

Risk Management *Reminders*

Equal Opportunity Employment Laws Review

Brought to Bucks–Mont NARI Members by RGK Insurance and Risk Management

As business owners it is important for you and your staff to understand the basics of Employment Laws. Employment Laws are in place to guarantee a fair and safe workplace for employees and employers. Since there has been a significant rise in the number of claims and penalties because of employment law infractions, it is important to review, understand and communicate your state, federal and local laws to your supervisors and staff. In the space allotted here, it would be difficult to cover all the pertinent laws, so this article will review the regulations that are under the domain of the Equal Opportunity Commission, and will provide general information.

It is relevant to mention that the basic provisions of employment laws cover all aspects of the employment relationship, prohibiting discrimination in recruiting, interviewing, hiring, promotion, demotion, job transfer, compensation training, discipline, benefits administration, and termination. The laws discussed below also make it illegal to retaliate against an employee who makes a complaint or request under these employment laws.

Also in play is the legal doctrine of

vicarious liability. Vicarious Liability is the legal doctrine that assigns liability (responsibility) for an injury to a person who did not cause the injury but who has a particular legal relationship to the person who did the negligent act. The Employer and Employee have a legal relationship. Therefore if your supervisor or “employee A” harms or discriminates against “employee B,” you as the employer are legally responsible for any damages or claims that may arise from the actions of your supervisor, “Employee A”.

Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. It also makes it illegal to retaliate against an employee who makes a complaint of harassment or discrimination. All types of harassment are included under Title VII including sexual harassment. We include here the **Pregnancy Discrimination Act of 1978** and the **Equal Pay Act of 1963**, making it illegal to discriminate based on pregnancy or pay different wages to men and women if they perform equal work in the same workplace.

Americans with Disabilities Act Amendment Act of 2008 modified the Americans with Disability Act of 1990 and the Rehabilitation Act of 1973. The ADAAA, along with the Genetic Information Nondiscrimination Act of 2008 (GINA), makes it illegal to discriminate against a qualified person with a disability (physical or mental). It also protects people who actually have a disability or are regarded as having a disability. The Amendment of 2008 made changes to the definition of the term “disability”. The effect of these changes has made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. The legal definition of disability under the ADAAA is a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. The Act requires employers to engage in good faith interactive process to determine if a reasonable accommodation can be made to allow the employee to continue to complete the essential functions of their job duties.

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The **National Labor Relation Act (1935)** gives employees the right to self-organization (unionize) and the right to engage in “concerted activity”. Concerted Activity is two or more employees who take action for their mutual aid or protection regarding terms and conditions of work. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action. Examples of concerted activity include discussing or attempting to form a union, discussing wages, safety equipment, work hours, or work conditions. It is important to note that most employees in the private sector are covered by the NLRA, regardless of whether or not they are in a union shop.

Age Discrimination Act of 1967 protects people who are 40 or older from discrimination because of age.

Harassment as a form of discrimination is described as unwelcomed verbal or physical conduct based on a person’s race, color, religion, sex or gender, national origin, age (40 and over), disability (mental or physical), or genetic information. Harassment can be described as severe, pervasive and persistent conduct that unreasonably interferes with an employee’s work

performance or creates an intimidating, hostile or offensive work environment. It can be a single occurrence where an employee’s status or benefits are directly affected by the harassing conduct of a manager or person of authority.

Retaliation claims can be based on adverse employment actions (retaliation) against employees who complained about any protected right or who participated in a complaint procedure regarding a protected right. In addition to the laws noted above, employees also have certain legal protected rights if they are serving on a Jury/Witness Duty; are pregnant or nursing, have made a Family Medical Leave request, are active military or have served in the armed forces; have made a OSHA claim, or have made a wage and hour claim... to name a few.

Not under the EEOC, but very relevant to PA Employers, we include the PA Worker’s Comp and the Pennsylvania Humans Relation Act. **The PA Worker’s Compensation Act (1915)** is mandatory for all employers who have one or more employees, and provides medical and wage payments to injured workers. Employers can not retaliate against an employee for making a workers compensation claim.

Mirroring the Civil Rights Act and the ADAAA the **Pennsylvania**

Humans Relation Act of 1955

(amended 1997) prohibits certain practices of discrimination because of race, color, religious creed, ancestry, age disability or national origin by employers and is enforced by the Pennsylvania Human Relations Commission in the Governor's Office. The major difference between Title VII/ADA and the PHRA is the PHRA reduces the threshold of employer responsibility to include any person employing *four* or more persons within the Commonwealth.

What should an employer do?

To help ensure you are compliant with the laws and are reducing your exposure to complaints, employers should educate themselves, their supervisors and their staff on compliant employment practices. Policies and procedures should be drafted, documented and utilized to provide clear direction and insure consistent application. Employers should document the business reasons of their decisions. In the absence of documented proof that decisions and actions were taken for non-discriminatory reasons, government agencies, adverse employment or judges may be left to assume actions were discriminatory. To further protect your business from claims of discrimination, you may invest in Employment Practices Liability Insurance.

Need more information or have a question about the information covered in this article? Call our office for assistance.



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or have questions regarding liability insurance?**

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