a civil wrong in which an employer violates a duty owed to its customers or employees, is handled at the state level. An example of a tort is when an employee agrees to let a company use her photo in an employee newsletter, but the employer later uses it in a public advertisement without her permission. Because case law differs across states, companies must be familiar with the case law in all of the states in which they operate.

Most employment discrimination lawsuits are brought under federal statutes, although state laws can be even more restrictive. A state's Attorney General's office and website provide information about that state's fair employment practice laws. Some state laws extend protection to employers who are not covered by a federal statute. Other statutes protect groups not covered by federal acts and individuals who are performing civil or family duties outside of their normal employment. For example, Alaska protects workers from discrimination based on parental status.[10]

So What?

Because state laws can extend the protection of federal statutes, it is important to be familiar with the relevant laws in the states in which a company operates.

To interpret, administer, and enforce specific laws, local, state, and federal legislative bodies create agencies such as the Department of Labor and the Equal Employment Opportunity Commission. Because state laws differ and change over time, it is important to update your knowledge and regularly consult legal counsel to ensure compliance with current local, state, and federal regulations. The Society for Human Resource Management (SHRM), an association of HRM professionals, offers legal information and updates to its members.[11]

Major Federal Employment Laws

There are several major federal laws that broadly apply to the employment relationship, summarized in Table 3-1. Let's take a closer chronological look at them.

National Labor Relations Act of 1935. Congress enacted the National Labor Relations Act (NLRA) to protect employee and employer rights and to encourage collective bargaining between labor unions and employers. The NLRA was also created to end certain private sector labor and management practices that can harm the general welfare of workers, businesses, and the U.S. economy "by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries."[12] The NLRA prohibits retaliation against employees seeking to unionize. In addition to giving workers the right to join unions and bargain collectively, it created a system to arbitrate disputes between unions and employers and prohibits employers from interfering in union activities.

Fair Labor Standards Act (FLSA) of 1938. The Fair Labor Standards Act establishes a national minimum wage, overtime rules, recordkeeping requirements, and youth employment standards.[13] It covers employees in the private sector and in federal, state, and local governments. The FLSA excludes some jobs from FLSA coverage, making some employees including commissioned salespeople, farm workers, and salaried executives exempt from the overtime pay and minimum wage provisions.

Equal Pay Act of 1963. To promote equal pay for equal work, the Equal Pay Act of 1963 prohibits discrimination in pay, benefits, and pensions on the basis of an employee's gender. It covers most government employees and employers that engage in interstate commerce. Jobs are considered "equal" when they require substantially the same effort, skill, and responsibility under similar working conditions and in the

TABLE 3-1 Chronological Summary of Major Employment Related Executive Orders and Federal Laws

EXECUTIVE ORDER OR LAW	DESCRIPTION
National Labor Relations Act of 1935	Prohibits retaliation against employees seeking to unionize
Fair Labor Standards Act (FLSA) of 1938	Establishes both a national minimum wage and overtime rules
Equal Pay Act of 1963	Prohibits wage discrimination on the basis of sex
Title VII of the Civil Rights Act of 1964	Prohibits employment discrimination based on race, color, religion, sex, or national origin
Age Discrimination in Employment Act (ADEA) of 1967	Protects people 40 years of age or older
Rehabilitation Act of 1973	Prohibits discrimination against qualified individuals with a disability
Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) (Amended in 2002 by the Jobs for Veterans Act)	Prohibits discrimination against and requires affirmative action for disabled veterans as well as other categories of veterans
Pregnancy Discrimination Act of 1978	Prohibits discrimination for all employment-related purposes on the basis of pregnancy, childbirth, or related medical conditions
Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986	Employers with group health plans and 20 or more employees in the prior year must offer continued health and dental insurance coverage to terminated employees for limited periods of time
Immigration Reform and Control Act of 1986	Employers with at least 4 employees must verify the employment eligibility of everyone hired; only U.S. citizens, nationals of the United States, and aliens authorized to work in the United States are eligible for employment
Worker Adjustment and Retraining Notification Act (WARN) of 1988	Employers with at least 100 employees must give at least 60 days' notice to workers of plant closings or mass layoffs of 50 or more people (excluding part-time workers)
Americans with Disabilities Act of 1990 (Amended in 2008)	Prohibits discrimination of a qualified individual with or perceived as having a disability; focus on fair treatment and reasonable accommodation
Family and Medical Leave Act of 1993	Requires leave and job-return for personal or family medical reasons and for the care of newborn or newly adopted children
The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994	Ensures that members of the uniformed services are entitled to return to their civilian employment after their service
Genetic Information Nondiscrimination Act of 2008	Prohibits employers from discriminating against individuals based on the results of genetic testing when making hiring, firing, job placement, or promotion decisions

same establishment. Employers in an industry can pay employees different wages for doing the same job, but male and female employees working in the same job in the same company must be paid the same.

Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act[14] prohibits employment discrimination based on race, color, religion, sex, or national origin and provides monetary damages in cases of intentional employment discrimination. Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

Under Title VII, it is an unlawful employment practice for an employer:[15]

> To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...

or

> To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Intentional discrimination is established "when a complaining party demonstrates that race, color, religion, sex or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."[16] Either direct or specific and substantial circumstantial evidence can be used to create a reasonable inference that a protected characteristic was a determining factor in an adverse employment decision. For example, email evidence that an employee had been subjected to sexual harassment before being terminated for alleged performance reasons may be sufficient to prove that sex was a motivating factor in her dismissal. The Civil Rights Act of 1991 is enforced by the Equal Employment Opportunity Commission.

bona fide occupational qualification (BFOQ): a characteristic that is essential to the successful performance of a relevant job function

There are limited situations in which a protected characteristic can be considered a **bona fide occupational qualification** (BFOQ) under Title VII and be legally used to make employment decisions. A BFOQ is a characteristic that is essential to the successful performance of a relevant job function, and that the essence of the business operation would be undermined by including or excluding members with a protected characteristic.[17] Only a qualification that affects an employee's ability to perform the job can be considered a BFOQ. For example, corrections facilities with gender segregated wards usually require at least one staff member of the same gender as the inmates to always be on duty.

BFOQs do not apply to all jobs, and race and color can never be considered BFOQs.[18] Customer preference is also insufficient to justify a BFOQ defense. BFOQs must be based only on the actual inability of individuals with some protected characteristic (for example, their sex) to perform job duties, not on stereotyped characterizations.

It is not a violation of the Equal Pay Act if wage differences between male and female employees occur due to seniority systems, quality or quantity of work, or merit. Also, employers in violation of the act are not allowed to lower the wages of one gender to comply with the law—they must raise the wages of the underpaid gender.

Megapress/Alamy

Laws including the the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, and the Family and Medical Leave Act of 1993 helped to make the workplace more fair for women.

The Age Discrimination in Employment Act (ADEA) of 1967. The Age Discrimination in Employment Act[19] (ADEA) prohibits employers from discriminating against any worker with respect to compensation or the terms, conditions, or privileges of employment because he or she is age 40 or older. Some states have expanded the ages protected from employment discrimination. In New Jersey it is illegal to discriminate against employees between the ages of 18 and 70.[20]

The Rehabilitation Act of 1973. The Rehabilitation Act of 1973[21] requires employers to engage in affirmative action to promote the hiring of individuals with a disability. Qualified individuals with disabilities are people who, with reasonable accommodation, can perform the essential functions of the job for which they have applied or have been hired to perform. **Reasonable accommodation** means an employer is required to take reasonable steps to accommodate a disability unless it would cause the employer undue hardship.[22] One successful plaintiff claimed that the FBI discriminated against him when it dismissed him from the FBI Academy because of his post-traumatic stress disorder.[23]

reasonable accommodation: an employer is required to take reasonable steps to accommodate a disability unless it would cause the employer undue hardship

Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) (Amended in 2002 by the Jobs for Veterans Act). The Vietnam Era Veterans' Readjustment Assistance Act[24] (VEVRAA) prohibits discrimination against protected veterans and requires federal government contractors and subcontractors with a contract of $25,000 or more with the federal government to take affirmative action to employ and promote protected veterans.

The Pregnancy Discrimination Act of 1978. The Pregnancy Discrimination Act of 1978[25] amended Title VII of the Civil Rights Act to prohibit sex discrimination on the basis of pregnancy. Pregnancy, childbirth, and related medical conditions must be treated the same way as other temporary illnesses or conditions.[26] This means that it is illegal to decide not to hire or promote someone simply because they are pregnant. Lucasfilm was found guilty of pregnancy discrimination and wrongful termination after rescinding a job offer when it learned the candidate was pregnant.[27]

Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986. The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families who lose their health benefits the right to choose to continue group health plan benefits. Benefits can be continued for limited periods of time under circumstances including voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, or another life event.[28] COBRA applies to group health plans sponsored by employers with 20 or more employees in the prior year.

The Immigration Reform and Control Act of 1986. Under the Immigration Reform and Control Act, employers must use an I-9 verification form to verify the employability status of every new employee within three days of hiring. This form requires documentation verifying the new hire's eligibility, identity, and authorization to work in the United States. To avoid the appearance of discrimination on the basis of national origin, it is a good idea to make the job offer contingent on proof of employment eligibility.

For privacy reasons, I-9s must be kept in a folder where managers cannot see them and recruiters and hiring managers should be trained on I-9 compliance.[29] The internet-based E-Verify system operated by the Department of Homeland Security in partnership with the Social Security Administration can help employers determine a person's eligibility to work in the United States.[30] An I-9 audit at restaurant chain

Chipotle Mexican Grill's Minnesota restaurants forced it to fire hundreds of allegedly illegal workers, perhaps more than half of its staff at the time.[31]

Rather than conducting workplace raids to pick up undocumented workers, Immigration and Customs Enforcement policy has shifted to the criminal prosecution of businesses for workplace immigration law violations. Immigration and Customs Enforcement is increasingly making work-site criminal arrests of corporate officers, managers, and contractors.[32] It is a good idea to keep I-9 records updated and accurate and regularly conduct internal I-9 workforce audits to identify and correct any problems.

The Worker Adjustment and Retraining Notification Act (WARN) of 1988. The WARN Act is a federal law requiring employers of 100 or more full-time workers who have worked at least 6 of the last 12 months and an average of 20 hours or more per week to give employees 60 days advance notice of closing or major layoffs.[33] WARN requires that notice be given to all hourly, salaried, managerial, and supervisory employees, but business partners, workers participating in strike actions, and contract employees are not covered. More details about what is covered are available on the Department of Labor's website.[34]

Some states have passed their own WARN-type acts expanding this coverage. Illinois extends coverage to employers with as few as 75 full-time employees, and New Jersey increased the federal penalties for infractions.

The Americans with Disabilities Act (ADA) of 1990. The Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act that became effective on January 1, 2009, guarantee equal opportunity for individuals with disabilities or perceived as having disabilities. Similar protections to those provided on the basis of race, color, sex, national origin, age, and religion are also provided.[35]

Under the ADA, a person is to be considered disabled regardless of whether or not any form of treatment or corrective device (other than contact lenses or glasses) is used to ameliorate or control the condition. The ADA prohibits an employer from asking applicants about their disabilities or medical history before offering employment. The ADA and its amendment require employers to reasonably accommodate employee and applicant disabilities during the hiring process as well as during the employment relationship.

The Second U.S. Circuit Court of Appeals upheld a $900,000 award against Walmart for compensatory and punitive damages, plus $644,000 in attorney fees to an employee with cerebral palsy. Walmart managers asked prohibited questions during the hiring process, and later discriminated against him.[36]

Family and Medical Leave Act of 1993. The Family and Medical Leave Act of 1993 (amended by the Family and Medical Leave Act and National Defense Authorization Act of 2008) requires eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. In a single 12-month period, eligible employees are entitled to:[37]

- Twelve workweeks of leave for:
  - the birth of a child and to care for the newborn child within one year of birth
  - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement
  - the caring of the employee's spouse, child, or parent who has a serious health condition