

## Federal Laws Affecting the Hiring/Selection Process

COVERAGE	ENFORCEMENT	REMEDIES
<b>Equal Pay Act of 1963, 29 U.S.C. §206(d)</b>		
The Equal Pay Act prohibits an employer from discriminating on the basis of sex by paying persons of one sex less than the wage paid to persons of the opposite sex in the same establishment “for similar work in the same job classification.” Excepted are wage differentials based on seniority, merit pay and piecework, and a “differential based on any other factor other than sex.”	The Act is administered by the Equal Employment Opportunity Commission (“EEOC”), but employees are not required to file a charge with the EEOC before filing suit.	A successful plaintiff will receive back pay for up to two years (or three years if the employer’s violation is willful). The court may award liquidated damages in an amount equal to the back pay. Attorney’s fees also are available to the successful plaintiff. These cases may be tried by a jury.
<b>Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621-634</b>		
Employers who are engaged in an industry affecting commerce and who have 20 or more employees are prohibited from discriminating against individuals on the basis of age in hiring or discharge decisions or with respect to compensation, terms, conditions or privileges of employment. The Act protects employees who are at least 40 years of age. Under amendments to the Act, there is no upper limit to the protected age range. Employees of federal, state, and local governments also are protected.	The Act is administered by the Equal Employment Opportunity Commission (“EEOC”). Aggrieved employees are required to file a charge with the agency, and the agency must be given time to attempt conciliation before a complainant may bring a private suit. Private suits under the Act are tried by a jury except in the case of federal employees.	Monetary damages for back pay and other withheld benefits are the standard remedies, but liquidated damages equal to the amount of back pay awarded can be assessed if the employer’s violation is willful. Remedies of reinstatement, retroactive seniority, and appropriate equitable relief (e.g., an injunction) also are available. Attorney’s fees may be awarded to successful plaintiffs.
<b>Immigration Reform and Control Act of 1986, 8 U.S.C. §§1324(a) et seq.</b>		
All employers, including state and local government employers, must verify that employees hired on or after November 7, 1986, are either U.S. citizens or authorized to work in the United States. Verification requires that new hires produce specific documents proving their identity and employment eligibility and, further, that both employee and employer complete a government form, INS form I-9, indicating that the new hire is eligible for employment. In addition, the Act makes it unlawful for employers having four or more employees to discriminate by hiring, recruiting, referring or discharging employees on the basis of national origin, citizenship or intention to obtain citizenship, to the extent that such discrimination is not covered by Title VII of the Civil Rights Act of 1964.	Immigration and Naturalization Service (“INS”) may conduct investigations and hearings and may impose penalties against employers who knowingly hire unauthorized aliens or fail to comply in good faith with the verification procedures set forth in the Act. The Charges of immigration-related discrimination may be filed with the Special Counsel for Immigration-Related Unfair Employment Practices (the “Special Counsel”), to be appointed by the President and approved by the Senate. The Special Counsel will investigate charges received and if he determines that there is reasonable cause to believe the charge to be true, may file a complaint before one of the administrative law judges to be specially appointed by the Attorney General under the Act. The judge will then conduct a hearing on the charge and issue a final order, which is subject to limited judicial review.	If, after investigation, the INS determines that an employer has knowingly hired or continued to employ an unauthorized alien, it may impose a civil penalty of between \$250 and \$10,000 for each unauthorized alien. For violations of the verification requirements of the Act, the civil penalty ranges from \$100 to \$1,000 for each individual with respect to whom a violation occurred. An employer who engages in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens in violation of the Act is subject to a criminal penalty of up to \$3,000 for each unauthorized alien, and imprisonment for up to six months. Employers who are found to have engaged in immigration-related discrimination may be required to hire individuals directly and adversely affected, with or without back pay, to retain records of job applicants, and to pay a civil penalty of up to \$2,000 for each individual discriminated against, or \$10,000 in the case of previous offenders.

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<b>Civil Rights Act of 1964 Title VII - Equal Employment Opportunity, 42 U.S.C. §2000e</b>												
Employers with 15 or more employees are prohibited from discriminating against any individual with respect to compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, sex or national origin.	Title VII is administered by the Equal Employment Opportunity Commission ("EEOC"), and employees must file a charge of discrimination with the EEOC (or with qualified state agencies) as a condition of filing a private suit. The EEOC investigates and attempts conciliation between the employer and the affected employee. The EEOC also may bring suit in federal court against an uncooperative employer.	Remedies of back pay, reinstatement, retroactive seniority, and appropriate equitable relief (e.g., an injunction) may be sought under Title VII. In addition, an employee alleging intentional discrimination may seek compensatory damages and punitive damages up to maximum limitations established by the Civil Rights Act of 1991 (see below). When such damages are sought in a case alleging intentional discrimination, either party may demand a jury trial. Attorneys' fees, including expert fees, may be awarded to the prevailing party.										
<b>Civil Rights Act of 1991, 29 U.S.C. §§1981, 1989, 2000e et seq., and 12101 et seq.</b>												
As amended by the Civil Rights Act of 1991, Section 1981, prohibits any form of intentional race discrimination in employment by either private employers or those acting under state law, including claims arising out of a failure to hire or promote; a failure to provide equal terms, benefits, and conditions of employment; the imposition of discipline; termination; or racial harassment. All persons, including whites, may bring actions alleging race discrimination pursuant to Section 1981. The Supreme Court has construed the term "race" broadly to cover virtually any ethnic group. The Act amends the coverage of Title VII to make it unlawful, in connection with the selection of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or alter the result of, employment related tests based on the race, color, religion, sex, or national origin of the test taker.	<p>The Act made significant changes to ease the plaintiff's burden of proof in two types of Title VII discrimination cases where the Supreme Court had imposed a more difficult burden.</p> <p>First, in "disparate impact" cases, the Act provides that if the plaintiff shows (usually statistically) that a facially neutral practice (such as a test), or analytically inseparable group of practices, causes an unintentional, adverse, disparate impact on a protected group, unlawful discrimination will be established. Thus discrimination is to be found unless the employer affirmatively meets the burden of proving that either there is not casual connection between the practice and the statistical result or that the practice is job related for the position in question and consistent with business necessity. Even if the employer meets the burden of proof, the plaintiff may still prevail by proving that another practice not having a disparate impact also would meet the employer's business goals.</p> <p>Second, in "mixed motive" cases, the Act provides that Title VII is violated if the plaintiff proves that an impermissible factor, such as race or sex, influenced an employment decision. This violation is to be found even if the employer proves that the same decision would have resulted without regard to the role played by the impermissible factor in the decision. However, if the employer does make this showing, the remedy is limited to declaratory relief, injunctive relief, and attorneys fees, but may not include damages, reinstatement, hiring, promotion or repayment.</p> <p>Lastly, one of the Act's most significant changes is the</p>	<p>The Act creates new damage remedies for intentional (disparate treatment) discrimination claims by the disabled or handicapped (under the Americans with Disabilities Act and the Rehabilitation Act of 1973) and by Title VII plaintiffs whose claim is not also covered by Section 1981 -- that is, plaintiffs claiming discrimination because of their sex, religion, or color or national origin if the latter two categories are somehow not covered by Section 1981 (which covers race discrimination).</p> <p>Plaintiffs proving intentional acts of the foregoing types of discrimination may recover compensatory (e.g., pain, suffering, loss of enjoyment) and punitive damages in addition to the traditional remedies of back pay with interest, reinstatement, and other injunctive relief. To recover punitive damages it must be shown that the defendant acted with malice or with reckless indifference to the rights of the plaintiff.</p> <p>The sum of the amount of compensatory and punitive damages awarded for each complainant may not exceed the following limitations:</p> <table data-bbox="1375 1136 1932 1315"> <thead> <tr> <th data-bbox="1375 1136 1596 1193">Employer's <u>Number of Employees</u></th> <th data-bbox="1753 1136 1932 1193">Maximum Dollar <u>Recovery</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="1375 1193 1596 1226">15-100</td> <td data-bbox="1753 1193 1932 1226">\$50,000</td> </tr> <tr> <td data-bbox="1375 1226 1596 1258">101-200</td> <td data-bbox="1753 1226 1932 1258">\$100,000</td> </tr> <tr> <td data-bbox="1375 1258 1596 1291">201-500</td> <td data-bbox="1753 1258 1932 1291">\$200,000</td> </tr> <tr> <td data-bbox="1375 1291 1596 1315">Over 500</td> <td data-bbox="1753 1291 1932 1315">\$300,000</td> </tr> </tbody> </table> <p>These limitations do not apply to suits alleging race discrimination brought under Section 1981 or under Section 1981 and Title VII.</p>	Employer's <u>Number of Employees</u>	Maximum Dollar <u>Recovery</u>	15-100	\$50,000	101-200	\$100,000	201-500	\$200,000	Over 500	\$300,000
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	creation of the right to demand a jury trial in cases where the Act's newly created damages awards (see remedies) are sought.	
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<b>Rehabilitation Act of 1973, 29 U.S.C. §§701-796i, 793-794</b>		
Section 504, applicable to programs and activities that receive federal financial assistance, requires that the covered employer make a reasonable accommodation for a worker's disability. Note that the Americans with Disabilities Act and a great many state fair employment practice laws also prohibit discrimination against the disabled.	The requirements of Section 504 are enforced by the federal agency granting the financial assistance. Enforcement actions may be initiated by the filing of an individual complaint with the appropriate agency or by periodic compliance reviews. An aggrieved individual may sue under Section 504.	Agencies may withhold progress payments for non-complying employers. Alternatively, the employer's contract may be terminated or the employer may be debarred from competing for future contracts. In addition, pursuant to the Civil Rights Act of 1991, claims of intentional discrimination under Section 501 of the Rehabilitation Act may include claims for compensatory or punitive damages subject to the award limitations set forth in the Civil Rights Act. If such damages are sought, either party may demand a jury trial.
<b>Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq.</b>		
<p>The Americans with Disabilities Act ("ADA") protects disabled individuals from discrimination in employment and other major aspects of everyday life. Title I of the Act prohibits employment discrimination against the disabled. The Act also requires covered employers to accommodate "qualified individuals with a disability" unless that accommodation would impose an undue hardship on the employer. The ADA defines "qualified individual with a disability" as an individual with a disability who can, with or without a reasonable accommodation, perform the essential functions of the job that such individual holds or desires.</p> <p>The Act places a number of limitations on the conduct of medical examinations and inquiries. Employers may not make pre-employment medical inquiries, but may ask about the ability of the applicant to perform job-related functions. Pre-employment medical examinations may be used only after a conditional offer of employment has been extended. An offer of employment may be conditioned on the results of the examination only if: (i) all entering employees in the same job category are subjected to the examination regardless of whether or not they have a disability; and, (ii) the information obtained is treated as a confidential medical record and kept in a medical file separate from other personnel information. As for current employees, the ADA permits medical inquires and medical examinations if they are both job related and consistent with business necessity. Testing current employees or applicants to determine the "illegal use of drugs" is not considered a medical examination for purposes of the Act.</p>	The employment provisions of the Act are administered by the Equal Employment Opportunity Commission ("EEOC"). Title I of the ADA incorporated the enforcement procedures and remedies of Title VII of the Civil Rights Act of 1964. Under Title VII, an individual must first file a charge of discrimination with either the EEOC or a state or local fair employment practices agency before bringing suit in court.	A successful plaintiff under Title VII is entitled to injunctive relief, back pay, and attorneys' fees, including expert fees. In addition, as provided by the Civil Rights Act of 1991, an individual proving intentional disability discrimination may recover compensatory and punitive damages subject to the maximum award limitations provided under the Civil Rights Act of 1991. Such damages may not be recovered in a case alleging failure to provide a particular accommodation if the employer demonstrates good faith efforts, in consultation with the disabled person, to identify and make a reasonable accommodation that would provide such individual with and equally effective opportunity. In any case alleging an intentional discrimination where compensatory or punitive damages are sought, either party may demand a jury trial.