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**THE BASICS OF
EMPLOYMENT LAW**

The following information is intended to explain your general responsibilities as a Pennsylvania employer, or rights as an employee. This pamphlet is only a summary of the intensely fact specific laws and statutes that impact the employment relationship. Our attorneys are prepared to provide advice tailored to your particular situation to fulfill your obligations or exercise your rights under the law. Seeking an attorney's counsel may avoid problems and the need for additional legal services in the future, or help you become aware of rights you did not know you had.

BACKGROUND

Pennsylvania is an "at will" state which means that an employer can generally terminate an employee at any time for a good reason, a bad reason, or no reason at all. All employees are presumed to be "at will" except those employees subject to an employment contract with a "for cause" termination provision.

The doctrine of employment "at will" has limitations. An employer cannot make an adverse employment decision that is: (1) violative of public policy, (2) retaliatory or (3) discriminatory. An adverse employment decision is any action taken by an employer that constitutes a significant change in an employee's status and includes such actions as: hiring, firing, failing to promote, demoting, and the reassignment to a position with different responsibilities, fewer benefits or less pay.

The basis of a wrongful discharge claim asserting a violation of public policy stems from Pennsylvania's prohibition against an employer: (1) requiring an employee to commit a crime; (2) preventing an employee from complying with a statutorily imposed duty or right (such as filing a worker's compensation claim) or (3) discharging an employee when specifically prohibited from doing so by statute (jury duty, for example).

Closely related to a public policy claim, an employer will be liable for a claim of retaliation where an employee claims discrimination or asserts a right under state or federal law and subsequently suffers any adverse employment decision which is proven to be a result of raising the discrimination or statutory right. Examples include retaliating against an employee for opposing any form of illegal discrimination, filing a claim with the local or state human relations commission or the Equal Employment Opportunity Commission (EEOC), taking a family medical leave or reporting illegal activity (whistleblowing). A retaliation claim can be victorious even if the underlying claim of discrimination is ultimately determined not to be meritorious.



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Employment discrimination arises where an employee suffers unfavorable employment treatment due to membership in a "protected class." This is referred to as disparate treatment. The various "protected classes" are outlined in several federal, state and local employment laws. Disparate treatment can occur in the advertising for a position, hiring, the terms and condition of employment including pay, hours, and promotions, and in termination of the employment relationship.

An employee can also claim "disparate impact" discrimination although such claims are not common. In general, a disparate impact charge alleges that even where an employer is not motivated by a discriminatory intent, a neutral employment practice (such as requiring a driver's license when the position did not require driving) has had an unjustified adverse impact on members of a protected class (someone with a disability that is precluded from driving, for example).

With the above in mind, the two threshold considerations for every employer or employee when evaluating the various employment laws are: (1) Does the employment law apply? and (2) Are my employees or am I covered? Assuming the answer is "yes" to each of those questions, the obvious final and most important question is (3) What are my company's obligations or my rights under the law? To answer these questions, the following outlines several of the most common Federal, Pennsylvania and Lancaster County discrimination, wage and hour, protected activity, benefit, and leave laws.

STATUTES AFFECTING THE EMPLOYMENT RELATIONSHIP

When an employer has ONE or more employees, the following laws apply:

Employee Retirement Income Security Act (ERISA) establishes the requirements for employee benefit and pension plans and prohibits the discharge of employees in order to prevent them from obtaining vested benefit or pension rights.

Fair Labor Standards Act (FLSA) establishes the minimum wage rate, regulates overtime pay and restricts child labor employment. The FLSA also requires employers to make, keep, and preserve records concerning their employees' wages, hours worked and other conditions and practices of employment. (Some employers may be exempt from various provisions of the FLSA; however, Pennsylvania has similar laws, including a minimum wage which exceeds the federal minimum wage.) An amendment to the FLSA, the **Equal Pay Act**, requires equal pay for equal work without regard to gender.

National Labor Relations Act (NLRA) establishes the right of employees to form and join unions and to engage in protected concerted activity (joint employee action taken for purposes of collective bargaining, mutual aid or protection, whether or not there is a union). The NLRA also prohibits discrimination and adverse employment action for engaging in union activity, protected concerted activity and for filing charges or giving testimony under the law.

Uniformed Services Employment and Reemployment Rights Act (USERRA) provides reemployment protection and other benefits for veterans and employees who are called to military service. The law seeks to ensure that those who serve their country can retain their civilian employment and benefits, and seek employment free from discrimination because of their service. A Pennsylvania law provides additional protection.

Pennsylvania Wage Payment Collection Law mandates that every employer pay all wages, other than some fringe benefits and wage supplements, due to employees on regularly scheduled paydays designated in advance by the employer.

Pennsylvania Workers Compensation Law provides an employee with income and limits an employer's liability when an employee sustains a job-related bodily injury or occupational disease in exchange for the employer securing appropriate insurance.

Pennsylvania Unemployment Compensation Law provides eligible individuals with income support benefits following the termination of employment. Generally, an individual will be entitled to benefits if they are: (1) able and available to accept suitable work and do not refuse work when offered; (2) have sufficient qualifying wages and credit weeks; and (3) are unemployed through no fault of their own. An individual who has *voluntarily quit* (unless a necessitous and compelling reason exists, such as health reasons) or been discharged for *willful misconduct* (absenteeism, rule violation, for example) is disqualified.

Occupational Safety & Health Act (OSHA) sets standards and mandates inspections depending on the nature of the employment to ensure a safe and healthful workplaces. OSHA standards may require employers to adopt job safety and health practices or procedures reasonably necessary and appropriate to protect workers.

Once an employer has FOUR or more employees, the following laws apply:

Lancaster County Human Relations Ordinance and the **Pennsylvania Human Relations Act (PHRA)** prohibit discrimination on the basis of race, color, national origin, ancestry, religion, gender (includes sexual harassment), age (40 or older), non-job related handicap/disability (includes pregnancy), use of guide or support animals, the handicap or disability of an individual with whom a person is known to have a relationship or association, willingness or refusal to participate in an abortion or sterilization and having a GED.

Once an employer has FIFTEEN or more employees, the following laws apply:

Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities. The ADA applies to a person who has a physical or mental impairment that substantially limits one or more major life activities (i.e. sitting, standing, sleeping or lifting). An employer must engage with the employee in the interactive process and take appropriate steps to reasonably accommodate the employee in completing the essential functions of the position unless it would impose an undue hardship.

Title VII of the Civil Rights Act forbids race, color, religion, sex, and national origin discrimination. An amendment to Title VII, the **Pregnancy Discrimination Act (PDA)** proscribes discrimination based on pregnancy, childbirth or a related medical condition.

Once an employer has TWENTY or more employees, the following laws apply:

Age Discrimination in Employment Act (ADEA) prohibits age discrimination against individuals who are forty (40) years of age or older.

Consolidated Omnibus Budget Reconciliation Act (COBRA) gives covered workers and their families who lose their employer-provided health benefits due to a qualifying event (such as termination of employment or divorce) the right to choose to continue coverage for a specified period of time at their own expense.

Once an employer has FIFTY or more employees, the following law applies:

Family and Medical Leave Act (FMLA) entitles eligible employees to take up to 12 weeks of unpaid, job protected leave every 12 months for: (1) the birth, adoption or foster care placement of a child; (2) the care of a family member (spouse, child, or parent) with a serious health condition; (3) their own serious health condition. In general, an employee returning from FMLA leave must be restored to their original job. Under certain circumstances, an employee may take FMLA leave intermittently or on a reduced leave schedule.