

Introduction to Human Resource Concepts

Lesson 6 - Legal Environment of HRM

WORKBOOK

Lesson 6 Overview

In this part of the course, you will be introduced to:

- National Labor Relations Act
- Labor-Management Relations Act
- Fair Labor Standards Act
- Equal Pay Act
- Civil Rights Act
- Age Discrimination in Employment Act
- Occupational Safety and Health Act
- Employment Retirement Income Security Act
- Affirmative Action
- Americans with Disabilities Act

NLRA and LMRA

National Labor Relations Act – Established in 1935

The following is from the official U.S. Department of Labor's notice of employee rights under the act:

- *"The NLRA guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board, the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace. "*

NLRA and LMRA

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment
- Form, join or assist a union
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions
- Discuss your terms and conditions of employment or union organizing with your co-workers or a union
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union
- Strike and picket, depending on the purpose or means of the strike or the picketing
- Choose not to do any of these activities, including joining or remaining a member of a union.

NLRA and LMRA

Under the NLRA, it is illegal for your employer to:

- Prohibit you from soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms
- Question you about your union support or activities in a manner that discourages you from engaging in that activity
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity
- Threaten to close your workplace if workers choose a union to represent them
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

NLRA and LMRA

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten you that you will lose your job unless you support the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity
- Take other adverse action against you based on whether you have joined or support the union

If you and your coworkers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

NLRA and LMRA

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's website: www.nlr.gov.

The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

NLRA and LMRA

Labor-Management Relations Act – established in 1947

- Commonly known as the Taft-Hartley Act

Two primary purposes:

1. Lessen industrial disputes
2. Place employers in a more equal position with unions in bargaining and labor relations procedures

This act was an amendment to the NLRA (also known as the Wagner Act) to address problems that had developed since the passage of the NLRA in 1947.

NLRA and LMRA

The LMRA was an amendment to the NLRA (also known as the Wagner Act) to address problems that had developed since the passage of the NLRA in 1935.

The specific problems addressed were:

- Violent strikes and picketing
- Secondary boycotts that injured third parties
- The National Labor Relations Board's manner of determining appropriate bargaining units
- Union corruption
- Frequent work-assignment disputes among unions

NLRA and LMRA

The purpose and policy of the LMRA is:

- To prescribe the legitimate rights of employees and employers
- To provide orderly procedures for interfering with each other's rights
- To protect rights of individual employees when dealing with labor unions
- To define and proscribe labor and management practices
- To protect the public's rights in connection with labor disputes

FLSA

Fair Labor Standards Act – established in 1938, established minimum wage and overtime pay

The following is from the current FLSA Poster from the U.S. Department of Labor:

- Currently, the Federal Minimum Wage is \$7.25 per hour, effective July 24, 2009
- States may increase the minimum wage but not decrease it
- Overtime Pay – At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

FLSA

Child Labor – An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor.

- Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:
- No more than:
 - 3 hours on a school day or 18 hours in a school week;
 - 8 hours on a non-school day or 40 hours in a non-school week
- Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Different rules apply in agricultural employment.

FLSA

Tip Credit – Employers of “tipped employees” must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee’s tips combined with the employer’s cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

Enforcement – The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Employers may be assessed civil money penalties of up to \$1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to \$11,000 for each employee who is the subject of a violation of the Act’s child labor provisions. In addition, a civil money penalty of up to \$50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to \$100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

FLSA

Additional Information:

Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.

- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands
- Some state laws provide greater employee protections; employers must comply with both
- The law requires employers to display this poster where employees can readily see it
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor

EPA

Equal Pay Act – established in 1963

- Specifies that men and women who are doing equal jobs must be paid the same wage
- Equal jobs – ones that demand equivalent effort, skill and responsibility and are performed under the same conditions
- Pay may be unequal if attributed to differences in seniority, qualifications, or performance
- Despite its passage in 1963, today this is still a major issue in many organizations

CRA

Civil Rights Act – established in 1964 (Title VII)

- Forbids organizations with 15 or more employees to discriminate in employee selection and retention on the basis of sex, race, color, religion, or national origin
- Purpose is to force organizations to base personnel decisions solely on qualifications
- The Equal Employment Opportunity Commission enforces the provisions of the act
- The act was amended in 1991 to facilitate an employee's suing and collecting punitive damages for sexual discrimination

ADEA

Age Discrimination in Employment Act – established in 1967,
amended in 1986

- Originally prohibited personnel practices that discriminated on the basis of age, specifically against people aged 40 or over
- Applies to organizations with 20 or more employees
- The 1986 amendment eliminated the use of mandatory retirement policies by organizations

OSHA

Occupational Safety and Health Act – established in 1970

- Concerns with issues of employee health and safety.
- Enforced by the Occupational Safety and Health Administration
- OSHA inspectors investigate employee complaints regarding unsafe working conditions
- OSHA inspectors are authorized to make spot checks of organizations of hazardous industries
- Violations may result in heavy fines or the shutting down of the organization

OSHA

The official OSHA poster provides the following notice to employees:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in the inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the OSHA Act.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.

OSHA

The official OSHA poster provides the following notice to employees:

- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the OSHA Act that apply to your own actions and conduct on the job.

ERISA

Employment Retirement Income Security Act –
established in 1974

- Protects the employee retirement benefits offered by organizations
- Does not require organizations to provide retirement benefits
- If an employee retirement plan is provided, the act specifies how the plan must be managed to protect employee interests
- In the event the organization goes bankrupt, the act provides federal insurance on the retirement plan

AA

Affirmative Action – this is not an act passed by Congress; it is a Presidential Executive Order

It applies to all employers with 50 or more employees with federal contracts in excess of \$50,000

Under the order, the employer must:

- Actively encourage job applications from minority groups
- Hire qualified employees from under represented minority groups in the organization
- Voluntary participation by employers not covered by the order is encouraged

ADA

Americans with Disabilities Act – established in 1990

- Applies to organizations with 15 or more employees
- From the Equal Employment Opportunity is The Law poster:
 - 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"*

ADA

- Does not only apply to physical disabilities
- Heart disease, diabetes, epilepsy, cancer, AIDS and mental illness are also covered
- Many organizations no longer require a physical due to this act
- Reasonable accommodation – any modification or adjustment to a job or work environment that will enable a qualified employee with a disability to perform a central job function
- Organizations are required to provide disabled employees with reasonable accommodation

Lesson 6 Review

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Questions

and

Answers

Review Questions:

1. Under the National Labor Relations Act, you have the right to:
 - A. Form, join, or assist a union
 - B. Discuss your terms and conditions of employment
 - C. Strike and picket
 - D. All of the above
2. True or False: The National Labor Relations Act was established in 1985.
 - A. True
 - B. False
3. The LMRA was an amendment to the NLRA set to address all the following except:
 - A. Increased participation with management
 - B. Violent strikes and picketing
 - C. Union corruption
 - D. Frequent work-assignment disputes among unions
4. True or False: The Equal Pay Act set the minimum wage and overtime pay.
 - A. True
 - B. False
5. True or False: Affirmative Action is an Act of Congress that requires employers to actively encourage applications from minority groups, among other requirements.
 - A. True
 - B. False

Answer Key:

1. D
All are rights, including choosing not to join a union.
2. B
False. The National Labor Relations Act was established in 1935.
3. A
Not a provision of the LMRA; however, the National Labor Relations Board's manner of determining appropriate bargaining units is another problem addressed.
4. B
False. The FLSA set the minimum wage and overtime pay.
5. B
False. Affirmative Action is a Presidential Order, not an Act of Congress.