



Feature

At Work with John Fuller

By John Fuller

Title VII of the Civil Rights Act of 1964 and state extensions of Title VII, when added to ADA, FMLA, ADEA, EPA, FLSA, USERRA, PDA, OSHA, OFCCP, affirmative action, workers' compensation, and minimum wage requirements, along with many others, create a firestorm of confusion for those who are unfamiliar with employment laws. What is confounding is that any one of these laws, with the exception of Title VII, can change abruptly with court decisions and also yearly with Congressional, state, local, or legal decisions or actions. If an employer or an employee were to actually take a comprehensive look at the myriad of employment laws that protect the employee or that the employer is legally required to be aware of and adhere to, his or her head would spin!



Employers and employees constantly ask me the question, "Does this law pertain to me?" The answer is not always a pure yes or no. An employment law may apply to some employers or employees and may not apply to

others depending upon how many employees an employer has or whether the employer is a federal contractor or even where the employer is located.

A perfect example is Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based upon race, religion, color, national origin, sex, or handicap. Maryland takes this a few steps further to include sexual preference, familial status, and genetic code. Baltimore, Maryland, takes it even further with protection for the category of transgender.

Since Johns Hopkins Hospital is within Baltimore city limits, it must adhere to all of the above stated protected categories. A neighboring employer in a city such as Towson, adjacent to the Baltimore city limits, would not have to have protection for transgender employees, and a city such as McLean, Virginia, less than 45 miles away, would not have to provide protection for genetic code, transgender, or familial status but would still maintain the federal law that applies to everyone...well, almost everyone.

Now, when you take into consideration that Title VII and any or all extensions thereof are applicable only to employers who have 15 or more employees, the ADEA applies to employers who have 20 or more employees, and the EPA applies to employers with any number of employees, the confusion for employers and employees is readily apparent.

Employment laws sometimes contradict long-established personnel policies that have failed to realize changes through legislation or legal decisions that affect compensation,

payment of earned vacation, or other earned benefits. Those contradictions can be ticking time bombs waiting for lawsuits to occur or for sanctions to be applied. The Federal Department of Labor or EEOC, just like the IRS with taxes, is not amenable to employers claiming to be ignorant of employment laws that pertain to them.

What can be done to prevent either a misapplication or violation of employment law? First of all, an employer contemplating opening a business should be cognizant of employment laws that pertain to that business prior to opening the door on its first day. Second, the employer should hire a professional EEO Officer who is well trained with expert knowledge of employment laws and their application and who is an experienced EEO Investigator in the workplace. Employers should not rely solely upon human resource generalists to make these decisions. While HR generalists may have some knowledge of employment laws, it has been my experience that an EEO specialist will be a welcome addition to an HR staff. Much larger firms or businesses should, of course, consider hiring both an EEO specialist and a labor law attorney, especially when government contracts are involved.

Courts will generally ask employers during discrimination lawsuits how employment laws are disseminated to their employees. Are they merely posted on a bulletin board (some are required to be posted), and are the employees given a handbook to read, or are employees provided this valuable information on the day of hire through an orientation with supplemental training throughout the year?

It is in the best interests of an employer to hire experienced EEO professionals and/or legal counsel. Doing so will lessen liability they will likely incur if there are discrimination lawsuits. The bottom line for an employer is that an employer may actually prevent that one damaging lawsuit from occurring. It does that by taking the affirmative steps to ensure compliance with the law and applying all of the



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employment laws with the genuine intent to ensure full equal employment opportunity.

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