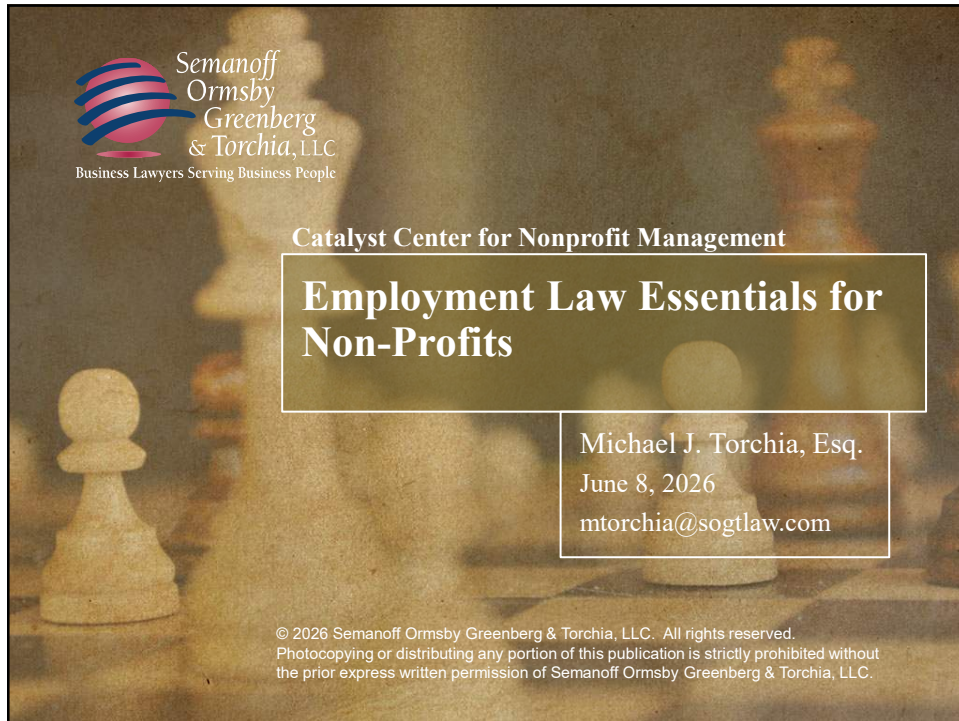




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Catalyst Center for Nonprofit Management

**Employment Law Essentials for
Non-Profits**

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June 8, 2026
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Employment Law Basics

The Hiring Process

At-Will Employment

The employer or the employee may terminate the employment relationship for good reason, bad reason, or no reason at all (as long as there is no contract, statute or public policy violation)



OVERVIEW

Number of Employees Matters. . .

- **EPA: No minimum**
- **PHRA: 4 employee minimum**
- **Title VII/ADA/GINA: 15 employee minimum**
- **ADEA: 20 employee minimum**
- **COBRA (federal): 20 employee minimum**
(but there is “mini-COBRA”)
- **FMLA: 50 employee minimum**
- **ACA: 50 employees to be a “large employer”**
- **WARN: 100 employee minimum**



OVERVIEW

Profit v. Non-Profit

- Typically statutes apply or not depending on number of employees, amount of revenue, location, specific industry, or public or private company
- Profit or not-for-profit usually not a factor, although from time to time there are different rules for non-profits – such as the FLSA.



OVERVIEW

Public v. Private Employers

- Significant differences between private employers and public employers.
- Many statutes, rules, and regulations apply to public employees that have no application to the private sector.
- Also matters if the public employee is federal, state, county, or city.



OVERVIEW

Union v. Non-union Employees

- Significant differences between employees who are or who are not parties to a collective bargaining agreement.
- Body of law differs, as does the procedures for making a complaint, the tribunals that hear the complaints, the importance of precedent, and more.



OVERVIEW

Location Matters. . .

- In what state does the employee work?
- In what state does the employee reside?
- If a remote worker, in what state is the office where the employee reports?
- Same questions for county
- Same questions for city
- International worker? (e.g. Europe, Canada, Mexico, Puerto Rico, etc.)



OVERVIEW

Location Matters. . .Philadelphia

Philadelphia has significantly more employee regulations than outside of Philly

➤ **POWER Act, effective May 27, 2025**

➤ **Ban the Box expansion**

➤ **“Promoting Healthy Families and Workplaces” law requires employers with 10 or more employees to provide paid sick leave, accruing at 1 hour per 40 hours worked, up to 40 hours per year.**

➤ **“Displaced Service Worker Protection Act” effective May 1, 2024, building buyers must retain workers under certain circumstances.**



Restrictive Covenants

Employment Agreements

- **Non-competes**
- **Non-solicitations**
- **Confidentiality**
- **Inventions**
- **Compensation, Bonus, Commission Agreement**
- **Employee Reps and Warranties**
- **Executive Agreements (typically meaning no longer at-will employment)**



Employee Reps (1 of 2)

Employee's Representations. For the purposes of this Section, "**Former Employer**" means any person, partnership, corporation or other entity which Employee was ever employed by or contracted with. Employee represents and warrants that:

- A. Employee is not a party to, or subject to the terms of, any agreement, covenant, understanding or restriction with any Former Employer or any other person or entity which would have the effect, indirectly or directly, of prohibiting Employee from entering into this Agreement or from fully carrying out the terms of this Agreement.
- B. Employee has not taken any trade secrets or other confidential information from any Former Employer, and even if Employee did have such trade secrets or confidential information, Employee agrees that Employee has not disclosed, and will not disclose those trade secrets and confidential information to Company or use them in Employee's employment.
- C. Company has not asked Employee to induce others or encourage others to solicit business for Company while Employee was still employed by any Former Employer.
- D. Employee has not solicited employees of any Former Employer to leave their employment of such Former Employer.



Employee Reps (2 of 2)

E. Company did not induce Employee to solicit business from any customer of any Former Employer.

F. Employee has not disparaged any Former Employer's goods, services, customers or employees.

G. Employee has not taken, does not possess, and does not have under Employee's control, any property that belongs to any Former Employer.

H. Employee understands that the provisions of any employee handbooks, personnel manuals and any and all other written statements of or regarding personnel policies, practices or procedures that are or may be issued by the Company or any official or department thereof from time to time do not and shall not constitute a contract of employment and create no vested rights; that any such provisions may be changed, revised, modified, suspended, canceled, or eliminated by the Company at any time without notice; and that they constitute guidelines only and may be disregarded either in individual or Company-wide situations when in the sole opinion and judgment of Company circumstances so require.

I. EMPLOYEE FULLY UNDERSTANDS EVERY PROVISION OF THIS AGREEMENT AND EMPLOYEE HAS BEEN ADVISED TO HAVE THIS AGREEMENT REVIEWED BY AN ATTORNEY OF EMPLOYEE'S CHOOSING AND EMPLOYEE HAS EITHER DONE SO OR HAS KNOWINGLY AND WILLINGLY DECIDED NOT TO DO SO.



Non-competition / Non-compete

- **No national ban on non-competes**
- **PA different from NJ**
- **PA requires additional consideration for current employees; NJ does not**
- **Non-compete must be signed on or before the first day of work, or . . .**
- **Must be a clear meeting of the minds of the material terms of the non-compete.**



PA Non-Compete Law

- The **Fair Contracting for Health Care Practitioner's Act** ("FCHCPA") became January 1, 2025, and only applies to PA employees. It applies to health care facilities of all sizes and has no minimum number of employees to applicable.
- The FCHCPA applies to (1) doctors, (2) osteopaths, (3) registered nurse anesthetists, (4) registered nurse practitioners, and (5) physician assistants. It generally **prohibits** non-compete agreements from being enforced against Health Care Practitioners.



PA Non-Compete Law

- If the Health Care Practitioner chooses to terminate employment on their own accord, the former employer may enforce a non-compete covenant in their employment agreement that is **under one year in duration**. As a result, employers may continue including one-year non-compete clauses in their employment agreements with Health Care Practitioners.
- In addition, employers may enforce non-compete covenants against a Health Care Practitioner in connection with a transaction involving a sale or transfer of assets or ownership interests in a business held by those Health Care Practitioners.



Non-solicitation provisions

In Pennsylvania, treat non-solicitation provisions as you would non-competes with regard to providing additional consideration for current employees.



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Employee Classification

Employees

Exempt and Non-Exempt Employees

- “Non-exempt” means: employee not exempt from the FLSA overtime provisions and is eligible to receive overtime pay
- “Exempt” means: employee is exempt from the FLSA overtime provisions, and does not get overtime pay
- Presumption is employee is **non-exempt**



Employees

Exempt and Non-Exempt Employees

- Complex issue that requires analysis
- Serious consequences for employers if wrong
- Employers can choose non-exempt, but can choose exempt!



Employees

Employee v. Independent Contractor

- Whether or not a worker is an independent contractor is not determined by job title, the type of agreement between the worker and the company, or even whether the worker receives a Form 1099 or W2 at the end of the year. *See* IRS Publication 15-A
- Employers don't get to choose!



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Employee Compensation

Employee Compensation

Fair Labor Standards Act

Enterprise coverage is the primary framework through which FLSA obligations attach to an employer. An “enterprise” means related activities performed for a “common business purpose.”

Therefore, enterprise coverage applies when the nonprofit has employees engaged in commerce and generates at least \$500,000 in annual gross volume of sales or business.



Employee Compensation

Fair Labor Standards Act

- Non-profits are not subject to the FLSA, if it is purely religious, charitable, or eleemosynary.
- Such entities are not considered those that compete with for-profit businesses, do not exist primarily for a “business purpose” and are outside “enterprise coverage.”



Employee Compensation

Fair Labor Standards Act

But some entities fall within “enterprise coverage” regardless of whether they operate for profit, such as:

- activities in connection with the operation of a hospital;
- an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises;
- a school for mentally or physically disabled or gifted children;
- a preschool, elementary or secondary school, or an institution of higher education.



Employee Compensation

Pennsylvania Minimum Wage Act

The PMWA exempts certain work performed for nonprofit organizations from both minimum wage and overtime requirements.

Employment in the activities of an educational, charitable, religious, or nonprofit organization is exempt from both the minimum wage and overtime provisions of the Act where the employer-employee relationship does not in fact exist, or where the services are rendered to such organization gratuitously, such as volunteers.



Employee Compensation

Wage and Hour Pitfalls

- Not paying overtime properly
- Effective Rate below minimum wage
- Not counting preliminary and postliminary tasks as compensable time
- Not counting bonuses in overtime calculation
- Not counting travel time as compensable



Employee Compensation

Wage and Hour Pitfalls

- Not complying with state and local laws
- Employee breaks
- So-called “de minimis” time
- Docking exempt employees
- Lack of time records or documentation
- Not reimbursing expenses agreed upon



Employee Compensation

Wage and Hour Pitfalls

Not paying non-exempt employees for remote work:

- After hours
- Days off
- Weekends
- On vacation
- During medical or family leave



Employee Compensation

Wage Payment and Collection Law
("WPCL")

- Must pay "wages" as defined by the next regular payday or 15 days
- 25% liquidated damages
- Mandatory attorneys' fees
- Individual liability!



Employee Compensation

Wage Payment and Collection Law

- Only authorized withholdings pursuant to Pennsylvania regulations.
- Unauthorized withholdings are violations of WPCL.
- Employees can agree to withholdings, but need to be in writing!



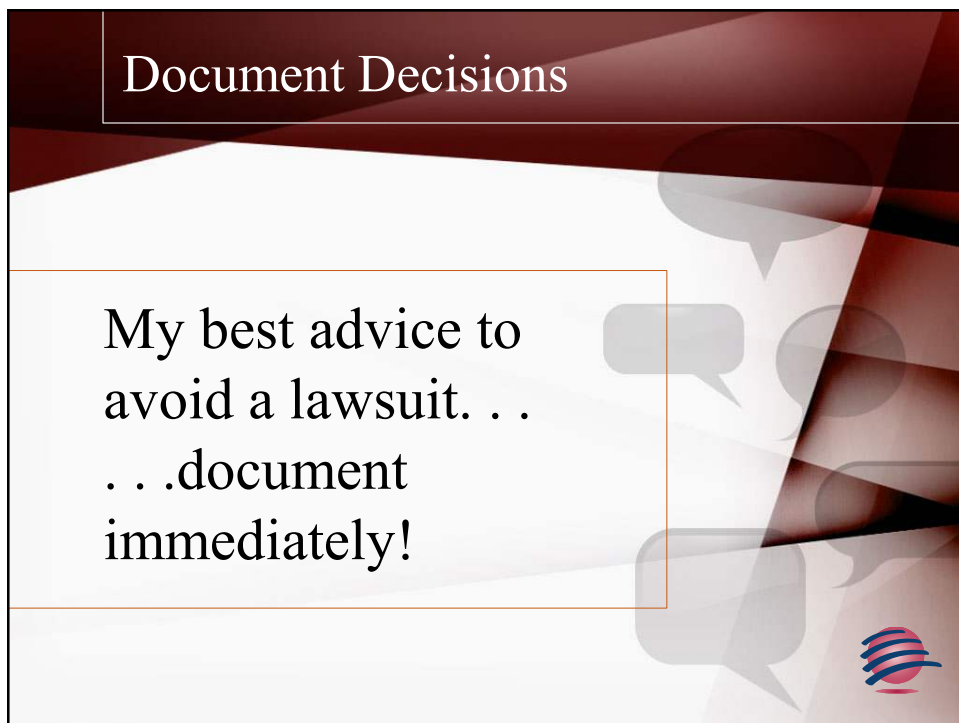
Employee Compensation

Commission Policies

Need a commission policy or agreement that includes, at a minimum:

- Definition of customer or client
- How much is paid for what
- When are commissions “earned” by the employee?
- When will commissions *not* be paid (Employee termination? Split commissions? House accounts? Write offs? Suing the client?)





Responding to Leave Requests

Never ignore or immediately reject leave requests:

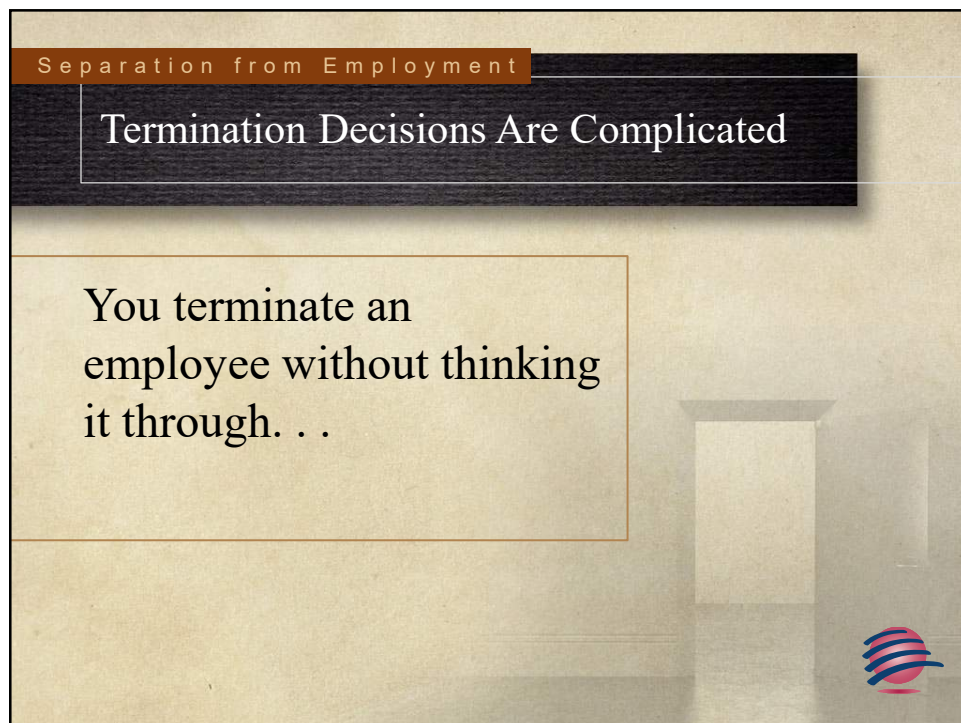
- **ADA**
- **FMLA**
- **Short Term Disability**
- **Vacation**
- **PTO**
- **Bereavement**
- **Jury Duty**
- **Other as per your policies**



Responding to Leave Requests

Do you provide paternity leave?





Separation from Employment

Termination Decisions Are Complicated

- Laws and Regulations
- Company Policies
- Employee Contract
- Past Precedent
- Previous Complaints
- Protected Class Status
- Retaliation Claims
- Union (CBA)
- Whistleblower Claims
- Non-legal considerations (morale, expense of replacement, etc.)



Separation from Employment

Severance Pay

- In Pennsylvania there is no requirement to pay severance unless contractually agreed.
- You can require an employee to sign a general release in exchange for severance pay (but not for compensation employee has earned).



Separation from Employment

Separation Packages – Getting a Release

Some typical provisions:

- General Release
- Confidentiality
- Return of all material and information
- Jurisdiction and venue
- Attorneys' fees
- Time given to review the agreement



Separation from Employment

Separation Packages – Getting a Release

Don't Forget:

- ADEA and OWBPA requirements for employees 40 and older
- Single termination: "21 and 7"
- Multiple termination: "45 and 7 plus the chart"



Separation from Employment

By the way. . .

Post-Employment References

Employers can provide accurate and truthful information without fear of a lawsuit unless the information is knowingly false or misleading.



Cutting edge stuff. . .

HAIR COMES THE CROWN ACT

- The CROWN Act -- “Creating a Respectful and Open World for Natural Hair” -- has been adopted in Pennsylvania effective January 24, 2026.
- PA joins 27 other states, including New Jersey, Delaware, and New York.
- Amendment to the PHRA, prohibits discrimination based on hair textures or hairstyles commonly associated with a particular race or national origin, The law expressly safeguards a range of protective hairstyles, including locs, braids, twists, coils, Bantu knots, afros, and extensions.



Philly Courts Ban Smart AI Glasses

Wearing smart glasses with audio or video recording was banned in Philadelphia’s courts starting Monday, March 31, 2026.



Microchipping Employees

Effective March 11, 2026, Washington State joins a dozen other states to prohibit employers from requiring, coercing, or requesting employees to be microchipped.



“Pawternity” Leave

New York City introduced bill to expand sick leave to care for your pet.

Co-sponsored Bill to expand New York City’s Earned Safe and Sick Time Act.



