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1. Overview

It is critical that social sector organizations familiarize themselves with relevant employment laws that affect their employees and their organization. Often social sector organizations 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 West Virginia employment laws that could apply to social sector organizations and their employees located in West Virginia. This overview does not provide a complete and comprehensive analysis of all potentially applicable employment laws in West Virginia and the United States and it should not be acted upon without specific legal advice based on a 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.” Under this arrangement, and setting aside the potential applicability of a number of special laws, either the employer or the employee may terminate the employment relationship at any time with or without cause 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 is generally presumed to be at will.

It is important to remember, however, that there are a number of special laws, both federal and state, that limit an employer’s unfettered right to terminate traditional at will employees. These laws, many of which are identified and discussed below, 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 and 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 still an at will employee of the employer, and the relationship is governed by the same laws as those applicable to at will employees. 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, need not 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 United States 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, which tend to share the same primary factors despite variations among the tests. Essentially, workers who are performing the same job and performing under the same supervision as regular employees are usually deemed to be employees. 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., whether 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 (e.g., 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 employment-related civil suits 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 key leaders. 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, and circumstances under which the agreement may be terminated by either party. In addition, such agreements often contain provisions requiring key employees to keep information confidential even after they leave employment and barring them from becoming employed by certain competing organizations for a limited period of time following termination. The provisions of these agreements and whether any such agreement should be used 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 special 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.

e. Employee Records

Under West Virginia employment laws, an employer should maintain a record for each person hired by him for the following periods:

- **2 years**— name/address of every employee, rate of pay, hours of employment, payroll deductions, and amount paid to him for each pay period. All employee records, including all documents related to hiring, firing, dismissal, discharge, discipline, etc.,
are to be kept for a period of at least two years following any incident giving way to a
civil action filed in the circuit court for a discriminatory complaint, pursuant to the
West Virginia statute of limitations for bringing a civil action.

Employers in West Virginia can also be required by the commissioner to keep records of
employee exposures to potentially toxic materials or harmful physical agents which are
required to be monitored or measured under any occupational safety and health standard.

In general, under federal laws, an employer is either required to or should maintain the
following records on each employee:

1 year – documents related to hiring, accommodations, promotions, discipline, and
discharge including job applications; resumes; or any other form of employment
inquiry whenever submitted in response to an advertisement or notice of job opening
including records pertaining to failure or refusal to hire any individual; records
relating to promotion, demotion, transfer, selection for training or apprenticeship,
layoff, recall, or discharge of any employee; job orders submitted to an employment
agency or labor organization for recruitment of personnel; test papers completed by
applicants or candidates for any position; results of any physical examination if such
is considered in connection with a personnel action; advertisements or notices relating
to job openings, promotions, training, or opportunities for overtime work; requests for
reasonable accommodation for disability or religious observance and what
accommodation, if any, was granted. This will cover the limitations period of claims
under Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans with
Disabilities Act (“ADA”) and the Age Discrimination in Employment Act (“ADEA”)
(see Section VIII below for summaries of these and other federal laws referred to by
initial caps in this Part).

3 years – Payroll records listing employee’s full name, home address, date of birth,
sex (for Equal Pay Act purposes), occupation/job title, time of day and day of week
on which workweek begins, regular rate of pay, the basis for determining regular rate
of pay (including any payments excluded from the regular rate of pay), straight-time
earnings, overtime premium earnings, additions/subtractions from wages for each pay
period, total wages for each pay period, and date of payment and pay period covered
by each payment. This is for claims under the ADEA and Fair Labor Standards Act
(“FLSA”).

2 years – Supplementary payroll records such as basic time sheets or production
records that contain the daily starting and stopping times of individual employees
and/or amount produced that day, wage rate tables for computing piece rates or other
rates used in computing straight-time earnings, wages, salary, or overtime, and any
records needed to explain the wage rate differential based on sex within the
establishment (e.g., production, seniority, or other bona fide business criteria). Such
information may be necessary in responding to claims under the FLSA including the Equal Pay Act.

1 year after plan terminates – Employee benefit plan records including pension plans, insurance plans, seniority systems, and merit systems. This includes benefit plans covered by ERISA as well as set plans for advancement, layoff, or reinstatement based on seniority, merit, or some other formula which will be pertinent to either an issue under a collective bargaining agreement or claims of age or other discrimination.

3 years – Records related to qualified family and medical leave including basic payroll and employee data (used to determine qualification for protection under the Family and Medical Leave Act (“FMLA”)), dates and hours FMLA leave is taken, hours worked in the 12 months prior to start of leave, copies of employee notices furnished to employer, copies of notices provided to employee of rights and responsibilities under FMLA, employer polices applicable to use of family and medical leave, documents verifying premium payments of employee benefits (both employer paid and employee portion of premium), records of any disputes with employees over use of FMLA leave. These documents will assist in supporting compliance with FMLA.

30 years – Records of employee exposure to toxic substances. Such records are required by the Occupational Safety and Health Act (“OSHA”).

5 years – Occupational illness or injury records. These records, required by OSHA, should be kept for 5 years after the year in which the injury was sustained or treatment ended, whichever is longer.

3 years (or 1 year if following termination) – I-9 Employment Eligibility Verification Form. These forms must be kept for a minimum of 3 years or 1 year after the employee’s employment ends, whichever is longer.

4 years – Tax records related to income tax withholdings. This is required by the Federal Insurance Contribution Act and the Federal Unemployment Tax Act.

At a minimum, social sector organizations should maintain one or more personnel files for each employee and preserve 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

Every employer, except perhaps for those with only two or three employees, should have written employment policies. Written policies clarify expectations, reduce risk and in some cases comply with statutory requirements such as those in the Family and Medical Leave Act (“FMLA”). In addition, both state and federal law require that certain laws be posted in an area accessible to all employees. There are several services that provide updated posters containing these notices. Most concern compliance with the FMLA, Title VII, the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), workers’ compensation, the organization’s anti-harassment policy, and state and federal wage and hour laws.

Employment manuals or handbooks should include the following policies:

a. Nondiscrimination

Under federal law, employers are prohibited from discriminating on the basis of race, color, religion, sex, national origin, veteran status, pregnancy, age, or disability. West Virginia law also prohibits discrimination on the basis of ancestry, blindness, or disability. The discrimination laws prohibit an employer from making employment related decisions such as hiring, firing, promotions, pay increases, or conditioning other terms and conditions of employment on a person’s protected status. Some local communities may have ordinances that provide for even greater protections, 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 be treated equally without regard to their protected status. In addition, employers may not retaliate against employees who seek to further or enforce employment discrimination laws. Employers also should be aware of their obligations to make reasonable accommodations for employees where the employees’ disabilities or religious beliefs conflict with employment requirements. 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 positive steps to reasonably accommodate employees with disabilities and specific religious practices.

See federal laws regarding discrimination in “Federal Law” section below. See West Virginia laws regarding discrimination in “Other State Specific Considerations” section below.
b. Harassment

Both federal and West Virginia 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 called “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 called “hostile environment” harassment). While sexual harassment is most often thought of, harassment on the basis of race, disability, age, etc., is also prohibited.

An employer is required to take all reasonable steps necessary to prevent the occurrence of either type of 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 encouraged to report any harassing behavior to their supervisor and/or a human resources person or senior manager should be 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 prompt and effective remedial action when harassment occurs. As with discrimination, employers cannot retaliate against an employee who complains about harassment.

c. OSHA Injury and Illness Prevention

The Occupational Safety and Health Act ("OSHA") regulates workplace safety for employers in businesses which affect commerce. Under OSHA, employers are required to furnish their employees with a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm. 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 to set and enforce occupational safety and health standards. Some industries have specific statutes which 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.

4. **Hiring Process**

The hiring process involves receiving and reviewing applications, interviewing potential candidates, and selecting the employee. Several federal and West Virginia laws limit what employers can ask 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 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 West Virginia discrimination laws prohibit employers from asking certain questions during the hiring process. For example, questions 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 are absolutely prohibited. 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 the federal credit-reporting laws under the Fair Credit Reporting Act, which requires obtaining the appellant’s consent as well as certain disclosures and reports to be made available to applicants.

Federal and West Virginia 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, 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 they 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 across the board. 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.

b. Immigration

All employers are required to verify that every new hire is either a United States citizen or authorized to work in the United States. All employees must complete Employment Eligibility Verification (I-9) Forms and produce required documentation within three business days of their hire date. Employers must retain these forms for three years after the date of hire or one year after the date of termination, whichever is later. Failure to follow the I-9 process can result in penalties and an audit by the U.S. Immigration and Customs Enforcement.

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

5. Compensation and Benefits

Several different federal and West Virginia laws regulate various forms of compensation and benefits. Each social sector organization should adopt a 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 West Virginia, the state minimum wage is adjusted each June 30, and employers are required to pay the greater of the West Virginia minimum wage or the federal minimum wage. As of June 30, 2008, the West Virginia minimum wage is $7.25/hr. An employer under the West Virginia minimum wage act is defined to generally include the State of West Virginia, its agencies, departments, all its political subdivisions any individual, partnership, association, public or private corporation, or persons acting for an employer and who employed during any calendar week six (6) or more employees. However, an employer is not covered by the state act if eighty percent of their employees are subject to any federal act relating to minimum wage, maximum hours or overtime laws. Also exempt are several types of employees, including those working in whitewater rafting and agriculture (as defined by the Fair Labor Standards Act.)
The two major requirements in both federal and West Virginia wage and hour laws concern (1) payment of the minimum wage and (2) payment for overtime hours. 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. Under the laws governing overtime, employers must pay most employees additional compensation for overtime hours.

Minimum wage and overtime laws are not limited to hourly employees. Employees that are paid in other ways, such as by salary or commission, may also be entitled to minimum wages and overtime pay. The minimum wage laws apply to all employees and the overtime laws apply to all employees except those who fall into one of the “exempt” classifications under federal law.

b. Bonuses

Bonuses can improve employee retention and provide 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 social security tax from taxable wages paid to employees. Under federal law, funds withheld must be deposited in certain depositories accompanied by a Federal Tax Deposit Coupon (IRS Form 8109) or 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. Willful failure on the part of the employer to collect, account for, and pay withholding taxes will subject the employer to a significant monetary penalty and, may impose personal liability on those responsible for remitting the withholding taxes.

Most employers, including non-profit organizations that are not 501(c)(3) organizations, must also file an Employer’s Annual Federal Unemployment (FUTA) Tax Return (IRS Form 940) and pay any balance due on or before January 31 of each year. Details may be found in IRS Circular E, available at [http://www.irs.gov/publications/p15/index.html](http://www.irs.gov/publications/p15/index.html). Employers who are 501(c)(3) organizations, however, are not required to file a FUTA Tax Return. If payment of tax is required, any balance is due on or before January 31 of each year. Details may be found in IRS Circular E, available at [http://www.irs.gov/publications/p15/index.html](http://www.irs.gov/publications/p15/index.html) and in Publication 15A.
d. Mandatory Benefits

i) Workers’ Compensation

All employers with one or more employees (five or more in the agricultural industry) 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 an employee injured in an “on the job accident.” What this means for employers is that an employee who is injured while performing work for the employer cannot sue the employer for his or her injury but is compensated through workers’ compensation.

ii) Unemployment Insurance

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-- including how long the employee worked for the employer. Employees terminated within 90 days of hire may receive unemployment benefits, but those payments are traditionally not taxed to the employer.

iii) Other West Virginia Laws

See Section 9 below.

iv) Federally Mandated Benefits

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

e. Mandatory Leave of Absence

Several federal and West Virginia 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 or type 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 “West Virginia Law” sections below.

With certain exceptions, the federal Family and Medical Leave Act (“FMLA”) requires employers with 50 or more employees to provide unpaid family or medical leave of up to 12 weeks in a 12-month period for the birth or adoption of a child; for the serious health condition of the employee or spouse, parent or child of the employee; or for a qualifying exigency arising out of the fact that a spouse, child, 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 the support of a contingency operation. A “serious health condition” includes inpatient hospitalization and subsequent treatment therefore and continuing treatment by
a health care provider including pregnancy. To be eligible for FMLA leave, the employee must have worked 12 months or longer, performed at least 1,250 hours of service for the employer in the 12 months prior to the date of leave, and must work at a site within 75 miles of which the employer has 50 or more employees. 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.

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.

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 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 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.

Although it is not uncommon to do so, employers are not required to give employees paid holidays. Indeed, except in cases where accommodation of religious holidays might be required, employers are not required to give employees time off during holidays.

Employers are not required to offer paid sick leave to employees. Traditional sick leave is often limited to time off for dealing with the employee’s own illness or possibly to care for a sick child or spouse. Upon termination, the employer has no independent legal obligation to pay out unused sick leave, which means the employer’s written policy will determine whether unused sick leave will be paid out.

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.
Paid leaves of absence, such as paid maternity or paternity leave, are not required by law.

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 anti-discrimination 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. Normally, advance notice of termination should be given. In most cases, employment counsel should be consulted before terminating any employees.

a. Pay

All wages earned and unpaid at the time of an employee’s voluntary termination are due and payable at the next regular pay date. However, an employee must be paid all wages earned and unpaid within 72 hours of the employee’s termination if he is involuntarily terminated. See more below in “West Virginia Law” section.

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 wage and leave claims. Also, the West Virginia Human Rights Commission’s regulations detail specific requirements for waivers of any claims under the West Virginia Human Rights Act.

c. Unemployment Insurance / Compensation

The purpose of unemployment compensation is to provide benefits to those who are unemployed through no fault of their own. Therefore, to be eligible for payments, an applicant generally must 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 at least $2,200 in his or her base period and earned wages in more than one-quarter of his or her base period; (2) be employed 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) participate in reemployment services such as job assistance services.

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 “totally unemployed,” an individual must be separated from employment for an employing unit and not be performing any services with respect to which wages are payable to him or her.

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 United States 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 United States 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 United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time and often the employment authorization is limited to specific employers, jobs, and even specific work sites.

When planning to bring foreign personnel to the United States, employers should allow several months for processing by the United States Citizenship and Immigration Services (“USCIS”) and 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 family relationships (e.g., marriage to a United States citizen) or 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 ascertain the requirements for that immigration filing prior to bringing the employee to the United States.

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 United States of six months or less. Neither visa authorizes employment in the United States. 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 United States. B-1 or B-2 visitors cannot be on the United States payroll or receive United States-source remuneration.

   ii) **F-1 Academic Student Visas Including Practical Training**
   
   Often, foreign students come to the United States 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 United States 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 United States.

   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 holders are granted one-year stays for specific employers, and other employment is not allowed without prior USCIS approval. Particularly with regard to Canadians, the paperwork required for filing these requests 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 United States. 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 United States operations. Generally, E visa holders receive a five-year visa stamp but only two-year entries at any time.

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 United States in specialty occupations that require at least a bachelor’s degree. Like H-1B visas, the United States employer must pay the E-3 worker the higher of the actual wage paid by such employer to United States workers or the prevailing wage paid to United States workers in local commuting area as determined by Department of Labor online wage library or other valid salary survey. These temporary visas are 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, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer-and job-specific. A United States employer must pay H-1B workers the higher of actual wage paid by such employer to United States workers or the prevailing wage paid to United States workers in local commuting area as determined by Department of Labor online wage library or other valid salary survey.

viii) **L-1 Intra-company Transferee Visas**
Most often utilized in the transfer of executives, managers, or persons with specialized knowledge from international companies to United States-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 for specialized knowledge persons. As in the case of certain E visa
capacities, some L managers or executives may qualify for a shortcut in any
permanent residence filings.

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 United
States 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 and Nationality Act (“INA”)

The Immigration and Nationality Act (“INA”) includes provisions addressing
employment eligibility, employment verification, and nondiscrimination. Employers may
hire only persons who may legally work in the United States (i.e., citizens and nationals
of the United States) and aliens authorized to work in the United States. The employer
must verify the identity and employment eligibility of anyone to be hired, which includes
completing an Employment Eligibility Verification Form (I-9). Employers must keep
each I-9 on file for at least three years or one year after employment ends, whichever is
longer.

d. Immigration Reform and Control Act (“IRCA”)

The Immigration Reform and Control Act (“IRCA”) requires employers, regardless of
size, to inspect and verify documentation establishing the identity and eligibility to work
in the United States of every newly hired employee and makes it unlawful to hire an alien
who is ineligible for work in the United States. Employers are subject to significant fines
and penalties for failure to comply with documentation requirements under the IRCA, as
well as for hiring unauthorized workers. IRCA also prohibits employers of four or more
workers from discriminating against lawfully admitted aliens.
8. Federal Law

Described below are some of the more significant federal laws and regulations, not including immigration, 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 areas of advertising, 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. In West Virginia, this time period is extended to 365 from the alleged act of discrimination. 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, 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, 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 that affects 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, 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 and remedies for pursuing a
claim under the ADA are similar to those provided by Title VII.

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

The Pregnancy Discrimination Act of 1978 (“PDA”) explicitly prohibits discrimination
based on pregnancy and its related conditions.

e. Employee Polygraph Protection Act (“EPPA”)

Employee Polygraph Protection Act (“EPPA”) generally prohibits the use of polygraph
machines by an employer in determining whether to hire, promote, or terminate an
individual. Some private employers are exempt from the EPPA. These exempt private
employers include 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. The EPPA 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. Either
the Secretary of Labor or an aggrieved employee can bring an action against an employer
for violating the EPPA. 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 of 1963 requires employers to pay men and women equal wages for
equal work. Equal pay is required for any job that "the performance of which require[s] 
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 Federal Fair Labor Standards Act ("FLSA")

The Federal Fair Labor Standards Act ("FLSA") regulates wages and hours of certain covered employees. 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," which was increased to $7.25 on July 24, 2009. 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 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")

The Family and Medical Leave Act ("FMLA") requires that eligible employees working for organizations with 50 or more employees be allowed to take up to 12 weeks of unpaid leave per year for the birth or adoption of a child, for the serious health condition of the employee or spouse, parent or child of the employee, or for a qualifying exigency arising out of the fact that a spouse, child 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 the support of a contingency operation. A “serious health condition” includes inpatient hospitalization, subsequent treatment, and continuing treatment by a health care provider. Pregnancy is included. To be eligible for FMLA leave, the employee must have worked 12 months or longer, performed at least 1,250 hours of service for the employer in the 12 months prior to the date of leave, and must work at a site within 75 miles of which the employer has 50 or more employees. 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.
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.


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 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 36 months 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 (so-called “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. 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 extend privacy protection to all types of “protected health information” held by “covered entities.” Covered entities include health plans, health care clearinghouses, and health care providers. The HIPAA security rules impose requirements with respect to safeguarding and protecting the confidentiality, integrity, and availability of electronic protected health information.

l. **The Occupational Safety and Health Act ("OSHA")**

The Occupational Safety and Health Act ("OSHA") regulates workplace safety for employers in businesses which affect commerce. Under OSHA, employers are required to furnish their employees with a place of employment free from recognized hazards that are causing or are likely to cause them death or serious physical harm. 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 that set and enforce occupational safety and health standards. Some industries have specific statutes that regulate employee safety and health. West Virginia has its own Occupational Health and Safety Act in § 21-3A-1 of the West Virginia Code. (See “Other State Specific Considerations”).

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 FRCA imposes strict guidelines requiring employers to use such credit reports only for a permissible purpose and may only do so after disclosing to employment applicants or employees the intent to seek and use credit information and obtaining the employee/applicant’s written consent. The disclosure/consent may not be made a part of the employment application form. Additionally, employees/applicants must be notified of any adverse decision based in whole or in part upon credit information. Additional requirements apply to investigative consumer reports.

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 also 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.

o. Genetic Information Nondiscrimination Act (“GINA”)

The Genetic Information Nondiscrimination Act (“GINA”) 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 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.

9. Other State Specific Considerations

a. West Virginia Human Rights Act (“WVHRA”)

The WVHRA prohibits discrimination on the basis of race, religion, color, national origin, blindness, ancestry, sex, disability or age. It is applied much like the Title VII Civil Rights Act of 1964. Claims of discrimination under the act must be filed with the West Virginia Human Rights Commission within 365 days of the alleged discrimination.
Prevailing employees or applicants most likely may obtain back pay, front pay, compensatory and punitive damages, equitable relief and attorney’s fees. The act applies to employers with 12 or more employees.

Outside of the WVHRA, if an employer has fewer than 12 employees, an employee may bring a common law retaliatory discharge claim based on unlawful discrimination because there is a substantial public policy against unlawful harassment.

b. West Virginia Family Leave Act

The West Virginia Family Leave Act provides a total of twelve weeks unpaid leave, following the exhaustion of all annual personal leave, during any twelve-month period because of the birth or adoption of a son or daughter to the employee or to care for an employee’s son, daughter, spouse, parent or dependent who has a serious health condition. In the case of a serious medical condition of an employee’s son, daughter, spouse, or dependant, the leave may be taken intermittently based on the medical condition. Part-time leave may also be taken so long as the total period does not exceed 12 weeks and does not interrupt the operations of the employer. The West Virginia Family Leave Act only applies to persons who are hired for permanent employment and who perform services within the state for a department, division, board, bureau, agency, commission, or other unit of the state government or any county board of education in the state.

c. West Virginia Minimum Wage/Maximum Hours Law

West Virginia’s Minimum Wage Law requires that the state minimum wage be adjusted for inflation each June 30. West Virginia’s current minimum wage as of June 30, 2008, is $7.25 per hour and applies to state employees. Employers must pay at least the greater of the West Virginia minimum wage or the federal minimum wage. No employer in West Virginia may require a work week longer than forty hours unless compensation is provided at a specified rate of no less than one and one-half the regular rate at which he is employed. An employer who pays an employee less than the mandated minimum wage shall be liable to such employee for the unpaid wages. An employer or the commissioner of labor may also bring a legal action to claim the unpaid wages under the article. Attorney fees may also be awarded in the judgment against a defendant. The amount recoverable is also limited to the unpaid wages as should have been paid by the employer within two years next preceding the commencement of the action. This act does not apply to an employer if eighty percent (80%) or more of its workforce falls under the Fair Labor Standards Act or those listed in West Virginia State Code section 21-5C-1.
d. West Virginia Occupational Safety & Health Act

The West Virginia Occupational Safety and Health Act provides that every employer shall furnish to each of his employees employment and a place of employment that is free from recognized hazards causing or likely to cause death or serious physical harm or serious illness. Employers also, at the request of an employee, must furnish a list of toxic or hazardous substances with which that the employee has come into contact. Further, an employer may not discriminate in any manner against an employee who files a complaint pursuant to the act, has testified, or is going to testify concerning any right afforded by the article.

e. West Virginia Miners’ Health, Safety & Training Act

West Virginia, under W.Va. Code § 22A-1-1 through -39, created the office of miners’ health, safety and training. The directors of the office create regions and districts for which mine inspectors are appointed and assigned. Examinations of mines should be conducted at a minimum four times annually and may be done without notice. Mine inspectors are under a duty to report any violation and issue a finding, order, or notice as appropriate. In the instance of a fatal accident, mine inspectors are required to make an examination into the facts of such situation and report their findings to the director and involved parties who have requested such information by written request. Other specific regulations are also promulgated by the statute including a requirement that emergency medical personnel be present at a mine where more than ten (10) employees are employed and more than eight (8) are present during the shift.

f. West Virginia Nurse Overtime & Patient Safety Act

West Virginia’s Nurse Overtime & Patient Safety Act prohibits a hospital from mandating that a nurse accept overtime hours, either directly or through coercion. It also prohibits the hospital from taking any action against the nurse if he or she refuses to work the overtime hours because doing so may, in the nurse’s judgment, jeopardize patient or employee safety. However, if there is an emergency situation that jeopardizes patient safety, a nurse may be scheduled for duty or mandated to continue work in overtime status. Nurses, per the statute, are also required eight (8) consecutive hours of off-duty time following the completion of a twelve-hour (12) shift and are prohibited from working more than sixteen (16) consecutive hours.

g. Miscellaneous provisions

West Virginia law has other miscellaneous employment law provisions such as:
i) Prohibiting the employment of those not authorized to work in the United States.

ii) Prohibiting discrimination in the hiring or firing of an employee based on their use of tobacco products off work premises.

iii) Rules affecting employment of persons having an infectious venereal disease in certain occupations.

iv) Required allowance of time off for jury duty.

v) Requiring seats be provided for females who work in a factory mercantile establishment or a mill or workshop so that they may use them when not engaged in active duties for which they are employed or at all times if the use of the seat will not interfere with their duties;

vi) Employers must provide all employees with a meal break of at least 20 minutes during a work period of 6 hours or more.

vii) No employer may threaten to discharge an employee in order to prevent him or her from freely exercising the right to vote.

viii) An employee is entitled to reinstatement after serving on a jury. An employer that threatens to discharge an employee for serving on a jury is subject to fine and/or imprisonment.

ix) The crime of corrupt practices includes an employer threatening an employee with loss of employment if a particular candidate is elected or defeated.

x) No employer may terminate or use any disciplinary action against an employee who is a member of a volunteer fire department, who is an emergency medical service attendant or a member of an emergency medical service and who, in the line of emergency duty, responds to an emergency call prior to the time he or she is due to report for work and which results in a loss of time from his or her employment.

xi) West Virginia has no statutes pertaining to an employer’s reliance upon employee activities outside of the workplace. With respect to public employees, however, West Virginia has a statute authorizing county boards of education to terminate teachers for, among other things, “immorality.”

xii) West Virginia law strictly prohibits the disclosure of confidential information relating to mental health records.

xiii) No employer can require applicants or employees to submit to a psychophysiological detection of deception examination (formerly polygraph) as a condition of employment or continued employment. There are exceptions for employers dealing with controlled substances, the military, and the police. Additionally, an employer cannot terminate an employee for failing to take a psychophysiological detection of deception examination.

xiv) The use of video and other electronic surveillance by employers in certain employment settings is prohibited.

xv) The intentional interception, attempt to intercept, or procurement of any other person to intercept any wire, oral or electronic communication is prohibited.

xvi) West Virginia law prohibits an employer from requiring an employee to submit to a drug test unless the employer has a reasonable good faith objective suspicion of an employee’s drug usage or the employee’s job involves public
safety of the safety of others. However, pre-employment drug testing of an applicant for employment does not generally constitute an invasion of privacy.

xvii) No employer may discriminate against a present or former employee because such employee is receiving or has received or attempted to receive workers’ compensation benefits.

xviii) An employer may not terminate an injured employee while the injured employee is unable to work due to a compensable injury and is receiving or is eligible to receive temporary total disability benefits unless the employee has committed a separate dischargeable offense.

xix) Owners and contractors may be liable for unpaid wages of their contractors and subcontractors.

xx) The West Virginia Wage Payment and Collection Act provides that employees who are laid off, quit, or resign must be paid on or before the next regular payday. An employee who is discharged must be paid all monies that are due to him (including benefits such as paid sick leave, paid time off, and vacation) within 72 hours of termination.

The above list is by no means an exhaustive overview of employment laws affecting employers in West Virginia. If you have any questions or are facing an issue, it is best to contact an employment attorney prior to acting.

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 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

• West Virginia Human Rights Commission, [www.wvf.state.wv.us/wvhrc](http://www.wvf.state.wv.us/wvhrc)
• West Virginia Division of Labor, [www.wvlabor.org/](http://www.wvlabor.org/)

ii) Websites

• West Virginia Statutes, [http://www.legis.state.wv.us/WVCODE/Code.cfm](http://www.legis.state.wv.us/WVCODE/Code.cfm)
• West Virginia Administrative Code, [www.wvsos.com/cs](http://www.wvsos.com/cs)