

## The Basics of Employment Law Compliance, by Threshold Numbers of Employees

### ALL EMPLOYERS

Some businesses/organizations may be exempt from provisions of the laws listed under "ALL EMPLOYERS" based on: the nature of the business/organization; whether it engages in interstate commerce; its annual gross revenues/sales; and/or other factors.

Any questions about whether a specific business/ organization does or does not have to comply with a specific law should be addressed to a competent labor law attorney or to the agency that administers the law. It is recommended that, unless the business/organization has determined through a labor law attorney or the agency that it does not have to comply with a specific law, it should meet the compliance requirements of that law.

- **New Hire Reporting (Personal Responsibility and Work Opportunity Reconciliation Act of 1996)**

Employers are required to report new hires within 20 days of employment. In Arizona, new hires must be reported to the Arizona New Hire Reporting Center. New hires can be reported by sending a copy of the employee's completed W-4 form or by sending a completed Arizona New Hire Reporting Form.

For additional information, contact them at: <https://newhirereporting.com/az-newhire/default.asp>

- **Fair Labor Standards Act (FLSA)**

The FLSA establishes the minimum wage employers must pay. The federal minimum wage was raised to \$7.25/hour on July 24, 2009.

**NOTE: The current (as of January 1, 2009) minimum wage required by the Arizona Minimum Wage Act (see next page) is \$7.25 hour.**

A poster, "Employee Rights Under The Fair Labor Standards Act" [WH-1088 (rev. June 2007)] must be posted. See PART 3: REQUIRED NOTICES AND POSTERS.

Employers are to establish a 168 consecutive hour (7 days x 24 hours/day) work week for purposes of calculating and paying overtime. Employers are required to pay overtime wages (at a rate of at least 1.5 times the employee's regular hourly rate) to non-exempt employees for all hours worked over 40 in a work week. Payment for overtime must be in the paycheck for the work week in which the overtime is worked. Non-exempt employees are NOT allowed to be given "COMP" time in lieu of payment for overtime.

- **Immigration Reform and Control Act (IRCA)**

The IRCA requires that an I-9 form be completed for each new employee within the first 3 days of employment in order that the employer verify the identity and the employment eligibility of the new employee. **NOTE: the employee MUST complete Section 1 of the form on his/her first (1<sup>st</sup>) day of employment.**

A "Handbook for Employers" (M-274, Rev. 03/09) is available from the Bureau of Citizenship and Immigration; go to: <http://www.uscis.gov/USCIS/Controlled%20Vocabulary/Native%20Documents/m-274.pdf>. There you can download the .pdf file

The Handbook provides instructions for completing the I-9 forms and includes the current (and only acceptable) version of the I-9 form. **NOTE: the current version of the form I-9 shows an expiration date of 06/30/09; however, that the use of that form is required until a revised form is issued.** The "Handbook" also contains color photos of documents that are acceptable as proof of identity, proof of employment eligibility, or both.

- **Legal Arizona Workers Act (LAWA)**

Employers in Arizona must use the federal E-Verify system to verify the employment eligibility of each person hire on or after January 1, 2008. This requirement is IN ADDITION TO the federal I-9 requirement (proof of identity and proof of employment eligibility), above.

Information regarding E-Verify and how to register as an employer is available at:  
[http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm)

- **Worker's Compensation Laws of the state of Arizona**

All employees, whether full-time, part-time, or temporary, MUST be covered by worker's compensation insurance. For specific information regarding the Arizona Worker's Compensation Law and its compliance requirements, contact the Arizona Industrial Commission.

The State Compensation Fund (SCF) in Arizona was formed to make worker's compensation insurance more available to small companies (since many private insurance carriers do not write policies for small businesses/organizations).

- **Arizona Civil Rights Act (ACRA)**

Arizona employers with one (1) or more employees are subject to the sexual harassment provisions of the Arizona Civil Rights Act; so, if a business/organization has one or more employees, its employees have protections from sexual harassment under ACRA.

- **Arizona Wage Laws**

Arizona employers must designate two or more days in each month, not more than sixteen days apart, as fixed paydays for payment of wages to the employees.

When an employee is discharged from the service of an employer, he/she must be paid wages due him within three working days or on the next regular payday, whichever is sooner.

Employers may not withhold or divert any portion of an employee's wages unless one of the following applies:

1. The employer is required or empowered to do so by state or federal law.
2. The employer has prior written authorization from the employee.
3. There is a reasonable good faith dispute as to the amount of wages due, including the amount of any counterclaim or any claim of debt, reimbursement, recoupment or set-off asserted by the employer against the employee.

- **Arizona Minimum Wage Act**

Effective January 1, 2009, the minimum wage in Arizona became \$7.25/hour. This rate is adjusted annually, based on economic indicators, and becomes effective January 1 of the following year.

This law requires new hires be given the employer's name, address, and phone number on the first day of employment.

There is a "small business" exemption:

- the business must have gross annual revenue of less than \$500,000; and,
- the business must be exempt from paying the minimum wage under the federal Fair Labor Standards Act (FLSA), 29 U.S.C 206(a).

- **Smoke-Free Arizona Act**

As of May 1, 2007, employers must prohibit smoking in all public places and place of employment. The only exception is outdoor patios as long as tobacco smoke does not enter, via entrances or windows or ventilation systems or other means, any areas where smoking is prohibited.

Certain signage is required at ALL entrances to buildings. For information about signage, go to:  
<http://www.smokefreearizona.org:80/order-signage.asp>

- **Arizona Child Labor Laws**

A.R.S. 23-230 to 23-242 AND the Fair Labor Standards Act (FLSA) provide guidance regarding "Youth Employment", including the permissible hours of work for youths under the age of 16, prohibited types of work for youth under age 16, and prohibited types of work for youth under 18.

- **Wage Payments, Tax Withholdings (Social Security, Medicare, federal income, state income), and Garnishments**

With regard to wage payments, see “Arizona Wage Laws”, on the previous page.

With regard to tax withholdings, employers should obtain and refer to Publication 15, “Circular E, Employer’s Tax Guide”, which is available from the IRS website at: <http://www.irs.gov/>

With regard to garnishments, you should obtain Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title 3 (CCPA); go to: <http://www.dol.gov/esa/whd/regs/compliance/whdfs30.pdf>

- **Employee Polygraph Protection Act**

The Act restricts the use of polygraphs (which includes lie detector tests, "honesty" tests, and similar tests or activities), except under some very specific conditions and only with the consent of the employee and only if certain procedures are followed and documented. A poster, "Notice: Employee Polygraph Protection Act", must be displayed.

- **Fair Credit Reporting Act (FCRA)**

Background checks/investigations of applicants or employees are considered “consumer reports” under the Act. Applicants or employees must be given a Notice of the employer’s intention to obtain a “consumer report” and authorize the background check/investigation.

A copy of the applicant/employee’s rights under the FCRA (“A Summary of Your Rights Under the Fair Credit Reporting Act”) also must be provided to him/her.

No adverse employment decision based on the results of the “consumer report” can be made until the applicant/employee is told of the information used to reach the decision and is given the opportunity to correct such information.

- **Employee Retirement Income Security Act (ERISA)**

Sets standards for employee benefits plans to ensure the equitable character of and financial soundness of such plans. Sets standards and rules governing the conduct of plan fiduciaries. Group health insurance plans, profit-sharing plans, 401(k) plans, 403(b) plans, and other such group benefits plans must meet ERISA standards.

- **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

Identifies the obligations employers have with regard to the hiring of members of the uniformed services, providing benefits to such members during periods of active duty, and the re-employment of such members returning from active duty.

- **Fair and Accurate Credit Transactions Act (FACT)**

As of June 1, 2005, all employers are required to destroy any document that has personal information on it prior to discarding the document. Personal information could be a telephone number, address, Social Security number, etc.

The law requires the destruction — ‘shredding or burning’ or ‘smashing or wiping’ — of all paper or computer disks containing personal information that is ‘derived from a consumer report’ before it is discarded. This law applies to all employers with one or more employees.

The aim is to protect the public from identity theft, one of the fastest-growing crimes in the United States. Many times personal information is stolen from an employer. The information comes from the employer’s paperwork, as well as computer database systems.

Employers have a duty to restrict access to this data as well as properly dispose of (destroy) the information. Every employer should establish written guidelines for maintaining confidentiality and placing restrictions on access to and use of this information. The guidelines also should contain provisions regarding data of temporary employees and contract employees.

## **EMPLOYERS OF 11 OR MORE**

- **Occupational Safety and Health Act (OSHA)**

Employers of 11 or more employees in certain, but not all, Standard Industrial Classification (SIC) codes and employers required by the Bureau of Labor Statistics must keep records of on-the-job injuries and illnesses on a calendar year basis and must provide that information annually to the Bureau of Labor Statistics.

All employers of 11 or more must meet OSHA safety standards, must display the OSHA required poster, and must report any accident that results in one or more fatalities or the hospitalization of five or more employees.

## **EMPLOYERS OF 15 OR MORE**

- **Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; and, the Arizona Civil Rights Act.**

These laws prohibit discrimination in any aspect of employment (recruiting, interviewing, selection, compensation, benefits, selection for training, discipline, termination, layoff, etc.) on the basis of race, gender, national origin, creed, or color. The Arizona law prohibits discrimination on the basis of handicap, as well.

The federal laws require employers to display a notice, "Equal Opportunity Is The Law", which is available from the Equal Employment Opportunity Commission.

The Arizona law requires employers to display a separate, additional notice, "Discrimination Is Prohibited In Employment", which is available from the Civil Rights Division, Attorney General's Office.

**NOTE: Arizona employers with one [1] or more employees are subject to the sexual harassment provisions of the Arizona Civil Rights Act; previously, only employers with 15+ employees were subject to those provisions.**

- **The Americans With Disabilities Act (ADA)**

This law prohibits discrimination in any aspect of employment on the basis of a person being: a) a "qualified individual with a disability"; b) someone with a history of a disability; or, c) someone perceived to have a disability. A "qualified individual with a disability" is one who meets the prerequisite qualifications for a job and who can perform the essential functions of the job, with or without reasonable accommodation.

The "Equal Opportunity Is The Law" poster identified above covers discrimination on the basis of disability; no additional notice or poster is required. This is a complicated law. It is recommended that employers who are required to comply with the ADA meeting compliance requirements as quickly as possible and that they get assistance from an experienced human resource professional.

## **EMPLOYERS OF 20 OR MORE**

- **Age Discrimination in Employment Act (ADEA)**

This law prohibits discrimination in any aspect of employment on the basis of age – defined as age 40 or older. The "Equal Opportunity Is The Law" poster identified on the previous page covers discrimination on the basis of age; no additional notice or poster is required.

- **COBRA**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) allows employees, and their enrolled dependents, who otherwise would lose group health insurance benefits to continue such benefits. Employers are required to provide an "Initial COBRA Notice" to employees who enroll for group health insurance benefits at the time of enrollment or at the time benefits become effective. If a spouse and/or dependent children are enrolled, the "Initial COBRA Notice" has to be mailed to them.

At the time of a COBRA "qualifying event", the "qualified beneficiary(ies)" must be provided with a "COBRA Election Notice" that includes all information necessary for a "qualified beneficiary" to make an election decision.

**NOTE:** COBRA is a complicated law. It is recommended that employers who are required to comply with COBRA get assistance from an experienced human resource professional or employment law attorney.

- **Older Workers Benefit Protection Act (OWBPA)**

It is basically an amendment to the ADEA that establishes the circumstances under which a “release/waiver of claims” agreement, in which the employee waives his/her rights under the ADEA, is valid when offered, in conjunction with a severance package, to an employee who is being discharged or laid-off or otherwise separated from employment.

## **EMPLOYERS OF 50 OR MORE**

- **Family and Medical Leave Act (FMLA)**

The Act requires employers to grant up to 12 weeks of unpaid FMLA leave to employees who are eligible.

The Act requires employers to display a notice, "Your Rights Under the Family and Medical Leave Act of 1993", which is available from the Wage and Hour Division, U.S. Dept. of Labor.

**NOTE:** The FMLA is a complicated law. It is recommended that employers who are required to comply with the FMLA get assistance from an experienced human resource professional or employment law attorney.

- **Trip Reduction Legislation**

Employers in Maricopa County, Arizona, who employ 50 or more employees working at, or reporting to, a single work site must comply with the 1988 Air Quality Bill (ARS 49-581 et seq.).

For more information about the requirements of employers for establishing a trip reduction program, go to: <http://www.maricopa.gov/envsvc/COMMUNIT/trp.asp>

- **Arizona Crime Victim Leave Act**

Requires employers to provide unpaid “crime victim leave” to employees who is a “victim” of a crime, as defined in A.R.S. 13-4439 or A.R.S. 8-420, in order to attend all court proceedings involving the perpetrators of the crime, including preliminary hearings, trials, and post-trial hearings.

## **EMPLOYERS WITH 100 OR MORE**

- **EEO-1 Reporting**

Private employers must file an EEO-1 report annually if they are:

- subject to Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972) with 100 or more employees EXCLUDING State and local governments, primary and secondary school systems, institutions of higher education, Indian tribes and tax-exempt private membership clubs other than labor organizations;

**OR**

- subject to Title VII who have fewer than 100 employees if the company is owned or affiliated with another company, or there is centralized ownership, control or management (such as central control of personnel policies and labor relations) so that the group legally constitutes a single enterprise, and the entire enterprise employs a total of 100 or more employees.

For more information or to obtain an EEO-1 Report Form, go to: <http://www.eeoc.gov/eo1survey/>

- **Trip Reduction Legislation**

Employers in Maricopa County, Arizona, who employ 100 or more employees working at, or reporting to, a single work site must meet MORE requirements of the 1988 Air Quality Bill (ARS 49-581 et seq.) than do employers of 50-99 employees working at, or reporting to, a single work site.

For more information about the requirements of employers for establishing a trip reduction program, go to: <http://www.maricopa.gov/envsvc/COMMUNIT/trp.asp>

- **Worker Adjustment and Retraining Notification Act (WARN)/ Plant Closing Law**

Requires employers to provide early (60 days prior) and written notification to employees when plant closings, layoffs, or reduction of work hours will affect them. Certain terms and conditions apply (number of employees that will be affected, employer size, etc.) and certain exceptions exist based on reason for the actions. If layoffs, plant closings, or reductions in hours worked are anticipated for more than a few employees, the organization should obtain additional information regarding the requirements of the WARN/Plant Closing Law.