



EMPLOYMENT LAW BASICS  
FOR  
MAINE SUMMER CAMPS

# A SAMPLE OF THE LAWS THAT APPLY TO EMPLOYMENT

- Title VII – The Civil Rights Act of 1964
- Americans With Disabilities Act (ADA)
- Fair Labor Standards Act (FLSA)
- Family Medical Leave Act (FMLA)
- Age Discrimination In Employment (ADEA)
- Equal Pay Act
- Uniformed Services Employment and Reemployment Rights (USERRA)
- The Employee Retirement Income Security Act (ERISA)
- Occupational Health and Safety Act (OSHA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Maine Human Rights Act (MHRA)

# SPEED-DATING EMPLOYMENT LAW

- Hiring and Firing Practices
- Employment Discrimination
- Drafting Employment Policies
- Wage and Hour Compliance

# HIRING AND FIRING: JOB DESCRIPTIONS



- Identify the camp's needs as employer
- Make sure your job posting does not contain discriminatory language (directly/indirectly)
  - Avoid certain “trigger” phrases: “young, energetic” or “0-1 years of experience” or “a few good men” or “cleaning lady” or “Christian landscaper”
- Clearly and accurately define the essential requirements and functions of the position
  - Could have legal significance later when an employee makes a claim for unlawful discrimination
  - So keep copy of the job description even after hired in the employee's permanent employment file

# HIRING AND FIRING: JOB DESCRIPTION CHECKLIST

- Job title
- FLSA status – exempt vs. non-exempt
- Supervisory relationship
- Location and travel requirements
- Purpose/Objective of job
- Essential functions of the job
- Physical demands
- Skills
- Experience
- Special working conditions

# HIRING AND FIRING: INTERVIEWS

- What camps can and can't ask:
  - Age

<b>YES</b> 	 <b>NO</b>
<ul style="list-style-type: none"><li>• Confirmation that over the age of 18</li><li>• Dates of education and employment can be asked if used for verification of information given</li></ul>	<ul style="list-style-type: none"><li>• “How old are?”</li><li>• “Date of birth?”</li><li>• “Ages of your children?”</li><li>• Questions that tend to identify applicants over the age of 40</li><li>• Questions asked for purpose of determining age (like year graduated high school)</li></ul>



# HIRING AND FIRING: INTERVIEWS

## – Citizenship/Birthplace/Language

<b>YES</b> 	 <b>NO</b>
<ul style="list-style-type: none"><li>• “Are you authorized to work in the United States?”</li><li>• “In what other cities, states, and countries have you lived?”</li><li>• Inquiries into languages applicant reads, speaks or writes. If required for the job, applicant can be asked if they speak and/or write English</li></ul>	<ul style="list-style-type: none"><li>• “Are you a U.S. citizen? When did you acquire citizenship? Are your family citizens?”</li><li>• Birthplace of applicant or applicant’s family is improper if designed to determine applicant’s national origin</li><li>• “What is your native tongue?” Inquiries into how applicant learned to read, write, speak a foreign tongue</li></ul>

# HIRING AND FIRING: INTERVIEWS

## – Parenthood/Child Care/Marital Status

<b>YES</b> 	 <b>NO</b>
<ul style="list-style-type: none"><li>• [No okay parenthood questions]</li><li>• “Is there any reason why you cannot work nights or weekends? Overtime if needed?” [If required for job]</li><li>• “Do you have a close relative who works at camp? If so, please identify them and their position at camp and your relationship to them.”</li></ul>	<ul style="list-style-type: none"><li>• “Are you pregnant? Plan to have children?”</li><li>• “Who cares for your kids? What are their ages?”</li><li>• “Are you married? Do you prefer Miss or Mrs. or Ms.? Are you single? Divorced?”</li></ul>



# HIRING AND FIRING: INTERVIEWS

## – Religion/Disability/Physical Condition

<b>YES</b> 	 <b>NO</b>
<ul style="list-style-type: none"><li>• “Is there any reason why you cannot work overtime or weekends?”</li><li>• “Do you have a close relative who works at camp? If so, please identify them and their position at camp and your relationship to them.”</li><li>• ADA allows inquiry into ability to perform job-related functions. Can ask applicants to describe/demonstrate how they can perform job duties</li></ul>	<ul style="list-style-type: none"><li>• “Does your religion prevent you from working weekends?” What religious holidays do you observe?” Inquiries into religious affiliations.</li><li>• “Do you have a disability? Are you handicapped? Do you think a handicapped person could do this job?”</li><li>• No pre-employment medical examinations (except certain conditional post-job offer medical history)</li></ul>

# HIRING AND FIRING: TERMINATION

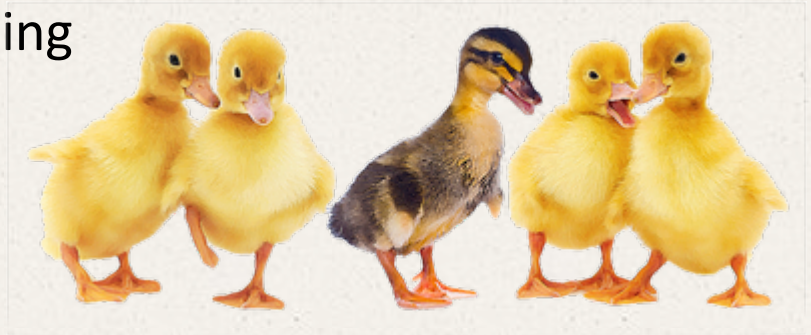
- Maine is an “at-will” state – you don’t need to tell your employees that their employment is on an at-will basis
- In most instances, camps are dealing with at-will employees (unless your employees are covered by a collective bargaining agreement or other contract that limits termination)
- Even if you tell a counselor they’re hired “for the summer” which suggests some guarantee of job security, that promise can be canceled out if you clearly state, in writing, as a disclaimer that employees are hired on an at-will basis
  - Usually done in an employee handbook

# HIRING AND FIRING: TERMINATION

- Under Maine law, an at-will employee may be terminated for any reason not specifically prohibited by law.
- What is specifically prohibited by law?
  - Discrimination
  - Retaliation for filing a claim or asserting rights
  - Refusal to do an illegal act
- Depending on the circumstances, you may want to consider a separation agreement

# HIRING AND FIRING: PRE-TERMINATION

- Even though you have the right under Maine law to terminate an employee at any time without warning/intermediate measures, you may want to employ escalating disciplinary steps:
  - Verbal and/or written counseling
  - Performance plan
  - Suspension
  - Termination
- Document everything!
  - Have employee sign disciplinary documents and keep in employee's personnel file
- Under Maine law, upon written request, employer must provide written reasons for employee's termination



# EMPLOYMENT DISCRIMINATION

- Discrimination in the workplace occurs when an employee is treated differently than other employees
- Both state and federal antidiscrimination laws protect workers who have traditionally been excluded from employment opportunities
  - Title VII of the Civil Rights Act, the ADA, the ADEA, and the Maine Human Rights Act
- Three types of prohibited conduct under these laws:
  - Overt Discrimination / Disparate Impact
  - Harassment
    - Including sexual harassment
  - Retaliation

# EMPLOYMENT DISCRIMINATION

- Generally unlawful to refuse to hire, to fire, or to treat differently in compensation or work conditions based upon a protected classification:
  - Race, color, national origin, gender, sexual orientation, disability, age, religion, etc.
- Are permitted to engage in some different treatment but must have:
  - The “bona fide occupational qualification” defense
  - Must show the protected-status employee you’re discriminating against would be unable to perform the normal duties of the job

# EMPLOYMENT DISCRIMINATION: HOSTILE WORK ENVIRONMENT

- Unwelcome, unwanted, or offensive conduct based on or because of an employee's protected class
  - Race, color, national origin, sex, sexual orientation, disability, age, religion
- Looks to the general atmosphere of the workplace, such as verbal and/or physical conduct that “unreasonably interferes with an individual's work or performance” or creates an “intimidating, hostile, or offensive working environment.”

# EMPLOYMENT DISCRIMINATION: HOSTILE WORK ENVIRONMENT

- See our earlier webinar on sexual harassment
- Remember – not restricted to just sexual harassment or gender-based harassment
  - Possible to have a hostile work environment based upon race, age, disability, religion, etc.
  - E.g., employee repeatedly subjected to derogatory comments or stereotypes related to their race or religion; employee tries to get coworker to quit by spreading untrue malicious gossip about the coworker because of their sexual orientation



# EMPLOYMENT DISCRIMINATION: CAMP'S RESPONSIBILITIES

- Defining respectful and appropriate behavior should begin long before an incident of discrimination or harassment occurs
  - Set a behavior standard that everyone knows about, agrees with, and commits to follow - this makes it easier for coworkers to recognize inappropriate behavior and speak up
  - Make sure your supervisors are setting a good example of that behavior
- Camp also needs to make clear to its employees that they should feel safe reporting incidents of discrimination or harassment
  - There are many reasons an employee might not want to report an incident involving a coworker or supervisor

# EMPLOYMENT DISCRIMINATION: CAMP'S RESPONSIBILITIES

- Camp should define for employees the process it will follow for reported discrimination claims
- Have a clear mechanism for reporting
  - Including the ability to report to another member of management should the supervisor be the accused
  - A complaint may be made verbally or in writing
- Take immediate steps to stop inappropriate behavior or conduct as it occurs or is reported
- Investigate as promptly and confidentially as possible
- Guard against retaliation
- Make sure supervisors are properly trained to handle these reports of discrimination and harassment and know what to do

# EMPLOYMENT DISCRIMINATION: CAMP'S RESPONSIBILITIES

- Remember – all employees are entitled to work in a workplace free from harassment and discrimination
  - Not just from coworkers but from anyone who comes into camp – delivery or service persons, parents, other visitors, even campers
- It's camp's responsibility to make it safe
- Camp be liable for:
  - Discrimination or harassment experienced by its employees on the job
  - Failure of camp's supervisors to fulfill their obligations to prevent, report and investigate reported incidents
  - Retaliation against an employee for reporting

# DISCRIMINATION UNDER THE ADA: CAMP'S RESPONSIBILITIES

- Discrimination based on an individual's disability is prohibited
  - Applies to both employees and campers (and also visitors to camp)
- The ADA requires both employers and entities that provide services to provide “reasonable accommodations” to covered individuals to allow them to fully participate
- A reasonable accommodation is one that does not fundamentally alter the nature of the program or services provided by the camp or which does not otherwise cause an undue burden on the program
  - What constitutes an “undue burden” depends on a number of factors
  - ADA requires that camps engage in a individualized interactive dialogue with the individual/parents to determine whether the individual's needs may be accommodated

# EMPLOYMENT POLICIES

- Employee manual or staff handbook, whatever you call it, you should have certain policies in place
- And you should keep it updated – not something that you can just draft once and then not look at again
- Reviewing and updating is important
  - ACA accreditation standard: Hiring Policies
  - “Does the camp have written hiring policies that:
    - Identify appropriate application and screening processes for each job category?
    - Have been reviewed by legal counsel or a human resources professional within the last three (3) years?”
- Annual handbook check-up is a good idea – your workplace circumstances change and the employment laws change

# EMPLOYMENT POLICIES

- Consider goals of the handbook
  - Communicate your camp's unique goals and values
  - Inform new hires and current employees of key expectations and benefits
  - Provide guidance for supervisors who have to implement the policies
  - Ensure compliance with all applicable employment laws

# EMPLOYMENT POLICIES

- With those goals in mind, you may want your handbook to:
  - Include an introductory section that describes your camp, its history, its people, its values
  - Be written in clear, easy-to-understand language; your primary audience is your employees
  - Have a few disclaimers:
    - That all employees are considered at will and no provision in the handbook modifies that
    - That any provision in the handbook can be amended, modified, or terminated at any time

# EMPLOYMENT POLICIES

- Handbooks will cover a lot of ground and vary from camp to camp but generally include:
  - Opening Fundamental Policies
  - General Policies and Procedures
  - Employee Benefits
  - Leave Policies
  - Disciplinary Policies
  - Separation Policies
  - Camper/Parent Relations
  - Accommodations
- Given the different employee relationships at camp, you may want job-specific policies too



# EMPLOYMENT POLICIES

- Important topics that may need revisiting
  - Drug and alcohol policy
  - Anti-harassment/discrimination policy
    - All forms, not just sexual harassment
    - Outline the steps employee should take to report misconduct
  - Retaliation – make sure policy expressly says that retaliation at your camp is prohibited
  - Social media – guidelines and expectations for use of social media when content may impact the camp
    - Strike a balance – want to make clear that none of the requirements of your social media policy are intended to infringe on employees' rights under labor laws

# WAGE AND HOUR COMPLIANCE: RELEVANT LAWS

- Federal Fair Labor Standards Act
- Maine Fair Labor Standards Act
- These laws govern:
  - Minimum wage
  - Overtime pay
  - Certain recordkeeping
  - Youth employment standards



# WAGE AND HOUR COMPLIANCE: MINIMUM WAGE

- Starting January 1, 2020, have to pay employees at least \$12 per hour in Maine
- There ARE exceptions that apply to camps, but you still have to comply with minimum wage requirements for all non-exempt staff (office, kitchen, maintenance, etc.)
- Other forms of compensation may be included in minimum wage calculation
  - Commissions, certain bonuses, tips
  - Reasonable cost of room, board, and other facilities provided by employer for employee's benefit – a.k.a. the "3(m) credit"

# WAGE AND HOUR COMPLIANCE: OVERTIME

- Unless exempt, employees must receive overtime pay for all hours worked over 40 in a work week at a rate not less than time and one-half (1½) their regular rates of pay
- Measured by workweek – 7 consecutive 24-hour days
- Calculated by dividing total earnings (including cost of room and board if applicable) in workweek by total number of hours worked in workweek
  - Total Compensation ÷ Total Hours Worked = Regular Rate
  - Regular Rate x .5 = Additional Overtime to be paid on top of the regular wage for each hour worked after 40 hours
- Applies whether hourly worker or non-exempt salaried

# WAGE AND HOUR COMPLIANCE: RECORDKEEPING

- Employers must:
  - Keep complete and accurate payroll records
    - Employee name, address, etc.
    - Hours worked each day and total hours worked each week
    - Pay rate and basis on which employee's wages are paid (e.g., "\$12 per hour" or "\$440 a week")
    - Overtime earnings for week
    - Additions to/deductions from wages
  - Keep payroll records for three years; have to be able to make available for inspection to DOL if requested
  - Display poster outlining FLSA provisions
    - Available at <https://www.maine.gov/labor/posters/index.html>
- If have exempt employees – which camps will – that should be denoted in the records too



# Minimum Wage

Labor Laws of the State of Maine provide protection for people who work in Maine. The Maine Department of Labor administers the laws, which all employers must follow. Department representatives inspect workplaces to ensure compliance. Citations and penalties may be issued to employers who do not comply.



Maine Law (Title 26 M.R.S.A. § 42-B) requires every employer to place this poster in the workplace where workers can easily see it.

This poster is available online at no charge and may be copied: <https://www.maine.gov/labor/posters/>

## Minimum Wage is \$12.00 per hour effective January 1, 2020

**Minimum Wage**  
Under Maine labor laws, any business operating in the state with one employee is automatically covered by state law. This includes all public and private employers regardless of profit or size. Effective January 1, 2020, the minimum wage in Maine is \$12 per hour.

**Municipal Minimum Wage Ordinances**  
Employers with employees who work in Bangor and/or Portland or any other municipality that passes a local minimum wage ordinance, may be subject to additional regulations and should check with municipal officials.

**Service Employee**  
A service employee is someone who regularly receives more than \$30 a month in tips. As of January 1, 2020, employers must pay a direct wage of at least \$6 per hour to service employees. If the employee's direct wage combined with earned tips do not average, on a weekly basis, the state required minimum wage, the employer must pay the difference.

**Overtime**  
Unless specifically exempted, employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. Employers have the right to allow or deny overtime, but if overtime is worked, it must be paid in accordance with state requirements. Compensatory or "comp" time cannot be used by private-sector employers although private-sector employers can allow employees to flex their time within the workweek (but not the pay period if the pay period is longer than a seven day cycle in the workweek).

### For more information, contact:

Maine Department of Labor  
Bureau of Labor Standards  
45 State House Station  
Augusta, Maine 04333-0045  
Telephone: 207-623-7900  
TTY users call Maine Relay 711  
Web site: [www.maine.gov/labor/bls](http://www.maine.gov/labor/bls)  
Email: [bls.mdol@maine.gov](mailto:bls.mdol@maine.gov)

**Exemptions from Overtime**  
Maine statutes incorporate by reference the salary requirements under the Fair Labor Standards Act (FLSA). The new minimum salary requirement will be \$692.31 per week as of January 1, 2020. Salary is only one factor in determining whether a worker is exempt from overtime under federal or state law. The duties of each worker must be considered as part of this analysis. Failure to adhere to both requirements—meeting the duties test and the weekly salary threshold—will result in violations of both federal or state law or of one jurisdiction or the other depending on the discrepancies in the laws.

**Statements to Employees**  
Every employer shall give to each employee with the payment of wages a statement clearly showing the date of the pay period, hours worked, total earnings and itemized deductions.

**Recordkeeping**  
Employers shall keep, for three years, accurate records of hours worked and wages paid to all employees.

The Department of Labor enforces state wage and hour laws. Employers with questions about the law may call 207-623-7900 or may visit the department's webpage.

**Minimum Wage Guidance**  
[www.maine.gov/labor/labor\\_laws/minimum\\_wage\\_fa.html](http://www.maine.gov/labor/labor_laws/minimum_wage_fa.html)  
[legislature.maine.gov/statutes/26/title26sec664.html](http://legislature.maine.gov/statutes/26/title26sec664.html)

**Overtime Guidance**  
[www.maine.gov/labor/labor\\_laws/overtime.html](http://www.maine.gov/labor/labor_laws/overtime.html)  
[legislature.maine.gov/statutes/26/title26sec664.html](http://legislature.maine.gov/statutes/26/title26sec664.html)

\*Note: Maine employers may also be covered under the federal Fair Labor Standards Act. For more information, contact the U.S. Department of Labor Wage and Hour Office at 603-666-7716.

The Maine Department of Labor provides equal opportunity to employment and programs. Auxiliary aids and services are available to people with disabilities upon request. EPL 11/19

# EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

## FEDERAL MINIMUM WAGE

# \$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

### OVERTIME PAY

At least 1 1/2 times the regular rate of pay for all hours worked over 40 in a workweek.

### CHILD LABOR

An employee must be at least 18 years old to work in most non-farm jobs and at least 16 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youth 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

### TIP CREDIT

Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employer's tip 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.

### NURSING MOTHERS

The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth; each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

### ENFORCEMENT

The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Heightened civil money penalties may also be assessed for violations of the FLSA's child labor provisions, the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

### EXEMPTION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Some state laws provide greater employee protections; employers must comply with both.
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- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.
- 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.

WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-6243  
TTY: 1-877-880-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



80000 581010

# WAGE AND HOUR COMPLIANCE: EXEMPTIONS

- Camp Counselors!
  - If you're a licensed camp, then your employees who are counselors, junior counselors, or counselors-in-training" are exempt from the minimum wage and overtime rate laws
  - Only applies to counselors
- Other camp staff not exempt so need to pay minimum wage and overtime to:
  - Kitchen
  - Maintenance/grounds
  - Office
- Unless they otherwise qualify as an exempt employee...

# WAGE AND HOUR COMPLIANCE: EXEMPTIONS

- Certain other employees may be exempt from overtime requirements
- To be exempt, an employee must
  - 1) be paid the minimum salary set by federal and state law and
  - 2) have primary job duties in an executive, administrative or professional capacity
- Executive, professional, administrative
  - Camp director, nurse, office manager
  - Depends on their primary duty





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