

Employment Law 101

Overview of Major Employment Laws: "TAPEWORM FUNC"

Title VII of the Civil Rights Act of 1964

Americans with Disabilities Act of 1990 (ADA)

(A)ge Discrimination in Employment Act (ADEA)

Polygraph Protection Act, Employee

Employee Retirement Income Security Act of 1974 (ERISA)

(E)qual Pay Act of 1963

Worker Adjustment and Retraining Notification Act (WARN)

Occupational Safety and Health Act (OSHA)

Rehabilitation Act of 1973

Medical Leave Act, Family (FMLA)

Fair Labor Standards Act (FLSA)

Uniform Services Employment and Reemployment Rights Act of 1994

National Labor Relations Act (NLRA)

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Title VII of the Civil Rights Act of 1964

A. What?

Prohibits discrimination on the basis of race, color, religion, sex, pregnancy or national origin in all aspects of employment or referral for employment. Also prohibits retaliation against individuals exercising rights under the statute.

B. Who?

i) Employers employing 15 or more employees; ii) labor unions that operate a hiring hall or have 15 or more members; iii) employment agencies; iv) state and local governments; and v) federal government.

C. Remedies?

Back pay; front pay or reinstatement; compensatory damages and punitive damages (\$300,000 total); and injunctive relief.

D. Points of Interest

1. Employers with fewer than five employees do not come within the reach of either federal or Virginia antidiscrimination law.
2. In Fiscal Year 2005, the Equal Employment Opportunity Commission (EEOC) received 75,428 claims of discrimination. The breakdown of those claims is as follows:¹

Race - 26,740	(35.5%)	Disability - 14,983	(19.7%)
Sex - 23,094	(30.6%)	Equal Pay - 970	(1.3%)
National Origin - 8,035	(10.7%)	<i>Retaliation (All)</i> - 22,278	(29.5%)
Religion - 2,340	(3.1%)	<i>Retaliation (Title VII)</i> - 19,429	(25.8%)
Age - 16,585	(22.0%)		

¹ The number for total charges reflects the number of individual charge filings; some charges claimed multiple types of discrimination.

Age Discrimination in Employment Act of 1967 (ADEA)

A. What?

Prohibits discrimination in all aspects of employment on the basis of age where the individual is 40 years old or older; also prohibits retaliation.

B. Who?

i) Employers employing 20 or more employees; ii) labor unions that operate a hiring hall or have 20 or more members; iii) employment agencies; iv) state and local governments; and v) federal government.

C. Remedies?

Back pay; front pay or reinstatement; liquidated damages equal to back pay where the violation is willful; injunctive relief.

E. Points of Interest

1. The Act was established following the completion of a study required by Congress when the Civil Rights Act of 1964 was enacted.
2. Nearly half of the 136 million people employed in the United States are over 40 years of age.
3. Of the 16, 585 charges of age discrimination filed with the EEOC in FY 2005, 81% were closed administratively or with a finding of no reasonable cause. Twenty two percent of the 75,000 charges of discrimination filed with the EEOC in 2004 included allegations of age discrimination.
4. Other countries have had a different view of age discrimination. For instance, most European countries do not prohibit such discrimination.

Americans with Disabilities Act of 1990 (ADA) (Title I)

A. What?

Prohibits discrimination in employment on the basis of physical or mental disability; also prohibits retaliation.

B. Who?

i) Employers employing 15 or more employees; ii) labor unions that operate a hiring hall or have 15 or more members; iii) employment agencies; iv) state and local governments; and v) federal government.

C. Remedies?

Back pay; front pay or reinstatement; compensatory and punitive damages when intentional (\$300,000 except when employer demonstrates good faith efforts at reasonable accommodation); injunctive relief.

D. Points of Interest

1. Between July 26, 1992, when the EEOC began enforcing the Act, and the end of FY 2005, 219,890 charges of disability discrimination were filed. Of these, 82% were closed administratively or with a finding of no reasonable cause.
2. The most frequent disabilities claimed are back injuries, which comprise 16% of the claims filed.
3. The Act is one of two main federal statutes that address disability discrimination. The other is the Rehabilitation Act of 1973.
4. The ADA covers state and local governments and the private sector. Federal employees are protected by the Rehabilitation Act of 1973.

Employee **P**olygraph Protection Act

A. What?

Prohibits employers from requiring, requesting or using polygraph tests except in an ongoing investigation of economic loss and then only with strict procedural safeguards and must have other evidence in addition to the polygraph results to discipline.

Limited exceptions:

- employees who are reasonably suspected of involvement in a workplace incident that results in economic loss to the employer and who had access to the property that is the subject of an investigation;
- prospective employees of armored car, security alarm, and security guard firms who protect facilities, materials or operations affecting health or safety, national security, or currency and other like instruments; and
- prospective employees of pharmaceutical and other firms authorized to manufacture, distribute, or dispense controlled substances who will have direct access to such controlled substances, as well as current employees who had access to persons or property that are the subject of an ongoing investigation.

B. Who?

All private employers whose operations affect interstate commerce.

C. Remedies?

Civil penalty not to exceed \$10,000. Also employer may be liable for lost wages, benefits and injunctive relief.

D. Points of Interest

- The Act does not apply to federal, state or local government employers.

Employee Retirement Income Security Act of 1974 (ERISA)

A. What?

Establishes federal regulation of employee pension benefit plans and employee welfare benefit plans. Regulation provides i) reporting and disclosure requirements, ii) compliance with minimum standards for participation, vesting, benefit accrual, payment and funding, iii) standards of conduct for fiduciaries, and iv) conduct surrounding certain transactions.

B. Who?

Privately sponsored pension and welfare plans. Excludes i) benefit plans maintained by federal, state and local governments, ii) primarily by churches, iii) outside of the United States, iv) solely for complying with worker's compensation, unemployment compensation or disability insurance plans.

C. Remedies?

- **To Enforce ERISA Provisions-** Injunction, mandamus, and restitution, but not compensatory damages.
- **Failure of the Plan Administrator to provide information-** up to \$100 per day.
- **Enforcing terms of the plan-** Order the plan to pay the plan benefit; no punitive or emotional distress damages.

D. Points of Interests

- Upon retirement many workers continue to receive monetary compensation from their employer in the form of a pension. There are mainly two types of pensions: (i) *defined benefit plan*, where the benefit that an employee receives is normally based on the length of a workers employment and the wages that were received, and (ii) *defined contribution plan*, where the employer makes regular deposits into an account established for each employee. The employee is not guaranteed to receive a given amount during retirement but only the amount in the account.
- Amendments to ERISA have expanded the protections available:
 - 1) **Consolidated Omnibus Budget Reconciliation Act (COBRA)**, provides some workers and their families with the right to continue their health coverage for a limited time after certain events, such as the loss of a job.
 - 2) **Health Insurance Portability and Accountability Act (HIPAA)**, provides protections for working Americans and their families who have preexisting medical conditions or might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health.
 - 3) **Other important amendments** include the Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act, and the Women's Health and Cancer Rights Act.

Worker Adjustment and Retraining Notification Act (WARN)

A. What?

Requires employer to give 60 days advance notice of a plant closing or mass layoff in certain enumerated circumstances.

B. Who?

Private employers employing 100 or more employees.

C. Remedies?

An employer who violates the WARN provisions is liable to each employee for an amount equal to back pay and benefits for the period of the violation, up to 60 days. This may be reduced by the period of any notice that was given, and any voluntary payments that the employer made to the employee.

An employer who fails to provide the required notice to the unit of local government is subject to a civil penalty not to exceed \$500 for each day of violation. The employer may avoid this penalty by satisfying the liability to each employee within three weeks after the closing or layoff.

D. Points of Interests

The following events trigger the notification provisions:

- **Plant Closings** when a covered employer must give notice 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 (as defined later) for 50 or more employees during any 30-day period.
- **Mass Layoffs** when a covered employer must give notice 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.
- Enforcement of **WARN** requirements is through the United States district courts. Workers, representatives of employees and units of local government may bring individual or class action suits.

Occupational Safety and Health Act

A. What?

Requires employers to (i) 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 and (ii) comply with OSHA standards.

B. Who?

All persons engaged in a business affecting commerce that has employees. Excludes state and local government and the federal government.

C. Remedies?

Civil penalty of \$7,000 for each violation, \$70,000 for each willful violation. Criminal violations may lead to a fine of up to \$70,000 and up to six months in prison for the first offense; a fine of up to \$140,000 and up to one year in prison for second offense.

D. Points of Interest

- The federal OSHA is enforced by the Occupational Safety and Health Administration, which is within the Department of Labor.
- The Act allows states to adopt their own programs to administer safety and health regulations.

Rehabilitation Act of 1973 (§ 503 and § 504)

A. What?

Prohibits discrimination against disabled individuals in employment by government contractors and subcontractors and by programs receiving federal financial assistance. Also prohibits retaliation.

B. Who?

Federal Employees.

§ 503 of the Act applies to contractors and sub-contractors holding contracts with the federal government over \$2,500.

§ 504 of the Act applies to entities receiving federal financial assistance or grants.

C. Remedies?

§ 503 - Back pay, front pay or reinstatement, injunctive relief.

§ 504 - Back pay, front pay or reinstatement, injunctive relief, possible compensatory and punitive damages.

D. Points of Interests

- Some lower courts have held that the standard of proof under the Rehabilitation Act is different from that of the Americans with Disabilities Act, which was enacted in 1990.
- Under § 503, any contractor holding a contract with the federal government for \$50,000 or more and having 50 or more employees must have a written affirmative action program addressing employment opportunities for the disabled.
- Under § 504, federal agencies making financial assistance grants and administering financial assistance programs are responsible for enforcement. The provision also applies to state and local agencies, colleges, universities, and public schools.

Family and **M**edical Leave Act (FMLA)

A. What?

Requires employer to provide 12 weeks of unpaid leave during any 12 month period in the following circumstances: i) the birth and care of the newborn child of the employee, ii) for placement with the employee of a son or daughter for adoption or foster care, iii) to care for an immediate family member (spouse, child, or parent) with a serious health condition, or iv) to take medical leave when the employee is unable to work because of a serious health condition.

B. Who?

Employers employing 50 or more employees.

C. Remedies?

Monetary damages resulting from the violation (lost wages, salary, employment benefits, etc.). Can also recover actual monetary damages sustained as a direct result of the violation up to an amount equal to 12 weeks wages of the employee. In addition, an equal amount may be awarded as liquidated damages if the conduct was willful. An employee may also file a complaint with the Secretary of Labor.

D. Points of Interests

- Covered employees must develop, keep and preserve records pertaining to obligations under the Act.
- To be covered, an employee 1) must have worked for the employer for at least 12 months and for at least 1,250 hours during the immediately preceding 12 month period; and 2) must be employed at a worksite by an employer who employs 50 or more employees within 75 miles of the worksite.

Fair Labor Standards Act

A. What?

Establishes a minimum wage, requires employers to provide overtime compensation, provides restrictions on child labor, and prohibits unequal pay based on gender. The Act also prohibits retaliation and requires record keeping and posting of certain notices.

B. Who?

i) an employer employing at least two employees, ii) state and local government, and iii) federal government.

C. Remedies?

Payment of unpaid minimum wages or unpaid overtime compensation; liquidated damages if violation willful; injunctive relief. Under § 40.1-29 of the Code of Virginia, an employer who fraudulently fails to pay wages is guilty of a Class 6 felony if the amount of the wages is \$10,000 or more upon a second or subsequent conviction when the value of wages earned is combined to exceed the amount.

E. Points of Interest

- Generally, rights afforded under the FLSA are not waivable.
- Independent contractors, legislative employees, and volunteers are not covered and certain “white collar” employees.
- Approximately 72 localities across the nation have enacted "living wage" laws requiring employers to pay wages that are above federal or state minimum wage levels. In Virginia, the City of Alexandria has enacted such an ordinance.

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

A. What?

Prohibits discrimination against persons because of their service in the Armed Forces, reserve components of the Armed Forces, the Army and Air National Guard, commissioned corps of the Public Health Service, the Reserve, or certain other uniformed services. Also provides reemployment protection and other benefits for veterans and employees who perform military service.

B. Who?

All employers, including federal state and local governments. Also applies to "successors in interest."

C. Remedies?

If the claimant files an administrative complaint with the United States Department of Labor, remedies include i) return to a job, ii) back pay, iii) lost benefits, (iv) corrected personnel files, v) lost promotional opportunities, vi) retroactive seniority, vii) pension adjustments, and viii) restored vacation. Individuals may also file a civil action in which they may be awarded all of the administrative remedies in addition to liquidated damages, attorney's fees and expert witness fees.

D. Points of Interests

- Replaces the Veterans' Reemployment Rights Act of 1940.
- Strengthened and expanded employment and reemployment rights of uniformed service members.
- In order to be covered under USERRA, the employee must have held a civilian job and informed his employer that he would be leaving the job for service in the uniformed services. Additionally, the period of service must not have exceeded five years and the employee must have been released from service under "honorable conditions." Finally, the employee must have reported back to his civilian employer in a timely manner or have submitted a timely application for reemployment.

National Labor Relations Act (NLRA)

A. What?

Protects the rights of employees to organize or to refrain from organizing a union.

B. Who?

All employers engaged in interstate commerce. Excludes the following employees: i) primarily agricultural work, ii) domestic workers, iii) workers employed by a parent or spouse, iv) independent contractors, v) supervisors, vi) persons covered by the Railway Labor Act, and vii) federal, state and local government employees.

C. Remedies?

The National Labor Relations Board, which has five members appointed the President with the advice and consent of the U.S. Senate, prosecutes and decides cases in which a violation of the NLRA is at issue. The Board is authorized by the Act to issue a cease-and-desist order and "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." The object of a Board order would be twofold: (i) to eliminate the unfair labor practice and (ii) to undo the effects of the violation as much as possible. In determining what the remedy will be in any given case, the Board has considerable discretion. Orders of the Board are not self-enforcing; to compel enforcement the Board's order must be taken to federal circuit court for approval and enforcement.

D. Points of Interest

- The initial version of the Act, the Wagner Act, focused on providing rights to employees; no statutory protection was provided to employers.
- The Taft-Hartley Act , passed in 1947, amended the law to provided employers with certain rights and protections.
- In 1959 the Landrum-Griffin Act was passed after an extensive congressional investigation of corruption within the union movement. This law protects union members from corrupt union leaders who use abusive methods against union and non-union employees and employers to force union membership upon those who do not want union membership.

Consolidated Omnibus Budget Reconciliation Act (COBRA)

A. What?

Requires covered employee group health care plans to offer temporary continuation of coverage for up to 36 months (18 months in cases of termination of employment or reduction of hours) at group rates on a self-pay basis to qualified participants and beneficiaries.

An initial general notice must be furnished to covered employees, their spouses and newly hired employees informing them of their rights under COBRA and describing provisions of the law. Specific notices and time frames for making and responding to notices are also included. Plan administrators must automatically provide a notice to employees and family members of their election right within 14 day of notification of a qualifying event.

B. Who?

All group health plans maintained by private employers under ERISA or state or local government employers in states that receive funds under the Public Health Services Act. The following entities are exempt from COBRA coverage: i) churches, ii) the District of Columbia or any government entity, agency territory, or possession of the United States, iii) state and local government agencies of states that are not recipients of Public Health Services Act funds, and iv) employers with less than 20 employees.

C. Remedies?

The Internal Revenue Service may impose an excise tax on a private employer of \$100 per day per qualified beneficiary not to exceed \$200 per family for a COBRA breach. (Capped per year at the lesser of 10 percent of the total amount paid for group health plans or \$500,000.) Civil suits initiated pursuant to ERISA may obtain appropriate equitable relief and penalties of up to \$110 per day for COBRA notice violations.

D. Points of Interest

- COBRA also amends the ERISA, the Internal Revenue Code and the Public Health Service Act to provide continuation of group health coverage that otherwise would be terminated.
- In addition to other remedies, an ERISA plan administrator who does not comply with the notice requirements may be liable to the participant or beneficiary for an amount of up to \$110 a day.

- **Maximum coverage times:**

Qualifying Event	Eligible Beneficiary	Maximum Coverage
Termination of job or quit Reduced hours	Employee, spouse, dependent child	18 months
Employee entitled to Medicare Divorced or legal separation Death of employee	Spouse, dependent child	36 months
Loss of dependent child status	Dependent child	36 months

