1. **Overview**

It is critical that social sector organizations familiarize themselves with relevant employment laws that affect their employees and their organization. Social sector organizations often begin with like-minded persons informally coming together for the purpose of addressing a challenging social problem. However, regardless of the ties that bind those who work together on a social mission, the social sector organization must comply with applicable employment laws and implement relevant policies and procedures.

The following provides an overview of federal and Arizona employment laws that could apply to social sector organizations and their employees located in Arizona. This overview does not provide a complete and comprehensive analysis of all potentially applicable employment laws in Arizona and the United States and it should not be acted upon without specific legal advice based on the particular situation. Employment laws can differ greatly by state. If your organization and employees are located in another state, you should consult the employment law pages of LawForChange™ for that state.
2. General Issues

(a) At-Will Employment

The conventional relationship between an employer and an employee hired for an indefinite period of time is called “employment at-will.” The employment at-will doctrine permits the employer or the employee to terminate the employment relationship at any time, with or without cause or reason, and with or without advance notice. In the absence of a written contract or other evidence indicating that an employee may be terminated only “for cause,” employment in Arizona is generally presumed to be at-will. Employment at-will is discussed in Arizona’s Employment Protection Act, A.R.S. § 23-1501, et seq.

It is important to remember, however, that there are a number of laws, both federal and state, that limit an employer’s unfettered right to terminate traditional at-will employees. These laws prevent employers from firing any employee, whether at-will or not, for illegal reasons (e.g., discriminatory reasons, whistle-blowing, or engaging in certain activities protected by law).

(b) Temporary Employment and Consulting Relationships

In addition to traditional at-will employees or contract employees, many employers may use the services of temporary employees, independent contractors, or consultants (and employees of independent contractors or consultants).

When an employer hires an employee for a temporary period or for a season, the temporary employee is generally still an at-will employee of the employer, and the relationship is governed by the same laws as those applicable to at-will employees, in the absence of a contract or agreement otherwise. As with permanent employees, legally mandated benefits, such as workers’ compensation insurance and unemployment insurance, must be offered to temporary employees. Optional benefits, such as 401(k) plans, typically do not need to be offered to temporary employees.

An independent contractor or consultant is not considered an employee of the employer. Instead, an individual independent contractor is self-employed, and payments made to the independent contractor are considered contract payments rather than wages. The U.S. Internal Revenue Service (“IRS”) and other governmental agencies have a variety of tests for determining whether a worker is an employee or an independent contractor. While there is variation among the tests, they tend to share the same primary factors. For example, workers who are performing the same job and performing under the same supervision as regular employees are often deemed to be employees rather than independent contractors. Additional factors shared by the various tests include: the degree of control the employer exercises over the worker’s hours and manner of performance; whether the employer provides the worker’s tools and/or employee benefits (e.g., medical insurance, vacation pay); the length of service; and the method of payment (e.g., is the worker paid hourly or on a project basis).

The consequences of incorrectly classifying an employee as an independent contractor can be far-reaching and expensive. Misclassification can result in employer liability for unpaid payroll taxes and penalties, administrative claims for benefits provided to regular employees, liability for unpaid unemployment insurance and workers’ compensation premiums, increased
exposure to governmental audits, and potential exposure to lawsuits and administrative claims.

(c) Employment Agreements. While it is not required or necessary to enter into an employment agreement with any employee, social sector organizations may wish to enter into written employment agreements with one or more of its executives or key employees. If an organization chooses to enter into an employment agreement with a particular employee, such agreements typically spell out the term of employment (even if it is “at-will”), duties, compensation, benefits, and circumstances under which the agreement may be terminated by either party. Such agreements often contain provisions requiring the employee to keep information confidential even after they leave employment. Additionally, agreements may bar employees, in certain circumstances, from becoming employed by certain competing organizations in a limited geographic region and for a limited period of time following the employee’s termination. The provisions of these agreements and whether any such agreements are enforceable should be discussed with an employment attorney before they are presented to an employee or prospective employee.

(d) Government Contractors. A number of laws impose specific requirements on employers who contract with the government or a government-funded agency and on employers who receive grants or other funding from the government. These laws include equal opportunity laws, affirmative action laws, prevailing wage laws, and drug-free workplace laws. The application of the laws depends on the value of the contract or funding and/or the number of employees in the company. Employers should ensure they are complying with all applicable laws.

(e) Employee Records. An employer is either required to or should maintain the following records, among others, on each employee:

1 year – Employment applications, resumes, application materials and related documents for individuals who are not hired.

1 year (after superseded) – Accident prevention programs including lists of first aid and CPR trained staff.

3 years (after superseded or position abolished) – Position descriptions.

3 years (after classification request is acted on) – Position classification/reclassification records.

3 years (after grievance action resolved, unless litigation hold has been issued) – Employee grievance files.

3 years (after training is given; a record of class completion may be placed in employee’s personnel file) – Employee training files including attendance lists, class outlines, etc.

3 years (after fiscal year refund is issued) – Employee tuition refund program records.
5 years (after calendar year of termination of service) – Employee personnel files, including official files, evaluations, discipline records, and possibly supervisor’s work files.

5 years (after calendar year reported) – Occupational safety and health record including accident reports and annual summaries.

10 years (after calendar year of termination) – Employee personnel summary (paper and/or electronic form)

30 years (after termination of employment; maintained separately from the employee personnel file) – Employee’s medical and exposure records including lists of hazardous materials exposed to, pre-employment physicals, etc.

At a minimum, social sector organizations should maintain one or more personnel files for each employee, containing any offer letters and agreements signed by the employee, required wage and hour records, records regarding promotion, additional compensation, termination, disciplinary action, and any documents used to determine the employee’s qualifications for employment. Medical records, immigration information, and other confidential documents, such as reference checks and investigative files for harassment claims, should be kept separately from an employee’s regular personnel file and should be kept confidential.

3. Employment Policies and Employee Handbooks

It is the best practice for employers to have written employment policies. Written policies serve to clarify expectations, reduce risk and, in some cases, comply with the requirements of local, state, and federal laws. In addition, both state and federal law require that certain summaries of laws be posted in an area accessible to all employees. There are several services that provide updated posters containing these notices. Most of the required posters discuss compliance with the FMLA, Title VII, USERRA, workers’ compensation, the organization’s anti-harassment policy, state and federal wage and hour laws, and other applicable laws.

Policies for any employment manual or handbook should include a summary of the company’s policies, such as those that address:

(a) Nondiscrimination

Employers are prohibited from discriminating against employees or job applicants on the basis of race, color, religion, sex, national origin, veteran status, genetic information, pregnancy, age, disability, or any other protected class under applicable federal, state or local law. The discrimination laws provide equal opportunity with respect to compensation, benefits, opportunities for advancement and all other terms, conditions and privileges of employment. Some local laws may have ordinances that provide for even greater protections than state or federal law, so it is important to check those local laws for any additional requirements.

Failing to comply with discrimination laws can result in expensive lawsuits or administrative investigations. In general, these laws require that all employees and applicants be treated equally without regard to their protected status. Employees should be required to report
any discriminatory behavior to their supervisor, human resources representative, and/or a senior manager or executive who is designated to investigate such claims. In addition, employers may not retaliate against employees or applicants who report discrimination or assist with the enforcement of employment discrimination laws. Employers also should be aware of their obligations to make reasonable accommodations for employees whose disabilities or religious beliefs require accommodation. These obligations, which exist under both federal and state law, are unlike other equal employment opportunity laws in that treating all employees equally will not satisfy the obligations. Instead, employers must take steps to reasonably accommodate employees with disabilities and specific religious practices.

See federal laws regarding discrimination in “Federal Law” section below. See Arizona laws regarding discrimination in “Other State Specific Considerations” section below.

(b) Harassment

Both federal and Arizona laws also prohibit harassment in the workplace against any of the classes of employees protected under federal and state discrimination law. Two types of conduct constitute harassment in the workplace. The most obvious occurs when a supervisor makes a job promotion or benefit dependent on the receipt of sexual favors (often referred to as *quid pro quo* harassment). The other type occurs when an employee has to endure comments, physical contact, physical gestures, or other behavior that creates an offensive atmosphere for that employee (often referred to as a hostile work environment). While sexual harassment is most often thought of, harassment on the basis of race, disability, age, or any other protected class is also prohibited.

An employer should take all reasonable steps necessary to prevent harassment, which includes having an appropriate and comprehensive policy against harassment. For this reason, a harassment policy that both expressly prohibits harassment and provides avenues for employees to report harassing behavior are a must in any workplace. Employees should be required to report any harassing behavior to their supervisor, human resources representative, and/or a senior manager or executive who is designated to investigate such claims. Reasonable steps to prevent harassment would also include periodic dissemination of the harassment policy, harassment training (particularly for supervisors), investigations of any complaints, and, when harassment occurs, prompt and effective remedial action. As with discrimination, employers cannot retaliate against an employee who complains about harassment.

(c) Safety, OSHA Injury, and Illness Prevention

The Occupational Safety and Health Act (“OSHA”) regulates workplace safety and imposes a duty on employers to provide employees with a safe place to work. OSHA requires all employers to furnish employees with a workplace free from recognized hazards causing, or likely to cause, death, serious physical harm, or illness. Employers must also comply with occupational safety and health standards that are issued under the Act. “Right to Know” regulations issued under OSHA require that employees in certain industries be warned about hazardous materials and chemicals to which they may be exposed. OSHA sets forth a detailed procedure for adopting safety and health standards and provides for inspection, investigation and enforcement. Citations issued for noncompliance can result in civil and criminal penalties,
including fines and, for violations causing the death of an employee, imprisonment. States are allowed to develop and enforce their own plans setting and enforcing occupational safety and health standards. Some industries have specific statutes that regulate employee safety and health.

(d) **Workplace Violence**

Employers should take steps to prevent violence in the workplace. This may include policies against bringing weapons into the workplace, taking prompt and appropriate action against any acts or threats of violence, and creating an environment that will reduce the likelihood of violence in the workplace. In Arizona, a weapons policy cannot prohibit a person from lawfully transporting or storing a firearm that is: (1) in the person’s locked and privately owned motor vehicle or in a locked compartment on the person’s privately owned motorcycle; and (2) not visible from the outside of the motor vehicle or motorcycle. However, a person may not transport or store a firearm under these circumstances if: (1) the possession of the firearm is otherwise prohibited by federal or state law; (2) the motor vehicle is owned by the Company and used in the course of employment; or (3) the facility includes a parking lot or garage secured by a fence or other physical barrier, access to the area is limited by a guard or other security measure, and the Company provides temporary, monitored, and secure storage of a firearm, as well as ready access to retrieve the firearm.

4. **Hiring Process**

The hiring process involves receiving and reviewing applications, interviewing potential candidates, and selecting and hiring the employee(s). Federal, state, and local laws limit what employers can ask and do during the process.

(a) **Applications, Interviewing, Reference Checks and Background Checks**

The application process generally includes publishing the open position and accepting applications. Every help-wanted advertisement should contain an equal employment opportunity statement. Discrimination laws prohibit certain questions on the application, particularly those that elicit information about a person’s protected status and are not job-related.

The interviewing process generally involves interviews and reference checks. Federal and Arizona discrimination laws prohibit employers from asking certain questions during the hiring process. For example, questions are prohibited regarding a person’s age, disability, child-bearing decisions or plans, or other questions related to a person’s protected status that are not directly related to the qualifications for the job. Every person who interviews candidates and conducts reference checks should have a working knowledge of the laws that govern employment interviews.

Employers who use outside organizations to conduct background checks must comply with federal credit-reporting law under the Fair Credit Reporting Act, which requires certain disclosures and reports to be made available to applicants.

Federal and Arizona disability laws impose certain affirmative obligations on employers to ensure that disabled persons have a fair opportunity to participate in the hiring process. If any pre-employment testing is administered after a conditional job offer is made, then reasonable
accommodations must be made to those applicants who require them. Further, the use of testing or other criteria not related to the essential functions of the position being filled should not be used as it may tend to have a discriminatory impact on disabled applicants.

If an employer is going to administer a drug test, then it should have a set policy and make sure it is applied consistently and uniformly. Applicants may be required to disclose the use of prescription drugs to the test administrator, and that information should be kept confidential and only used to determine if the applicant passed or failed the drug test. Such information is not provided to the employer.

The Arizona Drug Testing Act neither requires nor prohibits employee drug screening, however, it grants legal protection to employers who conduct drug or alcohol impairment tests that conform to the requirements of the Act. Compliance protects the employer from liability for actions taken in good faith relating to positive test results, failure to test or detect a specific drug or condition, or the elimination of a prevention or testing program. To comply with the Drug Testing Act, the employer must publish and distribute a written statement to employees describing the drug and alcohol testing policy. The Act contains specific requirements, and each policy must describe which employees are subject to testing, under what circumstances, the substances for which the employee is tested, the methods and procedures of testing, and the consequences of positive test results or of failure to participate. The employer also must pay for employee testing, compensate the employee for his or her time, ensure that it is done in a reasonable and sanitary area, keep all communications relating to the testing confidential, and provide employees with the opportunity, in a confidential setting, to explain a positive test.

(b) Immigration

All employers are required to verify that every new hire is either a U.S. citizen or authorized to work in the U.S. All newly-hired employees must complete an Employment Eligibility Verification form (Form I-9) and produce required documentation within three days of their hire date. Failure to follow the I-9 process can result in monetary penalties against the employer.

Employers cannot discriminate against employees based on their immigration status. Thus, once an employee has proved that he or she is eligible to work in the U.S, the employee’s immigration status should not be used in any other employment decisions.

5. Compensation and Benefits

Several different federal and Arizona laws regulate various forms of compensation and benefits. Social sector organizations should adopt a lawful compensation scheme that is compatible with the organization’s mission and furthers its human resources goals.

(a) Wages

Most employers — regardless of size — are governed by both federal and state wage and hour laws. Federal and state wage and hour laws differ slightly, and employers must follow both. On July 24, 2009, the federal minimum wage was increased to $7.25/hr. In Arizona, the state minimum wage is adjusted each January 1, and employers are required to pay the larger of the
Arizona minimum wage or the federal minimum wage. Effective January 1, 2012, the Arizona minimum wage is $7.65/hr.

Two of the major requirements in federal wage and hour laws relate to: (1) payment of minimum wage, and (2) payment for overtime hours. Arizona does not any minimum wage or overtime requirements beyond what are required by the Federal Labor Standards Act. Under the minimum wage laws, employers must pay employees an amount that is at least the statutory minimum wage multiplied by the number of hours that the employee worked in any given work week. Likewise, an employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Minimum wage and overtime laws are not limited to hourly employees. Employees who are paid in other ways, such as by salary or commission, may also be entitled to minimum wages and overtime pay.

In Arizona, pursuant to A.R.S. § 23-351, an employer must pay wages at least two times a month and not more than 16 days apart. Employers who have their principal place of business outside of the state and whose payroll system is centralized outside of the state may pay exempt employees once per month. Overtime must be paid no later than 16 days after the end of the most recent pay period.

Employers must also ensure they are properly classifying their employees as exempt or non-exempt. Employers should include in their policies the FLSA safe harbor language to provide protection in the event they inadvertently make an improper deduction from an exempt employee’s wages. The policy must: (1) include a clearly communicated policy prohibiting improper deductions, and (2) outlines a complaint mechanism for any employee who believes that an improper deduction has been made. Once a complaint has been made, the employer must reimburse the employee for the improper deduction(s) and make a good faith commitment to future compliance.

(b) Bonuses

Bonuses can improve employee retention and provide extra incentives for reaching certain targets. Employers who provide bonuses (other than gift bonuses like holiday bonuses) should have a written bonus plan to ensure clarity, and to avoid unintended implied bonuses in contracts. Furthermore, how bonuses are determined and whether they are guaranteed (for example, for hitting certain production goals) or discretionary will also have an effect on calculating an employee’s overtime.
(c) Taxes

Employers are required to withhold federal income tax and the employee's portion of social security tax from taxable wages paid to employees. Under federal law, funds withheld must generally be deposited through the Electronics Federal Tax Payment System (EFTPS). An Employer’s Quarterly Federal Tax Return (IRS Form 941) must then be filed before the end of the month following each calendar quarter. An employer's failure to collect, account for, and pay withholding taxes can subject the employer to significant monetary penalties and, in some cases, can result in personal liability for the individuals responsible for remitting the taxes on the employer's behalf.

Most employers, including nonprofit organizations that are not 501(c)(3) organizations must also file an Employer’s Annual Federal Unemployment (FUTA) Tax Return (IRS Form 940) and generally pay any balance due for a calendar year on or before January 31 of the following year. Additional details may be found in IRS Publication 15, Circular E, available at http://www.irs.gov/publications/p15/index.html and in IRS Publication 15A. Conversely, employers who are 501(c)(3) organizations, exempt from federal income tax under Internal Revenue Code Section 501(a), are not required to file a FUTA Tax Return.

To ensure compliance with Treasury Regulations governing written tax advice, please be advised that any tax advice included in this communication, including any attachments, is not intended, and cannot be used, for the purpose of (i) avoiding any federal tax penalty or (ii) promoting, marketing, or recommending any transaction or matter to another person.

(d) Mandatory Benefits

(i) Workers’ Compensation

All employers, regardless of the number of employees, must provide workers’ compensation insurance for their employees. There are some limited exemptions from this requirement, but the workers’ compensation benefits are the only benefits available for job-related accidents causing injury. The cost of the insurance is paid by employers through payment of premiums into a state fund or to a private insurance carrier. Some employers qualify to be self-insured. Employers are required to document and report workplace accidents resulting in injuries.

(ii) Unemployment Insurance

The Arizona Economic Security Act provides for the payment of benefits for specified periods to individuals who become unemployed through no fault of their own. Employers must contribute to an unemployment compensation fund. When an employee is granted unemployment compensation benefits, whether those payments are counted against the employer’s account depends on several factors, one of which is how long the employee worked for the employer.

(iii) Other Arizona Laws

Arizona law does not require that employees receive a certain amounts of paid time off,
whether for vacation, holidays, or sick leave. If benefits are provided, there is no requirement on how they are administered as long as they are administered in a non-discriminatory fashion. Arizona law also does not require that employers provide any disability or medical insurance benefits. However, if such benefits are provided, the plans may be subject to ERISA, COBRA or HIPAA. See summaries of those laws in “Federal Law” section below.

(iv) Federally Mandated Benefits

See summaries of ERISA, COBRA and HIPAA in the “Federal Law” discussion below. If applicable, these federal laws mandate certain specified benefits.

(e) Leaves of Absence

Several federal and Arizona laws either require or govern leaves of absence, depending upon the reason for the leave. Although these leave laws can be very complicated, application of the laws usually depends on the size of the employer, and some of the more complicated laws do not apply to small employers. Various special leave provisions are discussed in the “Federal Law” section and “Arizona Law” sections below.

An employee is eligible for leave taken pursuant to the Family and Medical Leave Act (“FMLA”) if he or she has worked for the company for at least one year, worked for 1,250 hours during the 12-month period preceding the commencement of leave, and has worked at a worksite with 50 or more employees within 75 miles of the worksite. The FMLA allows eligible employees to take up to 12 work weeks of unpaid leave during a designated 12-month period, for the following reasons: (1) the birth of the employee’s child; (2) the adoption of a child by the employee, or the placement of a child with the employee for foster care; (3) to care for a spouse, child or parent who has a serious health condition; (4) due to the employee’s own serious health condition that renders the employee incapable of performing the essential functions of his or her job; or (5) for employees who experience any qualifying exigency arising from their spouse, child or parent being called to active military duty, or notified of an impending call or order to active duty. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 work weeks of leave to provide care to a spouse, child, parent or next of kin who is a covered military servicemember and has a serious injury or illness that was incurred in or aggravated by service in the line of active duty in the Armed Forces.

There are many specific requirements for notification, certification, calculation of the leave, benefits and protection, and return from FMLA leave. Employers should disseminate policies regarding these provisions and requirements. An individual who believes his or her FMLA rights have been violated is entitled to file a lawsuit. Remedies may include lost compensation, liquidated damages, other out of pocket expenses, equitable relief, and attorneys’ fees.

Additionally, in Arizona, an employee is entitled to time off to vote if there are less than three consecutive hours between the opening of the polls and the beginning of the employee’s regular work-shift or between the end of the employee’s regular work-shift and the closing of the polls. An employee may be absent for the difference of the length of time. An employer cannot penalize an employee for taking such an absence or make any deductions from the employee’s
usual salary or wages. Arizona law does not require an employer to pay for time spent in jury service, but employers are prohibited from refusing an employee a leave of absence for jury duty. Federal law requires exempt employees to be paid for any week of jury service which they also perform some work.

Other laws, such as the Uniformed Services Employment and Reemployment Rights Act discussed below, also provide specific requirements for leaves and return to work.

(f) Voluntary Benefits

The benefits listed below are not required by law. However, many employers choose to provide employees with such benefits in order to attract and retain the most qualified workers.

An employer is not required to provide employees with retirement benefits, welfare plans, severance pay, or other voluntary benefits. If an employer does establish such plans, however, they are governed by a federal law called the Employee Retirement Income Security Act (“ERISA”). See “Federal Law” section below. Under ERISA, employee benefit plans must comply with numerous and complex procedural requirements.

An employer is not required to provide employees with vacation pay. If an employer elects to provide such benefits, however, they should be uniformly applied in conformity with a written policy. This will help provide protection against claims of discrimination and may be necessary to ensure the employer complies with the pay provisions of the Fair Labor Standards Act (“FLSA”) as it relates to “exempt” employees.

While employers often provide employees with certain holidays, employers are not required to give employees paid holidays. Except in cases where accommodation of religious holidays might be required, employers are not even required to give employees time off during holidays.

Employers are not required to offer paid sick leave to employees. Upon termination, the employer has no legal obligation to pay out unused sick leave, which means the employer’s written policy will control. While the law requires a variety of unpaid leave of absences, paid leaves of absence, such as paid maternity or paternity leave, are not required by law.

Many employers choose to combine vacation, sick leave, personal days, and floating holidays into a single “paid time off” or “PTO” policy. This makes it easier to administer employee time off and a single policy for accumulating and using PTO will often suffice.

6. Termination of Employment

Absent an employment contract that provides otherwise, an employee of a social sector organization may ordinarily be terminated with or without cause provided there is no violation of applicable laws. Prior to termination, social sector organizations should thoroughly review all records concerning the employee or employees in question and carefully assess the risks of litigation. Employers should consider whether advance notice of termination should be given. In most cases, employment counsel should be consulted before terminating one or more employees.
(a) **Pay**

Upon terminating an employee, A.R.S. § 23-353 requires that the employer pays all wages within three working days or the end of the next regular pay period, whichever is sooner. If requested by the employee, such wages shall be paid by mail. Amounts an employee owes for lost or damaged company property may be deducted from an employee’s final wages in certain instances, such as when the employee has provided the employer with written authorization to do so. However, it is recommended to consult with an attorney before making such deductions.

(b) **Severance Agreements / Releases**

Generally, employers are not required to provide severance pay, unless they have agreed to do so. If the employer wants to offer severance to an employee, the employer may ask the employee to sign a release in exchange for the severance, in which the employee waives all legal claims the employee may have against the employer. If an employer seeks a release, the employee must be provided severance or other consideration in addition to any payments the employee was already entitled to receive. Federal law contains specific statutory requirements for waivers of age discrimination claims and prohibits the waiver of certain claims. Releases must be carefully drafted to ensure they are enforceable.

(c) **Unemployment Insurance / Compensation**

The purpose of unemployment compensation is to provide temporary and partial benefits to those who are unemployed through no fault of their own. The U.S. Department of Labor oversees the system, but each state administers its own program. To be eligible for payments, an applicant for unemployment must have worked for a covered employer and must generally either (1) have quit for good cause attributable to his or her employer; or (2) have been terminated for reasons other than serious misconduct connected with his or her work. In addition, an applicant must be available and actively looking for work during the entire period of benefits, and (1) have earned wages in at least 2 quarters in the base year; (2) be unemployed for a waiting period of one week; (3) make a claim for benefits for each week of unemployment; (4) have registered to work and continue to report to the employment office; (5) be available and able to work; and (6) actively seek, but be unable to obtain work during the benefit year (365 days).

Unemployment benefits come from taxes paid by employers on wages of their workers. These taxes are put in a special trust fund that is used solely to pay unemployment benefits to workers who lose their jobs through no fault of their own. The benefits are intended to be temporary to help people with basic needs while seeking new employment.

Most employers pay contributions under the experience rating provisions of the law at a rate of 2.7 to 5.4% of their total payroll. The employer’s contribution rate depends on its individual benefit ratio (benefits charged to its account for a certain period divided by its total payroll for the same period) as well as the level of funding of the Unemployment Compensation Fund.

To be “unemployed,” individuals must perform no services in a given week and receive no remuneration. In situations where individuals receive payments from their employers for periods in which they render no personal services, e.g., back pay awards, holiday and vacation
pay, certain severance payments or employer funded disability pay, they are not “unemployed” and are not entitled to unemployment benefits.

(d) **Health Care Continuation (COBRA) Requirements**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) requires employers who provide employee health and medical benefits to provide notification to employees of their COBRA rights at the time of a “qualifying event” such as a resignation or an involuntary termination of employment. COBRA applies to employers with more than 20 employees. See “Federal Law” section below.

7. **Immigration**

With globalization and the increasing benefits of a diverse workforce, social sector employers located in the U.S. often seek to employ foreign personnel. This is particularly true with social sector organizations that are already working and addressing problems not just in the U.S. but around the world. A variety of permanent and temporary visas are available depending on various factors such as the job proposed for the alien, the alien’s qualifications, and the relationship between the U.S. employer and the foreign employer. Permanent residents of the United States are authorized to work where and for whom they wish. Temporary work visa holders have authorization to remain in the U.S. for a temporary time and usually the employment authorization is limited to specific employers, jobs, and even specific work sites.

When planning to bring foreign personnel to the U.S., U.S. employers should allow several months for processing by the United States Citizenship and Immigration Services (“USCIS”), as well as the Department of State and Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, change of job sites, and changes in job duties, may dramatically affect (if not invalidate) the employment authorization of foreign employees.

(a) **Permanent Residency (the “green card”)**

Permanent residency is commonly based on either close family relationships, such as marriage to a U.S. citizen, or an offer of employment. Permanent residence gained through employment often involves a time-consuming process that can take several years. Therefore, employers considering the permanent residence avenue for an alien employee should seek competent legal advice as early as possible. Foreign nationals can also obtain permanent residency through investments. The EB-5 (Employment based, fifth preference) category allows foreign nationals to get this green card if they invest $1 million (or $500,000 in specific areas) in a business and create a sufficient number of jobs. Individuals can invest their money through regional centers or in individual projects.

(b) **Temporary Visas.**

The following are the most commonly used temporary visas:

(i) **B-1 Business Visitors and B-2 Visitors for Pleasure**
These visas are commonly utilized for brief visits to the U.S. of six months or less. Neither visa authorizes employment in the U.S. B-1 business visitors are often sent by their overseas employers to negotiate contracts, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment for brief periods in the U.S. B-1 or B-2 visitors cannot be on the U.S. payroll or receive U.S.-source remuneration. Note that nationals of many countries can also apply for a visa waiver that allows them to temporarily visit the United States. The visa waiver does not authorize employment in the United States.

(ii) F-1 Academic Student Visa – M-1 Vocational Training Visa

Often foreign students come to the U.S. in F-1 status for academic training or M-1 status for vocational training. Students in F-1 status can often engage, within certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time. Vocational students cannot obtain curricular work authorization but may receive some post-completion practical training in limited instances.

(iii) J-1 Exchange Visitor Visas

These visas are for academic students, scholars, researchers, and teachers traveling to the U.S. to participate in an approved exchange program. Training, not employment, is authorized. Potential employers should note that some J-1 exchange visitors and their dependents are subject to a two-year foreign residence requirement abroad before being allowed to change status and remain or return to the U.S.

(iv) TN Professionals

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specific defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN visas are granted for periods of 1-3 years and are employee-specific. Particularly with regard to Canadians, paperwork required for a TN visa request is minimal.

(v) E-1 Treaty Trader and E-2 Treaty Investor Visas

These are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the U.S. E visas are commonly used to transfer managers, executives or engineers with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its U.S. operations. There is no outside limit on how long a foreign national can hold an E visa.

(vi) E-3 Treaty Alien in a Specialty Occupation Visas for Australian Citizens

E-3 visas are for Australian citizens who will be employed in the U.S. in specialty occupations that require at least a bachelor’s degree. Like H-1B visas, the U.S. employer must pay the E-3 worker the higher of the actual wage paid by such employer to U.S. workers or the
prevailing wage paid to U.S. workers in the same position and within the same general vicinity. These temporary visas are generally granted for a period of 2 years and are renewable indefinitely.

(vii) **H-1B Specialty Occupation Visas.**

H-1B visas are for persons in specialty occupations that require at least a bachelor’s degree. Examples of such professionals are computer programmers, engineers, architects, accountants, and, some business positions. H-1B workers are generally granted three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer-and job-specific. A U.S. employer must pay H-1B workers the higher of the actual wage paid by such employer to U.S. workers or the prevailing wage paid to U.S. workers in the same general area.

(viii) **L-1 Intra-company Transferee Visas**

Useful in the transfer of executives, managers or persons with specialized knowledge from international companies to U.S.-related companies, L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to seven years in certain categories. L-1A visas are designed for the transfer of executives and managers while L-1B are for specialized knowledge persons. Some L managers or executives may qualify for a shortcut to permanent residency.

(ix) **O-1 and O-2 Visas for Extraordinary Ability Persons**

O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.

(x) **P-1 Athletes/Group Entertainers and P-2 Reciprocal Exchange Visitor Visas**

These temporary visas allow certain athletes who compete at internationally recognized levels or entertainment groups who have been internationally recognized as outstanding for a substantial period of time, to come to the U.S. and work. Essential support personnel can also be included in this category.

(xi) **Others**

There are a number of other non-immigrant visas categories that may apply to specific desired entries.

(c) **Immigration Reform and Control Act (“IRCA”)**

The Immigration Reform and Control Act (“IRCA”) requires that all employers hire only persons who are legally authorized to work in the United States. Each new hire must complete a Form I-9 (Employment Eligibility Verification Form). Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for
knowingly hiring unauthorized workers.

8. Federal Law

Described below are some of the more significant federal laws and regulations, aside from immigration laws discussed above, affecting the employment relationship.

(a) Title VII of the Civil Rights Act of 1964 ("Title VII")

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employment discrimination based on race, sex, color, national origin, or religion. Title VII applies to all employers with 15 or more employees and prohibits discrimination in all areas of the employer-employee relationship, including job postings, recruiting, hiring, promotion, compensation, benefits administration, and termination. Title VII also prohibits harassment based on an individual’s protected characteristics, as well as retaliation for engaging in conduct protected by Title VII. To recover damages, any individual who has suffered such discrimination must file a complaint with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the alleged discrimination or, in states such as Arizona where there is an antidiscrimination law and agency authorized to grant or seek relief, within 300 days of the discriminatory act or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. Once the EEOC investigates the allegations and makes a determination regarding the sufficiency of the evidence to prove the alleged discrimination, the EEOC will notify the employee in writing of his or her right to bring a civil action. Regardless of the EEOC’s determination, the employee may, within 90 days of receipt of the notice, bring a legal action based on his or her allegations. An individual’s possible remedies under Title VII include compensatory and punitive damages, back pay and front pay, reinstatement, and attorneys’ fees.

(b) Age Discrimination in Employment Act ("ADEA")

The Age Discrimination in Employment Act ("ADEA") makes it unlawful for employers to fail or refuse to hire, to discharge, limit, segregate or classify protected employees, or otherwise discriminate against them with respect to their compensation, terms, conditions or privileges of employment because of their age.

The ADEA protects employees who are at least 40 years old and applies to all employers with 20 or more employees employed in an industry affecting commerce. There are limited exceptions to the ADEA where age is a “bona fide occupational qualification” necessary to the particular business, or where the differentiation is based on reasonable factors other than age. Employees may file charges of discrimination with the EEOC, which enforces the ADEA. The employee or the EEOC may then sue in federal court for damages and other relief. Remedies under the ADEA include reinstatement or front pay, back pay, liquidated damages, and attorneys’ fees.

(c) Americans with Disabilities Act ("ADA")

The Americans with Disabilities Act ("ADA") makes it unlawful for employers to discriminate against a qualified individual with a disability based on the existence of a disability,
a record of a disability, or on the employer’s perception that an employee is disabled. The ADA requires that employers take reasonable steps to accommodate disabled individuals in the workplace unless such measures would constitute an undue hardship on the employer. The ADA applies to employers engaged in interstate commerce that have 15 or more employees. The procedures for pursuing a claim under the ADA, as well as the available remedies, are similar to those provided by Title VII.

The ADA was amended in 2008 by the Amendments Act and is now known as the ADAAA. One of the central purposes of the Amendments Act is to expand the definition of disability, which Congress criticized as having been too narrowly construed by the Supreme Court. The practical effect of the Amendments Act and interpreting regulations is that more individuals will qualify as disabled and will be entitled to reasonable accommodations at the workplace. Moreover, the broad coverage of the Amendments Act increases the number of employees protected under the ADA, thereby increasing the likelihood of litigation if companies are not complying with the statutory requirements.

The main point for companies to keep in mind is that the primary focus of the ADAAA is on whether discrimination occurred—not whether an individual is disabled. The practical effect is that employers should, in almost all instances, move right into the interactive process as the majority of employees will be able to establish an actual disability or record of a disability. Moreover, the regulations reiterate that an individualized assessment is required to determine whether an impairment substantially limits a major life activity. Accordingly, it is now even more important that human resources representatives sit down with employees and discuss why they may be struggling at work and begin the interactive process to determine if a reasonable accommodation might help, assuming the employee is disabled. Companies should ensure that these conversations, and all efforts to provide reasonable accommodations, are documented in writing and maintained with their employees’ confidential medical files.

(d) **The Pregnancy Discrimination Act of 1978 (“PDA”)**


(e) **Employee Polygraph Protection Act (“Polygraph Act”)**

The Employee Polygraph Protection Act (“Polygraph Act”) generally prohibits the use of polygraph machines, lie detectors, or similar devices by an employer in screening or determining whether to hire, promote or terminate an individual. Some private employers, including those within the security field, those involved in the protection of the public, those involved in operations impacting national security, and those authorized to manufacture, distribute, or dispense any controlled substance, are exempt from the Polygraph Act. The Polygraph Act also permits the use of a lie detector by any employer when the employer sustains an economic loss, the employee to be tested had access to the property that is the subject of the investigation, the employer has a reasonable suspicion that the employee was involved in the incident being investigated, and the employer obtains a statement from the employee authorizing the test. Even
in these limited situations where use of a lie detector is permissible, an employee being tested can terminate the examination at any time. Employers should consult with an attorney to determine if they fall within any of these exemptions prior to requesting that an employee submit to a polygraph or other screening test. Either the Secretary of Labor or an aggrieved employee can bring an action against an employer for violating the Polygraph Act. Remedies include reinstatement, promotion, back pay, and attorneys’ fees. The Department of Labor may also impose a fine up to $10,000.

(f) The Equal Pay Act of 1963 (“EPA”)

The Equal Pay Act requires employers to pay men and women equal wages for equal work. Equal pay is required for any jobs “the performance of which require equal skill, effort and responsibility and which are performed under similar working conditions.” There are exceptions for seniority systems, merit systems, pay systems based on quantity or quality of production, or other pay differentials based on factors other than sex. The Equal Pay Act applies to employers who have two or more employees engaged in interstate commerce, in the production of goods for interstate commerce, or in handling or working with goods and materials in interstate commerce. An employee who believes his or her employer has violated the EPA may bring an action in federal court or file a charge with the EEOC. The employee need not first bring the claim before the EEOC in order to sue. Remedies include back pay, attorneys’ fees, and court costs.

(g) The Fair Labor Standards Act (“FLSA”)

The Fair Labor Standards Act (“FLSA”) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in the federal, state, and local government. Employers must keep accurate records of hours worked by covered employees and those employees must receive a regular rate of pay for each hour they work up to 40 hours in a week. The regular rate must be at least equal to the required “minimum wage.” The federal minimum wage is $7.25/hr; however, in Arizona, the state minimum wage is adjusted each January 1, and employers are required to pay the larger of the Arizona minimum wage or the federal minimum wage. Effective January 1, 2012, the Arizona minimum wage is $7.65/hr.

All hours over 40 in a week are considered “overtime.” Generally, an employer must provide compensation to any covered (i.e., non-exempt) employee who works in excess of 40 hours in a week at an amount not less than one and a half times the worker’s regular rate of pay for each hour of overtime. These protections may not be eliminated by individual agreement or by union contract. While appearing simple, the FLSA is complex and subject to many regulations, exceptions, interpretations and exemptions and is not capable of short summary. For example, professional, executive and administrative employees, as defined by regulations, are exempt from both the minimum wage and overtime pay requirements and some occupations and industries have special minimum wage provisions. Employers who violate the FLSA are subject to civil penalties, including fines, and prevailing employees may recover unpaid wages, unpaid overtime compensation, liquidated damages, and attorneys’ fees.

(h) The Family and Medical Leave Act (“FMLA”)
As discussed in Section 5(e) above, the Family and Medical Leave Act ("FMLA") provides eligible employees with the entitlement to take unpaid job-protected leave for certain reasons. The maximum amount of leave an employee may use is either 12 or 26 weeks within a 12-month period depending on the reasons for the leave. To be eligible for FMLA leave, an employee must have worked at least 12 months for the company in the preceding seven years; worked at least 1,250 hours for the company over the preceding 12 months; and currently work at a location where there are at least 50 employees within 75 miles. FMLA leave may be taken for the following reasons: (1) birth of a child, or to care for a newly-born child (up to 12 weeks); (2) placement of a child with the employee for adoption or foster care (up to 12 weeks); (3) to care for an immediate family member (employee's spouse, child, or parent) with a serious health condition (up to 12 weeks); (4) because of the employee's serious health condition that makes the employee unable to perform the employee's job (up to 12 weeks); (5) to care for a covered servicemember with a serious injury or illness related to certain types of military service (up to 26 weeks); or (6) to handle certain qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on duty under a call or order to active duty in the Uniformed Services (up to 12 weeks). The maximum amount of leave that may be taken in a 12-month period for all reasons combined is 12 weeks, with one exception. For leave to care for a covered servicemember, the maximum combined leave entitlement is 26 weeks, with leaves for all other reasons constituting no more than 12 of those 26 weeks. If the employee’s need for leave is foreseeable, the employee must provide his or her employer with 30 days notice before taking leave. When the need for leave is unforeseeable, the employee is required to provide notice as soon as practicable.

Companies must identify in their handbooks and policies how the 12-month period is calculated. Eligible employees may take FMLA leave in a single block of time, or intermittently or with a reduced work schedule, in certain circumstances. Employees who require intermittent or reduced-schedule leave must try when practicable to schedule their leave so that it will not unduly disrupt the company's operations.

An individual who believes his or her FMLA rights have been violated is entitled to file a lawsuit. Remedies include lost compensation, liquidated damages, other out of pocket expenses, equitable relief, and attorneys’ fees.

(i) The Employee Retirement Income Security Act of 1974 ("ERISA")

The federal Employee Retirement Income Security Act of 1974 ("ERISA") regulates employee benefit plans maintained by employers engaged in commerce or in an industry or activity affecting commerce. ERISA contains minimum standards and specific requirements governing the creation, modification, maintenance and reporting of employer pension and retirement plans as well as other plans relating to employee health and welfare benefits. Welfare plans include, for example, plans providing medical, hospital, death or other insurance benefits, vacation and severance benefits. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, providing exemptions for religious institutions, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA does not prescribe any particular level of severance, insurance, pension or welfare benefits, nor does it require that they be provided at all. This is a matter to be decided by the employer and, if the employer is unionized, to be bargained between the employer and the
union. However, if benefits are offered, they must comply with regulations prohibiting discrimination and must be administered fairly under the terms of the benefit plan. ERISA generally preempts state laws governing employee plans and arrangements.

(j) The Consolidated Omnibus Budget Reform Act (“COBRA”)

The Consolidated Omnibus Budget Reform Act (“COBRA”) requires employers with more than 20 employees who provide health and medical benefits to offer continuation of those benefits to former employees and their covered dependents (“qualified beneficiaries”) upon the occurrence of certain “qualifying events.” COBRA generally provides a maximum continuation period of 18 months. In certain circumstances where a qualified beneficiary is disabled at any time during the first 60 days of COBRA coverage, the period can be extended to 29 months. Also, if certain qualifying events occur during the original 18 months of COBRA coverage, qualified beneficiaries become entitled to receive a limited additional amount of continuation coverage. Employers may require electing qualified beneficiaries to pay the entire premium for COBRA coverage plus a 2% administrative charge. COBRA contains very specific procedures for notifying qualified beneficiaries of their COBRA rights. COBRA applies whether employees leave voluntarily or involuntarily.

(k) Health Insurance Portability and Accountability Act (“HIPAA”)

The Health Insurance Portability and Accountability Act (“HIPAA”) establishes limitations on the use of preexisting condition exclusions (“portability” rules). HIPAA prevents group health plans or health insurance issuers from imposing a preexisting condition exclusion of more than 12 months (18 months for late enrollees) for coverage of any condition that was present during the six-month period ending on the individual's enrollment date. In addition to various other provisions, HIPAA mandates that preexisting condition limitations generally may not be imposed upon newborns or adopted children under age 18, and may not apply to pregnancy and certain genetic information. The preexisting condition exclusion period must be reduced by periods of “creditable coverage,” generally defined as periods of continuous coverage the individual has under other health plans. HIPAA also imposes various other requirements on employers and group health plan providers and insurers, such as nondiscrimination and disclosure requirements, special enrollment rights, and special notice obligations. The HIPAA privacy rules establishes national standards to protect individuals’ medical records and other personal health information, and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The HIPAA Security Rule establishes national standards to protect individuals’ electronic personal health information that is created, received, used, or maintained by a covered entity. The Security Rule requires appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity, and security of electronic protected health information.

(l) The Occupational Safety and Health Act (“OSHA”)

As discussed in Section 3(c) above, the Occupational Safety and Health Act (“OSHA”) regulates workplace safety and imposes a duty on employers to provide employees with a safe place to work. OSHA requires all employers to furnish employees with a workplace free from recognized hazards causing, or likely to cause, death, serious physical harm, or illness.
Employers must also comply with occupational safety and health standards that are issued under the Act. “Right to Know” regulations issued under OSHA require that employees in certain industries be warned about hazardous materials and chemicals to which they may be exposed. OSHA sets forth a detailed procedure for adopting safety and health standards and provides for inspection, investigation and enforcement. Citations issued for noncompliance can result in civil and criminal penalties, including fines and, for violations causing the death of an employee, imprisonment. States are allowed to develop and enforce their own plans setting and enforcing occupational safety and health standards. Some industries have specific statutes that regulate employee safety and health.

(m)  The Fair Credit Reporting Act (“FCRA”)

The Fair Credit Reporting Act (“FCRA”) prescribes the extent to, and manner in which, employers may use credit information in making employment decisions, including hiring and termination. The FCRA imposes strict guidelines requiring employers to use such credit reports only for a permissible purpose, after disclosure to employment applicants or employees of the intent to seek and use credit information, and after obtaining the written consent of the employee/applicant. The disclosure/consent may not be made a part of the employer’s application form. Additionally, employees/applicants must be provided specific information prior to and after any adverse decision that is made based in whole or in part upon credit information. Additional requirements apply to investigative consumer reports. The Federal Trade Commission (FTC) enforces the FCRA.

(n)  The Uniformed Services Employment and Reemployment Rights Act (“USERRA”)

The Uniformed Services Employment and Reemployment Rights Act (“USERRA”) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual’s membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA requires employers to grant employees unpaid time off to fulfill temporary military obligations, and also requires employers to rehire individuals who leave work to serve full time in the U.S. Uniformed Services for up to five years. USERRA protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training, and provides them with certain seniority rights, pension rights, and the right to continued health insurance coverage. Except in certain circumstances, employees must notify their employer in advance of the need for military leave, and also must reapply for employment after their service. The time limits for reapplication vary depending on the length of service. Damages recoverable for violation of USERRA include re-employment, lost wages and benefits, liquidated double damages for “willful” violation, and attorneys’ fees.

(o)  Genetic Information Nondiscrimination Act (“GINA”)

The Genetic Information Nondiscrimination Act (“GINA”) prohibits genetic discrimination in two areas – employment and health insurance. Title II of GINA applies to
employers, labor organizations, and joint labor-management committees and generally prohibits employment discrimination based on the genetic information of an employee or the employee’s family members. It prohibits an employer from discriminating against an individual in hiring, firing, compensation, terms, or privileges of employment on the basis of genetic information of the individual or family member of the individual. The law defines genetic information as (1) an individual’s genetic tests; (2) an individual’s family member’s genetic tests; or (3) the manifestation of a disease or disorder in the individual’s family member. Subject to a number of narrowly defined exceptions, GINA prohibits an employer from requesting, requiring, or purchasing genetic information of the individual or family member. An employer may engage in genetic monitoring of biological effects of toxic substances in the workplace but only in certain narrowly defined situations. Employees may sue in a court of competent jurisdiction for relief from violations of GINA and obtain back pay, front pay, compensatory and punitive damages and attorney’s fees.

GINA makes clear that genetic information, if acquired - even inadvertently - may not be used to discriminate against an individual with respect to employment or benefits or disclosed in violation of GINA’s confidentiality requirements. If an employer acquires genetic information, such information must be treated and maintained as part of the employee’s confidential medical records. Such information must be maintained on separate forms and in separate medical files and must be treated as a confidential medical record. This is consistent with the requirements under the ADA regarding the maintenance and treatment of medical information.

The preceding overview covers only a few of the most fundamental components of GINA’s new regulations and is not an exhaustive list of all obligations. Employers would be wise to carefully review the regulations, which may be obtained through the EEOC website. Legal counsel can assist if there are questions about how to interpret and implement the complex provisions.

9. Other State Specific Considerations

(a) Arizona Civil Rights Act

The Arizona Civil Rights Act prohibits discrimination on the basis of race, color, religion, sex, national origin, age, or disability. It is applied much like Title VII of the Civil Rights Act of 1964. The Act’s prohibition against sexual harassment applies to employers with one or more employees, and the other provisions apply to Arizona employers with 15 or more employees. Prevailing employees or applicants may obtain back pay, front pay, compensatory and punitive damages, equitable relief, and attorney’s fees.

(b) Arizona Whistleblower Statute

Arizona law prohibits any adverse employment action or retaliation against an employee who discloses information that the employer has violated, is violating, or will violate the Arizona Constitution or Arizona law. Employees who have been retaliated against may sue for lost wages, injunctive relief, and other compensatory damages.

(c) Arizona Minimum Wage Law
In Arizona, the state minimum wage is adjusted each January 1. Effective January 1, 2012, the Arizona minimum wage is $7.65/hr. Employers must pay at least the greater of the Arizona minimum wage or the federal minimum wage. An employee may file an administrative complaint with the Labor Department of the Industrial Commission of Arizona up to one year after the alleged violation occurred. An employee may also file a civil lawsuit up to two years after the alleged violation occurred. An employer failing to pay minimum wage then has to pay the unpaid wages plus interest and damages in the amount of twice the unpaid wages.

(d) Arizona Medical Marijuana Act

Arizona voters passed the Arizona Medical Marijuana Act (“AMMA”) in 2010. AMMA provides expansive workplace protections to employees who are users of medical marijuana. The most significant of AMMA’s provisions impacting employers are found in A.R.S. § 36-2813. Those provisions protect applicants and employees who use medical marijuana from discrimination.

Regardless of the situation, if an employee is protected by AMMA’s provisions, employers should use care in reviewing all the facts and issues before taking any action, just as they would any other incident where allegations of failure to operate equipment or perform job duties safely, otherwise, allegations of discrimination, harassment and retaliation could arise.

(e) Arizona Anti-Blacklisting Statute

Arizona law prohibits any understanding or agreement whereby the name of any person or persons, list of names, descriptions or other means of identification are spoken, written, printed or implied for the purpose of being communicated or transmitted between two or more employers whereby the employee is prevented or prohibited from engaging in useful occupation.

(f) A.R.S. § 12-781

This statute, which governs the possession of guns in parking lots, became effective September 30, 2009. Under this statute, employers cannot have a policy prohibiting a person from lawfully transporting or storing a firearm in a parking lot under certain enumerated circumstances. A policy that prohibits, for example, any possession of firearms on company property, when such property includes a parking lot, could be problematic under the statute. Arizona employers should review their policies that address firearms to ensure they comply with A.R.S. § 12-781.

(g) Arizona Sexual Orientation Discrimination

In the city of Phoenix, sexual orientation discrimination is illegal for the city or city contractors or suppliers with more than 35 employees.
10. Employment Law Resources

(a) Federal

(i) Agencies

• National Labor Relations Board (NLRB), http://www.nlrb.gov
• Dept. of Justice Civil Rights Division, http://www.usdoj.gov/crt
• U.S. Citizenship and Immigration Services (USCIS), http://www.uscis.gov/portal/site/uscis

(ii) Websites

• United States Code, http://www4.law.cornell.edu/uscode/

(iii) Additional Materials

• Employment Law Updates, http://employmentandthelaw.com
• Employment Law Tips, http://employmentlawpost.com/
• Society of Human Resources Management, http://www.shrm.org/Pages/default.aspx
• Bureau of National Affairs (BNA) publications on employment
• Publications by the American Bar Association Section on Labor and Employment

(b) State

(i) Agencies

• Arizona Civil Rights Division, http://www.azag.gov/civil_rights/
• Arizona Industrial Commission (workers’ compensation and minimum wage issues), http://www.ica.state.az.us/

(ii) Websites

• Arizona Revised Statutes, http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp