



# Personnel Law Update

MARI-JO WILKES, HUMAN RESOURCES  
PERSONNEL OFFICER  
DEPARTMENT OF NATURAL RESOURCES

# Personnel Laws

- Laws provide for fair, consistent treatment
- No discrimination
- Free from retaliation

# Protections

- Race
- Color
- Sex
- National Origin
- Religion
- Age
- Disability
- Genetics
- Sexual Orientation (EO)
- Veteran Status (EO)
- Military Leave
- Exercise of FMLA Rights
- Exercise of Workers' Comp Rights
- Protected Complaints ("Whistleblowers")
- Wage and Hour

# Federal Employment Laws

- Civil Rights Act of 1964 – Title VII, Title VI
- Age Discrimination in Employment Act (ADEA)
- ADA Amendments Act (ADAAA)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
- Genetic Information Nondiscrimination Act (GINA)
- Family Medical Leave Act (FML)\*\*
- Fair Labor Standards Act (FLSA)\*\*

# Americans with Disability Act Amendments

- Last updated 2009
- Clarified definition of “disability”
  - Construed broadly
  - Effects of Medications/therapies
- Easier to show that impairment substantially limits a major life activity
- Increased # of major life activities
- **Result:** More employees with protected disabilities but not presently needing or requesting accommodation

# USERRA

- Last updated in 2006
- Ensures that those 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 (raises, benefits)
  - 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

# USERRA

- Reemployment Eligibility:
  - The employer had *advance notice* of the employee's service;
  - The employee has *five years or less* of cumulative service in the uniformed services in his or her employment relationship with a particular employer;
  - The employee *timely returns to work* or applies for reemployment; and,
  - The employee has not been separated from service with a disqualifying discharge or under other than *honorable conditions*.

# USERRA

- On active duty when reaching the 5-year mark, employee rights are extended
- USERRA applies to all public and private employers in the United States, regardless of size
- Employer Support of the Guard and Reserve (ESGR)
  - Statement of Support document available
  - [www.esgr.org](http://www.esgr.org)



# GINA

- Passed in 2008
- Prohibits from unfair treatment due to differences in their DNA that may affect their health
- Prohibits discrimination from health insurers and employers
  - Health insurer might refuse to give coverage to a woman who has a DNA difference that raises her odds of getting breast cancer
  - Employers also could use DNA information to decide whether to hire or fire workers
- Genetic discrimination occurs if people are treated unfairly because of differences in their DNA that increase their chances of getting a certain disease

# FMLA

- Passed in 1993 and updated in 2008 and again October 2009
- Originally passed to help balance work and family
- Both updates added new forms of protected leave for eligible employees whose family members are called up for and serve on military duty or are injured in the course of such duty

# FMLA

- Eligibility: Employed 12 months and have physically worked 1250 hours
- Allows up to 12 weeks (480 hrs) protected leave within 12 months
  - Your own serious health condition
  - Spouse, child, or parent with serious health condition\*
  - Care for newborn, adopted, or foster-placed child
- Protects your performance appraisal
- Provides for continuing health insurance
- Guarantees same or equivalent position

# FMLA

- Serious Health Condition
  - Physical or mental condition
  - Pregnancy or prenatal care
  - Chronic, serious condition
  - Multiple medical treatments
- Bonding
  - Birth of the child
  - Initial placement of a adopted or foster-placed child

# FMLA

- Medical certification includes
  - Health care provider contact information
  - The starting date and expected duration
  - Medical facts
  - Statement of the need for time off
  - Information on the ability to perform essential functions
- Intermittent Leave
  - # of episodes and how long the episodes will last
  - Recertification
  - Call in Policy

# FMLA

- Military family leave
- Helps employees balance work and family
- Expands protections
  - Qualifying exigency. . . .Guard and Reserve
    - Military Events and related activities
    - Financial and legal matters
  - Servicemember Caregiver Leave (26 weeks in 12 months)
    - Undergoing medical treatment, recuperation or therapy
    - Outpatient treatment

# FMLA

- Unpaid status
- Use compensatory time and leave balances concurrent with FMLA status
- Intermittent leave can occur
- FMLA can overlap with other protections
  - ADAAA, Workers Comp, TMD
- Why apply for FMLA when you have leave?
  - 1250 hours
  - Protects performance appraisal

# FMLA

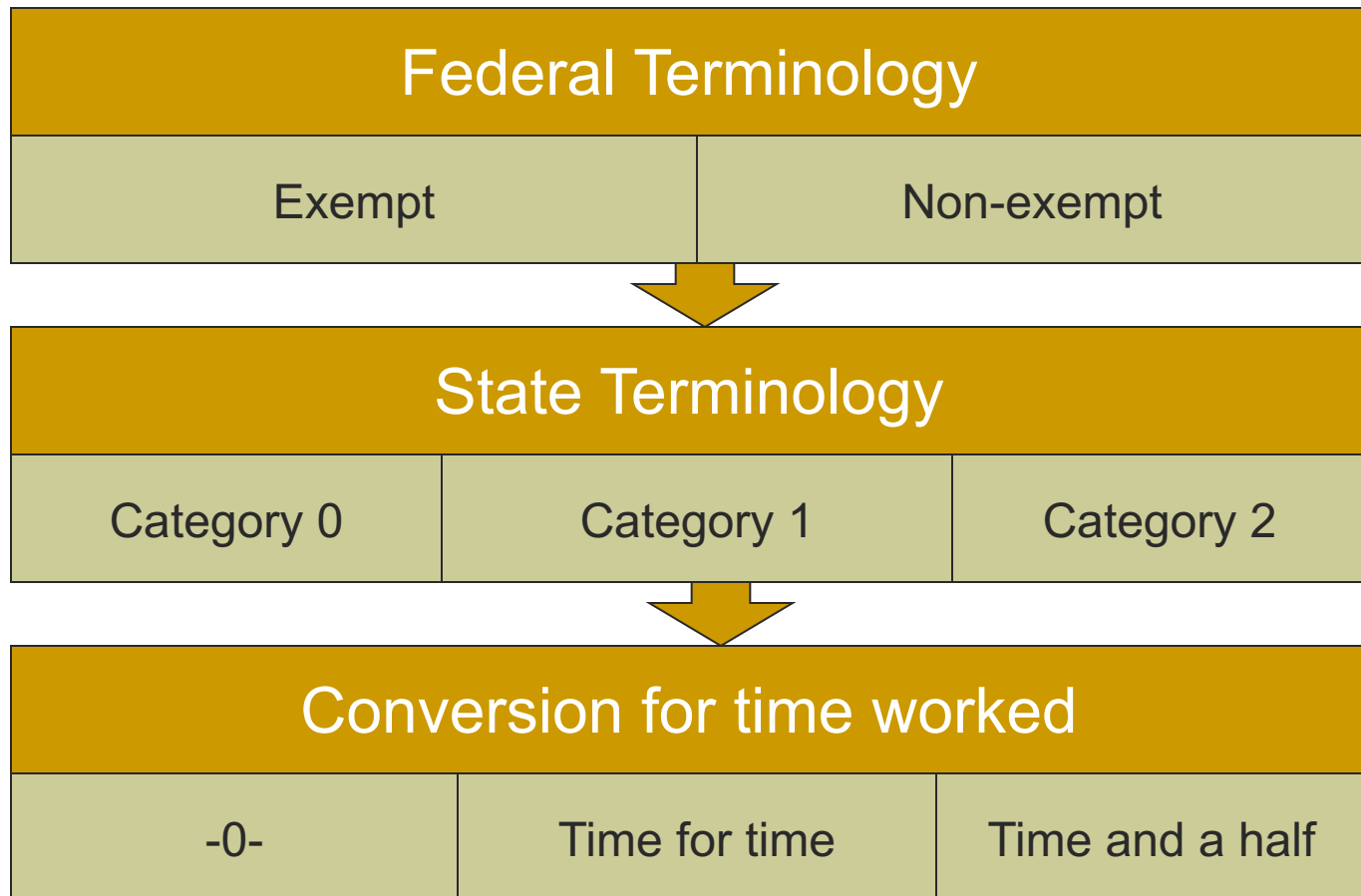
- Supervisor legal responsibilities
  - Notice of eligibility/Rights and Responsibilities
  - Keep records for 3 years – confidential
  - Do not keep in personnel file, create separate medical file
  - Do not interfere with employee rights to use FMLA
  - No retaliation
  - No discrimination or discharging employees
  
- Organizational and personal liability is possible
  - CONSISTENCY is important



# Fair Labor Standards Act

- Last updated 2004-2006
- Terms to know
  - Exempt (not covered) vs. Non-exempt (covered)
  - Work week
    - Fixed and regularly recurring period of 7 consecutive days
    - Examples: Sunday-Saturday, Saturday-Friday, etc.
  - Physically worked
    - Hours actually worked
    - Does not include leave or comp time used

# Fair Labor Standards Act



# Fair Labor Standards Act

## Category 2

- Earns comp time:
  - Federal
  - State
  - Holiday
- Program Specialist I
- Technician I

## Category 1

- Earns comp time:
  - State
  - Holiday
- Program Specialist II
- Technician II

## Category 0

- Earns comp time:
  - Holiday

# Fair Labor Standards Act

Program Specialist I  
Sunday-Saturday

Category 2 Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday	8	
Tuesday	8	
Wednesday	8	
Thursday	8	
Friday	8	
Saturday	4	
WEEKLY TOTALS	44	0

- Paid for 40 hours
- Earns federal comp for any hours physically worked over 40
- $4 * 1.5 = 6$  hours federal comp
- 44 hours

# Fair Labor Standards Act

Program Specialist I  
Sunday-Saturday

Category 2 Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday	6	2AL
Tuesday	8	
Wednesday	8	
Thursday	8	
Friday	8	
Saturday	4	
WEEKLY TOTALS	42	2AL

- Paid for 40 hours
- Earns federal comp for any hours physically worked over 40
- $2 * 1.5 = 3$  hours federal comp
- 44 hours
- OR flex time

# Fair Labor Standards Act

Additional Scenarios

Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
WEEKLY TOTALS		

# Fair Labor Standards Act

Additional Scenarios

Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
WEEKLY TOTALS		

# Fair Labor Standards Act

Program Specialist II  
Sunday-Saturday

Category 1 Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday	8	
Tuesday	8	
Wednesday	8	
Thursday	8	
Friday	8	
Saturday	4	
WEEKLY TOTALS	44	0

- Paid for 40 hours
- Earns state comp
- 4 hours state comp
  
- 44 hours



# Fair Labor Standards Act

Program Specialist II  
Sunday-Saturday

Category 1 Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday	6	2AL
Tuesday	8	
Wednesday	8	
Thursday	8	
Friday	8	
Saturday	4	
WEEKLY TOTALS	44	2AL

- Paid for 40 hours
- Earns state comp
- 2 hours state comp
- 44 hours

# Fair Labor Standards Act

Additional Scenarios

Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
WEEKLY TOTALS		

# Fair Labor Standards Act

Additional Scenarios

Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
WEEKLY TOTALS		

# Fair Labor Standards Act

Additional Scenarios

Analysis

Days of week	Hours Worked	Leave Used
Sunday		
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		
WEEKLY TOTALS		

# Personnel Law Update

- Questions???