THE ALPHABET SOUP OF REGULATIONS:
What’s new with ADA, FMLA, GINA and the EEOC?
Tom Owen Selected as New Director of Policy and Practice Review for HR

Human Resources is pleased to introduce Tom Owen as Director of Policy and Practice Review. He has served as the Assistant Director of Human Resources Services at the Texas A&M University campus in Doha, Qatar since 2008. Tom has broad experience as a Human Resources professional with extensive work in a variety of workplace environments, affording him the opportunity to engage in the entire human resources body of knowledge. You may reach Tom at towen1@tamu.edu or 862-3331. Please join us in giving him a warm welcome as he returns to Aggieland.
What we will cover today

- Americans with Disabilities Act Amendments Act (ADAAA)
- Family and Medical Leave Act (FMLA)
- Genetic Information Non-discrimination Act (GINA)
- Equal Employment Opportunity Commission (EEOC)
- Other
The Americans with Disabilities Act Amendments Act (ADAAA)
The Americans with Disabilities Act Amendments Act

The ADAAA is federal legislation that prohibits discrimination against qualified individuals with disabilities in all employment practices, including:

- Job application procedures
- Hiring
- Firing
- Advancement
- Compensation
- Training
- Other privileges of employment
What is a disability?
- ‘Record of’
- ‘Regarded as’
- Major life activity
- Short term or temporary disabilities
Americans with Disabilities Act Amendments Act

- Reasonable Accommodation
- Essential job functions
- Triggers
- What does the ADA AA mean to you?
The Family and Medical Leave Act (FMLA)
The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) allows qualified employees to have up to 12 weeks of job protected leave per fiscal year for:

- the birth/adoption/placement in foster care of a child
- the care of a child, spouse or parent with a serious health condition
- the employee’s own serious health condition
- the care of a covered military service member.
Family and Medical Leave

- What is FMLA?
  - 12 weeks of leave for a qualifying reason
  - Paid or unpaid
  - Job protection
Qualifying for Family and Medical Leave

- Work for the employer for at least 12 months in the past 7 years
- Work a minimum of 1250 hours in the past 12 months
- Serious health condition of the employee or employee’s family member
- Birth, adoption or placement of foster child
- Military exigency
- Additional leave to care for family member who suffered an injury or illness while on active duty
Family and Medical Leave

- When?
  - Intermittent leave
  - What happens when leave is used up?
  - Triggers
  - Is it always 12 weeks?

- How to apply for FMLA
The Genetic Information Non-Discrimination Act (GINA)
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- What does GINA cover?
- How does it affect employment?
- Inadvertent disclosure
- Safe harbor language
The Genetic Information Non-Discrimination Act (GINA)

- Final regulations issued by EEOC effective January 11, 2011.
  - Prohibits use of genetic information in employment - hiring, firing, promotion, job placement, etc.
  - Restricts employers from requesting, requiring or purchasing genetic information (e.g. for health insurance decisions)
  - Strictly limits the disclosure of genetic information
The Genetic Information Non-Discrimination Act (GINA)

- Inadvertent Acquisition
  - “Watercooler” Exception
    - Overhearing a conversation
    - Casual conversation
    - “Probing” questions
  - “Safe Harbor” Language
    - Directs an individual or healthcare provider to NOT provide genetic information.

- Confidentiality
  - Information kept separate from personnel files
The Genetic Information Non-Discrimination Act

SAFE HARBOR language on the University’s Certification of Health Care Provider Form -

“Physician’s Instructions : The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”
The Equal Employment Opportunity Commission (EEOC)
Equal Employment Opportunity Commission

Enforces laws making it illegal to discriminate against a job applicant or employee on the basis of:

- Race
- Color
- Religion
- Sex (including pregnancy)
- National Origin
- Age (40 or older)
- Disability
- Genetic Information
Equal Employment Opportunity Commission

Enforces laws making it illegal to *retaliate* against a person because the person:

- Complained about discrimination
- Filed a charge of discrimination
- Participated in an employment discrimination investigation or lawsuit
Equal Employment Opportunity Commission

- Discrimination with regard to Title VII of the Civil Rights Act, ADA AA, ADEA, and GINA
- Retaliation cases
  - Adverse action taken because an employee participates in a protected activity
  - Claims increased 35% in the last decade
- (New) Third party retaliation
Coming Attractions

- What will the future bring?
  - More legislation?
  - How to stay up to date (webinars, newsletters)
Relevant Policies, Regulations, and Rules

- System Policy 07.01 *Ethics*
- System Policy 08.01 *Civil Rights*
- System Regulation 08.01.01 *Civil Rights Compliance*
- (pending) University Rule 08.01.01.M1 *Civil Rights Compliance*
- University Rule 34.01.99.M1 *Sexual Harassment*
- System Regulation 31.03.05 *Family and Medical Leave*
- System Regulation 31.02.07 *Unemployment Compensation Program*
- System Regulation 33.99.01 *Employment Practices*
Any Questions?
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Policy & Practice Review
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