

The Employer Alphabet

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We all learn our ABC's when we are young. There are toys, games, television shows and even a snappy song to help us learn our letters. But employers must learn a whole new alphabet in order to operate within the law on a day-to-day basis. Unfortunately, there are no songs to help employers learn this new alphabet of acronyms, just employment lawyers and other HR professionals. And when employers don't learn their ABCs, they might cry, "Better WARN the CEO that we are being sued under the ADA, FMLA and FLSA, and that the CFO's PeDA with the H-1 means that we have to appear before the EEOC because of Title VII. Call GINA in HR and have her get the attorney on the phone PDQ." Or, "We're going to perform a RIF (reduction in force). What are our obligations under the ADEA, OWBPA, COBRA, ERISA and the WARN Act?"

Below is a list of the federal abbreviations and acronyms all employers must learn. Each state has its own alphabet soup which employers must also learn. For instance, Illinois has the IDHR (Illinois Department of Human Rights), which investigates claims under the IHRA (the Illinois Human Rights Act), and the IHRC (Illinois Human Rights Commission), which hears the actual claims if the claims continue. The IDOL (Illinois Department of Labor) enforces, among other laws, the IWPCA (Illinois Wage Payment and Collection Act) and the IMWL (Illinois Minimum Wage Law). And there's VESSA (Victim's Economic Security and Safety Act), PRRA (the Personnel Records Review Act), ERDA (Employment Record Disclosure Act), and FMLA (Family Military Leave Act -- not to be confused with the federal Family and Medical Leave Act). And the list goes on. We are only providing a brief overview of what the laws are and what they cover, and we recommend you consult with your HR or legal professional for more details.

ADA. The Americans with Disabilities Act of 1990 prohibits discrimination in all aspects of employment based on a disability, including hiring, promotion, pay and benefits, and termination. It prohibits discrimination against a qualified person with a disability, defined as someone who can perform the essential functions of a job position with or without a reasonable accommodation. The ADA applies to employers with 15 or more employees.

ADAAA. The ADA Amendments Act of 2008 expands what is considered to be a disability under the ADA and emphasizes the "interactive process" that employers must engage in with employees when a physical or mental condition affects the employee's job performance.

ADEA. The Age Discrimination in Employment Act of 1967 prohibits employers with 20 or more employees from discriminating against employees who are 40 years old or older. (See also OWBPA.)

COBRA. The Consolidated Omnibus Budget Reconciliation Act provides certain former employees and their spouses and dependent children the right to temporarily (up to 18 months) continue employer group health benefits. COBRA applies to employers with 20 or more employees.

DOL. The federal Department of Labor is charged with the responsibility to administer and enforce dozens of laws, one of the most common being the FLSA, which is enforced by DOL's Wage and Hour Division (WHD).

EEOC. The Equal Employment Opportunity Commission is the federal agency charged with the responsibility to investigate all complaints of employment discrimination brought under Title VII, the ADA, ADEA, EPA and GINA.

EPA. In the context of employment law, this is not the Environmental Protection Agency, but rather the Equal Pay Act of 1963, which requires pay equity for male and female employees in positions with substantially equal job duties and responsibilities, sometimes referred to as "equal pay for equal work."

EPPA. The federal Employee Polygraph Protection Act applies to all employers and generally prevents (with a few exceptions) employers from requesting or requiring lie detector tests either for pre-employment screening or during the course of employment.

ERISA. The Employee Retirement Income Security Act of 1974 is a federal law designed to protect the rights of participants and beneficiaries of employee benefit and retirement plans.

FAA. Here, not the Federal Aviation Administration, but rather the Federal Arbitration Act, which allows for the arbitration of many private disputes filed in state and federal courts, including employment claims, where the parties have agreed to arbitrate.

FCA. The False Claims Act provides whistleblower protection to individuals (including employees) who report companies that defraud governmental programs.

FCRA. The Fair Credit Reporting Act applies to employers who conduct background checks on applicants and employees and requires employers to give notice when requesting "consumer reports," which include background checks, drivers' records, etc., and to disclose to applicants and employees when they are making an adverse employment decision based on the outcome of the consumer report.

FLSA. The Fair Labor Standards Act is the federal wage and hour law that sets rules for minimum wage, child labor and classification of exempt and non-exempt employees. One of the most misunderstood laws by employers, the method of payment (*i.e.*, hourly vs. salary) has nothing to do with whether an employee is exempt or non-exempt from overtime laws.

FMLA. The Family and Medical Leave Act applies to employers with 50 or more employees and requires employers to provide up to 12 weeks of unpaid leave in a year for employees with serious health conditions who are unable to perform the essential functions of the job, or employees who are caring for a spouse (which now includes same-sex spouses), parent or child with a serious health condition, or for the birth or adoption of a child, or for a qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on "covered active duty." The FMLA also provides 26 weeks of unpaid leave in a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the service member's spouse, child, parent or next of kin.

GINA. The Genetic Information Nondiscrimination Act of 2008 prohibits employers (and health insurers) from discriminating against employees on the basis of genetic predisposition to illness and disease, and also restricts employers from requesting, requiring or even possessing genetic information about the employee or family history.

HIPAA. (Be careful! It's not HIPPAA!) The Health Insurance Portability and Accountability Act of 1996 imposes rules on employers to protect the confidentiality of employees' personal health information.

IRCA. The Immigration Reform and Control Act of 1986 prohibits hiring of individuals without legal authority to work in the United States and identifies the steps that must be taken by employers to verify authorization to work. It is enforced by the United States Citizenship and Immigration Services (USCIS).

NLRA. The National Labor Relations Act is the statute that governs all union activity, but also applies to non-union employers. It protects non-union employees who, as a group, engage in certain protected activities related to the terms and conditions of employment. One of the most important parts of the NLRA for non-union employers to know is that they can neither prohibit employees from discussing their pay or complaining about other terms and conditions of employment, nor punish them for doing so.

NLRB. The National Labor Relations Board was established by the NLRA and has the authority to investigate charges of unfair labor practices, to oversee union elections, and to regulate collective bargaining rights.

OSHA. The Occupational Safety & Health Administration enforces the Occupational Safety & Health Act. The law imposes certain obligations on employers to provide safe and healthy workplaces and prohibits retaliation against employees who make complaints or participate in OSHA investigations.

OWBPA is the Older Workers Benefit Protection Act of 1990, which is an amendment to the ADEA. The law makes it illegal to discriminate against individuals 40 and over for employment benefit programs. It also sets specific criteria for individual and group

severance and release agreements in order for employees to waive age discrimination claims.

PDA. The Pregnancy Discrimination Act, which is an amendment to Title VII (see below). The PDA treats discrimination based on pregnancy, childbirth and related medical conditions as sex discrimination under Title VII.

Title VII. Part of the Civil Rights Act of 1964 (and amended versions thereafter), which prohibits any form of discrimination based on race, color, religion, sex (including pregnancy), or national origin, with regard to hiring, termination, promotion, compensation, or any other term, condition or privilege of employment. It applies to employers with 15 or more employees.

USERRA. The Uniformed Services Employment and Reemployment Rights Act of 1994 protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service and prohibits employers from discriminating against past and present members and applicants to the uniformed services.

WARN. The Worker Adjustment and Retraining Notification Act, requires employers with 100 or more employees to provide 60 days written notice to affected employees, union bargaining representatives and local governmental officials of “plant closings” and “mass layoffs.” There are various formulae used to define the requisite number of layoffs that trigger the duty to notify. (Individual state WARN acts may apply to employers with fewer than 100 employees.)

So, now that we know our ABC’s... and all the other useful acronyms and abbreviations of employment law, we can begin to prevent claims from being filed in the first place. YOLO, so do all that you can to avoid hearing your office manger exclaim “OMG!” when she opens envelopes delivered by the USPS from the EEOC and the IDOL alleging violations of the ADEA and the IWPCA because your V.P. (whose career is about to R.I.P.) thought himself a V.I.P. when he hired his BFF after firing a member of AARP without paying out earned VACA.