

# HR 101

Business Resource Session  
March 5, 2025



**The Fun HR Pros**



# Texas Specific

- 1 employee

- Texas Payday Law (private sector) defines how and when employers can pay wages (PTO, holiday, parental, severance, etc.)
  - If an employee is fired (involuntarily terminated), final wages are due within **6 calendar days**
- Texas Unemployment Compensation Act
  - Applies to employers who pay \$1500 or more in gross wages in a calendar quarter
    - Employers must register with the TWC
    - Employers must file quarterly wage reports and make quarterly tax payments

- 2+ employees

- Texas “COBRA” law or the Small Employer Health Insurance Availability Act
  - Requires health benefit continuation for employees up to 9 months (vs. 18/36 under federal COBRA)
  - Employees must have been covered by the group health plan for at least 3 months before the QE
  - Employees must elect continuation coverage within 60 days of separation & pay the full premium
  - Employee cannot have been terminated for “gross misconduct”



# Federal Labor Laws by Number of Employees

## All employers regardless of number of employees

- American Taxpayer Relief Act
- Consumer Credit Protection Act
- Employee Polygraph Protection Act
- Employee Retirement Income Security Act (ERISA)\*
- Equal Pay Act
- Fair and Accurate Credit Transactions Act
- Fair Credit Reporting Act
- Fair Labor Standards Act (FLSA)\*
- Federal Insurance Contributions Act (FICA)
- Health Insurance Portability and Accountability Act (HIPAA)\* *if offering benefits*
- Immigration Reform and Control Act\*
- Immigration and Nationality Act
- Lilly Ledbetter Fair Pay Act
- Mental Health and Addiction Equity Act (for group health insurance plans)
- National Labor Relations Act
- Newborns' and Mothers' Health Protection Act (for group health insurance plans)
- Occupational Safety and Health Act (OSHA)\*
  - OSHA Hazard Communication Standard
- Sarbanes-Oxley Act (SOX)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)



# Federal Labor Laws by Number of Employees

	11+	15+	20+	50+	100+
OSHA Recordkeeping*	X	X	X	X	X
Americans with Disabilities Act (ADA)*		X	X	X	X
Genetic Information Nondiscrimination Act (GINA)		X	X	X	X
Pregnancy Discrimination Act		X	X	X	X
Pregnant Workers Fairness Act*		X	X	X	X
Title VII of the Civil Rights Act*		X	X	X	X
Age Discrimination in Employment Act (ADEA)			X	X	X
Consolidated Omnibus Benefits Reconciliation Act (COBRA)*			X	X	X
Affordability Care Act & 1094 Reports filed annually*				X	X
EEO-1 Report filed annually				If a federal contractor/sub with a contract of \$50k+	X
Family and Medical Leave Act				X	X
Patient Protection and Affordable Care Act				X	X
Worker Adjustment and Retraining Notification Act (WARN)					X

EOs do not override laws, i.e. The Civil Rights Act of 1964



# Federal Labor Laws (All)

- Equal Pay Act & Lilly Ledbetter Fair Pay
- Fair Credit Reporting Act
  - Employers must get written consent before pulling an applicant's credit history
  - Employers must inform applicant that the report may be used for employment decisions
  - A copy of the report and summary of rights must be provided if adverse action is taken based on the report (i.e. not hired)
  - "Investigative Consumer Reports" require a separate disclosure form aka running criminal history, education, employment history, references, residences, SSN
- Immigration Reform & Control Act
  - I-9 supporting documents
  - E-Verify
- ERISA (private sector): Sets *minimum standards* for retirement and health plans (pre & post-tax), and requires plans to provide participants with *plan information*

Consider  
finance/accounting  
positions, positions that  
access customer payment  
info

What does your  
Handbook say about  
background and drug  
tests? Do you have a  
documented procedure  
for these items?



# Federal Labor Laws (All)

- USERRA: Protects current and former members of the Armed Forces, Reserves, National Guard, and other uniformed services. **Guarantees:**
  - Prompt reemployment in the same position with the same seniority, status, and pay
  - Health plan continuation coverage for up to 24 months while in the military
  - Reinstatement in the employer's health plan when reemployed without waiting period
- OSHA
  - Hazardous chemicals in the workplace? → **Required** to develop & implement a written hazard communication program AND train employees on the hazards they're exposed to and proper precautions
  - Report work-related fatalities within 8 hours and
  - Report work-related in-patient hospitalizations, amputations, loss of an eye within 24 hours



# Federal Labor Laws

- FLSA – Applies if a company has \$500,000 in gross revenue
  - Who is covered?
    - Private sector: full-time and part-time employees
    - Public sector: federal, state, and local government employees
    - Interstate commerce & Domestic workers
  - What are the protections?
    - Minimum wage
    - Overtime
    - Child labor regulations
    - Recordkeeping
    - Retaliation protections
  - Enforced by the DOL's Wage & Hour Division





# Federal Labor Laws

HR 201:  
Sales  
roles &  
the FLSA

## FLSA – Why does this matter to my business?

- Overtime pay (1.5x regular rate over 40 hours worked)
  - ✓ Define your workweek – Is it documented and communicated?
  - ✓ Proper classifications: Exempt vs. Non-Exempt → Formal job descriptions
    - Salary (\$35,568)+ **Duties Test**
      - **Executive** – Manages the enterprise or department/subdivision of the enterprise
      - **Professional** (Learned & Creative) – Advanced knowledge required (science or learning)
      - **Administrative** – Performs office/non-manual work directly related to the general business operations or management of the employer or its customers. Work includes the exercise of discretion and independent judgment with respect to matters of significance





# Federal Labor Laws


## FLSA – Why does this matter to my business?

- Recordkeeping i.e. time tracking and payroll records
  - Non-exempt employees: In/Out, breaks, lunches, etc.
  - You can only deduct from an hourly employee's wages so long as the deduction doesn't take the employee's final pay below minimum wage (gross) and the employee must have authorized those deductions in advance.
    - **Mandatory:** Federal & State income taxes, SS & MC, court-ordered (no authorization required)
    - **Voluntary:** Insurance premiums, retirement contributions, charitable donations
    - **Agreed to and Authorized:** Union dues, expenses that have been advanced, overpayment of or advanced wages, tuition reimbursement, lost, stolen, or damaged property due to negligence (\*min wage)
      - ✓ Authorization to Deduct form



# Federal Labor Laws (Highlights)

W2 or 1099 (W9)?



Keep in mind the IRS  
and NLRB have their  
own definitions

A Jan. 2024 DOL Ruling rescinded the 2021 rule in which 2 factors carried greater weight in determining 1099 status (i.e. control over the work and opportunity for profit or loss)

## 6 Factors – “Totality of Circumstances Test” (2024)

- The degree to which the employer controls how work is done
- The worker’s opportunity for profit or loss
- The amount of skill and initiative required for the work
- The degree of permanence of the working relationship
- The worker’s investment in equipment or materials required for the task
- The extent to which the service rendered is an integral part of the employer’s business



# Americans with Disabilities Act (ADA) & Pregnant Worker's Fairness Act (PWFA)

**15+ employees and applies regardless of FMLA**

## ADA

### What is a disability?

- A *physical OR mental impairment* that *substantially limits* 1 or more *major life activities*;
- A record of such an impairment; or
- Being regarded as having such an impairment

### What does the ADA affect?

- Job descriptions
- Pre & during employment testing
- Written materials: training materials, company & leave policies
- Reasonable Accommodations (RA)

## PWFA

- EEOC's regulation effective June 18, 2024
- Provide an RA to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions
  - Medical Condition Examples: C-sections, miscarriage, postpartum depression, edema, lactation, and more
  - Limitation Examples: migraines, morning sickness, not being around certain chemicals, not working in the heat, limiting or avoiding certain physical tasks, and/or attending health care appointments for the pregnancy, childbirth, or related medical condition

- The PWFA is much broader than the ADA since it includes terms like "temporary" and "in the near future"
- The physical or mental condition can be modest, minor, or episodic

The PWFA is intended to cover conditions that do not rise to the level of disability applied under the ADA



# ADA & PWFA (continued)

## ADA

### Reasonable Accommodations

A reasonable accommodation (RA) is any modification or adjustment to a job or the work environment that will enable an applicant or employee with a disability to participate in the application process or to perform essential job functions so they have equal workplace opportunities as those without disabilities.

#### What is an RA?

- ✓ Create a Reasonable Accommodation policy
- ✓ Establish a Reasonable Accommodation procedure
  - ✓ Neutral, 3<sup>rd</sup> party involvement due to PHI
- Denial of an accommodation request
  - The accommodation imposes an undue hardship (not just an inconvenience)

## PWFA

### Types of RAs

- ✓ Frequent breaks for resting or eating
  - ✓ Sitting or standing as needed
  - ✓ Schedule changes, part-time work
  - ✓ Temporarily suspending one or more essential functions (up to 40 weeks)
- Establish a procedure for accommodation requests
- Denial of an accommodation request? Like ADA
  - An employee cannot be forced to take paid or unpaid leave if another RA allows them to continue working

Undue hardship requires “**significant difficulty or expense**” and/or removes essential job functions, requires the creation of a new job, or bumps another employee out of their job



# Title VII (15+ employees) and The Age Discrimination in Employment Act (ADEA)

- What is Title VII? (Equal Employment Opportunity)
  - Protects job applicants and employees from employment discrimination based on
    - Race
    - Color
    - Religion
    - Sex, including pregnancy, sexual orientation, and gender identity
    - National Origin
- ADEA (20+ employees)
  - Prohibits employers from discriminating against individuals who are 40 years of age or older in any aspect of employment
- Both protect employees from discrimination in:
  - Hiring/Termination
  - Promotion
  - Compensation & Benefits
  - Job Training
  - Other terms, conditions, or privileges of employment (job assignments)



# Title VII and The ADEA in the Workplace

Do your employees know where to go if they have a concern?

- Interviewing

- Have a prepared, scripted interview every time you hire
- Ensure everyone involved in interviewing is trained and uses the interview script
- Ensure the process is followed consistently

- **"Do not ask" questions**

- When did you graduate? When do you intend to retire?
- Do you have a disability? Have you ever filed a workers compensation claim?
- Are you married? Do you have children? Are you pregnant? When do you plan to start a family?
- What country are you from? Where are you really from – your family? Where is your accent from?
- Arrests/convictions – this is handled by the application and background check
- Anything about race/color – no comments like "I don't see race/color."
- Do not ask specifically about volunteer work or memberships that may elicit information that are not job-related → How do you like to spend your free time when you're not at work?

- Create and document a Harassment/Complaint reporting procedure, including a non-retaliation clause

- Provide training for employees and supervisors, including non-retaliation
- Ensure a neutral, 3<sup>rd</sup> party receives and/or investigates the complaint
- Consider formal training/policy on bullying



# Benefits Administration

## COBRA (20+ employees)

Allows ee's & their families to keep their employer-provided health insurance for a limited time after certain events

- Health coverage loss due to job loss, reduced hours, divorce, and other QEs
- Employee must enroll within 60 days after benefits end
- Required Administration by Employer
  - Provide new hires notice of their rights upon eligibility
  - Provide notice at separation
  - Enrollment into the plan if elected

## Affordable Care Act

(50+ employees)

- Controlled Group = "Common Ownership"
  - Multiple businesses are owned by the same individuals or entities to a significant degree
    - Single Employer & Must provide coverage
- 1094 Reports filed annually
  - At the time of crossing the threshold of 50 ee's
- Regularly scheduled for 30 hours of work = full-time & eligible for benefits
- Variable rate & lookback period determines if an ee qualifies as F/T
- Documentation – capture enrollments AND waivers of coverage





# Affordable Care Act & Common Ownership

**“Parent subsidiary”** – When one or more companies are connected through stock ownership with a common parent corporation that meet all the following:

- 80% of the stock of each company (except the common parent) is owned by one or more corporations in the group
- The common parent company owns 80% of at least one other company

**“Brother-Sister” Controlled Group** – A group of 2 or more companies where 5 or fewer common owners (including individuals, estates or trusts) own directly or indirectly a controlling interest of each group and have effective control:

- Controlling interest – at least 80% of each company (but only if such common owner owns stock in each company)
- Effective control – more than 50% of the stock of each company, taking into consideration the ownership only to the extent such ownership is identical with respect to each company

Shareholder	Company A	Company B	Identical Ownership
Mary	40%	40%	40%
Bob	45%	50%	45%
Jane	0%	10%	0%
John	15%	0%	0%
			85%

Company A and Company B are a brother-sister controlled group because:

1. Five or fewer shareholders own more than 80% of each corporation (85% of Company A and 90% of Company B) and
2. The same 5 or fewer shareholders own more than 50% of both corporations, taking into account identical ownership.



# Special Considerations

## Federal Contractors & Subcontractors (\*Common Ownership)

- E-Verify if contract has the FAR E-Verify clause
- EEO-1 Filing (\$50k contract, \*50+ ee's)
- Affirmative Action Planning (AAP)
  - Race/gender
  - Veterans (\$150k contract, \*50+ ee's)
  - Disability (\$50k contract, \*50+ ee's)

## Non-Profits

- Most federal laws apply (W2s)
- A "for profit" arm



# Federal Record Retention Requirements

- Payroll records, timesheets/cards (FLSA, Lily Ledbetter, EPA, ADEA, FMLA)
- Tax records (FICA & FUTA)
- Health & Safety (OSHA – 11+ employees)
  - Check your industry (see [OSHA.gov](https://www.osha.gov))
  - Record work-related injuries/illnesses that result in medical treatment “beyond first aid”
- Military Leave (USERRA)
- Background checks (FCRA)
- Drug Testing – employees must be notified of a policy and what it covers
  - Pre-hire; Random vs. Reasonable Suspicion
- Employment benefits (ERISA)
  - Summary Plan Descriptions – Section 125 & ERISA Wrap
  - Federal COBRA (20+ employees)
- Selection, hiring and employment records (ADA, Title VII, ADEA – 15+ employees)
- Disability Accommodations & Leave Records (ADA – 15+ ee’s, FMLA – 50+ ee’s)



# HR Technology

- Efficiency

- Pre-hire

- Recruiting & Onboarding (I-9s, W4s, electronic signatures of handbook)

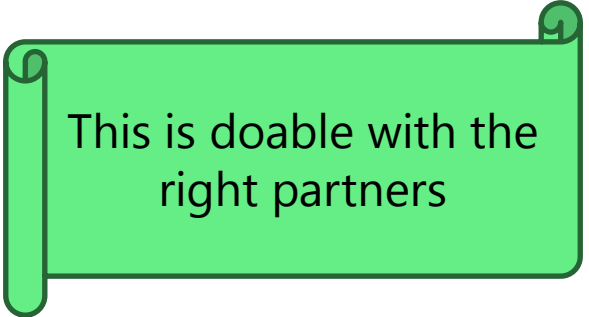
- Employment (Employee Self-Service!)

- RECORD RETENTION: time tracking and time off, compensation changes, job changes, personal updates (marriage, births, taxes)
    - Performance: real-time, formal, succession planning, development
    - Documentation
    - Training (Learning Management System)
    - Engagement (surveys)

- Offboarding

- Exit interviews
    - Final pay
    - W2s

- Automated file feeds: Retirement, Benefit Carriers (MED/DTL/VIS, disability, FSA/HSA, Life insurance, etc.), COBRA, ACA reporting/tracking



This is doable with the right partners



THANK YOU

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