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HR Fundamentals: A Legal Perspective

SAIS Fundamentals Conference – April 4, 2022

Heather J. Broadwater, Employment Attorney

Stanton Law LLC

Atlanta, Georgia

Heather.Broadwater@StantonLawLLC.com

706-713-1204



Agenda

- Introduction
- Legal Rights and Responsibilities
 - Sources of Primary Legal Authority
 - Analyzing Authority
 - Legal Authority Example
- A Few Key HR Functions



Introduction

- This session will focus on major employment laws and the fundamental human resource policies, procedures, and practices they affect
- While time will not allow for a deep or broad exploration of all major employment laws, participants should achieve a basic understanding of key provisions and tips for compliance
- Appendices provide overviews of major employment laws, common mistakes, and links to online resources

HR Fundamentals



Key Employment Laws

- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Title VII of the Civil Rights Act (Title VII)
- Equal Pay Act / Lilly Ledbetter Fair Pay Act (Equal Pay Act)

HR Fundamentals



Key Employment Laws

- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Immigration Reform and Control Act (IRCA)
- Occupational Safety and Health Act (OSHA)
- Fair Credit Reporting Act (FCRA)
- Pregnancy Discrimination Act (PDA)
- Fair Labor Standards Act (FLSA)
- Family and Medical Leave Act (FMLA)



Sources of Legal Authority

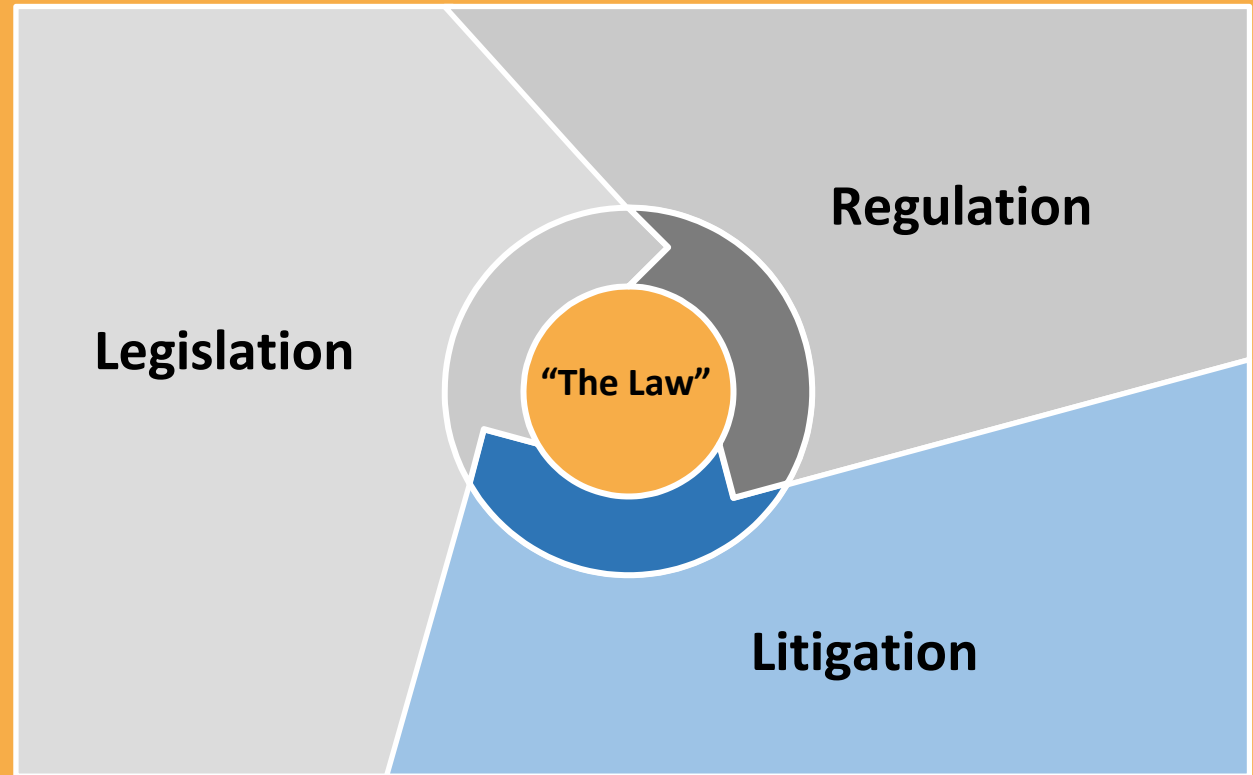
- Legislation
- Regulation
- Litigation

Legal Rights and Responsibilities



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Sources of Legal Authority





Analyzing Authority:

Does the authority...

- Require
- Prohibit
- Permit, but not require
- Not explicitly require, prohibit, or permit



Legal Authority Example – Form I-9 (IRCA)

- Required action
 - Completing form and verifying employment eligibility within deadlines
 - May be required to use E-Verify
 - Must provide newly-hired employee with copy of page 3 of I-9, which identifies documents in Lists A, B, and C
- Not explicitly required, prohibited, or permitted in Act
 - Using final TNC (Tentative Non-confirmation) or agency failure to timely respond to TNC as justification to take action and terminate



Legal Authority Example – Form I-9 (IRCA)

- Prohibited action
 - Requiring completion of I-9 prior to offer of employment
 - Discriminating based on National Origin
 - Dictating which documents employee produces
 - Using I-9 info to check applicant's identity or Social Security status
 - Using initial receipt of TNC as justification for taking action against the employee.
- Neither explicitly permitted nor explicitly prohibited
 - Photocopying authorizing documents

HR Functions Often Include

- Job Analysis and Design
- Recruitment and Selection
- Hiring and Onboarding
- Compensation and Benefits
- Safety and Security
- Training and Development
- Performance Evaluation Process
- Counseling and Discipline
- Separation from Employment





Recruitment and Selection

- Prohibited from discrimination on the basis of
 - Race, color, religion, national origin, pregnancy, or sex* - Title VII
 - *Includes discrimination in pay based on sex - Equal Pay Act
 - Disability - ADA
 - Age (40 or over) - ADEA
 - Pregnancy – PDA
 - Veteran's Status
- Required to provide accommodation to allow persons with disabilities to participate in the application process (ADA)



Recruitment and Selection

Examples

- Application for employment
- Job interview
- Group or peer interviews
- Background checks
- Salary negotiations
- Facially-neutral criteria

Compensation and Benefits



- Required to properly classify workers (Internal Revenue Code and FLSA)
- Required to properly track and pay hours worked by Non-Exempt employees (FLSA)
- Prohibited from improper deductions from Salaried Exempt employee pay (FLSA)
- Required to provide job-protected time off to eligible employees for qualifying events with proper documentation (FMLA)
- Prohibited from discrimination based on protected categories



Compensation and Benefits



Examples

- Exempt vs. Non-Exempt classification
- Non-Exempt employee works through lunch
- Non-Exempt employee voluntarily works outside of school's 'business hours'
- Deductions from Exempt employee pay
- Time off to vote or for jury duty
- School provides paid "Maternity Leave"
- Male employee requests 6 weeks of time off to bond with new child
- Employee requests time off for adoption of child



Separation from Employment

- Prohibited from discrimination based on protected categories
- Must comply with employment contract / agreement or offer letter
- May be bound by handbook policy, depending on language



Separation from Employment

Examples

- Supervisors with differing standards
- Employment At-Will vs. Employment Contract vs. Hybrid
- Employee Handbook policies

The image features a close-up, top-down view of a lush, dense patch of plants. The foliage consists of numerous small, bright green, oval-shaped leaves with prominent veins. Interspersed among the leaves are many small, vibrant orange flowers, some in full bloom and others as buds. The overall texture is very busy and organic. Overlaid on this background is the word "Questions?" in a white, elegant serif typeface, centered horizontally and slightly above the vertical midpoint. The text is clear and stands out against the darker green areas of the plants. In the top right and bottom left corners, there are several thin, white, parallel diagonal lines that cut across the image, adding a modern, graphic design element to the naturalistic background.

Questions?



Heather J. Broadwater



Employment Attorney

Stanton Law LLC

706-713-1204

Heather.Broadwater@stantonlawllc.com

www.stantonlawllc.com

410 Plasters Avenue NE, Suite 200

Atlanta, GA 30324



Fair Labor Standards Act (FLSA)



- Establishes minimum wage, overtime, recordkeeping, and child labor standards for employers
- Provides for exemption from overtime requirement for certain administrative, executive, professional and computer professional employees
- Defines “hours worked,” including during travel

Fair Labor Standards Act (FLSA)

Common Mistakes



- Misclassification of non-exempt employees as exempt
- Failure to compensate employees for all hours worked
- Miscalculation of payment due for overtime work
- Mistreatment of travel time
- Mispayment of salaried exempt employees

Age Discrimination in Employment Act (ADEA)

- Prohibits discrimination by covered employers based on age 40 and over
- Applies to employees and applicants
- Makes it unlawful to discriminate against a person because of his or her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training
- Specifically prohibits employers from denying benefits to older employees
- Allows employers to coordinate retiree health benefit plans with eligibility for Medicare or a comparable state-sponsored health benefit



Age Discrimination in Employment Act (ADEA)

Common Mistakes



- Assuming that workers age 40 or older are not capable of keeping up with technology or job requirements
- Giving preferential treatment to younger applicants based on an assumption that a younger worker will stay with the employer for a longer number of years
- Excluding older workers from training and development opportunities based on the expectation that they will not remain employed long enough for a return on the investment in training and development

Americans with Disabilities act (ADA)



- Prohibits private employers 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
- Defines a qualified employee or applicant with a disability as an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question
- Requires employers to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business

Americans with Disabilities act (ADA)



Common Mistakes

- Assuming that an employee or applicant with a disability is unable to perform the essential functions of the job
- Giving non-disabled applicants preferential treatment in hiring or in employment
- Failing to engage in the interactive process to determine whether a reasonable accommodation will enable the individual to perform the essential functions of the job

Consolidated Omnibus Budget Reconciliation Act (COBRA)



- Gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events

Consolidated Omnibus Budget Reconciliation Act (COBRA)



Common Mistakes

- Failure to communicate to COBRA administrator a change in hours or family status that triggers COBRA eligibility for an employee or a family member covered by the group health plan

Family and Medical Leave Act (FMLA)



- Entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave

Family and Medical Leave Act (FMLA)



Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
 - to care for the employee's spouse, child, or parent who has a serious health condition;
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;

Family and Medical Leave Act (FMLA)

Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).



Family and Medical Leave Act (FMLA)



Common Mistakes

- Lack of communication with FMLA administrator
- Failing to “start the clock” on the employee’s FMLA leave
- Failing to inform employee of pending expiration of FMLA leave
- Failing to establish the manner in which the employer defines the 12-month period for calculating available leave
- Delaying the start of FMLA leave until the employee has exhausted all available paid leave

Uniformed Services Employment and Reemployment Rights Act (USERRA)



- Provides for the employment and reemployment rights for all uniformed service members
- Extends reemployment rights to persons who have been absent from a position of employment because of “service in the uniformed services.”
- Defines “Service in the uniformed services,” which includes the performance of duty on a voluntary or involuntary basis
- Establishes the obligations of the employee to be eligible for employment and reemployment rights

Uniformed Services Employment and Reemployment Rights Act (USERRA)



Common Mistakes

- Failing to provide employee with seniority and all rights and benefits based on seniority that they would have attained with reasonable certainty had they remained continuously employed
- Forcing an employee to use available paid leave during absence for military service
- Denying an employee the option to use available paid leave during absence for military service

Occupational Safety and Health Act (OSH Act)



- Establishes that employers have the responsibility to provide a safe workplace
- Broadly states that employers have a general duty under which *“Each employer shall 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 to his employees.”*

Occupational Safety and Health Act (OSH Act)



Common Mistakes

- Assuming that OSHA's requirements are a factor only in industries seen as hazardous
- Treating OSHA compliance and safety as the responsibility of only a few individuals

Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009

- Equal Pay Act prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions
- Equal Pay Act forbids employers from lowering some employees' wages to make pay equal
- Lilly Ledbetter Fair Pay Act states EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began



Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009



Common Mistakes

- Paying a higher hourly wage to a male employee and then attempting to equalize the difference by periodically paying a bonus to a female employee
- Allowing a male candidate to negotiate for a higher wage than a female employee performing equal work, skill, responsibility, and working conditions

Pregnancy Discrimination Act



- Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- Pregnancy discrimination involves treating an individual — an applicant or employee — unfavorably in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits (such as leave and health insurance), and any other terms or conditions of employment
- Requires that, if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer must treat her in the same way as it treats any other temporarily disabled employee

Pregnancy Discrimination Act



Common Mistakes

- Assuming pregnant employees are incapable of working
- Removing a pregnant employee from a public-facing position due to pregnancy
- Deciding against hiring a pregnant applicant because 'she will just go out on leave and might not come back'

Title VII of the Civil Rights Act (Title VII)



- Makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, pregnancy, or sex
- Makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- Requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business
- Prohibits harassment based on a protected category

Title VII of the Civil Rights Act (Title VII)



Common Mistakes

- Failing to be able to articulate legitimate non-discriminatory business reasons for employment decisions
- Allowing a hostile working environment based on protected categories
- Failing to properly investigate allegations of discrimination or harassment

Immigration Reform and Control Act (IRCA)



- Requires employers to properly complete Form I-9 for each individual they hire for employment in the United States
- The Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:
 - Unfair documentary practices;
 - Citizenship or immigration status discrimination in hiring, firing and recruiting;
 - National origin discrimination in hiring, firing and recruiting; and
 - Retaliation or intimidation.

Immigration Reform and Control Act (IRCA)



Common Mistakes

- Only making a copy of authorizing documents without completing the appropriate section of Form I-9
- Not completing the sections of Form I-9 within the specified deadlines
- Requiring an applicant to present documents and complete the I-9 before making a conditional offer of employment
- Subjecting employees to unequal treatment in the I-9 process

Appendix II - Online Resources



Resources

- **Summary of the Major Laws of the Department of Labor | U.S. Department of Labor (dol.gov)**
 - <https://www.dol.gov/general/aboutdol/majorlaws>
- **FMLA Resources**
 - <https://www.dol.gov/agencies/whd/fmla>
- **Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009 | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-ledbetter-fair-pay-act-2009>
- **USERRA | U.S. Department of Labor (dol.gov)**
 - <https://www.dol.gov/agencies/vets/programs/userra/USERRA-Pocket-Guide>



Resources

- **DOL Guidance Regarding Pregnancy Discrimination**
 - <https://www.eeoc.gov/pregnancy-discrimination>
- **Fact Sheet: Age Discrimination | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/laws/guidance/fact-sheet-age-discrimination>
- **Fact Sheet: Disability Discrimination | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/laws/guidance/fact-sheet-disability-discrimination>
- **Continuation of Health Coverage (COBRA) | U.S. Department of Labor (dol.gov)**
 - <https://www.dol.gov/general/topic/health-plans/cobra>



Resources

- **OSHA At-A-Glance**
 - <https://www.osha.gov/sites/default/files/publications/3439at-a-glance.pdf>
- **Laws & Guidance | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/laws-guidance>
- **Title VII of the Civil Rights Act of 1964 | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>



Resources

- **Background Checks: What Employers Need to Know | U.S. Equal Employment Opportunity Commission (eeoc.gov)**
 - <https://www.eeoc.gov/laws/guidance/background-checks-what-employers-need-know>
- **Handbook for Employers M-274 | USCIS**
 - <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>
- **Employment Eligibility Verification | USCIS**
 - <https://www.uscis.gov/i-9>