



QUADRENNIAL TRAINING 2025

Employment Law

Employee vs Independent Contractor

EE vs Independent Contractor

Why the Distinction Matters



**Legal and Tax
Implications.**



**Impact on
workplace rights
and responsibilities.**



**Importance for
businesses and
workers.**

Employee

Characteristics

- Works under the control and direction of the employer.
- Employer sets hours, tasks, and processes.
- Paid regularly (salary, hourly wages).
- Eligible for benefits (health insurance, retirement plans, etc.).
- Taxes (income, Social Security, Medicare) are withheld by the employer.

Independent Contractor

Characteristics

- Self-employed and works for clients.
- Has control over how and when work is performed.
- Paid per project or deliverable, not by hours worked.
- Covers own expenses (tools, supplies, etc.).
- Responsible for self-employment taxes.

Legal Tests for Classification

Common Criteria

- **Behavioral Control:** Does the company control what and how tasks are performed?
- **Financial Control:** Does the worker have an opportunity for profit/loss?
- **Relationship Nature:** Are there contracts, benefits, or an expectation of permanency?

IRS Common Law Test

“ABC” Test used in some states

Key Differences



ASPECT	EMPLOYEE	INDEPENDENT CONTRACTOR
Work Hours	Set by employer	Determined by contractor
Tools/Equipment	Provided by employer	Provided by contractor
Taxes	Withheld by employer	Paid by contractor directly
Benefits	Usually provided	Not provided
Control	Employer has control	Contractor retains control

Does the state have any special considerations for classifying workers as independent contractors?

Arkansas	No	
Arizona	No	But be aware, the following state agencies have been aggressive at enforcing misclassifications: unemployment compensation and unauthorized aliens.
California	Yes	Under California law, unless subject to specific exemptions, the majority of employers are classified as employees, rather than independent contractors.
Colorado	No	
Florida	No	
Kansas	No	But be aware, for the purposes of unemployment classification, misclassifications are aggressively enforced.
Kentucky	No	
Maryland	No	But be aware, misclassification is enforced aggressively.
Massachusetts	Yes	Non-exempt employees, interns, employees terminated without cause, minors, and independent contractors may not be subject to a non-compete unless it is reasonable (12 months and limited in scope); this does not apply to trade secrets, confidential information, or goodwill.
Tennessee	No	
Texas	No	

Americans with Disabilities Act

Americans with Disabilities Act

(A D A)

- Prohibits employers from discriminating against qualified individuals with disabilities.
- Hiring, terminations, promotions, training, and privileges of employment.
- An employer is required to make reasonable accommodation to the known disability of a qualified applicant or employee if it would not pose an “undue hardship” on the operation of the employer’s business.

Americans with Disabilities Act

Examples

- An applicant that is hearing impaired may need a sign language interpreter during a job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat or monitor blood sugar and insulin levels.
- An employee with cancer may need time off to attend radiation or chemotherapy treatments.

Family Medical Leave Act

Family Medical Leave Act

(F M L A)

- Provides certain employees with up to 12 weeks of unpaid leave per year for their own serious medical condition, or a serious medical condition of a qualified family member.
- Applies to employers with 50 employees within a 75-mile radius.
- To qualify, employees must:
 - Have worked for the employer for 12 months.
 - Have worked 1,250 hours within the past 12 months.
 - Provide certification from a provider that they or the family member need the leave.

Title VII of the Civil Rights Act

Title VII of the Civil Rights Act

(Title VII)

- Prohibits employers from discriminating against employees on the basis of:
 - Race
 - Color
 - Sex
 - National Origin
 - Religion
- Pertains to all aspects of employment (hiring, terminations, promotions, etc.).
- Prohibits harassment in the workplace based on a protected class.

Does the state recognize protected classes in addition to those recognized by federal employment discrimination laws?

Arkansas	No	
Arizona	Yes	National Guard membership
California	Yes	Note that some of the federally recognized protected classes may have broader definitions under state law, for example race include protected hairstyles and textures, and any perception that a person has a protected characteristics is also covered. Additional categories include: medical condition, marital status, veteran or military status.
Colorado	Yes	Ancestry
Florida	Yes	Marital Status
Kansas	No	
Kentucky	Yes	Tobacco use; while not included as a protected characteristic, employers may also not discriminate on the basis of HIV status.
Maryland	Yes	Marital status, personal appearance, family responsibilities, matriculation, political affiliation, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, or credit information (Note that for these categories, as well as all recognized protected classes, D.C. prohibits discrimination based on "actual or perceived" status of the person).
Massachusetts	Yes	Sexual orientation explicitly does not include persons whose sexual orientation involves minor children as the sex object), veteran status; also note that pregnancy includes lactation or the need to express breast milk
Tennessee	No	
Texas	No	

ADEA and EPA

Age Discrimination in Employment Act =

(A D E A)

- Prohibits employers from discriminating against employees age 40 or older.

Equal Pay Act

(E P A)

=

- Requires men and women with the same knowledge, skills, and abilities be paid equally for equal work.

Harassment Policies

Equal Employment Opportunity

=

What Does The Law Require?

- No Harassment
- No Discrimination
- Reasonable Accommodation
 - Disabilities
 - Religion
- No Retaliation

Equal Employment Opportunity

What Is Discrimination?



01

Individual is qualified.

02

Member of protected class.

03

Denied equal opportunity.

04

Non-protected individual received the opportunity.

Equal Employment Opportunity

Decisions that can get employers into trouble.



Recruitment and hiring
Discipline and demotions
Salary increases and bonuses
Transfers and promotions
Assignments and training
Invitations to meetings
Terminations and layoffs

Equal Employment Opportunity

Sexual Harassment

=

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Equal Employment Opportunity

Economic Harassment

=

- Taking any tangible employment action based on agreement or refusal to engage in certain conduct.
- Involves a threat or promise of a benefit linked to a protected characteristic.
- “Quid Pro Quo”

Equal Employment Opportunity

Environmental Harassment

=

- Unwelcome conduct based on someone's membership in a protected category that unreasonably:
 - Interferes with an employee's job performance, or
 - Creates an intimidating, hostile, or offensive work environment.

Equal Employment Opportunity

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Key Concepts

- The victim does not have to be of the opposite sex.
- The offender or offended can be a supervisor, agent of the employer, supervisor in another area, a co-worker, or a non-employee.
- The offended need not be the target of the conduct.
- Economic injury is not required.

Equal Employment Opportunity

Policies

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- These policies should apply to:
 - Inappropriate jokes
 - Off-site conduct
 - Third parties
 - Social media

Equal Employment Opportunity

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Duty to Investigate

- No such thing as “off the record”
 - Confidant
 - Clergy
- Conduct a good-faith investigation
- The investigation process must be treated as confidential manner as possible.
- A “good-faith investigation” constitutes a defense to any future claim and limits liability.
- Employees may NOT be told all actions that are taken.
- Have a zero-tolerance policy related to retaliation.

Equal Employment Opportunity

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Retaliation

EEO Laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination, including harassment.

For example, it's unlawful to retaliate against employees or applicants for the following:

- Communicating with a supervisor or manager about employment discrimination, including harassment.
- Answering questions during an employer investigation of alleged harassment.
- Refusing to follow orders that would result in discrimination.
- Resisting sexual advances or intervening to protect others.
- Requesting accommodation of a disability or for a religious practice.
- Asking managers or co-workers about salary information to uncover potentially discriminatory wages.

Equal Employment Opportunity

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R e t a l i a t i o n

The following could be construed as retaliation:

- Reprimanding the employee or give a performance evaluation that is lower than it should be.
- Transferring the employee to a less desirable position.
- Engaging in verbal or physical abuse.
- Increasing scrutiny.
- Spreading false rumors.
- Treating a family member negatively.
- Making the person's work more difficult (for example, punishing an employee for an EEO complaint by purposefully changing his work schedule to conflict with family responsibilities).

Corrective Action and Documentation

Corrective Action and Documentation

WHY?



Allows you to
organize your
thoughts and plan for
the meeting.



Helps establish
expectations for the
employee.



Reduces any
confusion or
ambiguity later.



Stands up in court.

Corrective Action and Documentation =

Specificity

- Date, time, description of incidents
- Date of memorandum
- Specific examples (current and past)
- Objective terms
- Names of people involved
- Policy violation(s)
- Consequences
- Purpose
- Employee reaction
- Date and time of meeting
- Agreement/signature

Corrective Action and Documentation =

Example

To: Tristan's Personnel File

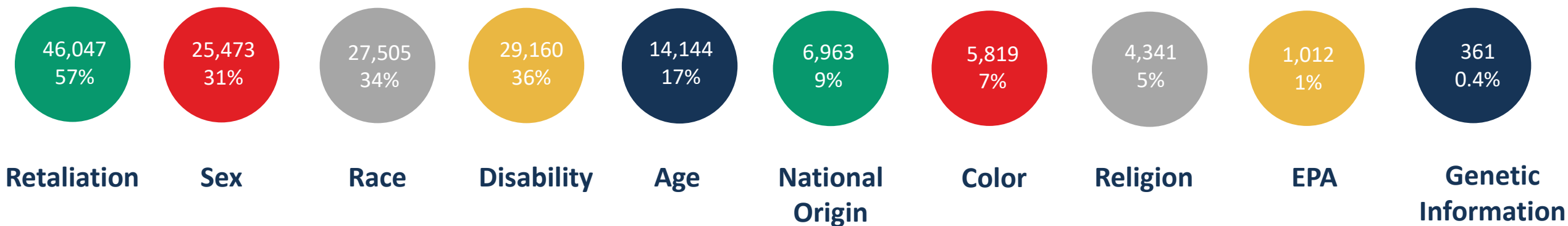
From: Jennifer

RE: Meeting, 3/30/2022

Tristan is becoming quite a challenge. He is always late, and I have to cover for him with his clients who are complaining left-and-right. When I spoke with him, he was very uncooperative. I told him he needs to tell me when he is going to be late. The entire team is fed up with his antics. He is un-coachable, and I will be writing him up.

Employment Laws

EEOC Fiscal Year Statistics



The EEOC received **88,531** new charges of discrimination in FY 2024, reflecting an increase of more than 9% over FY 2023. The agency effectively managed this growing demand, ending the fiscal year with 52,080 charges pending—only a slight increase from the 51,100 charges pending at the close of FY 2023.



Thank you!



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