U.S. Legal issues in Worker T&D

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Introduction

In these lecture notes, I reference laws at the federal level of government in the USA, because State- and/or local-level laws are beyond the scope of this course. It is your responsibility to become knowledgeable about any laws in your local area.

I start with a brief description of U.S. federal laws. Then, I highlight some of the main legal issues in the context of worker T&D.

Understanding U.S. Federal Laws

Below is a brief description of U.S. federal laws to give you a minimally sufficient foundation for understanding the remainder of these lecture notes.

There are many entities that establish the federal laws in the USA, and each of those entities creates a different type of federal law. In general, the different types of federal laws in the USA have this structure of decreasing authority:

- U.S. Constitution;
  - federal **statutes** & international treaties/agreements;
    - federal **regulations** & **executive orders**;
      - other less-powerful sources that are beyond the scope of this lecture.

Importantly, the U.S. federal judicial system (e.g., Supreme Court) can nullify any of the above, except the Constitution.

Here are some definitions in the context of the U.S. federal government:

- A federal **statute** is a written law adopted by the U.S. Congress.
  - The **U.S.C.** (**United States Code**, or **USC**) is the official set of all permanent U.S. federal statutes currently in force. The USC

does NOT include federal regulations, nor case law, nor temporary provisions. You can read the entire USC at: https://uscode.house.gov

- A federal **regulation** is a written law adopted by a federal executive department or agency, because those specified departments/agencies are granted authority by specified statutes to make such regulations within the scope of those statutes. Regulations add detail and clarity that help make statutes enforceable.
  - **C.F.R.** (**Code of Federal Regulations**, or **CFR**) is the the official set of all the permanent U.S. federal regulations currently in force. It does NOT include federal statutes, nor case law, nor temporary provisions. You can read the entire CFR at: https://www.ecfr.gov.
- An **executive order** (**EO**) is a written directive from the U.S. President, that instructs officers and agencies of the executive branch on how to carry out their legally delegated duties.

Here is an illustrative example to tie some of the above definitions together:

The *Age Discrimination in Employment Act* (ADEA) is a federal statute that was passed by the U.S. Congress, therefore it is codified in the USC (specifically, in sections 621–634 in Title 29 of the USC, typically written as: 29 USC §§ 621–634). However, the EEOC (*Equal Employment Opportunity Commission*) is the federal executive agency that is granted authority (by several USC statutes) to create federal regulations related to its corresponding statutes, including the ADEA. Therefore, the CFR contains specific regulations that add further details to make the ADEA clearly enforceable (e.g., 29 CFR pts. 1625–1627). Therefore, ADEA-related federal statutes are in 29 USC §§ 621–634, whereas ADEA-related federal regulations are in 29 CFR Parts 1625–1627.

Being able to say aloud (or in your head) a U.S.C or CFR citation can give you a lot of confidence (or make you look confident!). To do that, it helps to know the structure of the USC and CFR

The USC has this structure:

- Titles (**required**) (Subtitles are optional)
  - chapters (optional) (subchapters are optional)
    - parts (optional) (subparts are optional)
      - sections (**required**): §. Paragraphs, subparagraphs, clauses, and sub-clauses are all optional inside a section.

The CFR has this structure:

- Titles (**required**) (Subtitles are optional)
  - chapters (**required**) (subchapters are optional)
    - parts (**required**) (subparts are optional)
      - sections (**required**): §. Paragraphs, subparagraphs, clauses, and sub-clauses are all optional inside a section.

Here's how read aloud USC and CFR citations:

- **29 USC § 621**: "*Title 29 of the United States Code, section six hundred twenty-one*"
  - Or, less formally: "*Twenty-nine U S C, section six twenty-one*"
- **29 USC § 621 et seq.**: "*Title 29 of the United States Code, section six hundred twenty-one et seq.*"
  - ***et seq.*** is an abbreviation for the Latin expressions *et sequentes* or *et sequentia*, which mean *and the following*; it is pronounced like "et sek".
  - Or, less formally: "*Twenty-nine U S C, section six twenty-one et seq.*"
- **29 USC §§ 621–634**: "*Title 29 of the United States Code, sections six hundred twenty-one through six hundred thirty-four*"
- **29 CFR pt. 1625**: "*Title 29 of the Code of Federal Regulations, part one six two five*"
  - Or, less formally: "*29 CFR, Part one six two five*"
- **29 CFR § 1625.1**: "*Title 29 of the Code of Federal Regulations, section one six two five point one*"
  - Or, less formally: "*29 CFR, section one six two five point one*"

Paying the workers for training

The **Fair Labor Standards Act** (**FLSA**) authorizes the ***Wage and Hour Division*** of the U.S. Department of Labor (DOL) as one of the primary agencies to adopt and enforce regulations related to the FLSA. Those regulations are codified in 29 CFR Part 785 (2024).

As a result, 29 CFR §§ 785.27–785.32 (2025) specifies criteria with which to determine whether *non-exempt*[1] employees must be compensated for participating in a training program or similar activities.

Keep in mind, the FLSA and the CFR specify that any U.S. State and/or local government is legally allowed to adopt State- and/or local-level laws that provide *greater* protections/benefits to workers beyond the federal minimums (e.g., a State may require that *all* trainings be compensated). Thus, you must know your local laws.

For illustrative purposes, below I've provided the federal criteria for determining whether *non-exempt* employees must be compensated for participating in training, which are summarized in 29 CFR § 785.27:

> Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

[1] In general, most of the rules in the FLSA apply to *non-exempt employees*. You likely have an intuitive sense of what an *employee* is, and the types of workers who *aren't* employees: independent contractors, unpaid interns, and company owners or shareholders. The FLSA and related C.F.R regulations define various types of employees who are *exempt* from some of the protections in the FLSA (i.e., **exempt employees**). Perhaps the most common type of exempt employee you will encounter are white-collar salaried employees whose annual salary is greater than approximately $40K.

(a) Attendance is outside of the employee's regular working hours;

(b) Attendance is in fact voluntary;

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during such attendance.

Paid vs. Unpaid Internships

Below I've provided an excerpt from the DOL's ***Wage and Hour Division*** website about how to figure out whether an *unpaid* internship is legal (**bold** emphases added).

However, keep in mind that any U.S. State and/or local government is legally allowed to adopt State- and/or local-level laws that provide *greater* protections/benefits to workers beyond the federal minimums (e.g., a State may require that *all* internships be paid). Thus, you must know your local laws.

> The FLSA requires "for-profit" employers to pay employees for their work. Interns and students, however, may not be "employees" under the FLSA—in which case the FLSA does not require compensation for their work.
>
> Courts have used the "**primary beneficiary test**" to determine whether an intern or student is, in fact, an employee under the FLSA. In short, this test allows courts to examine the "economic reality" of the intern-employer relationship to determine which party is the "primary beneficiary" of the relationship. Courts have identified the following seven factors as part of the test:
>
> 1. The extent to which the intern and the employer clearly understand that **there is no expectation of compensation**. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
> 2. The extent to which the internship **provides training** that would be **similar** to that which would be given in an **educational environment**, including the clinical and other hands-on training provided by educational institutions.
> 3. The extent to which the internship is **tied to the intern's formal education program** by integrated coursework or the receipt of academic credit.
> 4. The extent to which the internship accommodates the intern's academic commitments by **corresponding to the academic calendar**.
> 5. The extent to which the internship's duration is **limited to the period** in which the internship provides the intern with

beneficial learning.

6. The extent to which the **intern's work complements, rather than displaces, the work of paid employees** while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted **without entitlement to a paid job at the conclusion** of the internship.

Courts have described the "primary beneficiary test" as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Accomodations in training programs

Perhaps when most people think of *accommodations* in a work-context, they think of persons with permanent disabilities. However, U.S. federal laws also require accommodations for:

- limited abilities due to **pregnancy** (42 USC § 2000gg et seq. (2025); 29 CFR pt. 1636 (2024));
- **breastfeeding** (29 U.S.C. § 218d (2025));
- **religious practices** (42 USC § 2000e et seq. (2025); 29 CFR pt. 1605 (2024));
- **re-employing uniformed-service members returning from duty** (38 USC 4311 et seq. (2025); 20 CFR pt. 1002 (2024)).

Because it is popularly cited, it is worth describing here the **Americans with Disabilities Act** (**ADA**; 42 USC § 12101 et seq. (2025);), which is a U.S. federal statute that protects many rights of persons with disabilities, including work-related rights (42 USC § 12111 et seq. (2025); 29 CFR Part 1600 et seq. (2024)). The ADA requires that any private employer that has **15 or more employees** must provide **reasonable accommodations** for persons with disabilities in the work-context, **including in-person and online training activities**. The **EEOC** (**Equal Employment Opportunity Comission**) is the federal agency authorized to adopt and enforce federal regulations related to the employment-related provisions of the ADA.

However, keep in mind any U.S. State and/or local government is legally allowed to adopt State- and/or local-level laws that provide *greater* protections/benefits to workers beyond the federal minimums. Thus, you must know your local laws.

Below is a brief list of common types of reasonable accommodations.

Accessibility in general:

- Extra breaks (e.g., for medication, or breastfeeding);
- Audio or digital text materials;
- Allowing food and beverages (e.g., diabetes);
- Extended time for assessments;
- Modified schedules or additional breaks for medications;
- CART (Communication Access Realtime Translation) captioning;
- Large-print materials;
- Sign-language interpreter;
- Providing a distraction-free environment for assessments.

In-person Accessibility: In addition to the general accessibility features noted above, examples of reasonable accommodations for *in-person* training activities include:

- Accessible venue (e.g., ramps, elevators, seating adjustments, accessible restroom on same floor, adjustable-height desks).
- Braille materials.
- Assistive listening devices.

Electronic and/or Online Accessibility: In addition to the general accessibility features noted above, examples of reasonable accommodations for *electronic and/or online* training activities include:

- Designs that meet commonly accepted standards of accessibility, such as the WCAG (Web Content Accessibility Guidelines) version 2.2.
  - Example features include: keyboard-enabled navigation, alt-text captioned video, adjustable font/contrast.
- Alternative keyboards, pointing devices, and other input devices.

Providing inadequate training

There are too many federal laws to list here that focus on requirements that employers must follow, including requirements for maintaining a safe work-context. Many of those laws are written specifically for a specified industry (e.g., aviation, mining, cybersecurity). It is your responsibility to be knowledgeable about the laws related to your specific industry.

However, it is generally worth knowing about the **Occupational Safety and Health** (**OSH**) Act (originally signed into law in 1970). It established standards for safety and health in work-contexts, and it requires every employer to furnish a work environment without recognized hazards. OSH-related laws may also apply if an employee is harmed or injured during training.

The **Occupational Safety and Health Administration** (**OSHA**; part of the U.S. DOL) is the federal agency authorized to adopt and enforce regulations related to the OSH Act.

The laws produced from the OSH Act are in 29 USC § 651 et seq. (2025) and in 29 CFR Part 1900 et seq. (2024).

Keep in mind any U.S. State and/or local government is legally allowed to adopt State- and/or local-level laws that provide *greater* protections/benefits to workers beyond the federal minimums. Thus, you must know your local laws.

Violating any Copyright and/or Intellectual-Property Laws

U.S. federal laws give special permission to public schools and public universities to use copyrighted materials in a classroom context. However, private-sector entities aren't eligible for those same permissions. In general, any private-sector entity wishing to use copyrighted materials in a T&D system must either obtain an appropriate license or permission to use such materials, or they must be able to prove their use of such materials is protected within **fair-use** laws. Roughly speaking, fair-use analyses consider multiple aspects of the situation, including the purpose of the use, the amount of the copyrighted material that was used, and the market effect produced by the use (e.g., removing an opportunity for the copyrighted material to be sold to the users).

These days, there are countless materials (e.g., books, websites, visuals) that are licensed for use without any purchase (e.g., via a Creative Commons license).

Illegal discrimination in the context of training

Recall that *discrimination* is not necessarily immoral nor illegal. In the broadest sense, to *discriminate* means to *recognize a distinction* (e.g., recognizing ethical employees versus unethical employees). Typically, in legal contexts, *discrimination* is specifically the process of making "an unjust or prejudicial distinction in the treatment of different categories of people" (Oxford Dictionary of English, 2025), and *illegal discrimination* is performed against legally protected categories of persons, also known as *classes of persons* (i.e., a *protected class*).

It is a complicated endeavor to try to list every type of person that is granted special protections in U.S. federal laws (especially because some protections only apply in specified contexts). However, this is a generally comprehensive list of federally protected classes that would be good for a scientist–practitioner of work-psychology to be aware of:

- Race
- Color
- Religion (belief, observance, practice; including atheism)
- Sex (biological sex; pregnancy/childbirth & related medical conditions; breastfeeding; sexual orientation; gender identity)
- National origin
- Age (40+)
- Disability (physical or mental impairment)
- Genetic information (including family medical history)

- Citizenship or immigration status
- Uniformed-service membership or obligation to serve
- Disabled & other protected veterans
- Bankruptcy or debtor status (government employers and limited private-sector coverage)

Because it is popularly cited, it is worth describing here the **Civil Rights Act** (**CRA**), which produced a collection U.S. federal statutes (first signed into law in 1964) that prohibit discrimination on the basis of any legally protected characteristic, including race, color, religion, sex, and national origin. In the original 1964 written legislative act, there was a section titled *Title VII: Equal Employment Opportunity*, and it that is why today people often refer to the work-related statutes of the CRA as its *Title VII* statutes (even though structural labels such as titles and chapters are changed when a legislative act becomes codified into the U.S.C.).

Those anti-discrimination work-related laws are found in 42 USC § 2000e et seq. (2025) and 29 CFR Part 1600 et seq. (2024), and they apply to:

- Any employing entity having **15 or more employees** for at least **twenty weeks** in the current or preceding year.
- State and/or local governments and their agencies.
- Federal departments & agencies.
- Employment agencies and labor organizations.
- Joint employers and/or agents (e.g., managers, trainers, staff) of any above-listed entity.

Keep in mind any U.S. State and/or local government is legally allowed to adopt State- and/or local-level laws that provide *greater* protections/benefits to workers beyond the federal minimums. Thus, you must know your local laws.

The **EEOC** (**Equal Employment Opportunity Comission**) is the primary federal agency authorized to adopt and enforce federal regulations related to the employment-related provisions of the CRA for workers who aren't federal employees (the *Office of Personnel Management* does the same for federal employees).

Illegal discrimination in the context of worker training can occur in any phase of the training context, including:

- Eligibility for and/or access to training.
- The training content or materials.
  - Training content/material must not create nor reinforce prejudices nor stereotypes against protected classes (e.g., sexist jokes in role-plays; stereotypes about minority ethnic groups).
- Behaviors toward participants during training.

Suggested Readings

These items are available in our Zotero Group Library.

- Murphy, K. R. (2018). The Legal Context of the Management of Human Resources. *Annual Review of Organizational Psychology and Organizational Behavior*, *5*(1), 157–182. https://doi.org/10.1146/annurev-orgpsych-032117-104435
  - Kevin Murphy has written on a wide range of topics related to the science and praxis of work-psychology. This article is a good read.
- The Legal Context For Personnel Decisions. (2011). In R. M. Guion, *Assessment, Measurement, and Prediction for Personnel Decisions* (2nd ed, pp. 121–153). Routledge. https://doi.org/10.4324/9780203836767
  - Robert "Bob" Guion was a seminal figure in the early days when I–O Psycholgogy was becoming an established field of science and praxis. Fun fact: a friend and mentor of mine, Steve Jex, got to know Bob because they both worked at Bowling Green State University. Steve told me he would see Bob at church and the gym, and that Bob was apparently very vigorous in doing his physical exercises.
  - This chapter comes from a popular textbook he wrote, which has been (and continues to be) assigned to grad students in work-psychology for many decades throughout the world (including me when I was in grad school!).