

# Wilson Elser

**THE CATHOLIC UNIVERSITY OF AMERICA:  
LEADERSHIP DEVELOPMENT DAY**

## **“KEY” LEGAL UPDATES FOR MANAGERS**

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## Overview of Laws Governing the Employer/Employee Relationship

# Relevant Laws and Agencies

- Generally falls into four broad categories
  - Anti-Discrimination
  - Wage & Hour
  - Labor Relations
  - Miscellaneous
- Agencies
  - U.S. Equal Employment Opportunity Commission
  - U.S. Department of Labor
  - National Labor Relations Board
  - U.S. Department of Justice
  - U.S. Department of Education
  - D.C. Office of Human Rights

# EEOC Enforces ...

- Title VII of the Civil Rights Act of 1964 (Title VII)
- Pregnancy Discrimination Act
- Equal Pay Act (EPA)
- Age Discrimination in Employment Act (ADEA)
  - Older Workers' Benefit Protection Act
- Americans with Disabilities Act (ADA)
- Rehabilitation Act (Section 501 and 505)
- The Genetic Information Nondiscrimination Act of 2008 (GINA)
- Lily Ledbetter Fair Pay Act
- Civil Rights Act of 1991 (Section 102 and 103)

# U.S. DOL Enforces ...

- Fair Labor Standards Act (FLSA)
- Family Medical Leave Act (FMLA)
- Rehabilitation Act (Sections 503 and 504)
- Immigration and Nationality Act (INA) (H-1B visa program)
- Occupational Safety and Health Act (OSHA)
- Employee Retirement Income Security Act (ERISA)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Consumer Credit Protection Act
- Government Contracts
- Among others....

# Title VII & PDA

- Prohibits discrimination on the basis of:
  - Race
  - Color
  - Religion
  - Sex (including pregnancy)
  - National Origin
  - Caregiving Responsibilities (Families Responsibilities Discrimination)
- Prohibits harassment because of any of the above
- Prohibits retaliation for exercising any rights protected by the statute, including:
  - Complaining regarding your rights
  - Complaining regarding someone else's rights
  - Testifying in a proceeding
- Cover any employer who employs 15 or more employees

# ADA

- Prohibits discrimination or harassment on the basis of:
  - Disability
  - Perceived Disability
  - Status as Recovering Addict
- Retaliation for exercising any rights protected by the statute including:
  - Complaining regarding your rights
  - Complaining regarding someone else's rights
- Covers any employer who employs 15 or more employees

# FMLA

- What does it require?
  - Up to 12 weeks unpaid leave to care for a sick family member, an adoption, or your own illness
  - D.C. FMLA – Up to 16 weeks
- Who is covered?
  - Employers who employ 50 + employees
  - Employees who have been continuously employed by a covered employer for the previous 12 months
- What does it prohibit?
  - Hostile work environment
  - Retaliation for exercising any rights protected by the statute,
    - Complaining regarding someone else's rights
    - Complaining regarding your rights



# Other statutes

- EPA: Prohibits disparate pay based upon gender
  - Equal pay for comparable work
  - Applies to both genders
- ADEA & OWBPA: Prohibits employment based discrimination against employees aged 40 and above
- Section 1981:
  - Prohibits race based discrimination in the making, performance, modification and termination of contracts, and
  - Prohibits race based interference with the enjoyment of all benefits, privileges, terms and conditions of contractual relationship

# Other Federal Statutes

- Labor relations
  - National Labor Relations Act
    - Contains Anti-Discrimination provision
- Miscellaneous
  - Executive Orders 11246 – federal contractor EEO and affirmative action
  - Federal Claims Act
    - Whistleblower provisions
  - Federal Arbitration Act
  - WARN Act

# State & Municipal Statutes

- State and municipalities are obligated to give, at a minimum, the protections provided by the federal statutes
- Usually they provide more protections

# D.C. HUMAN RIGHTS ACT

- Any person who employs an individual
  - Any person acting in the interest of the employer, directly or indirectly
- Individual liability: yes
- Exhaustion of administrative remedies required
  - No. An employee can file charge with D.C. office of human rights or file private lawsuit in D.C. superior court
- Statute of limitations: 1 year
- Private cause of action
  - Within 1 year of alleged act of discrimination

# D.C. HUMAN RIGHTS ACT

- Protected basis
  - Race, color, religion, sex, national origin, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, genetic information, disability, status as a victim of an intrafamily offense, place of residence or business
- Exception for “any educational institution that is affiliated with a religious organization or closely associated with the tenets of a religious organization” with respect to sexual orientation

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## **NEW LAWS AND AMENDMENTS**

# Americans with Disabilities Act Amendments Act (ADAAA)

- “Disability”:
  - A physical or mental impairment that substantially limits a major life activity; or
  - A record of a physical or mental impairment that substantially limits a major life activity; or
  - When the employer takes an action prohibited by the ADA based on an actual or perceived impairment
- “Substantially limits”
  - Need not prevent, or significantly or severely restrict, performance of major life activity
  - “Common sense assessment” comparing individual’s ability to most people in general population

# Americans with Disabilities Act Amendments Act (ADAAA)

- Expands definition of “major life activities”: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working
- “Major life activities” also includes: major bodily functions, including functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, circulatory, respiratory, endocrine, reproductive functions, hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular
- Lists are NOT exhaustive



# Americans with Disabilities Act Amendments Act (ADAAA)

- Does not change requirement to provide a reasonable accommodation for a disability
  - Discussed in detail shortly

# Title II of Genetic Information Nondiscrimination Act of 2008 (GINA)

- Prohibits use of genetic information in employment, among other things
- “Genetic information”: Includes information about genetic tests or family medical history
- Employer can NEVER use genetic information to make employment decision because it does not relate to ability to perform job
- EEOC has proposed regulations

# Other New Guidance Includes:

- The Americans With Disabilities Act: applying performance & conduct standards to employee's with disabilities (Oct. 2008)
- Questions and answers: religious discrimination in the workplace (July 2008)
- Best practices for eradicating religious discrimination in the workplace (July 2008)
- Unlawful disparate treatment of workers with care giving responsibilities (May 2007)
- Questions and answers about healthcare workers and the ADA (Feb. 2007)
- Questions and answers about deafness and hearing impairments in the workplace and the ADA (March 2007)
- Reasonable accommodations for attorneys with disabilities (July 2006)

**REASONABLE  
ACCOMMODATIONS UNDER  
THE ADA, D.C. HUMAN  
RIGHTS ACT, AND  
REHABILITATION ACT**

# REASONABLE ACCOMMODATIONS

- What is a “reasonable accommodation”?
  - Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
  - Any accommodation must be effective so that individual can perform the essential functions of the job

# REASONABLE ACCOMMODATIONS

– Includes:

- Making facilities accessible
- Job restructuring
- Part-time or modified schedules
- Acquiring or modifying equipment
- Changing tests, training materials, or policies
- Providing qualified readers or interpreters
- Reassignment to a vacant position

# REASONABLE ACCOMMODATIONS

- **What you don't have to do:**
  - **eliminate an essential function of the job**
  - **lower uniform production standards**
  - **provide personal use items, like wheelchair, glasses, hearing aids, etc.**

# REASONABLE ACCOMMODATIONS

- Requesting a reasonable accommodation
  - Burden is on the employee to request one
  - But if the need for one is obvious, you need to be proactive
  - Request can be made by employee, a representative, or spouse
  - Employee does not have to use the terms “reasonable accommodation”
    - “I’m having trouble getting to work on time because of my medical treatments.”
    - “My wheelchair does not fit under my desk.”



# REASONABLE ACCOMMODATIONS

- When you get a request, you should:
  - Refer the employee to HR
  - Refer to the University's policy
    - <http://policies.cua.edu/EEO//reasonableaccommodationsfull.cfm#III>
  - Work with HR to engage in the interactive process

# REASONABLE ACCOMMODATIONS

- A request for accommodation does not need to be in writing
- Don't assume that the request is unreasonable or an undue burden without consulting with HR
- If the need for an accommodation is not obvious, the University can ask for reasonable documentation about the disability and functional limitations
- Engaging in the interactive process is crucial
- Ultimately, what constitutes a reasonable accommodation is up to the employer
- The University does not have to provide the specific accommodation requested by the employee

# WAGE AND HOUR ISSUES

# HOURS WORKED AND OVERTIME

- To employ is to “suffer or permit to work”
- Regular workweek = 40 hours during a 7-day workweek
- Overtime = any hours over 40 hours in a 7-day workweek
- Overtime is paid at one-and-a-half times the regular rate
- If the employee works more than 40 hours in a workweek even without prior approval, overtime must be paid
- Recordkeeping is key and required by law

# HOURS WORKED

- Employee must be paid even if she decides on her own to come into the office over the weekend to “catch up” on work
- Employee must be paid if he is required to attend a University function as a representative of the University
- An employee cannot be compelled to “volunteer” work as part of his job

# EXEMPTIONS FROM OVERTIME

- Overtime is not required for exempt employees
  - Administrative
  - Executive
  - Professional
  - Computer
- There are very specific requirements for determining whether a position is exempt or nonexempt.
  - Actual job duties determine exemption, not job description
  - Exemption may differ based upon levels of responsibilities
    - Administrative assistant vs. Executive assistant
    - Accountant vs. bookkeeper

# DAMAGES

- Improper classifications can lead to big back pay damages
  - 2 or 3 years
  - Must review all timecards to determine actual hours worked
  - Each hour must be counted

# OTHER OVERTIME ISSUES

- Compensatory (“Comp”) Time
  - NOT AVAILABLE FOR PRIVATE EMPLOYERS
  - You cannot give time off in lieu of overtime worked



# INTERVIEW QUESTIONS

- See handout

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## Questions and Answers

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**The End**