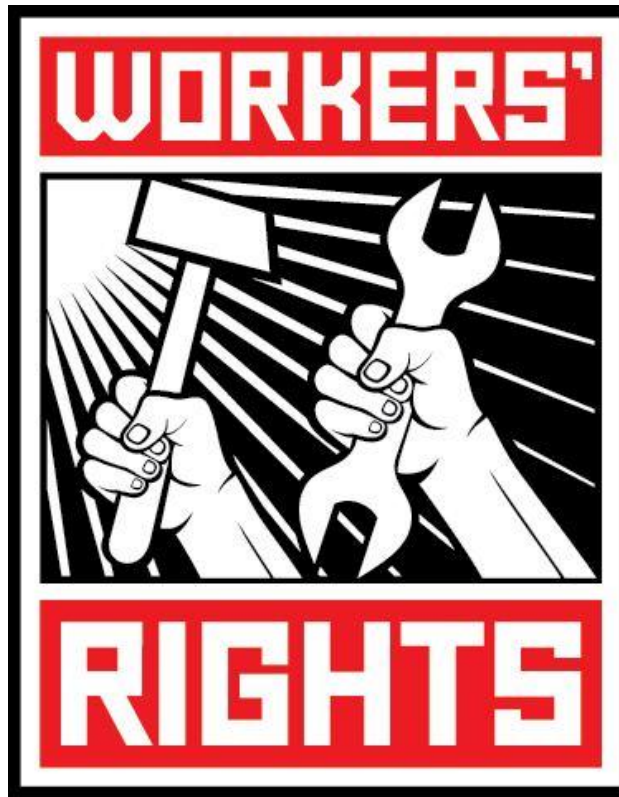


Workers' Rights Manual

v. 2013



Summary of Federal and State Laws that Apply to Iowa Workplaces

• *The Labor Center* •

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The Workers' Rights Manual is a collaborative effort of the Labor Center staff. Labor Educators Jennifer Sherer, Robin Clark-Bennett and Matthew Glasson each contributed to the Manual. Research Assistant Brandon Underwood contributed to the research and writing for the 2013 version. Editor for the 2013 Manual was Matthew Glasson. Comments, suggestions and corrections should be addressed to him.

Original artwork (at the beginning of each chapter) by Matt Kristek

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Part 1: Getting Paid

Minimum Wage

Overtime

Wage Payment Protections

Fair Labor Standards Act (FLSA)

(Federal Law – Fair Labor Standards Act of 1938, 29 USC 201-19)

This important labor law was passed in 1938 as part of the “New Deal.” It requires most employers to pay a minimum wage and requires premium pay (time and a half) for all work over 40 hours in a week. However, not all employers are covered, and many categories of workers are exempt from all or part of the FLSA. The Fair Labor Standards Act also includes child labor protections, and new (2010) rights of nursing mothers to reasonable breaks and locations for expressing breast milk at work. (See: Nursing Mothers section, in Part 2 of this manual.)

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Covered workers must be paid at least the minimum wage for all hours worked.
- Most workers must be paid at least the minimum wage, currently \$7.25 per hour. The minimum wage is adjusted periodically by Congress. States and local governments may also enact minimum wages higher than the federal minimum wage.
- Young workers (under 20) can be paid \$4.25 during first 90 days
- Tipped workers must be paid at least \$2.13 per hour. However, the combination of the \$2.13 hourly wage plus tips must equal at least the minimum wage. If the combination does not equal at least the minimum wage, the employer is required to pay the difference.
- Most workers must be paid time and a half for all hours worked in excess of 40 hours in a week. FLSA does not require an employer to include paid leave (vacation, holidays, sick leave, etc.) in the 40 hour calculation. There are special overtime rules for hospital employees, police, and fire fighters.
- Employers may not retaliate against workers who complain about overtime violations, file complaints, or sue in court.
- Employers must retain time records of daily and weekly hours worked for at least two years and must allow workers to inspect these records at reasonable times and places.

ADDITIONAL INFORMATION

- The U.S. Department of Labor (DOL) has extensive regulations that define terms like “hours worked” and interpret how the law applies in various circumstances.
- *Note:* Employees covered by a collective bargaining agreement often have overtime provisions that are more generous than those required by the FLSA.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with annual revenue of at least \$500,000
- Hospitals, care centers and other institutions, schools
- Public agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

1. SOME WORKERS ARE EXEMPT FROM BOTH MINIMUM WAGE AND OVERTIME PAY

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in DOL regulations)
- Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year
- Casual babysitters and persons employed as companions to the elderly or infirm.

2. SOME WORKERS ARE EXEMPT FROM OVERTIME PAY ONLY

- Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft sales-workers; or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
- Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans
- Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
- Domestic service workers living in the employer’s residence
- Employees of motion picture theaters
- Farm workers.

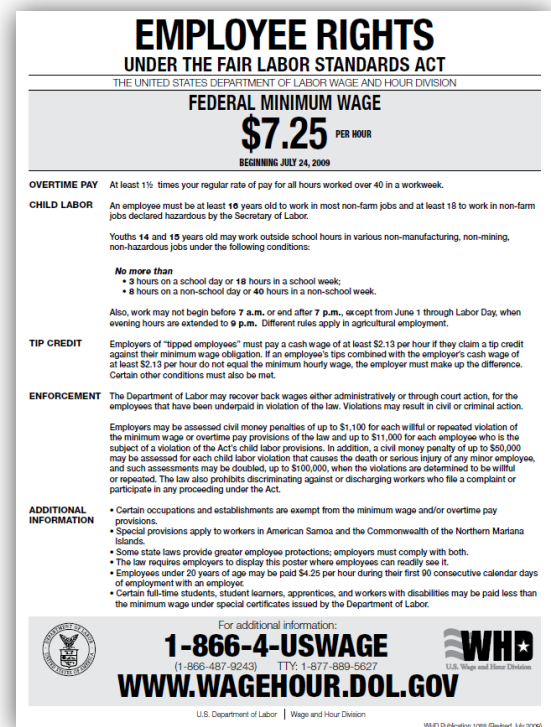
WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay double back pay, plus interest
- Pay worker’s attorney fees and court costs
- Pay a fine of up to \$1,100 for each violation
- Serve a jail sentence of up to two years

HOW IS THIS LAW ENFORCED?

The Wage & Hour Division of the U.S. Department of Labor is responsible for enforcing this law. There is no charge for this service. However, the Department of Labor is not required to accept every case.



EMPLOYEE RIGHTS
UNDER THE FAIR LABOR STANDARDS ACT
THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE
\$7.25 PER HOUR
BEGINNING JULY 24, 2009

OVERTIME PAY At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than

- 3 hours on a school day or 18 hours in a school week;
- 8 hours on a non-school day or 40 hours in a non-school week.

Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Different rules apply in agricultural employment.

TIP CREDIT Employers of “tipped employees” must pay a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee’s tips combined with the employer’s cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Employers may be assessed civil money penalties of up to \$1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to \$11,000 for each employee who is the subject of a violation of the Act’s child labor provisions. In addition, a civil money penalty of up to \$50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to \$100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

For additional information:
1-866-4-USWAGE
(1-866-487-9243) TTY: 1-877-689-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division
WHD Publication 1080 (Revised July 2008)

Wage & Hour Div., U.S. Dep't of Labor
Des Moines District Office
Federal Building
210 Walnut Street, Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/

Workers also have the right to file their own case in federal or state court, without the assistance of the Department of Labor. If the amount owed is under \$5,000, the claim can be filed in small claims court (state court). Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. Workers who are represented by private attorneys can request that their legal fees in a successful case be paid by the employer.

Iowa Minimum Wage Law

(Iowa Code, Chapter 91D)

The Iowa Minimum Wage Law is similar to the FLSA's minimum wage provisions, but it applies to some additional employers (payrolls between \$300,000 and \$500,000 annually). The Iowa minimum wage is currently the same as the federal minimum wage, but the amounts are adjusted separately and may not always be the same.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Covered employers must pay employees at least \$7.25 per hour
- Young workers (under 20) can be paid \$4.25 during first 90 days
- Tipped employees must be paid at least \$4.35 per hour

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with annual revenue of more than \$300,000
- Public agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Professional employees
- Outside sales persons
- Participants in certain training and rehabilitation programs,
- Inmates working in prison
- Independent contractors

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay double unpaid wages (if violation was willful) plus interest
- Reimburse employees for legal fees and court costs
- Pay a fine of up to \$500/pay period for each violation

HOW IS THIS LAW ENFORCED?

The Iowa Division of Labor, which is part of Workforce Development, is responsible for enforcing this law. There is no charge for this service. However, the Division of Labor does not have sufficient staff to assist all workers with wage claims.

Iowa Division of Labor, Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
515-281-3606 or 800-JOB-IOWA (for Deaf and Hard of Hearing, use Relay 711)
www.iowaworkforce.org/labor

Workers also have the right to file their own case in state court, without the assistance of the Division of Labor. If the amount owed is under \$5,000, the claim can be filed in small claims court. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. Workers who are represented by private attorneys can request that their legal fees in a successful case be paid by the employer.

Iowa Wage Payment Collection Act

(Iowa Code, Chapter 91A)

This law includes comprehensive rules about how and when workers must be paid. Employers who do not comply with the law may be fined and are liable to the worker for any amounts not paid promptly, plus liquidated damages equal to unpaid amounts (if the failure to pay was intentional). Workers can also recover attorney fees from the employer in cases where they are successful.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must pay workers at least monthly and at regular intervals.
- Employers must pay workers within 12 days of the end of the payroll period.
- Employers must pay terminated workers in full on the next regular pay day. Payment must include any severance, vacation, holiday pay, sick pay, etc. due to worker. (Note that Iowa law does not require these benefits, only requires that they are paid promptly, if the worker is entitled to them by a contract or employer policy.)
- Employers must pay workers in cash, check, or (in some cases) direct deposit.
- Employers must provide workers with written statements of hours worked, amount earned and any deductions made.
- Employers may not deduct from workers' pay unless the deduction is authorized by law (taxes, garnishments, etc. see the next section, "Wage Garnishments") or unless the worker authorizes the deduction in writing. No deductions are allowed for cash shortages, bad checks, property damage caused by the worker, lost or stolen property, cost of personal protective equipment or costs of relocating the worker in excess of \$20 (applies to only certain employers).
- Employers must promptly make any required payments to benefit funds (medical, hospital, pension or profit sharing, etc.). (Note that Iowa law does not require these benefits, only requires that they are paid promptly, if the worker is entitled to them by a contract or employer policy.)
- Employers must pay workers for time traveling between worksites during the work day. (Note that this Iowa law does not require compensation for travel to and from worksite at beginning or end of day, unless employer provides transportation and workers are required to use it and/or required to provide some service during travel time.)
- Employers must notify workers about wage rates and paydays in writing at time of hiring, and provide written policies explaining vacation pay, sick leave, reimbursement for expenses, retirement benefits, severance pay, or other benefits (if any).
- Employers must maintain written records of hours worked, amounts paid and all deductions for at least 3 years.
- Employers may not retaliate against workers who make wage claims or assist someone else in making a claim.
- Employers must allow veterans of certain wars to take Veterans Day as a paid holiday if (1) the veteran would otherwise be working, (2) the veteran requests it in writing 30 days in advance, and (3) the veteran's absence would not adversely affect public

health or safety or cause the employer “to experience significant economic or operational disruption.”

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- All private sector employers and public agencies (state & local government)

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Spouses and family members of farmers
- Neighbors of farmers who are exchanging labor
- Sharecroppers
- Independent contractors
- Licensed professionals (doctors, lawyers, etc.) who provided services to clients or patients on a fee for service basis

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay unpaid wages due, including all benefits due, plus interest
- Pay liquidated damages (if violation was willful)
- Reimburse workers for attorney fees and court costs
- The Iowa Division of Labor can assess penalties of up to \$500 for each violation.

HOW IS THIS LAW ENFORCED?

The Iowa Division of Labor, which is part of Workforce Development, is responsible for enforcing this law. There is no charge for this service. However, the Division of Labor does not have sufficient staff to assist all workers with wage claims.

Iowa Division of Labor
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
515-281-3606 or 800-JOB-IOWA (for Deaf and Hard of Hearing, use Relay 711)
www.iowaworkforce.org/labor

Workers also have the right to file their own case in state court, without the assistance of the Division of Labor. If the amount owed is under \$5,000, the claim can be filed in small claims court. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. The law *requires* the Court to award attorney fees (paid by the employer) to workers who bring successful cases under Chapter 91A.

Theft of Services

(Iowa Code, Section 714.1(3))

The legal definition of the crime of theft includes a person who receives services from someone else through deception. That definition of theft is broad enough to cover some kinds of wage theft.

WHAT DOES THIS LAW PROHIBIT?

The law provides that a person commits theft if the person “obtains the labor or services of another... by deception. Where compensation for... services is ordinarily paid immediately upon... the rendering of such services, the refusal to pay or leaving the premises without payment... gives rise to an inference that the goods or services were obtained by deception.” In other words, a person who hires someone to do something by falsely promising to pay for the service and who then refuses to pay is guilty of theft.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- This law applies to everyone.

WHAT TYPES OF WORKERS ARE COVERED BY THIS LAW?

Anyone who provides a service in this state is covered.

- Workers of all types
- Independent contractors

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

- Theft may be a misdemeanor or a felony depending primarily on the amount of the theft.
- Persons convicted of theft may be fined or imprisoned.

HOW IS THIS LAW ENFORCED?

Iowa criminal laws are enforced by the county attorneys in each county. However, county attorneys have a lot of discretion about which cases they choose to prosecute. In a criminal case, the standard of proof is guilt beyond a reasonable doubt. That high standard of proof will make most county attorneys reluctant to pursue a theft of services case unless the evidence is very strong.

Crimes should be reported to local law enforcement officials (police or sheriff) who will conduct an investigation and make a recommendation to the county attorney. If necessary, you can also contact the county attorney directly. The county attorney’s office is usually in the county seat of each county, often in the courthouse or county office building.



Wage Garnishments

(Federal Law - Consumer Credit Protection Act of 1982, 15 USC 1671-77 and Iowa Code, Chapter 642)

Garnishment is a way for a creditor to collect money from a debtor who has failed to pay. Garnishment is the result of a legal process. First, the creditor must sue the debtor and prove that the debtor really owes the money. After a trial, the court will decide whether a debt is really owed. If the judge decides that the debt is valid, the court will issue a “judgment” which specifies the amount that is due. If the debtor does not pay the judgment voluntarily, the creditor can ask the sheriff to seize the debtor’s property and sell it to pay the debt. Certain kinds of property (including your home and vehicle) are exempt from this process; many low-wage workers do not possess property that can be legally seized. The creditor can also ask the sheriff to garnish a debtor’s wages, which is much more common.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

Federal and state laws put limits on the amount of wages that can be garnished from a worker’s wages. Employers must comply with whichever limit provides the most protection for the worker.

Iowa Code Section 642.21 puts a limit on the amount of wages that may be garnished each year. The amount depends on the worker’s expected earnings for that year.

Up to \$12,000	\$250/year
\$12,000 to \$16,000	\$400/year
\$16,000 to \$24,000.....	\$800/year
\$24,000 to \$35,000	\$1,500/year
\$35,000 to \$50,000	\$2,000/year
\$50,000 and up.....	10% of expected annual earnings

Keep in mind that these are annual limits on what each creditor can collect from a debtor each year. A worker with multiple judgments issued against him or her could have wages garnished for \$250 in January by creditor A and then be garnished by creditor B for \$250 in February. The same thing could happen again the following year, and so on, until the judgments are paid.

These limits do not apply to judgments for child support or for back taxes.

An employer who receives a garnishment order from the sheriff must notify the worker that his/her wages are being garnished. The worker then has 10 days to contest the garnishment, including the garnishment amount.

Employers are prohibited from deducting more than the amounts specified or for deducting any amounts without a proper garnishment order.

The Consumer Credit Protection Act (CCPA) is the federal law which limits wage garnishments, among other things. The CCPA limits are higher than the limits under Iowa law, so workers generally will not be affected by them. However, if the limits under Iowa law *do not* apply, (*i.e.*, the judgment is for child support or back taxes) then the CCPA limits will apply. CCPA allows garnishment of up to 50% of the worker's disposable earnings for support of the worker's current spouse and children (if there is no support order), up to 60% if there is a divorce decree or child support order requiring support, and up to 65% if the worker is more than 12 months behind in support payments. "Disposable earnings" means the amount left after taxes (and some other legally required payments) are deducted from the wages due to the worker. Judgments for federal and state taxes and certain bankruptcy orders are exempt from these limits. There are also special limits on garnishments for non-tax debts owed to federal, state and local governments.

The CCPA also prohibits employers from discharging a worker based on garnishment for a single debt. The CCPA does not prohibit an employer from discharging a worker who has multiple judgments against him/her.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- All employers

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

If a worker makes an objection to the garnishment within 10 days of receiving notice, the court can reduce or eliminate an improper garnishment under Iowa Code, Chapter 642.

The CCPA allows a worker to recover improperly garnished amounts from the employer. It also allows a worker who is improperly discharged to be reinstated and to recover back pay from the employer. Willful violations can result in criminal prosecutions, fines up to \$1,000, or imprisonment.

HOW IS THIS LAW ENFORCED?

Both laws may be enforced through private civil suits. If the amount owed is under \$5,000, the claim can be filed in small claims court. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid.

The CCPA, including the criminal sanctions, is also enforced by the U.S. Department of Labor:

Wage & Hour Div., U.S. Dep't. of Labor
Des Moines District Office
Federal Building
210 Walnut Street, Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/



Part 2: Time Off, If You Need It

Family, Medical, & Pregnancy Leave

Leave for Military Families

Restroom Breaks

Breaks for Nursing Mothers

The Family and Medical Leave Act (FMLA)

(Federal Law – Family Medical Leave Act of 1993, 29 USC 2601, 2611-19)

This 1993 law requires certain employers to permit an eligible employee up to 12 weeks of unpaid leave annually for their own serious health condition or to care for family members under certain conditions.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must allow eligible workers to take unpaid time off from work (leave) for up to a total of 12 weeks a year, on an intermittent or continuous basis:
 - Due to a worker's own serious health condition
 - To care for a spouse, child (under 18 or incapable of self-care), or parent with a serious health condition
 - For childbirth or bonding with a newborn, adopted, or foster child
 - For certain circumstances related to deployment of a spouse, child, or parent in the armed forces
- Employers must allow eligible workers to use up to 26 weeks of unpaid leave to care for a military family member with a serious illness or injury incurred in the line of duty
- Employers must reinstate workers to the same job or an equivalent one at the end of FMLA-covered periods of leave
- Employers must continue workers' medical insurance during FMLA leaves on the same basis as when they were working
- Employers may not discourage, retaliate against, or penalize workers for using FMLA leave: absences related to FMLA-covered circumstances cannot be counted as unexcused absences or used as grounds for discipline
- Employers must inform workers of their FMLA rights

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with 50 or more employees
- Public agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Workers who have worked less than 12 months for their current employer
- Workers who worked less than 1250 hours in the previous year for their current employer
- Workers at a worksite with fewer than 50 employees within 75 miles

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Allow time off
- Provide reinstatement and back pay to employees discharged or refused reinstatement because of protected absences
- Promote an employee who has been denied advancement because of FMLA absences

ADDITIONAL INFORMATION

- The U.S. Department of Labor has extensive regulations that define terms like “serious health condition” and interpret how the law applies in various circumstances
- Eligible workers may use FMLA leave on an intermittent basis (short periods of time) for medical appointments, treatment, isolated episodes of incapacity, and other circumstances related to their own or a family member’s serious health condition
- Workers must request FMLA leave by providing employers with enough information to know that an absence is related to a qualifying FMLA circumstance
- Employers may require workers to provide certification documenting the need for FMLA leave

HOW IS THIS LAW ENFORCED?

The Wage & Hour Division of the U.S. Department of Labor is responsible for enforcing this law. There is no charge for this service. However, the Department of Labor is not required to accept every case. The U.S. Department of Labor also can provide information and assistance at no cost. Consultation with the DOL may be particularly helpful in cases where an employer does not understand what the FMLA requires.

Wage & Hour Div., U.S. Dep’t. of Labor
Des Moines District Office
Federal Building
210 Walnut Street Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/

Workers also have the right to file civil suits against employers if they are improperly denied FMLA leave, are not properly reinstated following their leave, or are disciplined or discharged for taking FMLA leave. If the amount owed is under \$5,000, the claim can be filed in small claims court. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. Workers who are represented by private attorneys can request that their legal fees be paid by the employer, in successful cases.

Iowa Pregnancy Disability Law

(Iowa Code Section 216.6(2)(e))

This state law is intended to protect workers from being penalized because of their inability to work due to pregnancy or childbirth.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Workers who are disabled because of pregnancy, childbirth, or related medical conditions must be granted an unpaid leave of absence for up to 8 weeks

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Public and private employers in the State of Iowa with 4 or more workers

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Workers who are members of the employer's family
- Certain domestic and personal service workers
- Employees of religious institutions are excluded under limited circumstances

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

A violation of this law is considered an Unfair Employment Practice. After a hearing, the Civil Rights Commission can:

- Order the employer to stop violating the law
- Require the employer to take "remedial action" including but not limited to: reinstating the worker, posting notices at the workplace, paying lost wages, court costs, and attorney fees

ADDITIONAL INFORMATION

- Workers must provide the employer with timely notice of the period of leave requested
- The employer must approve any change in the period requested before the change is effective
- The employer may require a medical verification stating that due to a pregnancy-related disability, the employee is not able to reasonably perform the duties of employment
- Claims alleging violation of this law must be filed with the Commission within 300 days after the alleged unfair practice occurred



HOW IS THIS LAW ENFORCED?

The Iowa Civil Rights Commission is responsible for enforcing this law.

Iowa Civil Rights Commission
400 East 14th Street, Room 201
Des Moines, IA 50319
Phone: 515-281-4121 or 1-800-457-4416
www.state.ia.us/government/crc

Details about the ICRC complaint process are spelled out in greater detail in the civil rights section of this manual, in Part 4.

Restroom Breaks

(Occupational Safety and Health Act & Iowa Occupational Safety and Health Act)



There is no general law requiring employers to provide breaks to most workers. There are specific laws applying to youth under age 16, interstate truckers, and airline pilots. Most other workers are not guaranteed any breaks by law. However, the federal Occupational Safety and Health Administration (OSHA) and the Iowa Occupational Health and Safety Administration (IOSHA) have both recognized that the ability to use the restroom is part of a safe and healthy workplace.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- OSHA requires employers to provide restrooms for workers (except in unusual circumstances) and requires that workers be allowed “reasonable” use of restroom facilities.
- IOSHA rules go further, requiring that employers must allow workers to use the facilities whenever they need to do so.

HOW IS THIS LAW ENFORCED?

Violation of these standards is treated in the same manner as any other violation of an OSHA standard. See the OSHA section in Part 3 of this manual for enforcement details.

Occupational Safety and Health Administration (OSHA)

Regional Office

Two Pershing Square Building

2300 Main Street, Suite 1010

Kansas City, Missouri 64108-2416

Phone: (816) 283-8745

Fax: (816) 283-0547

www.osha.gov

Division of Labor Services

Iowa Workforce Development

1000 East Grand Avenue

Des Moines, Iowa 50319-0209

Phone: (515) 281-5387 or

(800) JOB-IOWA; (800) 562-4692 (for Deaf and Hard of Hearing, use Relay 711)

www.iowaworkforce.org/labor/iosh/

Break Times for Nursing Mothers

(Federal Law – 29 U.S.C. 207(r))

Section 4207 of the 2010 Affordable Care Act amended the Fair Labor Standards Act to add a requirement that nursing mothers be given a reasonable opportunity to express breast milk during work hours.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must provide reasonable break time for a mother to express breast milk for up to one year following the birth of a child. The law does not require that the break time be paid.
- Employers must provide an appropriate location, other than a bathroom, that is away from co-workers and the public.



WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- All employers covered by the FLSA (see the FLSA section in Part 1 of this manual)
- Employers with fewer than 50 workers don't have to comply if it would cause "an undue hardship"

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

None specified amendment, but presumably the same as other FLSA violations.

HOW IS THIS LAW ENFORCED?

This law can be enforced in the same manner as other FLSA violation, through a complaint to the Department of Labor or private legal action. See the FLSA section in Part 1 of this manual for additional enforcement details.

Wage & Hour Division, U.S. Dep't. of Labor
Des Moines District Office
Federal Building
210 Walnut Street, Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/



Part 3: Staying Safe

*Health and Safety Protections
Compensation for Injuries*

Occupational Safety and Health Act (OSHA)

(Federal Law – Occupational Safety and Health Act of 1970, 29 USC 651-78)

Iowa Occupational Safety and Health Act

(Iowa Code, Chapter 88)

The federal Occupational Safety and Health Act was passed in 1970 to create safer workplaces. Iowa law is nearly identical to federal law. Most enforcement is by state agency.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must furnish workplaces free from recognized hazards
- Employers must comply with specific health and safety standards
- Employers may not punish workers who complain about safety hazards or file an OSHA complaint

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- U.S. Postal Service
- Federal agencies (through executive order)
- State and local public agencies (covered by Iowa Occupational Safety and Health Act)



WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Under OSHA, an employer can be ordered to:

- Pay up to \$7,000 per violation (up to \$70,000 for a willful or repeat violation)
- Eliminate health hazards or pay up to \$7,000 per day
- Shut down an operation that is creating an imminent danger

HOW ARE THESE LAWS ENFORCED?

These laws are enforced exclusively by the state and federal OSHA agencies. There is no right to file a private lawsuit for violation of OSHA standards. Complaints can be filed with either the state or federal agency, but in most cases the complaint will be handled initially by the state agency. Complaints may be made anonymously. There is no cost to file a complaint.

Occupational Safety and Health Administration (OSHA)

Regional Office

Two Pershing Square Building

2300 Main Street, Suite 1010
Kansas City, Missouri 64108-2416
Phone: (816) 283-8745
Fax: (816) 283-0547
www.osha.gov

Division of Labor Services
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: (515) 281-5387 or
(800) JOB-IOWA; (800) 562-4692 (for Deaf and Hard of Hearing, use Relay 711)
www.iowaworkforce.org/labor/iosh/

For life-threatening situations, call (800) 321-OSHA

Iowa Workers' Compensation Act

(Iowa Code, Chapters 85, 85A, 85B, 86, 87)

The Iowa Workers' Compensation Act dates back to 1913. It is a no-fault insurance law, requiring employers to carry insurance intended to financially compensate workers who are injured on the job. The law also provides employers with immunity from negligence lawsuits. Separate laws apply to federal workers, railroad and maritime workers, and local police and firefighters.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must provide financial compensation to workers who are injured on the job, including:
 - Medical care and expenses related to a workplace injury
 - Partial replacement of wages lost when unable to work due to workplace injury (weekly benefits based approximately on 80% of take-home pay)
 - Partial replacement of wages lost due to permanent injuries
- Employers must purchase workers' compensation insurance or qualify as self-insured
- Employers have the right to direct injured workers' medical care if the care is being paid for by workers' compensation insurance, including choosing the physician or health care provider who will provide the care. If the care provided is inadequate, workers have the right to petition for alternate care.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- State and local government agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Federal government employees (covered by separate law)
- Maritime and railroad workers (covered by separate law)
- Police officers and firefighters (partially)
- Some domestic and casual employees
- Some agricultural workers
- Independent contractors (narrowly construed)

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

If benefits are not paid in a timely manner, the employer or insurance company may be required to pay penalty benefits, if the failure to pay was intentional.

HOW IS THIS LAW ENFORCED?

Benefits are paid by private insurance, but the law is enforced by the Iowa Division of

Workers' Compensation. Workers must report injuries to their employer within 90 days. The employer must report the injury to the Division of Workers' Compensation. If the employer or insurance company disputes a claim, they should notify the worker that the claim will not be paid. Disputed claims are decided by an administrative law judge (ALJ) from the Division of Workers' Compensation. Contested claims must be filed by the worker within 2 years of the date of injury or 3 years from the last payment if weekly benefits are paid. There is a \$100 filing fee for a contested case.

Division of Workers' Compensation

Iowa Workforce Development

1000 East Grand Avenue

Des Moines, Iowa 50319-0209

Phone: (515) 281-5387 or

(800) JOB-IOWA; (800) 562-4692 (for Deaf and Hard of Hearing, use Relay 711)

E-mail: IWD.DWC@iwd.iowa.gov

www.iowaworkforce.org/wc/

The Division of Workers' Compensation can provide information about how to file a claim, but does not represent workers in contested cases. Workers can represent themselves or can be represented by an attorney or some other advocate, like a union representative, for example. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid.

Although workers may file contested case claims without the assistance of an attorney, it is not usually advisable to do so. The workers' compensation law is confusing, and the agency's procedure is complicated. In all but the simplest cases, injured workers should seek advice from a workers' compensation attorney or some other person (e.g., a union representative) who has experience with the system. Many lawyers will accept workers' compensation cases on a contingent fee basis, meaning that the lawyer's fee will be paid as a percentage of the amount of compensation that the worker receives.



Part 4: Unfair Treatment

Laws Protecting Workers from Discrimination

Civil Rights Act of 1964 – Title VII

(Federal Law – Civil Rights Act of 1964, 42 USC 2000e-2000e-17)

Pregnancy Discrimination Act (PDA)

(Federal Law – Pregnancy Discrimination Act of 1978, 42 USC 2000e(k))

Equal Pay Act (EPA)

(Federal Law – Equal Pay Act of 1963, 29 USC 206(d))

Age Discrimination in Employment Act (ADEA)

(Federal Law – Age Discrimination Act of 1967, 29 USC 621-34)

Genetic Information Nondiscrimination Act (GINA)

(Federal Law – Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff-2000ff-11)

Iowa Civil Rights Act

(Iowa Code, Chapter 216)

The Civil Rights Act of 1964 was intended primarily to eliminate race discrimination, but it also prohibits discrimination on the basis of color, sex, religion, creed and national origin. The Iowa Civil Rights Act was passed at about the same time and is very similar to the federal law; however, there are small but important differences. The other laws listed above supplement the Civil Rights Act, adding additional protections against other types of prohibited discrimination (pregnancy, gender-based pay, age, genetic information, etc.). Although the laws are all very similar, each has its own peculiarities.

WHAT DO THESE LAWS REQUIRE EMPLOYERS TO DO?

- Employers may not discriminate against job applicants or workers on the basis of race, color, religion, national origin, or sex (Title VII, Iowa Civil Rights Act)
- Employers may not discriminate against job applicants or workers on the basis of sexual orientation (Iowa Civil Rights Act)
- Employers may not discriminate against job applicants or workers on the basis of pregnancy, childbirth or related medical condition (PDA)
- Employers may not discriminate against job applicants or workers on the basis of age (ADEA, Iowa Civil Rights Act). Note: ADEA covers age discrimination only for individuals over age 40.
- Employers may not request genetic information from workers or family members and may not discriminate against job applicants or employees on basis of genetic

information from the worker or the worker's family members (GINA)

- Employers may not pay men and women different wage rates for the same work (EPA)
- Employers may not adopt hiring or promotion policies that screen out a disproportionate percentage of minorities or women, unless justified by a business necessity
- Employers may not discharge or otherwise punish employees for opposing discriminatory practices, complaining to management, or taking legal action

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with 15 or more employees (In Iowa, some smaller employers are also covered under some laws. Call the Iowa Civil Rights Commission for more information.)
- Public agencies
- Employment agencies
- Labor organizations
- State and local government (covered by Iowa Civil Rights Act)

WHICH EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Tax-exempt private membership clubs
- Religious organizations

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Cease discriminatory practices
- Hire, promote, or restore employment
- Pay back wages and benefits
- Compensate for emotional distress
- Pay punitive damages
- Pay fines of up to \$25,000
- Pay worker's attorney fees and litigation expenses

HOW ARE THESE LAWS ENFORCED?

Both the federal Equal Employment Opportunity Commission (EEOC) and the state Iowa Civil Rights Commission (ICRC) civil rights agencies are responsible for enforcing these laws. Types of discrimination covered by both federal and state civil rights laws may be enforced by either the state civil rights agency or the federal EEOC.

A worker who has been discriminated against must file with the civil rights agency first and may not sue the employer until the agency has processed the case. In cases where both the

state and federal agencies have jurisdiction, the worker can file with either agency, but most cases will be handled initially by the ICRC. Complaints must be filed with the ICRC or the EEOC within 300 days of a violation. There is no charge for this service.

Equal Employment Opportunity Commission (EEOC)

Reuss Federal Plaza

310 West Wisconsin Ave, Suite 800

Milwaukee, WI 53203-2292

Phone: 1-800-669-4000

Fax: 414-2974133

TTY: 1-800-669-6820

www.eeoc.gov

Iowa Civil Rights Commission (ICRC)

400 E. 14th Street, Room 201

Des Moines, IA 50319-1004

Phone: 515-281-4121 or 1-800-457-4416

www.state.ia.us/government/crc/

Workers also have the right to take cases to state or federal court after the agency has processed the case. The worker may wait and let the agency complete its process, or the worker may request a “right to sue” letter 60 days after filing a complaint with the ICRC or EEOC. Civil suits may be filed in state or federal court, depending on the law. Workers who are represented by private attorneys can request that their legal fees be paid by the employer if their case is successful.

Discrimination on the Basis of Criminal History

Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964 (Federal Law – USC 2000e-2000e-17)

There is no law that directly prohibits an employer from considering an applicant's prior criminal history. In fact, for certain jobs, an employer may be required to consider an applicant's criminal history. At the same time, there have been instances where the courts have determined that over-reliance on criminal history may result in unlawful discrimination, especially on the basis of race and national origin, since African American and Latino workers are disproportionately arrested when compared to their representation in the total population.

Since the 1960's, courts have found that the use of criminal history records as a basis of employment decisions can be a form of race discrimination, but each case was decided on its own facts. On April 25, 2012, the Equal Employment Opportunity Commission (EEOC), prompted by technological and legal changes, issued new enforcement guidance for employers. These guidelines do not have the force of law but are intended to help employers to avoid violating the civil rights of job applicants.

WHAT IS PROHIBITED BY THE EEOC RULES?

An employer may not use criminal history information as a way to discriminate on the basis of race or national origin. For example:

- An employer must not consider criminal history information differently for different applicants or workers, based on their race or national origin. For example, an employer can't require criminal history records for Latino workers but not for Anglos. An employer can't refuse to hire African-Americans with any criminal history, but ignore the criminal history of white workers.
- An employer must not refuse to employ a worker based solely on the fact that the worker has been *arrested*. As several courts have noted, an arrest, without a conviction, is not sufficiently reliable evidence of criminal conduct and a rule prohibiting employment of all workers who have been *arrested* is likely to disparately impact African American and Latino workers. A worker may prove discrimination under Title VII by showing that (1) the employer has a policy of excluding applicants on the basis of an arrest and (2) the policy is in fact excluding a disproportionate number of African-Americans or Latinos.



WHAT IS ALLOWED BY THE EEOC RULES?

The rules do not prohibit employers from ever considering criminal history, but they do offer some guidance on when it is permissible to do so.

- In contrast to arrests, convictions are reliable evidence of criminal conduct. Though it is legal to do so, the EEOC recommends that employers not ask about convictions on *job applications*. Instead, an employer should first make a determination as to

whether an applicant is qualified and only request criminal history information in connection with a job offer.

- The EEOC recommends that if employers do ask about convictions, they only ask about convictions that are relevant, *i.e.*, those that are (1) related to the job duties and (2) inconsistent with the necessities of the business. For example, a prior conviction for child molestation would be very relevant for someone applying for a job as a school bus driver, but maybe not for a bank teller.
- If a worker does have a criminal conviction, that fact alone should not result in automatic disqualification for the job. The EEOC rules strongly suggests that the employer consider the nature of the crime, the length of time passed since the crime occurred, and the nature of the job the worker will be doing, before making any decision.
- An employer should then assess the worker individually, which includes notifying the worker that he or she had been screened because of a criminal history, giving the worker a chance explain why he or she should not be excluded because of a criminal history, and considering whether an exception should be granted to the worker despite the worker's criminal history.
- When assessing an individual worker, an employer should consider such things as: the facts surrounding the criminal conduct, the worker's age at the time the conduct occurred, employment history or education and training since the criminal conduct occurred, and employment or character references.

ARE THERE EXCEPTIONS TO THE EEOC RULES?

- The EEOC rules do not apply if there is a specific federal law that *requires* an employer to consider past criminal convictions. Such requirements exist in many industries including transportation, nuclear energy, finance, import/export, etc. However, state and local laws that exclude people from employment based on prior convictions may be invalid if they are not consistent with Title VII and EEOC rules.
- The EEOC rules do not prohibit an employer from making employment decisions based on its own investigation of misconduct, even if the alleged misconduct is criminal in nature. For example, if a teacher is accused of improper contact with a student, the school district is not required to wait for the criminal proceedings to be concluded before deciding whether to terminate the teacher's employment. The school district can conduct its own investigation and can make a decision even before the criminal case goes to trial.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

The same as those covered by Title VII of the Civil Rights Act of 1964.

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

The same as those not covered by Title VII of The Civil Rights Act of 1964.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

The same as those provided for other violations of Title VII of The Civil Rights Act of 1964.

HOW IS THE LAW ENFORCED?

In the same manner as the other provisions of Title VII of The Civil Rights Act of 1964.

Americans with Disabilities Act (ADA)

(Federal Law – Americans with Disabilities Act of 1990, 42 USC 12111-117)

This 1990 civil rights law was intended to increase employment opportunities for workers with disabilities. It prohibits discrimination in public accommodation, housing, education and employment. The ADA is based on and is similar in many ways to the other civil rights laws described in the previous section.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers may not discriminate against qualified individuals with disabilities. “Disability” is broadly defined to include any permanent illness, injury or condition that limits one or more major life activity
- Employers must make reasonable accommodations for workers with disabilities
- Employers may not discharge or punish employees who request accommodations, file complaints, or sue in court

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with six or more employees
- Public agencies
- Labor organizations

WHICH EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Tax-exempt private membership clubs

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Stop discriminatory practices
- Hire, promote, or restore employment
- Make reasonable accommodations so that disabled workers can perform their jobs
- Pay back wages and related benefits
- Pay damages for emotional pain
- Pay punitive damages
- Pay worker's legal fees and litigation costs

HOW IS THIS LAW ENFORCED?

The ADA is enforced in the same way as other civil rights laws. Complaints must be filed with the Iowa Civil Rights Commission or the Equal Employment Opportunity Commission within 300 days of a violation (see previous section for details).



Anti-Discrimination Provisions of the Immigration and Nationality Act

(Federal Law – 8 USC 1324b)

The Immigration Reform and Control Act of 1986 was the first federal law requiring employers to check the identity and work eligibility of each worker, and making it unlawful for employers to knowingly hire people who are not authorized to work in the U.S. However, this law also contains important provisions that prohibit employers from discriminating against workers in hiring and firing, based on the workers' national origin or citizenship status.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

The antidiscrimination provisions of this law prohibit employers from engaging in certain types of discrimination in hiring, firing, recruiting, or referring workers for a fee:

- Citizenship/immigration status discrimination: Employers may not treat work-authorized individuals differently based on their citizenship or immigration status. Most “citizens-only” hiring policies are illegal under this provision, which protects U.S. citizens, permanent residents, temporary residents, asylees and refugees from discriminatory treatment.
- National origin discrimination: Employers may not fire or refuse to hire people based on their place of birth, ancestry, native language, accent, or because they are perceived as looking or sounding “foreign.”
- Document abuse: When workers are hired, they are required to show documents to prove their identity and work authorization as part of filling out a form called Form I-9. *Workers have the right to choose which documents they will show*, from among the lists on the Form I-9. Employers may not demand that workers produce more or different documents, as long as the worker has fulfilled the requirements of the Form I-9. Employers may not reject reasonably genuine-looking documents, or prefer certain documents over others, based on the worker's citizenship status or national origin. These protections also apply when employers “re-verify” or re-check an employee's work authorization documents.
- Retaliation: Employers may not intimidate, threaten, or coerce workers to interfere with their right to file charges or participate in investigations.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- All employers with more than 3 employees
- Note: in cases of national origin discrimination, employers with 15 or more employees are covered by the Civil Rights Act of 1965, which is enforced by the Equal Employment Opportunity Commission (EEOC). The Immigration and Nationality Act covers national origin discrimination only in workplaces with more than 3 and less than 15 employees.

WHICH EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- The law exempts certain employers from citizenship status discrimination, when they are required to hire U.S. citizens by law, regulation, executive order, or government contract.

WHAT TYPES OF WORKERS ARE PROTECTED BY THIS LAW?

- Citizens and non-citizens who are authorized to work in the U.S.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer can be ordered to:

- Hire or rehire a worker
- Provide back pay
- Pay fines – amount varies based on type of violation, and whether it is a repeat violation
- Provide training for supervisors or company officials

HOW IS THIS LAW ENFORCED?

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in the U.S. Department of Justice Civil Rights Division is responsible for enforcing this law. Work-authorized individuals can file charges of immigration-related employment discrimination within 180 days of the discriminatory act, by filling out a charge form (which is available in several languages on the OSC website) and faxing or mailing the completed form to the OSC at:

Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC)
U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Worker Hotline Phone: 1-800-255-7688
Fax: 202-616-5509
www.justice.gov/crt/osc/

There is no cost to file a charge with the OSC. Charges can be filed by the victim of discrimination, or by another person or group, although the charge form requires specific information about the act(s) of discrimination and the person or people involved. If OSC determines that an employer appears to have violated the law, the agency may negotiate a voluntary settlement agreement with the employer, or the agency may file a complaint to bring the case before a judge.

The OSC also maintains a free telephone hotline for workers and their advocates to ask questions, to file a complaint, or to request printed outreach materials for workers and employers. The number of the OSC hotline is 1-800-255-7688.

Services for Non-English Speaking Employees

(Iowa Code, Chapter 91E)

This state law requires certain employers to provide translation services and social service referrals for non-English speaking employees if at least 10% of the work force is non-English speaking. The law also regulates employer recruiting practices.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must provide translation services to non-English speaking workers at each work location and on each shift where non-English speakers are employed
- If Spanish interpretation is required, the interpreter must come from a list certified by the Commission on Latino Affairs
- Employers must also provide a person “whose primary responsibility is to serve as a referral agent to community services”
- Employers or agents who recruit non-English speaking workers from more than 500 miles away must provide written information about the job when recruiting workers, including the hours, wage rates, job duties, health risks, and a warning about penalties for falsifying immigration documents. Employers must also provide return transportation back home if a recruited worker resigns within 4 weeks and makes a request for transportation within 3 business days.



WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with at least 100 employees where at least 10% of the workforce is non-English speaking

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Government workers (federal, state & local)
- Spouse and family members of farmers
- Sharecroppers or neighbors of farmers who are exchanging labor
- Seasonal agricultural workers who work directly for farmers
- Independent contractors
- Licensed professionals (doctors, lawyers, etc.) who provide services to clients or patients on a fee for service basis

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Pay penalties of up to \$1,000 for each violation
- Pay punitive damages for repeated violations
- Repeated violation is also a simple misdemeanor

HOW IS THIS LAW ENFORCED?

This law is enforced by the Iowa Division of Labor.

Iowa Division of Labor

Iowa Workforce Development

1000 East Grand Avenue

Des Moines, IA 50319-0209

515-281-3606 or 800-JOB-IOWA (for Deaf and Hard of Hearing, use Relay 711)

www.iowaworkforce.org/labor



Part 5: Organizing for Better Conditions

The Right to Form, Join and Support Unions and Bargain Collectively

National Labor Relations Act (NLRA)

(Federal Law – 29 USC 151-69)

This law, enacted in 1935 as part of the New Deal, was designed to provide basic organizational rights to workers, to prohibit employer interference with those rights and to encourage the practice of collective bargaining.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must respect workers' rights to engage in concerted activity (collective discussion or action) to improve their wages and working conditions, including meeting, talking to co-workers, soliciting, petitioning, leafleting, signing union cards, picketing, striking, and other collective activities related to improving workplace conditions.
- Employers may not restrain, interfere with, or coerce workers exercising their rights.
- Once workers form a union, employers must bargain in good faith with the union about all matters relating to wages, hours, and terms and conditions of employment.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with annual revenue of more than \$500,000
- U.S. Postal Service

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Federal government, other than Postal Service (a separate, similar federal law covers federal workers)
- Railroads and airlines (covered by a separate federal law)
- State and local government (covered by a separate state law)
- Religious schools

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Agricultural laborers
- Domestic service employees
- Supervisors, managers
- Confidential employees (those who have access to employer's bargaining information)
- Independent contractors
- Undocumented workers are also covered by this law, but they no longer have legal rights to be reinstated or receive back pay for violations because of a U.S. Supreme Court case called *Hoffman Plastics v. NLRB*, 535 US 137 (2002)

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Violations of the NLRA are called unfair labor practices. Employers found to have committed

unfair labor practices may be ordered to:

- Stop violating worker or union rights
- Reinstatement an employee fired for unlawful reasons (with back pay and benefits)
- Reverse any other action taken against a worker because the worker engaged in activities protected under the NLRA
- Recognize and bargain in good faith with the union

HOW IS THIS LAW ENFORCED?

This law is enforced by the National Labor Relations Board (NLRB). Unfair labor practice charges must be filed with the appropriate NLRB regional office within 6 months of a violation. Charges are investigated by the agency, with the assistance of the parties. If the NLRB Regional Director finds probable cause, the worker will be represented by the Regional Director and the case will be decided by an administrative law judge from the NLRB. There is no cost for the service.

If the worker is filing an unfair labor practice charge based on union activity, it is very important to consult with the union and to involve the union in the unfair labor practice charge process.

For most of Iowa:

Des Moines (Resident Office, Region 18)
210 Walnut Street - Room 439
Des Moines, IA 50309-2103
Phone: 515-284-4391
Fax: 515-284-4713
www.nlr.gov

For Iowa counties along the Mississippi:

Peoria (Sub-region 33)
300 Hamilton Blvd, Suite 200
Peoria, IL 61602-1246
Phone: 309-671-7080
Fax: 309-671-7095
www.nlr.gov

Iowa Public Employment Relations Act (PERA)

(Iowa Code, Chapter 20)

This 1974 Iowa law is modeled on the National Labor Relations Act (NLRA) and was intended to provide similar rights to public workers in Iowa. The law is very similar to the NLRA (see previous section), except:

- Public employees cannot legally strike
- Unresolved contract negotiations are resolved by an arbitrator
- Mandatory topics of bargaining are limited to a list included in the law

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must respect workers' rights to engage in concerted activity (collective discussion or action) to improve wages and working conditions, including meeting, talking to co-workers, soliciting, petitioning, leafleting, signing union cards, picketing, and other collective activities related to improving workplace conditions (but not striking).
- Employers may not restrain, interfere with, or coerce workers exercising their rights
- Once workers form a union, employers must bargain in good faith with the union about mandatory topics of bargaining which are listed in the law

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- State and local government agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Supervisors, managers
- Elected officials
- Judicial officers
- Patients or inmates
- Confidential employees (those who have access to employer's bargaining information)
- Temporary employees (less than 4 months)
- Work-study students
- National Guard
- Employees of Iowa's Justice Department other than Consumer Advocate Division
- Employees of the credit union and banking divisions of Iowa's Department of Commerce

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Violations of the PERA are called prohibited practices. Employers found to have committed prohibited practices may be ordered to:

- Stop violating worker or union rights
- Reinstate workers fired for unlawful reasons (with back pay and benefits)

- Reverse any other action taken against a worker because the worker engaged in activities protected by the PERA
- Bargain in good faith with the union

HOW IS THIS LAW ENFORCED?

The Iowa Public Employment Relations Board (PERB) is responsible for enforcing this law. Charges must be filed with PERB within 90 days of a prohibited practice. Parties are responsible for gathering necessary evidence and presenting their own cases. Contested cases will be decided by an administrative law judge (ALJ) from PERB. There is no charge for filing a case with PERB.

If the worker is filing a prohibited practice charge based on union activity, it is very important to consult with the union and to involve the union in the prohibited practice charge process.

Public Employment Relations Board (PERB)
510 E. 12th Street, Suite 1B
Des Moines, IA 50319
Phone 515-281-4144
Fax: 515-242-6511
Email: iaperb@iowa.gov
www.iowaperb.iowa.gov/index.html



Part 6: Privacy at Work

*Medical Records and
Other Personal Information*

Medical Records

(Americans with Disabilities Act - Federal Law - 42 USC 12111-117)

In addition to the prohibiting discrimination against people with disabilities, the Americans with Disabilities Act (ADA) protects the privacy of workers' medical records.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers may not require job applicants or current employees to provide medical records or disclose pre-existing conditions or other facts from their medical histories
- Employers may not require job applicants pass a physical examination until after a job offer has been made. Employers may require workers (new or current employees) to undergo physical examinations only if the exam is limited to determining whether workers can safely perform the essential functions of a job; no other information should be disclosed by the examining doctor.
- If a worker's medical information is voluntarily disclosed (e.g., in relation to a physical exam, request for disability accommodation, workers' compensation injury claim, or FMLA leave request, etc.), employers must keep this medical information confidential unless release is authorized by a worker. Note that ADA confidentiality requirements prohibit employers from sharing a worker's information with co-workers and supervisors, but may not prohibit sharing information with insurance companies.
- Employers must store medical records of current and former employees in a secure (locked) area, separate from worker personnel files.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with six or more employees
- Public agencies
- Labor organizations

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Tax-exempt private membership clubs

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Keep information confidential
- Pay money damages for improper disclosure
- Pay damages for emotional pain
- Pay punitive damages
- Pay worker's legal fees and litigation costs

HOW IS THIS LAW ENFORCED?

The ADA is enforced in the same way as other civil rights laws, see civil rights section in Part 4 of this manual for details.

Genetic Information

(Genetic Information Nondiscrimination Act - Federal Law - 42 USC 2000ff-2000ff-11)

In addition to prohibiting discrimination on the basis of a worker's genetic information (see the civil rights section, in Part 4 of this manual), the Genetic Information Nondiscrimination Act (GINA) also provides privacy protections for workers' genetic information.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers and health insurance companies are prohibited from requiring genetic information from workers or their family members
- Health insurance companies cannot request or require a person to undergo a genetic test, and cannot purchase genetic information about a person prior to issuing an insurance policy
- Health insurance companies cannot deny coverage or increase premiums based on genetic information (applies to both group and individual plans). Note that GINA does not prohibit insurance companies from making coverage or premium decisions based on current health conditions (this will change after the Affordable Care Act is fully implemented).

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with 15 or more employees
- Public agencies (federal, state and local)
- Employment agencies
- Labor organizations
- Also applies to health insurance companies

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Tax-exempt private membership clubs
- Religious organizations
- Does not apply to life insurance or disability insurance companies

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers and health insurers may be ordered to:

- Cease discriminatory practices
- Hire, promote, or restore employment
- Pay back wages and benefits
- Compensate for emotional distress
- Pay punitive damages
- Pay fines of up to \$25,000
- Pay worker's attorney fees and litigation expenses

HOW ARE THESE LAWS ENFORCED?

GINA is enforced in the same way as other civil rights laws, see the civil rights section in Part 4 of this manual for details.

Personnel Files

Iowa Code, Chapter 91B

This 1990 Iowa law guarantees workers the right to review their own personnel files and provides immunity to employers who disclose information from personnel files under some circumstances.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must allow workers to review and copy their own personnel files, including performance evaluations, disciplinary records and “other information concerning employer-employee relations” (does not include the right to review confidential references). Review must take place at a mutually agreeable time, the employer can be present, and the worker can be charged a “reasonable fee” for copies.
- Employers may provide certain types of information from the personnel file of a current or former worker to a prospective employer, and are immune from any claim for damages unless:
 - The disclosure violates the worker’s civil rights
 - The information is intentionally provided to someone who has no legitimate interest in the information
 - The information is not relevant to the request
 - The information is provided with malice (intended harm to the worker)
 - The information is known by the employer to be false

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- State & local government agencies

WHAT TYPES OF EMPLOYERS DON’T HAVE TO FOLLOW THIS LAW?

- Federal government (not covered by state laws, but separate laws or policies may apply)

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

- Remedies are not specified in the law, but Iowa courts could order an employer to provide access to personnel files and award attorney fees if an employer acted “in bad faith.”
- No penalties are specified for improper disclosure of personnel information, but workers could recover damages for defamation or invasion of privacy, etc. depending on what was disclosed.

HOW IS THIS LAW ENFORCED?

This law is enforced by private legal actions in state court. There is no provision for recovering attorney fees under this law.

Employee Polygraph Protection Act (EPPA)

(Federal Law – 29 USC 2001-09)

The Employee Polygraph Protection Act of 1988 (EPPA) generally prevents employers from using “lie detector” tests, either for pre-employment screening or during the course of employment, with certain exceptions.



WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers generally may not require or request any worker or job applicant to take a lie detector test—except for “for cause” testing of employees who are reasonably suspected of involvement in a specific workplace incident (theft, embezzlement, etc.) that resulted in economic loss to the employer
- Employers may not discharge, discipline, or discriminate against workers or job applicants for refusing to take a test that is not “for cause”
- Employers may not retaliate against workers for exercising other rights under the Act
- Employers must display the EPPA poster in the workplace

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Government agencies (federal, state & local)

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Security services (guards, alarm services, armored cars, etc.)
- Pharmaceutical manufacturers, distributors and dispensers

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Cease practices that violate the law
- Reinstatement of workers fired for illegal reasons (with back pay and benefits)
- Pay penalties of up to \$10,000 per violation

HOW IS THIS LAW ENFORCED?

The Wage & Hour Division of the U.S. Department of Labor is responsible for enforcing this law. There is no charge for this service. However, the Department of Labor is not required to accept every case.

Wage & Hour Div., U.S. Dep't. of Labor
Des Moines District Office
Federal Building
210 Walnut Street, Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/

Workers also have the right to file their own cases in federal or state court, without the assistance of the Department of Labor. If the amount owed is under \$5,000, the claim can be filed in small claims court (state court). Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. There is no provision for recovering attorney fees in this kind of case.

Iowa Polygraph Law

Iowa Codes Section 730.4

The Iowa Polygraph Law is similar to the federal Employee Polygraph Protection Act (EPPA), but also covers state and local government employees

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers generally may not require or request any worker or job applicant to take a lie detector test as a condition of employment, promotion or change in status, or as a condition of a benefit or privilege of employment
- Employers may not administer worker lie detector tests

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- State and local government agencies

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Federal government

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Law enforcement
- Corrections

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Cease practices that violate the law
- Reinstatement workers fired for illegal reasons (with back pay and benefits)
- Pay fines of at least \$150 if charged with a simple misdemeanor under the criminal provisions of the statute

HOW IS THIS LAW ENFORCED?

Criminal provisions of the law are enforced by county attorneys. However, a county attorney will have discretion about whether to pursue this kind of case.

Workers also have the right to file their own cases in state court, without the assistance of the county attorney. If the amount owed is under \$5,000, the claim can be filed in small claims court. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. There is no provision for recovering attorney fees in this kind of case.

Private Sector Drug Free Workplaces Act

Iowa Code, Section 730.5

Iowa's drug testing law limits the circumstances under which an employer can require a drug or alcohol test from a worker and provides details about how such tests can be conducted.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

Employers may conduct drug or alcohol tests of workers under limited circumstances

- Employers may test job applicants
- Employers may test current workers under the following circumstances:
 - Based on a reasonable suspicion that the worker is under the influence
 - Based on the worker's involvement in an accident
 - Randomly
 - As a follow-up to drug or alcohol treatment
 - As required by federal law or law enforcement
- Employers may only conduct tests if they have previously provided workers with a written policy on drug testing
- Employer tests must be conducted by qualified labs, and results must be reviewed by a medical officer
- Employers must follow standards for positive tests based on federal law
- Employers must pay full costs of drug tests
- Employers must allow workers to request a confirmatory (second) test
- Employers must offer workers who test positive for alcohol for the first time an option to enter rehabilitation treatment
- Employers must keep test results confidential, with some exceptions

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Government agencies (federal, state & local)

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers who *intentionally* violate the law may be ordered to:

- Cease practices that violate the law
- Reinstatement of workers fired for illegal reasons (with back pay and benefits)

Note the law relieves employers of liability for most unintentional violations of the law

HOW IS THIS LAW ENFORCED?

The Iowa Attorney General can enforce the confidentiality provisions of the law. All other provisions must be enforced by private legal actions in state court. There are no provisions for recovering attorney fees under this law.



Part 7: Losing Your Job

Discharge & Unemployment

Employment Termination

Iowa's Employment at Will Standard

Iowa law provides workers very little protection from being fired. The Iowa Supreme Court (along with courts from many other states) has adopted a standard called “employment at will.” That standard means that workers may be fired at any time for any reason, or for no reason at all, unless (1) the worker has a contract of employment or (2) the termination is for a reason that is specifically prohibited by law or (3) the termination is for a reason that violates “public policy.”

- 1) **Contractual protections against termination.** Most workers are not covered by contracts. The most common exception would be workers who are covered by a union-negotiated collective bargaining agreement. Typically, collective bargaining agreements include substantial limitations on an employer's right to discharge or discipline workers unless the employer has “just cause” for doing so. Individual employment contracts may also prevent an employer from arbitrarily firing a worker. Individual contracts are not unusual for executives, some kinds of professionals, performing artists and professional athletes. Very few other workers have individual employment contracts. In some extremely limited circumstances, a court may treat some other document (for example, an employee handbook) as if it were an employment contract, if it provides an explicit limitation on the employer's right to fire workers.



- 2) **Terminations that violate other laws.** There are many federal and Iowa laws (many of which are discussed in previous sections) that prohibit employers from discharging workers for specific reasons, such as the worker's race or gender, union activity, or in retaliation for making a complaint under various laws or testifying in investigations. In order to be successful in these kinds of cases the worker must show evidence that the reason for his/her discharge was due to a legally prohibited factor(s).
- 3) **Terminations that violate “public policy.”** The Iowa Supreme Court has also created its own exception to the “employment at will” doctrine. In *Springer v. Weeks & Leo Co., Inc.*, 429 N.W.2d. 558 (Iowa 1988), the court decided that a worker who had been fired after the employer found out she was planning to file a workers' compensation claim, could sue the employer for damages, despite the “employment at will” doctrine. The court said that it would only permit this kind of case where the worker could show that the discharge was in retaliation for the worker exercising some important legal right (filing a workers compensation claim in this case) or engaging in some important civic duty (serving on a jury, for example). The exact limits of this protection are still unclear.

Civil Service protections for public employees

Some public employees are covered by civil service laws, which protect them from being discharged without a good reason. The civil service system was created more than 100 years ago to protect public employees from abuses and corruption of political patronage. Various forms of civil service laws apply to different types of government employees:

- Most federal civilian workers are covered by federal civil service laws [Civil Service Reform Act of 1978, 5 USC §2301, *et seq.*]
- Most employees of the state of Iowa are covered by the state's merit system [Iowa Code, Chapter 8A]
- School teachers and administrators are covered by a state law that provides them with some protection from discharge without a good reason and provides them with some procedural rights before they are laid off [Iowa Code, Chapter 279]
- County sheriffs' deputies are covered by county civil service commissions [Iowa Code, Chapter 341A]
- City workers in cities with populations of more than 15,000 and police and fire fighters in cities with populations of more than 8,000 are protected by local civil service commissions [Iowa Code, Chapter 400.]

Protections for veterans who are public employees

Most veterans who are employed by state and local government are protected from discharge, unless the employer can prove incompetence or misconduct. *See:* The Veterans Preference Section in Part 9 of this Manual.

Worker Adjustment & Retraining Notification Act (WARN Act) (Federal Law – 29 USC 2101-09)

The WARN Act was passed in 1988 and is intended to provide workers and communities with an advance warning of an impending plant closing or major layoff. Most employers with more than 100 workers are required to provide 60 days' notice before a plant closing or a mass layoff.



WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

Sixty days in advance of any plant closing or mass layoff, covered employers must provide notice to (1) the workers or their union, (2) state government and (3) local government where the plant is located. "Plant closing" is defined as shutting down operations at a worksite that affects at least 50 full-time workers at that worksite.

- "Mass layoff" is defined as a loss of employment, not caused by a plant closing, that affects either:
 - 500 or more full-time workers
 - 50 to 499 full-time workers, if they constitute 33% of the workforce
- "Full-time workers" does not include workers who have worked less than 6 months in the last year or workers who work less than 20 hours per week on average.
- Job losses that occur in a 30 day period of time are counted together for purposes of calculating the threshold numbers. In some circumstances, two or more instances of job loss that do not separately meet the threshold numbers may be counted together if they occur within a 90 day period of time.
- If workers are represented by a union, the employer must give written notice to the chief elected officer of the union. If workers are not represented by a union, the employer must give written notice to the individual workers.
- Part-time workers who are being laid off are entitled to notice of the layoff or closing even though they are not counted toward the threshold numbers.
- The notice must contain: an explanation of whether the closing or layoff is permanent or temporary, the date of the closing or layoff and the date when workers' employment will be separated, an explanation of workers' right to bump another employee, and contact information for a person within the company who can provide additional information.
- If the job loss is due to a plant sale, either the seller or the buyer must give notice to workers. The seller must give notice if the plant closing or layoff takes place before or up to the time of the sale. The buyer must give notice if the closing or layoff takes place after the time of the sale. Notice of the sale is not required if the sale does not result in a closing or layoff.

EXCEPTIONS TO THE NOTICE REQUIREMENT

In certain circumstances, a covered employer may not be required to give the full 60 days' notice.

- The employer is actively seeking new capital or business which could postpone or prevent the layoff or closing.
- The employer could not foresee circumstances that led to the layoff or closing, such as sudden or dramatic market changes.
- The layoff or closing is the result of a natural disaster.

In all three cases the employer must give notice to workers as soon as practicable.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses and organizations, including non-profit organizations, with 100 or more full-time workers.
- Private businesses and organizations, including non-profit organizations, with 100 or more workers who work at least a combined 4,000 hours per week.
- Public and quasi-public entities that are separately organized and operate in the commercial context are covered.
- Federal, state and local governments are not covered.

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Workers on strike or workers who have been locked out as part of a labor dispute.
- Workers working on temporary projects or facilities who understood the temporary nature of the work when they were hired.
- Contract workers who work at a worksite, but who are employed by another employer (for example, employees working for a temp service).
- Government employees.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay back pay for up to 60 days.
- Pay attorney's fees and costs.
- For failing to provide notice to the local government, an employer may be subject to a civil penalty of up to \$500 for each day of violation.

HOW IS THE LAW ENFORCED?

The U.S. Department of Labor has no enforcement authority under this law. Workers, states, and local governments may file cases in state courts. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. Workers who are represented by private attorneys can request that their legal fees in a successful case be paid by the employer.

The U.S. Department of Labor does provide assistance in understanding the law and its regulations.

U.S. Department of Labor
Employment and Training Administration
Division of Adults and Dislocated Workers
Room C5325
200 Constitution Avenue, N.W.
Washington, DC 20210
(202) 693-3580
<http://www.doleta.gov/layoff/>

Iowa Worker Adjustment and Retraining Notification Act

(Iowa Code, Chapter 84C)

The Iowa Worker Adjustment and Retraining Notification Act is similar to the WARN Act, but it applies to smaller employers and requires only 30 days' notice prior to a closing or layoff. Under this state law, employers are required to provide notice of a closing to the workers and to Iowa Workforce Development.

WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

- An employer must give 30 days' notice to workers if a plant closing will result in a layoff or termination of at least 25 full-time workers. Workers who have worked less than 6 months in the last year and workers who work on average less than 20 hours per week are not counted.
- If workers are represented by a union, the employer must give written notice to the union. If workers are not represented by a union, the employer must give written notice to the individual workers.
- The notice must contain: an explanation of whether the closing or layoff is permanent or temporary, the date of the closing or layoff and the date when your employment will be separated, the job titles to be affected and the names of the individuals to be affected, and contact information for a person within the company who can provide additional information.
- If a business is sold, either the seller or the buyer must give notice to workers. The seller must give notice if the plant closing or layoff takes place before or up to the time of the sale. The buyer must give notice if the closing or layoff takes place after the time of the sale. Notice of the sale is not required if the sale does not result in a closing or layoff.



EXCEPTIONS TO THE NOTICE REQUIREMENT

An employer is not required to give the full 30 days' notice if:

- The employer is actively seeking new capital or business which may postpone or prevent the layoff or closing.
- The employer could not foresee circumstances that led to the layoff or closing, such as sudden or dramatic market changes.
- The layoff or closing is the result of a natural disaster.

If the notice is less than 30 days in advance of the employment loss, the notice provided to employees must contain specific explanation for reducing the notice period.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses and organizations with 25 or more full-time workers.
- Public agencies with 25 or more full-time workers.

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Workers on strike or workers who have been locked out as part of a labor dispute.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer who does not provide appropriate notice to the Iowa Department of Workforce Development may be ordered to:

- Pay a civil penalty of up to \$100 for each day of violation.

HOW IS THE LAW ENFORCED?

This law is enforced exclusively by the Iowa Department of Workforce Development. There is no right to file a private lawsuit under this law.

Ted Harms
Program Coordinator, State Dislocated Worker Unit
Iowa Workforce Development
3420 University Avenue
Waterloo, IA 50701
Telephone: (515) 669-0359
ted.harms@iwd.iowa.gov

Interference with Future Employment

Iowa Code, Sections 730.1, 2, 3 & 9

Iowa has three infrequently used laws, first enacted in 1924, which protect workers from malicious efforts to interfere with their employment. These laws were specifically intended to protect railroad workers, but also apply to other private sector workers. A more recent law protects the seniority rights of laid off workers.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers may not prevent discharged workers from finding new jobs, though employers may provide a truthful statement of the reasons for the worker's discharge. [§730.1]
- Employers may not "blacklist" former workers ("blacklisting" is defined as any attempt to prevent workers from finding new employment except as permitted by §730.1). [§730.2]
- Individuals are prohibited from attempting to get a worker fired by making false accusations about the worker failing to charge customers for services provided. [§730.3]
- Employers may not refuse to hire someone unless they give up their seniority rights from a previous job. [§730.9]

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- Individuals

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- No specific exclusions, but probably not intended to apply to government agencies

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

Employers may be ordered to:

- Cease practices that violate the law
- Pay damages (treble damages are allowed for blacklisting violations)

Violations of §730.1 or §730.3 are also simple misdemeanors

HOW IS THIS LAW ENFORCED?

The criminal provisions are enforced by county attorneys. All other provisions are enforced by private legal actions in state court. None of these laws contain provisions for the recovery of attorney fees.

Iowa Employment Security Act (Unemployment Insurance)

(Iowa Code, Chapter 96)

The Social Security Act, enacted in 1935 as part of the New Deal, requires states to adopt unemployment insurance laws. Iowa's version is similar to many other states' laws, although details of each law are slightly different. Iowa's law creates an unemployment insurance fund which is administered by Iowa Workforce Development. Employers are required to contribute to the fund through payroll taxes. The tax rate is based on the number of hours worked, wages paid, and claims experience. Workers who become unemployed through no fault of their own are eligible for benefits during their period of unemployment.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

- Employers must contribute to a state fund that provides compensation to unemployed workers, based on their earnings history
- Employers must notify Iowa Workforce Development when a worker leaves employment and must describe whether the person was discharged, laid off or left voluntarily.
- An employer may contest a worker's claim for benefits if they believe the worker is not eligible under the law, but the final eligibility decision will be made by Iowa Workforce Development.

WHAT RIGHTS OR BENEFITS DOES THIS LAW PROVIDE TO WORKERS?

- Unemployed workers have a basic entitlement to 26 weeks of benefits, but this period is extended under certain circumstances. Currently the maximum benefit period is 99 weeks.
- Workers may also be entitled to benefits during certain job training programs.
- To qualify for benefits, workers must:
 - Have worked and earned wages in 15 out of the last 18 months
 - Be unemployed through no fault of their own
 - Be able to work and available to work
 - Actively search for work and maintain records of work search
- Certain circumstances may disqualify a worker from receiving benefits, including:
 - Being discharged for misconduct (intentional wrongdoing)
 - Voluntarily quitting (usually)
 - Refusing to accept suitable work
- A worker who is disqualified may become re-qualified by working 10 weeks or more for another employer

CAN WE GET UNEMPLOYMENT DURING A LABOR DISPUTE (STRIKE OR LOCKOUT)?

There are special rules that apply during labor disputes. (*See: Iowa Code, Section 96.5(4)*)

and 871 IAC 24.33.) If you are not working because of a labor dispute at your place of employment, you are not eligible for unemployment benefits, with a few exceptions. If you meet one of these exceptions, you will be eligible for benefits:

- You are not part of the bargaining unit that is directly affected by the labor dispute and you are not personally participating in the labor dispute, *e.g.*, you are unemployed because there is no work for you to do during the strike, even though you are not on strike and your unemployment is not the result of your own refusal to cross the picket line.
- The union that represents you has made an offer to continue working under the terms of an expired collective bargaining agreement for a reasonable period of time and the employer refuses that offer and locks out the workers instead.

A person who is receiving unemployment benefits and who is offered a job as a replacement for workers who are on strike or who are locked out can refuse that offer and still receive benefits, because the offer is not considered suitable.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- Government agencies (federal, state & local)

WHAT TYPES OF EMPLOYERS DON'T HAVE TO FOLLOW THIS LAW?

- Agricultural employers, if the employer did not:
 - Pay wages of more than \$20,000 annually in the either of the last two years; or
 - Have more than 10 employees on the payroll during any 20 week period during the year (not including aliens working legally in the U.S.)

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

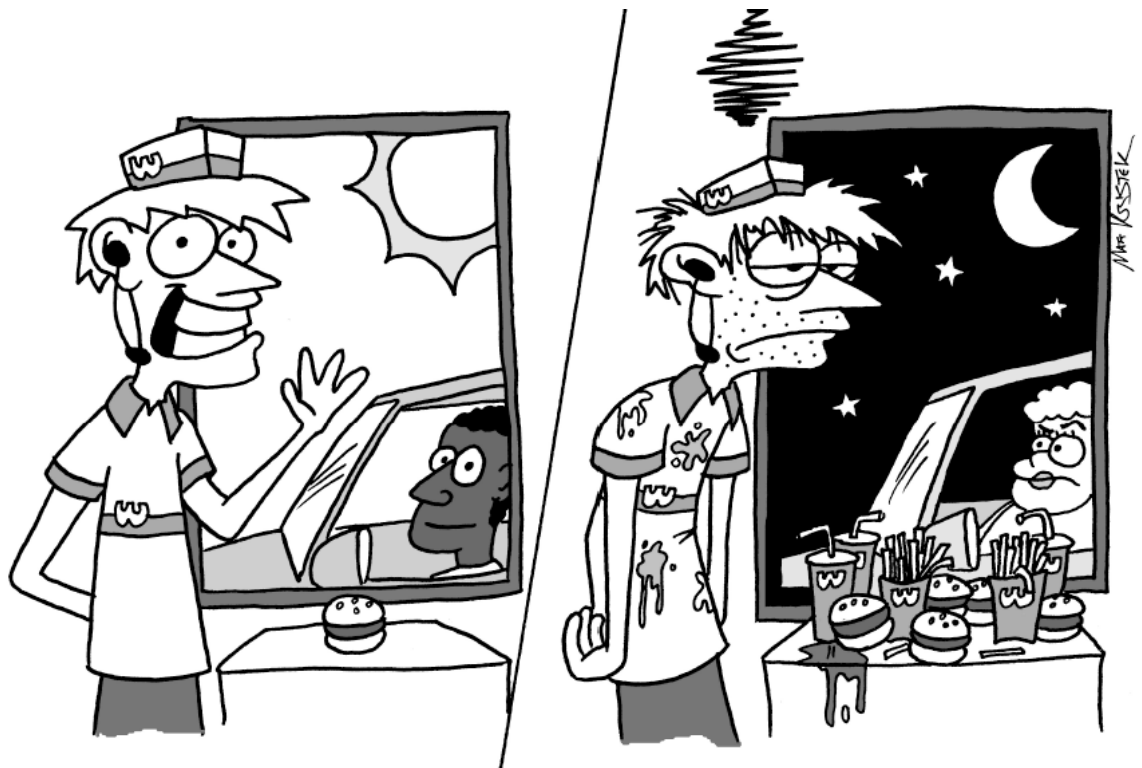
- Immigrant workers who do not have legal authorization to work are not eligible to receive benefits, even if they have paid into the system
- Independent contractors
- Ministers and other church employees
- Employees of certain non-public schools
- Disabled workers employed in sheltered workshops
- Participants in work training programs
- Elected officials
- Domestic service workers working in a private home, local college club, or fraternity or sorority, which did not have a total payroll in excess of \$1,000 in any calendar quarter of the previous year
- Work study students
- Prisoners
- Family members working in the home
- School employees during school recess (*e.g.*, summer break), if they have been promised employment when school resumes

HOW IS THIS LAW ENFORCED?

An unemployed worker must file a claim for benefits with Iowa Workforce Development, either in person at a local office or on-line. The employer will be notified of the claim and has 10 days to contest the claim. An administrative law judge (ALJ) from Workforce Development will decide contested claims. There are several levels of possible appeals of the ALJ's decision.

Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: (515) 281-5387 or
(800) JOB-IOWA; (800) 562-4692 (for Deaf and Hard of Hearing, use Relay 711)
E-mail: UIClaimsHelp@iwd.iowa.gov
www.iowaworkforce.org/ui/

Workforce Development can provide information about how to file a claim, but does not represent workers in contested cases. Workers can represent themselves or can be represented by an attorney or some other person, like a union representative. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid.



Part 8: Protecting Young Workers

Federal and State Child Labor Laws

Child Labor Provisions of the Fair Labor Standards Act

(Federal Law – Fair Labor Standards Act of 1938, 29 USC 201-19)

In addition to its minimum wage and overtime requirements, the Fair Labor Standards Act (FLSA) contains provisions to protect young people from exploitative child labor. The FLSA establishes a minimum age of 14 for most types of work, and sets restrictions on the hours and types of work permitted for young workers. (See also: Iowa Child Labor Law, next section)

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

In non-agricultural employment:

- An employee must be at least 16 years old to work unlimited hours in most non-farm jobs and at least 18 years old to work in jobs declared hazardous by the U.S. Secretary of Labor. See the U.S. Department of Labor website for details about hazardous jobs.
- Youth 14 and 15 years old may work outside school hours in certain non-hazardous jobs permitted by the U.S. Department of Labor, under the following conditions:
 - No more than 3 hours on a school day or 18 hours in a school week.
 - No more than 8 hours on a non-school day or 40 hours in a non-school week.
 - Work may not begin before 7am or end after 7pm, except from June 1 through Labor Day when evening hours are extended until 9pm.

In agricultural employment:

- An employee must be at least 16 years old to work unlimited hours in most agricultural jobs, including those declared hazardous by the U.S. Secretary of Labor. See the U.S. Department of Labor website for details about hazardous jobs.
- Youth under 16-years-old may work outside school hours in various non-hazardous agricultural jobs under the following conditions:
 - Youth age 10 and 11 must have parental consent, and may only work on farms that are not covered by minimum wage requirements (using no more than 500 “man-days” of farm labor in any quarter of the preceding calendar year).
 - Youth age 12 and 13 must have parental consent.

In all covered employment: employers may not discriminate against or discharge workers who file a complaint or participate in any proceeding under the Act.



WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses with annual revenue of at least \$500,000
- Hospitals, care centers and other institutions, schools
- Public agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

Workers engaged in certain occupations are exempted from the minimum age provisions:

- Newspaper delivery
- Performance in radio, television, movie, or theatrical productions
- Work for parents in a family business
- Gathering evergreens and making evergreen wreaths

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay a civil penalty of up to \$11,000 for each employee who is the subject of a violation of the FLSA's child labor provisions, and a civil penalty of up to \$50,000 in cases that cause death or serious injury of a minor employee (penalty for death or serious injury can be doubled if the violation is determined to be willful or repeated).
- Pay a criminal fine of up to \$10,000 if convicted for a willful violation. For a second conviction for a willful violation, the employer can be fined up to \$10,000 and serve a jail sentence of up to six months.

HOW IS THIS LAW ENFORCED?

The Wage & Hour Division of the U.S. Department of Labor is responsible for enforcing this law. There is no charge for this service. However, the Department of Labor is not required to accept every case.

Wage & Hour Div., U.S. Dep't. of Labor
Des Moines District Office
Federal Building
210 Walnut Street, Room 643
Des Moines, IA 50309-2407
Phone: 515-284-4625
www.dol.gov/whd/

Iowa Child Labor Law

(Iowa Code, Chapter 92)

Iowa Child Labor Law is similar to the federal Fair Labor Standards Act (FLSA) in that it sets minimum age, hours of work, and hazardous jobs standards for youth employment. There are also significant differences between the federal and Iowa laws. If an employer is covered by both federal and Iowa child labor law, the law with the stricter standard must be obeyed.

WHAT DOES THIS LAW REQUIRE EMPLOYERS TO DO?

In non-agricultural employment:

- An employee must be at least 16 years old to work unlimited hours without a work permit in most non-farm jobs, and at least 18 years old to work in certain hazardous jobs. See Iowa Code, Section 92.8 for a list of jobs prohibited under age 18.
- Youth 14 and 15 years old may work outside school hours in certain non-hazardous jobs permitted by the Iowa Code, under the following conditions:
 - Must have a work permit. Contact Iowa Workforce Development for details.
 - No more than 4 hours on a school day or 28 hours in a school week.
 - No more than 8 hours on a non-school day or 40 hours in a non-school week.
 - Work may not begin before 7am or end after 7pm, except from June 1 through Labor Day when evening hours are extended until 9pm.
 - Workdays of 5 hours or more must allow a 30-minute break.
- Street vendors must be at least 10 years old, and must have a street trades permit until they reach age 16. Street vendors may not work during school hours, or before 4am or after 7:30pm, except from June 1 to Labor Day when hours extend to 8:30pm.
- Child models under age 16 must have written parental permission, and may not work during school hours, or more than 3 hours per day and 12 hours per month. Work may not begin before 7am or end after 10pm.

In agricultural employment:

- An employee must be at least 16 years old to work unlimited hours without a work permit in most agricultural jobs.
- Youth under 16-years-old may work outside school hours in various agricultural jobs under the following conditions:
 - At least 14 years old, with a work permit, *unless work is “part-time” (up to 14 hours/week during the school year; up to 20 hours/week outside school year)*. No minimum age or permits are required for “part-time” agricultural workers.
 - At least 14 years old for certain types of seed production, including removal of corn tassels during June, July, August (no work permit required)
 - Migratory workers must be at least 12 years old, and hold a migrant labor permit until they reach age 16. Youth age 12 to 14 may not work prior to school hours. Work may not begin before 5am or end after 7:30pm, except

from June 1 through Labor Day when evening hours are extended until 9pm.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- All employers in the state of Iowa

WHAT TYPES OF WORK SITUATIONS ARE NOT COVERED BY THIS LAW?

- Part-time, occasional, or volunteer work for nonprofit educational, charitable, religious, or community service organizations
- Work in or around any home, outside of school hours, that is not related to the business, trade, or profession of the employer
- Work in an occupation or business operated by the child's parents
- Work ordered by a juvenile court, involving a child at least 12 years old

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Pay a civil penalty of up to \$10,000 for each permit violation, and each day that each child works in violation of specific provisions of the law.
- Pay a civil penalty of \$10,000 when a child is permitted to perform prohibited work that results in a fatality.

Violations of this law for which a penalty is not specifically provided constitute a serious misdemeanor.

The parent or guardian of a minor child who negligently allows the child to work in violation of the law is guilty of a serious misdemeanor, punishable by \$1875 in fines and/or one year in jail per offense.

HOW IS THIS LAW ENFORCED?

Iowa Workforce Development, Division of Labor Services, is responsible for enforcing this law. There is no charge for this service. However, Iowa Workforce Development is not required to accept every case.

Division of Labor Services
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Phone: (515) 281-5387 or
(800) JOB-IOWA; (800) 562-4692 (for Deaf and Hard of Hearing, use Relay 711)
www.iowaworkforce.org/labor/



Part 9: Protecting Veterans' Rights

*Federal & State Laws That Protect the
Employment Rights of Military Service
Personnel & Veterans*

Uniformed Services Employment and Reemployment Rights Act (USERRA)

(Federal Law – 38 USC 4301-35)

USERRA was passed in 1994 and protects the civilian jobs and benefits of military and reserve personnel. It provides that returning service members are to be reemployed in the job they would have attained had they not been absent for military service, which includes the same seniority, status and pay, and rights and benefits.

WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

- An employer may not deny initial employment, reemployment, retention in employment, promotion, or any other benefit on the basis of the worker's membership in the uniformed services, application for membership, performance of service, application for service, or obligation to perform service. An employer may not retaliate against a worker for exercising rights under this law.
- An employer must grant reemployment to a worker whose absence from employment was due to service in the uniformed service if the worker gave notice to the employer, the worker submits an application for reemployment with the employer, and the length of all the worker's absences from the employer due to uniformed service total 5 years or less. There are several exceptions to the 5 years total. For instance, periodic National Guard training does not count towards the 5 year total.
- An employer must reemploy the returning service member in the position the service member would have attained had the service member not been absent. The worker is entitled to the same seniority, pay and status, and rights and benefits. An employer must make reasonable efforts to provide skills training to permit the worker to qualify for reemployment.
- An employer must retain an employee's health and pension coverage. If a worker's service is for 31 days or more, the worker may be required to pay up to 102% of the health insurance premium. If the worker's service is for less than 31 days, the worker may not be required to pay more than the employee share of the health coverage.
- An employer must post a notice informing workers of their rights and obligations under the law. The employer must post the notice in the place where the employer customarily posts notices to workers.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- Private businesses
- Public agencies

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Independent contractors

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

An employer may be ordered to:

- Comply with the law.
- Pay lost wages and benefits due to the employer's failure to comply with the law.
- Pay liquidated damages in an amount equal to the lost wages and benefits, if the violation was willful.
- Pay attorney's fees and costs.

HOW IS THE LAW ENFORCED?

The Veterans Employment and Training Service (VETS) of the U.S. Department of Labor is responsible for enforcing this law. There is no charge for this service. However, the Department of Labor is not required to accept every case.

Veterans' Employment and Training Service (VETS)
U.S. Department of Labor
430 East Grand Avenue, 3rd Floor
Des Moines, Iowa 50309
Main Office (515) 281-9061
<http://www.dol.gov/vets/>

Workers also have the right to file their own court case. Workers may file cases against private employers in federal courts. Workers may file cases against states in state courts. Low-wage workers may be entitled to representation at no cost by Iowa Legal Aid. Workers who are represented by private attorneys can request that their legal fees in a successful case be paid by the employer.

Leaves of Absence for Military Service of Public Employees

Iowa Code, Section 29A.28

Section 29A.28 of the Code of Iowa provides rights similar to USERRA, but applies only to state and local government employers. However, it covers more types of military and quasi-military service than USERRA.



WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

- Public employers are required to grant a leave of absence to any worker who is called to active duty in the armed forces of the United States, or of the state of Iowa or in the “nurse corps” or in the civil air patrol or in the national disaster medical team of the United States.
- Section 29A.28 does not restrict the length of the leave granted. The first 30 days of the leave are without loss of pay.
- A public employer may temporarily replace an absent worker, but upon return from active duty, the worker is entitled to reinstatement.
- A public employer must reemploy the returning service member in the position, classification and in the same geographic location held by the service member at the time he/she entered active duty.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- State and local government.

WHAT TYPES OF WORKERS ARE NOT COVERED BY THIS LAW?

- Temporary public workers employed for six months or less.
- Private sector workers.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

None are specified in the law, but presumably a veteran would be entitled to reinstatement and/or back pay.

HOW IS THE LAW ENFORCED?

The enforcement mechanism not specified in the law. Presumably it is enforced by private legal action in state court.

Veterans Preference

Iowa Code, Chapter 35C

This law was originally passed to give a preference in public employment to veterans of the Civil War. It has since been amended to include veterans of other wars, other kinds of military service and long term reserve and National Guard members. This law requires public employers to give preferences in hiring and job retention to qualified veterans. (A similar requirement appears in Chapter 400, Iowa's Municipal Civil Service law.)

WHAT DOES THE LAW REQUIRE EMPLOYERS TO DO?

- A public employer must give preference to a qualified veteran over equally qualified non-veterans.
- A qualified veteran who has a disability or is aged cannot be disqualified from a job unless he/she is "incompetent to perform properly the duties of the position applied for."
- A qualified veteran cannot be removed from public employment except for incompetence or misconduct. The veteran is entitled to a hearing prior to removal and the public employer has the burden of proving incompetence or misconduct.

WHICH EMPLOYERS ARE COVERED BY THIS LAW?

- State and local government

WHICH VETERANS ARE COVERED BY THIS LAW?

Most, but not all, veterans are entitled to a preference. Veterans must be citizens of the United States and fall into one or more specific categories of service, including:

- Service in the armed forces of the United States during certain specific conflicts described in Iowa Code, Section 35.1, including: Korea, Vietnam, Lebanon, Grenada, Panama, the Persian Gulf, etc.
- Certain reserve veterans from the Korean War.
- Current or former reserve members with at least 20 years of service.
- Current National Guard members with at least 20 years of service.
- Any veteran who served on active federal service, other than training, and who was honorably discharged.

WHAT ARE THE REMEDIES FOR VIOLATIONS OF THIS LAW?

A qualified veteran who is not given a preference can request a court order requiring the public employer to hire him/her. Chapter 35C does not specify other remedies, but presumably an improperly discharged veteran could request reinstatement and/or back pay as a remedy.

HOW IS THE LAW ENFORCED?

The law is enforced by private legal action. A veteran who is denied a preference or who has had his/her salary reduced may choose between two kinds of legal actions or submit the dispute to arbitration. The procedure for challenging an improper termination is not specified in the law.