



# Labor Standards



# Employment Discrimination

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act
- The Americans with Disabilities Act of 1990
- Equal Pay Act of 1963
- Race, color, sex, religion, national origin, retaliation
- Age (40+)
- Disability
- Equal Pay



# Employment Discrimination

- GINA Act
- The Wyoming Fair Employment Practice Act of 1965
- Generic Information Non-discrimination Act
- All of the above



# State and Federal Coverage

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- Under the State Tort Act an individual has 2 years to file a claim. Once filed, there's one year to file the lawsuit.
- Under the Federal Tort Act and individual has 4 years to file a claim.



# 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 desire
- Aversion to a particular sex in the workplace
- Sexual Harassment

## Does not cover...

- Sexual orientation
- 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.



# Types of Sexual Harassment

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## 2 Basic Types of Harassment

⇒ Quid Pro Quo

⇒ Hostile Work Environment



# Quid Pro Quo

(Latin for “this for that”)

Examples:

- A supervisor implies to an employee that the employee must sleep with him or her to keep the job.
- An employee is denied a raise because he or she rejected advances from the manager.



# Quid Pro Quo

## Examples (continued):

- A manager promises an employee a promotion if the employee will have sex with the manager.
- The manager tells the employee he or she will get better job duties, or a better shift assignment, if she sleeps with him.
- The manager promises to protect the employee from layoff in exchange for sexual favors.



# 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.



# Hostile Work Environment

## Examples:

- A sales clerk makes demeaning comments about female customers to his coworkers.
- A male employee brags to coworkers about his sex life.
- A computer screen saver shows pornographic pictures.
- An employee sends e-mails to coworkers that contain sexually explicit images, language or jokes and the coworkers are offended.
- A customer fondles a server.



# Hostile Work Environment

Examples (continued):

- A male employee who makes constant reference to a female coworker's "cup size" and other comments about her breasts (or other body parts).
- Questions asked of a coworker about his or her sex life.



# 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, sexual harassment is men harassing women.
- 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.



# Why You as a Supervisor Should Care

## Costs to the employer.

- Low morale.
- Turnover.
- Increased absenteeism.
- Lost productivity.
- Time spent providing state or federal investigators with information and in meetings.
- Legal fees and court costs.
- The alleged harasser and supervisor who does nothing can be named individually in a law suit.
- Possible payment of lost wages.



# IMPORTANT ROLE OF SUPERVISORS

- A supervisor's failure to act can mean liability for the state.
  - 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 is 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.



# 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.



# ADA DEFINITIONS

- “Individual with a disability” is a person who:
  - has a physical or mental impairment that substantially limits one or more major life activities;
  - has a record of such an impairment; or
  - is regarded as having such an impairment.



# ADA DEFINITIONS

- Examples: physical impairments



- Back condition
- Arthritis
- Carpal Tunnel Syndrome
- Hearing impairment
- Visual impairment
- Multiple Sclerosis
- Diabetes
- Heart disease



# ADA DEFINITIONS

- Examples: Mental Impairments



- Depression
- Stress
- Anxiety
- Post Traumatic Stress Disorder
- Personality Disorder
- Dyslexia



# ADA DEFINITIONS

- “Substantially limits” means significantly limits ability to perform activity compared to average person in general population.
- Factors:
  - Nature and severity
  - How long condition will last or is expected to last
  - Permanent or long-term impact



# ADA DEFINITIONS

- Major life activities



- Walking
- Hearing
- Learning
- Caring for oneself
- Breathing
- Seeing
- Working
- Performing manual tasks
- Speaking
- Sleeping



# 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

- Ex: 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



# 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!



# 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.

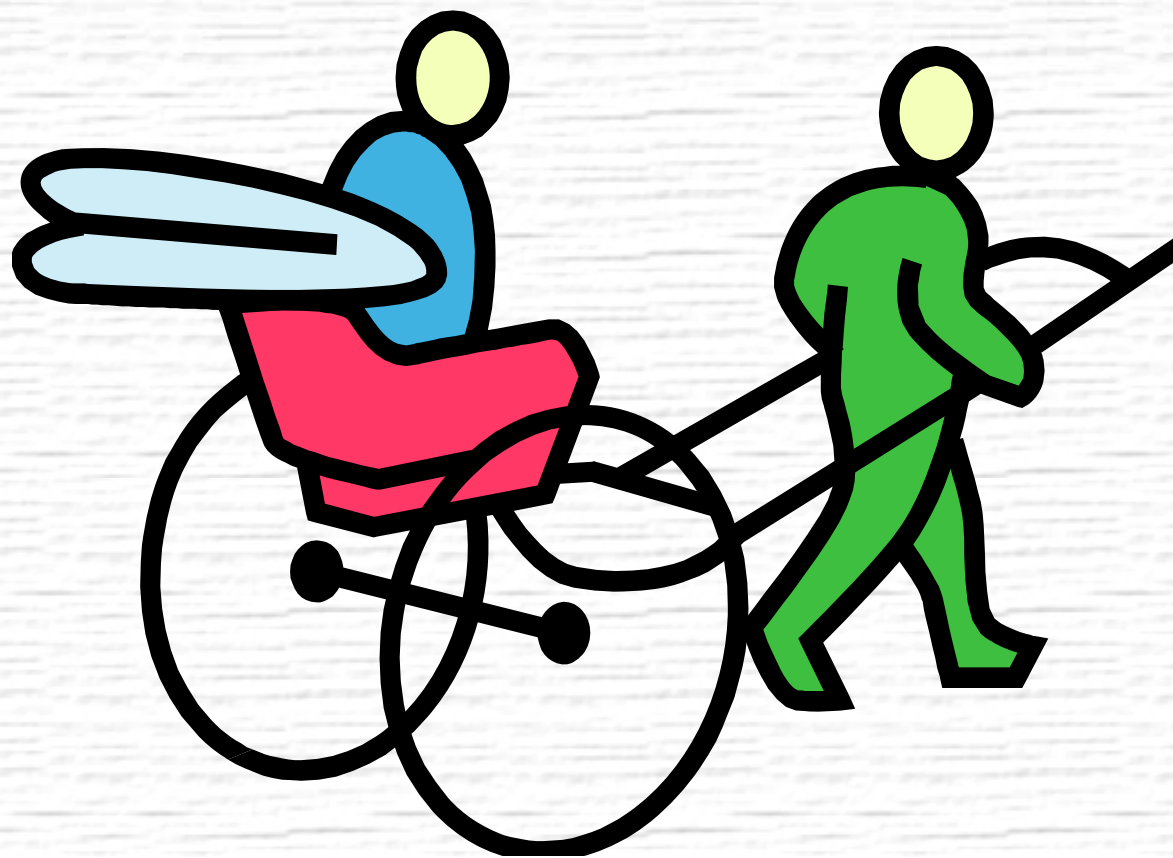


# Retaliation Continued

- 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.



# 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 ...



# Minimum Wage

- Current federal minimum wage- \$7.25
- Current State minimum wage--\$5.15
- Will take legislative act to change the state minimum wage.



# Miscellaneous Wage Requirements

- Employers must pay an employee all wages owed within 5 working days of the employee's last day of work.
- Claims for wages may be filed by any employee who no longer works for the employer from which s/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.



# Fair Labor Standards Act (FLSA)

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- 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.



# 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.



# Other Considerations

- 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 perform work for others?



# Other 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) 777-5476
- Unemployment Insurance
  - (307) 473-3789
- U.S. Department of Labor
  - (801)-524-5706
- LGLP
  - (307)-638-1911



# Useful Websites

- Wyoming Department of Employment
  - [www.doe.wyo.gov](http://www.doe.wyo.gov)
- U.S. Department of Labor
  - [www.dol.gov](http://www.dol.gov)
- Local Government Liability Pool (LGLP)
  - [www.lglpwyoming.org](http://www.lglpwyoming.org)



# Questions

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