

The HR Advisor

TIPS ON HOW TO IMPROVE YOUR COMPLIANCE WITH EMPLOYMENT AND LABOR RELATED LAWS.

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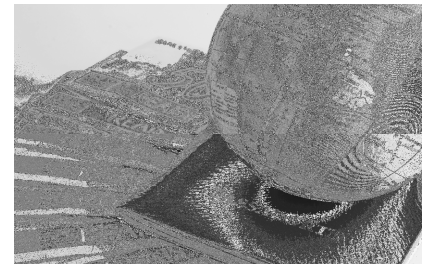
ADA

Employees and their lawyers are getting more creative when deciding whether to pursue a claim under the Americans with Disabilities Act (ADA). In recent years, employees and their attorneys have brought suit against their employers based on a little known provision of the ADA which provides protection beyond simply those who have disabilities or those perceived to have disabilities. This little known provision of the ADA permits employees to sustain a lawsuit based on their association with someone with a disability. For example, say you have an employee with a disable child. It would likely be a violation of the ADA to terminate that employee because you believe the child's disability will negatively affect their work performance.

Fringe Benefits – Vacation Pay

There is not a state in the county that requires an employer to grant their employees vacation leave or pay. Employers are free to craft their own vacation policies relevant to their needs and their workforce. However, although employers are free to determined if they

are going to offer vacation pay, states differ on an employer's obligation regarding their leave policy, especially when it comes to whether an employer has to pay for unused vacation at the time an employee leaves employment. For example, some states consider vacation pay to be wages that is earned at the time it is awarded. Thus, in these states, an employer must pay an employee for all accrued vacation at the time of separation. Not all states, however, place the same obligation on employers. To find out what your state's laws are on vacation leave and pay, visit www.employmentlaw.com/FringeBenefits.html.



A Term to Know

Whistleblower

A whistleblower is an individual that reports an employer's unlawful or illegal behavior to federal or state authorities. Most employment and labor-based laws provide protection for employees who engage in whistleblowing against their own employer. Whistleblowers are generally protected for good-faith whistleblowing even if the allegations ultimately prove to lack merit.

For more information or to ask a question about any of the covered topics, please visit:



EmploymentLawHandbook.com

Wage and Hour

Both the federal government and many state governments maintain a minimum wage that must be paid to all employees, unless the employee falls within one of the few exceptions. Starting July 24, 2008, the federal minimum wage will increase to \$6.55 per hour. What this means is that regardless of the state in which employees work, they must be paid, unless otherwise exempt, a minimum wage of \$6.55. This does not mean, however, that this is the minimum wage for all employees regardless of the state in which the employee performs work. As noted, many states maintain their own minimum wage rates which exceed the federal minimum rate. Additionally, states may have minimum wage exemption distinct from those of the federal government. An employer is wise to ensure they are in compliance with both state and federal minimum wage laws.



ADEA

The Age Discrimination in Employment Act (ADEA) is apparently a one way street. Under most discrimination laws, an employee in a class of individuals not traditionally discriminated against may still bring a claim of discrimination. For example, a man, in certain situations, can bring a sex discrimination claim against his employer for hiring a woman, even though men are not traditionally the victims of workplace sex discrimination. The ADEA, however, does not permit reverse discrimination claims. In other words, a younger employee may not bring an age discrimination claim against an employer for hiring an older younger simply because he is older. This little twist in the ADEA is a great tool for employers who want to hire or retain older employees, but must offer special benefit, such as flexible work hours or special healthcare benefits, to keep them employed.

OSHA and Work Place Safety

One way OSHA seeks to help ensure a safe work environment for our nation's employees is to require employers to conduct a hazard assessment of their workplace. For employers, in addition to complying with OSHA requirements, hazard assessments help improve employee productivity and help reduce costs associated with lost work-hours and Workers' Compensation claims. Potential hazards to look for when conducting a safety assessment include: machinery; tools; high heat; chemicals; harmful dust; light radiation; falling objects; sharp objects; rolling or pinching objects; electrical hazards; and workplace layout and workflow. If you, as an employer, do not fill comfortable conducting your own hazard assessment, consulting companies would be willing to perform this service for you.

Discrimination – Sexual Harassment

Although we like to believe we live in a civilized society, not all citizens always act that way, even in the workplace. One of the most common forms of inappropriate workplace behavior comes in the forms of hostile environment sexual harassment. This occurs when an employee is subject to unwelcome sexually-bases language and/or touching. An employer's best defense against hostile workplace sexual harassment is a written sexual harassment policy that educates and warns employees about the costs of engaging in sexual harassment in the work place. The policy should also outline the procedure for reporting workplace sexual harassment. This policy, if routinely enforced, will give employer employers substantial protection form sexual harassment claims.

A QUICK REMINDER

Some states require employees under the age of 18 to obtain a work permit prior to obtaining employment. To find out if your state requires employees under the age of 18 to have work permits visit:

www.employmentlawhandbook.com/ChildLaborLaws.html