

# Employment Law Overview

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# Initial Questions to Ask

- Who is Employer
- Private or Public
- # of Employees Who Work for Employer
- How Long Has Employee Worked for Employer
- What is the Issue
- How much is Employee Paid

# # of Employees Who Work for Employer

- ACRA (sexual harassment) – 1 employee
- Title VII and ADA – 15 employees
- ADEA – 20 employees
- FMLA – private employer - 50 employees

# What is the Issue

- ◉ Discrimination – 180 days/300 days
- ◉ FMLA – 2 years
- ◉ FLSA Violation – 2 years/3 years intentional
- ◉ Retaliation/Whistleblowing
- ◉ Wrongful Termination
- ◉ Claim against the State based on state law, 180 days –notice of claim

# DISCRIMINATION

## Protected Characteristics

### Title VII– AZ Civil Rights Act

- Race
- Color
- Religion
- Genetic Information
- National Origin
- Sex -- also Equal Pay Act, Pregnancy, Sexual Harassment
- Sexual Orientation

### ADEA

- Age -- 40+

### Rehab. Act / ADA

- Disability -- physical / mental impairment that substantially limits a major life activity; a record of such impairment or is regarded / perceived as having such impairment  
Also known association

# Supervisory Decisions Covered: Terms, Conditions, Privileges

- Hiring -- recruiting, screening, selecting
- Assigning -- overtime, special projects
- Promoting
- Transferring
- Evaluating
- Training -- technical programs, classes
- Compensating -- benefits, pensions, vacations
- Disciplining
- Terminating -- layoff, recall

# Exhausting Remedies

## Arizona Civil Rights Act

- File charge within 180 days
- File complaint within one year of filing charge of discrimination

## Title VII, ADAA, ADEA

- File charge within 300 days of last act of discrimination
- No need to exhaust remedies **Rehab. Act (disability) and RACE**
- **Section 1981 (race discrimination)**

# DISCRIMINATION - FEDERAL EMPLOYEES

## MSPB

An employee can file a mixed case - discrimination in connection with an action otherwise appealable to the Board.

## EEO - EEOC

Within 45 days of the discriminatory action, employee must contact the Agency's EEO office and file a complaint. The Agency will investigate and employee will be given options, including electing a Hearing before an EEOC Judge.

# Merit Systems Protection Board

Federal employees may file an appeal with the MSPB within **30 days** of the following adverse actions:

- Removals (terminations);
- Suspensions of more than 14 days;
- Demotions; and
- Other matters such as appeals of OPM determinations in retirement matters, among others.

# Wrongful Termination - AEPA

- Written K – prohibiting firing
- State law that prohibits such firing:  
ACRA; filing safety complaint
- Firing in retaliation for:
  - > (i) Refusing to violate the Arizona Constitution or laws of Arizona,
  - (ii) Telling ER that EE believes ER violated or will violate AZ Constitution/AZ laws
  - (iii) Using Arizona's workers' compensation program.

# Wrongful Termination cont.

- (iv) Serving on a jury
- (v) Voting in elections.
- (vi) Not joining a union.
- (vii) Serving in the national guard or armed forces.
- (viii) Refusing to pay fees or gratuities as a condition of employment.
- (ix) Refusing to purchase goods or supplies from any particular person as a condition of employment.
- (x) Using leave if the employee is a victim of a juvenile offense a victim of a crime.

# How Much is Employee Paid

## AMWA

As of January 1, 2021, the minimum wage in Arizona is **\$12.25/hr.**

AZ minimum wage increases every January 1 by an amount equal to the percentage increase of the Consumer Price Index.

## FLSA

Since July 24, 2009, the minimum wage under the FLSA is **\$7.25/hr.**

Because the minimum wage under the AMWA is more generous, it takes precedence over the FLSA

# COVERAGE

- The AMWA covers all employers in the private and public sectors except small businesses, the State of Arizona, and the federal government. The AMWA protects all employees of a covered employer except for a person who is employed by a parent or a sibling, or a person who is employed to perform babysitting services in the employer's home on a casual basis.
- A small business is defined as any entity that has less than \$500,000 in gross annual revenue and is exempt from having to pay a minimum wage under the FLSA. This definition can cause some confusion because the FLSA does not contain any exclusion for small businesses. Rather, it asserts jurisdiction based on a defined impact upon interstate commerce. The AMWA does not require any ties to interstate commerce.
- The FLSA applies to employees based on their work activities as well as to employees of enterprises engaged in interstate commerce. Employees are covered if they engage in commerce or produce goods for commerce or if they work for an enterprise engaged in those activities. As a practical matter, the law covers almost all employees and employers in both the private and public sectors.
- An enterprise is engaged in commerce if it meets one of the following tests: (1) it has two or more employees engaged in commerce or has employees engaged in handling, selling, or otherwise working on goods that have been moved in or been produced for commerce, and it is a business whose annual gross sales are not less than \$500,000; (2) it is a hospital, old-age home, or school; or (3) it is a public agency.

# OVERTIME

- Employees who work in excess of 40 hours in any 7-day work week must receive compensation at a rate not less than one and one-half times the regular rate.
- Holidays, sick time, and vacation not included when counting 40 hours.
- Exempt vs non-exempt
- Exemptions for certain industries

# RETALIATION PROHIBITED

## AMWA

- AMWA prohibits employers from retaliating against any person who asserts a claim or right under the law, who assists any other person in doing so, or who informs any person about his or her rights.
- Presumption of retaliation if ER takes adverse action within 90 days after a claim. The presumption may be rebutted by clear and convincing evidence that the action was taken for permissible reasons.

## FLSA

- Prohibits discharging or discriminating against because of filing complaint, instituting a proceeding and/or engaging in other protected activity. Employee may be entitled to equitable relief, including reinstatement, as well as damages.
- Protected activity includes filing an internal complaint. In a retaliation case, the employee's remedy is one of damages, both compensatory and punitive.

# NO WAIVER

- No verbal or written agreement or employment contract may waive any rights under the AMWA or the FLSA.

# AZ SICK TIME LAW

- Employees earn one hour of paid **sick time** for every 30 hours worked. Employees are entitled to at least 24 hours of paid **sick time** if the employer has 14 or fewer employees. The amount increases to 40 hours of paid **sick time** for employers with 15 or more employees.
- No retaliation

# FMLA Coverage

- Birth or Placement of Child
- Serious Health Condition -- Employee's or immediate family member's (spouse, child or parent)
- Military family leave

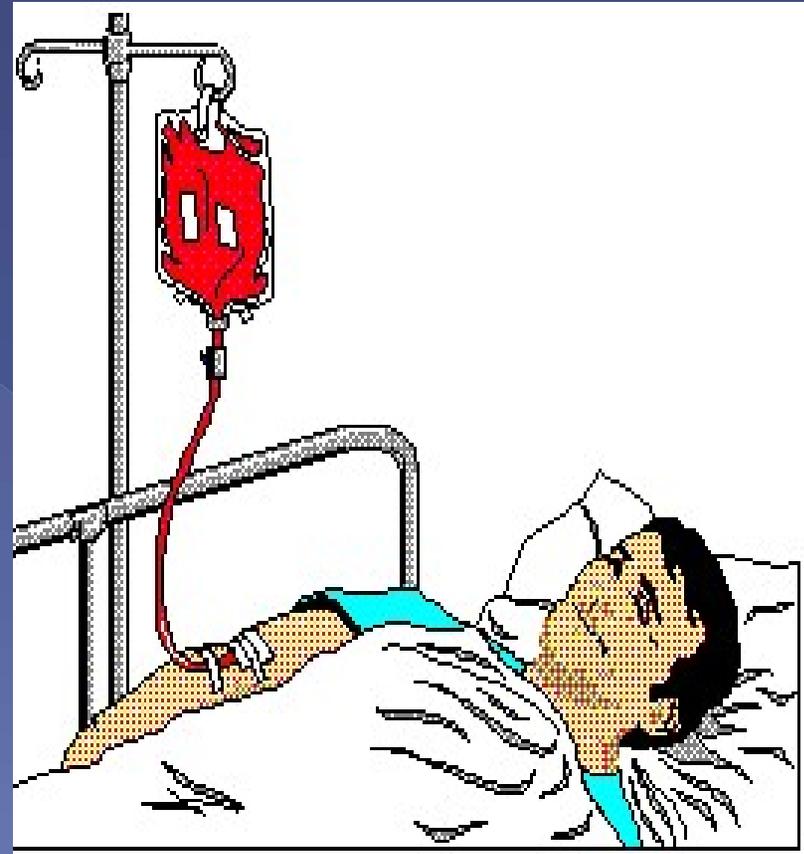


# FMLA Employee Eligibility

- Worked for a covered employer
- Employed for at least twelve months in any capacity (full time, part time, temporary)
- Worked **1250** hours in preceding 12 month period
- Worked at a location where at least 50 employees are employed by ER within 75 miles

# Serious Health Condition

- Inpatient Care or
  - Continuing treatment by a health care provider = absence of at least 3 consecutive days and treated at least twice
- \*Chronic condition



# AMERICAN WITH DISABILITIES ACT

The ADA prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else, such as to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services.

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

# ADA vs. Rehabilitation Act

## ADA

- Employers must have 15 or more employees;
- Need to exhaust remedies

## Rehabilitation Act

- Applies to federal government and private employers that receive federal funds.
- No need to exhaust remedies.

# An Individual with a Disability

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a history or record of such an impairment; or
- Is regarded by others as having such an impairment.
- The ADA does not specifically name all of the impairments that are covered.

A qualified employee or applicant with a disability is an individual who, with or without **reasonable accommodation**, can perform the essential functions of the job in question.

**Reasonable accommodation** may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

# Undue Hardship

- An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship."
- Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

*QUESTIONS?*

THANK YOU!