

EMPLOYEE RIGHTS

Employee Rights in the Workplace

All employees have basic rights in the workplace -- including the right to privacy, fair compensation, and freedom from discrimination. A job applicant also has certain rights even prior to being hired as an employee. Those rights include the right to be free from discrimination based on age, gender, race, national origin, or religion during the hiring process.

There are certain pieces of information that an employer may not seek out concerning a potential job applicant or employee. An employer may not conduct a credit or background check of an employee or prospective employee unless the employer notifies the individual in writing and receives permission to do so.

Other important employee rights include:

- Right to be free from discrimination and harassment of all types;
- Right to a safe workplace free of dangerous conditions, toxic substances, and other potential safety hazards;
- Right to be free from retaliation for filing a claim or complaint against an employer (these are sometimes called "whistleblower" rights);
- Right to fair wages for work performed.

Federal and State Regulations on Employment Relationships/Employee Rights

Employee Privacy

Employee privacy rights encompass an employee's personal information and activities at work. Employees have some specific rights to privacy in the workplace, but these rights are balanced against their employers' privileges to monitor their business operations. Federal, state, and local legislation provide a basic source of protection.

An employee's right to privacy in the workplace is an increasingly controversial legal topic, especially in an age of increased reliance on computers and electronic mail to do business. Technology has enabled employers to monitor virtually all workplace communications made by employees using computers -- including use of the Internet and company e-mail. While employees may feel that this monitoring is a violation of their privacy rights, it is usually allowed under the law. Other employee activities such as private conversations receive more privacy protections.

Personal Information

Of a concern is the fact that through record requirements for [health insurance](#) and the [Americans with Disabilities Act \(ADA\)](#) and such employers may learn about

employees' health conditions and personal information. Employers have the responsibility to refrain from divulging information contained in medical records they come across. They also have a duty to take measures to protect such sensitive personal information as social security numbers from inside or outside [identity theft](#), a fairly recent, critically important area of concern for HR personnel.

Internet Usage and Email

- An employee's activities while using an employer's computer system are largely unprotected by personal privacy laws. Emails are considered to be company property if they are sent using the company's computer system. Employers generally have the right to monitor and view employee email, so long as they have a valid business purpose for doing so. Many employers now have email systems that copy all email messages as they pass through the system to check for productivity, illegal use, and other issues. Emails are frequently being used as evidence during trial to prove employee misconduct or wrongdoing.
- In addition, employers have the right to track the websites visited by their employees, to block employees from visiting specific Internet sites, or to limit the amount of time an employee may spend on a specific website.

Employee Communications

- The [Electronics Communications Privacy Act \(ECPA\)](#) places some limitations on an employer's right to monitor its employees' telephone usage at work. Under the Act, an employer may not monitor an employee's personal phone calls, even those made from telephones on work premises. An employer may monitor a personal call only if an employee knows the particular call is being monitored and consents to it. The ECPA also provides protection for an employee's voicemail messages at work. Employers face legal liability if they read, disclose, delete, or prevent access to an employee's voicemail messages.

HIPAA and Employee Medical Information

- The [Health Insurance Portability and Accountability Act \(HIPAA\)](#) is a federal law that includes regulations covering how employers must protect employees' medical [privacy](#) rights as well as the electronic disclosure of employees' medical information and requires employers to cover employees' and their dependents' preexisting health conditions under certain circumstances, as well as to protect the privacy of health information.
- HIPAA's regulations prescribe the permitted uses and disclosures of individually identifiable health information by certain entities, including employers that have access to employee health information. In addition, the [Americans with Disabilities Act \(ADA\)](#) requires employers to keep confidential medical information in a file separate from all other employment or [personnel files](#). HIPAA laws protect the privacy of all past, current and future employee health-related information.
- Under HIPAA, an employer can ask an employee for a doctor's note related to sick leave, workers compensation, wellness programs or health insurance. HIPAA

does not protect employment records, however, if health-related information is contained in those records, authorization has to be provided to the physician and may only be used for the purpose stated.

Individuals with Disabilities

Individuals with disabilities are protected from discrimination in employment through laws such as the Americans with Disabilities Act (ADA), the Rehabilitation Act and VEVRAA.

Americans with Disabilities Act (ADA)

- Defines a disability as a physical or mental impairment that substantially limits one or more major life activities.
- Prohibits discrimination against a person with a qualified disability.
- Provides that if an individual with a disability can perform essential functions with or without reasonable accommodation, that person cannot be discriminated against on the basis of their disability.
- The Department of Labor's Office of Disability Employment Policy (ODEP) provides information about these laws. However, ODEP does not enforce these laws.

Section 504 of Rehabilitation Act of 1973

- Requires federal contractors and subcontractors with government contracts in excess of \$10,000 to take affirmative action to employ and advance in employment qualified individuals with disabilities.

Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)

- Some disabled veterans are covered under this law. If a covered disabled veteran believes he or she has been discriminated against by a federal contractor or subcontractor, he or she may file a complaint with OFCCP.

Enforcement of Disability Laws

- The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Section 503 of the Rehabilitation Act, OFCCP and coordinating authority under Title I of the Americans with Disabilities Act, which prohibits job discrimination by employers against qualified individuals with disabilities. The Equal Employment Opportunity Commission (EEOC) has primary authority for enforcing the employment-related provisions of the ADA, which are found in Title I. Most government contractors are covered by both Section 503 and Title I of the ADA.
- The Civil Rights Center (CRC) enforces the employment-related provisions of Section 504 of the Rehabilitation Act. Section 504 covers organizations and entities that receive federal financial assistance from DOL. CRC also enforces Title II of the ADA as that title applies to the labor- and workforce-related practices of state and local governments and other public entities. Finally, CRC enforces

Section 188 of the Workforce Investment Act of 1998 (WIA), which bars disability-based discrimination by programs and activities that are part of the [One-Stop employment and training system](#) established by WIA Title I. See the [Laws & Regulations](#) subtopic for specific information on these laws.

Other Rules and Regulations Related to Discrimination

[Civil Rights Act of 1991](#)

On November 21, 1991, Congress enacted the Civil Rights Act of 1991. Congress acted to address a series at least seven decisions by the Supreme Court, some of which were regarded as changing the well-established landscape of discrimination law, and calling into doubt existing precedent. [Title VII of the Civil Rights Act of 1964](#) prohibits employment discrimination based on race, color, religion, sex and national origin. The law applies to any employer with 15 or more employees.

[Equal Employment Opportunity Commission \(EEOC\)](#)

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

[Equal Pay Act \(EPA\)](#)

The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

[Pregnancy Discrimination Act of 1978](#)

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also 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.

The Age Discrimination in Employment Act (ADEA)

Age discrimination involves treating someone (an applicant or employee) less favorably because of his/her age. The ADEA only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states do have laws that protect younger workers from age discrimination. It is not illegal for an employer or other covered entity to favor an older worker over a younger one, even if both workers are age 40 or older. Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

Age Discrimination in Employment Act

- Prevents employers from giving preferential treatment to younger workers to the detriment of older workers.
- Only applies to workers 40 years of age and older, and to workplaces with 20 or more employees.
- Does not prevent an employer from favoring older employees over younger employees.

Other Rules and Regulations Related to Employee Rights

Fair Labor Standards Act (FLSA)

The FLSA establishes minimum wage, overtime pay, record keeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

Federal Unemployment Tax Act

This law covers unemployment compensation.

National Labor Relations Act (NLRB)

Congress enacted the National Labor Relations Act ("NLRA") in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.

Occupational Safety and Health (OSH) Act

Ohio is not a "state plan" state; that is, it does not have a federally approved occupational safety and health regulatory program. Therefore, private sector workplaces are regulated by the federal standards. The state has adopted by reference the federal safety standards (except ionizing and nonionizing radiation) for public sector employers and has adopted its own stricter requirements for employee rights to refuse work, employee medical records, injury and illness

records, and for penalties.

Fair Labor Standards Act

- Provides regulation as to the duration of work days, and breaks an employer must provide.
- Governs applicable salary and overtime requirements set out by the federal government.

Whistleblower Protection

Ohio has a specific whistleblower statute that applies to certain employment situations. To receive statutory protection, you must first notify a supervisor or other responsible officer about suspected wrongdoing before you can receive whistleblower protection for reporting to state officials about your employer's suspected criminal offenses. (Criminal offenses include a co-worker's criminal activities, suspected felonies and actions likely to cause an imminent risk of physical harm to humans or produce a hazard to the public.) After you report the violation to state officials, your employer has 24 hours to correct the violation and inform you of the correction. This advance notice requirement does not apply if you are reporting criminal violations of Ohio's laws concerning air pollution, solid and hazardous waste, safe drinking water and water pollution.

If you are making a complaint to the federal government, you should seek help with how your complaint should be made, and to what government agency or department. The federal False Claims Act allows private citizens to bring lawsuits against federal contractors who commit fraud against the government. To bring such a suit, you must have some private knowledge of the fraud and be represented by an attorney. If your suit is successful, it is possible that you may receive a portion (usually about 15 to 25 percent) of any recovered money ("damages").

If your complaint is protected by Ohio or federal law, you may not be fired or have other retaliatory actions taken against you because of your whistleblowing activity. If you believe your employer has retaliated against you, you should use all of the same channels to complain. You have the right to bring legal action if the retaliation is not addressed.

Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. §§ 4301 – 4335) is a federal law intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other "uniformed services:" (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The federal government is to be a "model employer" under USERRA. See 38 U.S.C. § 4301.

Agency Policy and Procedure including:

1. The right to file a grievance as per agency Policy HR-306 Employee Grievance Procedure
2. The right for any of your health information maintained by human resources to be kept private as per HIPAA regulations
3. The right to be compensated within the regulations of the Department of Labor and related state regulations.
4. The right to be free from sexual harassment and other harassment as per agency Policy HR-020 Anti-Harassment
5. The right to be free from workplace-related violence as per Policy HR 645 Workplace Violence Prevention
6. To file any work related injury that could result in worker's compensation.
7. Staff recruitment, selection and transfers will be done in a fair, equitable and legal manner, complying with all applicable laws and regulations as per agency Policy HR-111 Transfers and Promotions