If you have questions regarding Federal Laws Affecting Illinois Employers, please contact:

Terry Guolee
312-540-7544
tguolee@querrey.com

Querrey & Harrow
www.querrey.com®

ILLINOIS LAW MANUAL

CHAPTER XVII
EMPLOYMENT LAW

D. FEDERAL LAWS AFFECTING ILLINOIS EMPLOYERS

There are many federal civil rights laws designed to protect employees. Some of the major laws include: Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

1. Title VII

Title VII, part of the Civil Rights Act of 1964, is the same statute that created the Equal Employment Opportunity Commission (EEOC). 42 U.S.C. 2000(e), et seq. Title VII generally applies only to employers of fifteen or more employees. Under Title VII, an employer may be sued by a single employee, a class of employees, or by the EEOC. Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Title VII prohibits retaliation against employees (including former employees) and applicants who have engaged in activity protected by Title VII, such as filing a charge with the EEOC. Robinson v. Shell Oil Co., 519 U.S. 337 (1997).

Like the Illinois Human Rights Act, Title VII prohibits sexual harassment. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). The abusive work environment actionable under Title VII is one in which harassment is "severe and pervasive," and characterized by conduct which is both objectively hostile (offensive to the "reasonable person") and subjectively abusive as perceived by the alleged victim. Harris v. Forklift Systems, Inc., 510 U.S. 17, 21-22 (1993). Same-sex harassment is also actionable. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).

Employers are strictly liable for sexual harassment committed by supervisory level employees if that harassment results in a tangible job detriment such as discharge, failure to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998). When no such tangible employment action is taken by the supervising employee, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. The employer may affirmatively allege that it exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and that the plaintiff-employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. Burlington Industries v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

While there are several different theories of liability available to employees under Title VII, the most common cause of action is disparate treatment. Disparate treatment occurs when one employee is treated differently than another similarly-situated employee because of her race, color, religion, gender, or national origin. In

order to prove a case of disparate treatment, the plaintiff must show that she:

1) is a member of a protected class;

2) was qualified for the job;

3) suffered an adverse employment decision; and

4) has some evidence to create an inference that the adverse employment decision was based on her membership in the protected class.

Carson v. Bethlehem Steel Corp., 82 F.3d 157, 158-59 (7th Cir. 1996).

Once the plaintiff has proved these elements, the burden shifts to the employer to articulate a non-discriminatory reason for the adverse employment decision. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). After a non-discriminatory reason is proffered, the burden shifts back to the plaintiff to prove that the proffered reason is a lie. St. Mary's Honors Center v. Hicks, 509 U.S. 502, 507 (1993). While even employment decisions that are only partially based on illegal grounds are actionable, the ultimate burden of proving the unlawful discrimination is on the plaintiff. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989); Civil Rights Act of 1991 as recognized in Pilditch v. Board of Educ. of City of Chicago, 3 F.3d 1113, 1118 n.2 (7th Cir. 1993) (Act makes employment decision illegal if it was motivated "at all" by an illegitimate motive).

2. The Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) protects those who are at least forty years old from adverse employment decisions based on their age. 29 U.S.C. Section 621, et seq. While the courts have recognized some exceptions for employees in very high policy-making positions, the exceptions are greatly limited. See Western Airlines, Inc. v. Criswell, 472 U.S. 400 (1985) (holding that it was appropriate for a jury to decide if an airline could discriminate on the basis of the age of their pilots); Knight v. State of Georgia, 992 F. 2d 1542 (11th Cir. 1993) (upholding a Georgia law which contained a mandatory retirement age for state troopers). Moreover, the ADA Amendments Act of 2008 provides broad coverage of individuals under the Act. Horgan v. Simmons, 704 F.Supp.2d 814, 818 (N.D. Ill. 2010).

The Act only applies to employers who employ more than twenty people. 29 U.S.C. Section 621, et seq. In an ADEA case, the plaintiff's burden is identical to that in a Title VII claim. The plaintiff must show evidence to create an inference that the adverse employment decision was based on age. O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 313 (1996). This burden may be met even if the plaintiff was replaced by someone over forty, as long as the replacement employee was substantially younger. Id.

3. The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities because of those disabilities. 42 U.S.C. Section 12101. A qualified individual with a disability is an individual who can perform the essential functions of his or her job with or without reasonable accommodation. 42 U.S.C. Section 12111(8). Like Title VII, the ADA applies to employers of fifteen or more employees. Under the ADA, a disability includes:

1) a physical or mental impairment that substantially limits one or more of the major life activities;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

42 U.S.C. Section 12102(1).

To prove that an employee was regarded as having a disability, a plaintiff must present evidence that the defendant thought her impairment disqualified her for a broad range of jobs. A mere showing that the plaintiff was regarded as ill-suited for a particular job is insufficient. Duncan v. State of Wisconsin

Department of Health and Family Services, 166 F. 3d 930, 935 (7th Cir. 1999). When determining whether someone is disabled, the court will consider the individual "with reference to measures that mitigate the individual's impairment."

The ADA requires an employer to make:

> reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business . . . .

42 U.S.C. Section 12112(b)(5)(A). The term "reasonable accommodation" may include reassignment to a vacant position. If the measures taken to mitigate the impairment cause an additional impairment or do not sufficiently mitigate the impairment, an employer will still be required to provide reasonable accommodations. Kemp v. Holder, 610 F.3d 231, 235 (5th Cir. 2010); Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999).

Procedural frameworks govern how an employee's complaint moves through both the Illinois and federal agencies created to regulate employment practices. Complaints under Title VII must begin at the EEOC while complaints under the Illinois Human Rights Act must begin in the Illinois Department of Human Rights (IDHR).

Querrey & Harrow, Ltd.
175 W. Jackson Blvd., Chicago, IL 60604
www.querrey.com

Illinois offices: *Chicago, Joliet, Oak Lawn, Waukegan, Wheaton*
Indiana offices: *Merrillville*