

Personnel Aging Policy Manual

I. Introduction

Citizen decision-makers and advisors reflect the consumer focus that characterizes the aging difference. In the Wisconsin aging network, older people set the direction and policies for the advocacy efforts and programs that AAAs and aging units undertake.

It is equally true that the personnel hired by the agencies in the aging network play a vital role in the operation of the network. Operating under the director of citizen boards and committees, the personnel that staff the agencies in the Wisconsin aging network are responsible for the day-to-day operations of the aging network.

Good personnel practices and policies help in clarifying expectations between employers and employees. This is equally true for the Wisconsin aging network. This chapter presents a brief summary of some of the major personnel-related information and requirements for AAAs and aging units.

Volunteers and employees are essential elements of any aging agency's ability to achieve its mission. Volunteers are a vital resource in governance, administrative, and service capacities. Good aging-personnel policies are fair, establish clear expectations and provide for meaningful and effective performance evaluation for both paid employees and volunteers.

Employees and volunteers should be committed to the mission of the organization; and competently, efficiently and professionally perform the duties they agreed to assume. The employees and volunteers of the organization should broadly reflect the diversity of their organization's constituency.

II. Staffing Requirements

A. Area Agency on Aging Staffing Requirements

Federal regulations governing the Older Americans Act make the AAA responsible for providing adequate and qualified staff to perform all functions required of the AAA.

1. Personnel Authority

The AAA board of directors has the authority for the adoptions of personnel policies and for the hiring, firing, and compensation of employees. This authority may be delegated to the executive director for subordinate staff. For AAAs that are part of county government, the county personnel policies and procedures shall be followed.

2. Staffing Plan

The AAA shall include a staffing plan as part of the agency's three-year aging plan. Changes to the staffing plan shall be reflected in annual amendments to the three-year plans. The format for the staffing plan will be prescribed by the Bureau of Aging and Disability Resources.

3. Staffing

The Bureau of Aging and Disability Resources recommends that the minimum staff requirements for an AAA include all of the following:

- One full-time executive director
- Two full-time professional staff members
- One full-time bookkeeper/accountant
- One full-time administrative support professional

Although this list addresses the minimum staffing requirements, an AAA will be expected to sufficiently staff the organization to meet the needs of its constituency. A single county AAA's constituency is the elderly population in its planning and service area. A multi-county AAA's constituency are its aging units; the number of these units defines their needs. The recommended staffing levels are based on full-time equivalencies such that a given position may be filled by two or more part-time employees.

Consultants may be retained to assist the AAA to carry out specialized activities but may not be used for routine responsibilities of the agency. The use of special consultants shall be authorized by the board of directors and identified in the aging plan and budget.

If an AAA employs any staff for the purpose of providing direct services, the agency shall request a waiver from BADR through the area plan. The Older Americans Act sets specific criteria in order for an AAA to provide direct services.

4. Employment Criteria and Preference

AAA staff shall be hired, compensated and promoted on the basis of their qualifications and performance. Personnel decisions shall also be guided by all of the following statutory requirements and policy criteria:

- Title VI of the Civil Rights Act of 1964 and other federal and state laws, regulations, and policies
- The Americans with Disabilities Act of 1990
- Rehabilitation Act of 1973
- Subject to the requirements of merit employment systems of state and local governments, preference shall be given to individuals aged 60 or older for any staff positions in AAAs for which such individuals apply.
- The agency's approved affirmative action plan.

5. Merit System of Personnel Administration

Federal regulations require that when a unit of general-purpose local government has been designated as an AAA, employees of the AAA shall be included in the local merit system of personnel administration.

B. Aging Unit Staff Requirements

State law makes the aging unit responsible for providing adequate and qualified staff to perform all functions required of the aging unit.

1. Personnel Authority

The county board of supervisors or the tribal council has the authority for the adoption of personnel policies and for the hiring, firing, and compensation of employees of the aging unit. In the case of a private non-profit aging unit this authority rests with the board of directors.

For aging units which are part of county government, the county personnel policies and procedures shall be followed.

2. Staffing Plan

The aging unit shall include a staffing plan as part of the agency's three-year aging plan. Changes to the staffing plan shall be reflected in the annual amendments to the three-year plans. The format for the staffing plan will be prescribed by BADR and will be issued as part of the three-year plan's instructions.

3. Staffing

The Wisconsin Elders Act requires that an aging unit have an aging unit director and necessary personnel. The intent of this provision is to ensure that the aging unit has professional staff whose focus is with the programs and duties related to older people as listed in the act.

By referring to the aging unit director in the singular sense, the act clearly indicates that the aging unit director is an individual. Furthermore, the language describing the qualifications and appointment of the aging unit director does not suggest that responsibility of this position can be dispersed among a variety of individuals. Having a number of people perform various functions does not constitute having a full-time director. The term full-term shall have the same meaning determined by the county for all other full-time personnel.

Consultants may be retained to assist the aging unit to carry out specialized activities, but may not be used for routine responsibilities of the agency. The use of special consultants shall be authorized by the policy-making body and identified in the aging plan and budget.

4. Employment Criteria and Preference

Aging unit staff shall be hired, compensated, and promoted on the basis of their qualifications and performance. The following statutory requirements and policy criteria shall also guide personnel decisions:

- Title VI of the Civil Rights Act of 1994 and other federal and state laws, regulations and policies
- The Americans with Disabilities Act (ADA) of 1990
- Rehabilitation Act of 1973

- Subject to the requirements of merit-employment systems of state and local governments, preference shall be given to individuals aged 60 or older for any staff positions in area agencies on aging for which such individuals apply.
- The agency's approved affirmative action plan

5. Merit System of Personnel Administration

Employees of public county or tribal aging units which operate within the structure of county or tribal government shall be included in the local merit system of personnel administration.

III. Personnel Policies

Each AAA and aging unit not operating within the context of a governmental unit's personnel policies is required to develop and maintain written personnel policies.

An organization's personnel policies defines what the agency can expect from its employees and what the employees can expect from the agency. The policies should be written within the first year of hiring staff and will help the organization maintain positive employee relations because they can prevent conflicts arising from misunderstandings.

The board of directors or the policy-making body, often through its personnel committee, is responsible for developing written personnel policies. The executive director and staff members can contribute to the development of satisfactory policies. The board of directors should formally accept the personnel policies and review them on a regular basis to incorporate new legal requirements and organizational needs. It is recommended that legal counsel review policies to ensure they are in compliance with labor laws. Every employee should receive a copy of the policies.

If an AAA or aging unit is attached to a unit of county or tribal government, the aging agency will typically operate under the personnel policies and practices of the county or tribe.

A. Employee Handbook: Minimum Human Resource Policies

Although many aging agencies do not wish to take the time to write out their personnel policies, it is best to do so to make certain they are on record. Putting the personnel policies in writing is essential in this day and age of lawsuits. Among the items to include in the personnel policy statement or employee handbook are, at a minimum, the following:

1. Employee Acknowledgment

It is the employee's responsibility to read and understand the agency's policies.

2. Introduction to the Employee Handbook

The introduction welcomes the employee to the agency and describes the organization, its mission, values and beliefs.

3. Equal Opportunity

Incorporate a statement on equal employment opportunity into the introduction or address this as a separate statement to employees.

4. General Policies

- **Personal Information:** Requirements for personnel records and proof of identity.
- **Attendance:** Outlines expectations for employee attendance.
- **Use of Agency Property:** Addresses use of agency property including computers, copy machines, telephones, supplies, etc.
- **Confidentiality:** Some organizations require that employees sign a confidentiality statement as a condition of employment. Others only require one if the employee is privy to confidential information.
- **Dress Code:** If there are special dress requirements or expectations for appearance, it may be necessary to include a dress code policy.
- **Safety and Accident Rules:** The employer is responsible for providing a safe work environment. Employees also need to know their responsibility to work safely.
- **Anti-Substance Abuse:** Most employers take the problem of drug and alcohol abuse seriously as they can result in problems in the workplace.
- **Sexual Harassment:** This is a complex and sensitive subject; however, recent litigation puts this policy on the must have list. If the aging unit not part of a larger organization it is advisable to consult with a personnel expert to ensure that the policies meet the most current standards.
- **Smoking:** Some local governments have passed laws which govern the issue of smoking; more and more

buildings have rules for their occupants. Consider all of these factors in determining a smoking policy.

- Performance Reviews: Outline what the employees can expect in the way of performance reviews.
- Employment Categories: Does the agency have full-time and part-time workers, exempt and non-exempt categories? If so, it is a good idea to describe these in the handbook.

5. Compensation and Benefits

- Payroll: It is easy to outline the payroll procedures and this helps new employees get acquainted with the practices.
- Work Hours and Reporting: If the agency has specific work hours or allows flexible working hours, those policies should be explained.
- Holidays: A list of paid holidays approved by the board or governmental unit.
- Vacation: Vacation scheduling can be a problem for small agencies with few employees. If the agency needs employees to schedule in advance, be sure to let them know the requirements via the vacation policy.
- Sick Leave: Most agencies provide some form of sick leave, but be sure to define the carryover rules.
- Family and Medical Leave: If FML applies to the agency, the agency may need professional help to review or write any policy dealing with time away from work.
- Maternity Leave
- Funeral Leave
- Jury Duty
- Military Service
- Group Insurance Benefits: Make a summary reference to the insurance benefits and eligibility; then refer the employee to the detail in a separate benefits handout.
- Short Term Disability: If the agency has a short-term disability benefit, it should be mentioned in the handbook; but because the rules are complicated refer employees to the detailed document.
- Continuation of Medical/COBRA: If the agency has 20 or more employees, the law requires in most

circumstances that the agency provide continuation of health/medical benefits to employees who leave the agency.

- Worker's Compensation: Generally, employers are required to have worker's compensation insurance.
- Retirement Plans: Outline any features of retirement or savings plans in the policy handbook.
- Employee Assistance Program: Confidential programs designed to help employees before their problems impact their work and personal lives.

B. Code of Conduct

Federal regulations governing grants which aid state and local governments and private non-profit organizations require that grantees maintain a written code of conduct which governs the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds.

This requirements covers AAAs and aging units which are separate organizational units of other private or public entities. However, the requirements may be met by the adoption of a code of conduct covering the entire organization of which the AAA or aging unit is a part. If the larger organization does not have a code of conduct in place, the AAA or aging unit shall develop its own.

The code of conduct shall include material concerning:

1. Conflict of Interest

No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the area agency on aging or aging unit shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub-agreements. However, agencies may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of the agency.

2. Nepotism

It is improper for a person to be hired by an area agency on aging unit because they are a relative of a public

official. A problem arises when an individual in a policy-making or administrative position is involved, directly or indirectly, in the hiring, promotion, or supervision of a relative.

No member of an area agency on aging or aging unit may use his or her position to bring about the area agency on aging or aging unit's employment of the member's spouse or dependent relative. Further, a member of an area agency on aging or aging unit may neither (1) hire or promote as an employee of the area agency on aging or aging unit, nor (2) advocate the area agency on aging or aging unit's employment or promotion of, nor (3) exercise jurisdiction, supervision or direction over; a person to whom he or she is related as a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew, or spouse.

3. Drug-Free Workplace

Under the Federal Drug-Free Workplace Act of 1988, employees convicted of a criminal drug-related charge shall notify their immediate supervisor of such conviction no later than five (5) days following the conviction if the violation occurred at the workplace. Failure to report as required may result in disciplinary action.

An employee convicted of a criminal drug-related violation occurring in the workplace will be subject to discipline and may be required to participate in a rehabilitation program in compliance with the act. The agency is required to report all such convictions to the federal government.

4. Violence in the Workplace

Workplace violence is any direct, conditional, or implied threat, intentional act or other conduct which reasonably arouses fear, hostility, intimidation or the apprehension of harm in its target or witnesses. This includes any situation which causes a reasonable individual to fear for his or her personal safety, or for the safety of his or her family, friends, coworkers, clients, employer and/or their property.

Each aging agency is encouraged to develop policies and procedures related to violence in the workplace.

C. Job Descriptions

All personnel, both paid and volunteer, of an AAA or an aging unit shall have a written job description. Job descriptions shall be reviewed regularly so they continue to accurately reflect the expectations for the position. Job

descriptions must be approved by the board of directors or the policy-making body. It is also recommended that the agency develop job descriptions for board members. Clearly spelling out expectations for volunteers avoids confusion.

A job description describes the major areas of an employee's job or position. A good job description begins with a careful analysis of the important facts about the job such as individual tasks involved, the methods used to complete the tasks, the purpose and responsibilities of the job, the relationship of the job to other jobs and the qualifications needed for the job.

It is important to make a job description practical by keeping it dynamic, functional, and current. Do not get stuck with an inflexible job description! A poor job description will keep the agency and the employees from trying anything new and from learning how to perform their jobs more productively.

Many jobs are subject to change due to personal growth, organizational development and/or the evolution of new technologies. Flexible job descriptions will encourage the employees to grow within their positions and learn how to make larger contributions to the company.

When writing a job description, keep in mind that it will serve as a major basis for outlining job training or conducting future job evaluations.

A job description should include all of the following:

- The job title
- The job objective or overall purpose statement. This statement is generally a summary designed to orient the reader to the general nature, level, purpose, and objective of the job. The summary should describe the broad function and scope of the position and be no longer than three to four sentences.
- An item by item list of duties or tasks performed, including principal duties, continuing responsibilities and accountability of the position's occupant. The list should contain each and every essential job duty or responsibility that is critical to the successful performance of the job. The list should begin with the most important functional and relational responsibilities and continue down in order of significance. Each duty or responsibility that comprises at least 5 percent of the incumbent's time should be included in the list.
- A description of the relationships and roles the occupant of the position holds within the agency, including any supervisory positions, subordinating roles and other working relationships.
- Recruiting information, which may be useful when using job descriptions for recruiting situations. This

includes the following:

- Job specifications, standards, and requirements: the minimum qualifications needed to perform the essential functions of the job, such as education, experience, knowledge and skills. Any critical skills and expertise needed for the job should be included.
- Job location; where the work will be performed.
- A list of equipment used in the performance of the job; for example, whether the agency's computers run in an Apple or Windows environment.
- Collective bargaining agreements; agreements and terms that relate to job functions, if applicable, such as when the agency's employees are members of a union.
- The salaried pay range for the position.

D. Personnel Records

A confidential personnel record must be maintained for each employee of an AAA or aging unit. Access to this record must be restricted to authorized individuals and the employee. Personnel records must be maintained for 10 years following the employee's departure from the agency.

The federal government requires that an array of information be kept under different laws. When reviewing the chart for record retention requirements, know which laws affect the agency so that the agency is in compliance.

1. Record Retention Chart

Information	Retention Requirement	Law *
Employee name and any identifying number used in place of the name used on any work records	4 years from tax due date or payment of tax, whichever is later	Social Security Act
Social Security Number	4 years from tax due date or payment of tax, whichever is later	Social Security Act
Employee home address, including zip code	4 years from tax due date or payment of tax, whichever is later	Social Security Act
Date of birth of all employees	3 years	FLSA, Equal Pay Act
Gender of Employee	3 years	FLSA, Equal Pay Act

Occupation of Employee	3 years	FLSA, Equal Pay Act
Age records	No time period specified	ERISA
Service record to determine whether an employee has worked 1000 hours or has incurred a break in service	No time period specified	ERISA
Marital status record	No time period specified	ERISA
Form I-9	3 years after hire or the date of recruitment or referral (if directed from an employment agency) or, after termination, for one year or 3 years after hiring, whichever is later	Immigration Reform and Control Act of 1986
Complete job application	1 year	Title VII, ADA
Resumes or other forms of employment inquiry	1 year	Title VII, ADA
Other hiring material	1 year	Title VII, ADA
Job orders submitted by an employer to an employment agency	1 year	ADEA
Test papers for a position if the test paper discloses the result of the test	1 year	ADA
Results of any physical examination that is considered by the employer in connection with personnel action	1 year	ADA
Any advertisements relating to job openings	1 year	ADEA
Records of job movement (promotions, demotions, transfers)	1 year	Title VII, ADA, ADEA
Material relating to layoffs	1 year	Title VII, ADA, ADEA
Material relating to termination	1 year	Title VII, ADA
Selection for training or apprenticeship	1 year	Title VII, ADA, ADEA
Requests for physical job accommodation	1 year	ADA

2. Minimum Wage Law Records

Employers covered by the Wisconsin minimum wage law must keep all of the following records, for a minimum of three years, for each employee:

- name, home address, birth date
- dates employment began and ended
- time of day work began and ended
- total daily and weekly hours worked
- rate of pay for each payroll period
- deducted amount and the reason
- work output if paid other than on a time basis
- The time each meal period began and ended when meal periods are required for employees, or when meal periods are deducted from the work time. This information is not required when the work or the business activity ceases on a regularly scheduled basis.

3. Other Records for Agency Use

Other employment records routinely maintained by employers but not specifically listed in the federal requirements include the following:

- work history
- performance evaluations
- disciplinary records
- personal commendations
- sick days
- vacation days
- benefit enrollments
- beneficiary designations
- payroll withholding statements
- reports of reference checks
- worker compensation information
- medical records

IV. Labor Laws

Both federal and state laws govern labor practices. These laws vary considerably in their coverage and requirements. Aging agencies may in some cases be subject to either or both federal and state laws governing the same topic. In cases where the laws contain different requirements and the state laws are more stringent, the Wisconsin Department of Workforce Development is required by law to enforce the state regulations.

To obtain more information about any of these federal and state laws, contact the Department of Workforce Development at:

Equal Rights Division
1 S. Pinckney St., Room 320
P.O. Box 8928 Madison, WI 53708
Telephone: (608) 266-6860
TTY: (608) 264-8752

V. Overview of the Major Federal Labor Laws

The vast majority of federal labor laws are administered by the United States Department of Labor (DOL). Please note that other federal agencies besides DOL enforce laws and regulations that affect employers. For example, the Equal Opportunity Commission generally enforces statutes designed to ensure non-discrimination in employment. More detail is available from oversight agencies. Employers should contact their respective agencies with specific questions.

A. Requirements Applicable to Most Employers

1. Employee Benefit Plans

- **Employee Retirement Income Security Act (ERISA):** The Employee Retirement Income Security Act (ERISA) governs certain activities of most employers who have pension or welfare benefit plans, and preempts many state laws in this area. The statute also provides an insurance mechanism to protect retirement benefits through a requirement that employers pay annual pension-benefit insurance premiums.

ERISA-covered **pension plans** must meet a wide range of fiduciary, reporting and disclosure requirements.

Regulations define such concepts as what constitutes plan assets, what is adequate consideration for the sale of plan assets, and the effects of participants having control over the assets in their plans, among other things. Under ERISA, **welfare benefit plans** also must meet a wide range of fiduciary, reporting, and disclosure requirements.

- **Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA):** The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) also includes disclosure and notification requirements for the continuation of health care provisions. These provisions cover group health plans of employers with 20 or more employees on a typical business day in the previous calendar year.

COBRA gives separated participants and beneficiaries an election to maintain, at their own expense, coverage under the employer's health plan for a limited period of time.

- **Health Insurance Portability and Accountability Act of 1996 (HIPAA):** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added several provisions to ERISA which are designed to provide participants and beneficiaries of group health plans with improved portability and renewability of coverage, as well as improved access to insurance, protection against discrimination on the basis of health status, and privacy protection of health information.

2. Safety and Health Requirements

- **Occupational Safety and Health Act (OSH Act):** The Occupational Safety and Health Act (OSH Act), which is administered by the Department of Labor's Occupational Safety and Health Administration (OSHA), regulates safety and health conditions in most private industry workplaces (except those regulated under other federal statutes; e.g., the transportation industry). Many private employers are regulated through states operating under OSHA-approved plans.

It is the responsibility of employers to become familiar with jobsafety and health standards applicable to their establishments, to comply with these standards, and to eliminate hazardous conditions to the extent possible. Compliance may include ensuring that employees have and use personal protective equipment when required for their safety or health. Employees shall comply with all rules and regulations which are applicable to their own actions and practices.

Employers covered by the OSH Act are required to maintain workplaces that are safe and healthful. In doing so, they shall meet certain regulatory requirements. Through regulations, OSHA promulgates safety and health standards and frequently makes distinctions by type of industry.

3. Wage, Hour and Other Workplace Standards

- **Fair Labor Standards Act (FLSA):** The Fair Labor Standards Act (FLSA) prescribes minimum-wage and overtime-pay standards as well as record-keeping and child-laborstandards for most private and public employment, including work conducted in the home (homework).

Although the FLSA does not place a limit on the total hours which may be worked by an employee who is at least 16 years old, it does require that covered employees, unless otherwise exempt, be paid not less than one and one-half times their regular rates of pay for allhours worked in excess of 40 in a work week.

In addition, the FLSA generally prohibits the performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor.

- **Immigration and Nationality Act (INA):** Under the Immigration and Nationality Act (INA), foreign workers are allowed to work in the United States. Additionally, under theINA, employers must verify the identity and employment authorization of all employees, including foreign workers.
- **Family and Medical Leave Act:** The Family and Medical Leave Act requires that employers of 50 or more employees (and all public agencies) provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or a family member.
- **Uniformed Services Employment and Reemployment Act:** The Uniformed Services Employment and Reemployment Actensures that those who serve in the armed forces have a right to reemployment with the employer they were with when they went in service, including those called up from the Reserves or National Guard.
- **Employee Polygraph Protection Act (EPPA):** The Employee Polygraph Protection Act prohibits most use of lie detectors by employers on their employees.

- **Consumer Credit Protection Act:** Garnishment of wages by employers is subject to regulation under the Consumer Credit Protection Act.
- **Labor-Management Reporting and Disclosure Act (LMRDA):** The Labor-Management Reporting and Disclosure Act (LMRDA), also known as the Landrum-Griffin Act, deals with the relationship between a union and its members. It ensures certain basic standards of democracy and fiscal responsibility in labor organizations.

B. Requirements Applicable to Employers Because of the Receipt of Government Contracts, Grants or Financial Assistance

1. Non-Discrimination and Affirmative Action

Non-discrimination and affirmative action requirements for federal contractors are set under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veteran's Readjustment Assistance Act (38 U.S.C. 4212). These programs prohibit discrimination and require affirmative action with regard to race, gender, ethnicity, religion, disability and veteran status.

2. Wage, Hour and Fringe Benefit Standards

Wage, hour and fringe benefit standards are determined for employees of federal contractors under the Davis-Bacon Act and related acts (for construction); the Contract Work Hours and Safety Standards Act; and the McNamara-O'Hara Service Contract Act (for services). Safety and health standards are also issued under these acts and are applicable to covered contractors, unless they have been superseded by specific standards issued by OSHA.

VI. Overview of the Major State Labor Laws

A. Civil Rights Laws

1. **Fair Employment:** This prohibits discrimination based on race, creed, color, national origin, ancestry, age, gender, arrest or conviction record, sexual orientation, marital status, and membership in the military reserve. It prohibits unfair honesty testing and genetic testing. It also prohibits discrimination because of filing or assisting with a Labor Standards complaint or because of use or non-use of lawful products.

2. **Family or Medical Leave (Employers of 50 or more):** An employee of either gender is allowed up to six weeks of leave in a 12-month period for the birth of adoption of a child. An employee is allowed up to two weeks of leave in a 12-month period for the care of a child, spouse, or parent with a serious health condition. An employee is allowed up to two weeks of leave in a 12-month period for the employee's own serious health condition.
3. **Retaliation Protections: Public Employee Safety and Health:** If a public employee, other than a state employee, reports an actual or potential hazard and then is retaliated against by the employer or if a public employee, other than a state employee, reasonably refuses to perform a task which represents a danger of serious injury or death or exercises any other right related to occupational safety and health and then is retaliated against by the employer.
4. **Retaliation Protections: Employee Right to Know:** This states that employees have a right to know what toxic substances might be encountered on the job, and prohibits retaliation against an employee for exercising any rights under Wis. Stat. § 101.58-101.599.
5. **Retaliation Protections: Elderly Abuse Retaliation:** This prohibits retaliation against any employee, other than a state employee, for reporting the abuse of an elderly person to a state or county agency.
6. **Health Care Work Retaliation:** This prohibits retaliation against any health care worker for reporting violations of laws, rules, or quality-of-care standards.

B. Labor Standards Laws

1. **Prevailing Wage Rates and Hours of Labor for Local Government Unit Public Works Projects:** This required the Department of Workforce Development (DWD) to determine the prevailing wage rates for all types of local public works projects and required DWD to investigate any alleged violation of such wage rates or hours or labor.
2. **Prevailing Wage Rates and Hours of Labor for State Public Works Projects:** This required DWD to determine the prevailing wage rates for all types of state public works construction projects except highways and bridges, and required DWD to investigate any alleged violations of such wage rates or hours of labor.
3. **Hours of Work and Overtime:** This requires payment of time and one half the regular rate of pay for hours worked in excess of 40 in a given week; it also provides certain exemptions.
4. **Records Open to Employee:** This provides employees or former employees the right to inspect their own personnel records.

5. **One Day of Rest in Seven:** This requires employers in factories or mercantile establishments to provide at least one period consisting of 24 consecutive hours of rest within each calendar week. It also allows for the issuance of waivers or modifications to employers when jointly requested by labor and management.
6. **Minimum Wage:** This sets minimum wage rates; provides for special minimum-wage licenses for rehabilitation facilities, workers with disabilities, and student learners; and defines what comprises “hours worked”.
7. **Wage Payment and Collection:** This requires DWD to process individual wage claims from employees who have not received earned wages; it also establishes when employees shall be paid.
8. **Cessation of Health-Care Benefits:** This requires that, **for employers of 50 people or more**, 60 days advance written notification must be given when the employer decides to terminate a health-care benefit plan. Notices shall be provided to the employees, retirees and their dependents. The law does not require notification of employees who quit or who are terminated, nor does it require notification when an employer makes changes to an existing plan.

VII. The Hatch Act

The Hatch Act restricts the political activity of executive branch employees of the federal government. The Hatch Act also applies to the political activity of certain state and local government employees. Covered employees under the act are persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants. The act does not apply to the political activity of persons employed by educational institutions. Some statutes make Hatch Act provisions applicable to other categories of individuals, e.g., persons employed by private, non-profit organizations that plan, develop and coordinate Head Start and certain other types of federal assistance. Most employers of aging units and AAA's are covered under the Hatch Act.

A. Generally Permitted Political Activities

In general, the Hatch Act permits the political activities listed below, all of which must occur in non-work settings, and not on work time. Employee *may* do any of the following:

- Be candidates for public office in non-partisan elections
- Register and vote as they choose
- Assist in voter registration drives

- Express opinions about candidates and issues
- Contribute money to political organizations
- Attend political fundraising functions
- Attend and be active at political rallies and meetings
- Join and be active members of a political party or club
- Sign nominating papers
- Campaign for or against referendum questions, constitutional amendments, and municipal ordinances
- Campaign for or against candidates in partisan elections
- Make campaign speeches for candidates in partisan elections
- Distribute campaign literature in partisan elections
- Hold office in political clubs or parties

B. Generally Prohibited Political Activities

In general, the Hatch Act prohibits the political activities listed below. Employees may not do any of the following:

- Use official authority or influence to interfere with an election
- Solicit or discourage political activity of anyone with business before their agency
- Solicit or receive political contributions
- Be candidates for public office in partisan elections
- Engage in political activity while:
 - On duty
 - In a government office
 - Wearing an official uniform
 - Using a government vehicle

- Wear partisan political buttons while on duty

Questions about the Hatch Act should be addressed to:

Hatch Act Unit

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 201

Washington, D.C. 20036-4505

Telephone: (800) 85-HATCH

VIII. Federal Laws Prohibiting Job Discrimination: Federal Equal Employment Opportunity Law

The U.S. Equal Employment Opportunity Commission (EEOC) enforces all of these laws. The EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices and policies.

A. Federal Job Discrimination Laws

1. **Title VII of the Civil Rights Act of 1964:** This prohibits employment discrimination based on race, color, religion, gender, or national origin.
2. **Equal Pay Act of 1963:** This protects men and women who perform substantially equal work in the same establishment from gender-based wage discrimination; it also protects individuals who are 40 years of age or older.
3. **Title I and title V of the Americans with Disabilities Act:** These prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.
4. **Sections 501 and 505 of the Rehabilitation Act of 1973:** These prohibit discrimination against individuals with disabilities who work in the federal government.
5. **Civil Rights Act of 1991:** Among other things, this provides monetary damages in cases of intentional employment discrimination.

B. Discriminatory Practices Prohibited by Law

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any of the following aspects of employment:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements
- Recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Pay, retirement plans, and disability leave
- Other terms and conditions of employment
- Harassment on the basis of race, color, religion, gender, national origin, disability, or age
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability

Title VII also prohibits discrimination based on participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

C. Other Practices Discriminatory Under These Laws

1. **Title VII:** Title VII prohibits not only intentional discrimination, but also any practice which has the effect of discriminating against individuals because of their race, color, national origin, religion or gender.

2. **Immigration Reform and Control Act:** The Immigration Reform and Control Act (IRCA) of 1986 requires employers to ensure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA; verification must be obtained from *all* applicants and employees. Employers who impose citizenship requirements or give preferences to U.S. citizens in hiring or employment opportunities also may violate IRCA.
3. **Religious Accommodation:** An employer is required to reasonably accommodate the religious belief of an employee or prospective employee unless doing so would impose undue hardship.
4. **Sex Discrimination:** Title VII's broad prohibitions against sex discrimination specifically cover both sexual harassment and pregnancy-based discrimination.
 - **Sexual Harassment:** This includes practices ranging from direct requests for sexual favors to workplace conditions which create a hostile environment for persons of either gender. This also includes same-sex harassment.
 - **Pregnancy-Based Discrimination:** Pregnancy, childbirth and related medical conditions shall be treated in the same way as other temporary illnesses or conditions.

IX. Age Discrimination in Employment Act

The ADEA's broad ban against age discrimination also specifically prohibits all of the following:

- Statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ).
- Discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs
- Denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

X. Equal Pay Act

The EPA prohibits discrimination on the basis of gender in the payment of wages or benefits, where men and women

perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

XI. Title I and Title V of the Americans with Disabilities Act

The ADA prohibits discrimination on the basis of disability in all employment practices. It is necessary to understand several important ADA definitions in order to know who is protected by the law and what constitutes illegal discrimination:

A. Individual with a Disability

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities; or who has a record of such impairment; or is regarded as having such impairment. Major life activities are those activities which an average person can perform with little or no difficulty, such as walking, breathing, seeing, hearing, speaking, learning and working.

B. Qualified Individual with a Disability

A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation can perform the essential functions of that position.

C. Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, the following:

- making existing facilities used by employees readily accessible to and usable by persons with disabilities
- job restructuring
- modification of work schedules
- providing additional unpaid leave
- reassignment to a vacant position
- acquiring or modifying equipment or devices
- adjusting or modifying examinations, training materials or policies
- providing qualified readers or interpreters

Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits

and privileges of employment which are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

D. Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose undue hardship on the operation of the employer's business.

"Undue hardship" means an action which requires significant difficulty or expense when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

E. Prohibit Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees within the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

F. Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

XII. Employers and Other Entities Covered By Law

- **Title VII and the ADA** cover all private employers, state and local governments, and educational institutions which employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.
- **The ADEA** covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies, and labor organizations.

- The **EPA** covers all employers who are covered by the Federal Wage and Hour Law (the Fair Labor Standards Act). Virtually all employers are subject to the provisions of this act.

XIII. What Agency Handles a Charge also Covered by State or Local Law?

- XIV. The State of Wisconsin and some localities have anti-discrimination laws, as well as agencies responsible for enforcing those laws. The Equal Employment Opportunity Commission (EEOC) refers to these agencies as "Fair Employment Practices Agencies" (FEPA's). Through the use of "work-sharing agreements," EEOC and the FEPA's avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law.

If a charge is filed with a FEPA and is also covered by federal law, the FEPA "dual files" the charge with EEOC in order to protect federal rights. The charge usually will be retained by the FEPA for handling. If a charge is filed with EEOC and also is covered by state or local law, EEOC "dual files" the charge with the state or local FEPA, but ordinarily retains the charge for handling.

The state contact for information is:

Equal Rights Division
1 S. Pinckney St., Room 320
P.O. Box 8928 Madison, WI 53708
Telephone: (608) 266-6860
TTY: (608) 264-8752

The federal contact for information is:

Milwaukee District Office
Equal Employment Opportunity Commission 310 West Wisconsin Avenue, Suite
800
Milwaukee, WI 53203-2292
Phone: 414-297-1111
TTY: 414-297-1115

XV. Civil Rights Compliance/Affirmative Action Requirements for Counties and Provider Agencies

It is the policy of the Department of Health Services (DHS) to ensure implementation of federal, state, local and departmental civil rights compliance executive orders, policies, plans, rules and regulations in the provision of human services in Wisconsin. This commitment extends to ensuring civil rights compliance within department services and in-provider services funded through DHS. Service providers include organizations and individuals which receive funds to deliver services or provide goods. Any agency receiving \$10,000 or more in federal funds is also required to comply with equal employment opportunity / affirmative action (EEO/AA) laws, regulations and policies.

XVI. Equal Opportunity and Affirmative Action in Employment Regarding Counties and Provider Agencies

The Department of Health Services (DHS) is committed to providing equal opportunity in employment and taking affirmative action for elimination of past and present effects of discrimination. This commitment and responsibility extends to ensuring that all counties and service providers receiving funds from DHS are in full compliance with all pertinent federal and state equal employment opportunity and civil rights laws and regulations.

Equal employment opportunity covers all terms, conditions or privileges of employment including, but not limited to, hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, support services, rates of pay or other forms of compensation and selection for training. Individuals are protected from discrimination in employment based on age, race, religion, color, gender, national origin or ancestry, handicap, physical condition, developmental disability [as defined in s. 51.01(5), Wis. Stats.], arrest or conviction record (in keeping with s. 111.32, Wis. Stats.), sexual orientation, marital status, or political affiliation (s. 230.18, Wis. Stats.).

DHS and each county and service provider shall make reasonable accommodation for the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless DHS or the service provider can demonstrate that the accommodation would impose undue hardship on the operation of its program. A reasonable accommodation is a logical adjustment made to a job and/or the work environment, which adjustment enables a qualified person with a disability to perform the duties of that position.

In accordance with its responsibilities under s. 16.765, Wis. Stats., DHS requires annual affirmative-action plans from all contractors with 10 or more employees and with contracts of \$10,000 or more. These affirmative action plans address the under- utilization of racial/ethnic minorities, women, and persons with disabilities in the contractor's workforce. The plans also set specific measurable goals to ensure equal opportunities.