

# *Resource A*

*Important Diversity, Inclusion and Equity Laws*

Please note that these are federal employment laws and departments should also be aware of state employment discrimination and educational laws that prevent discrimination/harrassment and violence and be mindful of confidentiality laws, records retention laws and open meeting laws that may impact search committees and personnel decisions. Please check with your institution’s legal counsel regarding the applicability of these laws and related state and district laws to your campus.

Key Employment Discrimination Laws—A Brief Overview:

**FOURTEENTH AMENDMENT**—The 14th Amendment to the U.S. Constitution provides that “[n]o State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.”<sup>1</sup>

**TITLE VII Civil Rights Act of 1964**—Protection from discrimination by reason of race, color, religion, sex or national origin; protection from retaliation for opposing unlawful discrimination or participating in a claim of discrimination. Civil Rights Act of 1991 amends the Civil Rights Act of 1964 by strengthening and improving federal civil rights laws. It provides for damages in cases of intentional employment discrimination and clarifies provisions regarding disparate impact action.<sup>2</sup>

**TITLE VI of the Civil Rights Act of 1964**—It prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance.<sup>3</sup>

**TITLE IX of the Education Amendments of 1972**—Title IX of the Education Amendments of 1972 prohibits sex discrimination by programs or activities receiving federal financial assistance. The Office for Civil Rights (OCR) of the U.S. Department of Education enforces Title IX and most colleges and universities are covered by this statute. In recent years, OCR has been very diligent in enforcing this law, particularly as it relates to sexual harassment and assault.<sup>4</sup>

**EXECUTIVE ORDER 13672**—On July 21, 2014, President Obama signed Executive Order 13672, amending Executive Order 11246, to prohibit federal contractors and subcontractors from discriminating on the basis of sexual orientation or gender identity.<sup>5</sup>

**AMERICANS WITH DISABILITIES ACT (ADA)**—It provides protection from discrimination on the basis of physical or mental disability or perceived disability, or history of disability or association with someone with disability. The ADA Amendments Act of 2008 (ADAAA), clarifies and reiterates who is covered by the law and made significant changes to the ADA’s definition of “disability” that broadens the scope of coverage under both the ADA and Section 503 of the Rehabilitation Act.<sup>6</sup>

**AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)**—It provides protection from discrimination on the basis of age (age 40 and above).<sup>7</sup>

**EQUAL PAY ACT**—It provides protection from pay discrimination on basis of gender for work of equal skill, effort and responsibility, and which are performed under similar working conditions.<sup>8</sup>

**EXECUTIVE ORDER 11246**—Requires U.S. government contractors to develop and utilize affirmative action plans for increased utilization of minorities and women. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. On June 14, 2016, the Office of Federal Contract Compliance Programs announced publication of a Final Rule in the Federal Register that sets forth the requirements that prohibit federal contractors and subcontractors from discharging or otherwise discriminating against their employees and job applicants for discussing, disclosing, or inquiring about compensation.<sup>9</sup>

**FEDERAL FAIR CREDIT REPORTING ACT**—Requires employers using “investigative consumer reports” from “consumer reporting agencies” to disclose to the applicant that they intend to obtain such a report; applicant must be advised if a decision not to hire is based on information in the report.<sup>10</sup>

**IMMIGRATION REFORM AND CONTROL ACT of 1986**—Requires employer at time of hire to verify authorization to be employed in the U.S.; prohibits discrimination based on national origin.<sup>11</sup>

**NATIONAL LABOR RELATIONS ACT**—Prevention of unfair labor practices; employees cannot be discriminated against because they have exercised their rights to organize and/or bargain collectively.<sup>12</sup>

**PREGNANCY DISCRIMINATION ACT**—Women affected by pregnancy, childbirth or related medical conditions must be treated the same for all employment-related purposes, including receipt of fringe benefits, as other persons not so effected but similar in ability or inability to work.<sup>13</sup>

**THE REHABILITATION ACT OF 1973**—The Rehabilitation Act of 1973 protects people from discrimination in admission, employment, treatment or access based on disability in programs or activities receiving federal financial assistance. Section 504 states that “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that either receives federal financial assistance or is conducted by any executive agency or the United States Postal Service. Each federal agency has its own set of Section 504 regulations that apply to its own programs. Agencies that provide federal financial assistance also have Section 504 regulations covering entities that receive federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations.

Section 503 of the Rehabilitation Act of 1973 was updated in September 2013 to implement changes required by the passage of the ADA Amendments Act (ADAAA) of 2008. The Final Rule established an utilization goal for individuals with disabilities, requires contractors to invite applicants and current employees to voluntarily self-identify as someone with a disability, prescribes several quantitative measurements and comparisons, and requires contractors to include specific language in their subcontracts.<sup>14</sup>

#### **VIETNAM ERA VETERANS’ READJUSTMENT ASSISTANCE ACT**

**OF 1974 (VEVRAA)**—The Act prohibits federal contractors and subcontractors from discriminating in employment against protected veterans, and requires these employers to take affirmative action to recruit, hire, promote, and retain these veterans. In September 2013, the Office of Federal Contract Compliance Programs published a Final Rule that strengthens the affirmative action provisions of the regulations to aid contractors in their efforts to recruit and hire protected veterans and improve job opportunities for protected veterans.<sup>15</sup>

#### **FINAL RULE—VETERANS AND INDIVIDUALS WITH DISABILITIES**

**—2013**—Effective March 24, 2014, the Office of Federal Contract Compliance Programs’ Final Rules were implemented regarding recruiting qualified veterans and individuals with disabilities.

Rule changes include hiring benchmarks, utilization goals, data collection, records access, self-identification process, equal opportunity language in contracts and job listing specifications as well as changes required by the Americans With Disabilities Act (ADA) Amendments Act of 2008.<sup>16</sup>

**FAMILY AND MEDICAL LEAVE ACT OF 1993**—The Act entitles eligible employees to take up to twelve weeks of unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition.<sup>17</sup>

#### **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT OF 1994**

**(USERRA)**—The Act ensures that persons who serve or have served in the Armed Forces, Reserves, National Guard or other uniformed services are not disadvantaged in their civilian careers because of their service, are promptly reemployed in their civilian jobs upon their return from duty and are not discriminated against in employment based on past, present, or future military service.<sup>18</sup>

#### **THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008—**

The Act prohibits discrimination by employers and insurers based on genetic information about potentially inheritable diseases and health conditions.<sup>19</sup>

## ***Endnotes***

- 1** FOURTEENTH AMENDMENT, U.S. Const. amend. XIV, § 1.
- 2** TITLE VII Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000e to 2000e- 17.
- 3** TITLE VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.
- 4** TITLE IX of the Education Amendments of 1972, 20 U.S.C. Â§1681 et seq.
- 5** EXECUTIVE ORDER 13672, 79 F.R. 42971.
- 6** AMERICANS WITH DISABILITIES ACT, 42 U.S.C.A. §12101 et seq, as amended through Public Law 113–287, December 19, 2014.
- 7** AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C.A. §§ 621- 634.
- 8** EQUAL PAY ACT, 29 U.S.C.A. §§ 206(d).
- 9** EXECUTIVE ORDER ,11246 30 F.R. 12319.
- 10** FEDERAL FAIR CREDIT REPORTING ACT, 15 U.S.C. §§ 1681 et seq.
- 11** IMMIGRATION REFORM AND CONTROL ACT of 1986, 29 U.S.C.A. §§ 1802, 1813, 1851.
- 12** NATIONAL LABOR RELATIONS ACT, 29 U.S.C. §§ 151 et seq.
- 13** PREGNANCY DISCRIMINATION ACT, 42 U.S.C.A. § 2000e.
- 14** THE REHABILITATION ACT OF1973, Section 503 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 793; Implementing Regulation 41 CFR Part 60-741;Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794.
- 15** VIETNAM ERA VETERANS’ READJUSTMENT ASSISTANCE ACT OF 1974, 38 U.S.C. § 4212.
- 16** FINAL RULE–VETERANS AND INDIVIDUALS WITH DISABILITIES–2013 effective March 24, 2014, OFCCP, 41 CFR 60.
- 17** FAMILY AND MEDICAL LEAVE ACT OF 1993 29 U.S.C. 2601 et. seq.
- 18** UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT OF 1994, 38 U.S.C. 4301-4334.
- 19** THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008, Title I and Title II 42 U.S.C. §2000ff.