



## EMPLOYMENT POLICIES, CONTRACTS, AND CLASSIFICATION

## Types of Employees, Contractors, and Workers

**Employee:** A worker with a highly regulated, long-term relationship with a single employer.

**Independent contractor:** A worker who provides a specific service and has total discretion over how contracted work is done.

**Employee misclassification** occurs when employees are deprived of due benefits by being incorrectly labeled as independent contractors, interns, or volunteers.

The **right to control** test measures the degree to which an employer directs a worker's methods.

The **economic realities** test measures a worker's economic independence.

**Other types of employees** include full-time, part-time, temporary, and seasonal.

**Remember:** The *right to control* test and the *economic realities* test are used to determine if a worker is an employee or an independent contractor.

**Remember:** The Affordable Care Act has established clear definitions for all employee types, and defines how to calculate full-time equivalent employees.

Unpaid workers, like interns and volunteers, do not have employee status.

## Legislation and Departments that Protect Employees

**Fair Labor Standards Act (FLSA):** This 1938 act governs minimum wage, overtime pay eligibility, child labor, and more.

Coverage may be enterprise, for companies making over one-half \$500,000.00 per year, or individual, which covers employees involved in interstate commerce.

**Employee Retirement Income Security Act (ERISA):** Ensures fair establishment and execution of employee benefit plans.

**Affordable Care Act (ACA):** Establishes guidelines for providing health insurance.

**Family Medical Leave Act (FMLA):** Entitles eligible employees to up to 12 weeks unpaid leave and health benefits in a 12-month period.

**Occupational Safety and Health Administration (OSHA):** The federal agency that sets and enforces standards for workplace health and safety.

**Worker's compensation:** A form of insurance offering wage replacement and medical benefits to employees injured in the course of their work.

Exempt employees are high level workers ineligible for overtime. Non-exempt employees are eligible.

State minimum wage rates take priority over federal, while the overtime rate is set at time and one-half regular rate of pay.

**Remember:** the ACA contains the employer mandate, which stipulates when employers must provide health insurance to their employees.



# Employee Protections in Hiring and Firing

**Title VII of the Civil Rights Act:** Bans unfair and unequal treatment in hiring, firing, and other aspects of employment.

**Americans with Disabilities Act:** Makes it illegal to discriminate against disabled individuals.

**Pregnancy Discrimination Act:** Makes it illegal to discriminate against pregnant women.

Pregnant and disabled individuals must be provided reasonable accommodations, unless they cause undue hardship to the employer.

**At-will:** Typical US employee status, which means employees can be fired at any point without warning.

Exceptions include violation of public policy, implied contract, and covenant of good faith.

**Wrongful termination:** Applies to cases where the reason for firing goes against protected employee rights or actions.

**Motivating factor causation** means the charge in question was a motivating factor in the employer's decision.

**But for causation** means the charge in question was the only motivating factor in the employer's decision.

Don't forget about the **Equal Employment Opportunity Commission**, the federal agency responsible for enforcing discrimination and retaliation laws.

## Employment Contracts

**Employment contract:** Sets out the expectations, rights, and obligations between an employer and employee.

A **termination clause** in an employment contract clarifies the at will status of employees, as well as the grounds and required notice period for termination.

Clauses for resolving disputes include the governing law clause, jurisdiction clause, indemnity clause, and arbitration clause.

A **non-disclosure clause** restricts employees from revealing sensitive information, while a **non-compete clause** restricts them from engaging in a competing business after termination.

An **ownership clause** clarifies who owns the work created in the course of employment.

**Remember:** Wrongful termination is determined by *motivating factor causation* in discrimination cases, and but for causation in retaliation cases.

For fixed-term employees, a **length of agreement clause** may be used to clarify the start date, end date, and grounds for dismissal.