

Employment Law for Growing Government Contractors





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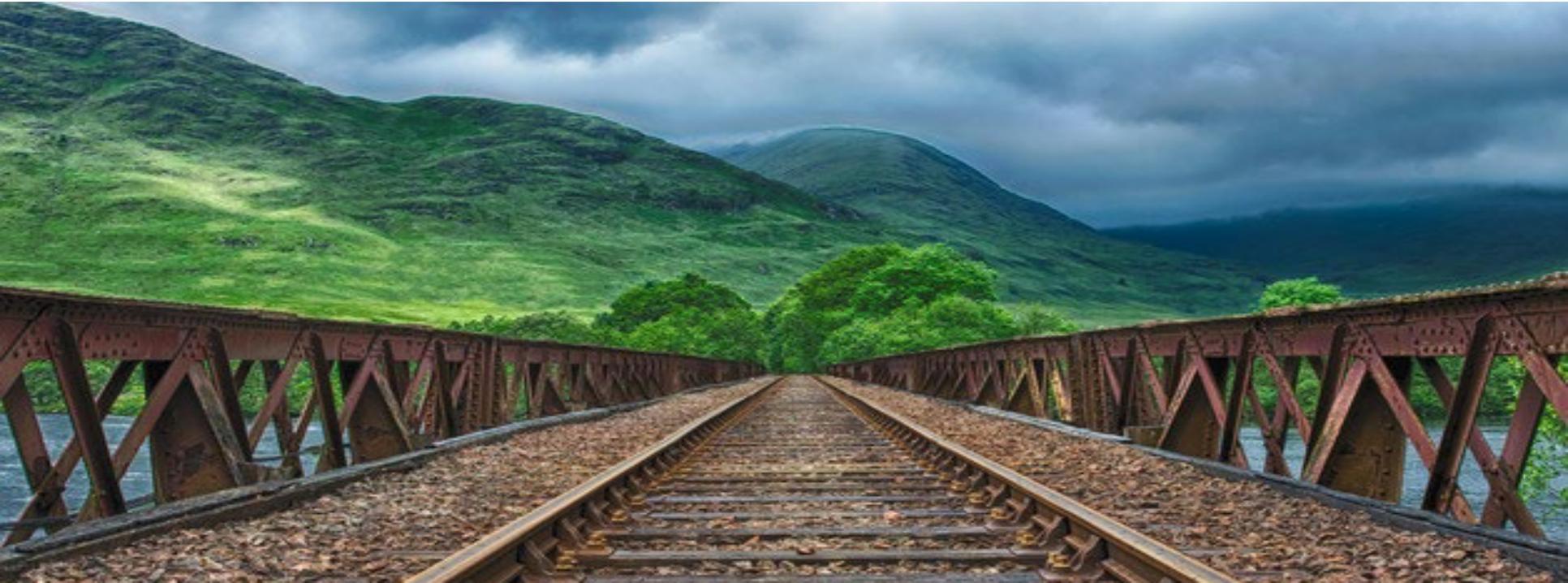
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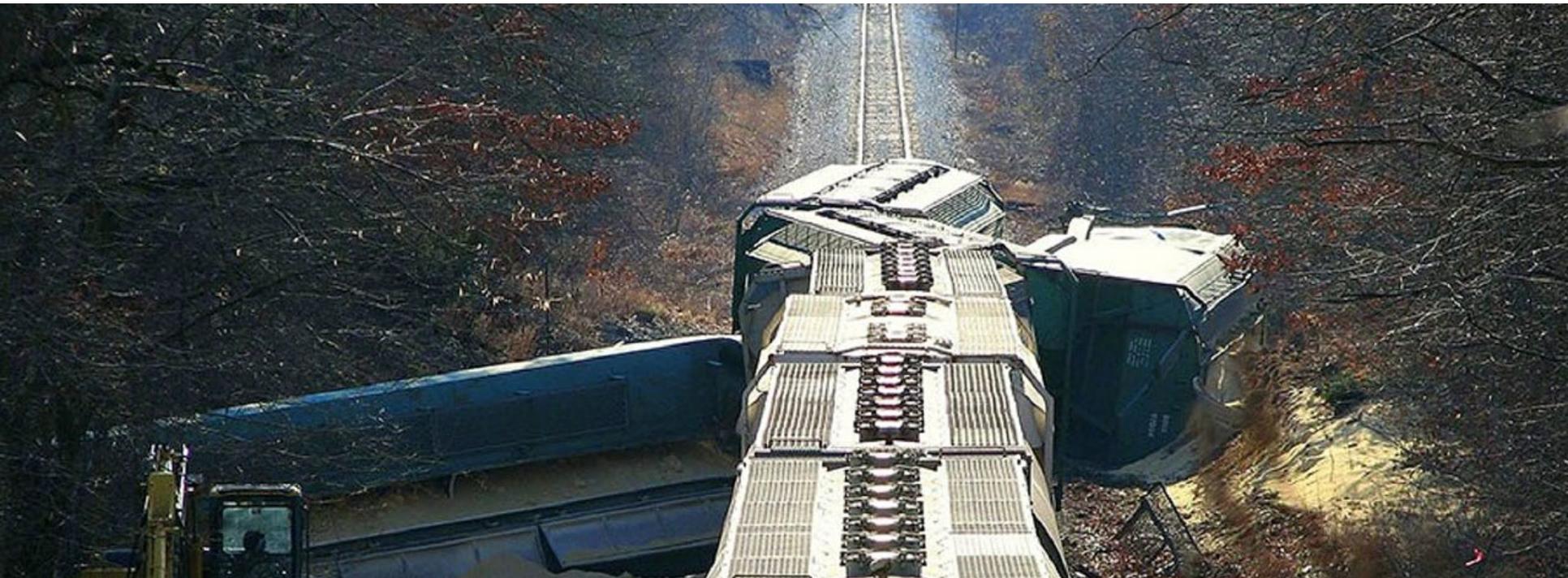
**“In this world you’re
either growing or
you’re dying.”**

-Lou Holtz

Congratulations, you're on the right track.



But if you're not moving forward, you can still get run over.



Part One:

**The Numbers and the Laws That Go
With Them**

The Numbers

As your business grows, so does the number of laws you must follow.

1+ Employee

15+ Employees

20+ Employees

50+ Employees

100+ Employees



The Highlights

Laws That Apply With 1+ Employee

- **Fair Labor Standards Act** Minimum wage and overtime
- **National Labor Relations Act** Unfair labor practices
- **Occupational Safety & Health Act** Health and safety
- **Drug Free Workplace Act** Drug test policies
- **I-9 Requirements** Employee verification
- **Civil Rights Act of 1983** Anti-discrimination in contracting
- **USERRA** Anti-discrimination for veteran and military status

Common Problem Areas



- **Fair Labor Standards Act**
 - Employee vs. Independent Contractor
 - Exempt vs. Non-Exempt
 - “Salary Basis” Test
 - “Comp Time” and “Flex Time”
 - (“Comp Time” does not exist for private employers but can provide to exempt employees)
- **National Labor Relations Act**
 - “Protected concerted activity”
 - (talking about compensation; social media)
- **Occupational Safety & Health Act**
 - Reporting / Investigation
 - Anti-Retaliation / Whistleblowers
- **Drug Free Workplace Act**
 - Written policy requirement

The Highlights

Laws That Apply With 15+ Employees

- Title IV
- Americans with Disabilities Act
- Pregnancy Discrimination Act
- Genetic Information Non-Discrimination Act
- Fair Credit Reporting Act
- Fair and Accurate Credit and Transactions Act
- Age Discrimination in Employment Act (20+)
- COBRA (20+)



Calculating Your Employees

- Need your (1) calendar, (2) payroll records, and (3) calculator.
- **The “Payroll Method”:**
 - Date of Hire and Date of Termination – Not if actually paid for work that week
 - Number of employees on each working day during the year
 - “Employee” = some employment relationship (includes part-time, temporary, etc.)
 - Even if they don’t work that week, they count
 - “20 or more work weeks in the current or preceding calendar year”



Title VII: What You Need to Know

- **Prohibits discrimination/harassment on the basis of protected categories.**
 - Race
 - Religion
 - Ethnicity
 - Sex
 - National Origin
 - Disability (under the ADA)
 - Sexual Orientation?
 - Eleventh Circuit: *Evans v. Georgia Regional Hospital*, 850 F.3d 1238 (2017)
 - But, see EO 11246
- **Types of Violations**
 - Disparate treatment (hiring, firing, promotion, pay, benefits, etc.)
 - Hostile work environment
 - Retaliation
 - Not general “discrimination” or “harassment” but based on specific protected categories

Sexual Orientation / Executive Orders

- **Executive Order 11246**
 - Federal contracting agencies must include sexual orientation and gender identity discrimination as prohibited bases of discrimination in the Equal Opportunity Clause in federal contracts.
 - Applies even with less than 15 employees
 - See also EO 13672, 11375, 11478, 13672, and OFCCP.

ADA: What You Need to Know

- Qualified Individuals with Disabilities
- Unlawful Discrimination
- Essential Job Functions
- Reasonable Accommodations
- Undue Hardship
- Relationship with Workers' Compensation Laws, FMLA, Sick Leave/PTO
- Retaliation

[Seek Guidance Early!](#)

FCRA and FACTA: What You Need to Know

Apply to background checks and workplace investigations.

Fair Credit Reporting Act (1970) - Requires written notice and consent before an employer may obtain a consumer report for employment purposes.

Fair and Accurate Credit Transactions Act (2003) - Relaxes notice requirements for certain types of “investigations” into compliance with federal, state, or local laws and regulations.

Requires disclosure of the “nature and substance” of the report, if adverse action is taken.

ADEA: What You Need to Know

- Applies if 20+ employees
- Prohibits age discrimination in employment
- 40 and over
- Prohibits mandatory retirement ages
- May be required to give certain information in layoffs



50+ Employees

- Family and Medical Leave Act
- Affordable Care Act

100+ Employees

- Worker Adjustment & Retraining Notification Act (WARN)

(Important for government contractors during government shutdowns)



State Laws

- May vary
- Alabama:
 - Workers' Compensation & Anti-Retaliation (Ala. Code 25-5-11)
- Tennessee:
 - Tennessee Human Rights Act (8+ employees)
- States with more laws and regulations:
 - California, New York, Massachusetts



Part Two:

**“Employment Law Myths” or
“Lies That CEOs Tell Each Other”**

Myths

Myth # 1 – “You can prohibit employees from discussing their pay with each other.”

Myths

Myth # 2 – “You should not tell employees the reason for their ‘at will’ termination.”

Myths

Myth # 3 – “You should always fight unemployment compensation claims.”

Myths

Myth # 4 – “Non-competes really aren’t enforceable” or “Non-competes are always enforceable.”

Myths

Myth # 5 – “You should keep all employee records (pay, medical, and personnel) together.”

Myths

Myth # 6 – “You only have to keep employee pay records for 1 year (or 2 years, etc.).”

Part Three:

Other Ways Your Business May Be Breaking Employment Laws

Common Mistakes

The “flexible lunch break”



Common Mistakes

Letting employees decide which hours and how many they want to work each day.



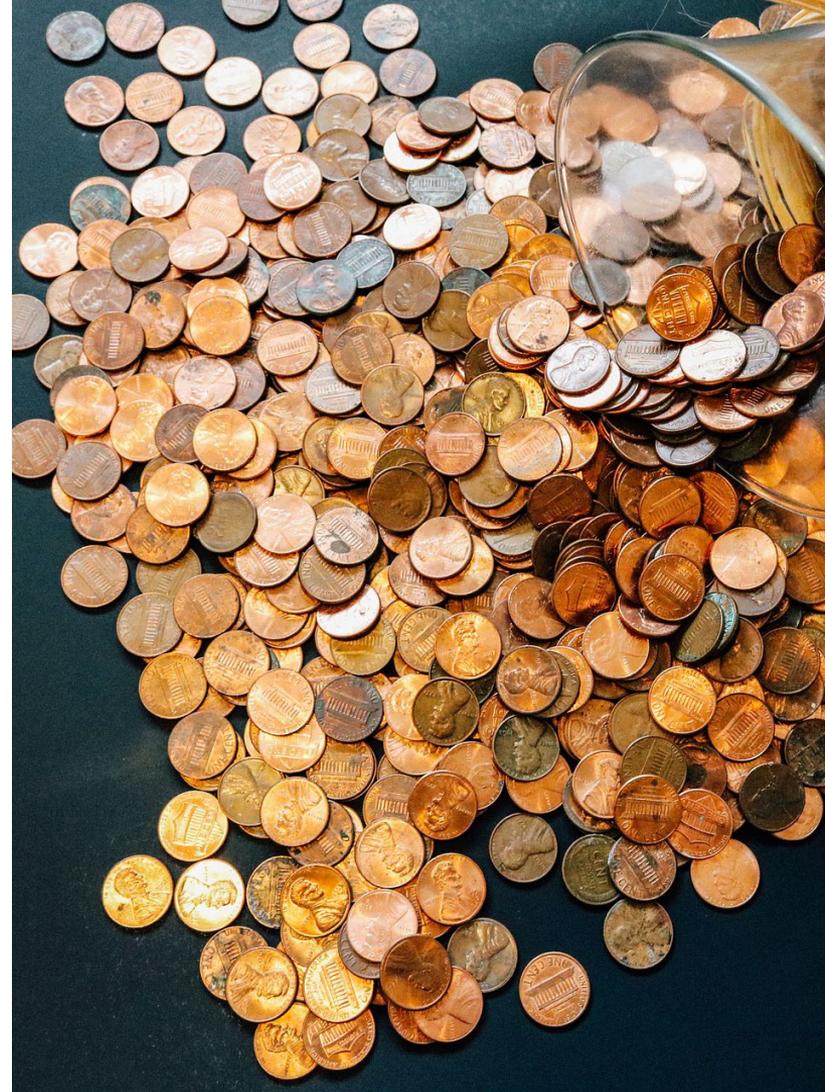
Common Mistakes

Failing to provide a final paycheck to an employee who has not returned.



Common Mistakes

Giving employees loans
and deducting
repayments from their
checks.



Common Mistakes

Having a “use it or lose it” vacation policy but failing to pay back money-owed on termination.



Common Mistakes

Asking “bad” questions during interviews.



What to Do:

1. Employment at Will
 - Handbook
 - Offer Letters
 - Employment Agreement
2. Anti-Discrimination and Harassment Policy
3. Anti-Retaliation Policy
4. Social Media Policy
5. Prompt Remedial Action



What to Do:

7. Know the size of your workforce (update yourself from time-to-time).
8. Review/update policies, handbooks, etc.
9. Review/update employment agreements, NDAs, non-competes



What to Do:

10. Train, and be consistent.
11. Due diligence when expanding to new states with different laws.



Other Considerations

- HR Professional?
- HASBAT? NCMA?
- Handbooks?
- FLSA Exemption Audits?



Thanks!

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