

ATTORNEY'S DESK

Employment Laws Covering the Small to Medium Business

By Michael E. Turner

The successful growth of any new business often requires or results in the hiring of more employees. But, in making new hires, the small to medium-sized business owner should always remember that the act of hiring an employee immediately entitles that employee to a number of legal employment rights that he or she did not have before.

Alabama is known as an employment "at-will" state. This means that absent an employment contract or violation of an applicable employment law (such as the ones listed below), a business can terminate an employee at any time and for any reason or no reason at all. That said, it is always advisable to have an objective, job-related reason for terminating an employee which can be both articulated and defended, preferably with a documented progressive disciplinary record (although terminations can be made immediately, with no prior warning, for serious acts of misconduct).

While a detailed description of each law is beyond the scope of this column, some of the major employment laws that can cover small to medium-sized businesses and their employees are the following:

The Fair Labor Standards Act (FLSA) among other things, requires the payment of minimum wages and overtime for "non-exempt" employees. The FLSA applies to any business employing one or more employees working in "interstate commerce." There are exemptions from overtime requirements for certain classifications of employees (including executive, administrative, professional, outside sales, and computer employees), provided they earn at least \$455.00 per week and meet the various job duty tests.

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination on the basis of race, sex, color, religion, and national origin. Discrimination on the basis of sex under Title VII also includes pregnancy discrimination and sexual harassment. Title VII covers employers with 15 or more employees.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of an ADA-covered disability. The ADA covers employers with 15 or more employees.

The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age. Persons aged 40 years or older are covered by the ADEA. The ADEA covers employers with 20 or more employees.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects military service members' reemployment rights when returning from military service, including those called up from the reserves or the National Guard, and prohibits discrimination based on military service or obligation. The USERRA covers nearly all employees, including part-time and probationary employees, and it applies to virtually all employers, regardless of size.

The Immigration Reform and Control Act of 1986 requires employers verify that persons being hired are not unauthorized aliens by following certain procedures (*i.e.*, the I-9 Form). Compliance with the Act is required of all employers, regardless of size.

The Equal Pay Act of 1963 requires that employers pay females and males equal compensation when those employees' jobs involve equal skill, effort, and responsibility. This Act covers employers who have two or more employees engaged in interstate commerce.

The Family and Medical Leave Act of 1993 (FMLA) provides up to 12 weeks of unpaid leave and job protection during any 12-month period to eligible, covered employees for the following reasons: (a) birth and care of the eligible employee's child, or placement for adoption or foster care of a child with the employee; (b) care of an immediate family member (spouse, child, parent) who has a "serious health condition"; or (c) the employee's own serious health

condition. The FMLA applies to any employer who engages in commerce, or in any industry or activity affecting commerce, and who employs 50 or more employees. Eligible employees of covered employers are required to have worked at least 12 months (which do not have to be consecutive) for the employer and have worked at least 1,250 hours during the 12 months immediately before the date FMLA leave begins.

The 1866 Civil Rights Act (Section 1981) grants to African-Americans and other minorities the right to make and enforce contracts, including employment contracts. Section 1981 has also been construed to apply to White Americans having claims of reverse discrimination. Any employer, regardless of the number of employees, is subject to a claim under Section 1981. Section 1981 applies only to claims of race discrimination.

The Alabama Age Discrimination in Employment Act is almost identical to the federal ADEA, and has the same employer coverage requirements.

The Alabama Workers' Compensation retaliatory discharge statute prohibits employers from terminating employees "solely" because of a workers' compensation claim. The Workers' Compensation Act generally applies to all employers with at least 5 employees, although employers with less than 5 employees may elect to be covered by the Act.

As indicated above, even the employees of a business considered small by its owner may be covered by a number of federal and state employment laws. And, defending a lawsuit filed by a former employee over his or her termination can be both expensive and time-consuming, especially to the small business owner. It is therefore advisable that every business owner, regardless of size, consider retaining the services of an attorney experienced with the relevant employment laws who can provide guidance about decisions involving employees potentially covered by those laws--preferably before those decisions are made. Also, an employment attorney can draft a set of written employment policies and procedures necessary for compliance with the applicable

employment laws. If you have taken the foregoing preventative measures and a lawsuit is still filed by a former employee, you will have increased the chances that the lawsuit will be easier and less expensive for your business to defend.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

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