

Wyoming

Labor Standards

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Wyoming

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Employment Discrimination

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act of 1967
- The Americans with Disabilities Act of 1990
- The Wyoming Fair Employment Practice Act of 1965
- Race, color, sex, religion, national origin, retaliation
- Age (40+)
- Disability
- All of the above

State and Federal Coverage

To obtain State coverage, the most recent discriminatory act must have occurred within six months of the time Charging Party has filed his/her claim.

Federal coverage requires the most recent discrimination to have taken place within 300 days of the time the claim is filed

Wyoming Fair Employment Practices Act of 1965

Prohibits employers from discriminating against applicants and employees based on:

- Race
- Sex
- Creed (religion)
- Color
- National origin/ancestry
- Age
- Disability

Sex

Covers...

- Gender (including sexual stereotypes & sexual orientation)
- Sexual desire
- Aversion to a particular sex in the workplace
- Sexual Harassment
- Pregnancy

- Does not cover...
- General horseplay
- Course or boorish language
- Differences in the ways men & women interact in the workplace

What is Sexual Harassment?

- Sexual harassment is any unwelcome sexual advance or conduct on the job that creates an intimidating, hostile or offensive working environment.
- Any conduct of a sexual nature that makes an employee uncomfortable has the potential to be sexual harassment.

Hostile Work Environment

An environment at the work place which significantly and adversely affects an employee because of her/his sex.

- Unwelcome sexual advances or conduct.
- Includes taunts, touching, pictures, jokes or other harassing words or actions.
- It may also include isolating or ostracizing others.

Hostile Work Environment

- The conduct must be unwelcome to be sexually harassing.
- Conduct that is acceptable to one employee may be offensive to another.
- Unless the conduct is severe, a single comment or incident would not be sufficient to create a hostile work environment.
 - An exception is unwanted touching

Impact

- Sexual harassment is evaluated based on impact or effect – not intent.
- It doesn't matter if the harasser was "only joking."
- If a coworker or subordinate is offended, it may become sexual harassment.

Anyone Can Be Sexually Harassed

The harasser may be:

- The victim's supervisor
- The manager
- A coworker
- A customer or vendor
- Of the same sex

Sexual Harassment Outside the Box

- Traditionally, we think of sexual harassment as men harassing women; however, women can also sexually harass men.
- Women can sexually harass other women.
- Men can sexually harass other men.

Same Sex Harassment

People of the same sex can sexually harass each other.

Examples:

- A man's coworkers constantly bombard him with sexually explicit photos of women and sexually explicit jokes. If this makes him uncomfortable, this behavior may be sexual harassment.
- Calling an individual who does not meet your expectations of what constitutes a man "gay" or "faggot" may be harassment.

IMPORTANT ROLE OF SUPERVISORS

- A supervisor's failure to act can mean liability for the your organization.
 - Supervisor must not participate in any discriminatory or harassing conduct.
 - Supervisor must stop any discriminatory or harassing conduct the supervisor observes in the workplace.
 - Supervisor must respond promptly and appropriately to all complaints of workplace discrimination or harassment made to the supervisor.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Race, Color, National Origin, Ethnic Background**
 - May not be used as basis for employment decisions
 - Ethnic slurs, racial jokes, offensive or derogatory comments or other verbal or physical conduct based on an individual's race, color, national origin or ethnic background are prohibited.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Religion**

- May not be used as basis for employment decisions
- Jokes, offensive or derogatory comments or other verbal or physical conduct based on an individual's religion are prohibited.
- Employees needing an accommodation in scheduling, job assignments, dress code, etc., for religious reasons must contact supervisor.

PROHIBITED CONDUCT

Other Types of Discrimination

- **Sex**
 - May not be used as basis for employment decisions
 - Sexual harassment is prohibited.
 - Pregnancy discrimination is prohibited.
 - may not use pregnancy as basis for employment decisions
 - may not apply special work conditions, rules or procedures based upon pregnancy

PROHIBITED CONDUCT

Other Types of Discrimination

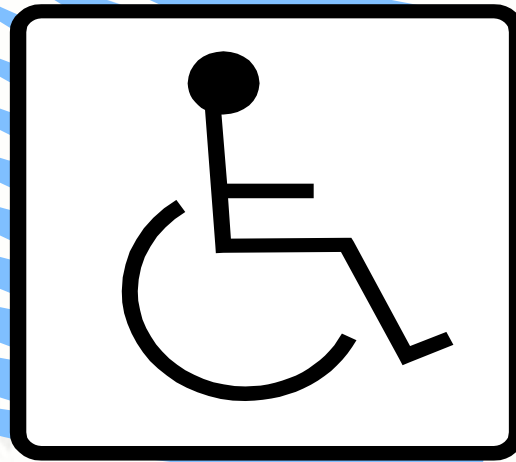
- **Age**

- Individuals who are 40 years of age or older may not be discriminated against on the basis of age.

- May not be used as basis for employment decisions
 - Offensive or derogatory comments or physical conduct based on an individual's age (40+) can create a hostile work environment.

Wyoming

THE AMERICANS WITH DISABILITIES ACT (ADA)



ADA BACKGROUND

- Federal law enacted in 1990
- Title I

Prohibits employers from discriminating against qualified individuals with disabilities in hiring, firing, promotion, compensation, job training or any other terms, conditions and privileges of employment.

January 1, 2009

ADA Amendments Act

- On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments Act of 2008. The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. The Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

New Definition of Disability under the Amendment

- ADAA defines disability as:
 1. A physical or mental impairment that substantially limits a major life activity;
 2. A record of a physical or mental impairment that substantially limited a major life activity; or
 3. When an entity (e.g. an employer) takes an action prohibited by the ADA based on an actual or perceived impairment.

Expands the Definition of "major life activities"

by including two non-exhaustive lists:

- the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
- the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");

Disability: Major Life Activities

Substantial limitation in a major life activity

- Major life activities include:
 - Walking
 - Sitting
 - Seeing
 - Hearing
 - Sleeping
 - Caring for oneself

- New Major life activities include:
 - Reading
 - Communicating
 - Bending

Also...Major Bodily Functions

- Sexual Reproduction
- Waste Elimination
- Auto-Immune Function
- Cell Growth
- Digestive, Bowel, Bladder Function
- Neurological & Brain Function
- Respiratory, Circulatory & Endocrine Systems

Includes Per Se Disabilities

- Cancer
- Epilepsy
- Multiple Sclerosis
- HIV/AIDS
- Major depression/depressive disorder
- PTSD
- Bipolar Disorder
- Schizophrenia

Clarifying Language

- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

Because of a Disability

- provides that an individual subjected to an action prohibited by the ADA (e.g., failure to hire) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is transitory and minor;

Regarded As...

- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and...

Re Focus Relevant Inquiry

- emphasizes that the definition of "disability" should be interpreted broadly, removing focus from "is the employee disabled?" to the substantive questions of discrimination: "Has there been exclusion or denial of a reasonable accommodation?"

Substantial limitation

- Examine extent, duration and impact
 - Extent: affected (impaired) to a significant degree as compared to the average person in the general population
 - Duration: impairment lasting less than about four to six months won't be a disability
 - Impact: must affect daily living activities, not just job duties
 - Ongoing new guidance from EEOC on impairments

Daily activities of living

- Include:
- Preparing meals
- Vacuuming
- Dusting
- Laundry
- Personal care and hygiene

Work related injury

- Does not necessarily equate to a disability
- Usually short in duration
- Often limited impact
- Frequently narrowly focused

ADA DEFINITIONS

- Alcoholism or other substance addiction can be a disability.
- Current use of illegal drugs is excluded from the definition of disability.

ADA DEFINITIONS

- Discrimination means:
 - using disability as basis for employment decisions without considering reasonable accommodation that may allow employee to perform essential functions of the job.
- Reasonable accommodation:
 - employer must provide unless it would constitute an undue hardship

ADA DEFINITIONS

- Examples of Reasonable Accommodations:
 - Extended leave
 - Physical changes to workplace
 - Restructuring of job
 - Modifying work schedule
 - Reassignment to a different position
 - Modifying equipment
 - Altering when or how an essential function is performed
- Reassigning an employee to a new or different job if the employee cannot be accommodated in his or her current position.

ADA TIPS FOR COMPLIANCE

- Review and update PDQs
- Do not ask job applicants if they have disabilities or impairments
- Evaluate employees based on job performance. Do not assume an impairment will affect the employee's ability to perform.
- Do not ignore suspected impairments if they impact work performance.

ADA TIPS FOR COMPLIANCE

- Do not retaliate against employees who request reasonable accommodation or otherwise attempt to invoke the protections of the ADA.
- Keep medical information in a confidential medical file separate from the employee's personnel file.
- Do not ask employees about their health.
 - Ask about performance problems and offer reasonable accommodations to address them.

IMPORTANT ROLE OF SUPERVISORS

- TIPS FOR SUPERVISORS

- Do not participate in or tolerate prohibited conduct in the workplace.
- Do not ignore prohibited conduct or complaints!
- No Magic words are required so listen closely to the behavior being described or the issue being discussed.

PROHIBITED CONDUCT

Retaliation

- The law strictly prohibits retaliation against an employee who complains of discrimination or harassment by anyone covered by the law, including:
 - managers/supervisors;
 - co-employees; and
 - the individual accused of inappropriate conduct.

The law also makes it illegal to retaliate against anyone who participates in any manner with an investigation of a charge of employment discrimination whether or not the charge is proved valid.

Retaliation Continued

- The U.S. Supreme Court says any conduct that would likely prevent a reasonable person from complaining about discrimination is unlawful retaliation.



Family and Medical Leave ACT

- State Requirements: None
- Federal Requirements: Family and Medical Leave Act of '93
 - Covered employers must grant eligible employees up to a total of 12 workweeks of unpaid leave during any 12 month period, for one or more of the following reasons:
 - Birth and care of newborn child of employee
 - Placement with the employee of son or daughter for adoption or foster care.

FMLA (cont.)

- To care for an immediate family member (spouse, child or parent) with a serious health condition.
- To take medical leave when the employee is unable to work because of a serious health condition.

The FMLA also

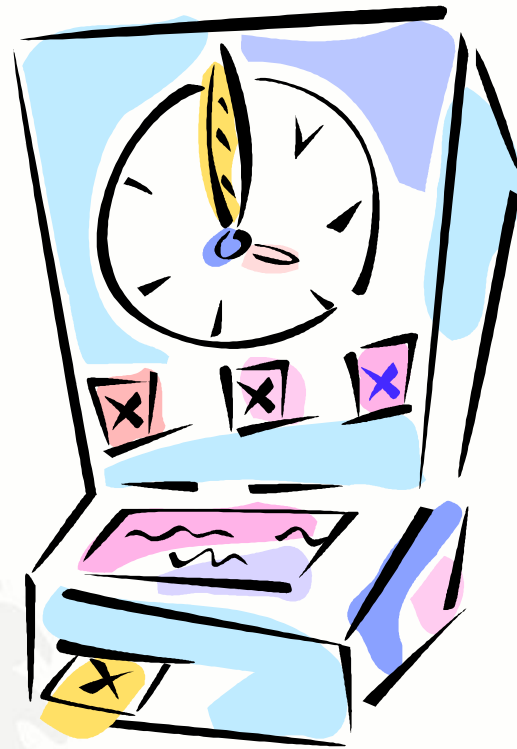
- Maintains health benefits during leave
- Restores an employee's job after leave
- Sets requirements for notice and certification of the need for leave.
- Protects employees who request or take leave; and

FMLA (cont.)

Includes certain employer record keeping laws.

For more information on the Family and Medical Leave Act, visit: <http://www.dol.gov/whd/fmla>

Wage & Hour



Minimum Wage

- Wyoming Statute § 27-4-202 provides:

Every employer shall pay to each of his or her employees wages at a rate of not less than five dollars and fifteen cents (\$5.15) per hour.

- Wyoming Statute § 27-4-507 provides:

It shall be unlawful for any employer to pay to any employee a lower wage, salary, or compensation than that provided for or agreed upon ...

Personnel Records

- State Requirements:
- 27-4-203. Record of work of employees required.
- Every employer subject to this act [§§ 27-4-201 through 27-4-204] shall make, and keep for a period of not less than two (2) years on or about the premises where in any employee is employed, a record of the name, address and occupation of each of

Personnel Records (cont.)

his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee.

Miscellaneous Wage Requirements

- Employers must pay an employee all wages owed no later than the employer's usual practice on regularly schedule payroll dates.
- Claims for wages may be filed by any employee who no longer works for the employer from which she or he is claiming wages owed.
- Labor can go back 2 years in pursuing wages owed
- Labor has no jurisdiction over independent contractor relationships

Vacation Liability

- Employer's liability for employees' earned vacation is governed by a 1963 Wyoming Attorneys' General Opinion No. 53:
 - 1. There must be an agreement or contract between employer and employee which provides for vacation pay.
 - 2. The agreement must specify some definite time element as to the period of employment which must be completed by employee before a right to vacation pay is earned.
 - 3. Vacation pay must have been earned as provided in the agreement.

Vacation Liability

- Recent statutory changes to the definition of “wages” allow an employer to avoid paying out earned, but unused vacation following an employee’s separation provided:
 - The employer’s written policy specifically states vacation pay will not be paid out upon separation, and
 - The employee acknowledges receiving the policy in writing.

Fair Labor Standards Act (FLSA)

- Federal law passed by Congress in 1938
- Set first federal minimum wage at 25 cents
- Set hours of work
- Child labor restrictions

Hours of Work

- FLSA sets basic hours of work at 40 hours per week
- Hours worked in excess of 40 in a workweek are considered overtime hours and need to be paid at time and one half of employees regular rate of pay.

Hours of Work Continued

- Under the FLSA there are some exceptions to the standard 40 hour workweek for certain employees (law enforcement).
- Certain employees (executive, professional and administrative) may be exempt from overtime.
- Questions on how overtime and exemptions are applied in your agency should be directed to LGLP or US Dept. of Labor – Kendrick Ladd, Wyoming Compliance Officer, 307-267-7305.

Hours of Work Continued

- Rest and meal periods—There is no statutory requirement, either state or federal, to provide employees rest or meal periods. The law only requires that rest periods of short duration (20 minutes or less) be paid. Meal periods of 30 minutes or more are not considered time worked unless the employee is not completely relieved of their duties.
- Rest and meal periods may be established by policy.

Child Labor

- Must be 14 to work (some exceptions for minors working for their parents)
- No work permits required
- Hours of work restrictions (primarily for 14 and 15 year olds outside of school hours)
- Driving restrictions
- No child under 18 may work in occupations deemed hazardous by Secretary of Labor.
(Currently list of 17 hazardous occupations)

Independent Contractor v. Employee

- Who is an employee governed by 2005 Wyoming State Supreme Court case:

Diamond B Services Inc. v. Lawrence Rohde

- “Employee” is defined as “any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.”
- An independent contractor “is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work.”

Considerations

- The key consideration in distinguishing employee versus independent contractor is “employer’s right to control the means and manner of the work.”
 - “When a worker is an independent contractor, the employer is typically interested only in the results of the work and does not direct the details of the how the work is performed”
 - Having a written contract is relevant evidence, but not conclusive. Just because you do not have a contract does not necessarily mean an individual is an employee and vice versa.

Considerations Continued

- The method of payment,
 - Independent contractors generally set the price of their services and bills for services on a regular basis
 - The employer typically sets the employee's rate of pay and deducts taxes for income, social security, and medicare.
- The right to terminate the relationship without incurring liability,
- Furnishing of tools and equipment,
- The scope of the work,
- Control of the premises where the work is to be done.
- Does the worker devote all of his efforts to the position or does he also performs work for others?

Considerations continued

- Employer's also usually pay into worker's compensation and unemployment insurance
- Employees also can participate in benefit programs offered by the employer such as retirement, health insurance, vacation and sick leave.
- Remember no one factor guarantees an individual is an independent contractor. The assessment is done on a case by case basis!

Numbers to Know

- Wyoming Workers Compensation
 - (307) 777-6763
- Unemployment Insurance
 - (307) 473-3789
- U.S. Department of Labor
 - (801)-524-5706
- Local Government Liability Pool (LGLP)
 - (307)-638-1911

Useful Websites

Wyoming Wage and Discrimination Questions	wyomingworkforce.org Select: If you are interested in learning more about Workers' Compensation, OSHA, Unemployment Insurance or Labor Standards, choose the specific topic that will most likely answer your question
Wyoming Statutes	legisweb.state.wy.us Select: State Statues and Constitution Select: Whichever version of the statutes you prefer, then choose Wyoming Code (top left), then Title 27 which covers Labor and Employment
Wyoming Rules and Regulations	soswy.state.wy.us Select: Administrative Services Select: Rule and Regulations
Federal Wage and Hour Information Toll Free Number: 866-487-9243	www.dol.gov United States Department of Labor Web Pages
Federal Discrimination Information	www.eeoc.gov U.S. Equal Employment Opportunity Commission Web Pages
Employer forms, training, booklets and resources	www.legalworkplace.com Alexander Hamilton Institute Web Pages
	www.cch.com Commerce Clearing House Web Pages
	www.hrhero.com HR Hero.com Web Pages
Employer Training and Information	www.msec.org Mountain States Employer's Council Web Pages

Questions

