Chapter 9

Employment Practices, Workers Rights

Resources in this chapter are an aid to draft a handbook or personnel manual. A carefully crafted handbook provides an opportunity to communicate to an employee the philosophy of the library. When crafting a handbook check with your library lawyer to make sure it does not imply a contract and jeopardize Indiana's employment at will doctrine.

For specific guidance in drafting a policy handbook or personnel manual consult *Model Employee Policies for Indiana Employers with Legal Commentary* 4th edition published by Indiana Chamber, 2003 available for loan from Indiana State Library. To purchase 6th edition go to http://www.indianachamber.com/index.php/hr-employment-law-compliance/model-employee-policies-sixth-edition .

Contact the Indiana State Library if you want samples of other library's personnel manuals.

A. Addresses for Employment Practices, Workers Rights, Etc.

Indiana

Indiana Department of Labor
402 West Washington Street, W-195
Indianapolis, IN 46204
(317) 232-2655
www.IN.gov/dol/2368.htm

Department of Workforce Development
For Employer Handbook of Unemployment Insurance go to
www.in.gov/dwd/files/Employer_Handbook.pdf

Unemployment Insurance Taxes
General tax questions and employer assistance (800) 891- 6499
8:00 to 5:00 Monday-Tuesday
8:00 to 4:30 Wednesday-Friday
Hours Effective March 10, 2008
To find WorkOne Center closest to your location visit online map at
www.in.gov/dwd/WorkOne/locations.html
Employer Tax Hotline is 1-800-437-9136

Worker's Compensation Board of Indiana
402 West Washington Street, W-196
Indianapolis, IN 46204
(800) 824-COMP
www.in.gov/wcb/

National

U.S. Department of Labor - Main Office
Frances Perkins Building
200 Constitution Ave., NW
Room S-1032
Washington, DC 20210
(866) 4-USA-DOL
www.dol.gov

DOL Topics and Agency Offices: On the www.dol.gov/ web page, click on *topics* (wages, health plans, and unemployment insurance. For a listing of offices, click on *DOL Agencies*. This includes:

1. **Bureau of Labor Statistics** (BLS)
2. **Employment Standards Administration** (ESA) Includes **Wage and Hour Division**
3. **Employment and Training Administration** (ETA)
4. **Occupational Safety and Health Administration** (OSHA)
5. **Veterans' Employment and Training Service** (VETS)
6. **Women's Bureau** (WB)

B. Federal Laws Requiring Posting

Included here are Federal laws required to be posted in the library - Department of Labor - www.dol.gov.

You can request free posters for each of these. There are companies who will send you an order blank to order their version of the free posters. These posters are in color and all mandatory laws are shown on one poster. The free posters are individual posters that have to be posted independently. It's your choice whether you get the free ones or pay to have a colorful poster with all the laws in one place.

Posters can be downloaded and printed free of charge directly from this eLaws Poster Advisor at www.dol.gov/elaws/posters.htm.

C. Wage and Hour Division (WHD)

Wage and Hour Division, part of the Department of Labor, webpage at www.dol.gov/whd/ contains links to minimum wage information, overtime pay, recordkeeping, youth employment and special employment, family and medical leave, migrant workers, lie detector tests, worker protections in certain temporary worker programs, and the prevailing wages for government service and construction contracts.

Federal Minimum Wage Notice - **(29 USC 206)**
www.dol.gov/dol/topic/wages/minimumwage.htm

Employers subject to the Fair Labor Standards Act must post a notice regarding the federal minimum wage in "conspicuous places in every establishment" where the affected employers can readily observe it on their way to or from work (29 CFR 516.4). Failure to post the required notice is a federal crime.

Minimum Wage and Overtime Pay

"The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, recordkeeping, and child labor. These standards affect more than 100 million workers, both full-time and part-time, in the private and public sectors.

The Act applies to enterprises with employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce. For most firms, a test of not less than $500,000 in annual dollar volume of business applies (i.e., the Act does not cover enterprises with less than this amount of business).

However, the Act does cover the following regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally, or physically disabled or gifted; preschools, elementary, and secondary schools and institutions of higher education; and federal, state, and local government agencies."

For further information consult www.dol.gov/compliance/guide/minwage.htm.

Employee Polygraph Protection Notice - (29 USC 2001)
www.dol.gov/elaws/firststep/poster_direct.htm?p_eppa=1

Each employer shall post and maintain such notice in conspicuous places on its premises where notices to employees are customarily posted" (29 USC S 2003). Any employer who violates Polygraph Protection Act may be assessed a civil penalty of up to $10,000 (29 USC 2005).

Equal Employment Opportunity Commission/Age Discrimination (29 CFR 1601.30)
www.eeoc.gov/

"Every employer has an obligation to keep posted in conspicuous places upon its premises notices describing the applicable provisions of Title VII and I. The ADA.Section 711(b) of Title VII makes failure to comply with this section punishable by fine…" for each violation (29 CFR 1601.30).

Family and Medical Leave Act of 1993 - (U.S. Dept of Labor, Employment Standards Division)
www.dol.gov/whd/fmla/index.htmThis Act pertains to employers having at least 50 employees within 75 miles. "FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to 'eligible' employees for certain family and medical reasons." Please consult the Fact Sheet #28: The Family and Medical Leave Act of 1993 at www.dol.gov/whd/regs/compliance/whdfs28.htm.

State Laws Requiring Posting

State laws required to be posted in the library – Indiana Department of Labor – You can request free posters for each of these. There are companies who will send you an order blank to order their version of the free posters. These posters are in color and all mandatory laws are shown on one poster. The free posters are individual posters that have to be posted independently. It's your choice whether you get the free ones or pay to have a colorful poster with all the laws in one place. A number of posters have links on this page www.in.gov/dol/2366.htm to PDF versions

Smoking Ban New Legislation HEA 1149 (Effective July 1, 2012)

Post sign that reads "Smoking is Prohibited by State Law." Legislation provides that smoking is prohibited within eight feet of a public entrance to a public place or place of employment. This new

law does not prohibit local authorities from enacting more restrictive smoking ordinances and this new law does not supersede an existing more restrictive local smoking ordinance.

Minimum Wage Law - (Ind. Code Ann. 22-2-2-8)
www.in.gov/legislative/ic/code/title22/ar2/ch2.html
"Every employer subject to the provisions of this chapter…shall keep a copy of them posted in a conspicuous place in the area where employees are employed." Violators of this statute may be guilty of an infraction.

Worker's Compensation Notice - (Ind. Code Ann. 22-3-2-2)
www.in.gov/wcb/2371.htm
"Each employer subject to this code shall post a notice in the employer's place of business to inform the employees that their employment is covered by worker's compensation." "(c) An employer who fails to comply with this section is subject to a penalty…" (22-3-2-22).

Equal Opportunity is the Law - (Ind. Code Ann. 22-9-5-25)
www.in.gov/legislative/ic/code/title22/ar9/ch5.html
Employers covered under this chapter "shall post notices in a format accessible to applicants, employees, and members describing the applicable provisions of this chapter…"Violators of this requirement may be subject to penalties under Section 711 of the Civil Rights Act of 1964. (42 U.S.C. 2000e-10).

Indiana Civil Rights Commission
Office: (317) 232-2600
Toll Free: (800) 628-2909
Hearing Impaired: (800) 743-3333
Fax: (317) 232-6580
E-mail: icrc@crc.in.gov
Website: www.in.gov/icrc
It is unlawful to discriminate against any person with regard to recruitment, hiring or firing, promotion, transfers, job training, wages or salaries, or any other term, condition, or benefit of employment. An employer must also accommodate employees with disabilities and those who have "sincerely held religious beliefs."

Workforce Development Act – (Ind. Code Ann. 22-4-17-1)
www.in.gov/legislative/ic/code/title22/ar4/ch17.html
"(e) Each employer shall display and maintain in places readily accessible to all employees posters concerning its regulations…"

Indiana Occupational Safety and Health Act of 1974
www.in.gov/dol/2391.htm
This poster must be displayed prominently in the workplace.
www.dol.gov/compliance/topics/posters.htm#applicable_laws

D. Important Employment Laws

1. **Minimum Wage -- federal and state** All library workers employed by the library, except for professional services, will fall under the federal minimum wage laws. Make sure that you are paying them at minimum wage or more. A computer professional who is paid an amount that is at least as high as the separate minimum wage for computer professionals is exempt from the overtime provisions of FLSA (see below).

2. **Fair Labor Standards Act (FLSA)** -- **federal** This includes the federal minimum wage, and it also lists requirements for overtime pay and compensatory (comp) time. It also prohibits covered employees from contributing volunteer hours to their place of employment. The Fair Labor Standards Act also includes child labor provisions, which set certain limitations on the use of juveniles as employees. If you use students under 18 years of age as pages, you should be aware of these restrictions. Please see webinar recording at http://www.in.gov/library/law.htm under heading **2013 Summer Legal Series** for July 31st 2:30-3:30 p.m. "Fair Labor Standards Act."
3. **State and Federal Civil Rights Laws** These laws prohibit employers from discriminating on the basis of race, color, religion, sex, or national origin in hiring, promotion, and other employment policies. The federal Title VII is one of the main civil rights laws.
4. **Age Discrimination Employment Act (ADEA)** -- **federal** ADEA prohibits employers from discriminating on account of age. The protected age group is 40 years old and older.
5. **American with Disabilities Act (ADA)** -- **federal** ADA strengthens prohibitions on discrimination against the disabled and requires employers to make their facilities accessible to the disabled and to make reasonable changes in their accommodations for the employment of disabled people.
6. **The Immigration Reform and Control Act** -- **federal** This law requires that employees complete an I-9 form within three days of starting work, verifying their identity and authorization to work. Employers may condition an offer of employment on the successful applicant's completing the form, but may not specify what documents must be used to complete the form.
7. **The Family and Medical Leave Act (FMLA)** -- **federal** FMLA allows employees to take up to 12 work weeks of paid or unpaid leave for certain medical and family reasons. It requires that employees taking such leave be allowed to return to their original job or an equivalent job with equivalent pay, benefits, and other employment terms and conditions.
8. **Health Insurance Portability and Accountability Act (HIPAA)** -- **federal** HIPAA provides rights and protections for participants and beneficiaries in group health plans. HIPAA includes protections for coverage under group health plans that limit exclusions for preexisting conditions; prohibits discrimination against employees and dependents based on their health status; and allows a special opportunity to enroll in a new plan to individuals in certain circumstances. HIPAA may also give you a right to purchase individual coverage if you have no group health plan coverage available, and have exhausted COBRA or other continuation coverage.

E. Indiana's Employment At-Will

Indiana is an at-will employment state. The general rule, which has been a longstanding principle of employment in America, is that an employment relationship for no specific duration (no contract has been signed for a set period of time) may be terminated at any time at the will of either the employer or the employee for any reason or for no reason at all. Under this rule, the reason for terminating an at-will employment relationship does not matter. Whether the reason was unfair, immoral or just plain unfair is of no consequence.

Employment-related litigation stemming from employee discharges is an ever- increasing phenomenon in American business. To avoid the threat and liabilities associated with wrongful discharge, employers must review all their policies and procedures, as well as employee handbooks and other written personnel documents, to determine that no promises or statements are being

made that could be construed as a binding employment contract. It is strongly recommended that all employers have written disclaimers that preserve the employment-at-will-relationships.

Finally, when terminating employees, an employer should always make sure that its action is uniform, consistent and fair and that whenever possible the employee has been given advance warning that particular behavior or conduct could result in termination.

F. Overtime Pay

Overtime pay and exemptions are covered by the Fair Labor Standards Act (FLSA). The State of Indiana refers to this act for matters of overtime.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and

- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than $455 per week **or**, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:

1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: www.dol.gov/whd/ and/or call our toll-free information and helpline, available 8 a.m. to 8 p.m. Eastern Time, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/dol/location.htm.

Personnel Policies Checklist

(Possible topics to cover)

For examples of policies and procedures see the Indiana State Personnel Department webpage www.in.gov/spd/2393.htm.

36. **Employment-At-Will Disclaimer**
37. **Job Classifications**; full-time and part-time status
38. **Orientation/trial Period**
39. **Equal Employment Opportunity Statement**
40. **Sexual Harassment Policies**
41. **Work Rules and Disciplinary Policy and Procedures** — common items included may be:
    - excessive absences, tardiness, or early leaves
    - use, possession, actual or intended distribution or being under the influence of drugs, controlled substances, or alcohol
    - insubordination
    - refusal to cooperate with investigation
    - falsification of library records, including the employment application
    - negligent or unauthorized use of library equipment
    - harassment, physical abuse or verbal abuse of employees, patrons, or visitors
    - gambling during working hours
    - theft or unauthorized use or possession of library property or another person's property
    - soliciting or seeking support or contributions during working time for any cause or organization without management approval
    - violation of safety rules or common safety practices

- failure to make a prompt report of any accident on library property
- inattention to the job, or poor job performance
- failure to observe library working hours and schedules, including scheduled overtime
- disclosure of confidential information to unauthorized persons
- possession of weapons on library property

42. **Hours of Work**, **Layoff/Recall**
43. **Military Leave**
44. **Jury Service**
45. **Bereavement Leave**
46. **Attendance Policy**
47. **Vacation**
48. **Holidays**
49. **Personal Days**
50. **Sick Days**
51. **Union-Free Workplace Statement**
52. **Open Door Statement** (do not restrict employees from communicating with members of management other than their immediate supervisors)
53. **Bulletin Boards** — fosters communication between employees
54. **Substance Abuse Policy**
55. **Family and Medical Leave Act Policies**
56. **Smoking** – can prohibit in facility
57. **Dress Code**
58. **References** — prevents employer from releasing references that will cause it to be held liable for defamation
59. **Promotion/Transfer/Job Openings**
60. **Timekeeping Requirements**
61. **Health Insurance, Health Savings Accounts**, **Disability Benefits Programs, Deferred Compensation, and PERF**
62. **Confidential Information**
63. **Personal Belongings**
64. **Employment of Relatives**
65. **Safety and Health**
66. **Inclement Weather/Emergencies**
67. **Telephone** (for customer satisfaction and for employee's personal calls)
68. **Internet/E-mail**
69. **Termination of Employment**

Receipt/Acknowledgement – helps to ensure that the employee has read the handbook.
Employee Examination of Personnel Files — employer may decide whether employees may review their files or not; documents should not be removed.

Adapted from a Barnes & Thornburg handout, 1998.

Taxable Fringe Benefits

A good resource for taxable fringe benefits is the **Taxable Fringe Benefit Guide** at http://www.irs.gov/pub/irs-pdf/p15b.pdf.This resource answers many of the questions library directors and staff ask.

Some cases require more research such as the following question.

For example, how is the purchase of staff polo shirts handled when the library board requires polo shirt to be worn during work hours? The work shirt is a taxable benefit because it can be worn for general use. The library allocates an employee clothing allowance in their payroll check.

In 2010 the Library Development Office included in the Annual Library Bookkeeping Workshop a presentation by on the topic of benefits and sales in libraries. Please visit the LDO workshop webpage at www.in.gov/library/ldoworkshops.htm. Click on the link for **Video Recording** "Afternoon Session (Part 2); Indiana State Library and Indiana Department of Revenue" found under the heading **Library Bookkeeping and Annual Report Workshop November 10 & 18, 2010.**