ABC'S OF EMPLOYMENT RIGHTS

Employment lawyers love to talk in code with each other (it's a way of verifying to each other how smart they think they are!). It's a code largely consisting of acronyms alien to the average citizen. I've spent a lot of time on these pages advising of employment rights. I thought I would try to provide you something you could take with you to work. Know a bit more about the laws that may affect your workplace than your employer expects you to! You might surprise someone in the HR office next time you have a problem. Be mindful, that this "crib sheet" is not legal advice, nor a complete description of the law. It's not a substitute for speaking directly to an attorney if you think workplace or civil rights are being violated.

This article addresses only the more prominent laws affecting the workplace. When employment lawyers list the laws they regularly work with, it's a hodge podge of letters akin to a bowl of alphabet soup. There's the ADA, the FMLA, ADEA, USERRA, WARN, EEOC, and the FLSA, and many more. Of course no list would be complete without the grandfather of all workplace laws. "Title VII" is not an acronym, but it is perhaps the most important workplace law, and is known as the "Civil Rights Act."

The purpose of Title VII, Title 42 U.S.C. (United States Code) Section 2000e *et seq.*, is to prohibit discrimination in employment that is based upon race, color, sex, religion, or national origin. It is interesting to note that the ban on sex discrimination was originally added to the act as an effort by some male senators to kill the proposed bill! Title VII applies to private employers, labor organizations, and employment agencies, as well as to federal, state, and local governments. Two basic theories of discrimination exist: *disparate treatment* (intentional discrimination against a person or job applicant), and *disparate impact* (neutral employment practices that unfairly impact employees or applicants). Title VII also prohibits retaliation in the event of a claim of discrimination. It is under Title VII, that the U.S. Supreme Court, in the context of "sex" discrimination, defined workplace rights against sexual harassment.

The Americans with Disabilities Act of 1990, Title 42 U.S.C. Section 122101 *et seq.*, is a unique law that serves both a nondiscrimination function and an affirmative action function. The ADA prohibits employers from discriminating against qualified individuals with disabilities in the terms, conditions, and privileges of employment. But the ADA also requires employers to make reasonable accommodations for qualified individuals, unless doing so would pose an undue hardship (usually an unreasonable financial burden or workplace disruption) on the employer. Reasonable accommodation is loosely defined as a modification to a work environment that would make it easier for a person with disabilities to enjoy the benefits of employment enjoyed by other employees.The ADA restricts employers from asking applicants and employees questions about their disabilities. There are also public accessibility requirements in the ADA, sidewalk ramps, blue parking spaces, and accessible restrooms evidence some of these mandates.

The acronym ADEA stands for Age Discrimination in Employment Act of 1967, which is found at 29 U.S.C. Section 621, *et seq.* This law protects persons who are 40 years old or

older against discrimination in hiring, promotion, assignment, compensation, discharge, and other terms and conditions of employment. Unlike Title VII and the ADA, the ADEA applies to employers who employ at lest 20 employees. It is important to remember the act does not protect employees who are under the age of 40. It provides protection to any person over 40 years of age who suffers discrimination at work, adverse job action, and who is replaced or disadvantaged at work by someone under 40.

In order to file a lawsuit for discrimination under one of the above laws, a person must first file a charge of discrimination with the U.S. Equal Employment Opportunity Commission, or EEOC. If after investigation the EEOC believes discrimination has occurred it will attempt to "conciliate" the dispute; if unsuccessful, the EEOC will issue a notice permitting access to the federal courts, and allowing a lawsuit.

The Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601 *et seq.,* provides for medical leave to care for certain family members as well as for the employee's own illness, provided the medical condition is "serious" enough to qualify for coverage. The FMLA applies to employers who employ 50 or more employees. To be eligible for FMLA protection, an employee must have been employed for at lest 12 months and worked at least 1250 hours during the 12-month period immediately preceding the start of leave. An employee returning from leave is entitled to return to either the same or an equivalent position.

Other laws define minimum wage and overtime benefits (FLSA – Fair Labor Standards Act); protect returning reservists' employment positions and compensation (USERRA – Uniformed Services Employment and Reemployment Rights Act); and require notices of plant closings and mass layoffs (WARN – Worker Adjustment and Retraining Notification). This is not an exhaustive list. A complete list of all federal laws affecting employees and employers would require a book, not a journal article to list and describe. The mentioned laws are in the author's opinion the most pertinent today. Many states, including Pennsylvania have enacted additional, though not conflicting, laws to augment the federal employment laws.