



Discrimination

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- [Background](#)
- [Federal Laws Prohibiting Employment Discrimination](#)
- [State Laws and Statutes Prohibiting Employment Discrimination](#)
- [Additional Resources](#)

Background

Over the course of the last 150 years, the majority of laws in the United States to protect employees from unfair labor practices perpetrated by employers were enacted as a result of the labor movement and realization of workers' rights. As the workers' role in mass production became vital to the capitalist market economy during the Industrial Revolution that commenced in Europe and spread to the United States in the 1820s, protection of workers' rights and government intervention (particularly the Federal government) to regulate employers to protect workers became a necessity to prevent exploitation of workers (including child laborers) in often dangerous working conditions. An outgrowth of this movement to protect employees and employees' rights from dangerous conditions and unfair wages and hours was the protection of employees from [DISCRIMINATION](#) by employers. More specifically, laws were enacted and enforced to prevent discrimination of targeted groups such as women and racial minorities and ensuring all employees are granted equal rights with respect to hiring, promotion, and termination decisions.

Laws specifically designed to protect workers commenced in earnest during the New Deal policies of Franklin Delano Roosevelt's presidential administration. New Deal policies, intended to ease the hardships caused by the depression, included laws to assist workers. The most prominent laws enacted by the Federal Government to protect workers during this period were the National Labor Relations Act of 1935 and the [FAIR LABOR STANDARDS ACT](#) of 1938. Provisions of the National Labor Relations Act of 1935 were initially part of the National Industry Recovery Act of 1933. However, employers and leaders in the business community did not embrace the provisions of the act. Employers and business leaders felt that the National Recovery Act of 1933 gave the Federal government too much power to regulate the operations and administration of businesses and would ultimately stifle competition. A contentious court battle ensued after passage of the act and the United States Supreme Court declared the National Industry Recovery Act of 1933 invalid in the case of *A.L.A. Schechter Poultry Corporation v. United States* (1935). Provisions of the National Recovery Act of 1933 that mandated that workers receive a [MINIMUM WAGE](#) salary and rights to join unions were then incorporated into the National Labor Relations Act of 1935. The validity of the National Labor Relations Act of 1935 was challenged before the Supreme Court in 1937 in *National Labor Relations Board v. Jones & Loughlin Steel Corporation* (1937). The Supreme Court, however, upheld the National Labor Relations Act of 1935 (also referred to as the Wagner Act) in a landmark decision that began an era of intervention by the Federal government to address unfair labor practices.

Labor laws pertaining specifically to discrimination have endeavored to protect workers from discrimination by their employer(s) based upon the employees race, gender, religion, national origin, age, marital status or physical [DISABILITY](#). These laws were enacted as a derivative of both the greater labor movement and the "civil rights revolution" of the 1960s that sought to end discrimination in all social institutions, including the workplace. Labor discrimination may take several forms, but laws specifically prohibiting employment

practices, such as discriminatory hiring, promotion, job assignment, termination, compensation and various types of harassment, were enacted by Federal law beginning in the early 1960s. There are also laws prohibiting retaliation against employees who initially lodge complaints. These laws are designed to protect employees. Some federal laws, however, do not always apply to state and local governments. In some late 1990s cases, the Supreme Court ruled that the federal laws place undue regulatory powers on state and local governments. In those instances, employees are protected by state and local laws but not federal laws.

Federal Laws Prohibiting Employment Discrimination

National Labor Relations Act of 1935

The National Labor Relations Board (NLRB) was created by passage of the National Labor Relations Act of 1935. The NLRB allows workers to anonymously vote to unionize their workplace. The provisions of the NLRB apply to all employers engaged in interstate commerce although airlines, railroads, agriculture, and government employers are exempt. The five board members are appointed by the president of the United States. There are two principle aims of the NLRB: to determine the free-will choice of employees to be represented by unions by means of secret-balloting and to deter and remedy unfair labor practices by employers and unions. The NLRB investigates complaints of unfair labor practices. If the NLRB determines there is reasonable cause to suspect a violation, an attempt is made by the NLRB to settle the complaint between the disputing parties. If there is no agreeable [SETTLEMENT](#), a formal complaint is issued and the complaint is heard before a NLRB administrative law judge. The judge issues an opinion that may be appealed to the board of the NLRB. The board's decision is subject to review by the United States [COURT OF APPEAL](#). About 35,000 charges are filed annually with the NLRB.

Fair Labor Standards Act of 1938

The principle aim of the Fair Labor Standards Act (FLSA) was to ensure minimum wage and maximum hour requirements for all nonunion workers. The initial intent was to protect children, particularly those exploited and working in bad factory conditions. The FLSA helps entry level workers in low wage jobs, such as manufacturing and agriculture, by establishing minimum wage and maximum hour provisions. As of 2002, the minimum wage is \$5.15 per hour worked and workers who work more than 40 hours in a 168-hour seven day workweek cycle must be compensated at one and one-half times their regular hourly wage.

The FLSA was amended in 1974 to extend to all employees of States and local governments. However, an organization of municipalities and state governments sued, proclaiming that the new amendments exceeded congressional authority to extend the minimum wage and maximum hours provisions of the FLSA. In a landmark decision, the United States Supreme Court held in the 1976 decision of *National League of Cities et al. v. Usery, Secretary of Labor* (1976) that the 1974 amendments of the FLSA did exceed congressional power and were therefore unconstitutional. The case limited Federal power to regulate state and local employers concerning minimum wage and maximum hours provisions.

Equal Pay Act of 1963

The Equal Pay Act of 1963 amended the FLSA by prohibiting wages based upon gender. According to the act, "equal work in jobs requiring equal skill, effort and responsibility and performed under similar working conditions" should be compensated equally, regardless of gender. Provisions of the Equal Pay Act of 1963 are enforced by Equal Employment Opportunity Commission (**EEOC**).

Title VII of the Civil Rights Act of 1964

Title VII of the **CIVIL RIGHTS** Act of 1964 (CRA) prohibits employment discrimination based on race, color, religion, sex, and national origin. There have been several notable amendments to the original CRA enactment in 1964. The act protects prospective and incumbent employees against those prohibited acts of failing or refusing to hire or discharging or discriminating with respect to promotion decisions.

The most practical legislation to ensure compliance regarding these matters was the creation of the Equal Employment Opportunity Commission. The Equal Employment Opportunity Commission (EEOC) seeks to prevent unlawful discriminatory employment practices by investigating complaints and advocating on behalf of complainants. If the respondent is a public organization such as a public agency or government agency, and the EEOC finds an unlawful employment practice, the EEOC requests the organization to refrain. If the responding organization does not agree with the findings of the EEOC, the EEOC may commence a [CIVIL ACTION](#). The court adjudicating the case then makes a determination. The court may reinstate or hire employees with or without back pay or any other relief. Discrimination may also be remedied by altering policies. Respondents may also appeal adverse rulings.

According to the CRA, employers may not engage in practices that may have a "disparate impact" on employees of a particular race, gender, religion, or national origin. Disparate impact occurs when a particular group is not hired or promoted at the same rate as another group. Proving a disparate impact practice may be difficult. The employee (the "plaintiff") must prove prima facie [EVIDENCE](#) of disparate impact. If the plaintiff is successful, the burden of proof then shifts to the employer, the "respondent," who must then claim that the selection methods and decisions are job related. Bonifide occupational qualifications (BFOQs) are requirements necessary for specific employment. For example, people who want to be public safety workers such as police officers and firefighters must be physically fit.

Unlawful employment practices may consist of discriminating against a particular race by not hiring or promoting because of race or not hiring or promoting members of that race at the same rate of other races hired or promoted. Violations involving national origin may consist of "English-speaking only" work rules. Employers may not discriminate because of accent or manner of speaking. Employers may not schedule examinations or other selection or promotional exams in conflict with employees' days of worship. The employer may not also maintain a restrictive dress code in conflict with specific religious attire. Also, mandatory "new age" training programs such as yoga or meditation may conflict with the non-discriminatory provisions of the religious. As of 2002, the EEOC handled between 75,000 and 80,000 complaints each year.

The Civil Rights Act (and subsequent amendments) grants power to recover [COMPENSATORY DAMAGES](#) and [PUNITIVE DAMAGES](#) for violations of other laws, such as the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The Civil Rights Act of 1991 amended several provisions of Title VII including extending the category aggrieved parties to include United State citizens working in foreign countries and clarifying what is necessary for the plaintiff to prove.

Age Discrimination in Employment Act of 1967

Discrimination based upon age has been the subject of numerous debates. The debate involves classification of age discrimination within discrimination based upon race, color, sex, national origin, or religion. The idea that older persons are not targeted because everyone ultimately ages is central to the debate. That is to say, since everyone ages, there is no separate class for aging individuals. Older persons do not form a unique and distinct class. The resistance to classifying age with race, gender, and religion caused it to be omitted from the original Civil Rights Act of 1964. Subsequently there were numerous challenges of the ADEA. The ADEA was originally intended for private employers; however, in 1974, amendments extended it to local and state governments. There have been two landmark Supreme Court cases regarding the application of the ADEA to

state employers. In 1983, the Supreme Court held in the case of *EEOC v. Wyoming* (1983) that the ADEA was a valid exercise of congressional authority. However, the Supreme Court later ruled in *Kimel et al. v. Florida Board of Regents* (2000) that persons could not sue state and local employers for violations.

Rehabilitation Act of 1973

The Rehabilitation Act of 1973 protects employees with "handicaps" from discriminatory practices by their employers. Persons are defined as handicapped by the Rehabilitation Act of 1973 if they have a physical or mental impairment that substantially limits one major activity or has a record of such impairment or is regarded as having such an impairment. The Rehabilitation Act of 1973 also provides money to states for employment training and counseling for persons with handicaps. Several provisions of the Rehabilitation Act of 1973 specify groups protected and rights granted. Section 504 prohibits organizations that receive federal assistance from discriminating against qualified persons with handicaps. The 1992 amendments brought the Rehabilitation Act of 1973 into compliance with the Americans with Disabilities Act (ADA). The act required states to provide access devices for persons with handicaps. The amendments in 1998 require access to electronic and information technology provided by the Federal government unless doing so causes an "undue burden." Provisions of the Rehabilitation Act of 1973 are enforced by the Office of Civil Rights (OCR).

Civil Service Reform Act of 1978

The Civil Service Reform Act of 1978 (CSRA) prohibits any employee with the authority to make personnel decisions from discriminating against applicants or incumbent employees based on the person's race, color, national origin, religion, sex, age, or disability. The CSRA also grants certain protections against personnel actions based upon a person's marital status or political affiliation. Provisions of the CSRA are enforced by the Federal Office of Special COUNSEL (OSC) and the Merit Systems Protection Board (MSPB).

Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964 enacted in 1978, requires employers not to discriminate because of pregnancy, childbirth, or medical conditions related to pregnancy and childbirth. The PDA also applies to all females regardless of marital status. Provisions of the PDA are enforced by the EEOC.

Immigration Reform and Control Act of 1986

The IMMIGRATION Reform and Control Act of 1986 (IRCA) is not primarily focused on prohibitions against unlawful employment practices; however, one provision requires employers who require employee verification prior to hiring not to discriminate against national origin. Provisions of the IRCA are enforced by the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Americans With Disabilities Act of 1990

ADA prohibits private employers, state and local governments, employment agencies and labor unions with 15 or more employees from discriminating against qualified employees with disabilities. An employer is prohibited from discriminating against persons with disabilities in hiring, firing, advancement, compensation, training and other benefits related to employment. According to the ADA, a person with a disability has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. The ADA protects employees with disabilities prior to initial employment and employees that develop disabilities while employed by the employer.

Encyclopedia of Everyday Law: Discrimination

In addition to prohibition against unlawful employment practices, the employer must also make "reasonable accommodations" for qualified employees who can perform "essential functions" of the job. A reasonable accommodation may consist of making existing facilities readily accessible to persons with disabilities or modifying equipment, training examinations, and policies, or requiring readers or interpreters. However, an employer is not required to lower quality or production standards to make accommodations.

The Supreme Court held in *Board of Trustees of the University of Alabama et al. v. Garrett et al.* (2000) that suits in federal court by state employees to recover money damages by reason of the State's failure to comply with Title I of the ADA are barred by the Eleventh Amendment. Essentially, the court ruling held that state employers are not bound by the ADA. Another recent Supreme Court ruling, *Ella Williams v. Toyota* (2001) also restricted the definitions of a person with a disability by adding that the disability must be in one or more major life activity which prevents the person "from performing tasks that are of central importance to most people's daily lives." The United States Supreme Court, with this ruling, attempted to clarify the broad language of the ADA to more precisely define when a person is to be considered disabled as opposed to impaired.

Family Medical Leave Act of 1993

The Family Medical Leave Act of 1993 (FMLA) protects employees against possible disruption in their employment caused by leave from work needed to care for a newborn or a sick family member. The FMLA applies to all public federal, state, and local municipal employers. The FMLA also applies to private employers who employ 50 or more employees in 20 or more workweeks in the current or preceding year. Private employers must also be engaged in commerce or any industry affecting commerce.

The employee is entitled to specific benefits if employed by a public or private employer covered by the FMLA. The employee is entitled to 12 workweeks of unpaid leave during a 12-month period for: the birth and care of a newborn child of the employee, for placement with the employee of a son or daughter for [ADOPTION](#) or foster care, for care of an immediate family member (defined by the FMLA as a spouse, child, or parent) with a serious health condition (defined by the FMLA as "any period of incapacity or treatment connected with inpatient care in a hospital or hospice or residential medical-care facility or continuing treatment by a health care provider which includes any period in which the employee is unable to work, attend school, or perform regular activities due to a health condition, a pregnancy-related absence, a chronic serious health condition or a permanent long-term condition.") The employee may take leave intermittently, meaning that the 12 week block does not have to be taken consecutively. However, intermittent leave, when used for birth and care for adoption or foster care must be approved by the employer. When the leave is used to care for a seriously ill family member, the intermittent leave may be taken only when medically necessary.

When the employee returns from FMLA leave, the employer must restore the employee to the original job or equivalent job with equivalent pay. The employer must also maintain health benefits while the employee is on FMLA leave.

Employees must meet certain requirements before they are eligible for benefits afforded by the FMLA. Employees must work for a covered employer for a total of 12 months and have worked for at least 1,250 hours in the 12-month period. The employee must provide 30-days advanced notice for the need to take FMLA leave. Employers may also require employees to provide medical documentation to validate the medical condition claimed. Employers (at their expense) may require employees to seek a second or third opinion. Employees also must furnish their employers with status reports and intent to return to work.

The provisions of the FMLA are enforced by the United States Secretary of Labor's Wage and Hour Division. Thus far, there have not been any challenges to the provisions of the FMLA heard before the United States Supreme Court.

Although employees of state and local employers cannot sue their employers for discriminatory practices involving provisions of some Federal laws (most notably the ADEA and ADA), below is a list of the applicable state laws prohibiting employment discrimination.

State Laws and Statutes Prohibiting Employment Discrimination

ALABAMA: Title 25 of the Code of Alabama 1975

ALASKA: Title 23 of Alaska Statutes

ARIZONA: Title 23 of Arizona Revised Statutes

ARKANSAS: Title 11 of Arkansas Department of Labor Laws and Regulations

CALIFORNIA: Chapter 98.75 of the California Labor Code

COLORADO: Title 8 of Colorado Department of Labor and Employment

CONNECTICUT: Title 31 of the Connecticut Department of Labor

DELAWARE: Title 19 of the Delaware Code

DISTRICT of COLUMBIA: Title 36 of the District of Columbia Code

FLORIDA: Title 31 of the Florida Statutes

GEORGIA: Title 34 the Georgia Code

HAWAII: Title 21 of the Hawaii Revised Statutes

IDAHO: Title 44 of the Idaho Statutes

ILLINOIS: Chapter 820 of the Illinois State Employment Law

INDIANA: Title 22 of the Indiana Code

IOWA: Title 3 of the Code of Iowa

KANSAS: Chapter 44 of the Kansas Statutes

KENTUCKY: Title XXVII of the Kentucky Revised Statutes

LOUISIANA: Title 23 of the Louisiana Revised Statutes

MAINE: Title 26 of the Maine Revised Statutes

MARYLAND: Labor and Employment Article of the Maryland State Statutes

MASSACHUSETTS: Part I, Title XXI of the General Laws of Massachusetts

Family Medical Leave Act of 1993

Encyclopedia of Everyday Law: Discrimination

MICHIGAN: Chapter 408 of the Michigan Compiled Laws

MINNESOTA: Chapter 175 through 186 of the Minnesota Statutes

MISSISSIPPI: Title 71 of the Mississippi Code

MISSOURI: Title XVIII of the Missouri Revised Statutes

MONTANA: Title 39 of the Montana Code

NEBRASKA: Chapter 48 of the Nebraska Statutes

NEVADA: Title 53 of the Nevada Revised Statutes

NEW HAMPSHIRE: Section 275 of New Hampshire Revised Statutes

NEW JERSEY: Title 34 of New Jersey Statutes Annotated

NEW MEXICO: Chapter 50 of New Mexico Statutes Annotated

NEW YORK: Executive Law Article 15, New York State **HUMAN RIGHTS** Law

NORTH CAROLINA: Chapter 95-240 through Chapter 95-245 of the North Carolina General Statutes

NORTH DAKOTA: Chapter 14 of the North Dakota Century Code

OHIO: Section 4112.02 of the Ohio Revised Code

OKLAHOMA: Title 40 of the Oklahoma Statutes

OREGON: Title 51, Chapters 651-663 of the Oregon Revised Statutes

PENNSYLVANIA: Title 43 of the Pennsylvania Consolidated Statutes

RHODE ISLAND: Title 28 of the Rhode Island General Laws

SOUTH CAROLINA: Title 41 of the South Carolina Code of Laws

SOUTH DAKOTA: Title 60 of the South Dakota Codified Laws

TENNESSEE: Title 50 of the Tennessee Code

TEXAS: Texas Labor Code

UTAH: Title 34 of the Utah Code

VERMONT: Title 21 of the Vermont Statutes

VIRGINIA: Title 40.1 of the Code of Virginia

WASHINGTON: Title 49 of the Revised Code of Washington

State Laws and Statutes Prohibiting Employment Discrimination

Encyclopedia of Everyday Law: Discrimination

WEST VIRGINIA: Chapter 21 of the West Virginia Code

WISCONSIN: Chapter 111 of the Wisconsin Statutes

WYOMING: Title 27 of the Wyoming Statutes

Additional Resources

"An Overview of the Fair Labor Standards Act." United States Office of Personnel Management. Available at www.opm.gov/flsa.htm.

"Employment Discrimination: An Overview." Legal Information Institute, Cornell Law School. Available at http://www.law.cornell.edu/topics/employment_discrimination... .

"Federal Laws Prohibiting Job Discrimination Questions and Answers." United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/facts/qanda.html.

A Guide To Disability Rights Laws. United States Department of Justice, Civil Rights Division, Disability Rights Section. Washington, DC: Government Printing Office, 2001.

Jacob, M. C. *"Industrial Revolution."* World Book Online Americas Edition, 2002. Available at <http://www.aolsvc.worldbook.aol.com/wbol/wbPage/na/ar/co/27...> .

"Labor and Employment Laws of the Fifty States, District of Columbia and Puerto Rico." Legal Information Institute, Cornell Law School. Available at http://www.law.cornell.edu/topics/Table_Labor.htm.

"Labor Movement." Mills, D. Q., World Book Online Americas Edition, 2002. Available at <http://www.aolsvc.worldbook.aol.com/wbol/wbPage/na/ar/co/30...> .

"Title VII of the Civil Rights Act of 1964." United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/laws/vii.html

Troubled passage: The Labor Movement and the Fair Labor Standards Act. Samuel, H. D., Monthly Labor Review, 123 (12) 32-37, 2000.

"United States Equal Employment Opportunity Commission: An Overview." United States Equal Employment Opportunity Commission. Available at www.eeoc.gov/overview.html.

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