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SMALL BUSINESS SERVICES

What Employment Laws Apply to My Company?

Employers are required to comply with numerous federal, state, and local employment laws. Certain laws affect virtually all employers, including but not limited to, the FLSA, IRCA, the OSH Act, and USERRA. Other laws, such as COBRA or FMLA, only apply to employers of a certain size. In this Tip, we provide a summary of some of the major federal employment laws based on employer size.

WHAT EMPLOYMENT LAWS APPLY TO MY COMPANY?

Employers are required to comply with numerous laws governing the workplace. These laws affect employers at the federal, state, and sometimes local levels. While certain requirements apply to all employers, regardless of size, others only apply to larger employers.

Below is a summary of some of the major federal employment laws based on employer size:

All Employers:

• **FLSA.** The Fair Labor Standards Act (FLSA) is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards. Under the FLSA, employers must pay all non-exempt employees at least the minimum wage per hour (currently $7.25) as well as overtime pay (1.5 times the employee's regular rate of pay) for all hours worked over 40 in a workweek.

Note: Many states have enacted their own laws regulating minimum wage, overtime, and youth employment. Where state and federal law conflict, the law that is more generous to the employee applies.

• **IRCA.** The Immigration Reform and Control Act of 1986 (IRCA) was passed to control and deter illegal immigration to the United States. Under the IRCA, employers are required to verify a new hire's authorization to work in the United States by completing Form I-9. Section 1 of the I-9 must be completed on the employee's first day of work for pay and Section 2 must be completed within 3 business days of the employee's first day of work.

Note: United States Citizenship and Immigration Services (USCIS) recently published a new version of Form I-9 with a revision date of "03/08/13 N." All employers must begin using this version of the form by **May 7, 2013**.

• **USERRA.** The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects individuals' reemployment rights when returning from a period of service in the uniformed services, including those called up from the reserves or National Guard. USERRA establishes a five-year cumulative total of military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills, and annually scheduled active duty for training. USERRA also prohibits employers from discriminating against applicants and employees based on past military service, current military obligations, or intent to serve.

• **OSH Act.** Under the Occupational Safety and Health Act of 1970 ("OSH Act"), employers are responsible for providing a safe and healthful workplace. Under the Act, there are hundreds of general and industry-specific health and safety standards. Employers should identify which standards apply to their workforce and implement policies and procedures accordingly. Additionally, employers with **10 or more employees** generally must use OSHA Forms 300, 300-A, and 301 to track and report recordable injuries and illnesses. However, employers in certain low-hazard retail, finance, insurance, or real estate industries are exempt. From February 1 to April 30 of each year, covered employers must post a summary of recorded injuries and illnesses (Form 300-A) in a conspicuous area of the workplace.

• **NLRA.** The National Labor Relations Act (NLRA) gives employees the right to join labor unions and work together, with or without a union, to improve their wages and working conditions. These protections are otherwise known as "concerted protected activity" and apply to both non-unionized and unionized employees, regardless of employer size.

15 or More Employees:

• **Title VII.** Title VII of the Civil Rights Act of 1964 (Title VII), as amended, prohibits employers from discriminating on the basis of race, color, religion, sex (including pregnancy), national origin, and genetic information. Recently, the Equal Employment Opportunity Commission (EEOC) has clarified that "gender identity and transgender status" are encompassed within the meaning of "sex" and are, therefore, afforded protection under Title VII.

Note: Most states have enacted their own nondiscrimination laws, many of which protect additional characteristics and cover smaller employers. Check your state law to ensure compliance.

• **ADA.** The Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act (ADAAA), prohibits employers from discriminating against qualified individuals on the basis of a disability. The ADA also requires that employers provide a reasonable accommodation to a qualified applicant or employee with a disability, unless to do so would cause undue hardship.

Note: Some states have similar laws that cover smaller employers.

20 or More Employees:

• **COBRA.** The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. In order for an employee to qualify, there must have been a COBRA "qualifying event" (e.g., termination of employment, reduction of hours, etc.). Employers are subject to COBRA if they have 20 or more employees and offer group health insurance.

Note: Some states have passed laws covering employers with fewer than 20 employees. These are generally known as "Mini-COBRA" laws.

• **ADEA.** The Age Discrimination in Employment Act prohibits employers from discriminating against individuals aged 40 or older on the basis of their age.

Note: Some states have laws that protect younger workers from age discrimination and/or apply to smaller employers.

50 or More Employees:

• **FMLA.** The Family and Medical Leave Act (FMLA) requires employers to provide eligible employees with up to 12 weeks of unpaid, job-protected leave per year for a serious health condition, the birth or adoption of a child, or an "exigency" related to the military service of the employee's immediate family member. In addition, eligible employees may take up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness. FMLA imposes several notice requirements on covered employers, which are intended to inform employees of their rights and responsibilities under the Act.

Note: Some states have family and medical leave laws that cover smaller employers.

• **Health Care Reform's 'Pay or Play' Provision.** Under the Patient Protection and Affordable Care Act (also known as the "ACA" or "Health Care Reform"), employers with at least 50 full-time equivalent employees (FTEs) generally must offer qualifying health coverage or face a penalty beginning January 1, 2014. The penalty will not apply if:

- o The employer offers all full-time employees the opportunity to enroll in at least "minimum essential coverage"; ***AND***
- o The coverage, among other things, is "affordable" (no more than 9.5% of the employee's earnings).

Penalties apply only if the employer fails to do the above and at least one employee purchases coverage through a health insurance marketplace (also known as an "exchange") and is eligible for and receives a federal tax credit in order to subsidize the cost of their health coverage. For more information, see our Health Care Reform whitepaper in the Forms & Documents section of HR411.

The information above provides a summary of major federal employment laws based on employer size. It is not a comprehensive listing of all HR compliance requirements. Employers should check their state and local laws and/or seek legal counsel for more information.

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