TO: Indiana Public Libraries

FROM: Indiana State Library

RE: **General Legal Update**

DATE: 5/20/24

It’s been a very busy year so far for legal matters! Below, I have outlined some newer legal developments and where to go for more information. Please note the 2024 Legislative Update will be sent separately so this memo will not cover matters related to Indiana’s 2024 legislative session. We may do a webinar or webinars on some of these topics in the upcoming months.

**LGBTQ Rights in the Workplace**

The Equal Employment Opportunity Commission (EEOC) is responsible for the administration and enforcement of Title VII of the Civil Rights Act and other federal anti-discrimination laws that affect the workplace. The EEOC recently promulgated [updated guidance](https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace) on harassment and discrimination in the workplace. The updated guidance includes information related to LGBTQ+ rights in the workplace. As a result of court decisions, the EEOC has announced that federal anti-discrimination and anti-harassment laws include gender identity and sexual orientation. Issues related to gender identity and sexual orientation can occur in the employment context in many ways. For example, the EEOC states that the following would be considered discrimination under Title VII:

* epithets related to sexual orientation or gender identity;
* physical assault due to sexual orientation or gender identity;
* “outing” (disclosure of an individual’s sexual orientation or gender identity without permission);
* harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person’s sex;
* repeated and intentional use of a name or pronoun inconsistent with the individual’s known gender identity (misgendering); or
* the denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity.

Indiana Attorney General, Todd Rokita, recently refuted the guidance saying there is no law that requires employers to use preferred pronouns. However, Rokita did agree in his recent [memo](https://content.govdelivery.com/attachments/INAG/2024/05/01/file_attachments/2865008/FINAL-Official-Opinion-2024-3.pdf), that repeated, continuous, intentional misuse of pronouns could create a hostile work environment under the right circumstances. It is important to note that neither the EEOC guidance nor Rokita’s memo carry the force of law so libraries should work with their attorneys if an issue related to LGBTQ+ rights or alleged discrimination of any kind occurs. You can contact the local EEOC office for guidance at (317) 226-7212.

**Fair Labor Standards Act New Overtime Provision**

The compensation threshold for overtime pay eligibility under the Fair Labor Standards Act (the Act) is increasing. Effective July 1, 2024, the salary threshold will increase to $43,888 and effective January 1, 2025, the salary threshold will increase to $58,656. The salary threshold will be adjusted for highly compensated employees as well. Beginning July 1, 2027, the salary thresholds will update every three years, “by applying up-to-date wage data to determine new salary levels.” These changes could make more of your employees eligible for overtime pay under the Act. Currently, individuals are eligible for overtime pay under the Act if they are not exempt under the Act and work more than 40 hours in any given work week. The Act provides an exemption from both the minimum wage and the overtime pay provisions for employees employed as “bona fide executive, administrative, professional and outside sales employees” as well as certain computer employees. The Department of Labor has established [tests](dol.gov/agencies/whd/fact-sheets/17a-overtime#footnoteOvertime) to assist employers in determining if certain employees are exempt under the Act. Employers need to determine which of their employees are exempt under the Act and therefore not eligible for overtime pay under the raised salary thresholds. If you need assistance determining which of your employees this could impact, please contact the U.S. Department of Labor at (317) 226-5860 or 1-866-487-9243.

**Pregnant Workers Fairness Act**

The [Pregnant Workers Fairness Act](https://www.eeoc.gov/statutes/pregnant-workers-fairness-act) (PWFA) went into effect June 27, 2023. On April 15th, 2024, the EEOC issued its final [regulations](https://www.federalregister.gov/documents/2024/04/19/2024-07527/implementation-of-the-pregnant-workers-fairness-act) and those regulations go into effect June 18th, 2024. The PWFA requires covered employers to provide reasonable accommodations, when needed, to qualified employees affected by pregnancy, childbirth, or related medical conditions unless the accommodation would cause the employer undue hardship. According to the EEOC, “covered employers” means private and public sector employers that have 15 or more employees. According to the EEOC, an employee can be qualified under the PWFA in two ways:

1. An employee who can perform the essential functions/fundamental duties of the job with or without a reasonable accommodation would be a qualified employee.
2. An employee can be qualified even if they cannot do the essential functions of their job as long as

the inability is “temporary;” the employee could perform the functions “in the near future;” and

the inability to perform the essential functions can be reasonably accommodated.

The EEOC has provided the following as some examples of possible reasonable accommodations:

1. providing a stool or chair for the employee to sit on so the employee is not on her feet the entire shift;
2. allowing more bathroom breaks;
3. allowing more time off for medical appointments;
4. providing for a later shift start time if morning sickness is an issue; and
5. a change in work assignments to accommodate a need for light duty.

It is up to the employee to inform the employer of the need for an accommodation. The employer should engage in an interactive discussion regarding the employee’s needs just like the employer would do in any other disability accommodation request situation. That allows the employer to tailor the accommodation to the employee’s specific and individualized needs. The EEOC has created a [Q&A](https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act#:~:text=An%20employee%20or%20applicant%20can,fundamental%20duties%20of%20the%20job.) document that contains additional guidance. For further information on the Pregnant Workers Fairness Act rules, you can contact the EEOC at (800) 669-6820.

**Title II Rule Strengthening Web and Mobile App Access for People with Disabilities**

Title II of the Americans with Disabilities Act requires state and local governments to make their services, programs, and activities accessible to people with disabilities. It is not a new Title II requirement that government websites and mobile applications (apps) must be accessible to people with disabilities. However, on April 24, 2024, the Department of Justice published a [final rule](https://www.ada.gov/assets/pdfs/web-rule.pdf) updating it’s Title II regulations. The final rule contains specific requirements about how to ensure that web content and mobile apps are accessible to individuals with disabilities. This [fact sheet](https://www.ada.gov/notices/2024/03/08/web-rule/#:~:text=Title%20II%20of%20the%20ADA,adoption%20services%20to%20zoning%20regulation.) contains helpful information you can share with your IT folks so they can verify the required standards are implemented in the library’s website and any mobile applications. Special District governmental entities (public libraries) must be in compliance by April 26th, 2027. If you need more information, please contact the ADA information line at (800) 514-0301.

**Independent Contractor Classification**

In January of this year, the U.S. Department of Labor published a [final rule](https://www.federalregister.gov/documents/2024/01/10/2024-00067/employee-or-independent-contractor-classification-under-the-fair-labor-standards-act) to assist employers in determining whether an individual is an employee or an independent contractor. The rule took effect in March and replaced the previous rule that had been published in 2021. Misclassifying employees as independent contractors can cause serious issues and put the employer at risk for owing back wages, taxes and more. The new rule mirrors the way employee/contractor status was determined prior to the 2021 rule. The move back to the pre-2021 standards was done to reflect and be consistent with legal precedent set by court cases. Beginning in March of this year, we went back to using the “totality of the circumstances economic reality test” which considers 6 factors when determining if someone is an employee or an independent contractor. The 6 factors are:

1. Opportunity for profit or loss depending on managerial skill;
2. Investments by the worker and the employer;
3. Permanence of the work relationship;
4. Nature and degree of control;
5. Whether the work performed is integral to the employer’s business; and
6. Skill and initiative.

Additional factors can be considered as well if they are relevant to whether the worker is in business for themself or is economically dependent on the employer for work. If library officials have any questions or concerns about whether or not someone the library is treating as an independent contractor may actually be an employe, the library’s legal counsel should be consulted for guidance on the matter.