Employment Laws Impacting the Recruiting Process

- Employment laws protect against discrimination in hiring, promotion, training, termination, layoff, compensation, benefits, job assignments, and training determinations. Decisions should be based on subjective facts, such as qualifications required for the job and performance in the job.

- **Indiana is an employment at-will state.**
  - At-will means that either the employee or the employer may terminate the employment relationship at any time and for any reason – a good reason, a bad reason or no reason at all.
  - The importance of at-will is that it allows an employer to discharge an employee for what the employer considers sufficient reason – no proof is needed for a third party (Admin. Agency, arbitrator, or a court).

- **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 – ADEA**
  - ADEA protects individuals who are 40 years of age or older.
  - Employers who have 20 or more employees and are engaged in industry affecting commerce are covered.
  - Indiana covers employees between 40 and 70; applies to employers who have one or more employees and not covered by ADEA.
  - A prevailing employee may be entitled to double damages in cases of willful violations (knowing or showing reckless disregard for prohibited conduct) of the ADEA.

- **AMERICANS WITH DISABILITIES ACT OF 1990 – ADA (TITLE I & TITLE V)**
  - ADA prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.
  - ADA applies to employers with 15 or more employees.
o Disabled means that one is **substantially limited** in a major life activity, i.e. caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working and participating in community activities.

o Examples of exclusions: homosexuals or bisexuals, current drug users, alcoholics, compulsive gamblers, kleptomaniacs, or pyromaniacs.

o Indiana ADA mirrors the federal ADA. The disability provisions of Indiana Civil Rights Law covers employers with between six and 14 employees.

o Employers are to make a reasonable accommodation for a disabled employee as long as it does not impose an undue hardship on the business operation.

o Determinations are made on a case-by-case basis.

Examples of reasonable accommodations:

- “Flexing an employee’s work schedule to meet the needs of medical treatment for disabling conditions, i.e. Chemotherapy, physical therapy.

- Providing moderately priced adaptive devices, i.e. Telephone amplifiers for the hearing impaired, video monitor enlargers for vision impaired, modified office equipment for one who is wheelchair bound.

- 71% of all accommodations cost less than $500.

- **Rehabilitation Act of 1973**

  o Employers with federal contracts or subcontracts exceeding $10,000 or employers that receive federal financial assistance may be required to take affirmative action to employ the disabled (special, proactive efforts to attempt to increase or promote).

- **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

  o Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin.

  o Indiana Civil Rights Law prohibits discrimination on the basis of race, religion, color, sex, disability, national origin or ancestry.

- **CIVIL RIGHTS ACT OF 1991**

  o In cases of intentional employment discrimination, allows for monetary damages.

- **EQUAL PAY ACT OF 1963 – EPA**

  o The Equal Pay Act protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.
• **FAIR LABOR STANDARDS ACT – FLSA**
  
  o **FLSA** establishes specific guidelines for what constitutes exempt/non-exempt positions. With few exceptions, to be exempt an employee must be paid at least $23,600 per year ($455 per week), be paid on a salary basis, and perform exempt job duties. Most employees must meet all three "tests" to be exempt.

  o **FLSA** establishes minimum wage, overtime, and record keeping standards for employees who are non-exempt. **FLSA** also regulates child labor.

  o **FLSA** requires employers of covered employees who are not otherwise exempt, to pay a minimum wage of not less than $6.55 as of July 24, 2008 (increases to $7.25 on July 24, 2009). Indiana’s minimum wage mirrors that of the federal government.

  o **FLSA** (and Indiana Law) require that overtime be paid to non-exempt employees at a rate of one and one-half times the employee’s regular rate of pay for each hour worked in each workweek in excess of 40 hours.

  o **FLSA and Child Labor** - 14 is generally the minimum age for employment under FLSA. 13 and younger may: deliver newspapers, babysit on a casual basis, work as an actor, work in a business solely owned and operated by parents, unless the business is manufacturing, mining, or any other occupation declared hazardous by the Secretary of Labor.

    ▪ 14 – 15 year olds may work 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day and 40 hours in a non-school week. Work must be performed between the hours of 7 a.m. and 7 p.m. except from June 1 through Labor Day when evening hours extend to 9 p.m.

    ▪ In Indiana as long as it doesn’t affect school attendance: 14 & 15 year olds may work the same hours as indicated under Federal Law. 16 and 17 year-olds may work 8 hours a day, 30 hours a week (with a max of 6 days a week) between 6:00am-10:00pm

• **IMMIGRATION REFORM AND CONTROL ACT (IRCA) OF 1986**

  o Requires completion of the I9 (Employment Eligibility Verification Form) to verify that every employee hired after 11/06/1986 is authorized to be employed in the United States.

  o Also contains an anti-discrimination section barring “unfair immigration-related employment practices.”

  o Employers must keep each I-9 on file for at least three years, or one year after employment ends, whichever is longer. Additionally, this Act allows employment of alien workers in certain specialty occupations (generally those requiring a bachelor's degree or its equivalent), who may be employed under the H-1B visa classification
• PREGNANCY DISCRIMINATION ACT of 1978 – PDA
  o PDA protects pregnant women from employment discrimination and requires employers to be non-discriminatory in providing employee benefits such as: Health insurance, sick leave, pensions, and vacation time.