

# NFIB GUIDE TO FEDERAL EMPLOYMENT LAW

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WHAT'S INSIDE

1. Fair Labor Standards Act (FLSA)

2. Equal Pay Act (amendment to FLSA)

3. Interviewing Don'ts

4. Title VII of the Civil Rights Act of 1964 (Title VII)

» Sexual Harassment (Title VII)

» Pregnancy Discrimination Act of 1978 (PDA)

» Age Discrimination in Employment Act (ADEA)

» Genetic Information Nondiscrimination Act of 2008 (GINA)

5. Americans with Disabilities Act (ADA)

6. Immigration Reform and Control Act (IRCA) (I-9)

7. Family and Medical Leave Act of 1993 (FMLA)

8. Occupational Safety and Health Act (OSH Act)



## What You Need to Know About Employment Law

DEVELOPED BY

**NFIB** | Small Business  
The Voice of Small Business. | Legal Center



Dear NFIB Member:

As a small business owner, you work hard everyday at your dream of running a successful enterprise. Yet being a small business owner means spending countless hours going over every detail to make sure your business is in compliance with federal and state laws.

To help make compliance a little easier, we are pleased to provide you with this *NFIB Guide to Federal Employment Law*.

This book will give you the basics of employment laws that you will most likely encounter at your business, such as the Fair Labor Standards Act, the Occupational Safety and Health Act, and several anti-discrimination laws.

Developed by the NFIB Small Business Legal Center, the *NFIB Guide to Federal Employment Law* was written to be your first stop to learn which federal employment laws apply to your business and what your business must do to comply. The NFIB Small Business Legal Center is the voice for small business in the nation's courts and the legal resource for small business owners nationwide.

This guide is just one of the many compliance guides developed by our Legal Center to make your job just a little bit easier. To find out about all of the guides available in this series, call 1-800-NFIB-NOW or visit [www.NFIB.com/legal](http://www.NFIB.com/legal).

Sincerely,

A handwritten signature in white ink that reads "Dan Danner". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Dan Danner  
NFIB President

# CONTENTS

one	Fair Labor Standards Act (FLSA).....	2
two	Equal Pay Act (amendment to FLSA).....	3
three	Interviewing Don'ts.....	3
four	Title VII of the Civil Rights Act of 1964 (Title VII) ..... » Sexual Harassment (Title VII) » Pregnancy Discrimination Act of 1978 (PDA) » Age Discrimination in Employment Act (ADEA) » Genetic Information Nondiscrimination Act of 2008 (GINA)	4
five	Americans with Disabilities Act (ADA).....	7
six	Immigration Reform and Control Act (IRCA) (I-9).....	8
seven	Family and Medical Leave Act of 1993 (FMLA).....	9
eight	Occupational Safety and Health Act (OSH Act).....	10

## ABOUT NFIB GUIDE TO FEDERAL EMPLOYMENT LAW

The NFIB Small Business Legal Center is pleased to provide you with this Federal Employment Law Handbook for Independent Business which describes various federal laws that regulate your business and your relationship with your employees.

If you would like to know more about any of the enclosed information you should contact an attorney licensed to practice law in your state. If you would like assistance finding an attorney, visit the *American Bar Association Lawyer Referral Service* at [www.abanet.org/referral/home.html](http://www.abanet.org/referral/home.html) or contact (800) 285-2221 for your state or county bar association.

The information contained in this handbook has been compiled as a helpful guide for independent businesses. This handbook should not be considered a legal resource. While we have attempted to provide accurate and complete information, the authors and publishers of this handbook cannot be responsible for any errors or omissions in its contents. **Note: This handbook is provided with the understanding that neither the authors nor the publisher are engaged in rendering legal or professional advice.**

## ABOUT NFIB

The National Federation of Independent Business is the nation's leading small business association, representing its members in Washington, D.C., and all 50 state capitals. NFIB's powerful network of grassroots activists send their views directly to state and federal lawmakers through our unique member-only ballot, thus playing a critical role in supporting America's free enterprise system.

## ABOUT NFIB SMALL BUSINESS LEGAL CENTER

The **NFIB SMALL BUSINESS LEGAL CENTER** is a 501 (c) (3), non-profit public interest law firm dedicated to the principles of justice and equity for small business. The Legal Center protects the rights of America's small business owners by providing guidance on legal issues and by ensuring that the voice of small business is heard in the nation's courts. For more information on the Legal Center's courtroom activity or how to support this worthy cause, please call (800) 552-6342 or visit [www.nfiblegal.com](http://www.nfiblegal.com).



# FAIR LABOR STANDARDS ACT

## (FLSA)

**THE FLSA ESTABLISHES** minimum wage requirements, overtime pay, record-keeping, and child labor standards for full- and part-time employees. State minimum wage laws differ widely and should be consulted in conjunction with this guidance.

### Application

The FLSA applies to all employers.

### Minimum Wage

The Federal minimum wage is \$7.25 per hour.

Variations of this rate are:

- the higher rate if federal and state minimum wage rates differ;
- employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer;
- certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Wage-Hour office of the Department of Labor.

### Overtime Pay

Overtime pay is at least 1 1/2 times an employee's regular rate of pay and applies to all hours worked over a 40-hour workweek.

Some exceptions to overtime pay and minimum wage include:

- executive, administrative, and professional employees ("white collar exemption"); or
- outside sales employees; or
- seasonal amusement or recreational establishments; or
- casual babysitters and certain farm workers.

### Child Labor

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work limited hours with strict conditions. For example, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through

Labor Day, when evening hours are extended to 9 p.m. Different rules apply in agricultural employment.

### Record-keeping Requirements

If an employee is subject to the minimum wage provisions or both the minimum wage and overtime provisions, an employer must keep extensive payroll records.

### Notice

The notice, *Your Rights Under the Fair Labor Standards Act*, must be posted where employees can readily see it.

## ADDITIONAL INFORMATION

To locate your Wage and Hour District Office visit: [www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm). To determine your state's minimum wage laws and more, visit: [www.dol.gov/whd/minwage/america.htm](http://www.dol.gov/whd/minwage/america.htm).

# EQUAL PAY ACT



## Application

The Equal Pay Act applies to all employers.

## Permitted Acts

There are limited exceptions for pay differentials when an employer can show that:

- the difference is due to a seniority or merit system; or
- the difference is due to an employee's education, training, and experience.

## Record-keeping Requirements

Employers should retain:

- payroll records for at least three years; and

**THE 1963 ACT** prohibits wage and benefit discrimination between men and women in substantially equal jobs within the same establishment.

- all records (including wage rates, job evaluations, seniority and merit systems, and collective bargaining agreements) for at least one year after an employee's termination, that explain the basis for paying different wages to employees of opposite sexes in the same establishment.

## Notice

The notice, *Equal Employment Opportunity is the Law*, must be posted where employees can readily see it.

## ADDITIONAL INFORMATION

For more information, please refer to the Equal Employment Opportunity Commission's (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) or contact (800) 669-4000 to locate an EEOC field office in your area.

# INTERVIEWING DON'TS

When interviewing job candidates, to avoid liability it's important your questions focus exclusively on the skill and experience needed for the position. Here's a list of questions you should *not* ask applicants.

## DON'T ASK ABOUT:

1. **AGE:** How old are you? When did you graduate? When were you born?
2. **MARITAL/FAMILY STATUS:** What is your marital status? Do you plan to have a family? When? How many children do you have? What are your childcare arrangements? What is your sexual orientation?
3. **ORGANIZATIONS:** To what clubs or social organizations do you belong?
4. **PERSONAL:** How tall are you? How much do you weigh?
5. **ARREST RECORD:** Have you ever been arrested?
6. **NATIONAL ORIGIN/CITIZENSHIP:** Are you a U.S. citizen? What is your native language?
7. **RELIGION:** What is your religious affiliation? Does your religion prevent you from working weekends or holidays?
8. **MILITARY RECORD:** Were you honorably discharged? Request military records.
9. **DISABILITIES:** Do you have any disabilities? Have you had any recent or past illnesses or operations? How is your family's health? Please complete the following medical history.

# TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (TITLE VII)

**TITLE VII PROHIBITS** employment discrimination on the basis of race, color, religion, sex, or national origin in hiring, employment (all terms, conditions, and benefits), and termination.

## Application

Title VII applies to businesses with 15 or more employees.

## Examples of Discrimination

Below are some examples of discrimination covered under Title VII:

- Harassing a person because of their friends', relatives', or associates' race, skin color, religion, gender, national origin, age, or disability. (See also Sexual Harassment section.)
- Treating people in similar jobs differently.
- Making assumptions about the abilities of persons based on stereotypes, physical characteristics, or age.
- Retaliating against a person because a complaint was filed.

## Remedies Available

If a complainant is successful in a Title VII cause of action, remedies that may be available include reinstatement, back pay, damages for future loss of earnings, emotional pain and suffering, mental anguish, and attorneys' fees.

## Notice

The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it.

## ADDITIONAL INFORMATION

To locate your Equal Employment Opportunity Commission (EEOC) field office call (800) 669-4000 or visit their website at [www.eeoc.gov](http://www.eeoc.gov).

# (TITLE VII)

## SEXUAL HARASSMENT



Title VII prohibits sex discrimination and sexual harassment in the workplace.

### Application

Title VII applies to businesses with 15 or more employees. State and local laws may cover all businesses.

### Examples of Sexual Harassment

Sexual harassment covers behavior that creates a hostile work environment. Examples are:

- unwelcome sexual advances.
- requests for sexual favors.
- verbal or physical conduct of a sexual nature.
- sexually suggestive or offensive personal references about an individual.

#### Note:

- the victim or harasser may be male or female.
- the victim does not have to be of the opposite sex.
- the harasser can be the victim's supervisor, an agent of the employer, a supervisor of another area, a co-worker, or a non-employee.
- the victim does not have to be the person harassed but can be anyone affected by the offensive conduct.
- unlawful sexual harassment may occur without economic injury to or discharge of the victim.

### Notice

The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it.

### ADDITIONAL INFORMATION

For more information, please refer to Equal Employment Opportunity Commission's (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) or call (800) 669-4000 to locate an EEOC field office in your area.

# (PDA)

## PREGNANCY DISCRIMINATION ACT



The 1975 Act prohibits discrimination on the basis of pregnancy, childbirth or related medical conditions. Women who are affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

### Application

The PDA applies to employers with 15 or more employees.

### Prohibited Acts

An employer should not:

- refuse to hire a woman because she is pregnant as long as she is able to perform the major functions of her job; or
- refuse to hire a pregnant woman because its prejudices against pregnant workers or the prejudices of co-workers, clients or customers; or
- fire or force a worker to leave because she is pregnant; or
- take away credit for previous years, accrued retirement benefits, or seniority because of maternity leave; or
- fire or refuse to hire a woman because she has an abortion.

### Notice

The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it.

### ADDITIONAL INFORMATION

For more information, please refer to the Equal Employment Opportunity Commission's (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) or contact (800) 669-4000 to locate the EEOC field office in your area.

# (ADEA)

## AGE DISCRIMINATION IN EMPLOYMENT ACT



ADEA prohibits age discrimination against individuals who are 40 years of age or older.

### Application

ADEA applies to employers with 20 or more employees. The ADEA applies to both employees and job applicants.

### Prohibited Acts

Employers should not discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

Employers must not include age preferences, limitations, or specifications in job notices or advertisements.

### Record-keeping Requirements

Employers should retain:

- all payroll records for at least three years after an employee's termination; and
- any employee benefit plan while in effect and for at least one year after termination; and
- any written or seniority or merit system while the system was in effect and for at least one year after an employee's termination.

### Notice

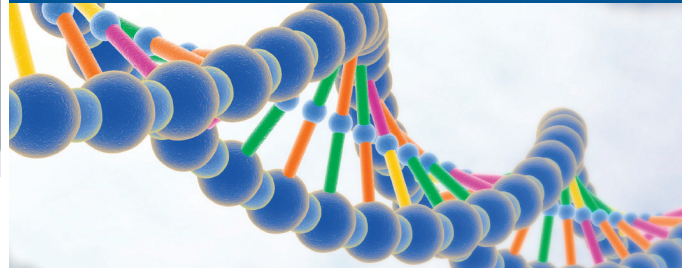
The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it.

## ADDITIONAL INFORMATION

For more information, please refer to Equal Employment Opportunity Commission's (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) or locate the nearest EEOC field office in your area by calling (800) 669-4000.

# (GINA)

## GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008



The 2008 law prohibits discrimination based on genetic information.

### Application

GINA applies to employers with 15 or more employees. GINA applies both to employees and job applicants.

### Examples of Discrimination

Below are some examples of discrimination covered under GINA:

- Harassing a person because of their genetic information or because of the genetic information of their relative.
- Making any employment-related decision based on genetic information, such as hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term of employment.
- Retaliating against a person because he or she filed a claim, participated in a discrimination proceeding, or opposed discrimination.

### Notice

The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it.

## ADDITIONAL INFORMATION

For more information, please refer to Equal Employment Opportunity Commission's (EEOC) website at [www.eeoc.gov](http://www.eeoc.gov) or locate the nearest EEOC field office in your area by calling (800) 669-4000.





# AMERICANS WITH DISABILITIES ACT (ADA)

**THE ADA PROHIBITS** employers from discriminating against qualified individuals with disabilities. An individual with a disability is someone who:

- has a physical or mental impairment that substantially limits one or more major life activities; or
- has a record of such an impairment; or is regarded as having such an impairment.

Persons discriminated against because they have a known association or relationship with a disabled individual are also protected.

## Application

The ADA applies to employers with 15 or more employees. Independent contractors are not covered. State and local human rights or handicap discrimination laws may apply to all employers.

## Requirements

The ADA requires that an employer make reasonable accommodations in certain circumstances for a disabled employee who is otherwise qualified for the job. A person may be otherwise qualified for the job if:

- the person meets the educational, experience, skill, and other job-related requirements; and
- the person can perform the essential job functions (with or without reasonable accommodations).

**Note:** It is a good idea to identify the essential job functions and propose a job-description before beginning the hiring process.

If an employee is otherwise qualified for the position, there are three areas where an employer should provide reasonable accommodations:

- to permit the employee to perform the essential job functions
- testing and application procedures
- to permit the enjoyment of general work privileges such as access to restrooms and customary employee work-related activities

### Examples of Reasonable Accommodations Include:

- part-time or modified work schedule
- acquisition or modification of equipment

- making facilities accessible to disabled persons
- reassignment of marginal job function

**Note:** An employer may not have to provide reasonable accommodations if they can establish “undue hardship” i.e., that it would be unduly expensive, disruptive, or affect the business.

## Notice

The notice, *Equal Employment Opportunity is the Law*, should be posted where employees can readily see it. A copy of this notice is provided in this handbook’s Appendix.

## ADDITIONAL INFORMATION

For more information call the Department of Justice ADA Information Line at (800) 514-0301 or visit their website at [www.ada.gov](http://www.ada.gov).



# IMMIGRATION REFORM AND CONTROL ACT (IRCA)

**THE IRCA OF 1986** prohibits any employer from hiring any person who is not legally authorized to work in the United States and it requires that employers verify the employment eligibility of all new employees.

The IRCA also makes it unlawful for employers to discriminate in hiring and discharge based on national origin (as does Title VII) and on citizenship status.

## Application

The IRCA applies to all employers, with the following *exceptions*:

- employers with between four and 14 employees (who would not be covered by Title VII anti-discrimination provisions) may not discriminate on the basis of national origin; and
- employers with at least four employees may not discriminate on the basis of citizenship.

## Procedural and Record-keeping Requirements

All employers should ensure that employees and the employer complete an Employment Eligibility Verification Form (I-9) when an employee begins work. Employees must keep I-9s on file for all current employees.

## ADDITIONAL INFORMATION

For more information, contact the U.S. Citizenship and Immigration Services (USCIS) at (800) 375-5283 or visit their website at [www.uscis.gov](http://www.uscis.gov). If you need a particular form, please call (800) 870-3676.



# FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

An employer may require 30 days advance leave notice and medical certification.

**THE FMLA REQUIRES** employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons, or for any “qualifying exigency” arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA also allows eligible employees to take up to 26 workweeks of job-protected leave in a “single 12-month period” to care for a covered service member with a serious injury or illness.

## Leave Requirement

An employee is entitled to unpaid leave for any of the following reasons:

- to care for the employee’s child after birth, or placement for adoption or foster care;
- to care for the employee’s spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee’s job.

An employer may require 30 days advance notice (when the need is foreseeable) and medical certification.

## Employment and Benefit Protections

Upon return from leave under FMLA, an employee should be restored to their original or an equivalent position with equivalent pay, benefits, and other employment terms.

An employee’s use of leave under FMLA may not result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

Employers must maintain the employee’s health coverage under any “group health plan” during the employee’s FMLA leave.

## Notice

Employers should post, *Your Rights Under the Family and Medical Leave Act of 1993*, where employees can readily see it.

## ADDITIONAL INFORMATION

For more information visit [www.dol.gov/compliance/laws/comp-fmla.htm](http://www.dol.gov/compliance/laws/comp-fmla.htm).



# OCCUPATIONAL HEALTH AND SAFETY ACT (OSHA)

**THE OSH ACT REQUIRES** that employers provide a safe and healthy workplace.

## Application

All employers are covered by the OSH Act, **except**:

- partners;
- self-employed persons; or
- farms where only immediate members of the family are employed.

## Inspections

Every business covered by the OSH Act is subject to inspection. Below are some helpful guidelines for the inspection:

- Anything said to OSHA by a supervisor or manager will be recorded, and if it is adverse to the employer's position it will be construed as an admission of liability in the event of a citation proceeding or criminal prosecution.
- The employer's representatives need not say anything to OSHA about the workplace conditions; the representative need only provide logs and other documents required to be kept.
- Be familiar with the forms used by OSHA to record information gained from inspections so that answers to questions will be recorded on those forms as favorably as possible.
- Immediately correct any apparent hazards disclosed during the inspection; this will not prejudice the employer's right later to contest a citation, and may enhance the employer's ability to obtain credit for good faith and lessen the chance for issuance of a "willful" citation.

- After an inspection, give the inspector a name, title, and address to whom any citations should be sent; otherwise, valuable time will be lost while mail travels within the company.
- Do not exaggerate the quality of safety/health conditions when describing them to an OSHA inspector.

## Record-keeping Requirements

There are five important steps required by the OSH Act:

1. Obtain a report on injuries requiring medical treatment (except first aid); and
2. Record injuries in the log (OSHA Form 300) according to the instructions; and
3. Prepare a supplementary record (OSHA Form 301) of occupational injuries and illnesses for recordable cases; and
4. Every year, prepare the annual summary (OSHA Form 300A); post it no later than February 1, and keep it posted until April 30 (A good place to post it is next to the OSHA workplace poster); and
5. Keep these records for at least five years.

## Exemptions

Small employers: Although subject to the OSH Act regulations, employers with 10 or fewer employees are exempt from the record-keeping requirements (unless required by your State). A list of exempt industries can be found at: [www.osha.gov/recordkeeping](http://www.osha.gov/recordkeeping).



**Exceptions:** Employers exempt from the record-keeping requirements should:

- Report fatalities or multiple hospitalization accidents; and
- Maintain a log of occupational injuries and illnesses and make reports if notified in writing by the Bureau of Labor Statistics that you have been selected to participate in a statistical survey.

## Standards

- Walking and working surfaces, ladders, platforms, scaffolds, and means of egress
- Ventilation, noise, radiation, and hazardous or toxic liquids and air contaminants
- Personal protective equipment use and maintenance
- Hazardous materials such as acids, corrosives, explosives, flammable and toxic substances
- Workplace sanitation
- Medical facilities
- Materials handling and storage
- Use, maintenance and construction of cranes and industrial vehicles
- Welding equipment and procedures
- Equipment, tool, and machine guarding
- Electrical apparatus
- Carcinogens

- Hazard communication
- Access to records
- Process safety management
- Blood borne pathogens
- Confined spaces
- Asbestos
- Control of hazardous energy
- Fall control

## Notice

Employers should post the following notices where employees can readily see them:

- Job Safety and Health Protections workplace poster (OSHA 3165), or their state's equivalent; and
- Annual summary of injuries and illnesses (Form 300 by February 1).

## ADDITIONAL INFORMATION

For more information visit [www.dol.gov/compliance/laws/comp-fmla.htm](http://www.dol.gov/compliance/laws/comp-fmla.htm).