- An eligible employee is entitled to take leave when a son or daughter is born, when a son or daughter is placed for adoption or foster care, when a family member (i.e., son, daughter, spouse, or parent) is affected by a serious health condition requiring the employee's absence from work, or when the employee experiences a serious health condition and is unable to perform his or her job functions. Leave taken for the birth or placement of a child must be taken within 12 months of the birth or placement for adoption.

Requirements -- The law allows an employee to take up to 12 weeks of unpaid leave in any 12-month period for the birth or adoption of a child, or to care for a child, spouse, or parent who has a serious health problem that makes it impossible to perform a job. Eligible employees may take 12-weeks of leave for the reasons stated above in any 12-month period and in certain circumstances, leave may be taken intermittently or on a "reduced leave schedule." However, to be eligible for leave, employees must have been employed for at least one year and have worked at least 1,250 hours within the previous 12-month period. In addition, employers may require employees to take any paid sick leave or annual leave as part of the 12-week leave provided in the law. Employees taking leave are entitled to receive health benefits while they are on unpaid leave under the same terms and conditions as when they were on the job. Also, employers must guarantee employees the right to return to their previous or an equivalent position with no loss of benefits at the end of the leave, although the law provides a limited exception from the restoration provision to certain highly paid employees. Furthermore, intermittent or reduced leave for family reasons can be taken only if the employer and employee agree to the arrangement. Generally, while seniority or other benefits do not accrue during a period of unpaid family or medical leave, any benefits accrued prior to commencement of such leave must be restored to an employee upon the employee's return to work. An exception applies to employees who are among the highest paid 10 percent of the workforce. Health benefits must be maintained while an employee is on leave.

## ALABAMA CHILD LABOR LAW

All employers in Alabama are required to keep on file a work permit for each employee under 18 years of age. Work permits are issued by all county and city boards of education; most high schools and many private or church schools.

- Hour Restrictions -- The law restricts the hours that minors under 18 years of age can work:
  - 16-17 year olds--Minors 16 and 17 years old who are enrolled in public or private school may not work before 5 a.m. or after 10 p.m. on any night preceding a school day. Exception: Those students granted exemptions by their superintendent of education or school headmaster may work past 10 p.m
  - 14-15 year olds--When school is in session (September through May), 14 and 15 year olds may work:
    - a. No more than three hours on a school day,
    - b. No more than eight hours on a weekend day,
    - c. No more than 18 hours a week,
    - d. Not before 7 a.m. or after 7 p.m.
    - e. Not during school hours.

During summer vacation (June through August) 14 and 15 year olds may work:

- a. No more than eight hours a day,
- b. No more than six days a week,
- c. Nor more than 40 hours a week,
- d. Not before 7 a.m. or after 9 p.m.

Enforcement and Sanctions -- The Department of Industrial Relations has the right of free access to any establishment in which minors may be employed. Anyone who hinders an inspection or makes a false statement to an officer of the Department is guilty of a misdemeanor. The Department has the authority to remove from a job any minor found working in violation of the Alabama Child Labor Law.