



## 2008 ACI-NA Human Resources Conference

### “Stump the Lawyer” : Legal Issues Impacting HR at Airports Today

Presented by:

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**A. TO CONSIDER WHEN EVALUATING LEGAL OBLIGATIONS**

1. Who is employer/ who is employee?
  - Is there a direct or joint employer liability/obligation?
  
2. Is there applicable Federal law?
  - Which is the appropriate regulation or agency with jurisdiction?
  - Ex.: OSHA vs. FAA



3. Is there an applicable State law that affords greater protection to EE?

4. Is employer Private or Public entity?

- Sometimes legal requirement applies only to private or public, not both

5. Is employee part of bargaining unit?

- CBA may control



## B. WAGE AND HOUR (FLSA)

1. Check applicable State law

2. Exempt EEs- paid to do a job; not by hr.

(a) Do not undue “exempt” status

(comp time arrangements; paying overtime)

(b) Is person truly exempt?

Exec., Admin, Learned Prof., Computer, Outside Sales

(c) What deductions can you take from salary

(refer to Chart)



### 3. Non-Exempt Employees:

(a) Dramatic rise in FLSA lawsuits  
(attorneys' fees; Faragher/ Ellerth)

(b) Special Issues:

- Off the clock work--- Pay
- Incidental Activities---Pay if benefit ER
- Uniform Change Time-- Pay, if required to change at worksite



## Commuting Time/ Travel Time-- Depends

Home to Initial Worksite: Not Pay

Worksite to Secondary: Pay

## Travel Away from Home-- Depends

Compensate if w/i regular work hrs regardless of day of week (even if not a scheduled work day)

Free Time While Away on Business-- Not Pay



## Training Time- Not Pay if meet all 4:

- \* outside regular work hrs
- \* attendance NOT required
- \* EE does NO productive work while in program
- \* not directly related to current job of EE



## Sleep Time

- \* Not pay unless unusual situation  
(residential facility)

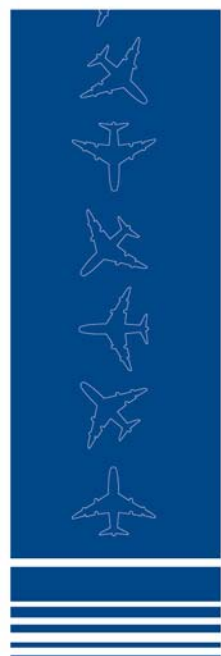


## C. SEXUAL ORIENTATION/ TRANSGENDER ISSUES

### 1. FEDERAL LAWS

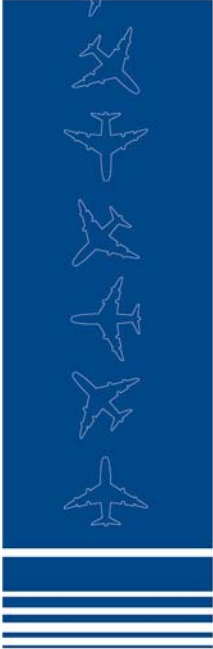
Private Sector Employment: sexual orientation/gender identity is NOT a protected category

Federal Gov Employment: protection afforded through 1978 Civil Service Reform Act, which covers all conduct that does not "adversely affect" work performance.



## 2. STATE LAWS

**Protection for Sexual Orientation or Gender Identity(\*\*).** If not appear, no protection offered.



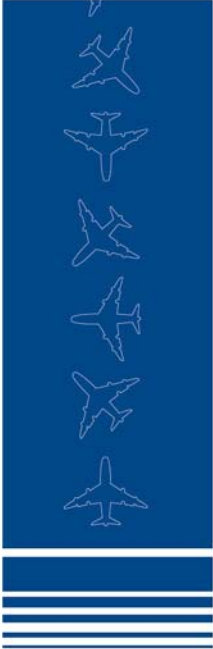
|             | Public | Private |
|-------------|--------|---------|
| Alaska      | Yes    | No      |
| California  | Yes    | Yes     |
| Colorado    | Yes**  | Yes**   |
| Connecticut | Yes    | Yes     |
| Delaware    | Yes    | No      |
| Hawaii      | Yes    | Yes     |
| Illinois    | Yes    | Yes**   |

|           |     |       |
|-----------|-----|-------|
| Indiana   | Yes | No    |
| Iowa      | No  | Yes   |
| Louisiana | Yes | No    |
| Maine     | Yes | Yes   |
| Maryland  | Yes | Yes   |
| Mass      | Yes | Yes   |
| Michigan  | Yes | No    |
| Minn      | Yes | Yes** |
| Montana   | Yes | No    |





|              |       |       |
|--------------|-------|-------|
| Nevada       | Yes   | Yes   |
| NJ           | Yes** | Yes** |
| New Mexico   | Yes** | Yes** |
| NY           | Yes   | Yes   |
| Ohio         | Yes** | No    |
| Oregon       | Yes** | Yes** |
| PA           | Yes   | No    |
| Rhode Island | Yes   | Yes** |



|            |     |       |
|------------|-----|-------|
| VT         | Yes | Yes   |
| Washington | Yes | Yes** |
| Wash DC    | Yes | Yes** |
| Wisconsin  | Yes | Yes   |

### 3. LOCAL LAWS

Over 180 cities/counties prohibit discrimination on basis of sexual orientation

<http://www.lambdalegal.org> (list of state-by-state anti-discrimination laws)



## 4. ISSUES

Pre-operative transgender –

What restroom to use? No federal law

Look to state law:

Goins v. West Group, 635 NW2d 717 (Minn. 2001): rejected a claim by a pre-op transgender EE who alleged discrimination based on sexual orientation when ER designated restrooms on the basis of biological gender.



- Court held- designation of restroom based on biological gender was not sexual orientation discrimination.
- Use common sense; interactive process; explore alternatives



## D. FMLA- NEW LAW

- Initial FMLA enacted 1993- Pres. Clinton
- Jan 28/08, Pres. Bush signed National Defense Authorization Act for FY 2008 (NDAA)
- Section 585 of the NDAA amends the FMLA of 1993 (FMLA)



Amendment (Effective 1/28.08):

Permits a **“spouse, son, daughter, parent, or next of kin”** to take up to **26 workweeks** of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing **medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”**



(26 workweeks of leave during a 12 month period)

Pending more detailed regulations, ERs must act in good faith in providing leave.

Follow same procedures as FMLA (Ex.: same substitution of paid leave and notice)



## Amendment (Effective- Pending)

NDAA also permits an employee to take up to **12 weeks** of leave for “any **qualifying exigency** (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that **the spouse, or a son, daughter, or parent of the employee is on active duty** (or has been notified of an impending call or order to active duty) **in the Armed Forces** in support of a contingency operation.”



(12 workweeks of leave during any 12-month period)

Not effective until the Sec. of Labor issues final regulations defining “any qualifying exigency.” DOL encourages employers to provide this type of leave to qualifying employees.



## **E. OSHA (OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION)**

1. OSHA Jurisdiction (1 or more EEs)
  - Unless preempted by other agency (FAA)
  
2. Employer-Employee Relationship Only
  - No OSHA Liability UNLESS there is ER-EE relationship



- No OSHA Liability for Subcontractor EEs unless Joint Employer
- Structuring reporting relationships to minimize Joint Employer Liability



### 3. Airport Personnel

- Ground Employees - OSHA jurisdiction
- Flight Crew (pilots, flight engineers, flight attendants) while “**aircraft in operation**” -- OSHA ceased to have jurisdiction; FAA has jurisdiction.
- Flight Crew when not in aircraft and in operation --- OSHA jurisdiction

