



# Human Resources Training

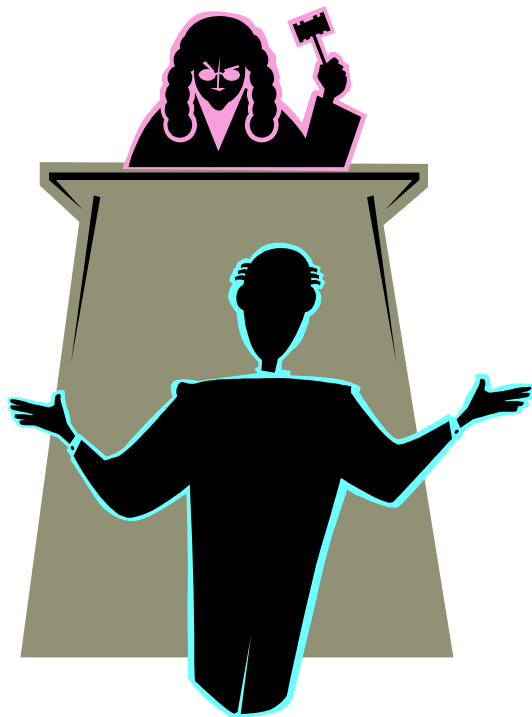
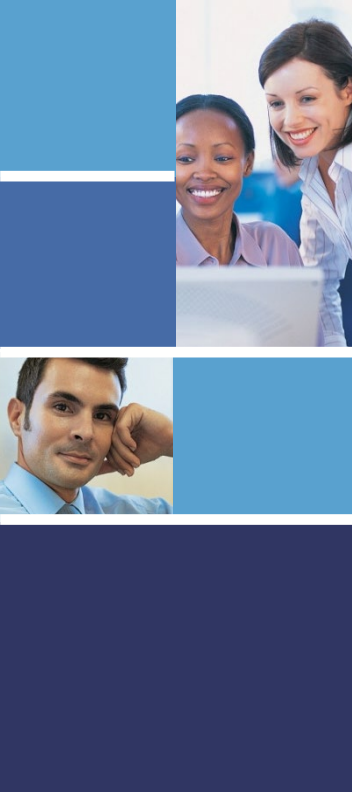
CURRENT LAWS AND BEST PRACTICES IN  
FIVE CRITICAL AREAS OF HUMAN  
RESOURCES.

January 13 , 2023  
Northfield Inn  
Springfield, Illinois



# REMINDER

## Compliance Issues



First!

I am not an attorney!

Nothing I provide/say today is  
intended to be legal advice.



# Agenda

**Hiring Practices and Handbooks**

**Fair Labor Standards Act  
(FLSA)**

**FMLA & COBRA**

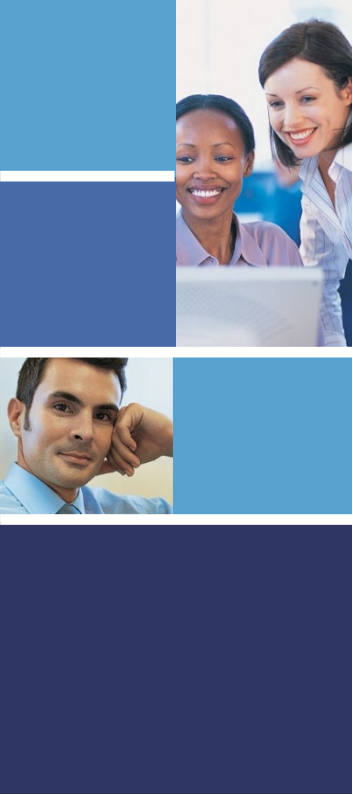
**Affirmative Action Plans (AAP)**

**Record Retention**



# Hiring Practices

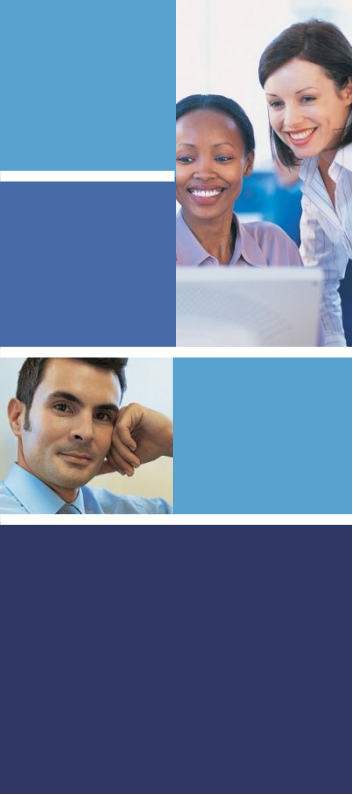
Whether handled by elected officials, supervisors or assigned to a centralized human resources department, hiring decisions are among the most important decisions made in any county. This session will cover best practices in hiring strategies, including developing accurate job descriptions and maximizing success in interviewing.



# Opportunity to Improve

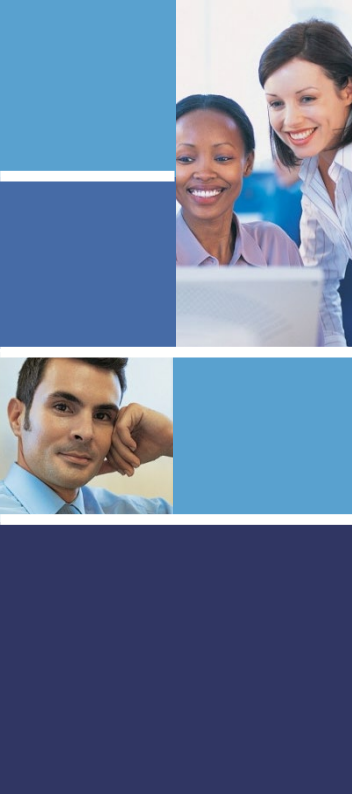
**With each vacancy, you have an opportunity to:**

- Improve your culture
- Upgrade skills of your workforce
- Maximize organization potential



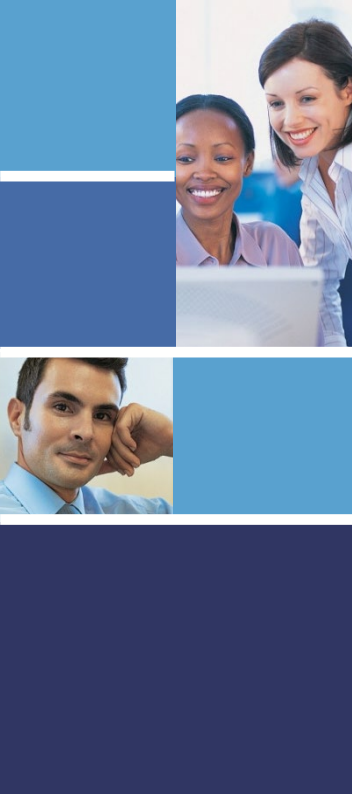
# What do you need?

- Once it is determined the position needs to be filled, identify the qualifications that are needed for current AND future needs?
  - Skills,
  - Abilities and Competencies
  - Behaviors
- Identify aspects of your culture that you wish to sustain and/or improve. - SWOT Analysis
- Establish the job description and qualifications and interview strategies accordingly



# Job Descriptions should include

- Title
- Department/Reporting Relationships
- Position Scope
- Education/Experience
  - Required or Minimum
  - Desired
- Essential Job Duties/Responsibilities
- Physical Requirements for Essential Job Duties



# Uses of Job Description

**Job description should be a resource for:**

- Advertising vacancy
- Creating phone screen and interview questions
- Describing position to candidate
- Establishing Performance Expectations

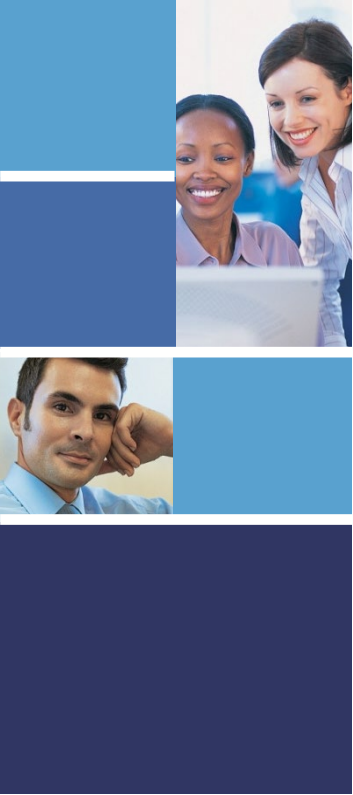
**Complete it before sourcing candidates!**



The slide features a vertical strip of images on the left side. At the top, two women are smiling and looking at a laptop. Below that, a man in a light blue shirt is shown in profile, resting his chin on his hand. The background of the slide is white, with blue and dark blue rectangular accents on the left and top edges.

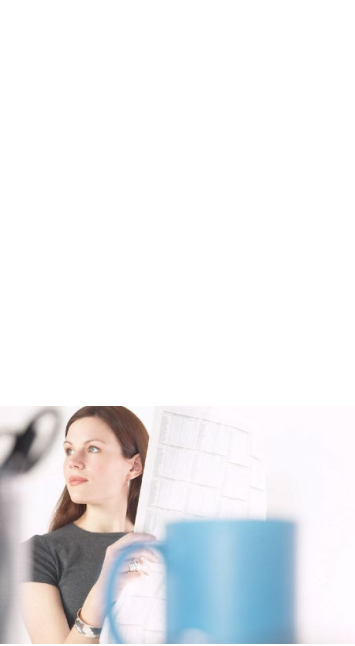
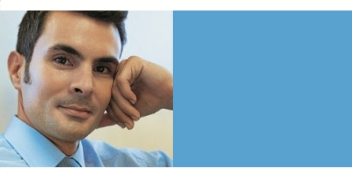
# Legal Tips

- Use the same interview template for all candidates that are screened
- Take notes & **KEEP THEM!**  
Actual statements not opinions



## Preparing for the Interview

- Set aside **sufficient time** for each interview and between interviews
- Arrange **quiet location** for interview
- **Review** the **job description** and the candidate's resume and **application** immediately before
- Prepare to provide information about the **company and its benefits**
- Provide **sufficient time** to rate candidate before next candidate is interviewed.



# The Interview

## At the start of the interview:

Confirm that you have the completed and **signed application**

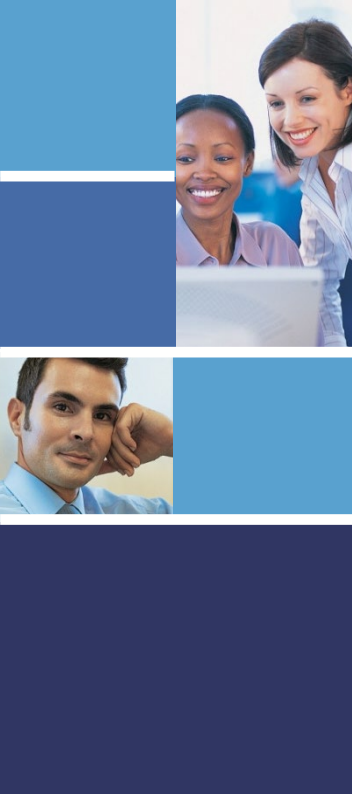
Offer a **beverage**

**Monitor your nonverbal** communication

Set the candidate at ease with **small talk**

- Before delving into questioning, **ask if the candidate has any questions.**
- **Take Notes**

# Panel Interviews



- Provides **multiple reviewers** the opportunity to hear the same information
- Improved opportunity to **take notes**
- Easier to **establish consensus** amongst interviewers
- Demonstrate that **diverse audience** involved in selection process
- Improves ability to concentrate on answers and develop appropriate **probing questions**



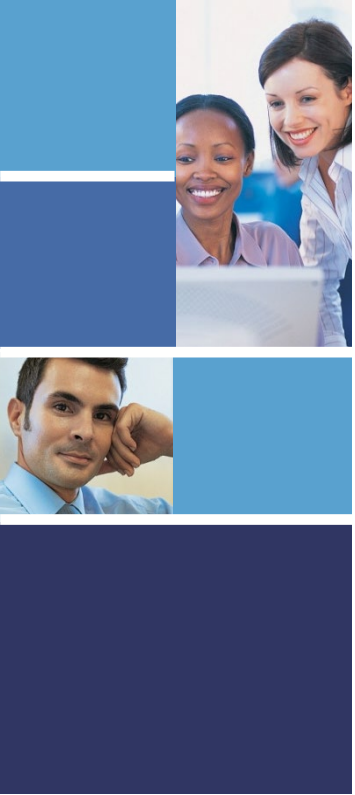
## During the Interview



### **What kinds of questions elicit the most informative responses?**

- Structured interview
- Open ended questions
- Behavioral interview questions
- Follow-up Probing questions





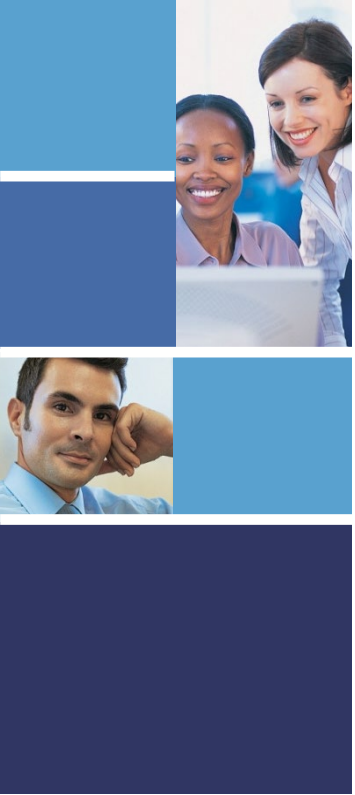
## Behavioral Based Interview Questions

- **Goal:** Find out what the candidate has done in the past in order to best predict what the candidate would do in the future
- Ask about specific experiences that the candidate has had where that candidate exhibited the competencies that are needed for the job



# Behavioral Based Interview Questions

- Tell me about a time when you resolved a problem for an angry client.
- Can you give me an example of how you have persuaded executives to see your point of view in the past?
- Describe an innovation that you proposed for a previous employer.
- In your position as \_\_\_\_\_, how did you determine which duties to delegate to subordinates?



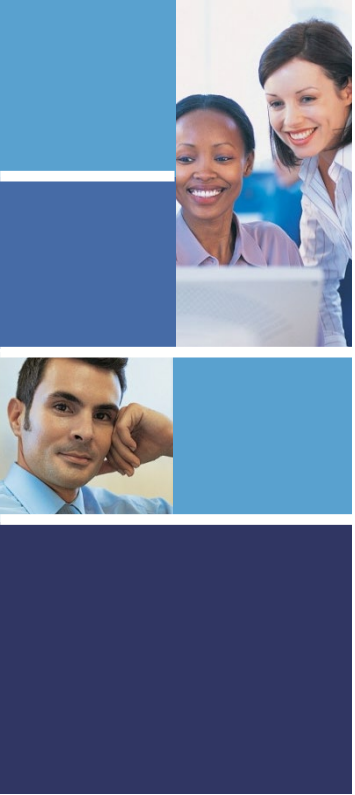
## Candidate Responses

- **Listen** to the full answer before preparing your next question
- Take notes – Actual statements not your opinions
- Demonstrate **unconditional positive regard**
- **Probe for more details** and to **confirm your understanding** of scope, role, complexity and issues.

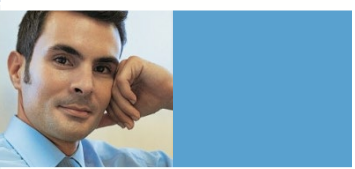


# During the Interview

- Show the job description to the candidate and discuss the contents
- Consider showing the candidate the work area



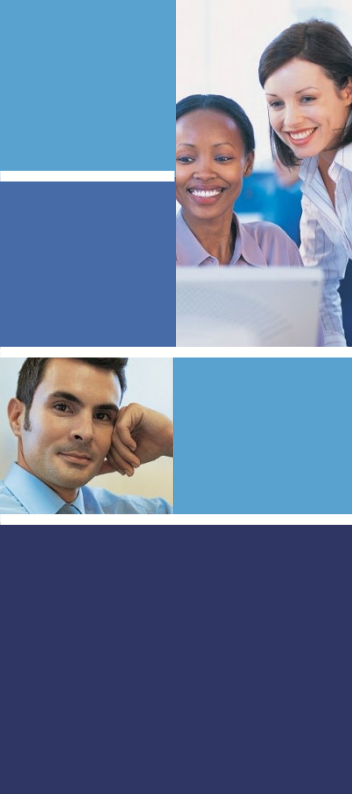
# Ending the Interview

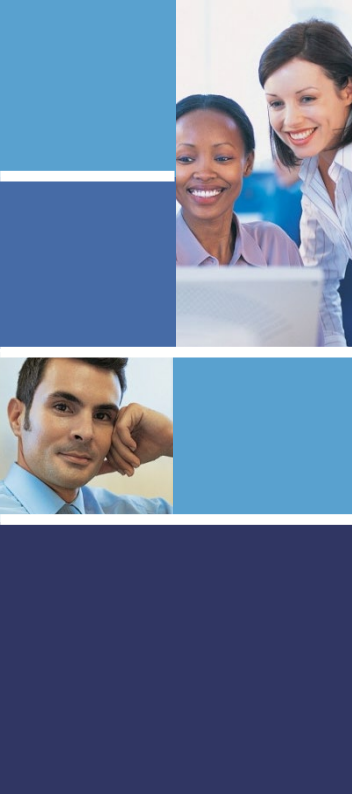


- **Ask the candidate** if there is anything else that the candidate would like to tell you about his or her **qualifications**.
- Ask if the candidate has any **questions**
- **Provide documents** describing your company and benefits.
- **Ask if the candidate is interested in the job** based on the information you've provided during the interview.
- Notify the candidate of when to expect further contact from you.
- Walk the candidate to the door and thank the candidate for the interview.

# Making the Selection Decision

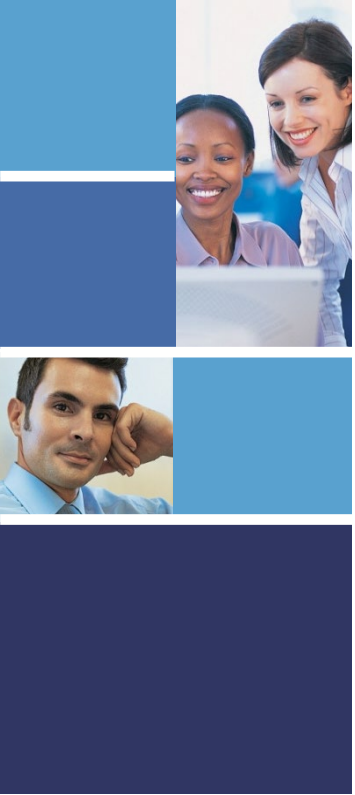
- Next Options
  - Requiring Job Related Work Product/Demonstrations
  - Additional Interviews for Finalists
- Risks to Avoid
  - Hiring **Best Interview** vs. **Most Qualified**
  - Weigh all the information
  - Credentials, Experience, Recency of Experience, Work Product, Achievements, References. Some factors may be more important





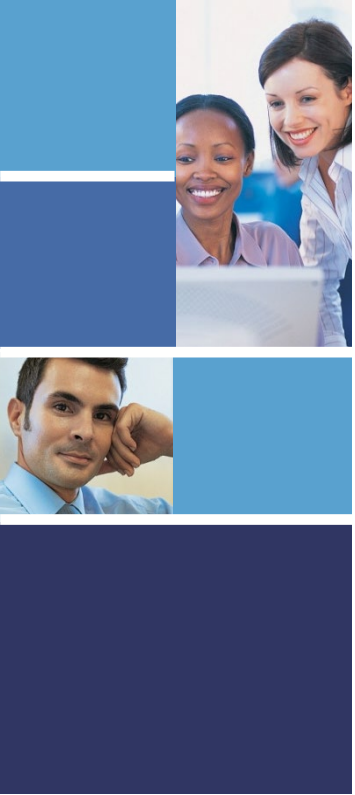
# Do Not Ask Illegal Question

- It is illegal to ask question that do not relate to the conditions for employment.
- The topics include: age, race, gender, religion, martial status, and parental status.
- Usually, these problems arise in small talk before or after the interview.



## Laws That Affect the Interview Process

- **National Labor Relations Act**  
Union membership
- **Uniformed Services Employment and Reemployment Rights Act (USERRA)**  
Membership or service in the uniformed services
- **Bankruptcy Act**
- **Child Support Enforcement Amendments**



# What to Ask and Not Ask

## Age

### **Instead of:**

When did you graduate?

### **Ask**

- ✓ Are you 18 years or older to do this type of work?
- ✓ Can you supply transcripts of your education?

# What to ask and not ask

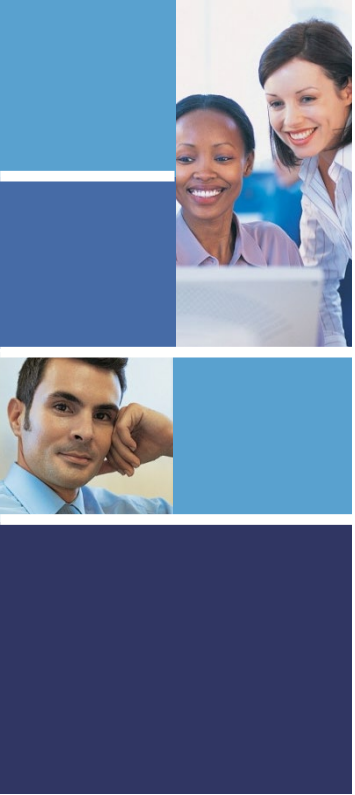
## Disability

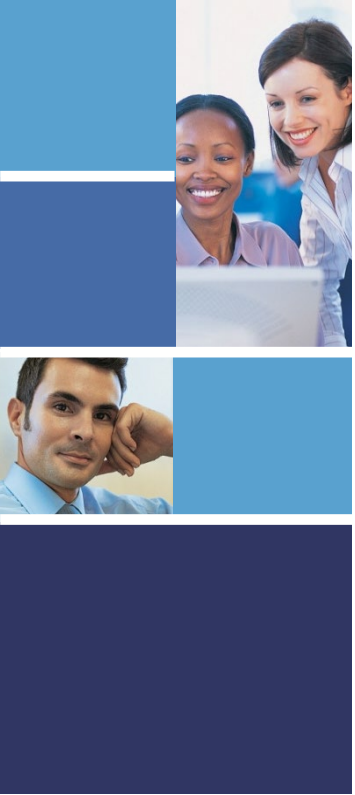
## Ask

- ✓ After reviewing the job description, “Can you do the duties listed in the job description, with or without accommodation?”
- ✓ If a worker has an obvious disability or reveals a hidden disability, you may ask the person to describe or demonstrate how the applicant would perform job duties.

## Must do

Employers must provide reasonable accommodation to candidates who have disabilities.





# What to ask and not ask

## Religion

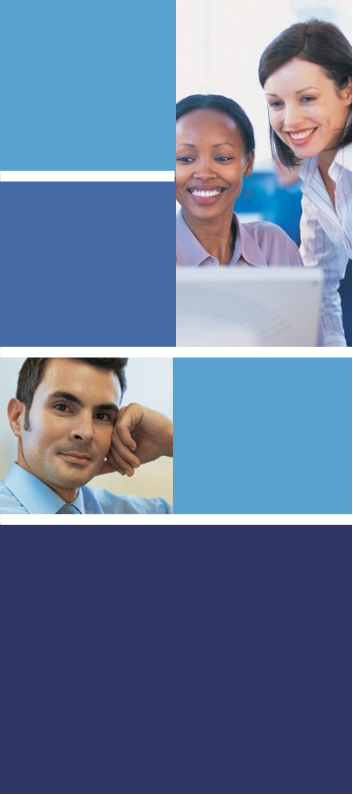
### Instead of:

What outside activities do you participate in?

### Ask:

What professional associations are you a member of?





# What to ask and not ask

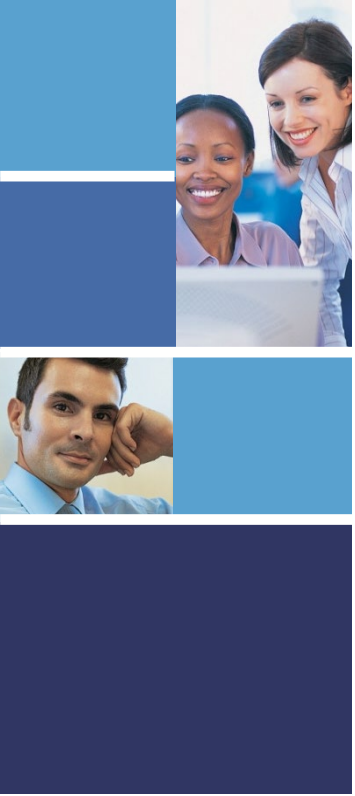
## Sex/marital status

### Instead of:

- Are you married?
- When do you plan to start a family?
- Do you have children?

### Ask:

- ✓ Are you available to travel frequently?
- ✓ Can you work overtime with no notice?
- ✓ Can you work evenings and weekends?
- ✓ When we check references/do a background check, are there other names we should look under?



# What to ask and not ask

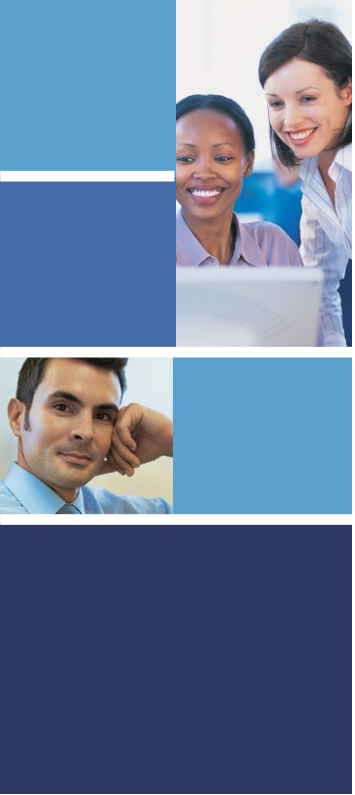
## National Origin/Citizenship

### Instead of:

- Are you a citizen of the US?
- What country are you from?
- Where is your accent from?
- What nationality is your last name?
- When does your visa expire?

### Ask:

If you are hired, are you able to provide documentation to prove that you are eligible to work in the US?



# What to ask and not ask

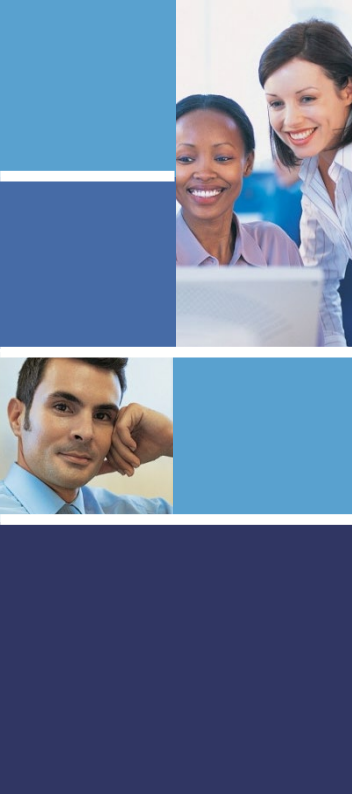
## Financial Status

### Instead of:

- Do you own a home/car?
- Have you ever filed for bankruptcy?
- Are you subject to any garnishments or child support orders?

### Ask:

Will you sign a form authorizing us to perform a credit check?



# What to ask and not ask

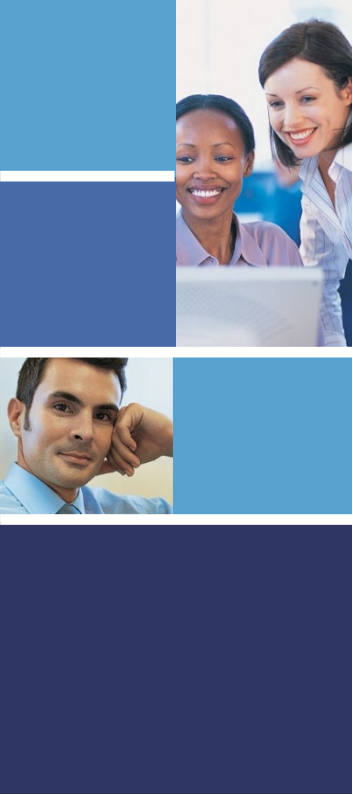
## Military

### Instead of:

- Please provide the status of your military discharge.
- Will you miss work to perform military service?

### Ask:

What experience did you gain in the uniformed service that is relevant to the job you would be doing?



# What to ask and not ask

## Appearance Guidelines:

Employers need to be aware of religious and cultural variations on appearances.

Create a Respectful and Open  
Workplace for Natural Hair  
aka the CROWN Act



# Employee Handbooks

HAVE YOU EVER HAD TO ADDRESS AN ISSUE WITH AN EMPLOYEE WHEN THERE WERE NOT CLEAR GUIDELINES LAID OUT FOR BOTH PARTIES (EMPLOYEE & EMPLOYER)?

An employee handbook is a necessary tool in protecting your county. It not only explains what is expected of your employees, but it can also put you on the right side of the law if a dispute occurs. This program will cover the primary policies for inclusion in an employee handbook based in part, on case law and Supreme Court decisions and provide recommendations from a risk management standpoint.

The employee handbook is recognized by human resource professionals as an essential tool for communicating workplace culture, benefits and employment policy information to employees. An employee manual typically describes information about the employer's employment practices, company benefits, equal opportunity commitments, attendance guidelines, pay practices, leave of absence procedures, safety issues, labor relations matters and sanctions for misconduct.

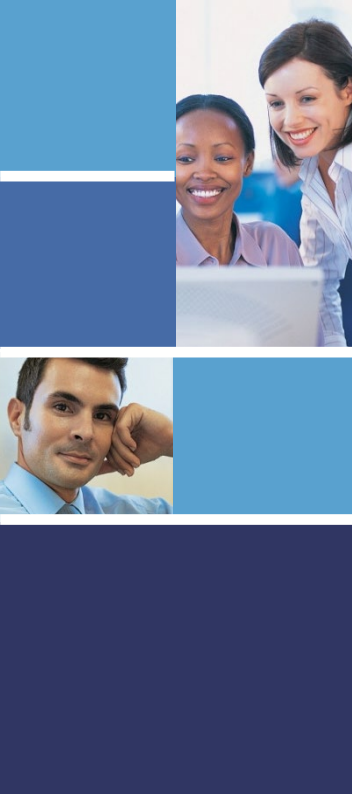


# Handbook Purpose

**To Inform**

**To Educate**

**To Inform  
The Entire Workforce**



# Handbook Purpose

- Inform & Educate Entire Workforce
  - Policies & Procedures
  - Expectations of Employees
  - Employers Commitments to Employees without Limiting Employer Flexibility Rights
  - Complaint Procedures
- Reminder of Employer Discretion
- Summarize Benefits
- Distributed in Organized Manner



# Typical Policy Inspirations

## Inspiration

- Employees Fighting
- Employee Consistently Tardy
- Employee wears mini skirt to work
- Employee damages company property
- Employee forwards chain e-mail

## Resulting Policy

- No Violence in the Workplace Policy
- Absenteeism Policy
- Dress Policy
- Company property policy
- E-mail & Internet use policy



# Benefits of a Handbook

Policies are Documented

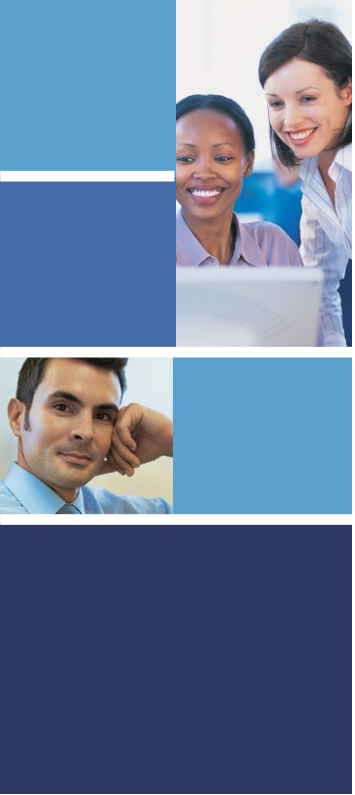
Uniformity among Departments

Tool for Performance Counseling

Support Uniform Supervisory Standards

Assist in Maintaining Moral

Potentially Protect Against Future Liability

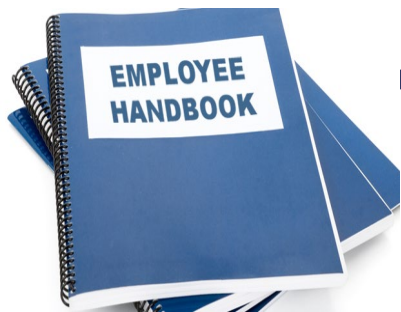
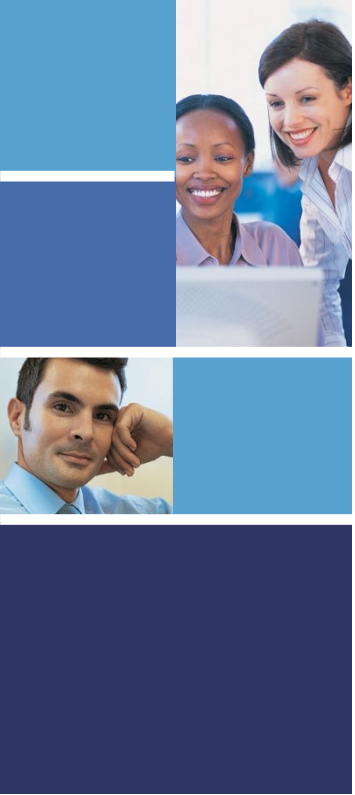


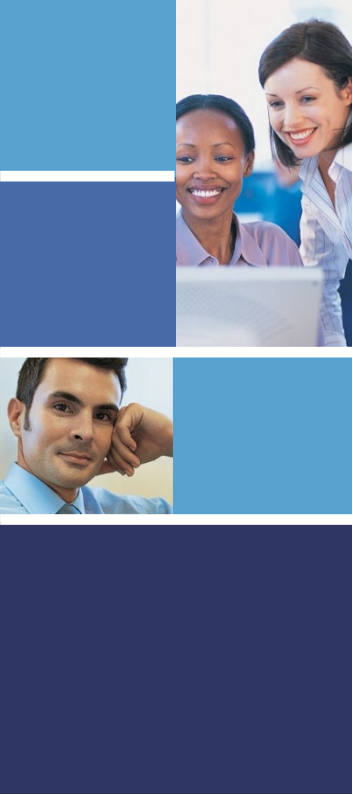
# Common Items in Handbooks

- Collective Bargaining Position
- Social Media & Data Privacy
- Reasonable Accommodation
- Retaliation
- Wages and Payroll/Timekeeping
- State-Specific Laws
- Leave Benefits
- Attendance/Time Off
- Smoking and Marijuana Use
- LGBT Rights

# Common Items in Handbooks

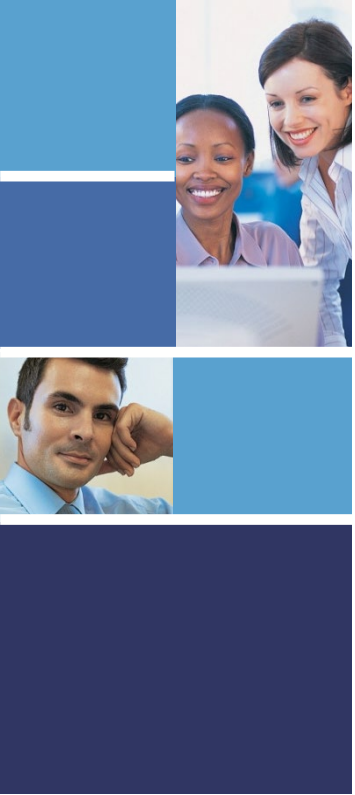
- Purpose Statement
- Applicable Statements Enforcing Compliance with Req Laws & Regs
- Work Hours
- Guidelines for Conduct
- Workplace Harassment, Discrimination, & Violence Statement Approved Leave Policies
- Non-Solicitation/Distribution Policy
- Use of Company Property
- Acknowledgement of Receipt





## Additional Elements Might Include

- Confidentiality Statement
- Business Ethics/Conflict of Interest
- Drug & Alcohol Use
- Employment Categories/Overtime
- Benefits
- Orientation Period
- Dress Code/Appearance
- Open Door Policy
- Grievance/Complaint Resolution
- Arbitration/Mediation
- References

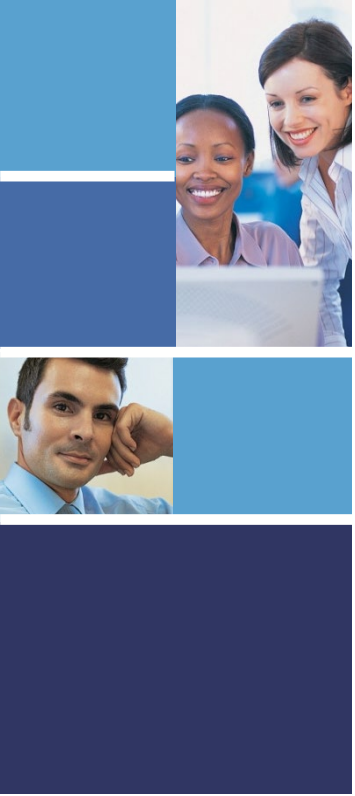


# Reviewing & Revising Handbooks

- # of Employees Now & Expected in Next 2-3 yrs
- Union or Non-Union?
- State/Fed Contracts?
- Other States of Operation?
- Copy write Date of Off the Shelf Products
- Age of Last Handbook Revision
- Key Elements Recommended to All Employers Included?

# Reviewing & Revising Contd.

- Meet w/Management
  - Concerns for Consistency
  - Suggestions
- Review Possible topics to include
- Research Other Handbooks
- Attend Courses
- Complete & Have an Attorney (Your State's Attorney) Review before Distribution

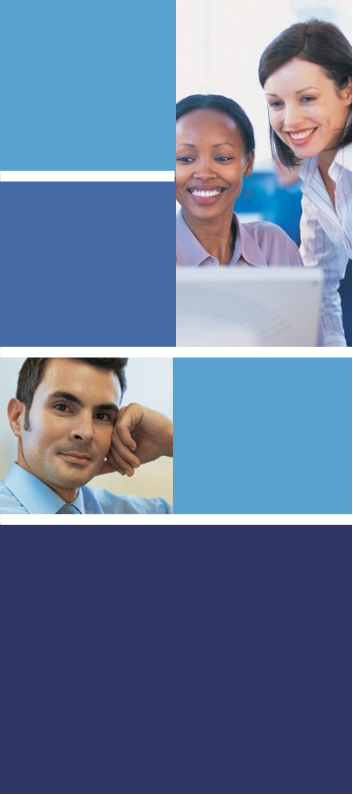




# Key Provisions

- Make Decisions that Fit Your Company - Which 12 months to count for FMLA?
- Get “Buy In” from others
- Top-Down Support
- Conduct Training
- Maintain Policies
- Review regularly





# Spanish Speaking Employees

## **Translation of Employee Handbooks, Safety Information, Benefits Information, Websites, & Other Documents**

- Workforce Language Services
- [www.workforcelang.com](http://www.workforcelang.com)
- 773.292.5500
- [info@workforcelang.com](mailto:info@workforcelang.com)



# Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) regulates minimum wage, overtime and equal pay for employees. FLSA is arguably the labor law that is most often violated by employers. We will review basic requirements of FLSA.

## **The Fair Labor Standards Act Of 1938, As Amended**



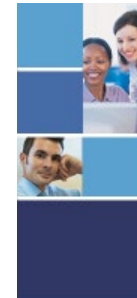
U.S. Department of Labor  
Wage and Hour Division

WH Publication 1318  
Revised May 2011



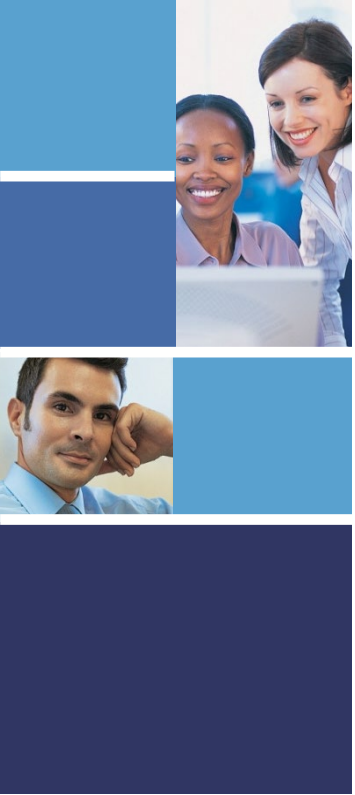
# Major Provisions

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Recordkeeping



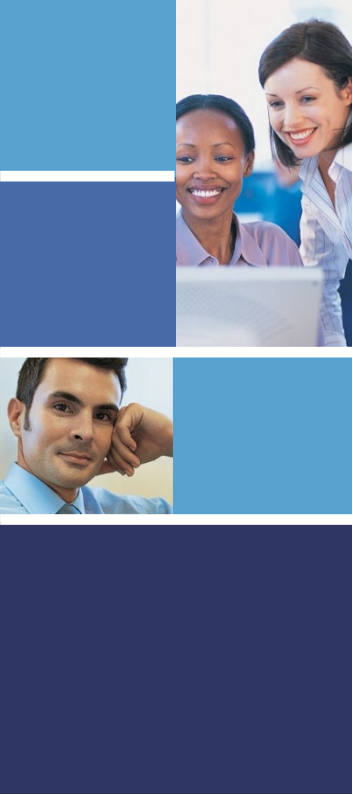
## Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the “employer” and the “employee”



## Coverage

More than **143 million workers** in more than **9.8 million workplaces** are protected or “**covered**” by the Fair Labor Standards Act (FLSA), which is enforced by the Wage and Hour Division of the U.S. Department of Labor.



# Coverage

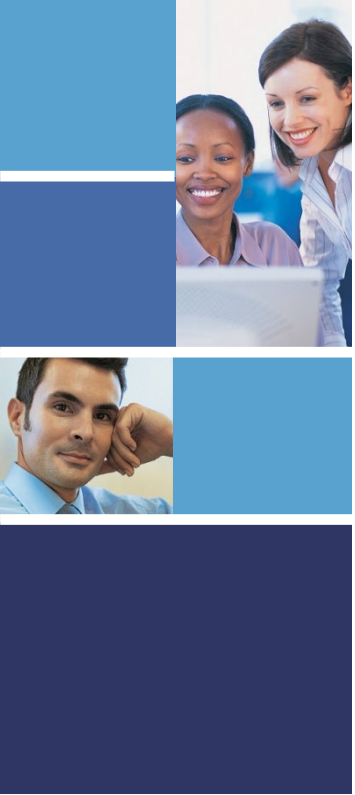
## Two types of coverage

- **Enterprise coverage**: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections
- **Individual coverage**: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections



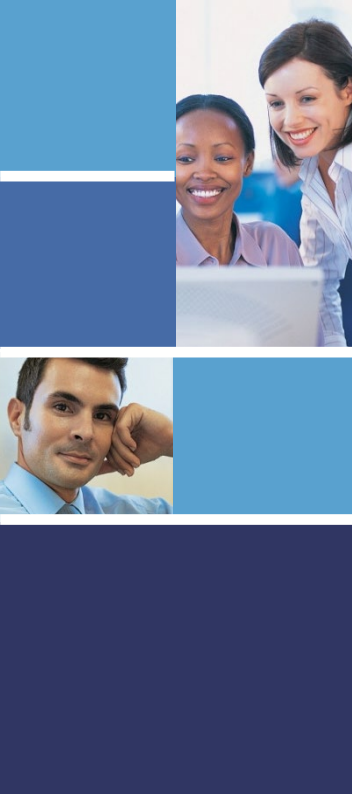
# Enterprise Coverage

- Enterprises with
  - At least two (2) employees
  - At least \$500,000 a year in business
- Hospitals, businesses providing medical or nursing care for residents, schools, preschools and ***government agencies*** (federal, state, and **local**)



## The Bottom Line

- **Almost every employee in the United States is covered by the FLSA**
- Examples of employees who may not be covered
  - Employees working for small construction companies
  - Employees working for small independently owned retail or service businesses



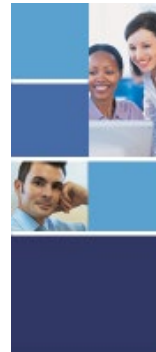
## Minimum Wage: Basics

- Covered, non-exempt employees must be paid not less than the federal minimum wage for all hours worked.
- The FEDERAL minimum wage is \$7.25 per hour effective July 24, 2009.
- Cash or equivalent – free and clear.
- Yes, the ILLINOIS minimum wage (\$13 an hour) is higher and federal contractor minimum wage is even higher (both outside of FLSA).



# Compensation Included

- Wages (salary, hourly, piece rate)
- Commissions
- Certain bonuses
- Tips received by eligible tipped employees (up to \$5.12 per hour July 24, 2009)
- Reasonable cost of room, board and other “facilities” provided by the employer for the employee’s benefit



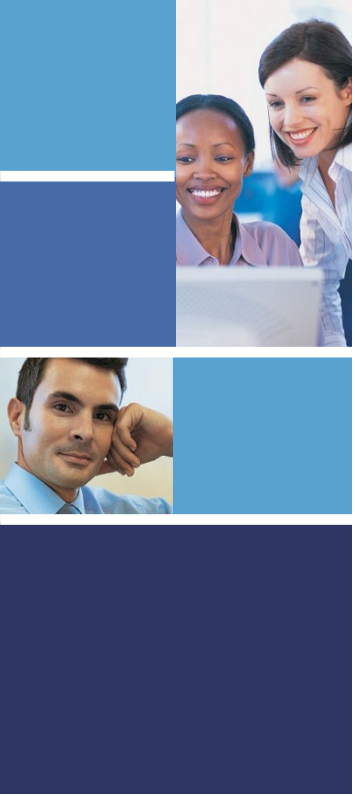
## Board and Lodging

- Cannot exceed actual cost
- Cannot include a profit to the employer
- Employer’s method of determining reasonable cost should follow good accounting practices
- Employer cannot take a credit when no cost is incurred



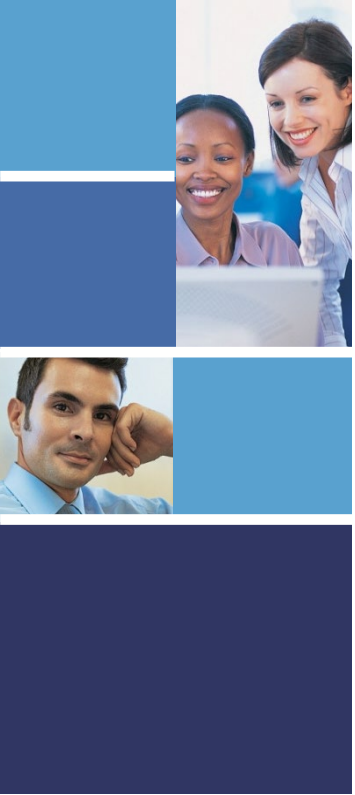
# Deductions

- Deductions from pay illegal if
  - Deduction is for item considered primarily for the benefit or convenience of the employer; and
  - The deduction reduces employee's earnings below required minimum wage
- Examples of illegal deductions
  - Tools used for work
  - Damages to employer's property
  - Cash register shortages



# Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- On-Call Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time

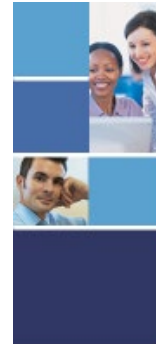


# On-Call Time

- On-call time is hours worked when
  - Employee has to stay on the employer's premises.
  - Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes.
- On-call time is not hours worked when
  - Employee is required to be available.
  - Employee is required to leave word at home or with the employer where he or she can be reached.

# Meal and Rest Periods

- Meal periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal
- Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid



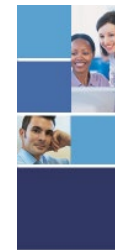
## Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance

# Travel Time

- Ordinary home to work travel is not work time
- Travel between job sites during the normal workday is work time
- Special rules apply to travel away from the employee's home community



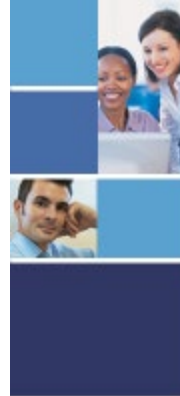
## Sleep Time

- Less than 24 hour duty
  - Employee who is on duty for less than 24 hours is considered to be working even if allowed to sleep or engage in other personal pursuits
- Duty of 24 hours or more
  - Parties can agree to exclude bona fide sleep and meal periods



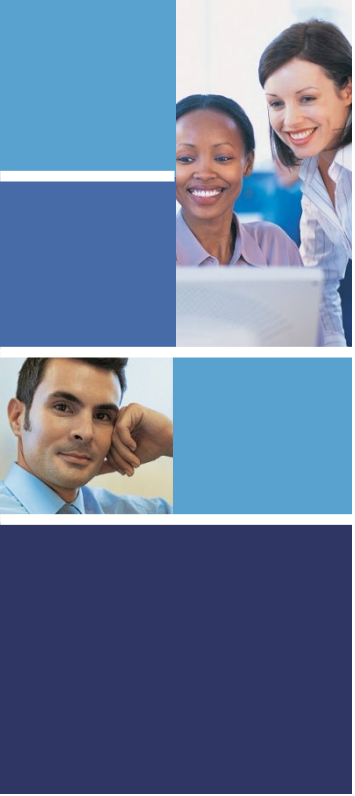
# Overtime Pay

Covered, non-exempt employees must receive one and **one-half times the regular rate of pay for all hours worked over forty in a workweek**



## Overtime Issues

- Each workweek stands alone
- Regular rate
  - Payments excluded from rate
  - Payments other than hourly rates
  - Tipped Employees
- Deductions



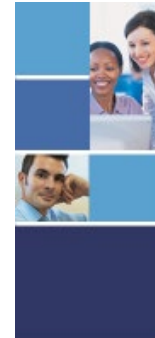
# Workweek

- Compliance is determined by workweek, and each workweek stands by itself.
- Workweek is 7 consecutive 24 hour periods (168 hours).



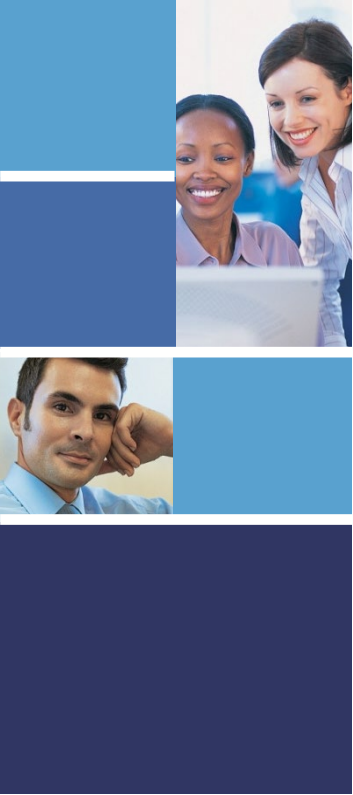
# Regular Rate

- Is determined by dividing total earnings in the workweek by the total number of hours worked in the workweek.
- May not be less than the applicable minimum wage.



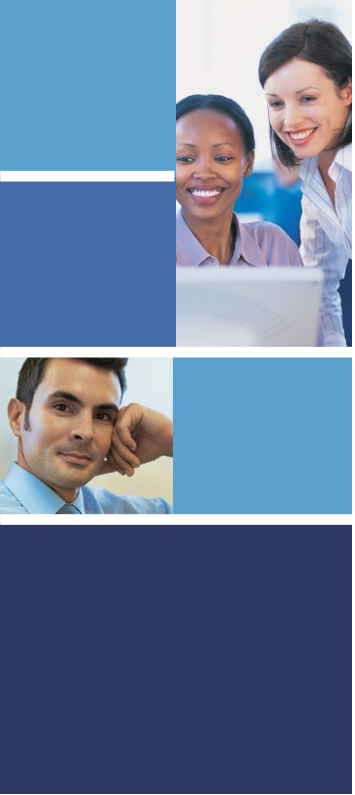
## Regular Rate Exclusions

- Sums paid as gifts
- Payments for time not worked
- Reimbursement for expenses
- Discretionary bonuses
- Profit sharing plans
- Retirement and insurance plans
- Overtime premium payments
- Stock options



# The FLSA Does Not Require

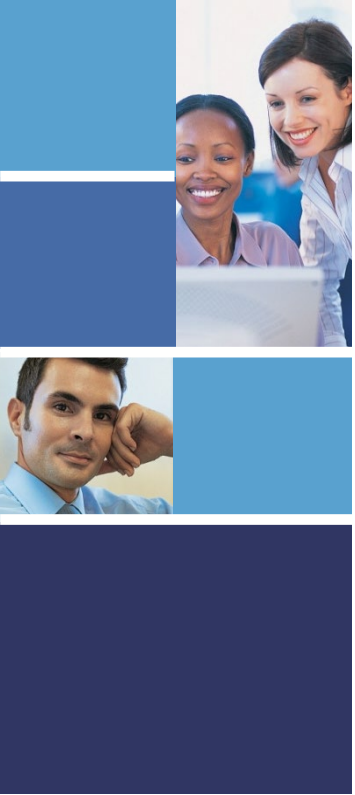
- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations.
- Premium pay for weekend or holiday work.
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work.
- Pay raises or fringe benefits.



## “White Collar” Exemptions

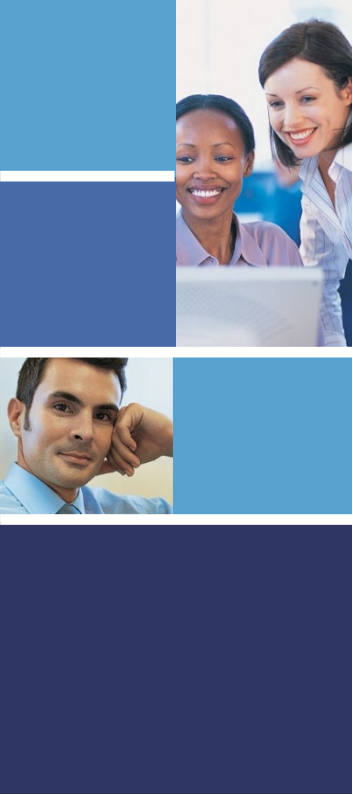
The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain.

- Executive Employees
- Administrative Employees
- Professional Employees
- Outside Sales Employees
- Employees doing Computer Programming



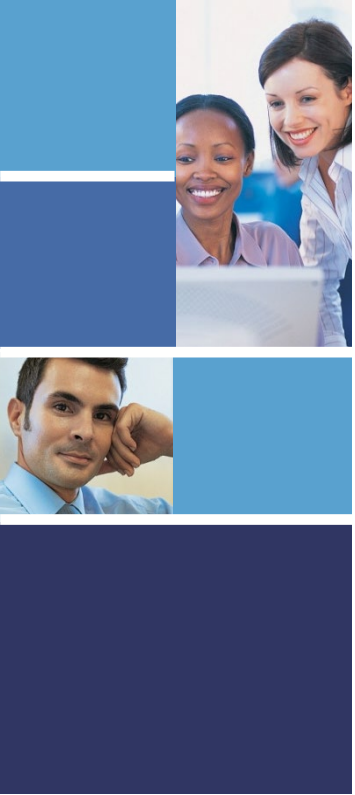
## Minimum Salary Level: \$684

- For most employees, the minimum salary level required for exemption is \$684 per week/ \$35,568 annually
- Must be paid “free and clear”
- This rate is expected to be raised in Congress in 2023. The numbers in discussion are \$900 to \$1000 weekly.



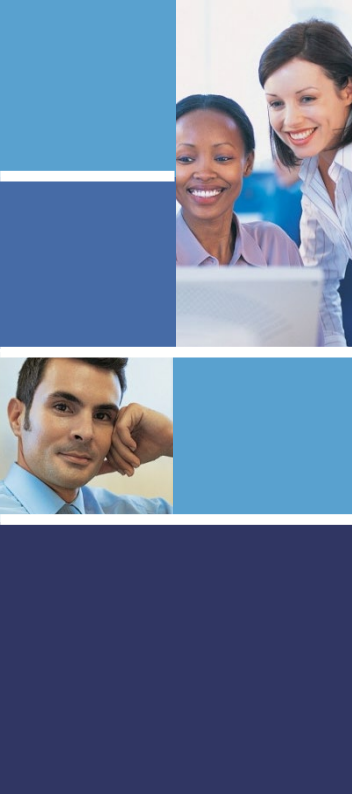
# Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis).
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed.
- Must be paid the full salary for any week in which the employee performs *any* work.
- Need not be paid for any workweek when no work is performed.



# Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses.
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.



## Effect of Improper Deductions

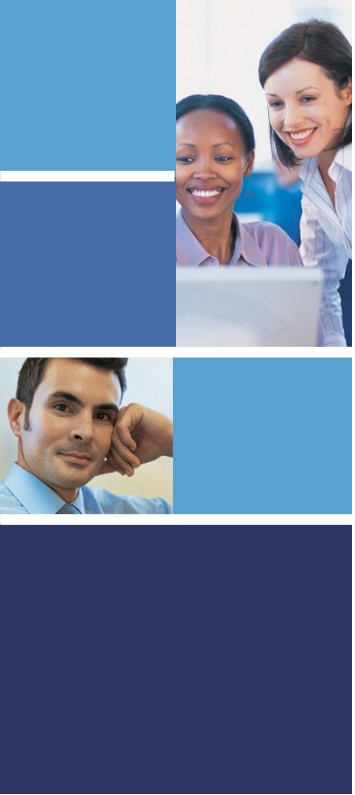
- An actual practice of making improper deductions from salary will result in the loss of the exemption
  - During the time period in which improper deductions were made
  - For employees in the same job classifications
  - Working for the same managers responsible for the actual improper deductions
- Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee



# Safe Harbor

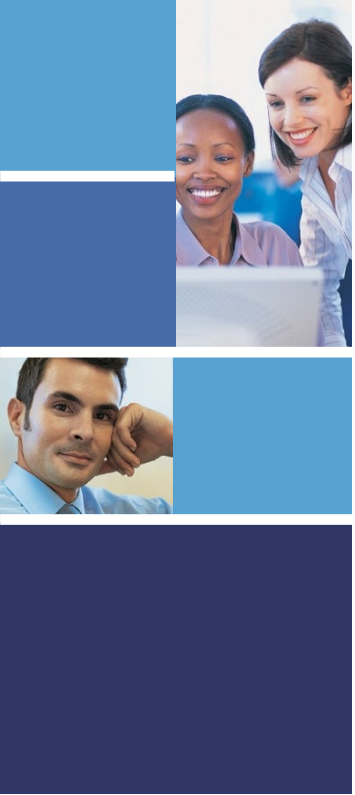
- The exemption will not be lost if the employer:
  - Has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism
  - Reimburses employees for any improper deductions; and
  - Makes a good faith commitment to comply in the future
- Unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints





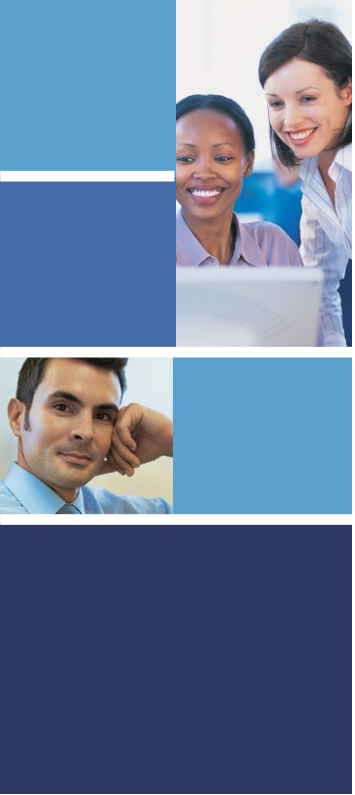
## Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision.
- Customarily and regularly directs the work of two or more other employees.
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight.



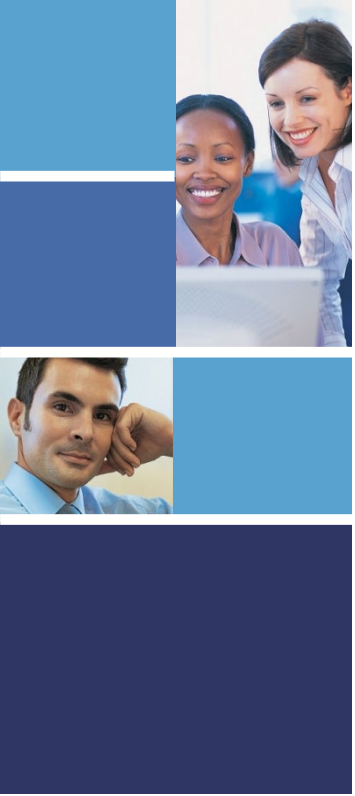
## Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers.
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



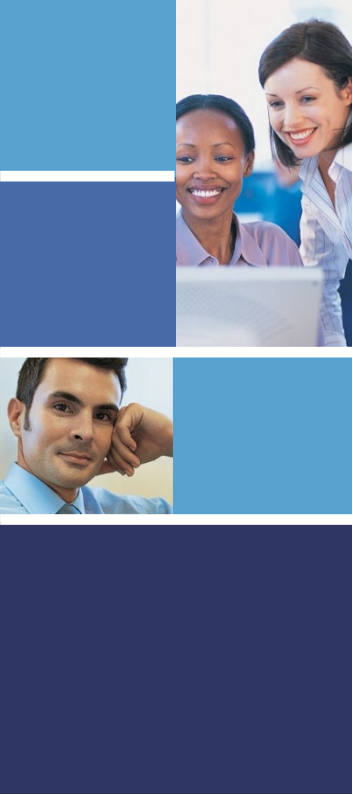
# Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.



# Outside Sales

- Primary duty is
  - Making sales or
  - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test



# Youth Employment

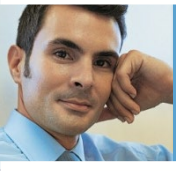
- 16 Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.
- 14 Fourteen- and 15-year-olds may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.
- <14 Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA.

# Family and Medical Leave Act

REFERRED TO AS **F-M-L-A** OR *FEM-A-LAH*

The Family and Medical Leave Act (FMLA) is intended to balance the demands of the workplace with the needs of families by allowing leave for certain qualifying reasons. Detailed regulations and numerous legislative and regulatory changes have made it extremely difficult to administer.

FMLA became law in 1993 and has become a challenge and remains a challenge for employers.



The slide features a decorative vertical strip on the left side. It contains two photographs: the top one shows two women, one Black and one white, smiling and looking at a laptop; the bottom one shows a man in a light blue shirt resting his chin on his hand. The background of the slide is white, with a large light blue rectangular area on the right containing the main text.

# Introduction to the FMLA

## Topics of Discussion:

- Employer Coverage and Employee Eligibility
- Qualifying Reasons for Leave
- Amount of Leave
- *Employer* Rights and Responsibilities
- Employee Rights and Responsibilities
- Military Family Leave Provisions

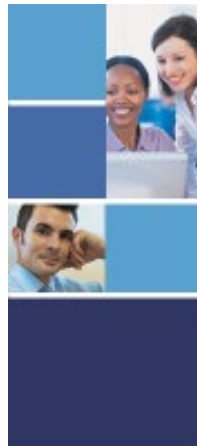


# Employer Coverage [§ 825.104](#)

- Private sector employers with 50 or more employees
- **Public Agencies**
- Public and private elementary and secondary schools

Employee's workweek  
is basis for entitlement

Eligible employees may  
take up to **12**  
**workweeks** of FMLA  
leave

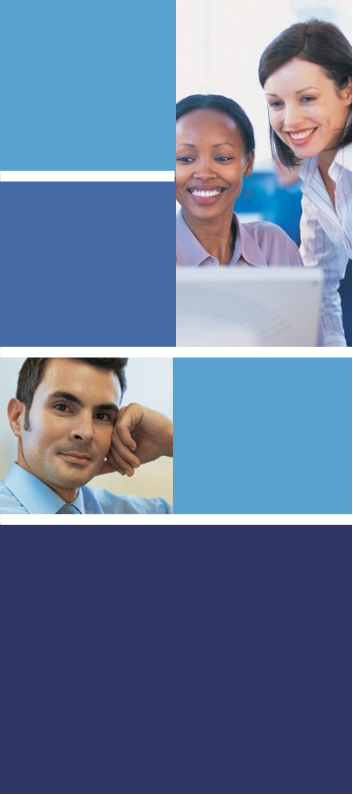


## Employee Eligibility

[§ 825.110](#)

- Employed by covered employer
- Worked at least 12 months
- Have at least 1,250 hours of service during the 12 months before leave begins
- Employed at a work site with 50 employees within 75 miles





## Qualifying Family Members [§ 825.122](#)

- **Parent** - A biological, adoptive, step or foster father or mother, or someone who stood *in loco parentis* to the employee when the employee was a son or daughter. Parent for FMLA purposes does not include in-laws.
- **Spouse** - A husband or wife as defined or recognized in the state where the employee was married and includes individuals in a same-sex marriage or common law marriage.
- **Son or Daughter** - *For leave other than military family leave*, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is either under 18 years of age, or 18 or older and incapable of self-care because of a mental or physical disability.



## Qualifying Leave Reasons [§ 825.112](#)

- Eligible employees may take FMLA leave:
  - For the birth or placement of a child for adoption or foster care
  - To care for a spouse, son, daughter, or parent with a serious health condition
  - For their own serious health condition

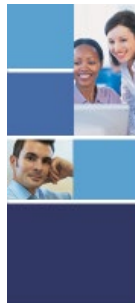
### – Military Family Leave

- Because of a qualifying reason arising out of the covered active duty status of a military member who is the employee's spouse, son, daughter, or parent (qualifying exigency leave)
- To care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (military caregiver leave)



## Qualifying Leave Reasons – For the Birth or Placement of a Child [§ 825.120-121](#)

- Both the mother and father are entitled to FMLA leave for the birth or placement of the child and/or to be with the healthy child after the birth or placement (bonding time).
- Employees may take FMLA leave before the actual birth, placement or adoption.
- Leave must be completed by the end of the 12-month period beginning on the date of the birth or placement.



Qualifying Leave Reasons –  
Serious Health Condition [§ 825.113](#)


Illness, injury, impairment or  
physical or mental condition  
involving:

- Inpatient Care, or
- Continuing Treatment by a Health Care Provider



## Serious Health Condition – Inpatient Care [§ 825.114](#)

- An overnight stay in a hospital, hospice, or residential medical facility.
- Includes any related incapacity or subsequent treatment.



### Serious Health Condition – Continuing Treatment [§ 825.115](#)

#### Continuing Treatment by a Health Care Provider

- Incapacity Plus Treatment
- Pregnancy
- Chronic Conditions
- Permanent/Long-term Conditions
- Absence to Receive Multiple  
Treatments

## Incapacity Plus Treatment

Incapacity of more than three consecutive, full calendar days that involves either:

- Treatment two times by HCP (first in-person visit within seven days, both visits within 30 days of first day of incapacity)
- Treatment one time by HCP (in-person visit within seven days of first day of incapacity), followed by a regimen of continuing treatment (e.g., prescription medication)

## Continuing Treatment by a Health Care Provider [§ 825.115](#)

### Pregnancy

Incapacity due to pregnancy or prenatal care.

## Continuing Treatment by a Health Care Provider [§ 825.115](#)

### Chronic Conditions

- Any period of incapacity or treatment due to a chronic serious health condition, which is defined as a condition that:
  - requires periodic visits (twice per year) to a health care provider for treatment
  - continues over an extended period of time
  - may cause episodic rather than continuing periods of incapacity

Continuing Treatment by a Health Care Provider [§ 825.115](#)

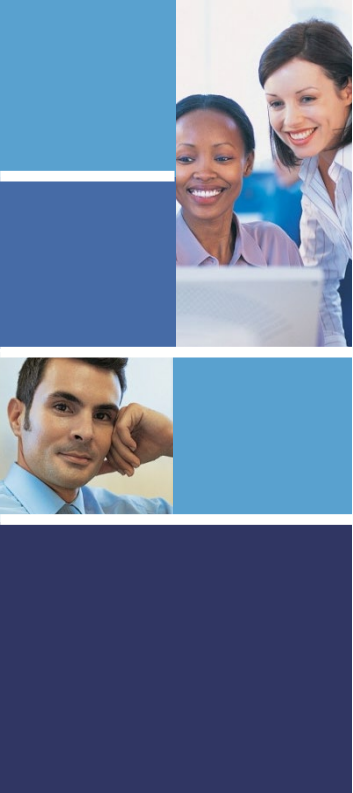
## Permanent/Long-Term Conditions

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective

Continuing Treatment by a Health Care Provider [§ 825.115](#)

### Absence to Receive Multiple Treatments

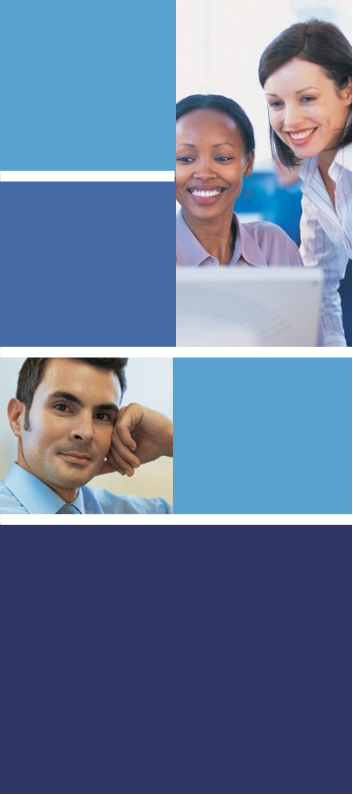
- For restorative surgery after an accident or other injury, or
- For conditions that, if left untreated, would likely result in incapacity of more than three consecutive, full calendar days



# Amount of Leave (12 Workweeks Max)– Intermittent Leave [§ 825.202](#)

- Employee is entitled to take intermittent or reduced schedule leave for:
  - Employee’s or qualifying family member’s serious health condition when the leave is medically necessary
  - Covered servicemember’s serious injury or illness when the leave is medically necessary
  - A qualifying exigency arising out of a military member’s covered active duty status
- Leave to bond with a child after the birth or placement must be taken as a continuous block of leave unless the employer agrees to allow intermittent or reduced schedule leave
- In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour \*
- Shortest increment may vary during different times of day or shift
- Required overtime not worked may count against an employee’s FMLA entitlement





## Amount of Leave – Special Rules [§ 825.200 - 205](#)

- Physical impossibility
- Holidays
- Planned medical treatment
- Transfer to an alternative position
- Spouses may be limited to a combined total for certain leave reasons

The slide features a vertical strip of four images on the left side. From top to bottom: 1. A woman with dark hair smiling. 2. A woman with dark hair and a man with light hair looking at a laptop. 3. A man with dark hair resting his chin on his hand. 4. A solid dark blue rectangle.

## 12-Month Period [§ 825.200](#)

### Method determined by employer

- Calendar year
- Any fixed 12-month leave year
- A 12-month period measured forward
- A rolling 12-month period measured backward



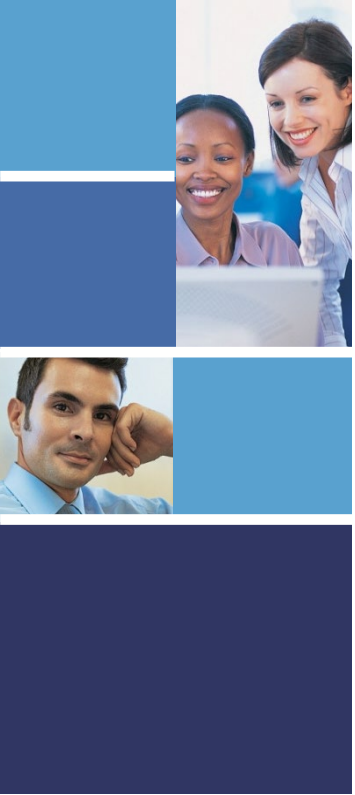
# Substitution of Paid Leave [§ 825.207](#)

- “Substitution” means paid leave provided by the employer runs concurrently with unpaid FMLA leave and normal terms and conditions of paid leave policy apply
- Employees may choose, or employers may require, the substitution of accrued paid leave for unpaid FMLA leave
- Employee remains entitled to unpaid FMLA if procedural requirements for employer’s paid leave are not met



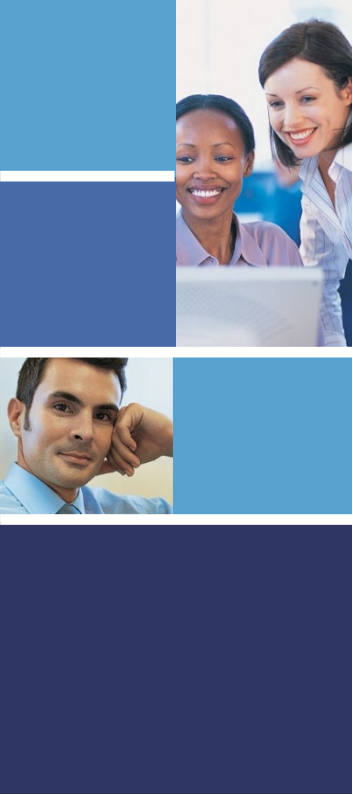
## Substitution of Paid Leave-Limitations [§ 825.207](#)

- Workers’ compensation leave
  - may count against FMLA entitlement
  - “topping off” allowed if state law permits
- Disability leave
  - may count against FMLA entitlement
  - “topping off” allowed if state law permits
- Compensatory time off (public sector only)
  - may count against FMLA entitlement
  - subject to FLSA requirements



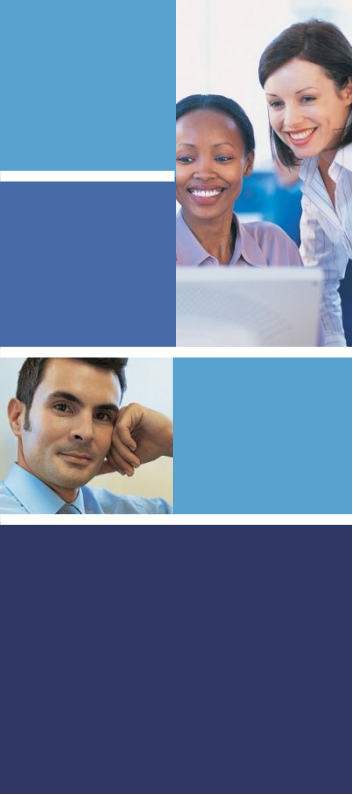
# Employer Responsibilities

- Provide notice
- Maintain group health insurance
- Restore the employee to same or equivalent job and benefits
- Maintain records



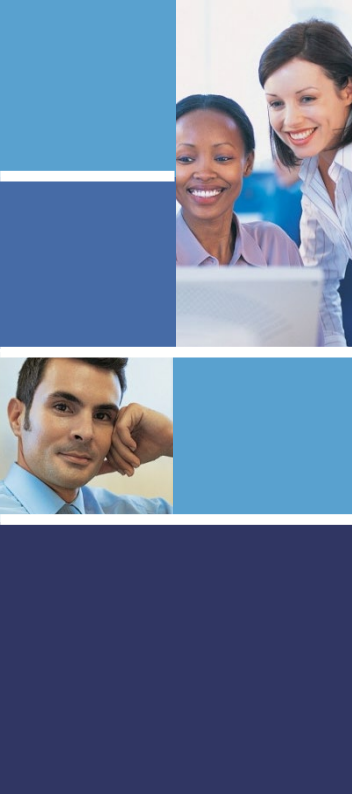
## Employer Responsibilities – Provide General Notice [§ 825.300](#)

- Employers must inform employees of FMLA:
  - Post a General Notice, and
  - Provide General Notice in employee handbook or, if no handbook, distribute to new employees upon hire
- Electronic posting and distribution permitted
- Languages other than English required where significant portion of workforce not literate in English
- Citations and Fines for willful posting violation



## Employer Responsibilities – Provide Notice of Eligibility [§ 825.300](#)

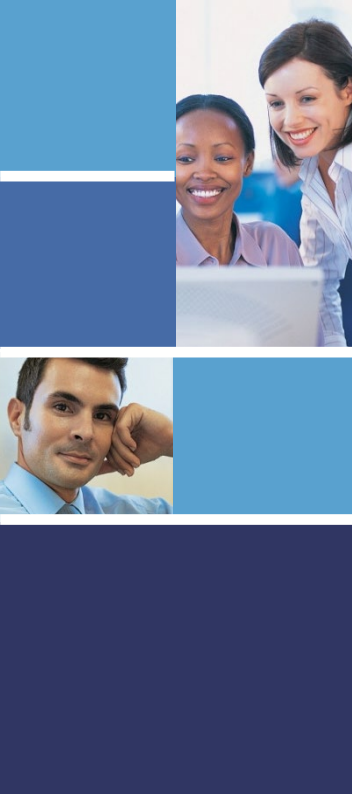
- Within five business days of leave request (or knowledge that leave may be FMLA-qualifying).
- Eligibility determined on first instance of leave for qualifying reason in applicable 12-month leave year.
- New notice for subsequent qualifying reason if eligibility status changes.
- Provide a reason if employee is not eligible.
- May be oral or in writing (recommended WH-381).



## Employer Responsibilities –

### Provide Notice of Rights and Responsibilities [§ 825.300](#)

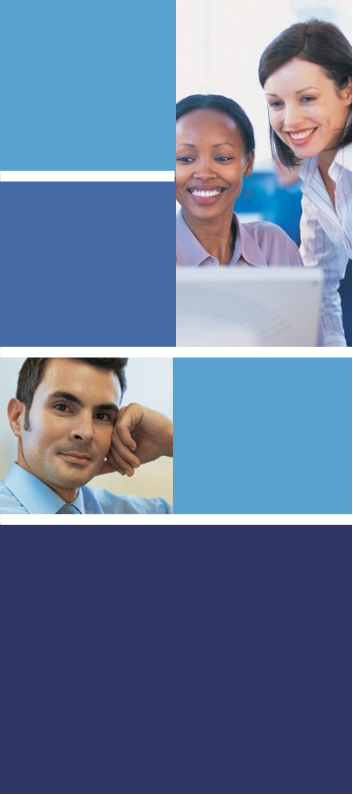
- Provided when eligibility notice required
- Must be in writing (recommended WH-381)
- Notice must include:
  - Statement that leave may be counted as FMLA
  - Applicable 12-month period for entitlement
  - Certification requirements
  - Substitution requirements
  - Arrangements for premium payments (and potential employee liability)
  - Status as “key” employee
  - Job restoration and maintenance of benefits rights



# Employer Responsibilities – Provide Notice of Designation [§ 825.300-301](#)

- Within five business days of having enough information to determine leave is FMLA-qualifying
- Once for each FMLA-qualifying reason per applicable 12-month period (additional notice if any changes in notice information)
- Include designation determination; substitution of paid leave; fitness for duty requirements
- Must be in writing (recommended WH-382)
- If leave is determined not to be FMLA-qualifying, notice may be a simple written statement
- Employer must notify employee of the amount of leave counted against entitlement, if known; may be payroll notation
- If amount of leave is unknown (e.g., unforeseeable leave), employer must inform employee of amount of leave designated upon request (no more often than 30 days)
- Retroactive designation permitted provided that failure to timely designate does not cause harm to employee





## Employer Responsibilities – Maintain Group Health Plan Benefits

[§ 825.209-213](#)

- Group health plan benefits must be maintained throughout the leave period.
- Same terms and conditions as if employee were continuously employed.
- Employee must pay his/her share of the premium.
- Even if employee chooses not to retain coverage during leave, employer obligated to restore same coverage upon reinstatement.
- In some circumstances, employee may be required to repay the employer's share of the premium if the employee does not return to work after leave.



## Employer Responsibilities – Job Restoration [§ 825.214 - .219](#)

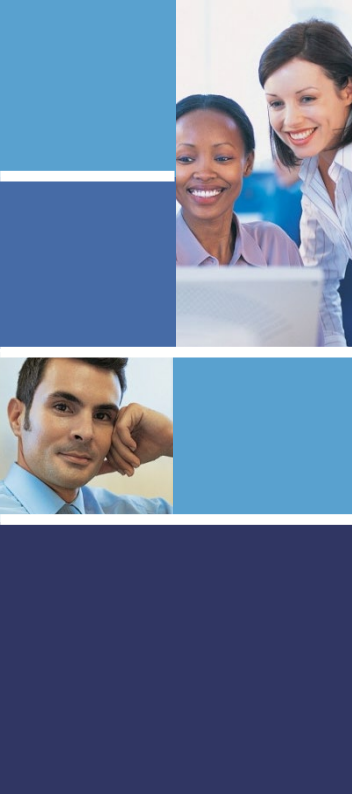
- Same or equivalent job
  - equivalent pay
  - equivalent benefits
  - equivalent terms and conditions
- Employee has no greater right to reinstatement than had the employee continued to work
- Bonuses predicated on specified goal may be denied if goal not met
- Key employee exception



# Prohibited Employment Actions [§ 825.220](#)

## Employers cannot:

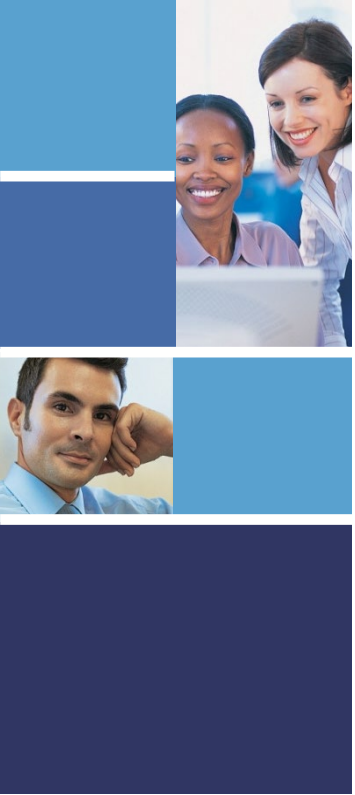
- interfere with, restrain or deny employees' FMLA rights.
- discriminate or retaliate against an employee for having exercised FMLA rights.
- discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA.
- use the taking of FMLA leave as a negative factor in employment actions.



## Employer Responsibilities – **Maintain Records** [§ 825.500](#)

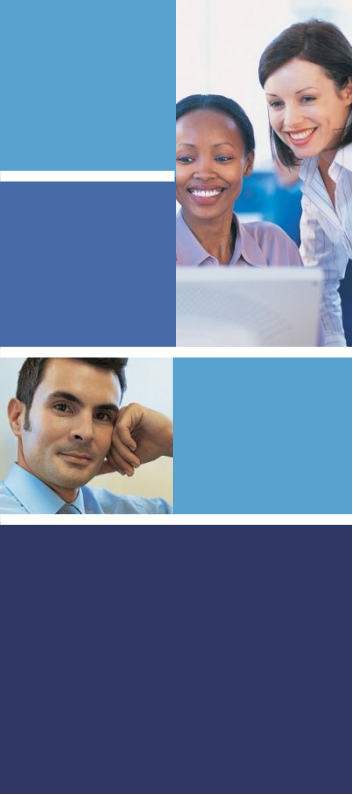


- Basic payroll information
- Dates FMLA leave is taken
- Hours of leave if leave is taken in less than one full day
- Copies of leave notices
- Documents describing benefits/policies
- Premium payments
- Records of disputes



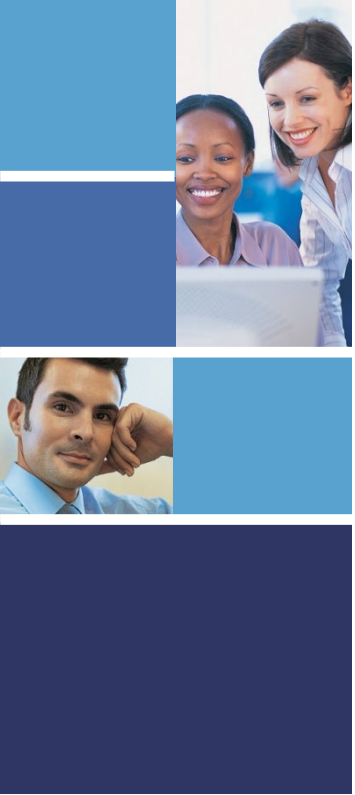
# Employee Responsibilities

- Provide sufficient and timely notice of the need for leave
- If requested by the employer:
  - Provide certification to support the need for leave
  - Provide periodic status reports
  - Provide fitness-for-duty certification



## Employee Responsibilities – Notice Requirements [§ 825.302 - .303](#)

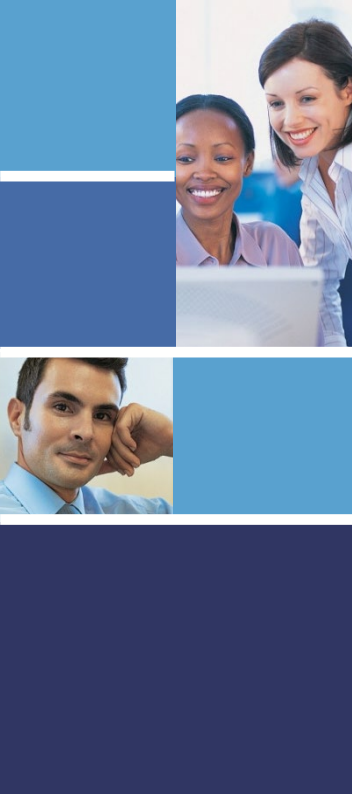
- Provide sufficient information to make employer aware of need for FMLA-qualifying leave
- Specifically reference the qualifying reason or the need for FMLA leave for subsequent requests for same reason
- Consult with employer regarding scheduling of planned medical treatment
- Comply with employer's usual and customary procedural requirements for requesting leave absent unusual circumstances
- Timing of Employee notice of need for leave:
  - *Foreseeable Leave* - 30 days notice, or as soon as practicable
  - *Unforeseeable Leave* - as soon as practicable



## Employee Responsibilities – Provide Certification [§ 825.305](#)

Medical Certification for serious health condition (recommended WH-380-E and 380-F)

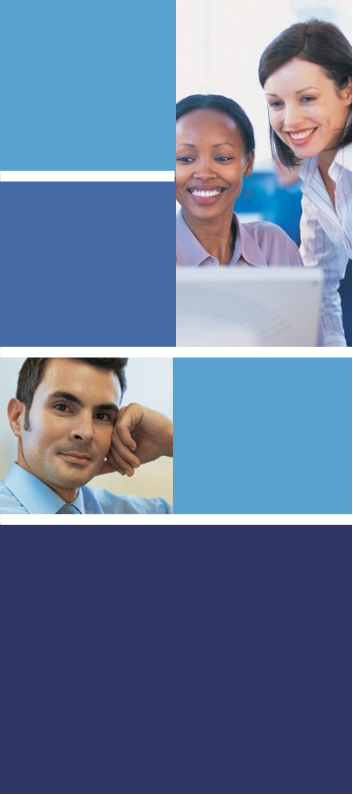
- Submit within fifteen calendar days
- Employer must identify any deficiency in writing and provide seven days to cure
- Annual certification may be required
- Employee responsible for any cost



# Employee Responsibilities – Provide Certification [§ 825.307](#)

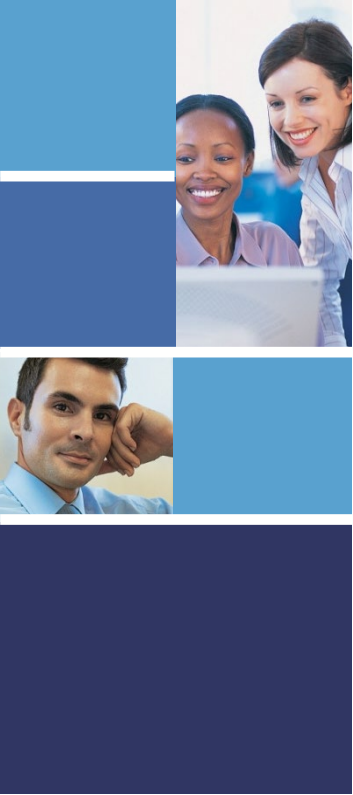
- Employer (**not** employee's direct supervisor) may contact health care provider to:
  - **Authenticate:** Verify that the information was completed and/or authorized by the health care provider; no additional information may be requested
  - **Clarify:** Understand handwriting or meaning of a response; no additional information may be requested beyond what is required by the certification form
- Second and third opinions (at employer's cost)
  - If employer questions the validity of the complete certification, the employer may require a second opinion
  - If the first and second opinions differ, employer may require a third opinion that is final and binding





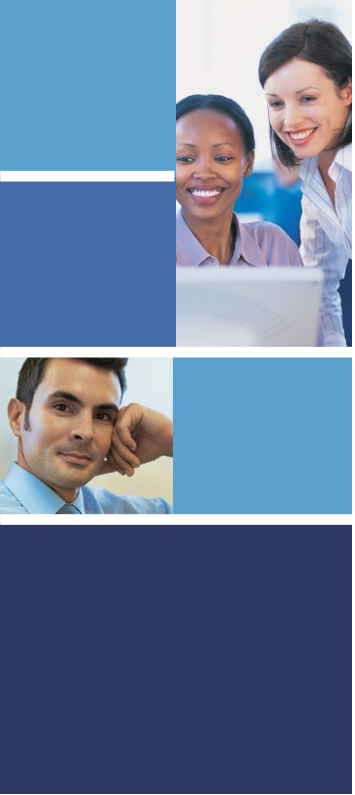
# Employee Responsibilities – Provide Certification [§ 825.308, .311 & .313](#)

- Recertification
  - No more often than every 30 days and with an absence
    - If the minimum duration on the certification is greater than 30 days, the employer must wait until the minimum duration expires
    - In all cases, may request every six months with an absence
  - More frequently than every 30 days if:
    - the employee requests an extension of leave, or
    - circumstances of the certification change **significantly**, or
    - employer receives information that casts doubt on the reason for leave
- Consequences of failing to provide certification
  - Employer may deny FMLA until certification is received
- Employee must respond to employer’s request for information about status and intent to return to work



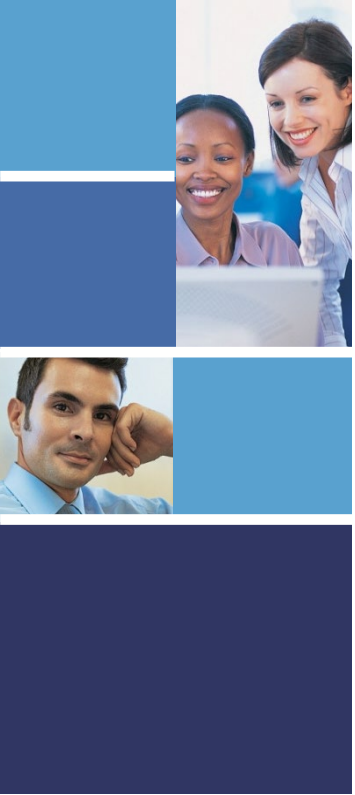
## Employee Responsibilities – Fitness-for-Duty Certification [§ 825.312](#)

- For an employee's own serious health condition, employers may require certification that the employee is able to resume work
  - Employer must have a uniformly-applied policy or practice of requiring fitness-for-duty certification for all similarly-situated employees
- If state or local law or collective bargaining agreement is in place, it governs the return to work
- Not permitted for intermittent or reduced schedule leave unless reasonable safety concerns exist
- Authentication and clarification
- Employee responsible for any cost



# OTHER LEAVES

- VESSA
- IL Family Bereavement Act
- Voting Time Off
- School Visitation Time Off
- Blood Donation Leave
- Jury Duty



## OTHER LEAVES

If employees take “other” types of leave the *employer may place them on FMLA*. This is applicable for an employee who is off on a workmen’s compensation issue. The reason is to have them use up all of their FMLA, so they don’t return to work from one matter and then leave on FMLA.



# COBRA Compliance

The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families who lose their health benefits the right to choose to continue benefits provided by their group health plan for limited periods of time under certain circumstances. With changing rules, regulations and court cases, being COBRA compliant is extremely complex. This program covers the basics to advanced concepts, and will provide answers to your questions regarding COBRA administration and compliance.

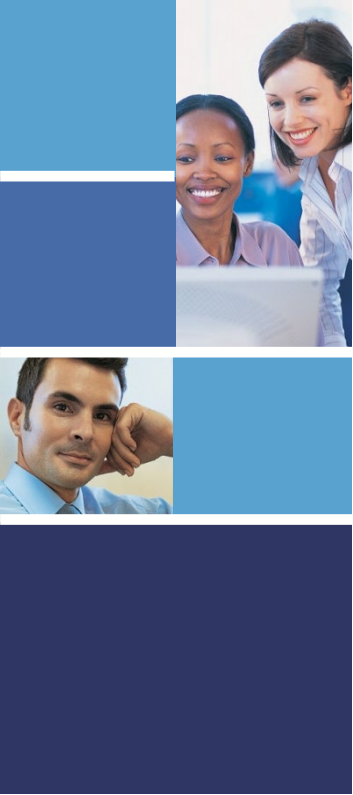
# WHAT IS COBRA?

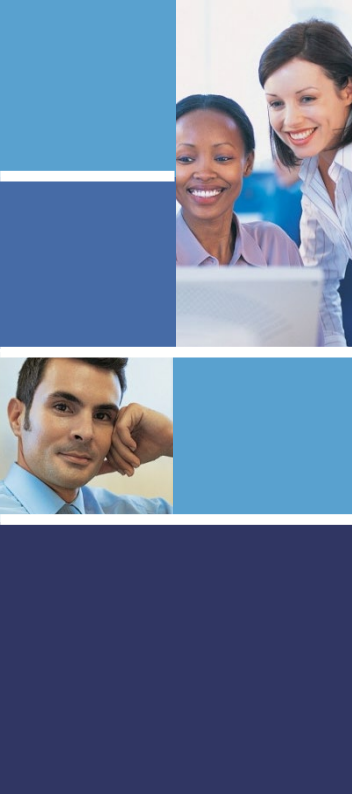
- Consolidated Omnibus Budget Reconciliation Act (COBRA).

- Passed by Congress in 1986.

Amends the Employment Retirement Income Security Act (ERISA), the Internal Revenue Code and the Public Health Service Act.

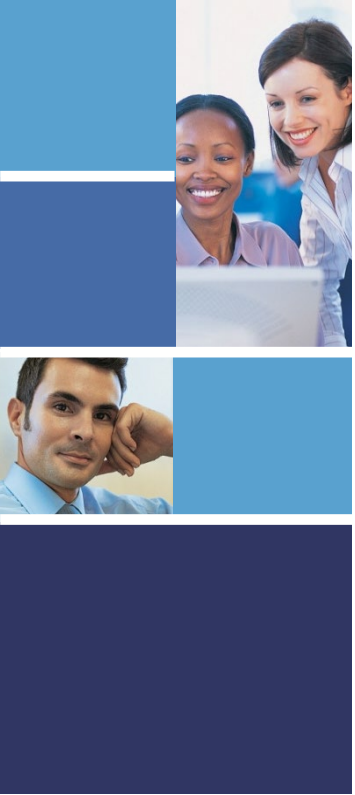
- Provides certain employees with health care continuation coverage.
- Applies to the private sector, state and local governments.
- Does not apply to the federal government and certain church-related organizations.





# WHAT IS A COVERED EMPLOYER?

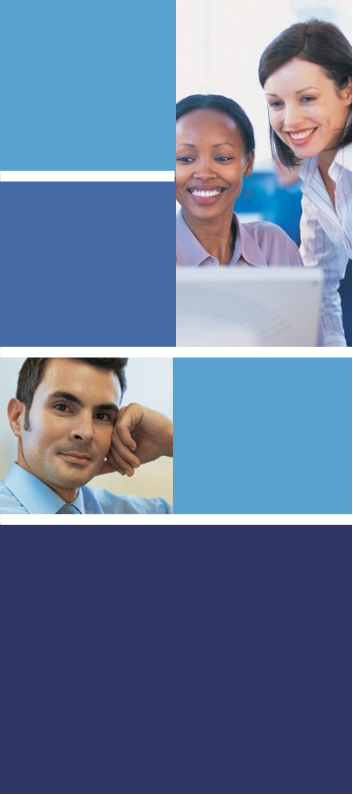
- **Group health plans with 20 or more employees on more than 50% of the working days in the previous year.**
  - “Employees” include all full-time and part-time employees when determining employer coverage.
  - “Employees” may also include the self-employed, independent contractors and corporate directors.
    - These individuals can be considered employees if their relationship to the employer allows them to be covered under the plan.



# WHO IS A QUALIFIED BENEFICIARY?

- Any individual covered by a group health plan on the day before a “qualifying event.”
- May be the employee, the employee’s federally recognized spouse and dependent children, a retired employee, or the retired employee’s spouse or dependent children.



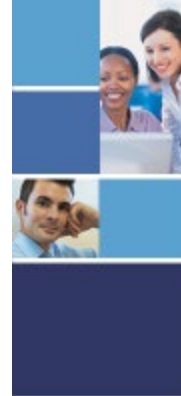
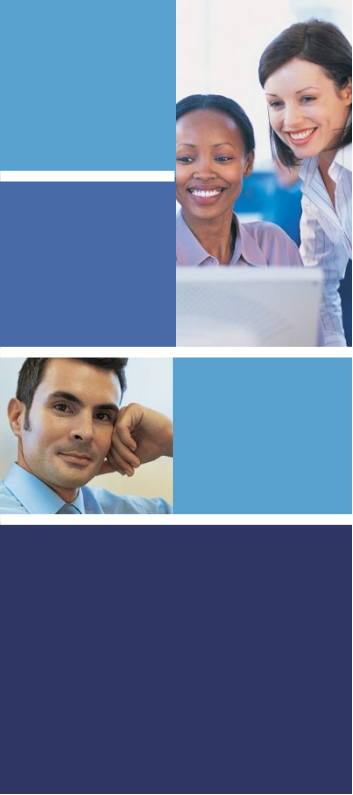


# WHAT IS A QUALIFYING EVENT?

- Event that causes that causes an individual to lose health coverage.
- The type of event will determine how long the qualified beneficiaries will receive coverage.

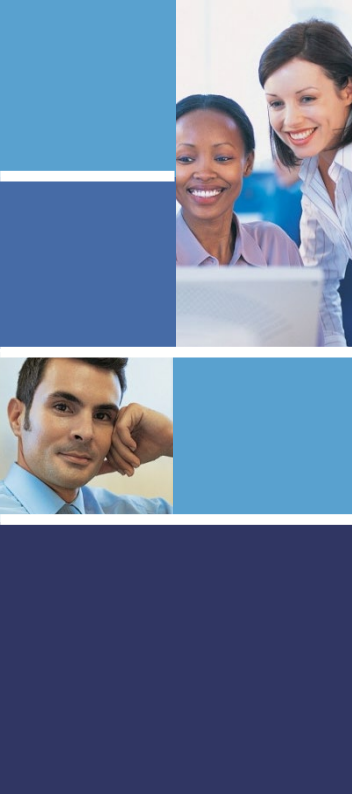
# QUALIFYING EVENTS FOR EMPLOYEES

- Voluntary or involuntary termination for reasons other than “gross misconduct.”
- Reduction in the number of hours of employment such as strike, layoff or leave of absence.



## DEFINITION OF “GROSS MISCONDUCT”

- **COBRA does not define “gross misconduct.”**
- **Courts have provided guidance:**
  - “The nature of the conduct itself is reasonably outrageous to the employer.”
  - “So outrageous that it shocks the conscience.”

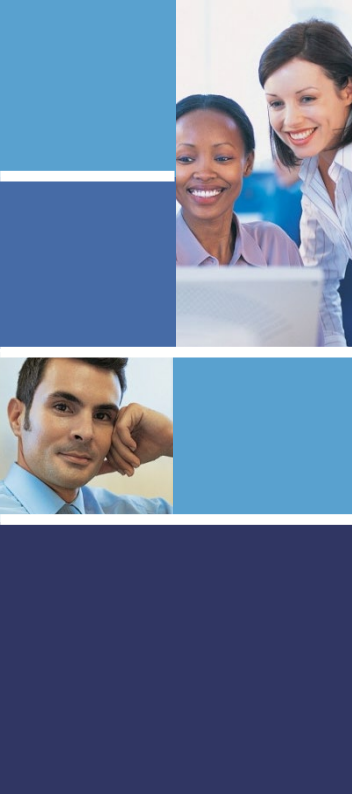


# QUALIFYING EVENTS FOR SPOUSES

- Termination of employee for any reason other than “gross misconduct.”
- Reduction in hours worked by employee.
- Employee becomes entitled to Medicare and voluntarily chooses to cancel group coverage.

The employer cannot require cancellation of group coverage for a current employee.

- Divorce or legal separation of employee.
- Death of employee.



# QUALIFYING EVENTS FOR DEPENDENT CHILDREN

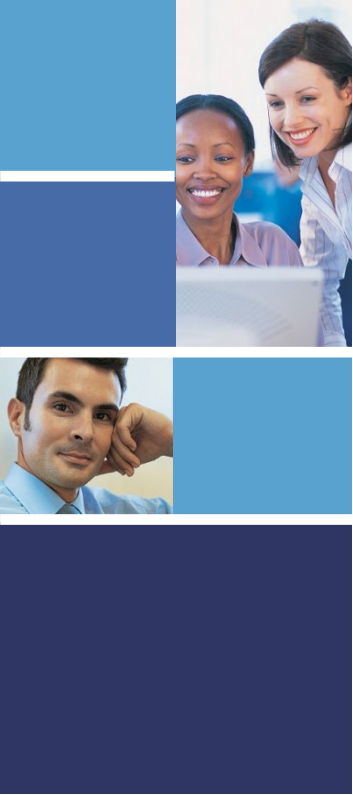
- Termination of employee for any reason other than “gross misconduct.”
- Reduction in hours worked by employee.
- Employee becomes entitled to Medicare and voluntarily chooses to cancel group coverage.

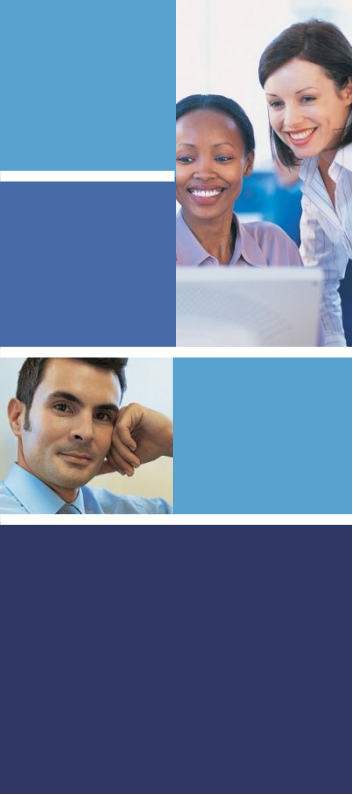
The employer cannot require cancellation of group coverage for a current employee.

- Divorce or legal separation of employee.
- Death of employee.
- Loss of “dependent child” status under the plan rules.

# WHEN EMPLOYER AND EMPLOYEE MUST NOTIFY PLAN

- Employers must notify the plan administrator **within 30 days after** an employee's death, termination, reduced hours or Medicare entitlement.
- Employees and qualified beneficiaries must notify the plan administrator **within 60 days after** a divorce or legal separation or after a child ceases to be a dependent under plan rules.
- Employees and qualified beneficiaries must notify the plan administrator **within 60 days after** a disability determination but before **expiration of 18 months** COBRA continuation.





# DURATION OF COVERAGE

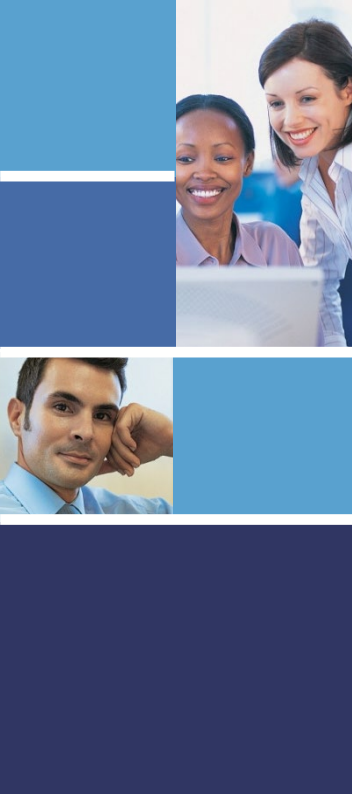
- **Termination of employment**  
(Employee, spouse, dependent child) – 18 months
- **Reduction in hours**  
(Employee, spouse, dependent child) – 18 months
- **Medicare entitlement of employee**  
(spouse/dependent child) – 36 months
- **Divorce/legal separation**  
(spouse/dependent child) – 36 months
- **Death of employee**  
(spouse/dependent child) – 36 months
- **Loss of dependent child status**  
(dependent child) – 36 months
- **Disabled under Title II or XVI of the Social Security Act**  
Qualified disabled beneficiaries when disabled during the first 60 days of COBRA become eligible for an additional 11 months (in cases where the duration of coverage is 18 months)—therefore, a total of 29 months.



# NOTICE PROCEDURES

## General Notice

- A **general notice** informing employees of their rights under COBRA and describing provisions of the law must be furnished to all employees who are eligible for group coverage.
- COBRA information is required to be in the summary plan description (SPD) supplied to all participants.
- The SPD must be furnished 90 days after a person becomes a participant or a beneficiary begins receiving benefits.
- Plans can satisfy general notice requirements by including in the plan's SPD and furnishing it to the employee and spouse within the 90-day time limit.



# SPECIFIC NOTES

## Election Notice

- Employers must notify plan administrators within 30 days after a qualifying event.
- The plan administrators must send an election notice to the employee or family member(s) within 14 days of receiving notice of the qualifying event.
- If the employer is also the plan administrator, the election notice must be sent to the employee within 44 days.

## COBRA Notice of Unavailability

- Used when a plan determines the qualified beneficiaries are not entitled to COBRA coverage.
- The beneficiaries must be notified within 14 days of the plan administrator receiving notice of the event that caused the loss of the benefit.

## Notice of Termination

- Used when COBRA coverage is terminated before the end of the 18-, 29- or 36-month period.
- This notice is to be provided “as soon as reasonably practicable” following the determination that coverage will terminate.





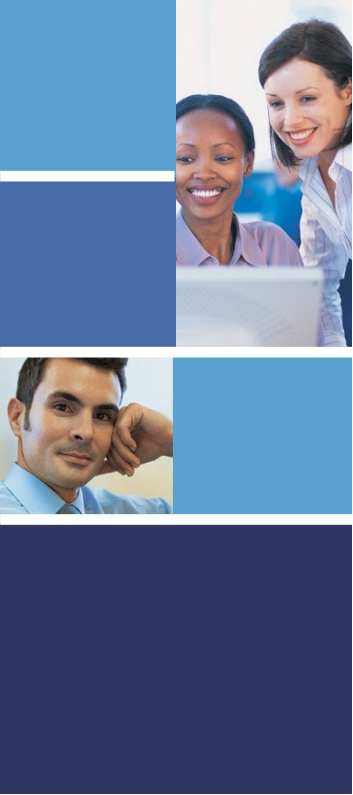
# ELECTION OF COBRA

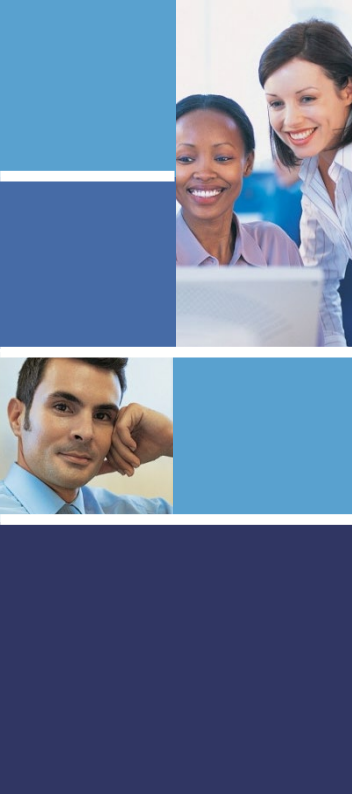
- Qualified beneficiaries have a 60-day period to elect coverage.
- The 60-day period is measured from the loss of coverage date or the date the election notice is sent, whichever is later.
- Coverage is retroactive to the date coverage was lost.
- An employee or an employee's spouse may elect COBRA on behalf of any other qualified beneficiary.
- Each qualified beneficiary, however, may independently elect COBRA coverage.
- Qualified beneficiaries may make the same changes to coverage as active employees during an open enrollment period.

# PAYING FOR COBRA



- Beneficiaries may be required to pay the entire premium for coverage.
- The premium cannot exceed 102% of the cost to the plan (2% administrative fee).
- Premiums reflect the total cost of the coverage (employer and employee).
- The initial premium must be made within 45 days after the date of the COBRA election.
- Premiums for successive periods of coverage are due on the date stated in the plan document.
- For successive periods of coverage, there is a 30-day grace period for payment.
- The plan is not obligated to send monthly premium notices.





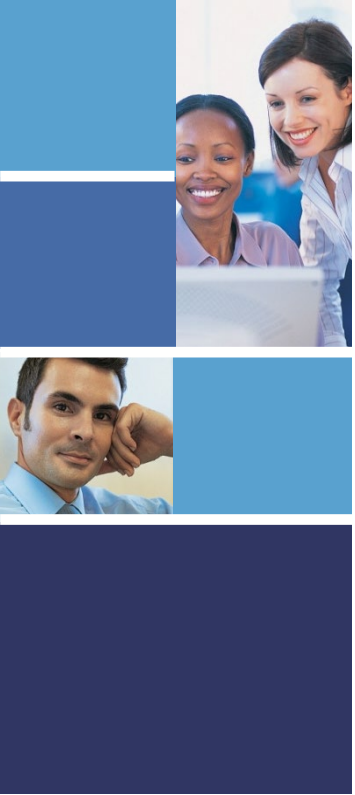
# SUMMARY

- COBRA is a federal law enacted in 1985.
- The act requires covered employers with group health plans to offer health insurance continuation coverage to their covered employees, federally recognized spouses and dependents in certain situations when a loss of coverage occurs.
- Although covered employers must offer COBRA, they do not have to cover the cost associated with the coverage.
- Individuals who qualify for COBRA may be responsible for the entire cost of the continuation benefit premium as well as for an administration fee.



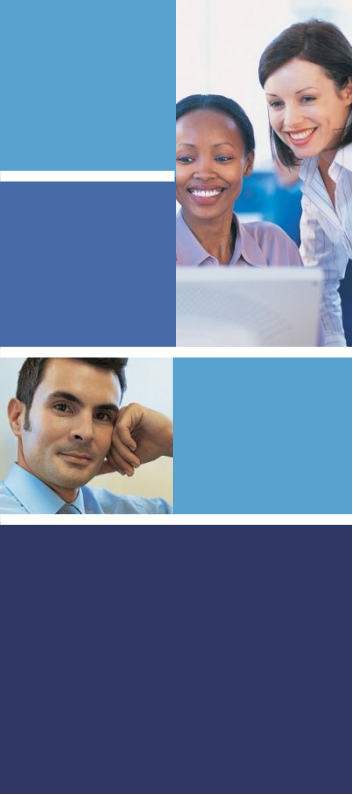
# Affirmative Action Policy (AAP)

The federal government installed affirmative action policies to even out historical inequalities and ensure certain diversity employment standards. This session covers the equal employment opportunity (EEO) laws and categories protected by federal and state regulations, including a focus on the importance of adopting an affirmative action plan.



# What is the Purpose?

- An Affirmative Action Plan (AAP) is a documented plan to employ people with disabilities, minorities, and veterans.
- Thus it is an “Affirmative Action to Employ”
- In other words your organization is taking steps to actively employ people who fall into these categories.



# Civil Rights Act of 1964, Title VII

- **Established the Equal Opportunity Commission to enforce the act's provisions.**
- **Coverage**
  - All private employers with **15 or more** employees
  - All educational institutions, public and private
  - ***State and local governments***
  - Public and private employment agencies
  - Labor unions with **15 or more** employees

# Protected Class

**Individuals within a group identified for protection under equal employment laws and regulation.**

Race, Ethnic  
Origin, Color

Gender

Age

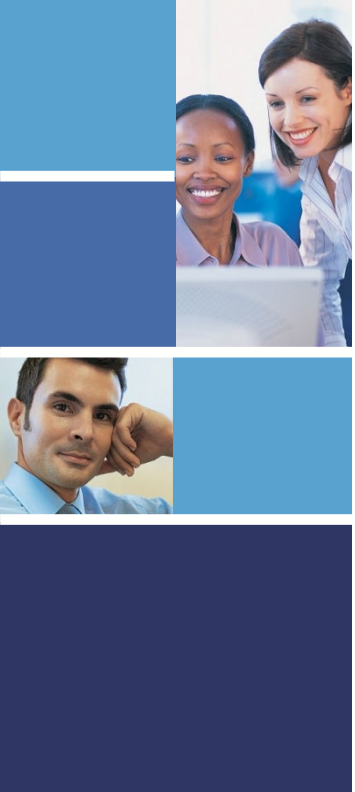
Disability

Military  
Experience

Religion

Marital  
Status

Sexual  
Orientation





# EEO Enforcement

## Equal Employment Opportunity Commission

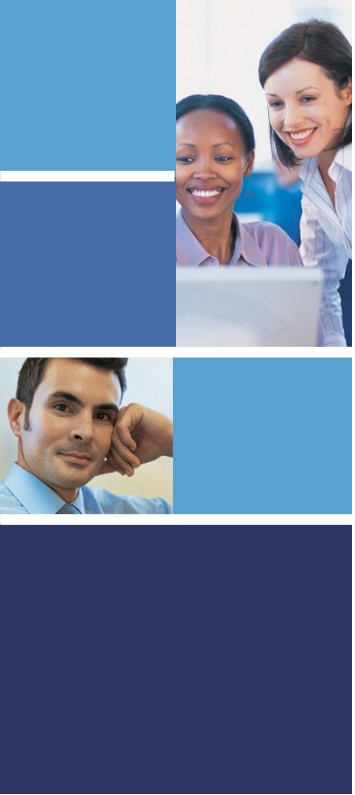
- EEOC is the enforcement authority for EEO laws.
- Composed of five members appointed by the President and confirmed by the Senate.
- Members (limited to no more than three from the same political party) serve seven year terms.

## Office of Federal Contract Compliance (OFFCP)

Ensures that federal contractors have nondiscriminatory practices and take affirmative action to overcome the effects of past discrimination.

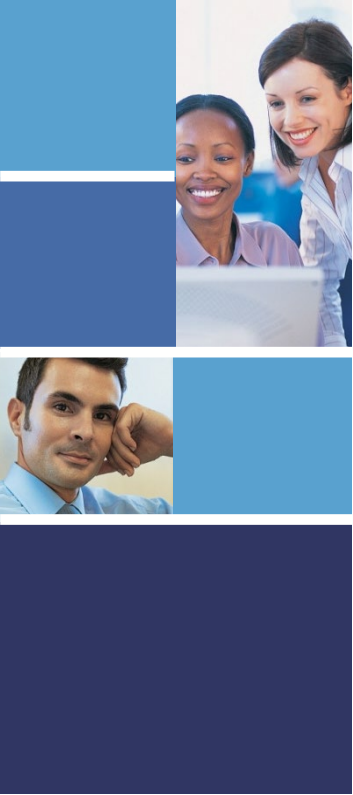
IDHR





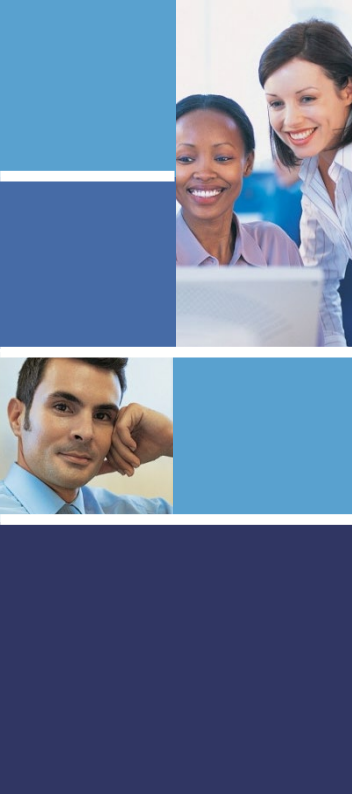
# When Must it be Prepared/Maintained

- As soon as you are aware that your organization meets the requirements set up by the Federal Government that it is required
- Annually thereafter



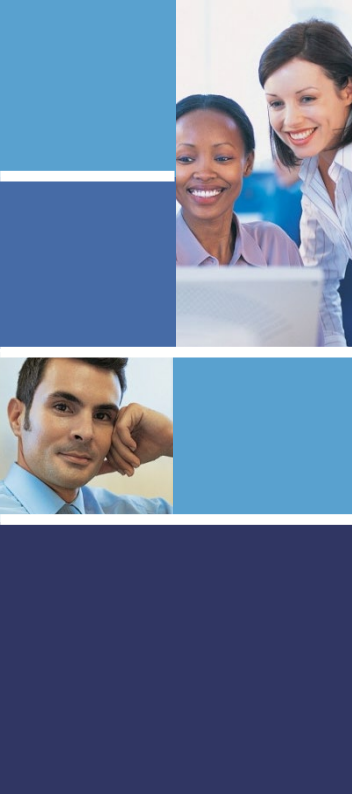
# What is an AAP - Am I Required?

- A requirement for federal government contractors with more than 50 employees and over \$50,000 in government contracts annually **to formally document** the inclusion of women and racial minorities in the workforce AND...disabilities and veterans.
- Covered employers must submit **plans describing their attempts to narrow the gaps** between the composition of their workforces and the composition of labor markets where they obtain employees.
- Focuses on **hiring, training, and promoting protected-class members who are *under-represented*** in an organization in relation to their availability in the labor markets from which recruiting occurs.



## Where is it Kept?

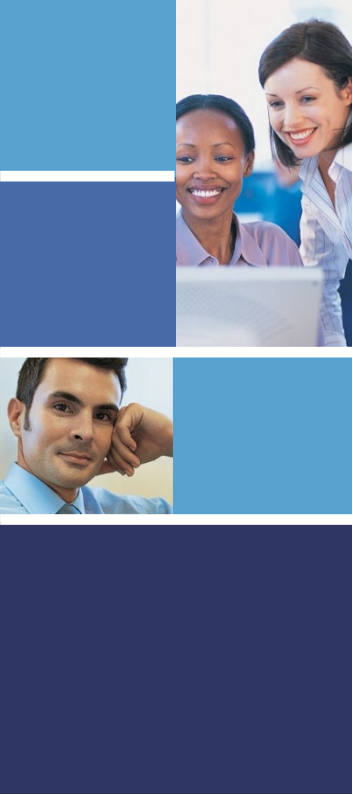
- In the Office of Preparer
- General location for all potentially Auditable Documents
  - Affirmative Action Plan
  - Emergency Evacuation Plan
  - Hazardous Communication Plan
  - Exposure Control Plan
  - Disaster Preparedness Plan



What exactly do I have to do for an  
AAP?

## THE REPORT

1. Track
2. Measure
3. Plan
4. Implement
5. Develop



# How & Where Do I Start?

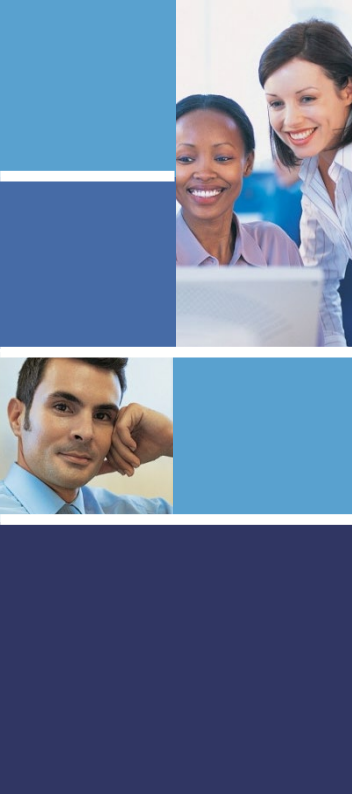
- EEO-4/EEO-1
- VETS-4212
- AAP
- Collect Data
  - Internally
  - Externally
- Time without Distraction
- Spreadsheets with Formula or Software Calculator
- Analysis Skills
- Writing Skills



# Personnel Record Retention

Numerous federal and state laws require employers to create and retain various forms of employment records – some even well after the termination of an employee. Proper maintenance of employment records is also critical to defending against employment-related litigation. This program will provide guidance on the general maintenance and retention procedures for employee records.

There is often confusion among employers concerning the legal requirements for recordkeeping and retention of employee files and other employment-related records. Not only are there federal recordkeeping requirements, but individual states also have requirements that must be followed. Some requirements apply to most or all employers, while others apply primarily to government contractors and subcontractors. Many of these requirements are dependent on the particular law which applies to the type of record and the number of employees.



## Standard Retention Periods

- **Generally an employer could establish the following retention periods for both electronic and paper-based records:**
- Personnel: 7 years after termination.
- Medical/benefits: 6 years after plan year.
- I-9 forms: Not more than 3 years after termination.
- Hiring Records: 2 years after hiring decision.



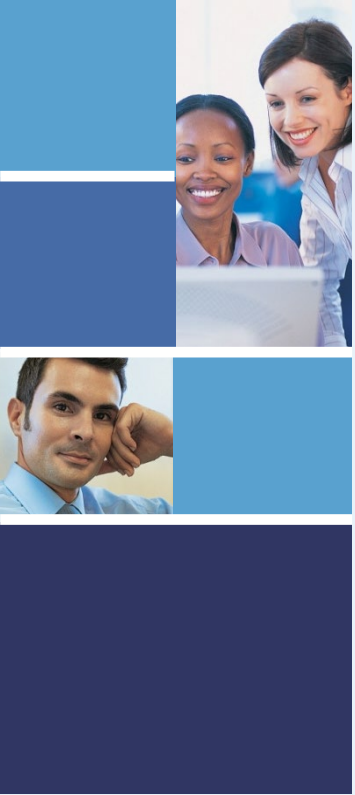


# What Records Are Required:

## **Basic records that an employer must maintain:**

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.





# Recommendations

## FILING AND MAINTENANCE

- Color Coded Folders
- Retention Periods on Front of Each File Cabinet
- Planned Purging Times of the Year
- Responsible Party Identified & Held Accountable
- Public Records Destruction Requirements
- Illinois Record Keeping Laws



# Visual Recommendations

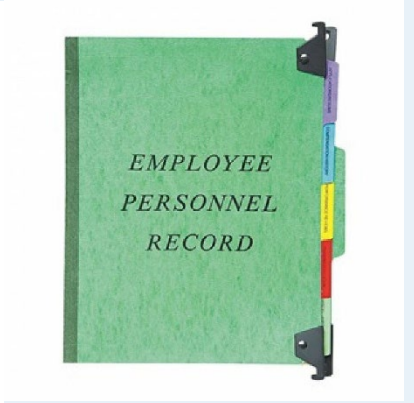
FILING MAINTENANCE – THINK ABOUT THE FUTURE

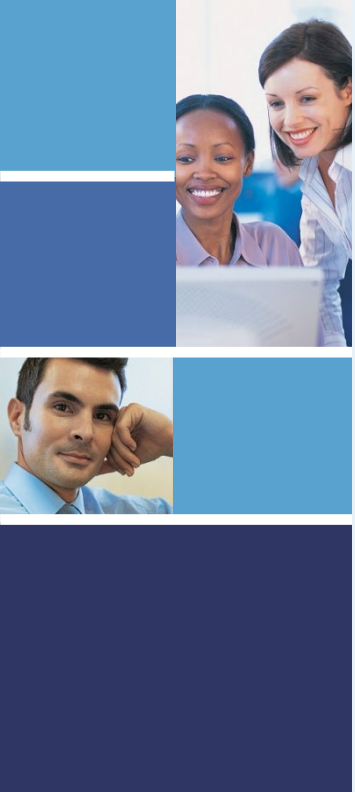


Working Files



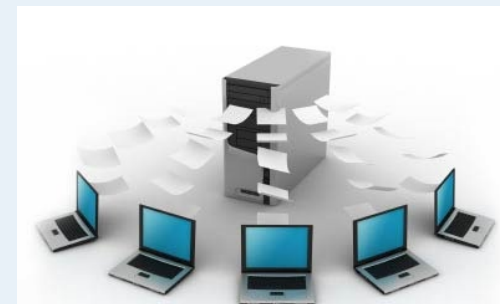
Via Active & Inactive

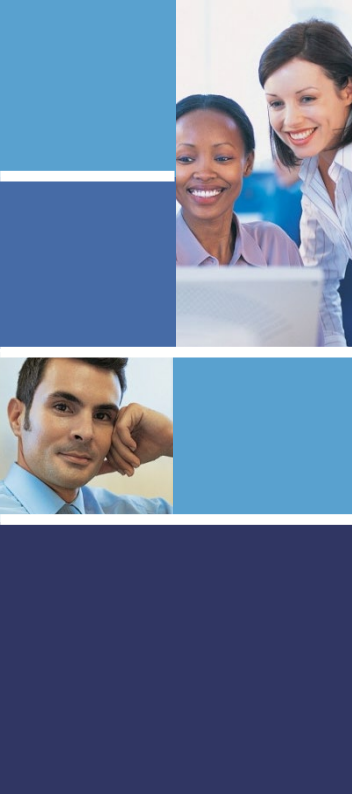




# Electronic Records Retention

HIGHLY RECOMMENDED BUT HAVE A CLOUD BACKUP!

A screenshot of a Microsoft Excel spreadsheet showing a financial budget or ledger. The table has multiple columns and rows of data, including numerical values and text labels.



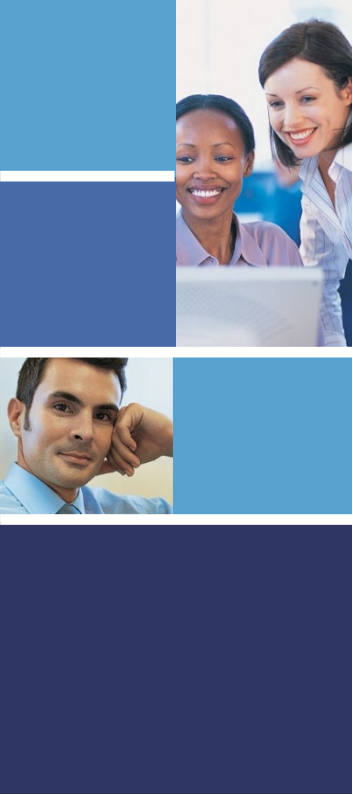
# Selection, Hiring & Employment Records

## Relevant Laws

- Age Discrimination in Employment Act (20 or more employees)
- Americans with Disabilities Act (15 or more employees)
- Civil Rights Act of 1964-Title VII (15 or more employees)

## Years to be kept

1 year after creation of the document or the hire/no hire decision whichever is later. 3 years for federal contractors.



# Payroll Records & Time Sheets/Cards

## Relevant Laws

- Age Discrimination in Employment Act (20 or more employees)
- Fair Labor Standards Act (1 or more employee)
- Equal Pay Act (1 or more employee)
- Lilly Ledbetter (1 or more employee)
- Service Contract Act, Davis-Bacon Act, Walsh-Healey Act (apply to federal contractors)
- Family Medical Leave Act (50 or more employees)

## Years to be kept

3 years (There are no retention requirements under Lilly Ledbetter, however it is recommended that employers retain records for length of employment, plus an additional 5 years)

The left side of the slide features a vertical stack of three images. The top image shows two women, one Black and one white, smiling and looking at a laptop. The middle image shows a man in a light blue shirt and tie, resting his chin on his hand. The bottom image is a solid dark blue rectangle. The background of the slide is white with blue and dark blue decorative elements.

# Form I-9

## Relevant Laws

Immigration Reform and Control Act  
(1 or more employee)

## Years to be kept

3 years after date of hire or one year  
after date of termination, whichever is  
later

# Employment Benefits

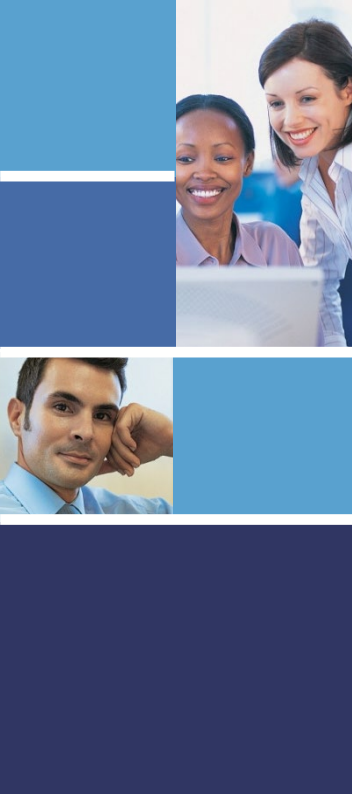
## Relevant Laws

Employee Retirement Income Security Act

## Years to be kept

6 years





# Tax Records

## Relevant Laws

- Federal Insurance Contribution Act (all employers)
- Federal Unemployment Tax Act (all employers)
- Federal Income Tax Withholding (all employers)

## Years to be kept

4 years from date tax is due or paid



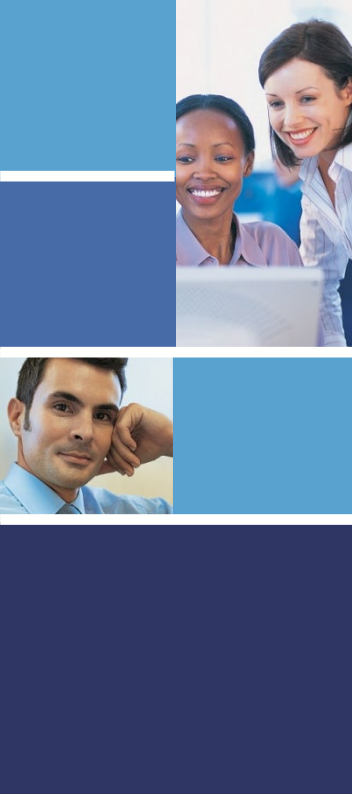
# Safety Data

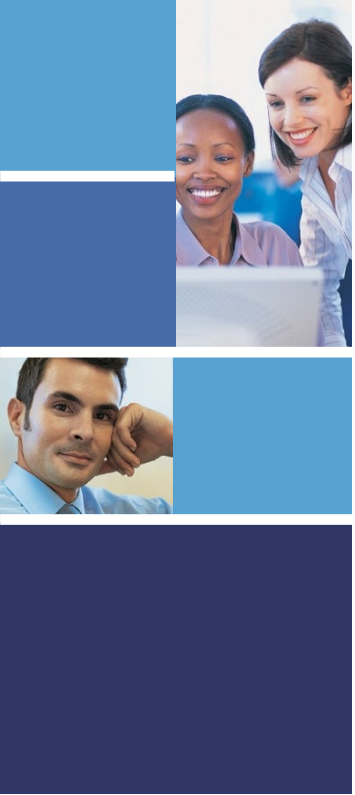
## Relevant Laws

- Occupational Health & Safety Act (10 or more employees)
- Walsh-Healy Act (federal contractors)

## Years to be kept

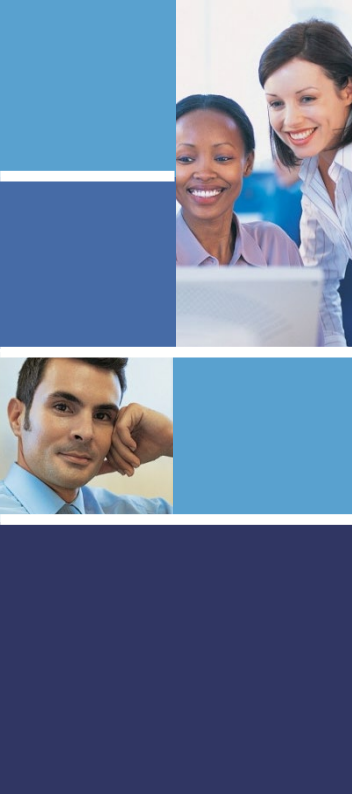
5 years following the year records pertain to (Medical exams, safety data sheets and exposure to toxic substances records retained for the duration of employee's job tenure plus 30 years)





## WC/Audits/Safety

- Workers' compensation claims: 30 years after date of injury/illness.
- Disputed issues (records relating to issues 2 years after resolution of dispute involving external agencies or parties, wage-hour investigation by DOL, EEOC charge, arbitrations, court actions, etc.), OSHA and employee safety records: 5 years after termination.



# Family Medical Leave Records

## Relevant Laws

Family Medical Leave Act (50 or more employees)

## Years to be kept

3 years



# Health Care Continuation

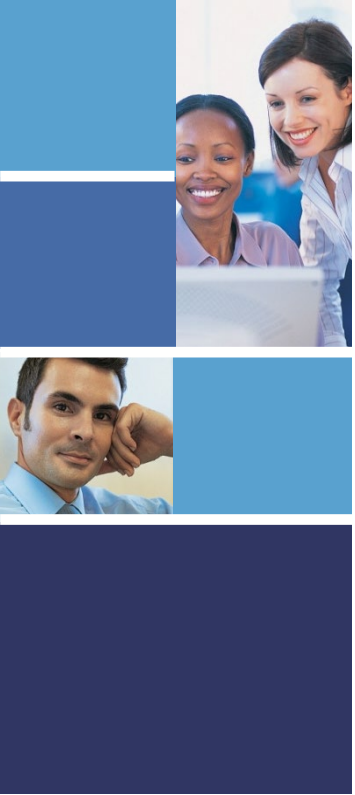
## Relevant Laws

Consolidated Omnibus Budget Reconciliation Act (20 or more employees)

## Years to be kept

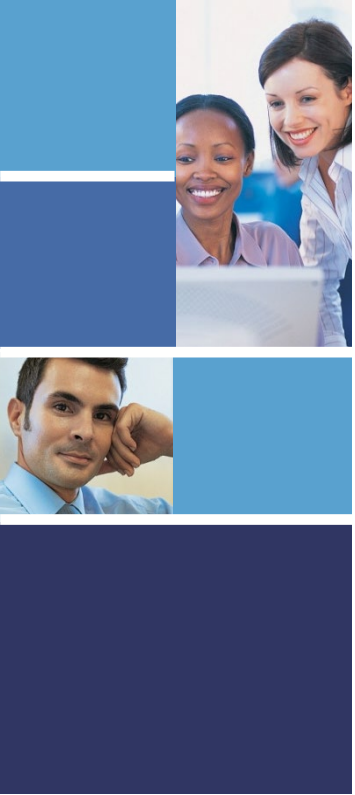
There are no recordkeeping requirements under COBRA. However, many experts recommend that records be maintained for 6 years from the date of the record to remain consistent with ERISA requirements.





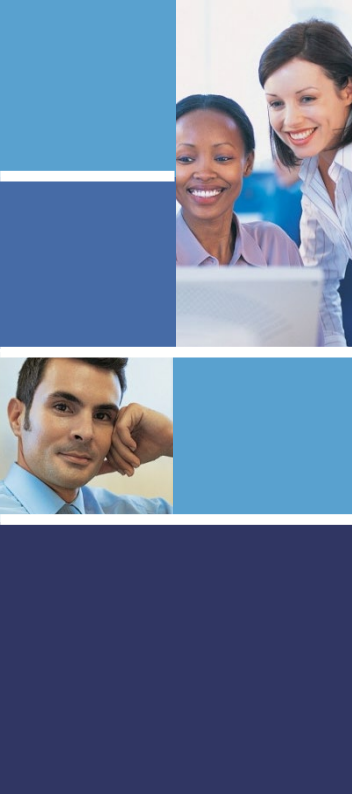
# Polygraph Test Records

- **Relevant Laws**
- Employee Polygraph Protection Act (1 or more employee)
- **Relevant Laws**
- 3 years



# Affirmative Action Plan/Data

- **Relevant Laws**
- Executive Order 11246 (applies to federal contractors)
- The Uniform Guidelines on Employee Selection Procedures (100 or more employees)
- **Relevant Laws**
- 2 years



# Credit Reports

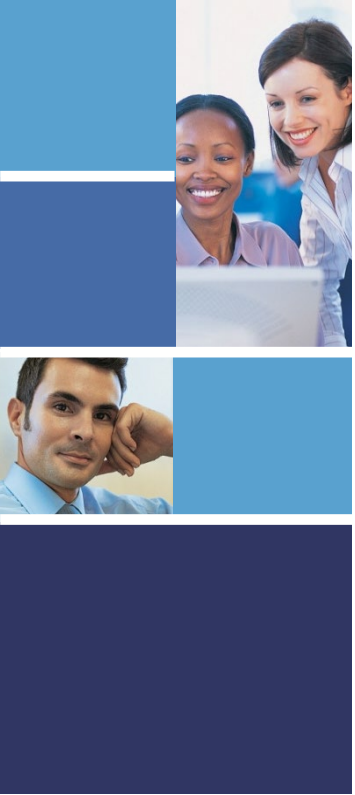
## Relevant Laws

Fair and Accurate Credit Transactions  
(1 or more employee)

## Relevant Laws

No retention requirement. Law requires shredding of all documents containing information derived from a credit report. Don't discard for at least one year though (see Selection, Hiring & Employment Records)





# Drug Test Records

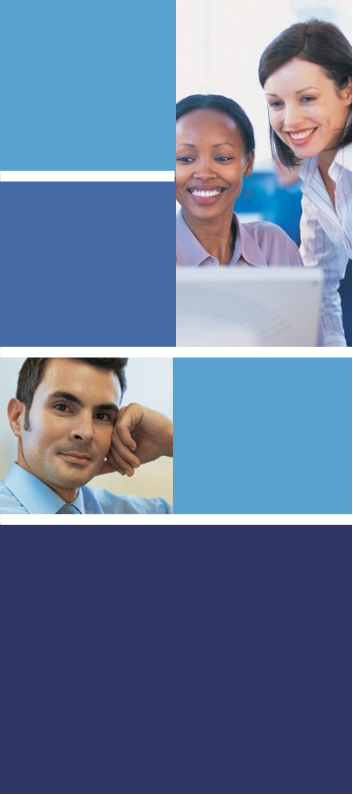
## Relevant Laws

Department of Transportation (DOT) covered safety sensitive transportation positions; aviation, trucking, railroads, mass transit and pipelines.

## Relevant Laws

1 year from test date (up to 5 years for records relating to drug testing for DOT positions)





# Reports Retention

- State New Hire reports: 1 year after report was filed.
- EEO-1: 2 years after report was filed.
- Annual Affirmative Action plans: 2 years after close of AAP year.
- OSHA 300/300A: 5 years after posting.
- Form 5500: 6 years after report was filed.
- Federal/state tax reports: 4 years after report was filed.

Thanks for  
your time  
and  
attention.

- Contact Dave Ryan
- LinkedIn
- Twitter
- [Dave@Rogersshr.com](mailto:Dave@Rogersshr.com)
- (217) 971-11414
- Contact Kelly Murray
- [ilcounty@gmail.com](mailto:ilcounty@gmail.com)
- (217) 528-5331