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# H.R. ABC's



**It's Time to Wake Up**

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# Human Resource Law

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## **OBJECTIVES:**

**Participants will be able to:**

- **Understand the legal issues impacted by state and federal laws.**
- **Understand how these state and federal laws apply to employment situations.**
- **Understand how policies and procedures interface with the laws and why you need to understand both.**

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## **ADA – Americans with Disabilities Act**

**Title I of the Americans with Disabilities Act of 1990, which took effect July 26, 1992, prohibits private employers, state and local governments, employment agencies and labor unions 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. An 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.**

**A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.**

## **Americans With Disabilities Act Amendments Act of 2008 (ADAAA)**

**On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). Employers with 15 or more employees must comply with the federal ADA law and the new amendments, and employers with six or more employees must continue to comply with Oregon's disability law. Employers covered by both state and federal laws (those with 15 or more employees) must apply the standard most beneficial to the employee. It is unknown at this point whether the Oregon legislature will adopt any of the new federal changes during the 2009 session.**

**The ADA Amendments Act was effective on January 1, 2009.**

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**The Act makes important changes to the definition of the term "disability" by rejecting several Supreme Court decisions and portions of the EEOC's ADA regulations. The Amendments Act expands the protections of the original ADA to include more individuals with less severe impairments, and many expect this will result in more discrimination claims filed under the ADA.**

**The Act retains the ADA's basic definition of a disability as:**

- Having a physical or mental impairment that substantially limits one or more major life activities;**
- Having a record of such an impairment; or**
- Being regarded as disabled.**

## **ADEA – Age Discrimination in Employment Act**

**The Age Discrimination in Employment Act of 1976 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment -- including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.**

**It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.**

**The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.**

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## **Affirmative Action Regulations/OFCCP**

The Office of Federal Contract Compliance Programs (OFCCP) is part of the U.S. Department of Labor's Employment Standards Administration. It has a national network of six regional offices, each with district and area offices in major metropolitan centers. The Office of Federal Contract Compliance Programs enforces the following:

### **Executive Order 11246, as amended**

This order, signed by President Lyndon B. Johnson in 1965, prohibits discrimination in hiring or employment decisions on the basis of race, color, gender, religion, and national origin. It applies to all nonexempt government contractors and subcontractors and federally assisted construction contracts and subcontracts in excess of \$10,000.

Under the Executive Order, contractors and subcontractors with a federal contract of \$50,000 or more, and 50 or more employees are required to develop a written affirmative action program that is designed to ensure equal employment opportunity, and sets forth specific and action-oriented programs to which a contractor commits itself to apply every good faith effort.

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## **ARRA – The American Recovery and Reinvestment Act of 2009**

**Signed by President Barack Obama on February 17, 2009. A \$789 billion Act also known as the stimulus bill.**

**ARRA will affect HIPAA's Privacy and Security Rules. Employers risk civil and criminal penalties.**

**ARRA includes the extension of the Emergency Unemployment Compensation program, which provides up to 33 total weeks of unemployment benefits and also increase the maximum payment \$25.**

**ARRA also provides an extension of COBRA for employees who lose their health care coverage due to involuntary termination between September 1, 2008 and December 1, 2009.**

**ARRA also requires employers to reduce the FICA withholding from employees' paycheck from the current 7.65 percent to 6.2 percent, or \$400 for individuals (\$800 for joint filers, which ever is less).**

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## **CRA - Civil Rights Act of 1964 (Title VII)**

**This Act prohibits discrimination in employment selection, hiring, training, promotion, salary, etc. on the basis of race, color, religion, sex, or national origin.**

## **CRA -Civil Rights Act of 1991**

**The Civil Rights Act of 1991 is a bill to amend the Civil Rights Act of 1964: to strengthen and improve federal civil rights laws, to provide for damages in cases of intentional employment discrimination, and to clarify provisions regarding disparate impact actions.**

**Signed in to law January 29, 2009**

**The LILLY LEDBETTER FAIR PAY ACT amends the Civil Rights Act of 1964 and other anti-discrimination laws to clarify at which points in time discriminatory actions qualify as an “unlawful employment practice.” According to the legislation, unlawful conduct occurs: “when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid...” The law further states that individuals may receive back pay as compensation for discrimination that occurred up to two years preceding the filing of a charge.**

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## **COBRA - Consolidated Omnibus Budget Reconciliation Act**

**Congress passed the landmark Consolidated Omnibus Budget Reconciliation Act (COBRA) health benefit provisions in 1986.**

**COBRA contains provisions giving certain former employees, retirees, spouses and dependent children the right to temporary continuation of health coverage at group rates. This coverage, however, is only available in specific instances. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees, since usually the employer formerly paid a part of the premium. It is ordinarily less expensive, though, than individual health coverage.**

**The law generally covers group health plans maintained by employers with 20 or more employees in the prior year. It applies to plans in the private sector and those sponsored by state and local governments.**

**Under COBRA, a group health plan ordinarily is defined as a plan that provides medical benefits for the employer's own employees and their dependents through insurance or otherwise (such as a trust, health maintenance organization, self-funded pay-as-you-go basis, reimbursement or combination of these).**

**Note: the February 17, 2009 The American Recovery and Reinvestment Act of 2009 significantly changes the provisions of the COBRA legislation.**

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## **CCPA - Consumer Credit Protection Act**

**This act established limitations on the amount of wages that can be garnished and restricted the right of employers to discharge employees whose pay is subject to a single garnishment order.**

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## **Defamation (Big D)**

The legal definition of defamation is an intentional false communication that injures another person's good name or reputation. To amount to defamation, the communication must be published or spoken.

In modern usage, written defamation bears the title of libel, and oral defamation that of slander.

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## **Des Moines Human Rights Commission**

The Commission is an agency of City Government. Its purpose is to prevent and eliminate, to the extent possible, discrimination based on race, color, creed, sex, sexual orientation, age, national origin, ancestry, religion, disability or familial status.

The Commission addresses illegal discrimination that occurs in the City of Des Moines in the areas of Employment, Public Accommodation, Housing and City Government.

### **What Can the Des Moines Human Rights Commission Do?**

The Commission can help you to prepare and file a complaint against anyone who you believe illegally discriminated against you.

The Commission will try to negotiate a settlement of your complaint. If it cannot be settled, the Commission will investigate your complaint and if it finds that you were illegally discriminated against, it will assist in obtaining a remedy for you.

You must file your complaint with the Commission no later than 180 days after the illegal discrimination happened. The Commission will investigate your complaint at no cost to you.

The Commission is an impartial Investigative Agency, which seeks to determine through investigation, if a person was treated unfairly in violation of the City Code we enforce.

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## **DAU - Drug and Alcohol Use**

**Under Iowa law a policy must be in place, training provided for employees and supervisors, and it must be in writing.**

**The purposes of such a policy as set forth below are:**

- 1. To establish and maintain a safe, healthy working environment for all employees;**
- 2. To ensure the reputation of the company and its employees within the community and industry at large;**
- 3. To reduce the number of accidental injuries to person and property;**
- 4. To reduce absenteeism, tardiness, and low productivity;**
- 5. To provide rehabilitation assistance for any employee who seeks such help.**

### **Guidelines:**

**Alcoholic Beverage** – is any beverage that may be legally or illegally sold and consumed and has an alcoholic content.

**Drug** – means any substance other than alcohol capable of altering an individual's mood, perception, pain level, or judgment.

**Prescribed Drug** – is any substance prescribed by a licensed medical practitioner for individual consumption.

**Illegal Drug** – is any drug or controlled substance, which is illegal to sell, deal, manufacture, or consume.

The use, distribution, sale, possession, transfer, dealing, manufacture, or purchase of illegal drugs on company property or while performing company business is strictly prohibited, and is grounds for termination. Such action will be reported to appropriate law enforcement officials.

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## **Drug and Alcohol Use, cont.**

**No prescription drug will be brought on company premises by any person other than the one for whom it is prescribed. Prescription drugs must be used only in the manner, combination, and quantity prescribed.**

**Any employee whose abuse of alcohol or illegal or prescription drugs results in excessive absenteeism, or tardiness, or is the cause of accidents, or poor work may be subject to corrective action, up to and including termination.**

**No alcoholic beverage will be brought or consumed on company premises except in connection with company-authorized events.**

**Many companies provide an Employee Assistance Program (EAP) for employees and their families that can be utilized for drug or alcohol related problems.**

**Iowa law permits drug screening in the event of reasonable suspicion. Questions regarding this law should be addressed with your company Attorney.**

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## **EEOC - Equal Employment Opportunity Commission**

**The EEOC is the agency responsible for administering Title VII of the 1964 Civil Rights Act as amended in 1972, as well as the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1992.**

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## **EPA - Equal Pay Act of 1963**

**This significant amendment to the FLSA occurred in 1963. Congress passed the Equal Pay Act prohibiting unequal wages for women and men who work in the same establishment, for equal work on jobs which require equal skill, effort, and responsibility, and which are performed under similar working conditions.**

**Wages paid an employee include all payments made to the employee as remuneration for employment. Vacation and holiday pay, premium payments of any kind, and fringe benefits are also included.**

**The equal pay standards do not rely upon job classifications or titles, but depend rather on actual job requirements and performance. The focus of any equal pay inquiry is the job itself and the worker's hour-by-hour duties and responsibilities. Men are protected under the law equally with women.**

**The law is enforced by the Equal Employment Opportunity Commission (EEOC).**

**The LILLY LEDBETTER FAIR PAY ACT was passed on January 29, 2009. An Iowa version passed in April of 2009 and is awaiting Governor Culver's signature.**

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## **ERISA - The Employee Retirement Income Security Act of 1974**

**The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.**

**ERISA requires plans to provide participants with plan information including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.**

**There have been a number of amendments to ERISA, expanding the protections available to health benefit plan participants and beneficiaries. One important amendment, the Consolidated Omnibus Budget Reconciliation Act (COBRA), provides some workers and their families with the right to continue their health coverage for a limited time after certain events, such as the loss of a job. Another amendment to ERISA is the Health Insurance Portability and Accountability Act (HIPAA) which provides important new protections for working Americans and their families who have preexisting medical conditions or might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health. Other important amendments include the Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act, and the Women's Health and Cancer Rights Act.**

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## **FCRA -Fair Credit Reporting Act**

**This act requires that you disclose that a credit check is being made, obtain a written consent from the person being checked, and furnish the applicant with a copy of the report.**

**This includes credit checks, drug testing results and criminal background checking.**

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## **FLSA - Fair Labor Standards Act**

**The Fair Labor Standards Act (FLSA) is a United States Federal law that was enacted in 1938.**

**Amendments have been made to this law since it was passed. It establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.**

**The Act provides for minimum standards for both wages and overtime entitlement, and spells out administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions.**

**The final regulations under the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees is effective August 23, 2004. These exemptions are often referred to as “white collar” exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and, in most cases, must be paid on a salary basis and not less than minimum amounts as specified in the regulations.**

**The Wage and Hour Division of the U.S. Department of Labor is responsible for the administration of the FLSA.**

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## **FMLA – Family Medical Leave Act**

**Covered employers must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:**

- For the birth and care of the newborn child of the employee;**
- For placement with the employee of a son or daughter for adoption or foster care;**
- To care for an immediate family member (spouse, child, or parent) with a serious health condition; or**
- To take medical leave when the employee is unable to work because of a serious health condition.**

**To be eligible, the employee must have been employed for 1 year and have worked 1250 hours in the last 12 months.**

**Amendments have been recently changed and the Military Families are included.**

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## **HIPAA - Health Insurance Portability and Accountability Act of 1996**

**HIPAA included new safeguards to protect the security and confidentiality of health information. The regulation covers health plans. It gives patients more control over their health information. It sets boundaries on the use and release of health records. It establishes appropriate safeguards to protect the privacy of health information. It holds violators accountable, with civil and criminal penalties. And it strikes a balance when public responsibility requires disclosure of some forms of data – for example, to protect public health.**

**Disclosure: Protected Health Information (PHI) may not be used or disclosed without authorization except for treatment, payment for treatment, health care operations, and certain law enforcement and public functions. Use and disclosure of PHI must be limited to the minimum necessary to accomplish the intended purpose.**

**Individual Rights: Individual rights related to personal health information requirements:**

- Receipt of notice of information practices**
- Access to their health information**
- Health information disclosure accountability**
- Amendment and correction requirement**

**Administrative Requirements:**

- Designate a privacy official**
- Document privacy policies and procedures**
- Train employees**
- Enforce rules and provide sanctions for violations**
- Implement technical and physical safeguards**
- Establish grievance process**

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## **HIPAA - Health Insurance Portability and Accountability Act of 1996, cont.**

**Employer Impact: The intent of the rule for employers is quite clear – to ensure that personal health information is used and disclosed in a manner consistent with the rule and not used by employers for employment-related decisions or for any other purposes not directly related to the administration of the health plan.**

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## **ICRC -The Iowa Civil Rights Commission**

**The mission of the ICRC is to enforce civil rights through compliance, mediation, advocacy and education.**

**The Iowa Civil Rights Commission enforces the laws prohibiting discrimination in employment, housing, financial credit, education and public accommodation on the basis of race, color, creed, sex, religion, national origin, physical and mental disability, age, marital status, familial status, and pregnancy.**

**You have 180 days from the date that you first found out about a discriminatory incident to file with the Iowa Civil Rights Commission. Your case will also be filed with EEOC or HUD, if these federal laws apply to your case. EEOC has a time limit of 300 days from the date of the discriminatory incident; HUD has a one-year time limit from the date of the discriminatory incident. In housing only, you can directly file in court with an attorney; the time limit to file directly in court is two years from the date that you first found out about the discriminatory incident.**

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## **IRCA – Immigration Reform and Control Act**

**The Immigration Reform and Control Act of 1986 (IRCA) was passed to control unauthorized immigration to the United States. Employer sanctions, increased appropriations for enforcement, and amnesty provisions of IRCA are the main ways of accomplishing its objective. The employer sanctions provisions and designates penalties for employers who hire aliens not authorized to work in the United States. Under the amnesty provision, illegal aliens who lived continuously in the United States since before January 1, 1982, could have applied to the Immigration and Naturalization Service (ICE) for legal resident status by May 4, 1988, the application cutoff date.**

**I-9's must be kept on every employee hired and retained during their employment. I-9's on terminated employees must be kept for 2 years after their leaving a company.**

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## **NLRB - National Labor Relations Board**

**The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers or to refrain from all such activity. Generally applying to all employers involved in interstate commerce—other than airlines, railroads, agriculture, and government— the Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. Through the years, Congress has amended the Act and the Board and courts have developed a body of law drawn from the statute.**

**EFCA – Employee Free Choice Act is being debated in Washington DC and would change the way unions would recruit.**

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## **OSHA -Occupational Safety and Health Act**

**This act was created to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.**

**IOSHA is the Iowa law which covers safety issues.**

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## **PDA - Pregnancy Discrimination Act of 1978**

**The PDA amended Title VII of the Civil Rights Act of 1978 to specifically prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions. The basic principle behind the PDA is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or being refused a job or promotion because she is pregnant. She cannot be forced to go on leave as long as she can still work, and if other employees who take disability leave are entitled to get their jobs back, so are women who have been unable to work because of pregnancy.**

**Employers with 15 or more employees must provide the same benefits and options to an employee out on pregnancy/maternity leave as those provided to other employees out on personal or medical leave.**

### **Iowa Law**

**Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective.**

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## **SOX -Sarbanes-Oxley**

**The American Competitiveness and Corporate Accountability Act of 2002 - called "Sarbanes-Oxley" for its two Congressional sponsors - is not a huge piece of legislation. Its 66 pages are mandates that carry important ramifications for every U.S. public company and for its top officers personally.**

**It was signed into law on July 22, 2002, within a year after once gilded names like Enron, WorldCom, Tyco, and Adelphia, went down in infamy. Its purpose is “to rebuild trust in America's corporate sector.”**

**Technically, Sarbanes-Oxley amends and revises the Securities Exchange Act of 1934. It tightens up the SEC's requirements for corporate governance, imposes personal liability (with penalties including fines and imprisonment) on executives, and stiffens the auditing rules in the hands of boards of directors.**

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## **UI - Unemployment Insurance – Iowa Workforce Development**

**The Unemployment Insurance Services Division of Iowa Workforce Development provides services to businesses, workers and the citizens of Iowa by collecting unemployment insurance taxes, maintaining the Iowa Unemployment Compensation Trust Fund, and making payments to eligible jobless workers.**

**Unemployment insurance replaces part of the income workers lose when they become unemployed through no fault of their own. Unemployment insurance softens the economic impact job losses have on communities by maintaining purchasing power in the area where workers live.**

**Employers pay the money for unemployment benefits. No contributions for unemployment insurance come from employee wages.**

**Anyone who is no longer working, or is working substantially fewer hours, and has worked and earned wages in work covered by unemployment insurance (this determination is made by Iowa Workforce Development) in the last 15 to 18 months may file an application for unemployment insurance benefits.**

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## **USERRA - Uniformed Services Employment and Reemployment Rights Act**

**Employees are required to notify their employers of military service obligations. Employees serving in the military must be provided leaves of absence and have reemployment rights for up to five years.**

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## **DOL - U.S. Department of Labor**

**The Department of Labor fosters and promotes the welfare of the job seekers, wage earners, and retirees of the United States by improving their working conditions, advancing their opportunities for profitable employment, protecting their retirement and health care benefits, helping employers find workers, strengthening free collective bargaining, and tracking changes in employment, prices, and other national economic measurements. In carrying out this mission, the Department administers a variety of Federal labor laws including those that guarantee workers' rights to safe and healthful working conditions; a minimum hourly wage and overtime pay; freedom from employment discrimination; unemployment insurance; and other income support.**

**The Department of Labor administers and enforces more than 180 federal laws. These laws include the Fair Labor Standards Act (FLSA), the Occupational Safety And Health Act (OSHA), Employee Retirement Income Security Act (ERISA), Uniformed Services Employment and Reemployment Rights Act, the Family and Medical Leave Act (FMLA), Worker Adjustment and Retraining Notification Act (WARN), and the Consumer Credit Protection Act, to name a few.**

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## **VEVRAA -Vietnam Era Veterans' Readjustment Assistance Act of 1974**

**Vietnam era veterans, special disabled veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized are protected in employment by the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. The law requires that employers with Federal contracts or subcontracts of \$25,000 or more provide equal opportunity and affirmative action for Vietnam era veterans, special disabled veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.**

**A Vietnam era veteran is a person who**

- 1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released with other than a dishonorable discharge;**
- 2) was discharged or released from active duty for a service connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975; or**
- 3) served on active duty for more than 180 days and served in the Republic of Vietnam between February 28, 1961 and May 7, 1975.**

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## **WHD - Wage and Hour Division**

**The Wage and Hour Division (WHD) of the U.S. Department of Labor is responsible for administering and enforcing some of our nation's most comprehensive labor laws, including: the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act (FLSA); the Family and Medical Leave Act (FMLA); and worker protections provided in several temporary visa programs.**

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## **WARN Act – Worker Adjustment and Retraining Notification Act of 1988**

**This act offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs.**

**This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government.**

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## **Workers' Compensation: An Overview**

**Workers' compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents.**

**State Workers' Compensation statutes establish this framework for most employment. Federal statutes are limited to federal employees or those workers employed in some significant aspect of interstate commerce.**