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Outline of Statutes and Regulations Affecting the Workplace

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Outline of Statutes and Regulations Affecting the Workplace

Comments

Report Submitted to the Commission on the Future of Worker-Management Relations

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OUTLINE OF STATUTES AND REGULATIONS
AFFECTING THE WORK PLACE

DISCLAIMER

This document is not intended to be a complete listing of statutes and regulations which have an impact on work places. It is intended to give readers a general idea of the legislation and regulations representative of federal labor and employment laws. No attempt has been made to examine include all state or local labor and employment laws, all tax or accounting issues that affect workers, employers and their places of work, environmental or transportation statutes and regulations and in general, no attempt has been made to examine criminal statutes which affect the work place.

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This document has been prepared for the Commission on the Future of Worker-Management Relations
by the Office of the Assistant Secretary for Policy
United States Department of Labor
June 21, 1993

TABLE OF CONTENTS

	Page
A. <u>EMPLOYMENT AND TRAINING LEGISLATION</u> . . . . .	. 1
Job Training Statutes	
Employment Service	
Veterans Employment and Training	
Employment Certification of Nonimmigrants	
Other Employment and Training Legislation	
B. <u>INCOME MAINTENANCE</u> . . . . .	. 4
Economic Dislocation	
Workers Compensation	
Retirement Security	
Health and Welfare Benefits	
C. <u>EMPLOYMENT STANDARDS</u> . . . . .	. 10
D. <u>LABOR MANAGEMENT SERVICES</u> . . . . .	. 12
E. <u>SAFETY AND HEALTH</u> . . . . .	. 13
F. <u>WHISTLEBLOWER PROTECTIONS AND ANTI-REPRISAL PROVISIONS OF OTHER STATUTES</u> . . . . .	. 15
G. <u>NONDISCRIMINATION</u> . . . . .	. 18
H. <u>OTHER STATUTES THAT AFFECT THE WORK PLACE</u> . . . . .	. 20
I. <u>INTERNATIONAL ACTIVITIES</u> . . . . .	. 21
J. <u>ORGANIC ACTS</u> . . . . .	. 25
Appendix	

[N.B. Laws mentioned in this document which affect workers or work places, but are not solely under the jurisdiction of the Department of Labor are marked with a *. These statutes may include those under the jurisdiction of other federal agencies, under shared jurisdiction or under the jurisdiction of the states.]

A. EMPLOYMENT AND TRAINING LEGISLATION

JOB TRAINING STATUTES

- o Job Training Partnership Act, 29 U.S.C. 1501 et seq., provides funding for preparing unskilled, low-income persons and dislocated workers for self-sustaining jobs through training and employment programs administered by federal-state-local government partnerships with private sector labor, business and industry groups.

Regulations: 20 CFR Parts 626 through 631 and 637; 29 CFR Part 34 (non-discrimination and equal opportunity provisions)

- * o Job Opportunities and Basic Skills Training Program (JOBS) was authorized under the Family Support Act of 1988 (Pub.L. 100-485). JOBS is administered by the states subject to the approval of HHS and is also coordinated with JTPA. This law requires AFDC recipients to register for work and provides funding for job search, work experience and job training for AFDC recipients to enable them to achieve economic self-sufficiency.
- * o Targeted Jobs Tax Credit (TJTC) provisions of the Internal Revenue Code, 26 U.S.C. 51, provide a tax credit to employers for hiring workers with perceived barriers to employment. TJTC is administered at the federal level by the Employment and Training Administration, the Internal Revenue Service and the Office of Vocational and Adult Education at the U.S. Department of Education.
- o Older Americans Community Service Employment Program 42 U.S.C. 3056 et seq., provides funding for part-time employment opportunities in community service activities for unemployed low-income persons 55 years or older. The statute requires employers of eligible older workers (primarily government agencies and private non-profit entities) to maintain certain standards for wages and working conditions.

Regulations: 29 CFR Part 89

- o National Apprenticeship Act, 29 U.S.C. 50, created a federal-State partnership to encourage high standards for apprenticeship training and to promote the concept of apprenticeship training among business and industry. Participation in a registered program imposes certain wage, working condition and equal employment opportunity requirements on employers or unions and permits employers to pay apprentices and trainees less than journeyman wages under the Davis-Bacon Act and related laws.

Regulations: 29 CFR Parts 29 and 30

- o Women in Apprenticeship and Nontraditional Occupations Act, (P.L. 102-530) (signed into law on October 27, 1992) establishes a program of competitive grants, to be awarded by the Department of Labor, to community-based organizations to provide technical assistance to employer and labor unions in order to promote opportunities for women in apprenticeship and nontraditional occupations. (This program has not been funded by Congress.)
- o National Literacy Act of 1991, (P.L. 102-73) establishes a National Workforce Literacy Assistance Collaborative within the Department of Labor to assist small and medium-sized

businesses, associations representing small businesses, and labor organizations in developing and implementing literacy programs tailored to the needs of the workforce.

- * o Stewart McKinney Homeless Assistance Act, 42 U.S.C. 11441, 11448, authorizes the Secretary of Labor to make grants for job training demonstration projects for homeless individuals, including homeless veterans.

EMPLOYMENT SERVICE

- o Wagner-Peyser Act, 29 U.S.C. 49 *et seq.*, created the U.S. Employment Service and the federal-state system of public employment offices which provide a labor exchange for workers and employers. Use of the Employment Service (Job Service) is voluntary for employers except for those seeking to import alien workers, and federal contractors who must list their vacancies with the Employment Service to help satisfy affirmative action obligations to veterans, minorities, and/or women under federal contract requirements or court orders.

To be able to have a job order processed by the Employment Service, an employer must offer a job that meets certain conditions regarding wages and working conditions. Similarly, the use of the Employment Service is voluntary for most workers. Workers seeking government benefits, such as food stamps or unemployment insurance, are required to register with the Employment Service and maintain some level of active job search.

Regulations: 20 CFR Parts 651 through 654

VETERANS' EMPLOYMENT AND TRAINING

- o Veterans' Employment Program, Title IV-C of JTPA, 29 U.S.C. 1721. Title IV-C of JTPA authorizes the Secretary of Labor to conduct programs to meet the employment a training needs of service-connected disabled veterans, veterans of the Vietnam Era and veterans who are recently separated from military service.

Regulations: 20 CFR Part 1005

- o Veterans' Employment and Training Service, 38 U.S.C. 4100 *et seq.*, makes special job training, counseling and placement services available to veterans through the Public Employment Service system under the administration of the Assistant Secretary for Veterans' Employment and Training (ASVET).

Regulations: 20 CFR Part 1001

- o Disabled Veterans' Outreach Program (DVOP), 38 U.S.C. 4103A, also provides for staff to carry out a special outreach program giving priority of services primarily to disabled veterans through the U.S. Employment Service system.

Regulations: 20 CFR Part 1001

- o Local Veterans' Employment Representatives, 38 U.S.C. 4104 provides for assignment of such representatives in local offices of the State employment service, and delineates their duties under the administration of the ASVET.

Regulations: 20 CFR Part 1001

- o Veterans' Reemployment Rights Act, 38 U.S.C., Chapter 43, provides reemployment rights for persons returning from active duty or from reserve training and National Guard duty. The purpose of the law is to assure reemployment of veterans and to protect them from being penalized by reason of their absence to fulfill their military obligations. A 1986 amendment to 38 U.S.C. also forbids employment discrimination against reservists and members of the National Guard.
- * o Transition Assistance Program, 10 U.S.C. 1143 *et seq.*, provides employment assistance to those service members, and their spouses, who are within 180 days of separation from military service. This program is administered jointly the Departments of Labor, Defense and Veterans Affairs.
- * o Service Members Occupational Conversion Training Act, Section 4481 *et seq.*, of the National Defense Conversion Act of 1992, assists newly separated service members whose military occupational skills do not have a civilian labor force equivalent with training services to facilitate their integration into the labor force. This program is jointly administered by the Departments of Labor, Defense and Veterans affairs.

EMPLOYMENT CERTIFICATION OF NONIMMIGRANTS

- * o Immigration and Nationality Act, as amended by the Immigration Reform and Control Act, 8 U.S.C. 1101 *et seq.* This Act directs the Department of Labor to certify both permanent and temporary labor programs which utilize nonimmigrant labor.

Regulations: 29 CFR Part 502 and 20 CFR Part 655
- o Immigration Act of 1990, P.L. 101-649, 104 State. 4978 (1990), which created three new temporary nonimmigrant visa programs that are administered by the Employment and Training Administration and enforced by the Employment Standards Administration, i.e. H-1B (professionals); D-1 (crew members); F1 (students).

Regulations: 22 CFR Part 89; 42 CFR Part 34
- * o Permanent Alien Labor Certification, 8 U.S.C. 1182(a)(14), requires employers seeking to import aliens for permanent jobs to first recruit U.S. workers in accordance with regulatory requirements and to offer certain wages and working conditions to those workers when recruiting.

Regulations: 20 CFR Part 656
- * o Temporary Alien Labor Certification, 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c) and 1185, as amended by the Immigration Reform and Control Act, Pub.L. 99-603, § 301. DOL's role in administering the provisions of this statute is similar to its role in permanent employment certification. Also, under this program the Secretary actually sets a minimum wage rate for agriculture, the Adverse Effect Wage Rate, that must be offered to alien workers and their U.S. co-workers. In other occupations only the prevailing wage in the area and occupation must be offered. The agricultural certification program is conferred on DOL by statute; the nonagricultural program is delegated to DOL through regulations of the Immigration and Naturalization Service which appear at 8 CFR 214.2(h).

Regulations: 29 CFR Part 501 and 20 CFR Part 655

- o Immigration Nursing Relief Act of 1989, 8 U.S.C. 1182 note was enacted to provide temporary relief for the shortage of registered nurses by legalizing current nonimmigrant registered nurses and ensuring employer efforts to attract and develop more United States employees to the nursing profession. The Act requires health facilities that wish to hire nonimmigrant nurses to make certain attestations to the Department's Employment and Training Administration. The Wage and Hour Division of the Employment Standards Administration is responsible for investigating and resolving complaints.

Regulations: 29 CFR Part 504 and 20 CFR Parts 621 and 655

OTHER EMPLOYMENT AND TRAINING LEGISLATION

- * o Consolidated Farm and Rural Development Act of 1972, 7 U.S.C. 1932(d). When the Secretary of Agriculture proposes to make certain kinds of loans, loan guarantees or grants for rural development activities, the Secretary of Labor is required to investigate and determine whether the project will result in a transfer of employment from another area or will result in an increase of productivity which will create a surplus of goods in the area. These activities require that a firm proposing to build a plant in a rural area maintain records sufficient to enable the Secretary to make these determinations.

Regulations: 29 CFR Parts 75.1 to 75.11

- o Executive Orders 12073 and 10582, Labor Surplus Area Program. The Employment and Training Administration periodically classifies areas as labor surplus areas and areas of substantial unemployment upon petition from State employment security agencies. Priority in granting federal procurement contracts is given to employers performing work in such areas.

B. INCOME MAINTENANCE

ECONOMIC DISLOCATION

- * o Unemployment Compensation Act, as amended, 42 U.S.C. 501-504, 1101-1109, 1301-1307 and 1320b-7, 1321-1324; 26 U.S.C. 3301-3311. This Act levies a federal tax on wages paid by employers. The tax is devoted to paying benefits to workers who lose their employment through no fault of their own. Unemployed individuals must be able to work and be available for work in order to qualify for benefits. Workers may be denied benefits if they leave work in disqualifying circumstances. Basic unemployment benefits last for 26 weeks.

Regulations: 20 CFR Parts 601, 602, 603 and 606; Title III, Social Security Act, Grants to States for Unemployment Compensation: 29 CFR Chapter V, 20 CFR Subtitle A and 45 CFR Subtitle A; Title IX, Social Security Act, Miscellaneous Provisions Relating to Employment Security: 20 CFR Chapter V; Title XII, Social Security Act, Advances to State Unemployment Funds: 20 CFR Chapter V,

- * o Federal-state Extended Unemployment Compensation Act of 1970, Title II of Pub.L. 91-373, provides that state laws are required to provide for the payment of additional weeks of unemployment benefits in times of high unemployment. Workers are required to make a more thorough work search and to accept "suitable employment" more broadly defined than under the regular program as a condition of receiving benefits. Extended unemployment

benefits usually last for an additional 13 weeks.

Regulations: 20 CFR Part 615

- * o Unemployment Compensation for Federal Employees (UCFE), 5 U.S.C. 8501-8509, provides for unemployment benefits on the basis of federal service under the terms and conditions of the applicable state law.

Regulations: 20 CFR Part 609

- * o Unemployment Compensation for Ex-Service Members (UCX), 5 U.S.C. 8521-8525 provides benefits for ex-service personnel on terms and conditions different from those provided for federal employees. These include a four week waiting period and a maximum of 13 weeks of benefits in a benefit year.

Regulations: 20 CFR Part 614

- * o Disaster Unemployment Assistance, 42 U.S.C. 5177, provides unemployment assistance for individuals who become unemployed due to a declared disaster. Assistance is available to eligible individuals for up to 26 weeks after a declaration is issued by the President.

Regulations: 20 CFR Part 625

- o Trade Adjustment Assistance, 19 U.S.C. 2271 et seq., provides for unemployment allowances and other readjustment assistance (work search, relocation assistance and training) for workers who are unemployed due to foreign competition. The Secretary must investigate and determine whether a total or partial closing of an employer's operation results from imports. There are burdens on employers to produce records to assist in the Secretary's investigations and payments of adjustment assistance.

Regulations: 20 CFR Part 617

- o Worker Adjustment and Retraining Notification Act (WARN), Pub.L. 100-379. This Act generally requires employers with 100 or more employees to provide 60 days advance written notice of a plant closing or mass layoff to individual affected employees, local governments, and the state dislocated worker unit. The Department does not have an enforcement role under the Act but is responsible for issuing interpretative regulations.

Regulations: 20 CFR Part 639

- * o Clean Air Employment Transition Assistance Program, Title XI, Section 1101 of the Clean Air Act Amendments of 1990 amended the Job Training Partnership Act by adding a new Section 236. Section 236 provides for the Clean Air Employment Transition Assistance Program. This program provides training and readjustment aid to workers dislocated as a result of employer's compliance with the Clean Air Act Amendments.

- * o Federal Transit Act of 1992 (FTA), Section 13(c), 49 U.S.C. 1609(c), provides that as a condition of federal grants and loans to state and local public bodies for financing mass transportation services under the FTA, the Secretary of Labor shall protect the interests of employees adversely affected by federal assistance.

Section 13(c) mandates that these protective arrangements include certain specific provisions. To carry out these requirements, the Department of Labor reviews agreements reached between employee representatives and state and local governments, transit authorities or other relevant employers to determine whether they satisfy the requirements of the Act. The Department may impose provisions on the parties' agreements if necessary. The arrangements certified by the Department are included in the contract of assistance between the Department of Transportation and the grant recipient. The Department also arbitrates disputes arising out of the employee protections as designated in the arrangements.

Regulations: 29 CFR Parts 215.1 through 215.7

- * o Rail Passenger Service Act of 1970, 45 U.S.C. 565, § 405 requires the Secretary of Labor to certify that labor protective agreements are established for railroad employees affected by the creation of AMTRAK. Under this protective arrangement, employees not represented by a labor organization may submit disputes arising under the terms of the protective arrangements to the Secretary of Labor for determination.
- * o Section 43 of the Airline Deregulation Act of 1978, Pub. L. 95-504 (49 U.S.C. 1552), provides a type of unemployment benefits and rehire protections for employees wholly or partially unemployed or otherwise adversely affected by airline deregulation.

Monetary benefits available under this program would be contingent upon appropriations by Congress, but to date, no money has been appropriated to pay such benefits. The Secretary of Labor has responsibility for provisions concerning protected employees' priority rehire rights, air carriers' duty to hire and compilation of a comprehensive job vacancy listing.

- o Redwood Act of 1978, Pub. L. 95-250, in Title II provided benefits to workers dislocated by the 1978 expansion of the Redwood National Park including dislocation allowances, severance pay, health and welfare benefits and pension benefits. The period of protections under this program expired on September 30, 1984, except that former employees who reached age 60 on or before the expiration date remained eligible for benefits until age 65.

Regulations: 29 CFR Parts 92

WORKERS COMPENSATION

- o Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., and its extensions: the Defense Base Act, 42 U.S.C. 1651 et seq.; the Outer Continental Shelf Lands Act, 43 U.S.C. 1331, et seq. and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171, et seq. The Longshore Act and its extensions provide benefits to specified workers who are injured or killed on the navigable waters of the United States or in certain adjacent areas.

Under this statute, employers are required to secure their compensation liability either by buying commercial insurance or by obtaining the Office of Worker Compensation Program's (OWCP) authorization to self insure (pay benefits directly to their employees). Employers who fail to secure their liability may be subjected to criminal penalties. The Longshore Act is a federally administered but privately financed workers' compensation program.

Regulations: 20 CFR Parts 701-704

- o Black Lung Benefits Act, 30 U.S.C. 901, et seq., provides benefits to coal miners, who are totally disabled due to coal workers' pneumoconiosis (black lung disease) and to certain survivors of coal miners who died due to or while totally disabled by this disease. The statute imposes primary financial liability for the costs of the program on coal mine operators, but also provides for the payment of certain benefits out of a trust fund financed by a tonnage tax on coal. Employers are required to secure the payment of benefits either by qualifying as a self-insurer or by insuring through the private insurance market. The Black Lung Disability Trust Fund, administered by the Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, provides for payment of benefits directly when no responsible mine operator can be held legally responsible.

Regulations: 20 CFR Parts 718, 722, 725, 726 and 727

- o Federal Employees' Compensation Act, 5 U.S.C. 8101 et seq., provides benefits to federal employees, and certain other individuals, who are injured or killed on the job. The Department of Labor is solely responsible for adjudicating claims for benefits. Decisions on these claims are reviewable only by the Employees' Compensation Appeals Board established under 5 U.S.C. 8149. Employers, i.e., employing agencies, are not parties to the claims process although they are required to furnish information and documents. Benefits are paid by the Department from the Employees' Compensation Fund, the costs to which are charged back to the agency, which then reimburses the fund out of their annual appropriation. (5 U.S.C. 8147)

Regulations: 20 CFR Part 10 (FECA regulations); 20 CFR Part 501 (Employees' Compensation Appeal Board regulations); 29 CFR Part 220

- o Federal Employers' Liability Act, 45 U.S.C.A. §§51 to 60, makes common carriers liable for injuries to any individual during the course of his or her employment, regardless of fault. The provisions of the Jones Act (which protects seaman who have been injured in the course of their employment) have been incorporated into the Federal Employers' Liability Act.
- * o State Workers' Compensation Laws, each of the 50 states, American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands has a workers' compensation law. Workers' compensation laws assure that workers who are injured on the job receive income maintenance, medical benefits and rehabilitation benefits. Benefits, coverage and standards vary widely by jurisdiction. In 1991, workers' compensation cost employers an estimated \$52 billion.

RETIREMENT AND OLD AGE SECURITY

- * o Social Security Act, 42 U.S.C. 401 et seq. The Social Security Act contains authorizing language for several broadly-based social programs. These programs will provide income maintenance, disability, health care or other services and benefits to most Americans at some time during their lives. Many Social Security Act benefits, such as Old Age Survivors Insurance and Medicare, are financed through payroll taxes. The Secretary of Labor is on the Board of Trustees of the Social Security Trust Fund.

Regulations: Title I, Grants to States for Old Age Assistance 45 CFR Chapter XIII, Subtitle A, Title II, Federal Old-Age, Survivors and Disability Insurance Benefits, 20 CFR Chapter III, Title XVI, Supplemental Security Income for the Blind, Aged and Disabled, 20 CFR Chapter III.

- * o Employee Retirement Income Security Act of 1974, as amended, (ERISA), 29 U.S.C. 1001 et seq., establishes a comprehensive federal regulatory scheme covering most private sector employee pension and welfare benefit plans established by employers, by employee organizations (such as unions), or by both. The Department of Labor has jurisdiction over ERISA's Title I provisions. This title provides standards for covered plans in the areas of reporting and disclosure, participation, vesting, funding and fiduciary responsibility.

The Department of Labor's principal responsibility is the administration and enforcement of these provisions. In addition, the Secretary of Labor chairs the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC). The corporation operates insurance programs for single- and multi-employer defined benefit pension plans under Title IV of ERISA. Defined contribution plans, such as §401(k) plans are not covered by the insurance program.

The Internal Revenue Service has many Internal Revenue Code provisions that parallel those in ERISA and has an impressive body of regulations governing pension plans. The Pension Benefit Guaranty Corporation also has its own regulations governing pensions. An administrative organization in 1978 placed virtually all authority with respect to reporting and disclosure and fiduciary responsibility with the Department of Labor, and authority for participation, vesting and funding with the Internal Revenue Service.

Regulations: 29 CFR Parts 2509 through 2590; 29 CFR Parts 2601 through 2677

Representative Regulations (published by DOL)

Definitions

- 2510.3-18 adequate consideration
- 2510.3-21 fiduciary
- 2510.3-101 plan assets

Reporting and Disclosure

- 2520.101-1 duty of reporting and disclosure
- 2520.103-1 contents of an annual report through
- 2520.103-2
- 2520.104-1 general (reporting and disclosure requirements)
- 2520.104-41 simplified annual reporting requirements for plans with fewer than 100 participants
- 2520.104-48 alternative method of compliance for through
- 2520.104-49 model simplified employee pension plans
- 2520.104a-2 plan description reporting requirements
- 2520.104a-3 summary plan description
- 2520.104b-1 disclosure requirements
- 2520.104b summary annual report

Fiduciary Standards

- 2550.403a-1 establishment of trust
- 2550.403b-1 exemptions from trust requirement
- 2550.404a-1 investment duties
- 2550.404c-1 participant directed individual account plan
- 2550.407a-1 rules for the acquisition and holding of through
- 2550.407a-3 employer securities and real property

2550.408b-2 statutory exemption for provision of services or office space to plan
 2550.408b-3 statutory exemption for loans to employee stock ownership plan
 2550.408e statutory exemption for acquisition or sale of qualifying employer securities or real property
 2560.502c-2 civil penalties under section 502(c)(2)
 2560.502(l)-1 civil penalties under section 502(l)
 (substantive, proposed regulations)
 2570.60 procedures for assessing 502(c)(2) penalties
 2570.80 procedures for assessing 502(l) penalties

- o Retirement Equity Act of 1984, Pub. L. 98-575, amended ERISA and the Internal Revenue Code to promote pension equity between men and women. Among other things, the Act standardized vesting and participation rules, established mandatory joint and survivor annuity rules, established rules regarding assignment or alienation of benefits in divorce and liberalized rules regarding "breaks in service" to take into consideration the need for maternity and paternity leave.

Regulations: 29 CFR Parts 2509 through 2590

- * o Older Workers Benefit Protection Act, 29 U.S.C. 623, amends the Age Discrimination in Employment Act to prohibit employers from discriminating against older in provision of benefits or benefits and other non-retirement benefits (such as severance pay), or from coercing older workers to sign waivers of their rights under the Age Discrimination in Employment Act.

Regulations: 29 CFR Part 1625.1

- * o Federal Employees Retirement System Act of 1986 (FERSA), 5 U.S.C. 8401 *et seq.*, established a new retirement system for most civilian federal employees hired after December 1983 and which provided for participation by certain other federal employees. In general, the system is designed to provide benefits from three sources: a basic annuity, Social Security and a thrift savings plan (with elective employee contributions and matching government contributions). FERSA establishes a Federal Retirement Thrift Investment Board to administer the thrift plan.

The Department's Pension and Welfare Benefits Administration (PWBA) has enforcement and some administrative authority. For instance, PWBA is required to conduct a system of audits to determine the level of compliance with the fiduciary provisions of FERSA applicable to the operation of the thrift plan, which are patterned after those contained in ERISA.

Regulations: 5 CFR Part 1600; 29 CFR Parts 2570, 2582, 2584 and 2589.

- * o Railroad Retirement Act, 46 U.S.C. 231 *et seq.* The Railroad Retirement Act created the Railroad Retirement System (RRS), a federally legislated retirement system providing retirement, survivor, and disability protection for workers with at least 10 years of railroad employment. The system is financed by employee and employer contributions to a trust fund and by reimbursement from the social security system for obligations of that system paid to RRS.

Regulations: 20 CFR Part 210.1

HEALTH AND WELFARE BENEFITS

- o Employee Retirement Income Security Act of 1974, as amended, (ERISA), 29 U.S.C. 1001 et seq., requires most private sector health and welfare benefit plans to disclose certain information about their plans to the federal government and their participants and beneficiaries and to meet fiduciary standards established under the Act.

Currently, more than 70 percent of the non-elderly population receive health insurance coverage through an employment-based plan. Another 15 percent purchase individual policies or are covered through a government plan. Of the 15 percent who remain uninsured, about three quarters of these are either employed or in families with at least one member who is working, but who does not receive medical insurance as an employment benefit. The Department of Labor has enforcement responsibility with regard to health and welfare plans.

Regulations: 29 CFR Parts 2509 through 2590

- * o Medicare, 42 U.S.C. Chapter 7, Subchapter XVIII, §§1395-1395ccc, is a nationwide health insurance program benefitting millions of aged and disabled persons. It is composed of a hospital insurance program and a Supplementary Medical Insurance program that covers physician's services and a range of other medical services. Benefits under this program are financed through payroll taxes.

Regulations: 42 CFR Chapter IV and 45 CFR Subtitle A

- * o Medicaid, 42 U.S.C. Chapter 7, Subchapter XIX, §§1396-1396u, is a federal-state matching program providing medical assistance for low-income persons who are aged, blind, disabled or members of families with dependent children. In some jurisdictions, Medicaid provides services to the "medically needy" who may even be defined as persons whose income or resources exceed the standards for the cash assistance part of the program, but who have other medical needs, such as a need for long-term care in a nursing facility. In other jurisdictions the definition of medically needy can reach individuals who are employed but qualify for medical assistance based on low wages or other qualifying criteria.

Regulations: 42 CFR Chapter IV and 45 CFR Subtitle A

C. EMPLOYMENT STANDARDS

- o Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., establishes minimum wage, overtime pay, recordkeeping and child labor standards which affect 63 million employees in private firms, 7.7 million employees of state and local governments, and 2.3 million federal government employees. Covered, non-exempt workers are entitled to a minimum wage of not less than \$4.25 per hour and overtime pay at a rate of not less than one and one-half times their regular rates of pay (generally after 40 hours of work in a workweek). Under certain conditions, state and local government workers can receive compensatory time off in lieu of cash overtime wages. The Office of Personnel Management administers FLSA with respect to federal employees.

Regulations: 29 CFR Part 510-800 (minimum wage and overtime); 29 CFR 570-580 (child labor); 29 CFR Part 541 (professional, executive and administrative).

- o Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, protects migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. All persons and organizations subject to the Act must observe the provisions of the Act when recruiting, soliciting, hiring, employing, transporting, or housing these workers or when furnishing their services to other employers, unless an exemption applies. Certain persons and organizations, such as small businesses, labor unions, and their employees, are exempt from the Act.

Regulations: **29 CFR Part 500**

- o Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*, requires private sector employers with 50 or more workers to provide up to 12 weeks of unpaid, job-protected leave to take care of a newborn or newly adopted child, to take care of a sick child, spouse or parent, or due to the employee's own serious health condition. The law also affects employees of state and local governments, the federal government and Congress.

Regulations: **29 CFR Part 825**

- o Employee Polygraph Protection Act, 29 U.S.C. 2001-2009, provides most employees and prospective employees in the private sector with protections against use of any lie-detector either for pre-employment screening or during the course of their employment, with certain limited exceptions.

Regulations: **29 CFR Part 801**

- o Copeland "Anti-Kickback" Act, 40 U.S.C. 276c. This legislation provides that the Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in federal or federally-assisted construction or repair on public works and public building projects. The Act and its accompanying regulations require submission of the contractor's payroll to the federal contracting agency each week. The Act provides criminal penalties for inducing workers on federally financed or assisted construction to give up any part of the compensation to which they are entitled. Submission of false statements is subject to criminal penalties under 18 U.S.C. 1001.

Regulations: **29 CFR Part 3**

- o Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. 327 *et seq.* This Act requires payment of overtime wages at one and one half times the basic rate of pay for any work performed after 40 hours a week on all government contracts (not just construction), with limited exemptions, and on federally-assisted construction contracts subject to the Davis-Bacon Related Acts.

Regulations: **29 CFR Part 5**

- o Service Contract Act (SCA), 41 U.S.C. 351 et seq. The Service Contract Act provides minimum compensation and safety and health standards for employees of contractors and subcontractors providing services under U.S. Government contracts. Service workers must be paid not less than the federal minimum wage on contracts of \$2,500 or less: and on contracts over \$2,500, no less than locally prevailing wages and fringe benefits or, in certain cases, the wages and fringe benefits contained in a predecessor contractor's collective bargaining agreement on successor contracts.

Regulations: 29 CFR Part 4, 6 and 8

- o Walsh-Healey Public Contracts Act (PCA), 41 U.S.C. 35 et seq. The Walsh-Healey Act provides labor standards for employees working on federal contracts which value more than \$10,000 for the manufacturing or furnishing of materials, supplies, articles or equipment. The Act contains minimum wage, maximum hours, and safety and health standards, and prohibits the employment of children under 16 years of age or convict labor on contract work. NB. The Walsh-Healey provisions for wage standards have not been in force since the decision in Wirtz v. Balder Electric Company 337 F.2d 518 (D.C. Cir. 1964).

Regulations: 41 CFR Part 50-201, 202 and 206

- o Davis-Bacon Act (DBA), Pub.L. 74-403, 40 U.S.C. 276a et seq. This Act requires payment of prevailing wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors on federal government contracts over \$2,000 for construction, alteration, repair, painting or decorating of public buildings or public works.

Regulations: 29 CFR Part 1, 3, 5, 6 and 7.

- o Davis-Bacon Related Acts (DBRA), authorize federal expenditures and other types of federal assistance (loans, grants, etc) for construction under statutes which incorporate Davis-Bacon prevailing wage provisions by reference. The DBRA have greatly expanded the impact of prevailing wage and benefit requirements. A number of the related Acts are listed in Appendix A.

- * o State "Little" Davis-Bacon Acts. Currently 32 states have "little" Davis-Bacon laws which establish prevailing wage standards for state construction projects. The standards and thresholds of coverage vary from state to state and for example, some states cover only public school or college/university construction projects. Eighteen states do not have prevailing wage laws.

D. LABOR MANAGEMENT SERVICES

- o Labor-Management Reporting and Disclosure Act of 1959, (LMRDA) as amended, 29 U.S.C. 401 et seq., protects the rights and interests of union members and the public generally as they relate to the activities of labor organizations, their officers and representatives, employers, and labor relations consultants. The Department of Labor is charged with administering Titles II (reporting), III (trusteeships), IV (elections), certain sections of Titles V (safeguards for labor organizations) and VI (investigations) of the Act. In addition, the Department has authority to enforce section 104 of the LMRDA relating to the right of union members and/or employees to receive or inspect copies of collective bargaining agreements.

Regulations: 29 CFR Part 401-453

- * o Civil Service Reform Act (CSRA), 5 U.S.C. 7120, provides that most federal employee labor organizations are subject to standards of conduct similar to the requirements of the LMRDA.

Regulations: 29 CFR Part 457-459

- * o Foreign Service Act, 22 U.S.C. 4117 provides that unions composed of members of the Foreign Service are subject to standards of conduct similar to the requirements of the LMRDA.

Regulations: 29 CFR Part 457-459

E. SAFETY AND HEALTH

- o Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*, applies to employers engaged in a business affecting commerce, in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territories of the Pacific, Wake Island, the Outer Continental Shelf, and Johnston Island. Coverage is extended to state and local government employees by those states operating federally-approved state occupational safety and health plans. Federal agency heads are responsible for providing safe and healthful working conditions of employment consistent with section 19 of the Act (and implementing Executive Order 12196). The Act does not apply to the self-employed, or to workers to the extent that they are covered by other federal safety and health regulations. It is estimated, for private industry alone, the Act covers 6.2 million work places employing 93 million workers.

Each employer has the statutory duty to furnish each employee with work and a workplace free from recognized hazards that can cause death or serious physical harm. Employers are also statutorily obligated to comply with safety and health standards established by the Department of Labor. Each employee must comply with occupational safety and health standards, and all rules and regulations issued under the Act which are applicable to his or her own actions and conduct. Under §11(c) of the Act, employees have the right to report safety or health dangers without fear of reprisal.

The Occupational Safety and Health Act in §4(b)(1) states that the provisions of the Act are not intended to provide safety and health protection for individuals with respect to whom federal agencies or state agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. Those individuals receive health or safety protections under various discrete statutes concerning nuclear power plants, railroads, airlines or the Coast Guard.

Regulations for the Occupational Safety and Health Act: 29 CFR Parts 1900 to end.

Representative General Industry Regulations - Part 1910

1910.94 abrasive blasting, ventilation
1910.120 confined spaces
1910.333 electrical safety - related work practices
1910.272 grain handling
1910.211 machine guarding
1910.120(j) hazardous waste operations
1910.132 personal protection - general requirements
1910.66 powered platforms

- 1910.141 sanitation
- 1910.265 saws and sawmills
- 1910.119 process safety management
- 1910.21 walking/working surfaces

Health standards:

- 1910.1027 cadmium
- 1910.1000 air contaminants
- 1910.1001 asbestos
- 1010.1002 coal tar patch volatiles
- 1910.1003 4-Nitrobiphenyl
- 1910.1004 alpha-Napthylamine
- 1910.1006 Methyl chloromethyl ether
- 1910.1007 3,3' Dichlorobenzidine
- 1910.1008 bis-Chloromethyl ether
- 1910.1009 beta-Napthylamine
- 1910.1010 Benzidine
- 1910.1011 4-Aminodiphenyl
- 1910.1012 Ethyleneimine
- 1910.1013 beta-Propiolactone
- 1910.1014 2-Acetylaminofluorene
- 1910.1015 4-Dimethylaminoazobenzene
- 1910.1016 B-Nitrosodimethylamine
- 1910.1017 Vinyl chloride
- 1910.1018 Inorganic arsenic
- 1910.1025 Lead
- 1910.1028 Benzene
- 1910.1029 Coke oven emissions
- 1910.1030 Bloodborne pathogens
- 1910.1043 Cotton dust
- 1910.1044 1,2 dibromo-3-chloropropane
- 1910.1045 Acrylonitrile
- 1910.1047 Ethylene oxide
- 1910.1048 Formaldehyde
- 1910.1200 Hazard communication
- 1910.1450 Occupational exposure to hazardous chemicals in laboratories

Representative Miscellaneous Regulations

- 1913 Rules of agency practice and procedure concerning OSHA access to employee medical records
- 1915 standards for shipyards
- 1917 marine terminals

Representative Construction Regulations - Part 1926

- 1926.30 shipbuilding and ship repair
- 1926.58 asbestos
- 1926.59 hazard communication
- 1926.417 lock out and tagging circuits
- Subpart E personal protective equipment
- Subpart F fire protection and prevention
- Subpart L ladders and scaffolding
- Subpart M floors, stairways
- Subpart P excavations
- Subpart Q concrete and masonry
- Subpart S underground construction

Subpart T demolition

- o Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.*, protects the health and safety of miners, and covers all coal, metal, and non-metal mines in the United States and Puerto Rico. Mine operators are obligated to comply with safety and health standards established by the Department of Labor through the Mine Safety and Health Administration (MSHA).

Miners' rights include: the right to have a representative accompany MSHA inspectors during mine inspections, the right to obtain an inspection of a mine where there are reasonable grounds to believe that an imminent danger or a violation of the Act or of a health or safety standard exists, the right to receive pay during certain time periods when a mine or part of a mine has been closed because of an MSHA-issued withdrawal order, the right to be protected from discrimination by a mine operator based on the exercise of rights granted by the Act (e.g., reporting a safety hazard to the Mine Safety and Health Administration), and the right to appropriate health and safety training.

Operators may challenge proposed citations and proposed penalties for violations of the Act. A miner or representatives of miners may contest the issuance, modification or termination of certain orders issued under the Act, and may challenge the reasonableness of the time set by MSHA for abatement of citations issued under the Act. Hearings before administrative law judges are provided for, as well as appeals to the Federal Mine Safety and Health Review Commission and the U.S. courts of appeals. Both mine operators and miners, or their representatives, can seek modification from MSHA of mandatory safety standards. A review procedure within the Department is established where the appropriateness of a modification can be challenged.

Regulations: 30 CFR Parts 1 to 199

Representative Regulations

Subchapter B - testing, evaluation and approval of mining products

Subchapter G - filing and other administrative requirements

Subchapter H - education and training

Subchapter M - accidents, injuries, illnesses and employment and production in mines

Subchapter N - metal and nonmetal mine safety and health

Subchapter O - coal mine safety and health

Subchapter P - civil penalties for violations

F. WHISTLEBLOWER PROTECTIONS AND ANTI-REPRISAL PROVISIONS OF OTHER STATUTES

WHISTLEBLOWER PROTECTIONS

- o In addition to the Department of Labor, other agencies, such as the Department of Justice and the National Railroad Adjustment Board administer and enforce whistleblower statutes. The following list enumerates those administered in the Department of Labor.

Enforced by the Occupational Safety and Health Administration:

- o Occupational Safety and Health Act 29 U.S.C. §651 *et seq.*, at §660. Regulations: 29 CFR Part 1977.

- * o Asbestos Hazard Emergency Response Act of 1986 (AHERA) 15 U.S.C. §2651, at §211. Note: There are no implementing regulations for whistleblower protections under AHERA. Complaints are investigated and adjudicated like complaints under the §11(c) of the Occupational Safety and Health Act.
- * o Surface Transportation Assistance Act (STAA) 49 U.S.C. §2305, at §405. Regulations: 29 CFR Part 1978.
- * o International Safe Container Act (ISCA) 46 U.S.C. App. §1506, at § 7. Note: There are no implementing regulations for whistleblower protections under ISCA. Complaints are investigated and adjudicated like complaints under the §11(c) of the Occupational Safety and Health Act.

Enforced by the Mine Safety and Health Administration:

- o Federal Mine Safety and Health Act 30 U.S.C. at §§ 813(g)(1) and 815(c), at §105. Note: While there are no implementing regulations for the whistleblower provisions of the Mine Safety and Health Act, these complaints are processed through the MSHA Office of Special Investigations to determine whether there is any basis for temporary reinstatement or proceeding with the case to the Federal Mine Safety and Health Review Commission.

Enforced by the Employment Standards Administration:

- * o Clean Air Act (CAA) 42 U.S.C. §7622, at §322. Regulations: 29 CFR Part 24.
- * o Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. §9610, at §110. Regulations: 29 CFR Part 24.
- * o Energy Reorganization Act (ERA) 42 U.S.C. §5851, at §211. Regulations: 29 CFR Part 24.
- * o Federal Water Pollution Control Act (FWPCA) 33 U.S.C. §1367 at §507; 29 CFR 24. Regulations: 29 CFR Part 24.
- * o Safe Drinking Water Act (SDWA) 42 U.S.C. §300j-9(i), at §1450(i). Regulations: 29 CFR Part 24.
- * o Solid Waste Disposal Act (SWDA) 42 U.S.C. §6971, at §7001. Regulations: 29 CFR Part 24.
- * o Toxic Substances Control Act (TSCA) 15 U.S.C. §2622; at §23. Regulations: 29 CFR Part 24.

ANTI-REPRISAL PROVISIONS OF OTHER STATUTES

- o Fair Labor Standards Act, 29 U.S.C. at §215(a)(3) prohibits retaliation against an employee who files a complaint, institutes a proceeding or testifies in a proceeding under the Act. It also protects an employee who serves on an industry committee.

Regulations: 29 CFR Part 510

- o Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. at §1855 includes a provision forbidding discrimination against a worker who files a complaint, institutes a

proceeding or exercises with just cause any right provided by the Act on behalf of himself or others. Complaints must be filed with the Secretary of Labor within 180 days. Remedies include restraint of the violation, including rehiring or reinstatement along with back pay and damages.

Regulations: **29 CFR Part 500**

- * o Age Discrimination in Employment Act, 29 U.S.C. 621, *et seq.*, prohibits employment discrimination based on age against those over age 40, protects employees and applicants for employment who oppose employer practices which violate the Act and prohibits retaliation against employees or applicants for employment who file charges, testify, assist or participate in investigations, proceedings or litigation under the Act.

Regulations: **29 CFR Part 1625.1**

- * o Title VII of the Civil Rights Act of 1964, at 42 U.S.C. §2000e-3(a), prohibits employment discrimination based on race, color, religion, sex or national origin, further prohibits discrimination against an applicant or employee who has opposed an unlawful employment practice. It also prohibits retaliation against an employee or applicant who files a charge, testifies, assists or participates in an investigation, proceeding or hearing under Title VII.

Regulations: 29 CFR Part 1601 (procedural regulations)

- o Longshore and Harbor Workers' Compensation Act, 33 U.S.C. at §948a includes a provision which forbids discharge of or discrimination against any employee who attempts to claim compensation under the Act, or who testifies in a proceeding. Remedies include reinstatement and back pay.

Regulations: 20 CFR Part 701-704

- * o Employee Retirement Income Security Act, 29 U.S.C. at §1140 makes it unlawful to discriminate against a participant or beneficiary for exercising any right granted by an employee benefit plan, ERISA, or related laws. It also prohibits retaliation against an employee who has given information or testified in a proceeding.

Regulations: **29 CFR Parts 2509 through 2590**

- o Job Training Partnership Act, 29 U.S.C. at §1574(g) contains a provision prohibiting discharge or other discrimination against a participant or other individual who files a complaint, institutes a proceeding or testifies in an investigation under the Act.

Regulations: **20 CFR Parts 626 through 631, 637**

- o Employee Polygraph Protection Act of 1988, 29 U.S.C. at §2001 *et. seq.*, prohibits most private employers from using polygraph tests either for pre-employment screening or during the course of employment. Federal, State and local government employers are exempt from the Act. The law provides several limited exemptions which permit the use of polygraph tests.

Regulations: **29 CFR Part 801**

- * o Consumer Credit Protection Act, 15 U.S.C. at §1671 et seq., in Title III, imposes restrictions on garnishments and prohibits the discharge of any employee because his or her earnings have been subject to garnishment for any one indebtedness.

Regulations: 29 CFR Part 870

G. NONDISCRIMINATION

- o The Equal Employment Opportunity Commission (EEOC), the Department of Labor (Office of Federal Contract Compliance Programs (OFCCP) and the Directorate of Civil Rights), the Departments of Justice, Health and Human Services and Education, among other agencies, have distinct as well as overlapping responsibilities for enforcing federal nondiscrimination and equal opportunity statutes.

- * o Civil Rights Act of 1964, as amended, 42 U.S.C. 2000a et seq., broadly prohibits discrimination on the basis of race, color, sex, religion or national origin. The Act reiterates the right of all persons to equal rights under law and provides protections against deprivation of rights. The Equal Employment Opportunity Commission has primary responsibility for enforcing this Act.

- * o Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e to 2000e-17 forbids employment or membership discrimination by employers, employment agencies, and unions on the basis of race, color religion, sex or national origin. Among other amendments, the Pregnancy Discrimination Act of 1978 amended Title VII to prohibit discrimination in employment against women affected by pregnancy, childbirth or related medical conditions. Title VII is primarily enforced by the EEOC; however, the Directorate of Civil Rights administers this section of the Act with respect to Department of Labor employees and applicants for employment.

Regulations: 5 CFR 720.101 et seq. (federal equal opportunity in recruitment); 29 CFR Part 1601 (procedural regulations); 29 CFR Part 1608.1, (affirmative action programs and plans); 29 CFR Part 1607.1, (employee selection procedures); 29 CFR Part 1606.1, (national origin); 29 CFR Part 1605.1, (religion); 29 CFR Part 1604.1 (sex).

- * o Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d prohibits discrimination on the grounds of race, color, or national origin in programs or activities receiving federal financial assistance. The Justice Department has the responsibility for coordinating enforcement among federal agencies. The Directorate of Civil Rights has enforcement responsibility for Department of Labor grant recipients.

Regulations: 29 CFR Part 31

- * o Equal Pay Act of 1963, 29 U.S.C. 206(d), makes it unlawful to pay wages to members of one sex at a rate lower than that paid to members of the other sex for work that involves equal skill, effort and responsibility work, except where the differential in pay is based on a bona fide occupational qualification or factors other than sex. This Act is an amendment to the Fair Labor Standards Act. Claims are administered by the EEOC and the Directorate of Civil Rights administers this Act with respect to claims of Department of Labor employees.

Regulations: 29 CFR Part 1620

- * o Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, et seq., prohibits discrimination against persons 40 years of age and older. In 1990, the ADEA was amended by the Older Workers Benefit Protection Act, at §623, to forbid age discrimination in employee benefits and to prohibit employers from coercing employees to waive their rights under the ADEA. The ADEA is administered by the EEOC.

Regulations: 29 CFR Part 1625.1 (interpretative rules); 29 CFR Part 1626 (procedural rules)

- * o Americans With Disabilities Act, 29 U.S.C. 706; 42 U.S.C.A. 12101 note to 12213, (ADA) prohibits discrimination against individuals with disabilities in most circumstances in employment, provision of state and local governmental (public) services, transportation, public accommodations and services operated by private entities and telecommunication services.

The employment provisions of the ADA became effective in July 1992 and cover employers with 25 or more employees. In July 1994, the ADA will extend to employers of 15 or more employees. Employment agencies, labor organizations and private sector employers, as well as the states are covered by the ADA. Claims under Title I of the ADA are administered by the EEOC. Claims under Title II of the ADA (state and local government) are administered by the Department of Justice and eight other designated federal agencies, including the Directorate of Civil Rights. Claims under Title III (public accommodations) are administered by the Department of Justice.

Regulations Implementing the ADA's Employment Provisions: **29 CFR Parts 1602 and 1630 (Equal Employment Opportunity regulations); 28 CFR Part 35 and 36**

- o Executive Order 11246, as amended, 42 U.S.C. 2000e note, prohibits discrimination against an employee or applicant for employment on the basis of race, color, religion, sex or national origin by federal contractors and subcontractors, and requires federal contractors and subcontractors to take affirmative action to ensure that employees and applicants for employment are treated without regard to race, color, religion, sex or national origin. The Office of Federal Contract Compliance Programs (OFCCP) in the Employment Standards Administration is responsible for ensuring compliance with E.O. 11246.

Regulations: 41 CFR Parts 60-1 through 60-60

- o Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits federal contractors and subcontractors from discrimination against Vietnam veterans and requires affirmative action in all personnel practices. The Act is jointly administered by the Office of Federal Contract Compliance Programs and the Veterans' Employment and Training Service. It also requires federal contractors to list suitable employment vacancies with the State Employment Service.

Regulations: **41 CFR Part 60-250**

- * o Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, prohibits discrimination in employment by federal contractors and subcontractors on the basis of disability and requires that the contractor employ, and advance in employment, qualified individuals with disabilities. Section 503 is administered by the Office of Federal Contract Compliance Programs. By agreement with the Equal Employment Opportunity Commission, the OFCCP also has authority to investigate and resolve the ADA component of Section 503

complaints covered by both Acts.

Regulations: 41 CFR Parts 60-741 and 742

- * o Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 prohibits discrimination on the basis of disability in programs or activities receiving federal financial assistance and in programs or activities conducted by the Department of Labor, other Executive agencies and the U.S. Postal Service. The Justice Department has the responsibility for coordinating enforcement among federal agencies. The Directorate of Civil Rights has enforcement responsibility for Department of Labor grant recipients and employees.

Regulations: 29 CFR Parts 32 and 33

- o Section 167 of the Job Training Partnership Act, as amended, 29 U.S.C. 1577, prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief and for beneficiaries only, citizenship or participation in JTPA, by recipients of JTPA funds. Section 167 is enforced by the Directorate of Civil Rights.

Regulations: 29 CFR Part 34

- * o Immigration Reform and Control Act, 8 U.S.C. 1101 et seq., makes it illegal for employers to discriminate against or refuse to hire legal aliens. This provision is enforced by a special counsel's office in the Justice Department. Employers of 15 or more workers are prohibited from engaging in employment discrimination on the basis of national origin. IRCA specifically prohibits, however, the employment of unauthorized aliens.
- * o Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. prohibits sex discrimination in educational or training programs or activities that receive federal financial assistance. The Justice Department has the responsibility for coordinating enforcement among federal agencies.
- * o Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Department of Health and Human Services (HHS) has the responsibility for coordinating enforcement among federal agencies.

Regulations: 45 CFR Part 90

H. OTHER STATUTES THAT AFFECT THE WORK PLACE

- * o National Labor Relations Act, 29 U.S.C. 151 et seq., also known as the Wagner Act, as amended by the Labor-Management Relations Act (also known as the Taft-Hartley Act). The NLRA sets out the rights and responsibilities of workers and management with respect to protected employee activity, representation and collective bargaining processes, strikes, lockouts, administration of the Act and many other issues. The National Labor Relations Board administers the Act.

With the exception of the Board's rule on Collective Bargaining Units in the Health Care Industry, labor law has primarily been made on a case-by-case basis.

Regulations: 29 CFR Part 103 (Collective Bargaining Units in the Health Care Industry)

- * o Railway Labor Act, 46 U.S.C. 151 to 188, sets out the rights and responsibilities of management and workers in the rail and airline industries where one employer may provide its services in numerous locations simultaneously. Sets out the functions and responsibilities of the National Railroad Adjustment Board and the National Mediation Board, including extensive negotiation and mediation procedures; governs work stoppages.

Regulations: 29 CFR Part 1201.1

- * o Drug Free Workplace Act, 41 U.S.C. 71, requires all recipients of federal grants and all recipients of federal contracts of \$25,000 or more to maintain a drug-free workplace. Specifically, covered contractors and grantees must certify that they will provide a drug-free workplace, publish a statement so notifying their employees, establish an ongoing drug-free awareness program, notify the federal government of any criminal drug statute conviction for a violation occurring in the workplace, impose sanctions for such criminal violations, and continue in good faith to comply with these requirements. The Act does not require that the employer establish an employee assistance program or a drug testing program.

The Nuclear Regulatory Commission (NRC) created its "Nuclear Power Plant Personnel Fitness for Duty Program" to require licensees to implement a fitness-for-duty program for their personnel. The objective of the program is to assure that nuclear power plant personnel are not under the influence of any substance, legal or illegal which will adversely affect their ability to safely and competently perform their duties. The program regulations require random drug testing and include testing for alcohol.

Numerous drug testing requirements apply to specific industries such as the Coast Guard, trucking and railroads.

Regulations: **Notice and Final Regulations for the Drug-Free Workplace Act were published in the Federal Register on May 25, 1990. CFR citations, however, are different for each federal agency. Nuclear Power Plant Personnel Fitness For Duty Program regulations appear at 10 CFR Part 26; Coast Guard regulations - 46 CFR Parts 4 and 16, 33 CFR Part 95; trucking regulations - 49 CFR Part 391; railroad regulations - 49 CFR 219.**

I. INTERNATIONAL ACTIVITIES

- * o Support For East European Democracy (SEED) Act of 1989, section 202, 22 U.S.C. § 5422, authorizes the Secretary of Labor to Provide technical assistance to Poland and Hungary for the implementation of labor market reforms and to facilitate adjustment during the period of economic transition and reform.
- * o Freedom For Russia and Emerging Eurasian Democracies and Open Market Support Act of 1992 (Freedom Support Act), Pub. L. 102-511, 106 Stat. 3320, at section 201 adds chapter 11 to the Foreign Assistance Act of 1961, 22 U.S.C. § 2295 et seq., to authorize federal agencies, including the Department of Labor, to provide technical assistance to the independent states of the former Soviet Union. New section 498B of the Foreign Assistance Act of 1961, 22 U.S.C. 2295b, provides that federal agencies may use in the independent states of the former Soviet Union the same administrative authority that is available for providing assistance to Poland and Hungary and the other Eastern European countries. Section 903 of the Freedom Support Act amends the SEED Act of 1989 by adding new section 3, 22 U.S.C. 5402, to authorize technical assistance activities to be conducted not only in Poland and Hungary but also in other countries of Eastern Europe.

- o United States Information and Educational Exchange Act of 1948 authorizes that U.S. Government agencies provide support for the Secretary of State in the following areas:
- * o Foreign Assistance Act of 1961 22 U.S.C. § 2299(c), makes the DOL a member of the Development Coordination Committee.
- * o Trade Expansion Act of 1962, as amended by Omnibus Trade and Competitiveness Act of 1988, Section 1621, 19 U.S.C. § 1872(a)(3), implemented by Exec. Order No. 11846, 40 Fed. Reg. 14291 (1975), as amended, reprinted in 19 U.S.C. § 2111 note (established the Trade Policy Committee to carry out § 242), and Exec. Order No. 12188, 45 Fed. Reg. 989 (1980), reprinted in 19 U.S.C. § 2171 note (listed Secretary of Labor as member of the Trade Policy Committee). The Secretary of Labor is also a member of the Economic Policy Council (EPC) established in April 1985 and the National Economic Council (NEC), established by Executive Order 12835 of January 25, 1993.
- * o The Omnibus Trade and Competitiveness Act of 1988, section 6306(b), 29 U.S.C. § 565, requires the Secretary of Labor to conduct a study on the extent to which countries recognize and enforce, and producers fail to comply with, internationally recognized worker rights and biennially report the results of this study to the Congress.
- * o Executive Orders pursuant to the Agricultural Act of 1956, as amended, (Exec. Order No. 11651, 37 Fed. Reg. 4699 (1980), as amended, reprinted in 7 U.S.C. § 1854 note) establish a Textiles Trade Policy Group in which the Department of Labor participates.
- * o Trade Act of 1974, as amended, established the Labor Advisory Committees for Trade Negotiations and Trade Policy, 19 U.S.C. § 2155(b)(1).
- * o Executive Order 12198, 45 Fed. Reg. 989 (1980), issued pursuant to the Trade Agreements Act of 1979, 19 U.S.C. § 2541 created an interagency Trade Negotiations Committee (TNC) chaired by the U.S. Trade Representative. The Secretary of Labor is a member of the TNC.
- * o Caribbean Basin Economic Recovery Expansion Act of 1990. Section 212(f) of the CBERA requires the Administration to submit a report to the Congress on or before October 1, 1993 regarding the operation of the program including steps taken to afford internationally recognized worker rights to workers in the Caribbean Basin Initiative (CBI) countries and the effect on the U.S. labor force. The Department of Labor contributes to this report.
- * o Caribbean Basin Economic Recovery Act of 1983, 19 U.S.C. § 2702(c)(8) provided worker rights as a criteria for eligibility and requires a DOL report on the effects of the Caribbean Basin Initiative (CBI) on American workers. An annual study by the Secretary of Labor on the impact of the CBI on U.S. workers is required by title II, section 216 of the Caribbean Basin Economic Recovery Act of 1983, 19 U.S.C. § 2705.
- * o Foreign Service Act of 1980 names DOL to the Board of the Foreign Service, 22 U.S.C. § 3930.
- * o Immigration Reform and Control Act of 1986 mandates major Presidential reports on legalization, employer sanctions, and immigration impacts. ILAB has responsibility for the Department's contribution to these reports. It requires the Department of Labor's contribution to three series of reports: Triennial Comprehensive Reports on Immigration (Title IV, Section 401) 13 U.S.C. § 1364, implemented by Exec. Order No. 12789, 57 Fed. Reg. 5225 (1992); Reports on Unauthorized Alien Employment (Title IV, Section 402) 8

U.S.C. § 1324a note; and Reports on Legalization Program (Title IV, Section 404) 8 U.S.C. § 1255a note.

- * o Joint Resolution 131 of June 1934 provides for U.S. membership in the International Labor Organization (ILO). The Bureau of International Labor Affairs represents the Department at the ILO, 22 U.S.C. § 271.
- * o Executive Order 12216 45 Fed. Reg. 41619 (1980), reprinted in 22 U.S.C. § 271 note (continued by E.O. 12610 of September 30, 1987), 52 Fed. Reg. 36901 (1987), established the President's Committee on the International Labor Organization (ILO). The Secretary of Labor chairs the Committee. Its other members are the Secretaries of State and Commerce, the President's National Security Adviser, the President of the AFL-CIO, and the President of the U.S. Council for International Business.
- * o The Defense Production Act (section 309) requires an annual report on offsets in military export sales. The report is prepared by an interagency committee that includes the Labor Department and is coordinated by the Office of Management and Budget. Responsibilities for the report are delegated in Executive Order 10480, section 602(d), 50 U.S.C. app. 2099.
- * o Foreign Assistance Act of 1961, as amended, states that the public sector members of the Board of Directors of the Overseas Private Investment Corporation (OPIC) shall include "an officer or employee of the Department of Labor" who "shall be designated by, and serve at the pleasure of the President of the United States." The Deputy Under Secretary for International Affairs represents DOL on the OPIC Board, 22 U.S.C. §2193(b).
- * o Chapter I of Title II of the Trade Act of 1974, 19 U.S.C. § 2254(b), provides under section 204(b) that the Secretary of Labor monitor import relief and advise the President regarding modification or termination of such relief.
- * o Andean Trade Preference Act, (Title II of Public Law 102-182) requires a DOL report on the effects of the Act on U.S. labor. An annual study by the Secretary of Labor on the impact of the ATPA on U.S. workers is required by Section 207. (The first report will be transmitted to the Congress in the fall of 1994.) Section 282 mandates the Secretary of Labor and Commerce to develop a trade monitoring system and report questions to the Congress. (BLA and Census now perform this activity).
- * o Section 5402 of the Omnibus Trade Act of 1988, 15 U.S.C. § 4902, ILAB represents the Secretary on the new Interagency Trade Data Advisory Committee.
- * o Section 232 Trade Expansion Act of 1962, 19 U.S.C. 1862, the Secretary of Labor consults with the Secretary of Commerce in investigations to determine the effect of imports of an article on the national security.
- * o Title V of the Trade Act of 1974, 19 U.S.C. §§ 2461-65, implemented by Exec. Order No. 11846, § 8, reprinted in 19 U.S.C. § 2111 note, ILAB participates in the interagency administration of the Generalized System of Preferences (GSP).
- * o Chapter 3 of Title I of the Trade Act of 1974 (section 132) 19 U.S.C. § 2152, implemented by Exec. Order No. 12188, reprinted in 19 U.S.C. 2171 note, provides that the Secretary of Labor shall advise and provide information to the President before the President enters into any Trade Agreement under the Omnibus Trade and Competitiveness Act of 1988.

- * o Title III of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1978, 19 U.S.C. § 2411(c)(2)(C). The Secretary of Labor represents the Department of Labor in the interagency administration of Title III regarding the enforcement of United States Rights under Trade Agreements and Responses to Foreign Trade Practices.
- * o Section 307 of the U.S.-Canada Free Trade Implementation Act 8 U.S.C. § 1184(e), provides for the admission of Non-Immigrant Professionals under the Agreement by adding a new subparagraph (e) to Section 214 of the Immigration and Nationality Act under which the Attorney General, in consultation with the Departments of State and Labor may promulgate regulations for admission of these persons.

J. ORGANIC ACTS

- o Creating the Bureau of Labor Statistics, 29 U.S.C. 1 et seq.
- o Creating the Department of Labor, 29 U.S.C. 551 et seq.
Regulations: 29 CFR 0.735-1 et seq., 98.600 (drug-free work place), 98.100
- o Creating the Women's Bureau, 29 U.S.C. 11. amended by the Reorganization Act of 1949, see 5 U.S.C. 901 et seq. (resulting in Reorganization Plan No. 14, of 1950).

APPENDIX
Davis-Bacon Related Acts

- * National Housing Act (sec. 212 added to c.847, 48 Stat. 1246, by sec. 14, 53 Stat. 807, 12 U.S.C. 1715c and repeatedly amended).
- * Housing Act of 1950 (college housing) (amended by the Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
- * Housing Act of 1959 (sec. 401(f)) of the Housing Act of 1950 as amended by Pub L. 86-372, 73 Stat. 681, 12 U.S.C. 1701q(c)(3)).
- * Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199, 16 U.S.C. 779e(b)).
- * Library Services and Construction Act (sec.7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended.
- * National Technical Institute for the Deaf Act (sec. 5(b)(5), 20 U.S.C. 4322 and 4332.
- * National Foundation of the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended, 20 U.S.C. 954(j)).
- * Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318, title III, sec 301(a)(1), 86 Stat. 326, 20 U.S.C. 1232(b)).
- * The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821, 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
- * Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205, 25 U.S.C. 450e).
- * Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407, 25 U.S.C. 1633(b)).
- * Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
- * Job Training Partnership Act (sec. 143(d), 96 Stat. 1345, 29 U.S.C. 1553(d)).
- * State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
- * Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894, 33 U.S.C. 1372).
- * Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended, 38 U.S.C. 5035(a)(8)).
- * Postal Reorganization Act (sec. 410(b)(4)(C), 84 Stat. 726 as amended, 39 U.S.C. 410(b)(4)1C)).
- * National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45, 40 U.S.C. 808.
- * Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21, 40 U.S.C. App. 402).
- * Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec.

308(h)(2), 88 Stat. 370, as amended by 90 Stat. 378, 42 U.S.C. 242m(h)(2)).

- *. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453, 42 U.S.C. 291e(a)(5)).
- *. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254, 42 U.S.C. 293a(g)(1)(C), also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
- *. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).
- *. Heart Disease, Cancer and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
- *. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
- *. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).
- *. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284, 12 U.S.C. 1715c, 42 U.S.C. 1437(j)).
- *. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).
- *. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, regarding farm housing, 78 Stat. 797, 42 U.S.C. 1486(f)).
- *. U.S. Housing Act of 1961, (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).
- *. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307, 42 U.S.C. 1592i).
- *. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5), 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).
- *. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).
- *. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811, 88 Stat. 2327, 42 U.S.C. 2992a).
- *. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended, 42 U.S.C. 3107).
- *. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 5012, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).
- *. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575, 42 U.S.C. 3222).
- *. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 410, 42 U.S.C. 5046).
- *. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).
- *. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C.

- 4529).
- *. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410, 42 U.S.C. 5046).
 - *. Housing and Community Development Act of 1974 (secs . 110, 802(g), 88 Stat. 649, 724, 42 U.S.C. 5310, 1440(g)).
 - *. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).
 - *. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254, 42 U.S.C. 6371j).
 - *. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001, 42 U.S.C. 6708: also sec. 208, 90 Stat. 1008, 42 U.S.C. 6728).
 - *. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168, 42 U.S.C. 6881(h)).
 - *. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823, 42 U.S.C. 6979).
 - *. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337, 45 U.S.C. 565(d)).
 - *. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat . 307, renumbered sec. 13 by 88 Stat. 715, 49 U.S.C. 1609).
 - *. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893, 49 U.S.C. 1636(b)).
 - *. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231, 49 U.S.C. 2214.
 - *. Federal Civil Defense Act of 1950 (SO U.S.C. App. 2281i).
 - *. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) considered a statute for purposes of this part but not in the United States Code).
 - *. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).
 - *. Energy Security Act (sec. 175(c), 94 Stat. 611; 42 U.S.C. 8701).