

# U.S. EMPLOYMENT LAW & REGULATIONS

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## Types of Legal Systems

Civil Law	Common Law	Religious Law
<ul style="list-style-type: none"> <li>Based on written codes approved by legislative bodies.</li> <li>Most prevalent form of law in the world</li> </ul>	<ul style="list-style-type: none"> <li>Based on judicial decisions. (<b>Precedence</b>)</li> <li>Evolves over time.</li> <li>Forms the basis of legal systems in United Kingdom and former colonies.</li> </ul>	<ul style="list-style-type: none"> <li>Based on religious beliefs and conventions (a mix of written codes and interpretations).</li> <li>Can influence HR policies and practices.</li> </ul>

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## Rule of Law

- No individual is beyond the reach of the law.
- Authority is exercised only in accordance with written and publicly disclosed laws.
- Laws are enforced through due process procedures.
- Government is thereby restrained from abusing power.

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**SIRM** Sources of the Law

**The Constitution**

- The basic written set of principles and precedents of federal government in the US,
  - Est. 1789
  - Preceded by The Articles of Confederation
  - 27 amendments

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**SIRM** US Gov't

**Executive: Enforces Law**

- President (Commander in Chief)
- Vice President
- 15 Cabinets
  1. State
  2. Treasury
  3. Defense
  4. Justice
  5. Interior
  6. Agriculture
  7. Commerce
  8. Labor
  9. Health & Human Services
  10. Housing & Urban Dev
  11. Transportation
  12. Energy
  13. Education
  14. Veterans Affairs
  15. Homeland Security
- EPA, OMB, IIN, Small BA, Trade Rep

**Legislative: Creates Law**

- Congress
  - House
    - Representation by population
    - 435 members
  - Senate
    - Equal representation
    - 100 members

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**SIRM** Geographic Boundaries

of United States Courts of Appeals and United States District Courts

**Judicial: Interprets Law**

- Supreme Court
- Circuit Court of Appeal
  - 13 courts
- District Courts
  - 94 courts

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**SIRM**

### FTC Announces Rule Banning Noncompetes

FTC's final rule will generate over 8,500 new businesses each year, raise worker wages, lower health care costs, and boost innovation

APRIL 24, 2024

**BREAKING: August 20, 2024. A U.S. federal court in the Northern District of Texas set aside the FTC's non-compete rule and ordered that it shall not be enforced.**

The order will likely be appealed to the U.S. Court of Appeals for the Fifth Circuit but the FTC cannot enforce the Rule against any employer, nationwide, at this time. [\(More below\)](#)

**FINAL ANSWER?**

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**SIRM**

### Sources of Law

- The Constitution
- Statutes
- Regulations
- Agency guidelines
- Executive orders
- Common law

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**SIRM**

### Legal Compliance Essentials

- Policies, procedures, training
- Workplace posters
- New-employee orientation
- Workers' compensation insurance
- Proper tax withholding
- Paychecks delivered in accordance with law
- Compliance training
- Organizational code of conduct
- Provisions for reporting or participation in investigation of discriminatory employment practices
- Compliance hotline

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**SIRM** Legal Services and Risk Mitigation 

Securing appropriate legal counsel and employment practices liability insurance (EPLI) is prudent.

**Legal services**

HR needs to:

- Understand relevant employment law and the potential implications of noncompliance.
- Recognize when involvement of legal counsel may be necessary.

**EPLI**

- Protects against the risk of heavy financial losses resulting from employment claims and lawsuits.
- Must be carefully considered and reviewed to ensure that it provides the level of protection needed.

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**SIRM** HR Audits and Compliance Checklists 

- Checklists help to prepare for an HR compliance audit (internal or external).
- They help:
  - Keep organization compliant.
  - Prevent potential liabilities.
  - Ensure that business operations are generating results and supporting organization's brand.

Administrative agencies may be more or less rigorous during a compliance audit than what appears on a HR checklist.

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**SIRM** Attorney-Client Privilege and Discoverability 

- Discussion between client and attorney related to securing legal advice is considered "privileged and confidential" within certain limits.
- Some activities performed by HR may be covered.
- HR often works directly with employer's attorney.

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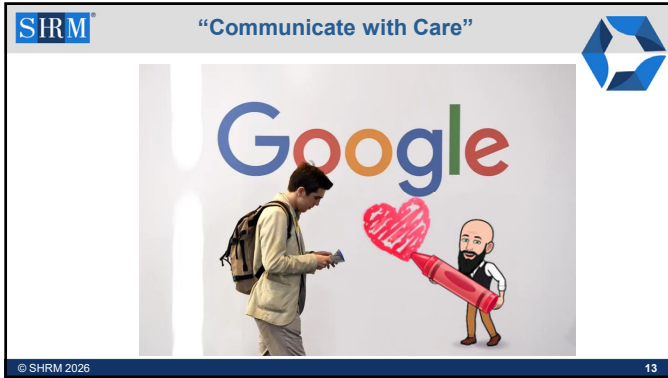
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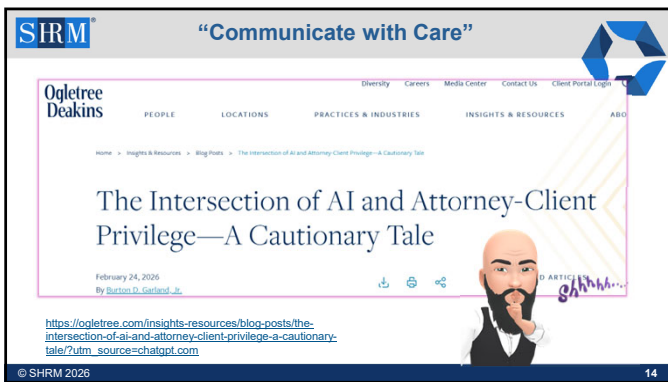
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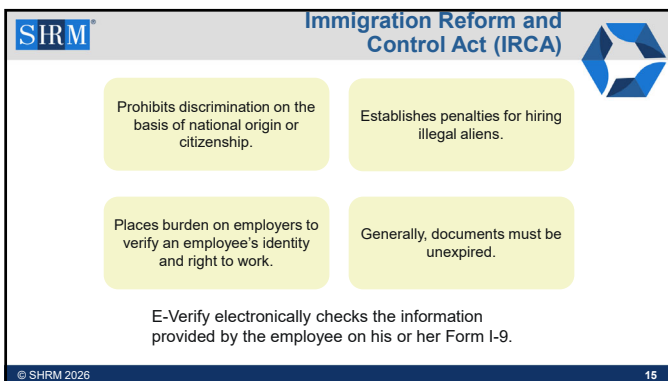
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**SIRM** I-9 Record Retention

I-9 Record keeping

- <2 years: 3 years after the date of hire
- >2 years: 1 year after termination date

Hired 2024      2025      2 years 2026      3 years 2027

EE1  
EE2  
EE3

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**SIRM** Green Cards and Visa Types

Immigrant visas

- EB-1 (Priority Workers)
- EB-2
- EB-3
- EB-4
- EB-5

Nonimmigrant visas

- B-1 (Business Visitor)
- H-1B (Specialty Occupation Workers)
- L-1 (Intracompany Transferee)
- E-1 and E-2 (Treaty Investors and Traders)
- E-3 (Australian Free Trade/Specialty Occupation Workers)
- F-1 (Students)
- J-1 (Exchange Visitors)
- TN (NAFTA)
- O Visas
- Q Visas

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**SIRM** DACA and Employment at-Will

**DACA**

- Allows certain people who came to the U.S. as children to request deferred action with regard to deportation.
- Provides eligibility for work authorization.
- Requires regular renewal.
- USCIS periodically issues new guidance for organizations.

**Employment at-Will**

- Means employers have the right to hire, fire, demote, or promote anyone for any reason.
- Employees may quit at any time without notice.
- Exemptions include:
  - Public policy.
  - Implied contract.
  - Covenant of good faith and fair dealing.

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**SIRM** **DACA and Employment at-Will**

**DACA**

- Allows certain people who came to the U.S. as children to request deferred action with regard to deportation.
- Provides eligibility for work authorization.
- Requires regular renewal.
- USCIS periodically issues new guidance for organizations.

**ALERT: Important Update on Deferred Action for Childhood Arrivals**  
 On Jan. 17, 2025, the U.S. Court of Appeals for the Fifth Circuit issued a decision regarding the DACA Final Rule. Pursuant to the court's order, USCIS will continue to accept and process DACA renewal requests and accompanying applications for employment authorization under the DACA regulations at 8 CFR 236.22 and 236.23. **USCIS will continue to accept initial requests but will not process new DACA requests at this time.** Current grants of DACA and related Employment Authorization Documents remain valid until they expire, unless individually terminated.

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**SIRM** **Fair Credit Reporting Act (FCRA)**

- Applicant/employee must provide written authorization before a consumer report is ordered (with limited exceptions).
- Employer must provide:
  - Written notice stating that report may be used and time allowed for response to report.
  - Notice if adverse action procedures are taken.
  - Certification to credit bureaus of FCRA compliance.

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**SIRM** **FCRA Amendments**

Fair and Accurate Credit Transactions Act (FACT Act)	Dodd-Frank Wall Street Reform and Consumer Protection Act
<ul style="list-style-type: none"> <li>Eliminates consent and disclosure requirements for certain third-party investigations (for example, suspected misconduct, violation of laws/regulations).</li> <li>Includes directives aimed at uncovering and preventing incidents of identity theft or unauthorized use of the information.</li> </ul>	<ul style="list-style-type: none"> <li>Adds notification requirements if any adverse action is taken either partly or wholly because of information in a consumer report.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>Notice of the adverse action</li> <li>Specific credit score information</li> <li>Name of the consumer reporting agency or person that furnished the credit score</li> </ul>

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**SIRM** Equal Opportunity

Laws require employment decisions to be job- and business-related and not made on the basis of factors that include the following:

- Race
- Sex (including pregnancy)
- Ethnicity
- National origin
- Citizenship
- Religion
- Age
- Color
- Military or veteran status
- Genetic information
- FMLA entitlement
- Disability status
- Sexual orientation
- Gender identity

\*Protected classes\* describes people who are covered under a federal, state, or local antidiscrimination law.

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**SIRM** Types of Discrimination

**Disparate treatment**

Direct discrimination that treats protected classes differently from other applicants or employees

**Disparate (adverse) impact**

Indirect discrimination that results when a policy that appears to be neutral has a discriminatory effect

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**SIRM** EEOC Complaint Process

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    graph TD
      A[EEOC charge filed] --> B[Charge filing process: EEOC Counselor must explain the complaint process, identify the claims, conduct limited inquiry, and seek a resolution at the lowest level possible.]
      A --> C[EEO Alternative Dispute Resolution (ADR) An alternative approach to resolve the dispute and avoid the adversarial process.]
      B --> D[If reasonable cause is found...]
      C --> D
      B --> E[If the EEOC does not make a determination...]
      C --> E
      D --> F[Charge is settled or may go to litigation with EEOC or private court.]
      E --> G[Charging party has right to request right-to-sue letter after 180 days.]
      E --> H[Charging party must file suit in court within 90 days.]
      F --> I[Charging party may file suit in court within 90 days.]
      G --> I
      H --> I
  
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**SIRM** Retaliation

**Employers are prohibited from retaliating against employees engaged in "protected activities."**

**Examples of protected activities:**

- Filing a complaint
- Threatening to file a complaint
- Refusing to obey a discriminatory or unsafe order
- Engaging in concerted activity with other employees

**Examples of adverse actions:**

- Firing, demoting, or disciplining an employee or treating an employee in a discriminatory manner
- Threatening action against or criticizing the employee
- Inappropriate discussions with the employee and internal or external parties

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**SIRM** Title VII of the Civil Rights Act of 1964

Religion

Color

Sex

Race

National origin

**Illegal to discriminate in employment**

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**SIRM** EQUAL OPPORTUNITY

CNN US Crime + Justice Energy + Environment Extreme Weather Space + Science

**Seattle becomes the first city in the US to ban caste discrimination**

By Harmeet Kaur, CNN  
Updated 7:01 AM EST, Thu February 23, 2023

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**SIRM** **Title VII Protections**



**Specific provisions apply to:**

- Recruiting, hiring, and advancement.
- Segregation and classification of employees.
- Harassment/hostile work environment.
- Compensation.
- Other terms, conditions, and privileges of employment.

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**SIRM** **Title VII Exceptions**



**Some exceptions include:**

Work-related requirements

Bona fide seniority systems

Bona fide occupational qualifications (BFOQs)

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**SIRM** **Key Title VII Amendments**



**Equal Employment Opportunity Act**

Gives the EEOC authority to “back up” its administrative findings and conduct its own enforcement litigation

**Pregnancy Discrimination Act (PDA)**

Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions; requires employers to treat pregnancy the same as any other temporary disability

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**SIRM** Uniform Guidelines on Employee Selection Procedures

- Assists employers in complying with Title VII and other EEO requirements.
- Covers all aspects of the selection process.
- Prohibits selection procedures that have adverse impact on protected classes.
- Adverse impact occurs when the rate for a protected class is less than 80% of the rate for the group with the highest selection rate (also known as the 80% or four-fifths rule).

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**SIRM** Uniform Guidelines on Employee Selection Procedures

Group	# Interviewed	# Hired	% Hired
Male	40	20	50%
Female	30	6	20%

The Math	Selection Rate	The Results
20%	40%	40%!! < 80%
50%		

Adverse impact occurs when the rate for a protected class is less than 80% of the rate for the group with the highest selection rate (also known as the **80% or four-fifths rule**).

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**SIRM** Key Discrimination Cases

Griggs v. Duke Power (1971)	Phillips v. Martin Marietta Corporation (1971)	McDonnell Douglas Corp. v. Green (1973)
<ul style="list-style-type: none"> <li>Sets standard for determining if disparate impact discrimination exists.</li> <li>Practices, procedures, or tests that appear neutral and that result in discriminatory effect on protected class are illegal.</li> </ul>	<ul style="list-style-type: none"> <li>Applied sex discrimination provisions of Title VII to employment.</li> <li>Generally prohibits employer from not hiring women with preschool-aged children while hiring men with such children.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals can show disparate treatment in hiring if they can demonstrate that they:                             <ul style="list-style-type: none"> <li>Belong to protected group.</li> <li>Applied for job and were rejected despite being qualified and employer kept looking for people with their qualifications.</li> </ul> </li> </ul>

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**SIRM** **Civil Rights Act of 1991** 

- Allows jury trials when a plaintiff seeks compensatory or punitive damages.
- Compensatory damages are awarded to make an injured person "whole."
- Punitive damages (exemplary damages) are awarded when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, or grossly reckless.
- Under federal law, punitive damages are not possible against a governmental unit or agency (but may be available under state law).

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**SIRM** **VEVRAA** 

- Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) requires covered federal contractors and subcontractors to employ and advance specified categories of veterans.
- It features antidiscrimination protection and reporting requirements for the employers.

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**SIRM** **Age Discrimination in Employment Act (ADEA)** 

**ADEA prohibits:**

- Employment discrimination against persons age 40 and over.

**ADEA covers:**

- All state and local governments.
- Employers with 20 or more employees.
- Unions with 25 or more members.
- Employment agencies and apprenticeship and training programs.

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**SIRM** **ADEA Exceptions and OWBPA Amendment**

- Age can be a BFOQ if necessary for the normal operation of the business.
- Other exceptions can occur when:
  - The organization has a genuine seniority or benefit plan.
  - The employer disciplines or fires for good cause.
  - The employee is a top executive or policy maker.

The Older Workers Benefit Protection Act (OWBPA) amended the ADEA to prohibit discrimination in employee benefits and waivers of claims.

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**SIRM** **Americans with Disabilities Act (ADA)**

Prohibits discrimination against **qualified** individuals with **disabilities**.

Applies to employers with **15 or more employees**, employment agencies, labor organizations, and joint labor-management committees.

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**SIRM** **ADA Terms**

**Qualified**

- Has the requisite skills, experience, education, licenses, etc.
- Can perform the essential functions of the job, either with or without **reasonable accommodation**

**Disability**

- Has an impairment that substantially limits one or more **major life activities**
- Has a record of such an impairment
- Is regarded as having such an impairment

**Essential functions**

- Primary job duties that a qualified individual must be able to perform, with or without accommodation

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**SIRM** ADA Amendments Act (ADAAA) of 2008 

- Retains the basic definition of disability contained in the ADA but expands interpretation.
- Makes it easier to meet the definition of disability.
- Includes nine rules of construction.

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**SIRM** Job Accommodation Network 

JAN Job Accommodation Network

Employers Individuals A to Z ADA Library COVID-19 MyJAN Publications Training About JAN

Follow JAN on Social Media

JAN Job Accommodation Network

Registration for Work Incentive Seminar Events (WISE)

8:02 ago

Want to work from home? Learn how Ticket to Work and service providers can help you on your path to employment. [Join](#)

(800) 526-7234 (Voice) | (877) 781-9403 (TTY) | Employer Live Chat

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**SIRM** Reasonable Accommodation 

Modifying or adjusting a job application process, a work environment, or the circumstances under which a job is usually performed to enable a qualified individual with a disability to be considered for the job and perform its essential functions

- Involves an interactive process between the employer and the employee.
- Does not require employers to provide reasonable accommodation but to give consideration for the reasonableness of the accommodation.

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**SIRM** Reasonable Accommodation

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**SIRM** The Pregnant Workers Fairness Act (PWFA)

**Your boss now has to accommodate pregnant workers, from morning sickness to abortion care**

The Pregnant Workers Fairness Act, which is now in effect, requires employers provide accommodations to pregnant workers for everything from pregnancy through the postpartum period, including time off to recover.

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**SIRM** Workplace Harassment

According to the EEOC, harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964 and ADEA, ADA, EPA, and GINA.

**Harassment becomes unlawful:**

- When enduring offensive conduct becomes a condition of continued employment.
- When the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- When an individual is harassed in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit.

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**SIRM** **Types of Sexual Harassment**



**Quid pro quo**

Employee must give in to sexual demands or forfeit an economic benefit (job or raise).

**Hostile environment**

Sexual or other discriminatory conduct creates a threatening or abusive work environment.

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**SIRM** **Key Sexual Harassment Cases**





- Two separate U.S. Supreme Court rulings distinguishing between supervisor harassment that results in tangible employment action (discharge, failure to promote, demotion) and supervisor harassment that does not.
- When harassment results in a tangible adverse employment action, the employer is always liable. *Example:* Vicarious liability

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**SIRM**





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