

2009 REWIND: WHAT HAPPENED IN EMPLOYMENT AND LABOR LAW?

December 1, 2009

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Overview



- Federal and state immigration developments
- ARRA COBRA subsidy
- New EEO poster
- Lilly Ledbetter Fair Pay Act
- ADEA Waivers Guidance
- ADA Amendments Act
- Genetic Information Nondiscrimination Act
- FMLA military leave expansion
- New FMLA regulations

New I-9 Form and Handbook

- Latest version "Rev. 08/07/09"
 - "Expires 08/31/12"
 - No substantive changes
- Prior version "Rev. 02/02/09"
 - Remains valid but will likely be retired
- Current version of M-274 Handbook for Employers "Rev. 07/31/09"

OMB No. 1615-0047, Expires 08/31/12
Form I-9, Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last		First	Middle Initial	Maiden Name
Address (Street Name and Number)			Apt. #	Date of Birth (month/day/year)
City		State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen of the United States
 A national of the United States (see instructions)
 A lawful permanent resident (Alien #) _____
 An alien authorized to work (Alien # or Admission #) _____ and (expiration date, if applicable - month/day/year) _____

Employer's Signature _____ Date (month/day/year) _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer/Translator's Signature _____ Print Name _____
 Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

Document Title:	List A	OR	List B	AND	List C
Issuing authority:	_____		_____		_____
Document #:	_____		_____		_____
Expiration Date (if any):	_____		_____		_____
Document #:	_____		_____		_____
Expiration Date (if any):	_____		_____		_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative _____ Print Name _____ Title _____
 Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) _____ B. Date of Return (month/day/year) (if applicable) _____

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title:	Document #:	Expiration Date (if any):
_____	_____	_____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative _____ Date (month/day/year) _____

Form I-9 (Rev. 08/07/09) Y Page 4

Busy Year for ICE

- From May 1 to October 30:
 - 45 businesses and 47 individuals debarred
 - 142 Notices of Intent to Fine totaling \$15,865,181
 - 45 Final Orders totaling \$798,179
 - 1,897 cases initiated
 - 1,069 Form I-9 Inspections
- November 19: 1,000 audits announced



E-Verify Federal Contractor Rule

- Applies to federal acquisition contracts
 - For commercial, non-commercial, or construction services
 - Awarded on or after September 8, 2009
 - Valued at over \$100,000
 - With performance periods of over 120 days
- If contract includes E-Verify clause, employer must verify:
 - Existing employees assigned to contract, and
 - All new hires even if not assigned to contract
 - Optional: employer also has option of verifying all existing employees

Employees Covered/ Flow Down Obligations

- “Employees assigned to contract” does not include support staff performing indirect or overhead functions who don’t perform substantial contract work
- Employer not required to verify employees granted active U.S. security clearances
- E-Verify clause is required in subcontracts flowing from covered prime contracts if:
 - For commercial, non-commercial, or construction services
 - Valued at over \$3,000
- Prime contractors are liable for noncompliance by subcontractors

Compliance Timeline

- If not enrolled, enroll within 30 days of contract award
 - Existing employees:
 - Start verification within later of 90 days of enrollment or 30 days of employee assignment to contract
 - New hires:
 - Start verification within 90 days of enrollment and follow 3 day rule
 - If choose to verify entire existing workforce, notify DHS and verify within 180 days of enrollment

Compliance Timeline

- If already enrolled, but not designated as federal contractor, update company profile within 30 days of award:
 - Existing employees:
 - Start verification within later of 90 days of enrollment or 30 days of employee assignment to contract
 - New hires:
 - If enrolled more than 90 days, follow 3 day rule; if enrolled less than 90 days, start verification within 90 days of enrollment and follow 3 day rule
 - If choose to verify entire existing workforce, notify DHS and verify within 180 days of update

SC Immigration Compliance In the News

Mobile: Cell/PDA | Alerts | E-News | RSS | Widgets | Twitter Find It: Jobs | Cars | Real Estate

GreenvilleOnline.com SEARCH THE UPSTATE: All Local News Archive

HOME NEWS SPORTS OPINION METROMIX ENTERTAINMENT MULTIMEDIA YOURUPSTATE OBITUARY

Business Crime & Arrests Education Health Politics Lifestyle Weddings City People Parents

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Landscaping company fined for alleged violations of the state Illegal Immigration Reform Act

BY PRENTISS FINDLAY • THE POST AND COURIER • NOVEMBER 6, 2009

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MOUNT PLEASANT — Pleasant Places, Inc. landscaping faces a \$24,000 state fine for alleged violations of the South Carolina Illegal Immigration Reform Act, officials said Thursday.

CHARLESTON REGIONAL BUSINESS JOURNAL Tuesday, September 08, 2009

HOME NEWS COMMUNITY SUBSCRIPTIONS NETWORKING JOBS REAL ESTATE

Immigration audits concern businesses

By Ashley Fletcher Frampton
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Published Aug. 18, 2009

State investigators visited 76 companies last month to ensure compliance with a provision of South Carolina's 2008 immigration law that recently kicked in.

SC Illegal Immigration Reform Act

- Effective dates for private employers
 - July 1, 2009 if 100 or more employees
 - July 1, 2010 if less than 100 employees
- Requirements
 - Use E-Verify or
 - Make sure new hire:
 - Has or qualifies for DL or ID card issued by SC DMV
 - Has DL or ID card from another state OK'd by SC DMV

SC LLR Inspections



South Carolina Department of
Labor, Licensing and Regulation

- Penalties
 - Monetary penalties from \$100 to \$1,000 per violation
 - Criminal penalties for false documents or statements
 - Suspension or revocation of “imputed license” to employ workers for “knowing or intentional” violation
 - Wrongful discharge cause of action
- Top 3 targeted industries: agriculture, construction, and manufacturing
- As of October 30, 2009, 600 businesses inspected and 16 cited

Initial SC Enforcement Issues

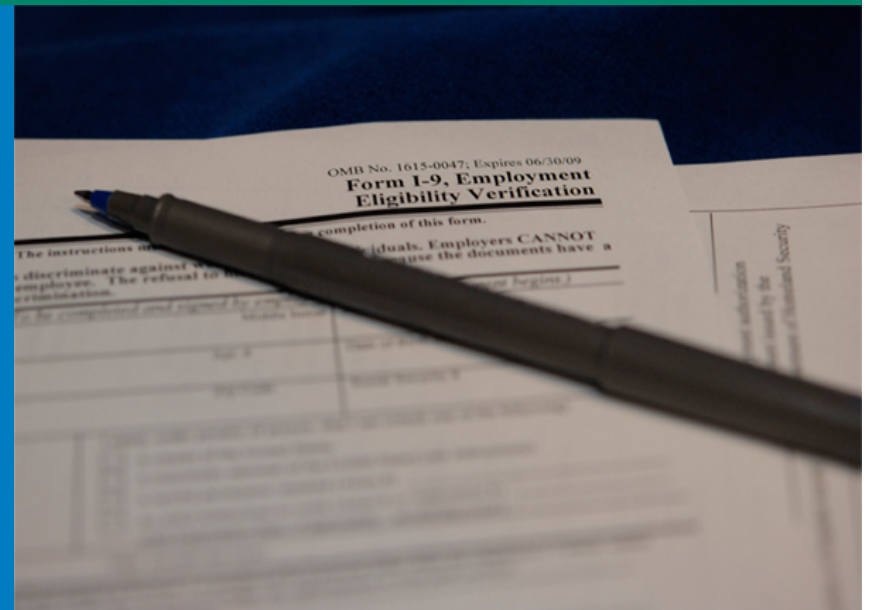
- Requesting I-9's
 - Only handful of federal agencies have right to see them
- No advance notice
 - ICE gives three days
- Request to interview employees randomly
 - No basis if documents are in order
- Inspecting for employees hired before July 1, 2009
 - No basis absent evidence of “knowing or intentional” violation
- Selection process
 - Raises constitutional issues

Status of SC Enforcement Issues

- No longer asking for I-9's and affirmatively telling employers not to produce them
- Giving at least three days advance notice
- Resolution to inspecting for violations and interviewing employees hired before July 1, 2009 involves employer signing statement that it takes appropriate measures to verify all workers are legal
- LLR still stands by selection process

Internal Audits

- With increased enforcement, error-free I-9's critical
- Good faith efforts like internal audits and training helpful
- Don't be surprised to find errors
- On regular basis, get trained staff to check randomly



Internal Audits

- Form is missing information
 - Employee or employer must add it and date and initial
- Form has incorrect information
 - Do not use “white out”
 - Draw line through it, insert correct information, and date and initial
- Form is lost
 - Get new one completed
 - Prepare explanatory memo

ARRA COBRA Subsidy

- Under the American Recovery and Reinvestment Act
- Federal government subsidizes
- 65% of COBRA premiums
- For up to 9 months
- For “assistance eligible individuals”
- Also available for comparable state continuation coverage

Assistance Eligible Individual

- Individual involuntarily terminated (other than for gross misconduct) between September 1, 2008 and December 31, 2009 *
 - Who is eligible for COBRA coverage during that period
 - And elects COBRA coverage
 - Income limits of \$125K (single) or \$250K (joint filer)
- * Legislative efforts under way to extend

Involuntary Termination

- “Severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment . . . where the employee was willing and able to continue performing services.”
- Includes all employer-initiated terminations, including terminations for cause
- Does not include resignations or termination due to death

When Subsidy Ends

- Earliest of:
 - 9 months after subsidy begins
(November 30, 2009 for some)
 - End of maximum COBRA period
 - First date eligible for other group medical plan or Medicare

Subsidy Process

- AEI pays 35% of COBRA premium
- Employer fronts remaining 65% of COBRA premium and gets credit against its payroll taxes for the same amount
- Aggregate payroll tax credits for COBRA premiums are reflected on employer's Form 941

New EEO Poster

- Revised November 2009
- Includes information regarding GINA's ban on employment discrimination based on genetic information
- Also reflects changes made by ADAAA
- Post new poster or new supplement with September 2002 EEO poster
- Both available in English, Spanish, Arabic, and Chinese

New EEO Poster

Equal Employment Opportunity is **THE LAW**

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Non-discrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected. The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-639-4000 (toll-free) or 1-800-639-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

New EEO Poster

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-367-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

EEOC 9/02 and OFCCP 8/08 Versions Usable With 11/09 Supplement

EEOCP/E-1 (Revised 11/09)

The Lilly Ledbetter Fair Pay Act of 2009

- Signed by President Obama January 29, 2009.
- Declares that a discriminatory compensation decision or other practice that is unlawful under Title VII, the ADEA, the ADA or the Rehabilitation Act occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice.

Who is Lilly Ledbetter?

- Supervisor with Goodyear Tire & Rubber in Gadsden Alabama from 1979 – 1998.
- Raises based on performance evaluations. Pay levels kept confidential.
- Later in her career, she begin to realize she was making less than similarly situated male employees.

EEOC Administrative Charge

An individual wishing to bring a Title VII lawsuit (in a state without an equal employment agency) must first file an EEOC charge **within 180 days** “after the alleged unlawful employment practice occurred.”

In South Carolina, unlike Alabama, there is a state equal employment agency (SCHAC) and the individual has **300 days** to bring a charge.

Who is Lilly Ledbetter?

- Alleged gender discrimination under Title VII of the Civil Rights Act.
- Jury Verdict for Ledbetter in excess of \$3 million.
- Goodyear appealed to the 11th Circuit, which reversed the jury verdict.

Ledbetter v. Goodyear Tire & Rubber (2007)

- Ledbetter appealed to the U.S. Supreme Court.
- She claimed each paycheck was a separate discriminatory employment decision.
- Court disagreed and held that Ledbetter's claim was untimely.
- Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory employment decision was made and communicated to her.

Ledbetter v. Goodyear Tire & Rubber (2007)

- In *Ledbetter*, the U.S. Supreme Court held the statute of limitations for a gender discrimination and equal pay act claim commenced upon the original discriminatory decision and did not restart with each successive paycheck.
- The LLFPA re-starts the statute of limitations each time an employee receives a check, thus permitting suit years after the original discriminatory decision.

NEW: ADA Amendments Act (ADAAA)

- Americans with Disabilities Amendments Act of 2008
- Went into effect January 1, 2009
- Expands the scope of several important ADA definitions



What is the ADA?

- Title I
 - Prohibits discrimination against a “qualified individual with a disability”
- Which employers must comply?
 - Private employers with 15+ employees
 - Includes part-time employees

Why was the ADAAA enacted?

- To overrule certain Supreme Court decisions: *Sutton v. United Airlines*, 527 U.S. 471 (1999); *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).
- To “reinstat[e] a broad scope of protection to be available under the ADA.”
- Construed “liberally” and in favor of broad coverage.



New **BROAD** Definitions

- “Disability”
- “Major Life Activity”
- Limited Role of Mitigating Factors
- Lower Standard for “Regarded As” Disabled

Who is an “individual with a disability”?



- An individual who:
 - Has a physical or mental impairment that substantially limits one or more major life activities of such individual
 - Has a record of such an impairment
 - Is regarded as having such impairment

Who is a “qualified individual with a disability”?



- An individual who:
 - Is qualified for a job
 - With or without reasonable accommodation
 - Can perform the essential functions of the job

ADAAA: “Disability”

- Basic definition remains essentially the same
- But definition should be broadly construed “to the maximum extent permitted by [the ADAAA]”
- Now specifically includes impairments that are either episodic or in remission (if it would substantially limit major life activity when active)

“Major Life Activity” now includes “Major Bodily Functions”

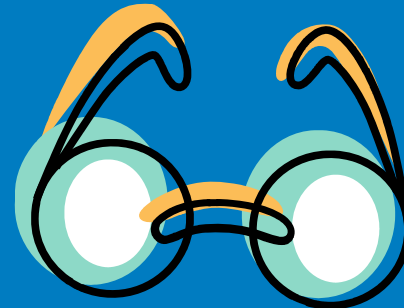
- Functions of the immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Respiratory
- Circulatory
- Endocrine
- Reproductive Functions



Mitigating Measures

- Pre-ADAAA: Whether a major life activity is “substantially limited” depends on effects of “mitigating measures”
- Post-ADAAA: Most mitigating measures should not be considered when determining if someone is disabled

– Exceptions:



Examples of Mitigating Measures

- Medication for conditions like epilepsy or depression
- Insulin to control diabetes
- Prosthetic devices
- Walkers, canes, and crutches
- Hearing aids



ADAAA: “Regarded As” Disabled

- Broadened definition
- Because of perceived mental or physical impairments
 - Regardless of whether perceived to limit major life activity
- Excludes “transitory and minor” impairments
 - Transitory = 6 months or less (actual or expected)

ADEA WAIVERS

- EEOC Guidance issued July 15, 2009
- Waiver of claims in severance agreements is generally valid if employee knowingly and voluntarily consents to waiver.
- Rules for waivers under Age Discrimination in Employment Act are defined by statute – Older Workers Benefit Protection Act.

“Knowing and Voluntary” Factors

- Written in a manner that can be clearly understood.
- Specifically refers to rights or claims arising under the ADEA.
- Advises the employee in writing to consult an attorney before accepting the agreement.
- Provides employee at least 21 days to consider the offer.

“Knowing and Voluntary” Factors (continued)

- Gives the employee seven days to revoke the agreement.
- Does not include rights and claims that may arise after the date on which the waiver is executed.
- Supported by consideration in addition to which the employee is already entitled.

ADEA WAIVERS

- ADEA waiver will be invalid and unenforceable if an employer uses fraud, undue influence, or other improper conduct to coerce the employee to sign it.
- Example: company told employee his termination resulted from "reorganization." After a younger person was hired to replace employee he sued for violation of ADEA and company changed its position and claimed he was terminated due to poor performance. Court found that fraud on the part of the employer invalidated the waiver.

ADEA WAIVERS FOR A “GROUP” OF EMPLOYEES

- A “group” is considered two or more.
- 45 days to consider the waiver.
- “Decisional unit” – the class, unit or group of employees from which the employer chose the employees who were and who were not selected for the program.
- Eligibility factors for program;
- Time limits for program.

ADEA WAIVERS FOR A “GROUP” OF EMPLOYEES

- Job titles and ages of all individuals who are eligible or who were selected for the program (cannot use age bands broader than 1 year);
- Ages of all individuals in the same job classification or organizational unit who are not eligible or who were not selected for the program.

ADEA WAIVERS

- EEOC Guidance contains Employee Checklist “What to do when your employer offers you a severance agreement.”
- Guidance also contains a sample waiver.

Say Hello To My Friend... GINA!

- GINA: Genetic Information Nondiscrimination Act of 2008
- Title II: Genetic Information in Employment Context
- Effective 11/21/2009
- 15 or more employees

GINA in the Workplace: Collection



- Collection Generally Prohibited
- Some Exceptions:
 - Inadvertence
 - Leave / accommodation request
 - Service offered by employer
 - Monitoring of toxic substances
 - Commercially available documents

GINA in the Workplace: Storage & Disclosure

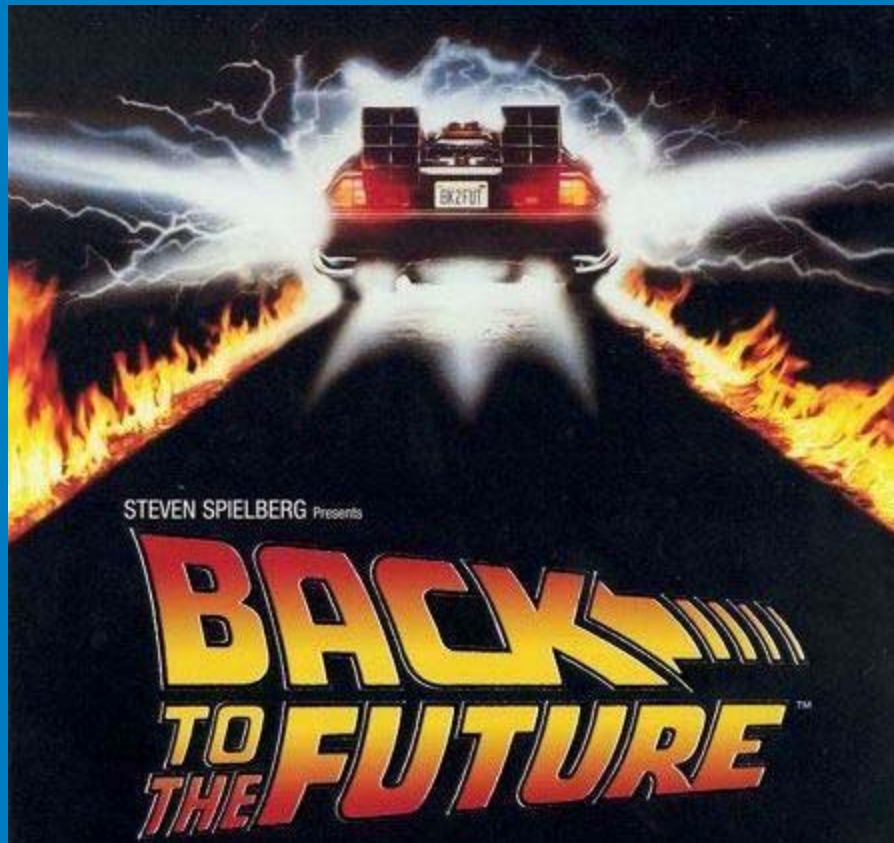
- **Storage Restrictions:**
 - Maintain Separate File(s)
 - Treat as Confidential Information
- **Disclosure under limited circumstances:**
 - Court Order
 - Employee's Written Request
 - Compliance Investigation
 - Public Health Agency



GINA in the Workplace: Discrimination

- Prohibits discrimination based on genetic information
 - Disparate impact claims not authorized
 - Title VII framework for damages and reporting
- Includes adversely affecting employee status
- Note: Statutes providing equal or greater protection unaffected
 - N.C.G.S. § 95-28.1A applies to all North Carolina employers.

Back to the Future FMLA Military Leave: The Sequel



- 2010 National Defense Authorization Act
- Effective 10/28/2009
- Expands:
 - Military Exigency Leave
 - Military Caregiver Leave

Military Exigency Leave: Qualifying Exigencies



- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities

Military Exigency Leave: Expansion

- Previously:
 - Member of National Guard, Reserves, certain retired members of Armed Forces
 - Called to Active Duty in Support of Contingency Operation
 - Why the limitation?
- Now:
 - Extends to members of regular armed forces
 - “Contingency Operation” removed
 - Deployed to a foreign country

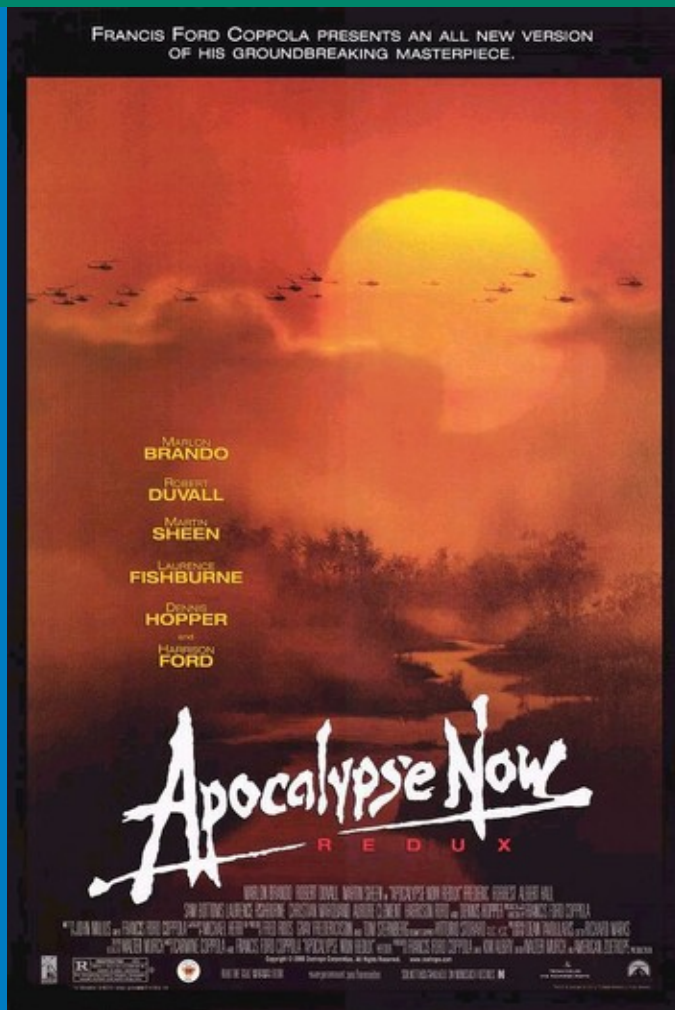


Military Caregiver Leave

- “Covered Servicemember” broadened:
 - Includes Veterans
 - Window of five years prior to date of treatment
- “Serious Injury or Illness” broadened:
 - All: Preexisting injury or illness aggravated by service
 - Veterans: Injury or illness may manifest itself before or after individual becomes a veteran

Apocalypse Now?

The New FMLA Regulations



- Effective 1/16/09
- Focus on communication and flow of information:
 - New employer notices
 - Some direct communication with health care provider
 - Medical certifications
 - Employee notice requirements

New FMLA Regulations, Continued

- Accounting for FMLA leave time
 - Increments
 - Award / bonus
- Release of FMLA claims



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