

# Employment Law for Caseworkers

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# Overview

- ▶ Employment At-Will Doctrine
- ▶ Wage Claims
- ▶ Employment Discrimination
- ▶ How you can protect your clients!

# Employment At-Will Doctrine

## Some History...

- ▶ The law swings like a pendulum from one side to the other!
- ▶ On the side of employees
- ▶ USA went from the English Rule to the American Rule.
- ▶ The English Rule presumed that employees were hired for a year and could not be let go without cause.
- ▶ Pendulum swings to employers!
- ▶ With the rise of the Industrial Revolution, the American Rule (employment at will) gained favor and was upheld by the US Supreme Court in 1908 in *Adair v. United States*.
- ▶ Now, workers could be let go at any time for any reason.

# Employment At-Will Doctrine

## Some History...

- ▶ BUT
- ▶ Public employees, state or federal, continued to enjoy protections from dismissal for no reason.
- ▶ Several court cases discussed the property interest that a public sector employee has in his or her employment.

# Employment At-Will Doctrine

## Some History...

- ▶ Pendulum back to employees
- ▶ In the private sector, the at-will doctrine also weakened, specifically through civil rights legislation, such as the Civil Rights Act of 1964 and public interest exceptions.
- ▶ In general, the pendulum swung to employees during the 1960s and 70s.
- ▶ For example, in *Peterman v. Intl Brotherhood of Teamsters, Local 396* (California, 1959), the court held that an employee couldn't be fired b/c the employee refused to commit perjury for his employer, despite the fact that the statute didn't contemplate this.
- ▶ In Arizona, courts ruled on the public policy exceptions to the at-will rule as well. ARS § 25-1501

# Employment At-Will Doctrine

## Some History...

- ▶ Examples of things against public policy:
  - ▶ employee refuses to cover up employer's theft of customers property (*Vermillion v. AAA Pro Moving & Storage*),
  - ▶ employee refuses to take part in "mooning" parody (*Wagenseller v. Scottsdale Memorial Hospital*),
  - ▶ whistle blowing on prisoners being illegally detained (*Wagner v. City of Globe*), and
  - ▶ discrimination based on statute (*Broomfield v. Lundell*).
- ▶ The court also stated that the three Ps (promises, policies, practices) could modify the at-will doctrine and create a contract. Contracts have a requirement of good faith and fair dealings.

# Employment At-Will Doctrine

## Some History...

- ▶ Pendulum towards Employer
- ▶ The Employment Protection Act, passed in 1996, limits what the courts recognized as contract law in employment.
- ▶ Specifically, in *Leikold v. Valley View Community Hospital*, an Arizona Supreme Court case decided in 1984, the court held that the three Ps (promises, policies, practices) could modify the at-will doctrine.
- ▶ The EPA limited that - employment manuals and policies do not create contracts in and of themselves.
- ▶ The statute of limitations (how quickly you must sue) used to be 3 or 6 years, depending on the claim, but now it is one year.

# Employment At-Will Doctrine

## Some History...

- ▶ The EPA also limited what is against public policy.
- ▶ Now, only acts outlined in statute or constitution are protected.
- ▶ An employer cannot retaliate against an employee for refusing to do something that would violate Arizona's law;
- ▶ for whistle blowing to a public entity or to the employer;
- ▶ or for exercising certain rights established by statute or common law (ex: exercising workers comp rights, jury duty, voting rights, military service, right to be free from the extortion of fees or gratuities as a condition of employment, refusing to buy food from a certain person/entity as a condition of employment, or victim leave rights).



# Employment At-Will Doctrine

## Some History...

- ▶ The EPA and Employees
- ▶ Government employees can sue for wrongful discharge if the employee has a right to continued employment under the US or Arizona Constitution, Arizona statutes, applicable regulation, policy, practice, or contract.
- ▶ Employers with 1 or more employees cannot sexually harass employees.
- ▶ EPA covers a broader range of whistle blowing activity (common law required that whistle blowing protect the public - under the EPA you can report that you are not getting paid, a personal matter, and it is still protected).

# Employment At-Will Doctrine

## Some History...

- ▶ Constructive Discharge Act of 1997
- ▶ if your working conditions are so intolerable or horrible that a reasonable person would quit, you can quit.
- ▶ Intolerable or horrible working conditions include:
  - ▶ sexual assault,
  - ▶ threats of violence against employee (but there is a cooling period after a complaint),
  - ▶ continued discriminatory conduct.
- ▶ If in doubt, give the employer 15 days notice (it's ok to take leave for those 15 days before quitting).

# Wage Claims - a big deal?

- ▶ Yes, for those getting paid “under the table” and even for those with an employment contract!
- ▶ In the news:
- ▶ **Male Teachers Claim Wage Discrimination**
  - ▶ Nine Pennsylvania teachers filed a federal lawsuit alleging their female counterparts get better pay.
- ▶ Not in the news:
  - ▶ Taxi drivers, mechanics
  - ▶ Tourism industry workers
  - ▶ Restaurant workers

# Wage Claims - what's the law

- ▶ Employee v. independent contractor
- ▶ Salaried
- ▶ Minimum Wage
- ▶ Not getting paid
  
- ▶ Under the table
  
- ▶ Document, document, document
  
- ▶ Gather everything - your employer is building a file on you, build a file on the employer!

# Wage Claims - what's the law

- ▶ Employee v. independent contractor
- ▶ **Independent contractors** - misclassified employees, why do you care? A lot of people are listed as independent contractors and are improperly denied overtime pay, benefits, and other benefits of employment.
- ▶ In general, these workers are less likely to have documentation regarding their employment and, if something goes wrong, are left unprotected.
- ▶ Whether classified as an independent contractor or not, keep copies of everything. Make sure you know your employers name, address, etc.
- ▶ The test: depends on entity (IRS, court, etc.) but essentially depends on how much/what kind of control employer has over the contractor, how often contractor works, what type of work.

# Wage Claims

- ▶ Salaried employees
- ▶ Executive
- ▶ Administrative
- ▶ Professional
- ▶ Outside sales
  
- ▶ Job duties
- ▶ Minimum of \$455 per week

# Wage Claims

- ▶ The Minimum Wage Act establishes a minimum wage in Arizona, record-keeping requirements, and allows for private right of action (this means YOU can sue instead of relying on an agency).
- ▶ Min. Wage Act violation SOL is one year. ICA's DOL will enforce if filed w/in a year and less than \$2,500.
- ▶ AZ Wage Act, workers get paid at least twice a month: ICA's DOL enforces, SOL is 2 years, 3 years if willful violation.
- ▶ Arizona Equal Pay Act: men and women get paid the same for the same work, enforced by ICA's Labor Department or private right of action, the SOL is 6 months.

# Wage Claims

- ▶ Arizona Minimum Wage Act
- ▶ Not waiveable, whether verbally or in writing. Your employer cannot make you sign away your rights.
- ▶ Excluded: small business (less than 500k in revenue and not subject to FLSA), the state of Arizona, federal government.
- ▶ All those notices in the break room are required because of this law.
- ▶ Under this law, employees have the right to inspect and copy their own payroll history.
- ▶ Employer must keep 4 years of records.



# Minimum Wage Claims

- ▶ Employees must be paid a minimum wage - but what is a wage?
- ▶ It includes food, lodging (can't exceed fair market value and must be in writing, in records), company car, etc. - unless a collective bargaining agreement excludes them.
- ▶ On the other hand, an employer can't reduce your wages due to: providing tools, equipment, uniform, etc. (unless a collective bargaining agreement states otherwise).
- ▶ Restaurant workers: always report your tips. Further, your wages should equal the minimum wage once tips are included.

# Filing a Complaint with the Industrial Commission of Arizona (ICA) re: Min. Wage

- ▶ ICA can enforce - or the attorney general, city attorney, county attorney, or YOU!
- ▶ Anyone / any entity can file a complaint.
- ▶ ICA is required to investigate.
  - ▶ May include review of all the employers records (to find pattern, keep employee anonymous)
  - ▶ ICA cannot divulge the employee's name without the employees consent.
- ▶ Once the investigation is done, ICA issues a Findings and Order.
  - ▶ Will be sent to employer, complainant, sometimes affected employees.
- ▶ Employer can be ordered to pay triple wages, along with other fines.
- ▶ The ICA CANNOT sue in court on your behalf.

# Min. Wage claims - what to do about it

- ▶ Advise the person to call your local legal aid office!
- ▶ Advise the person to document their case.
- ▶ Determine whether there is an issue. (You have the right to review your records. The Min. Wage Act does not apply to everyone.)
- ▶ Talk to HR
- ▶ Determine how to proceed
- ▶ Send a demand letter, if no ICA involvement
- ▶ How much money is at stake - determines in what court to sue
- ▶ Bring a claim under the Arizona Minimum Wage Act, if appropriate

# Didn't get paid?

- ▶ Arizona Wage Act
- ▶ Get paid at least twice a month, on fixed paydays, not more than 16 days apart (with some exceptions)
- ▶ If disputed amount is less than \$2,500 then ok to file with ICA
- ▶ Court may award triple damages, attorneys fees, court costs if the amount due is not in dispute
- ▶ Contract dispute
  
- ▶ Document, document, document

# Didn't get paid?

- ▶ Usually happens to employees who are terminated and especially to employees who do not have proper employment and tax documents
- ▶ Discharged employees must be paid wages within three working days from the date of discharge or on the next regular payday, whichever is earlier
- ▶ If employee resigns, next regular payday
- ▶ Undetermined wages can be paid later
- ▶ If employee requests that wages be mailed, employer must do so
  
- ▶ If the employee has certain property of the employers, the employer can withhold the check (or, at least the amount that the property is worth)

# How you can help

- ▶ Employees should keep a record of their hours worked
- ▶ Keep a record of tips, pay, wages, etc.
- ▶ Keep a record of when you receive wages
- ▶ Get a witness, if two coworkers get paid then go together
- ▶ Do sign write ups - can be evidence later

# Paycheck deductions

- ▶ An employer can deduct certain things from an employees paycheck per ARS § 23-353
- ▶ The employer is required to withhold by state or federal law (ex: taxes, FICA)
- ▶ The employee has submitted a voluntary written authorization to the employer (ex: 401(k) contribution)
- ▶ Employer has received a written authorization based upon an agreement between the employee and the employer (ex: uniform, lost tools)
- ▶ Reasonable, good faith doubt as to the amount of wages due
- ▶ Employer cannot offset debts. Ex: employee works in department store and owes the store money. Employer can't deduct the amount owed.

# Filing a Complaint with the Industrial Commission of Arizona (ICA) re: Unpaid Wages

- ▶ File a written claim w/in one year of the date wages became due
- ▶ Make sure the amount is for \$2,500 or less
- ▶ ICA investigates and
  - ▶ Will dismiss the claim, or
  - ▶ Notify the parties that there is a dispute that an investigation can't resolve, or
  - ▶ Determines claim is valid and orders the employer to pay (if the employer doesn't pay w/in 10 days, the employer is liable for triple the amount of unpaid wages plus interest)
- ▶ Either party can appeal the ICA's decision in court
- ▶ The ICA's finding will be filed with a court
- ▶ If the ICA finds that there is a dispute that can't be resolved, you can sue in court



# Unpaid Wage Claims - what to do about it

- ▶ Advise the person to call your local legal aid office!
- ▶ Determine whether there is an issue.
- ▶ Talk to HR
- ▶ Determine how to proceed
- ▶ Send a demand letter, if no ICA involvement
- ▶ How much money is at stake - determines in what court to sue
- ▶ Bring a claim under the Arizona Wage Act, if appropriate

# Youth Employment Laws

- ▶ ARS § 23-232 prohibits kids under 16 from certain types of work (ex: no heights over 5 feet, no dry cleaning)
- ▶ Children under 18 also have restrictions (ex: can't work around explosives)
- ▶ Over 16? Work as much/whenever you want (with parental permission)
- ▶ Under 16 and in school? Can't work more than 18 hours in one week. No school, can work up to 40 hours but either way no more than 8 hours a day.
- ▶ Under 16? No night time work for you.
  
- ▶ BUT, there is an exception for relatives, actors, training school programs, and more.

# Youth Employment Violation - what now

- ▶ File with the ICA
- ▶ If the ICA reasonably believes there's a violation, it will serve a cease and desist order
- ▶ Violator can appeal within 20 days and go to a hearing
- ▶ Administrative Law Judge will hold the hearing

# Employment Discrimination - the Law

- ▶ Many different laws
- ▶ Employment discrimination laws typically have a requirement for a minimum number of employees.

# What can you do?

- ▶ Document, document, document

# The Basics



- ▶ Arizona is a right to work state.
- ▶ What this means for you:
  - ▶ You can quit anytime you want.
- ▶ What this means for your employer:
  - ▶ You can be fired for **any** reason or for **no** reason - as long as it is not a bad reason.

# Overview

- ▶ **Discrimination**
  - ▶ Federal Law
  - ▶ What you can do
  - ▶ The EEOC
    - ▶ Claims
    - ▶ Process



# Discrimination

- ▶ Types of Discrimination:

- ▶ Age
- ▶ Disability
- ▶ HIV / Aids
- ▶ Gender
- ▶ Religion
- ▶ National Origin
- ▶ Race
- ▶ And more!

I.e. a “bad” reason.



# Federal Employment Laws

- ▶ Civil Rights Act of 1964, as amended (15+)
  - ▶ Race, color, national origin, sex, religion
  - ▶ Pregnancy Discrimination Act
  - ▶ Retaliation
  - ▶ Genetic Information Nondiscrimination Act
- ▶ Reconstruction Civil Rights Acts (1+)
- ▶ Age Discrimination in Employment Act (20+)
- ▶ Americans with Disabilities Act, as amended (15+)

# Federal Employment Laws

- ▶ Fair Labor Standards Act (FLSA)
  - ▶ Wages, overtime, youth employment
  - ▶ The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments
  - ▶ The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) enforces the FLSA

# Federal Employment Laws

- ▶ Uniformed Service Employees Re-employment Rights Act (1+)
  - ▶ Protects civilian job rights and benefits for veterans and members of the active and Reserve components of the U.S. armed forces.
  - ▶ Returning service-members must be promptly reemployed in the same position that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority.
  - ▶ File with VETS (Veterans Employment and Training Services)

# Federal Employment Laws

- ▶ National Labor Relations Act, as amended
  - ▶ \$500k revenue or
  - ▶ \$50k interstate trade
- ▶ Guarantees basic rights of private sector employees to organize into trade unions, engage in collective bargaining for better terms and conditions at work, and take collective action including strike if necessary
- ▶ Created the National Labor Relations Board

# Federal Employment Laws

- ▶ Title III, Consumer Credit Protection Act (Garnishment)
  - ▶ Restrictions on wage garnishment guard employees from discharge by their employers because their wages have been garnished for any one indebtedness
  - ▶ File with the Wage and Hour Division

## ▶ Family Medical Leave Act

- ▶ Employer 50+
- ▶ Employee 50+, 75 miles, work 1250 hours in 12 months
- ▶ eligible employees may take unpaid, job-protected leave for specified family & medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.
  - ▶ Twelve workweeks of leave in a 12-month period for:
    - ▶ birth of a child & to care for newborn child within one year of birth;
    - ▶ placement with employee of a child for adoption or foster care & to care for newly placed child within one year of placement;
    - ▶ care for the employee's spouse, child, or parent who has a serious health condition;
    - ▶ serious health condition that makes the employee unable to perform the essential functions of his or her job;
    - ▶ any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or
  - ▶ Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave)
- ▶ Report to Wage and Hour Division

# Federal Employment Laws

- ▶ Polygraph Protection Act - same as FLSA
  - ▶ prevents employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions
  - ▶ Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act
  - ▶ In addition, employers are required to display the EPPA poster in the workplace for their employees
- ▶ Report to Wage and Hour Division

# Federal Employment Laws

- ▶ Equal Pay Act - same as FLSA
  - ▶ Equal wage for the sexes
  - ▶ Report to EEOC
- ▶ Occupational Safety & Health Act
  - ▶ 1+ for ADOSH
  - ▶ 10+ for federal
  - ▶ Report to OSHA
- ▶ Immigration Reform & Control Act, as amended
  - ▶ 4+ for citizenship/national origin



# Federal Employment Laws

- ▶ Employment Retirement Income Security Act
  - ▶ If employee benefits
  - ▶ 20+ for COBRA
- ▶ Sarbanese-Oxley
  - ▶ Publicly traded business
- ▶ Bankruptcy
- ▶ Worker Adjustment and Retraining Notification (100+)
- ▶ Numerous “integrity” laws

# Document

- ▶ If you believe that you are being discriminated against or harassed, document it. Keep a journal with dates, names, and what happened.
- ▶ Keep copies of the employee handbook, policies, memos, reviews, etc.
  - ▶ Make sure you do not remove sensitive or confidential information!

# Document

- ▶ The behavior must be severe enough to result in harassment or a hostile or offensive work environment.
- ▶ The behavior can also be an adverse employment action / decision.
- ▶ The law does not prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious.

# Adverse employment action

- ▶ The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

# Supervisor

- ▶ The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

# Co-worker

- ▶ The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

# Harassment

- ▶ Harassment can include, for example, offensive remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).
- ▶ The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Age
- ▶ Disability
- ▶ Equal Pay/Compensation
- ▶ Genetic Information
- ▶ Harassment
- ▶ National Origin
- ▶ Pregnancy
- ▶ Race/Color
- ▶ Religion
- ▶ Retaliation
- ▶ Sex
- ▶ Sexual Harassment



# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Age
  - ▶ Forbids age discrimination against people who are age 40 or older
  - ▶ It is not illegal for an employer or other covered entity to favor an older worker over a younger one, even if both workers are age 40 or older
  - ▶ Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Disability
  - ▶ treating a qualified individual with a disability (or who is believed to have, who has a history of, or relationship with) who is an employee or applicant unfavorably because she has a disability
  - ▶ The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").
  - ▶ What is a disability?

## ▶ Disability

- ▶ What is a disability?
- ▶ The ADA has a three-part definition of *disability*.
  - ▶ (1) has a physical or mental impairment that substantially limits one or more major life activities; OR
  - ▶ (2) has a record of such an impairment; OR
  - ▶ (3) is regarded as having such an impairment.
- ▶ *A physical impairment*: "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine."
- ▶ There is NO comprehensive list.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Equal Pay/Compensation
  - ▶ Men and women in the same workplace must receive equal pay for equal work.
  - ▶ The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal.
  - ▶ All forms of pay are covered by this law!
  - ▶ If there is an inequality in wages, employers may not reduce the wages of either sex to equalize their pay.
  - ▶ An individual may go directly to court and is not required to file an EEOC charge beforehand.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Genetic Information
  - ▶ Prohibits the use of genetic information in making employment decisions.
  - ▶ Restricts employers and other entities from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Harassment
  - ▶ 1) enduring the offensive conduct becomes a condition of continued employment, or
  - ▶ 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
  - ▶ **Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality.**

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ National Origin
  - ▶ Treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).
  - ▶ Treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.
  - ▶ The victim and the person who inflicted the discrimination can be the same national origin.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Pregnancy
  - ▶ treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth
  - ▶ If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee
  - ▶ May be disability under the ADA - reasonable accommodations



# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Race/Color
  - ▶ Treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.
  - ▶ Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.
  - ▶ The victim and the person who inflicted the discrimination can be the same race or color.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Religion
  - ▶ Treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, but also others who have sincerely held religious, ethical or moral beliefs
  - ▶ Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group
  - ▶ Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Retaliation
- ▶ All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Sex
- ▶ Involves treating someone (an applicant or employee) unfavorably because of that person's sex
- ▶ Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex
- ▶ Discrimination against an individual because that person is transgender is discrimination. This is also known as gender identity discrimination. In addition, lesbian, gay, and bisexual individuals may bring sex discrimination claims.

# Reporting

- ▶ Report Violations to the Equal Employment Opportunity Commission (EEOC)
- ▶ Sexual Harassment
  - ▶ It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature
  - ▶ Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general
  - ▶ Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex

# Reporting

- ▶ The process:
- ▶ You (or someone on your behalf) file charge
  - ▶ Make sure you file timely (times vary)
- ▶ Mediation
- ▶ Investigation
- ▶ Nothing found - Right to Sue Letter issued
- ▶ Something found
  - ▶ EEOC attempts settlement
  - ▶ If unsuccessful, case is referred to EEOC staff
  - ▶ Staff may sue on your behalf or issue a Right to Sue letter

# Reporting

- ▶ If the EEOC feels like your case has no merit OR if the EEOC does not have the authority to investigate that type of case, the EEOC may dismiss the case.
- ▶ EEOC enforces FEDERAL law.

# Reporting

- ▶ EEOC enforces FEDERAL law.
- ▶ State law violation?
- ▶ Arizona Civil Rights Division (Phoenix) (FEPA)  
1275 W. Washington  
Phoenix, AZ 85007  
Phone: 602-542-5263  
Fax: 602-542-8885  
TTY: 602-542-5002  
Website: <https://www.azag.gov/civil-rights>



# Overview

- ▶ 1. The Basics
- ▶ 2. Discrimination
- ▶ 3. Wage Claims
- ▶ 4. Unemployment Insurance



# Wage Claims

- ▶ The Fair Labor Standards Act (FLSA)
- ▶ State Minimum Wage Laws
- ▶ Reporting Violations



# FLSA

- ▶ Applies to employers:
  - ▶ Whose annual sales total \$500,000 or more; or
  - ▶ Engage in interstate commerce.
  - ▶ Common exemptions:
    - ▶ Executive, administrative, professional
    - ▶ Outside sales people
    - ▶ Computer specialists
    - ▶ Apprentices
    - ▶ Misc workers

NOTE: salaried does not mean exempt. Even these exemptions have some exceptions.

# FLSA

- ▶ Regulates:
  - ▶ Minimum Wage
  - ▶ Form of Pay
  - ▶ Tips / Commissions
  - ▶ Equal Pay Act
    - ▶ Equal Pay for Equal Work
    - ▶ Exceptions: seniority, merit, quantity / quality, any factor other than gender
  - ▶ Overtime
    - ▶ After 40 hours, employee paid time and a half.
    - ▶ There are some exceptions.
  - ▶ Child Labor

# Reporting Violations

- ▶ Report FLSA violations to the Wage and Hour Division:
  - ▶ 1-866-4USWAGE (1-866-487-9243)
  - ▶ Remember: employer may not retaliate against you for filing a claim.

# Reporting Violations

- ▶ Report Wage Disputes to:
- ▶ Arizona Industrial Commission - Labor Department
- ▶ Karen Axsom, Director  
Email: [laboradmin@ica.state.az.us](mailto:laboradmin@ica.state.az.us)  
Phoenix: 800 W Washington St, Phoenix AZ 85007 - Phone: (602) 542-4515  
Tucson: 2675 East Broadway, Tucson AZ 85716 - Phone: (520) 628-5459

# CLS

- ▶ Need help?
- ▶ Call us.

# Scenario 1

- ▶ Examples:
- ▶ Bank statements showing payments from employer
- ▶ Time sheets and work done during that time
- ▶ Tax documents regarding Todd's status as a worker v. independent contractor
- ▶ Information on Maxxi Taxxi from the Corporation Commission's website
- ▶ Full name, address, and phone number of Randy
- ▶ Find out if Randy actually owns Maxxi Taxxi
- ▶ Ask for check, not cash (are taxes getting taken out?)
- ▶ Coworker names, address, phone numbers



# Scenario 2

- ▶ Fax reports - confirm sending stuff
- ▶ Paycheck stubs
- ▶ Name, address, and phone number of owner
- ▶ Information on the company that owns the motel
- ▶ Tax documents, status
- ▶ Time cards along with what done
- ▶ Normal rate of rent in the area
- ▶ Bank statements
- ▶ Memos
- ▶ Have owners sign time sheets
- ▶ Employment manual

# Scenario 3

- ▶ Don't give too much info about meds, medical condition, etc.
- ▶ Employment Manual
- ▶ Time Sheets and work done
- ▶ Actual job duties
- ▶ Employers job description
- ▶ Proof that ok to work from home
- ▶ Proof that now not ok to work from home
- ▶ Emails
- ▶ Tax documents
- ▶ Pay stubs
- ▶ Information on company
- ▶ FMLA/medical policies

# Scenario 4

- ▶ Tax documents
- ▶ Anything signed
- ▶ Name, address, phone number of the Mobile Home Park
- ▶ Name, address, phone number of the entity that owns Mobile Home Park
- ▶ Name, address, phone number of Ward Sylwester
- ▶ Name, address, phone number of all coworkers
- ▶ Time sheet
- ▶ What is done during that time
- ▶ Payment - proof made or lack thereof
- ▶ Rental info and lease
- ▶ Food info and receipts
- ▶ Pictures of the caves
- ▶ Emails/documentation of telling Ward about the caves

# Scenario 5

- ▶ Employment handbook
- ▶ Resumes of hired and rejected employees
- ▶ Employee evaluations from interviews of hired/rejected applicants
- ▶ 90 day review
- ▶ Time card and what done during that time
- ▶ Payment of wages information
- ▶ Emails between June and Wendy