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## EQUAL EMPLOYMENT LEGAL GUIDE

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The equal employment statutes affect all phases of the employment process, from the initial advertising of a job vacancy through the hiring, promotion, discipline, termination, and retirement of an employee. The rule remains the same at each stage of the employment process: an employer is prohibited from treating job applicants or employees differently on the basis of race, color, religion, sex, age, national origin, or handicap.

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### TITLE VII

The broadest antidiscrimination statute is Title VII of the 1964 Civil Rights Act, which prohibits discrimination in all phases of the employment relationship on the basis of race, color, religion, national origin, or sex, including pregnancy, childbirth, or abortion. Title VII applies to employers, labor unions, apprenticeship committees, employment agencies, and state and local government, and covers all employees, from the part-time delivery boy to the chief executive officer. Before a business is subject to Title VII, it must affect interstate commerce and employ 15 or more individuals for at least 20 weeks during the current or preceding calendar year.

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### THE AGE DISCRIMINATION IN EMPLOYMENT ACT

The Age Discrimination in Employment Act ("ADEA"), whose stated purpose is "to promote employment of older persons based on their ability rather than age," prohibits discrimination based upon the age of an individual who is between the ages of 40 and 70. The ADEA covers the same range of employment decisions as Title VII, but unlike Title VII's threshold application to employers with 15 or more employees during the current or preceding calendar year, the ADEA requires a minimum of 20 employees. Though the ADEA prohibits mandatory retirement before age 70, it does allow a seniority system or retirement plan that considers age as a factor so long as the plan does not require or permit involuntary retirement. In addition, if an individual between the ages of 65 and 70 has worked in executive or policy-making positions for at least two years prior to retirement, he may be forced into early retirement if his retirement benefits from the employer equal at least \$44,000 annually. Before an individual may bring an action in the federal district court, he first must file a charge of age discrimination with

the EEOC or a deferral agency. The plaintiff in a civil ADEA action is entitled to a jury trial, in contrast to the provisions of Title VII. Furthermore, an individual may be awarded liquidated damages in cases of willful violations of the ADEA, which he may not receive when Title VII is willfully violated.

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## EQUAL PAY

The Equal Pay Act of 1963 ("EPA") amended the Fair Labor Standards Act of 1938 to prohibit wage differentials based on sex that occur when an employee is paid less than an employee of the opposite sex although both employees are executing tasks "on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." An employer with an annual gross volume of at least \$250,000 and two or more employees engaged in interstate commerce or in the production of goods for interstate commerce must comply with the Fair Labor Standards Act, and therefore with the EPA. If an employer with 50 employees has only two employees engaged in interstate commerce, all 50 employees are protected by the EPA.

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## AGE DISCRIMINATION ACT

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. In contrast to the ADEA, the Age Discrimination Act does not specify a protected age group. The regulations to carry out the provisions of the Age Discrimination Act are promulgated by the Secretary of Health and Human Services. Each federal department or agency extending federal financial assistance may terminate its assistance or decline to extend that assistance initially if the actual or potential recipient discriminates on the basis of age. The entity denied funds is entitled to the same administrative procedural rights that are provided in Title VI of the 1964 Civil Rights Act.

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## EXECUTIVE ORDER 11246

Executive Order 11246 requires that construction contractors and subcontractors take affirmative action to extend equal employment opportunities to employees and applicants for employment on the basis of race, color, religion, sex, and national

origin. Executive Order 13672 was signed on July 21, 2014 by President Obama amending EO 11246 to prohibit discrimination based on sexual orientation and gender identity.

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## RECORD-KEEPING

The regulations promulgated by the agencies responsible for enforcing nondiscrimination statutes have established record-keeping retention policies. An employer should retain records for at least as long as the administering agencies request, because the records may become the proof that an employment decision was made on a nondiscriminatory basis.

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## SEXUAL HARASSMENT

An employee who is sexually harassed by a fellow employee, supervisor, or manager may file a charge with the EEOC or begin a suit in a state court. Generally, if the harasser is not a management or supervisory employee and if the employer was unaware of the harassment, the employer is unlikely to be held responsible for the harassment. On the other hand, if an employer does not remedy known harassment or if a management employee is the harasser, the employer may face compensatory and punitive damages and injunctive relief. An employer who wants to prevent sexual harassment charges should explain to his managers and supervisors that company policy does not condone or tolerate harassment.