

**JANUARY 17, 2007
CITY HALL CHICAGO**



The Department of Business Affairs & Licensing (DBA) empowers businesses to grow and succeed. The DBA provides businesses a gateway and is a primary point of contact for all city services. DBA's "one-stop-shop" for businesses provides business consultants to guide businesses through the government process.

Understanding Employment Law

**PRESENTED BY CHARLES KRUGEL
HUMAN RESOURCES ATTORNEY & CONSULTANT
LABOR & EMPLOYMENT LAW ON BEHALF OF MANAGEMENT
&
DIRECTOR OF LEGAL & COMPLIANCE SERVICES FOR
THE HUMAN RESOURCE STORE**

PRESENTATION HANDOUT

- 1) WHAT IS HUMAN RESOURCES AND WHY SHOULD IT MATTER TO YOU?
- 2) HOW MUCH DOES AN EMPLOYMENT DISPUTE COST & WHAT'S YOUR LIKELIHOOD OF GETTING INTO AN EMPLOYMENT RELATED DISPUTE?
- 3) WHAT'S APPROPRIATE TO ASK JOB CANDIDATES?
- 4) JOB CANDIDATE APPLICATION & SELECTION SUMMARY
- 5) INDEPENDENT CONTRACTOR VS EMPLOYEE: CLASSIFICATION ISSUES
- 6) OVERTIME—EXEMPT VS NONEXEMPT CLASSIFICATIONS
- 7) ILLINOIS EMPLOYMENT LAWS, Some Laws Likely to be Encountered by Businesses
- 8) FEDERAL EMPLOYMENT LAWS, Some Laws Likely to be Encountered by Businesses
- 9) FREE RESOURCES FOR RESEARCH
- 10) INFORMATION ABOUT CHARLES KRUGEL, Practice & Background Summary

DISCLAIMER: THE CONTENT CONTAINED IN THIS DOCUMENT IS GENERAL & INSTRUCTIVE INFORMATION ONLY; IT'S NOT INTENDED AS LEGAL ADVICE. THIS INFORMATION ISN'T INTENDED TO CREATE AND DOESN'T CREATE AN ATTORNEY-CLIENT RELATIONSHIP. READERS SHOULD NOT ACT UPON THIS INFORMATION WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

Charles A. Krugel, 312-804-3851, www.charlesakrugel.com, cak1@charlesakrugel.com



The Human Resource Store
Providing The Human Resource Service You Need When You Need It

info@hrstore.com • www.hrstore.com • A Division of Tenlca Consulting Inc.

What is Human Resources and Why Should It Matter to You?

The terms human resources (HR) and human capital (HC) mean the same thing and are interchangeable.

My definition of HR is that it's the management of employees as a capital asset. A business acquires and manages employees in a manner similar to acquiring and managing any other capital asset. Now what exactly does this entail?

Employees are obviously human and a business resource. However, in the same way that machinery or equipment is capital that is acquired, utilized, appreciates or depreciates in value, and which can be improved, sold or discarded, HR relates to the management of employees in a similar fashion. Although this explanation may seem callous, when further scrutinized it is evident that HR pays as much attention to the "human" half of its name as it does to the "resources" half.

HR concerns the approach and ideology a business adopts for its culture and the life cycle of its employees. It's how a business enhances and protects its human assets, and therefore how a business improves profits. Recruiting, selecting, compensating, motivating, maintaining and promoting employees are all part of HR. Consequently, to some extent, all businesses with more than one employee practice HR. Yet, an effective HR philosophy has to acknowledge that because employees affect every facet of business, employees have an enormous impact on profit.

HR AFFECTS PROFIT

Therefore, in order to increase profit and decrease expenses, management must know how to treat employees in a way which enhances their value. Ultimately, effective HR helps to maximize profit by minimizing employment related expenses and maximizing employee performance.

In U.S. industry, modern HR theories date back to the Industrial Revolution. Moreover, since the Industrial Revolution, HR has evolved along with changes in production, distribution, finance and, perhaps most importantly, legal and civil rights. HR poses problems for a business when it fails to understand how these changes influence macro and micro HR.

Micro and Macro HR

Macro HR is the strategic function of HR in a particular work environment. It encompasses the understanding of what HR means to a business; that is, how HR fits into the organization's structure, mission and planning. Macro HR further incorporates policy and practice development. It's the "big picture" stuff of HR.

Micro HR is the actual execution of duties as delineated at the macro level. These duties include the administration of policies regarding the selection, hiring, compensation, placement, performance management, promotion, conflict resolution, discipline and discharge of employees.

How Macro and Micro HR Impact the Bottom Line

As stated above, a business will encounter difficulties when it fails to account for changes to macro and micro HR practices and changes to our labor and employment laws. Such difficulties include an unsafe workplace, attendance issues, conflict, union organizing and litigation. Simply stated, when a business encounters HR related problems, money is lost.

Businesses have money coming in through the "front door" via revenue, venture capital, grants, investors, etc. However, much of this money can exit through the "back door" because of poor HR practices. For instance, time and money is lost

when a business realizes that it hired the wrong employee and may now have to discharge that employee. Consequently, that business will have to spend money and time finding and training a new employee and may even have to defend its treatment and discharge of the former employee. Recognizing and efficiently resolving these problems often costs a great deal of time, energy and money.

However, time, energy and money spent upfront, proactively, on HR related matters could help to reduce, and in certain instances eliminate, the loss of money out the "back door." Thus, HR becomes an investment in capital. Time, energy and money are saved and increased productivity and profits result. The cost of employment related disputes and the savings associated with proactive and preventive practices are examined on the following page.

Knowing which HR practices to adopt and which HR disciplines to focus on is crucial in resolving macro and micro HR issues. Effective HR helps transform business from just a place to work into an environment which provides employees varied opportunities for meaningful contributions. Meaningful employee contributions lead to decreased operating costs, innovation and increased profits. Implicit in this explanation is the fact that results are measurable via means such as before and after analyses and time and expense audits.

Labor & Employment Law Defined

Labor and employment law generally refers to the body of law regulating the workplace and all HR/HC related matters.

However, labor law and employment law are two distinct categories which are often confused with one another because they somewhat overlap.

Labor law usually refers to the body of laws regulating labor unions and associations and their relationship with management. Such laws include the National Labor Relations Act and other similar federal, state and local labor laws. These laws permit employee organizing, electing representation and entering into legally binding contracts with management.

Generally, employment law concerns the body of laws and rules regulating civil rights and non-union related conduct in the workplace. Civil rights include a workplace free from discrimination and harassment for all people (not just employees, it could be customers or the public) who fit into one of the legally protected classes (e.g., race, gender, disability, national origin, religion, military status, pregnancy, and in some instances sexual or gender orientation). Conduct laws refer to the employer's treatment of its employees. Like labor laws, these are federal, state and local laws.

Labor & Employee Relations Defined

On the macro HR level, labor relations refers to the philosophy a business adopts for dealing with labor unions, union organizing and employee associations. On the micro level, this refers to practices and rules for dealing with individual employee issues concerning unions and associations.

Employee relations refers to the ideology (macro) a business adopts for dealing with harassment and discrimination and other employee issues. This is generally unrelated to labor unions or employee associations. This may include communication, discipline, recognition and payroll policies. On the micro level, it generally refers to how laws and rules are applied to individual or groups of employees.

How Much Money Does an Employment Dispute Cost & What's Your Likelihood of Getting Into an Employment Related Dispute or Being Sued?

The Cost

One approach to determining cost is past experience. I've settled employment cases at the administrative level for \$1,000. At the circuit court level, I've settled cases for as much as \$125,000. However, past performance is neither a reliable predictor nor guarantee of future performance.

Here's another way to compute the cost of a dispute: If a complaint is filed with an administrative agency such as the Equal Employment Opportunity Commission (EEOC), a business should expect to pay a minimum of 5 hours for attorney's fees to just negotiate a quick settlement. Thus, if attorney's fees are \$250/hour, miscellaneous costs are \$50, and the settlement reached is \$1,000, that's \$2,300 spent. This doesn't even include the cost of employees spending time away from work to deal with this matter, and any other transportation, gas or lost sales, profits, etc. If the case isn't quickly settled or if it proceeds to court via lawsuit, then we're looking at substantially more money.

Another cost is the employee's damages. Damages may include back pay and benefits, front pay, punitive or exemplary damages, reinstatement or promotion. Furthermore, a court or agency may order training (e.g., diversity and harassment), affirmative action and monitoring. This is an additional and substantial cost that the business may bear. Overall, damages cost as much, if not more, than attorney's fees, expenses and costs.

According to Jury Verdict Research (www.juryverdictresearch.com), which compiles samples of employment discrimination verdicts for analysis, the median compensatory award for employment related cases, among all economic sectors:

- rose 18% in 2003 to \$250,000;
- fell to \$210,308 in 2004;
- from 1998-2004, the award was \$581,000; and
- from 1998-2004, 42% of all jury awards to plaintiffs in cases concerning age, disability, gender, race, pregnancy or religious discrimination or retaliation were between \$249,000 to \$499,000;
- 10% of all jury verdicts, for these same employee categories, was \$1,000,000 and up;

From "Working Up a Suit" by Barbara Bowers, *Best's Review*, Jan. 2005, Vol. 105, Issue 9, pp. 74-77; and Horner & Bagnell, LLC, *Employment & Labor Law Update*, August 2006.

According to Jury Verdict Research, the average award:

- was \$990,000 from 1998-2004, within the manufacturing, industrial and high tech sectors, the average jury verdict award for employment discrimination cases;
- from 98-04, within the service and retail sectors it was \$486,000; and
- From 98-04, within the transportation sectors—\$445,000.

From: "Risk Management—Why Train?" 2006, http://www.emtrain.com/risk_manage_why_train.shtml, citing Jury Verdict Research's "Employment Practice Liability: Jury Award Trends and Statistics," 2005 Edition.

According to insurance industry research:

- The general cost to settle a "frivolous employment case is \$30,000-\$40,000 (per a March 2005 statement from a Senior Vice President of London American General Agency; and

- 550 employment related lawsuits are filed every day (per a March 2005 statement from a Vice President of the National Union Fire Insurance Company).

From: "Heads Up! Employees at Large," in <http://www.insurancejournal.com/magazines/southeast/2005/03/07/coverstory/52769.htm>.

The Likelihood of Getting Into a Dispute

Some statistics compiled by government and private industry might help to determine the probability of an employment related complaint or suit being filed in addition to the cost to settle or litigate these complaints.

According to a 2004 Chubb Insurance (www.chubb.com) survey, during the previous few years, 1 in 4 or 25% of privately held companies have been sued by an employee or former employee. However, it's estimated that 75% of these claims are groundless. Nevertheless, these claims still cost money to handle and resolve. From "Working Up a Suit" by Barbara Bowers, *Best's Review*, Jan. 2005, Vol. 105, Issue 9, pp. 74-77.

According to the EEOC, they filed

- 328 lawsuits in fiscal year 2000,
- 430 lawsuits in FY 2001,
- 364 lawsuits in FY 2002,
- 393 lawsuits in FY 2003,
- 415 lawsuits in FY 2004 and
- 417 in FY 2005.

The monetary benefits paid over all of these suits averaged \$51.3 million from 2000-2002. However, in 2003, the amount awarded jumped to \$148.7 million, and in 2004 it increased to \$168.1 million. In 2005, it fell to \$107.7 million. From <http://www.eeoc.gov/stats/litigation.html>; this depicts complete litigation statistics from FY 1992 – FY 2005).

Regarding money paid on all complaints, *not including lawsuits*, from fiscal years 2000-2005 an average of \$251.8 million was paid by businesses (www.eeoc.gov/stats/all.html).

The above numbers just relate to the EEOC. This leaves out the courts, the Illinois Department of Human Rights, the Cook County Commission on Human Rights, the federal and state labor departments, labor boards, Homeland Security, etc. There's a lot of money at stake here.

As I said before, it's much cheaper to prevent these problems from arising via proactive or preventive human resources. For example, according to Jury Verdict Research:

- It costs \$5,000 to train 200 employees at \$25 each on employment issues such as harassment and discrimination.
- If that same company is sued, the cost to litigate the case is approximately \$155,000, and the cost to settle is about \$85,000.
- Yet, the cost to litigate or settle an individual case, *when no training occurs*, is \$960,750 to litigate and \$304,000 to settle.

From "Risk Management—Why Train?" 2006, http://www.emtrain.com/risk_manage_why_train.shtml, citing Jury Verdict Research's "Employment Practice Liability: Jury Award Trends and Statistics," 2005 Edition.

In short, it pays for almost any business of any size, to have a basic understanding of human resources and employment law, and to have access to a great labor and employment attorney.

What's Appropriate to Ask Job Candidates?

Although there are only a few explicitly illegal questions that an employer should never ask a job applicant, there are many more questions which lead to the inference that the employer intended to illegally exclude (discriminate against) a member of a protected class. One way to help avoid or minimize liability for discrimination is to ask all applicants all of the same questions.

Additionally, it's crucial that you focus on questions related to the *essential job functions*. Or, put another way, are the questions you're asking intended to solicit information connected to the applicant's ability and willingness to perform the essential job functions, or are they more indicative of illegal bias? In almost all cases, it's not an essential job function to be of a certain race, age, sex, sexual orientation, etc. Exceptions are extremely limited.

Don't ask questions to determine if the applicant has children or dependents, or plans to start a family. Such questions include asking about the number of children, having a babysitter or even if the applicant has a car (unless, the job requires that the applicant has their own transportation). If the candidate indicates that they're pregnant, then you can congratulate them, but don't relate their pregnancy to the job unless they indicate that they require some sort of accommodation.

You can ask questions to determine an applicant's reliability. Such questions include asking what hours and days the person can work; are there specific days or times they can't work, or if they have outside responsibilities that will interfere with work.

Relative to an applicant's national origin, you shouldn't ask questions to determine where the candidate is from. Such questions include asking where their parents are from or maiden names. You can ask if the applicant is legally eligible to work in the U.S., or if they have ever worked under a different or another name.

With respect to arrest and conviction records, you can't ask if the applicant has ever been arrested. You can ask if they have ever been convicted of a crime. If they've been convicted, then you could also ask what, when and how the case was resolved. Essentially, you should only be concerned with a criminal conviction if such information relates to essential functions; e.g., handling money or being with children. Moreover, the date of conviction may be relevant depending on the magnitude of the crime. For example, 5 years after conviction or completion of the sentence or probation could be a good cut off date. Also, acquire the applicant's written waiver/permission to conduct the criminal background check.

You can't ask if a candidate has any physical or mental disabilities. Also, you can't ask if the applicant has an alcohol or drug problem, or if they take any medications. The above prohibitions are negated if the applicant explicitly and without your solicitation discloses any disability, impairment, drug or medication usage. If this is the case, you can ask if they can work the hours and days you specify, or if the applicant has nonwork related responsibilities which would interfere with their ability to perform the essential job functions. Moreover, you can ask if the applicant can perform the essential job functions with or without an accommodation.

Relative to credit record and financial history, you cannot ask if the applicant owns or rents a home, if they've ever had wages garnished or if they've ever declared bankruptcy. You can disclose that you'll be conducting a pre or post job offer credit check in compliance with the Fair Credit Reporting Act and the Consumer Credit

Reporting Reform Act (i.e., obtain candidate's written permission to check).

Regarding military record, you cannot ask about discharge. You can ask about the applicant's education, training and work experience while in the military.

Relative to languages spoken, if the job requires language fluency, other than English, then you can ask if the applicant has that ability. However, you shouldn't just ask what the applicant's native language is. This could lead to an inference of national origin or race discrimination.

In the "old boys' network" it used to be asked of applicants what clubs, organizations, lodges or societies they belonged to. Now, due to their association with weeding out members of protected classes, these questions are unadvisable. You can ask about membership or associations only if they directly relate to the applicant's ability to perform the essential job functions. E.g., "We expect you to become involved with local chambers of commerce, because this is how we develop new business and alliances. Do you have problem with this?"

Relative to time off from work, work related injuries or worker's compensation, you should never ask if the applicant has ever filed for worker's compensation, unemployment compensation or if they have ever sued or filed a complaint against a prior employer. Also, you should never ask if the applicant had any prior work related injuries. Again, you can ask if there are specific days or times that the applicant can't work, or whether the applicant can perform the essential job functions.

You can ask behavior oriented questions such as how the applicant handled prior workplace disruptions or disputes, or how they would handle job related issues or matters that are related to the position.

Asking about religious and ideological beliefs, associations or affiliations is usually indicative of illegal bias. They rarely, if ever, relate to the essential job duties and will only serve as an invitation to lawsuits. The exception is if your organization or business is a religious organization.

Don't ask about gender or sexuality, including bisexuality, homosexuality or transgenderism. Don't ask about titles such as: Mr., Ms., Mrs., or Miss.

Previous addresses (residential) have traditionally been asked on job applications and interviews. Such information is rarely related to job duties, skills, abilities or knowledge. So, don't make such an inquiry. If you believe that such information is relevant, then you can get this by doing a credit or background investigation.

Also, asking someone when they graduated college or high school may be indicative of age bias, so don't ask when they graduated or attended. You could ask what kind of education or degrees they have.

You can ask an applicant's date of birth to determine employment eligibility. Use a disclaimer or indication that the applicant is being asked only for purpose of determining eligibility.

Some of the information contained in this page was adapted from the following articles: Society of Human Resource Management Whitepaper-Guidelines on Interview and Employment Application Questions" by Nail & Scharinger, 1998, 1999, 2002; Society of Human Resource Management Whitepaper: "ADA Job Interview Checklist for Supervisors," by Pritchard, 1992, 1999, 2002; & "33 Interviewing Questions," by Borgman Associates, 1993.

Job Candidate Application & Selection Summary

Focus on the essential functions of the job. Essential job functions usually defined via a valid job description.

For all candidates:

- Ask the same questions,
- Use the same background checking processes, use the same tests; and
- Score/assess the same way; i.e., don't adjust scoring/assessment system unless for a valid and/or legal purpose.

Don't discriminate in the hiring process on the basis of any protected class (see below); unless:

- mandated pursuant to a legally binding order or agreement, or
- you're doing so based on a "bona fide occupational qualification."

Can ask if candidate can perform the essential job functions with or without an accommodation (or a reasonable accommodation).

- Type of accommodation is generally contingent upon why needed, cost and feasibility.

Don't ask questions intended to elicit, or which unintentionally elicit, information regarding:

- race
- gender
- religious beliefs
- age
- sexual orientation
- disability
- military status
- socioeconomic status-own home, rent home, how will pay for home, education, etc.
- national origin.

Currently, it's popular to ask behavioral questions of candidates. These questions might be useful as they're generally nondiscriminatory, and they elicit performance and conduct related information. Examples of such questions include:

- Describe a situation in which you and another coworker conflicted. What happened? How did you deal with the situation? How was the situation resolved?
- Describe a situation where your employer asked you to do something

which you believe may have been unethical or unprofitable for the business? How did you handle this? What was the outcome?

Background Checking—Compliance with federal laws like the Fair Credit Reporting Act, Consumer Credit Protection Act and state law like the Illinois Uniform Conviction Information Act is contingent upon:

- disclosure of the background check;
- disclosure of the reason for background check;
- procurement of candidate or employee's written release(s)—could be more than 1 release depending on the checks conducted.

Also:

- subsequent to the selection process, if a candidate or employee is rejected as a result of the check, then provide employee with the relevant part of the report and summary of rights/recourse options.

Employment Testing:

- Make sure that the test is valid, reliable and used for purpose(s) intended.

Independent Contractor vs. Employee: Summary of Classification Issues

Advantage of the independent contractor classification:

- Avoid federal and state withholding taxes.

Disadvantage:

- If improperly classify employee (intent is irrelevant), then penalty, which may include payment of taxes by employer, 5%- 25% penalty for each month of nonpayment.

How to Distinguish Between the Two:

- Degree of control and independence is the key.
- Independent contractors have a great deal of control over their working conditions, environment, and freedom to work for anyone.
 - Such control might include control over work schedule, when paid, work for other businesses, location of work, able to maintain separate/distinct identity
 - Commission might not matter.
 - Use own methods of work; not trained by their principal
 - Use own tools, materials, etc.
 - Closed ended contract/agreement with a start and finish date
- Employees have little control over the above-mentioned factors.
 - Employees are subject to using the employer's materials, tools, processes, property, etc.

See the following for additional information:

www.irs.gov/businesses/small/article/0,,id=99921,00.html

Overtime—Exempt vs. Nonexempt Classifications

Overtime at a minimum of 1 1/2 times the regular rate of pay is required after 40 hours of work in a workweek.

Don't try to classify overtime or no overtime based on your financial goals. This will probably result in an illegal classification.

Most businesses are covered by the Fair Labor Standards Act. This is the federal law governing minimum wage and overtime.

Exclusions exists for businesses earning less than \$500k in annual revenue and not engaged in interstate commerce or hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally, or physically disabled or gifted; preschools, elementary, and secondary schools and institutions of higher education; and federal, state, and local government agencies.

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals;
- Employees of certain seasonal amusement or recreational establishments;
- Employees of certain small newspapers and switchboard operators of small telephone companies;

- Employees in newspaper delivery; and
- Casual babysitters and persons employed as companions to the elderly or infirm.

The following are examples of workers exempt from overtime pay requirements:

- Certain commissioned employees of retail or service establishments;
- Auto, truck, trailer, farm implement, boat, or aircraft salespersons, clerks and mechanics employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers (consumers, businesses);
- Railroad and air line employees, taxi drivers, some employees of motor carriers, and local delivery employees paid on approved trip rate plans;
- Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
- Domestic service workers who reside in their employers' residences; and
- Employees of motion picture theaters.

Certain employees may be partially exempt from the overtime pay requirements. These include:

- Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors;
- Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of 7-day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours); and
- Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job-specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours.

For additional information see:

www.dol.gov/esa/whd/flsa/faq.htm

ILLINOIS LABOR & EMPLOYMENT LAWS

Some Laws Likely to Be Encountered by Businesses

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Attorneys Fees in Wage Action Act	All employers	Must pay all wages owed to an employee once separated.	Employer liable for reasonable attorney's fees & costs.
Chicago Clean Indoor Air Ordinance	All employers	Smoking banned in enclosed workplaces. Post appropriate signs/notices.	Fines up to \$100 for 1 st violation; up to \$500 for 2 nd violation w/in 1 year; up to \$2500 for each additional violation w/in 1-year & a 60-day suspension or revocation of any permit or license.
Chicago Human Rights Ordinance	All employers	Can't discriminate on basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military service, source of income or social status. There are narrowly construed exceptions.	Fine of \$100 to \$500 per violation. Each day a violation continues is a separate offense.
Child Labor Law	All employers	Pertains to children under 16; children 14 & 15 years old can work, but employer must obtain certification. Limits work to 3 hours on a school day or 18 hours in a school week.	Each violation is a Class A misdemeanor. Each day out of compliance is a separate violation. Violations are subject to a fine up to \$5k for each violation.
Cook County Human Rights Ordinance	All employers	Can't discriminate on basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military service, source of income or social status. There are narrowly construed exceptions.	Actual damages, back pay, attorney's fees & costs, fine of \$100 to \$500 per violation. Each day a violation continues is a separate offense. Remedial action; e.g., hiring, reinstatement, promotion.
Directory of New Hires (part of the Unemployment Insurance Act)	All employers	Must report identifying information on all new employees within 20 days of first workday to Illinois Directory of New Hires.	Employer that knowingly fails to comply is subject to a fine of \$15 per employee not reported within 21 days after being notified by IDHS. An employer conspiring with the new employee to avoid the law is guilty of a class B misdemeanor & eligible for a fine no greater than \$500 per unreported employee.
Drug Free Workplace Act	Employers of 25 or more & with state of IL contracts or grants of \$5k or more	Employer must publish a notice that drugs (e.g., controlled substances) are prohibited in the workplace, that actions will be taken for policy violations, & that employees must notify employer within 5 days of any criminal drug conviction.	Suspension of payment, termination or debarment, ineligibility for any state contract/grant for at least 1 year, but not more than 5 years.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Employment Record Disclosure Act	All employers	Employer providing a job reference to a prospective employer will have civil immunity if it provides truthful & only job performance information.	None specified (but perhaps an employer can be held liable for libel, slander or defamation?)
Equal Wage Act	Employers of 6 or more engaged in any manufacturing	Pay equal wages for equal work. Exceptions permissible due to differences in skills, abilities, training, education, tenure, etc.	Fine of \$25 to \$100 for each violation.
Group Insurance for Terminated Employees	Employers with group health insurance & HMO contracts in Illinois	Upon employee separation, employer must provide COVERED employee who has been enrolled in the plan for at least 3 months, prior to separation, the option to continue hospital, surgical & major medical coverage for 9 months for self & dependants.	None specified
IL Human Rights Act	Employers of 15 or more working during 20 or more weeks in the calendar year. But, if disability or sexual harassment alleged, then Act applies to all employers	Can't discriminate against employees on basis of race, color, national origin, sex, age, marital status, military status, religion, arrest record or handicap. Maintain records for 1 year; indefinitely for complaints.	Damages include: Cease & desist order, actual damages, emotional distress, hiring, reinstatement, promotion, back pay & benefits; attorney's fees & costs; compliance reports; posting of notices; penalty payments to the state; loss of state contracts for up to 3 years.
IL Uniform Conviction Information Act	All employers conducting criminal background checks	If conducting criminal background checks for employment purposes, must obtain applicant's signature for release & maintain on file for at least 2 years.	Up to \$1k for willful violation, plus actual & general compensatory damages, attorney's fees & costs. Criminal penalties in certain circumstances.
IL Wage Assignment Act	All private employers	Employer obligated to honor a valid wage assignment.	Employer's refusal may be grounds for court action to recover entire amount of the debt from the employer. Employer can't fire or suspend employee due to wage demands; may be a Class A misdemeanor.
IL Wage Payment & Collection Act	All employers	Employer must pay all wages at least semi-monthly & within 13 days of when earned. Must pay wages & unused vacation time upon end of employment, but not later than next payday. Exclusions for certain exempt employees & per contract/agreement.	Employer liable for penalty if the IL Dept. of Labor determines wages owed, & employer doesn't pay. Penalties are 1% per cal. day up to double the amount of the award; may be found guilty of a Class C misdemeanor.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Jury Act (Right to Time Off for Jury Duty)	All employers	Employer must allow time off for jury duty. Can't retaliate for time off. FLSA exempt employees must be paid (offset for nominal jury duty pay permitted). Employee must provide employer a copy of the summons within 10 days of the date of issuance of the summons to the employee.	Employer may be charged with contempt of court & any damages for lost wages & benefits. Also, if employee fired, then reinstatement.
Medical Examination of Employees Act	All employers	Employer must pay for prescreening or post offer medical exam, if exam is a condition of hiring or employment.	Violations are a petty offense & carry a fine of up to \$100 for each offense.
Minimum Wage Law (Illinois)	Workers 18 & older; 4 or more employees, excluding family members	\$6.50/hour until 6/30/07; starting 7/1/07 \$7.50/hour; 7/1/08 \$7.75/hour; 7/1/09 \$8.00/hour; and 7/1/10 \$8.25/hour.	Payment of back wages, legal costs, attorneys' fees. Other penalties including punitive damages (up to 20% of back wages) may apply.
One Day Rest in Seven Act	Most employers (exclusions for emergency, safety & security workers)	Employer must provide non-executive & non-professional employees 24 consecutive hours off in every calendar week. Exceptions include part-time employee working less than 20 hours, emergencies, security guards. A 20 minute minimum break/meal period is required for each 7 ½ hours of consecutive work.	Each violation incurs potential fine of \$25 to \$100. Also may be found guilty of a petty offense.
Personnel Record Review Act	5 or more employees	Must let employees twice a year inspect their files & add own statements or rebuttals. Records are documents used for hiring or other personnel actions.	Each violation is a petty offense. Failure to comply may be contempt of court. Actual damages, costs & fees may be awarded. Willful & knowing violations are fineable at \$200/violation.
Prevailing Wage Act	Many employers with public works contracts or subcontracts	Employer must pay the state's stipulated minimum wage for work. The wage is set by a board.	Guilty of Class A misdemeanor. Back pay (pay the variance), subject to minimum 20% penalties & 2% punitive damages. Multiple violations may lead to 2-year debarment.
Right to Privacy in the Workplace Act	All employers, except some nonprofits	Can't discriminate for lawful activities outside of work. No inquiry of employee or prior employers whether employee has previously filed a worker's compensation claim or occupational disease claim.	Actual damages, costs & fees awardable. If willful violation, then a \$200 fine.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Sales Representative Act	All employers who contract with sales people on a commission basis; only covers most goods (not services)	Employer must pay sales representative according to terms of contract, past practice or industry custom. Commission must be paid within 13 days of separation/last day.	Up to 3-times the amount owed (exemplary damages), attorney's fees & court costs.
Spousal Health Insurance Rights Act	Employers with group health insurance in IL	Spouse or former spouse must be given the option to continue all health insurance coverage.	None specified
Time Off for Official Meetings Act	All employers	Must allow employees who are elected officials of local government or school board time off for official meetings (employee must provide advance notice). No retaliation attending. Time off can be unpaid.	None specified
Time-Off for Voting	All employers	Upon advance notice, employer must allow employees to leave work for 2-hour period between opening & closing of polls to vote. Can be nonpaid.	None specified
Toxic Substances Disclosure to Employees Act	5 or more full-time employees or 20 or more employees in IL	Must inform Dept. of Labor & employees of potential hazards, safety precautions & emergency procedures concerning exposure to toxic substances in the workplace which pose known suspected health hazards & which may cause death or serious physical harm. Must label all toxic substances & train all routinely exposed. Exemptions based on industry, substances faced & other factors.	\$1k/violation & not more than \$10k for each willful or repetitive violation. Punitive damages up to 10-times the total penalty or \$20k (whichever is larger). Back pay, attorney fees & costs. Reinstate employee. Institute training programs.
Unemployment Insurance Act	All employers	Must pay unemployment insurance contributions to IL, must file a quarterly Employer's Contribution & Wage Report, & report all new hires within 30 days.	Failing to report hires may result in a penalty equal to the lesser of (a) \$5 for each \$10k of the total wages paid by employer during the period (quarter), or (b) \$2,500 for each month failing to report. Employer who willfully fails to pay any required contribution shall be required to pay those contributions plus a penalty equal to 60% of the amount of the unpaid contributions.
Victims' Economic Security & Safety Act	50 or more employees (private employers); all state & local public sector employers	Victims of domestic violence, or household member who is a victim, can take up to 12 weeks of leave during 12-month period. Can be unpaid. Post notice.	Pay damages equal to the amount of wages, salary, employment benefits, public assistance, or other compensation denied or lost with interest; reinstatement, promotion and reasonable accommodations; attorney's fees, expert witness fees, & other costs of the action; penalty of 1% per day to the employee for each day of delay in paying the damages to the employee.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Wage Deductions for Benefit of Creditors	All employers	Employer must notify employee of any withholding/deductions re garnishments. Employer must honor court orders re garnishments.	If employer refuses or neglects to honor a judicial order, the creditor may be able to collect the total amount of the debt, plus fees & costs from employer. Employer can be convicted for Class A misdemeanor for retaliating against employee due to deductions.
Wages of Women & Minors Act	All employers	Employers can't pay minors under age 18 or women an oppressive & unreasonable wage (i.e., less than fair and reasonable for the value of the work & less than a living wage).	Can be convicted of a Class B misdemeanor, pay back wages, attorney's fees & costs.
Whistle Blower Statutes (Federal & State)	All employers	Many federal & state laws prohibit discriminatory or punitive actions against employees who report illegal activities.	Criminal & civil penalties, including fines & imprisonment.
Workers' Compensation Act	All employers who elect coverage. Failure to elect (i.e., no insurance) exposes employers to common law liability	Employers must insure or self insure. Pay disability benefits & expenses for work related injuries. Refrain from retaliating against employees for pursuing rights under this Act.	Any willful neglect or violation is a petty criminal offense. Monetary penalties vary on basis of offense.

DISCLAIMER: THE CONTENT CONTAINED IN THIS DOCUMENT IS GENERAL & INSTRUCTIVE INFORMATION ONLY; IT'S NOT INTENDED AS LEGAL ADVICE. THIS INFORMATION ISN'T INTENDED TO CREATE AND DOESN'T CREATE AN ATTORNEY-CLIENT RELATIONSHIP. READERS SHOULD NOT ACT UPON THIS INFORMATION WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

FEDERAL LABOR & EMPLOYMENT LAWS

Some Laws Likely to Be Encountered by Small Businesses

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Age Discrimination in Employment Act (ADEA)	20 or more employees	Discrimination against persons 40 years of age or older prohibited. Includes all terms & conditions of employment. Keep records for 3 years.	Back pay, front pay, attorney's fees & costs, equitable relief, liquidated damages.
Americans with Disabilities Act (ADA)	15 or more employees	Discrimination in terms or conditions of employment prohibited against qualified individuals with physical or mental disabilities. Reasonable accommodation must be provided for known disabilities. Pre-employment physical examinations are limited & disability related inquiries prohibited. Keep records for 1-2 years; indefinite if charge is filed.	Equitable relief, i.e., reinstatement, promotion, etc.). Back pay, front pay, lost benefits, attorney's fees & costs, & compensatory & punitive damages.
Civil Rights Act of 1866 (AKA Section 1981)	Covers most employers	Prohibits race discrimination; keep records indefinitely.	Compensatory damages, punitive damages, back pay, front pay, attorney's fees & costs, & equitable relief (e.g., reinstatement, promotion).
Consolidated Omnibus Benefits Reconciliation Act (COBRA)	Employer who provides group health plans & has 20 or more employees	Must offer, within 30 days post separation, qualified beneficiaries the opportunity to purchase continued coverage. Keep records for 6 years.	\$100-\$200/day fine per employee
Consumer Credit Protection Act	All employers	Can't discharge an employee due to garnishments/wage deductions for debt.	Reinstatement, back pay, restitution for garnishments/deductions, civil penalties including fines up to \$1k &/or imprisonment up to 1 year.
Drug Free Workplace Act	At least 25 employees & federal contracts of \$25k or more	Must have a drug free policy & program.	Suspension of payments, contract termination, debarment up to 5 years.
Employee Polygraph Protection Act	All employers except government & businesses handling controlled substances or security companies	Can't use lie detectors for pre-employment screening or during employment. Can't take adverse personnel action for refusing polygraph.	Hiring, reinstatement, promotion, lost pay, benefits & civil penalties up to \$10k.
Employee Retirement Income Security Act (ERISA)	Employers that offer pension or welfare benefit plans for employees	Must fund an insurance system to protect certain kinds of retirement benefits; premium payments to the U.S. Pension Benefit Guaranty Corp.; file plans with the U.S. Dept. of Labor & follow funding rules requiring all funds held in trust for employees. Keep records for 6 years.	Penalty of up to \$1,110/day for noncompliance. Penalty from 5%-100% of the amount concerned for certain violations, mandatory penalties of up to 20% for violations of fiduciary duties.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
Equal Pay Act	All employers	Must equally pay men & women for same work. Differences may be based on seniority or bona fide merit system.	Back pay, attorney's fees & costs, liquidated damages.
Executive Order #11246	All federal contractors & subcontractors with 50 or more employees & \$50k or more of contracts	Can't discriminate on basis of race, color, religion, sex or national origin. Affirmative action plan required. Keep records for 2 years.	Barred from future contracts, back pay, promotions, seniority credit.
Fair & Accurate Credit Transactions Act of 2003	All employers	Undoes some of the more onerous employment investigation aspects of the Fair Credit Reporting Act.	Same as Fair Credit Reporting Act below.
Fair Credit Reporting Act	All employers	Limited use of consumer/credit reports for employment decisions. Must make written disclosure to the employee & obtain written authorization from employee. Before adverse action is taken, employer must provide candidate/employee with the report & summary of rights.	Actual/compensatory damages, attorney's fees & costs, punitive damages, \$2.5k fine per violation, criminal penalties, for willful & knowing violations, including imprisonment up to 2 years.
Fair Labor Standards Act (FLSA)	Covers most employers	Employers must pay all non-exempt employees at least federal minimum wage & overtime for any hours worked in excess of 40 hours in a workweek. Narrow exclusions.	Compensatory damages, liquidated damages, equitable relief, & attorney's fees & costs. Criminal prosecution is possible along with penalty up to \$10k for willful violations.
Family Medical Leave Act of 1993	50 or more employees within 75 mile radius	Must permit employees up to 12 weeks of unpaid leave in any 12-month period for many family related matters. Job is protected; health care continued. Keep records for 3 years.	Reinstatement &/or promotion, back pay, benefits, compensatory damages, fees & expenses.
Health Insurance Portability & Accountability Act (HIPAA)	Employer who provides a group health plan & has 2 or more employees	Group health plan must have coverage for pre-existing conditions of new employees, certifications of coverage to former employees, enrollment periods to employees, & protection for mothers & newborns. Restrictions on dissemination of plan participant medical info. & records.	\$100/day per individual/employee. Criminal fines up to \$250k & imprisonment (limited circumstances).
Immigration Reform & Control Act of 1986	Record keeping provisions apply to all employers. Employers of 4 or more may not discriminate due to national origin/citizenship	Can't hire any person not legally authorized to work in the U.S. So, employers must verify employment eligibility. Can't discriminate in hiring or discharge due to national origin/citizenship. Keep records for 3 years.	Back pay, equitable remedies, fines up to \$10k per violation, criminal sanctions-up to 6 months in prison &/or \$3k fine for each unauthorized employee.

Act/Law	Coverage	Basic Requirements	Damages/Penalties
National Labor Relations Act	All employers	Can't threaten or discriminate against employees engaged in union or concerted activities, involving a labor organization. Keep records indefinitely.	Injunctive/equitable relief. Criminal fines up to \$5k &/or imprisonment up to 1 year.
Occupational Safety & Health Act	All employers	Must keep workplace free from recognized hazards likely to cause death or serious harm. Maintain records of work related injuries & illnesses. Keep records for 5 years.	Penalties up to \$7k per violation, penalties up to \$7k per day for failure to control violations, penalties from \$5k to \$70k per willful violation, & criminal penalties with a fine up to \$250k & 1 year prison term.
Rehabilitation Act of 1973	Covers all businesses with federal contracts, subcontracting agreements or receiving any federal financial aid	Can't discriminate on basis of a disability in terms or conditions of employment. Must have an affirmative action plan. Keep records for 1 year.	Compensatory damages, back pay, attorney's fees & costs, equitable relief, e.g., reinstatement, promotion.
Title VII of the Civil Rights Act of 1964, Amended 1991	15 or more employees	Discrimination on basis of race, color, religion, sex & national origin & pregnancy/maternity. Covers all employment actions, including hiring, firing, promotion, pay, practices & all other terms & conditions of employment. Keep records for 1 year; indefinite if charge is filed.	Equitable relief, e.g., reinstatement, promotion). Back pay, front pay, lost benefits, attorney's fees & costs, & compensatory & punitive damages.
Uniformed Services Employment & Reemployment Rights Act (USERRA)	All employers	Can't discriminate against applicants or employees on basis of military obligations or connection. Allows for continuation of benefits during military duty.	Equitable relief, e.g., reinstatement, promotion, back pay, benefits, attorney's fees & costs, penalties for willful violations.
Vietnam Era Veteran's Readjustment Assistance Act	Federal contractors & subcontractors with contracts or subcontracts of \$25k or more	Must have an affirmative action program. Keep records for 2 years.	Reinstatement, hiring, back pay, benefits, debarment, cancellation of contract.
Whistle Blower Statutes (Federal & State)	All employers	Many federal & state laws prohibit discriminatory or punitive actions against employees who report illegal activities. Keep records of complaint indefinitely.	Criminal & civil penalties, including fines & imprisonment.
Worker Adjustment Retraining & Notification Act	100 or more employees	Notice of at least 60 days prior to closing or layoff of 50 or more employees.	Back pay & benefits, up to 60 days; \$500/day civil penalty, up to 60 days; attorneys' fees.

DISCLAIMER: THE CONTENT CONTAINED IN THIS DOCUMENT IS GENERAL & INSTRUCTIVE INFORMATION ONLY; IT'S NOT INTENDED AS LEGAL ADVICE. THIS INFORMATION ISN'T INTENDED TO CREATE AND DOESN'T CREATE AN ATTORNEY-CLIENT RELATIONSHIP. READERS SHOULD NOT ACT UPON THIS INFORMATION WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

FREE RESOURCES FOR RESEARCHING LABOR & EMPLOYMENT LAW

There's a great deal of free high quality information available on the Internet. Many companies, universities, and professional organizations post their HR related policies and related information on the Web.

When using search engines such as Google or Yahoo it may be helpful to know what search terms to use. When using the following terms, use quotation marks as they help to reduce the number of frivolous hits. Also, combine terms to reduce excessive and irrelevant hits. The following terms are not all-inclusive and are only suggestive. However, I've personally found them to be useful, especially when combined with one another or in conjunction with the name of a statute or regulatory agency, also in quotation marks.

Search terms:

"workplace behavior," workplace harassment," "occupational safety," "discipline policies," "discipline procedures," "human resources policies," "human resources procedures", "human resources practices," "free download," "free downloads," "sample policy," "sample policies," free, "labor law," "labor relations," "employment law," "employee relations," "employment relations," and "labor and employee relations."

All links checked and working as of January 2, 2007.

- Chuck Krugel's Website www.charlesakrugel.com
- The Human Resource Store www.hrstore.com
- City of Chicago, Department of Business Affairs & Licensing www.cityofchicago.org
 - Go to "City Departments" link & click on "Business Affairs & Licensing"
- Law and Policy Institutions Guide www.lpig.org
 - "Tons" of free information regarding the law
- Integra Security Alliance www.integrasecurity.org
 - Under some of the links, there's useful information regarding screening, security and investigations
- Equal Employment Opportunity Commission www.eeoc.gov/employers/overview.html
- Business & Legal Reports www.blr.com
 - Updates concerning labor and employment law and HR
- Commerce Clearing House <http://hr.cch.com/>
 - Updates concerning labor and employment law and HR
- Northern Illinois Society for Human Resources Management www.nishrm.org
 - General HR legal and policy information
- 19th Judicial Circuit Court of Illinois www.19thcircuitcourt.state.il.us
 - Excellent starting point for researching federal, state and local law. Well organized and easy to use.
- Illinois Society for Human Resources Management www.illinoisshrm.org
 - General HR legal and policy information
- Human Resources Management Association of Chicago www.hrmac.org
 - General HR legal and policy information
- Illinois Department of Labor www.state.il.us/Agency/idol/
- Privacy Rights Clearinghouse (background checking) www.privacyrights.org/workplace.htm
- Internal Revenue Service www.irs.gov
- U.S. Department of Labor www.dol.gov

A PERSONAL STATEMENT FROM CHARLES KRUGEL ABOUT CHARLES KRUGEL
(I.E., Practice & Background Summary);
www.charlesakrugel.com;

As a labor & employment attorney & human resources (HR) consultant, I have 13 years of experience in the field & have been running my own practice for more than 6 years. Furthermore, I'm aligned with The Human Resource Store (HR Store) as the Director of Legal & Compliance related services; i.e., I provide labor & employment law counsel & representation to our clients. The HR Store is a company specializing in the delivery of human resources services to businesses.

In my own practice, my clientele includes small to medium sized companies in a variety of industries. In addition to providing traditional labor & employment law representation, I represent companies desiring to institute preventive & proactive HR functions. These functions include policies, procedures & programs, which help to reduce costs & act as catalysts for increasing productivity & profits. These functions also help to discreetly resolve issues in-house & prevent lawsuits & agency complaints. Alternatively, some clients just want to resolve labor & employment law related issues in the most efficient & discreet manner possible. Regardless of client motive, my services help clients retain greater percentages of their revenue, capital, investments & other forms of financing. Ultimately, the goal is to maximize profits & productivity by removing performance impeding obstacles & minimizing employment related expenses.

Relative to results, I have been lead negotiator for more than 100 labor & employment agreements & contracts, including noncompete & severance/separation agreements, collective bargaining & related labor agreements. Additionally, I have argued more than 11 arbitrations, 13 mediations & 39 agency cases/complaints & have resolved 100-plus labor grievances & similar in-house complaints & completed over 100 in-house investigations. Moreover, I'm a published author in my field, via the Labor Law Journal, & am frequently the subject labor & employment law related TV, radio & newspaper interviews.

My career choice is the result of a long running fascination with workplace behavior, management, & how & why people pursue particular vocations. While in college, I advanced my interest by majoring in psychology. After college, I pursued graduate study in industrial/organizational (I/O) psychology with the thought of being an I/O consultant. During my first year of graduate school, I realized that the practice of I/O psychology was too "touchy feely" for me. Consequently, I decided that once I earned my masters degree in I/O psychology, I would attend law school & become a labor & employment lawyer.

My law degree (JD) is from Ohio Northern University. My MA degree in I/O psychology is from the University of North Carolina at Charlotte. My BS degree in psychology is from Bradley University. During law school, I was a representative for the university senate. During graduate school, I was a graduate representative for the university senate. During college, I was a rush chairman & executive board member for my fraternity.

Relative to civic & association involvement, I'm on the following boards of directors: Time Dollar Tutoring (www.timedollartutoring.org), & Board Vice President; The YMCA Alliance (www.traininginc.org/chicago.htm), & Board Treasurer & Chair of the Finance Committee; board member for Youth Communication (www.newexpression.org), the publisher of New Expression newspaper & website, a media source for Chicago's teens; Junior Board member for Urban Gateways (www.urbangateways.org), an arts education organization; & Advisory Board member for the Law & Policy Institutions Guide's (www.lpig.org). Also, I have been legal counsel for the Chicago chapter of Bikers Against Child Abuse (BACA). I'm also volunteer "big brother"/mentor via the Jewish Children's Bureau. Also, I'm an active member of the Labor & Employment Relations Association, the Chicagoland Chamber of Commerce, the Greater O'Hare Association (a regional chamber of commerce) & the World Trade Center Chicago.

Finally, some personal background information. I'm a native Chicagoan. Born & raised in West Rogers Park. I graduated from Rogers Public Elementary School. For high school, I graduated from Niles North in Skokie. It was during childhood that I was indoctrinated into the ways of business, self-employment & entrepreneurship. My father owned & ran his own chain of pharmacies in Chicago for 35 years. My grandfather was an immigrant businessman who owned his own grocery stores in Chicago. Family taught me the value of hard work & how to compete & succeed in business.