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Report to Congressional Requesters

June 1994

WORKPLACE REGULATION

Information on Selected Employer and Union Experiences

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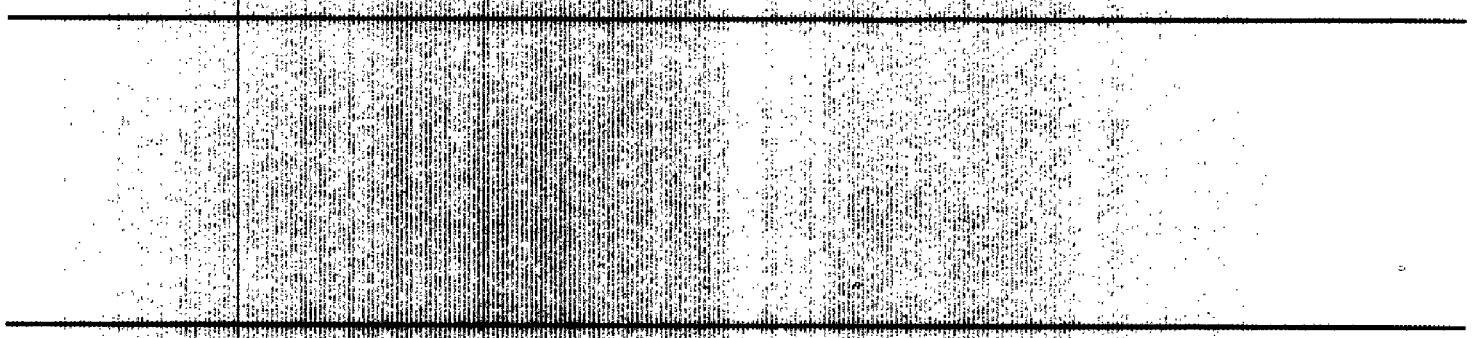

GAO

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Health, Education, and
Human Services Division

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June 30, 1994

The Honorable William D. Ford
Chairman, Committee on
Education and Labor
House of Representatives

The Honorable William F. Goodling
Ranking Minority Member
Committee on Education and Labor
House of Representatives

The Honorable Pat Williams
Chairman, Subcommittee on
Labor-Management Relations
Committee on Education and Labor
House of Representatives

The Honorable Marge Roukema
Ranking Minority Member
Subcommittee on Labor-Management
Relations
Committee on Education and Labor
House of Representatives

In response to your request, this report describes the major statutes and executive order comprising the framework of federal workplace regulation, and provides information on employer and union experiences operating under that framework.

We are sending copies of the report to the Secretary of Labor and other interested parties. Copies also will be made available to others on request.

This report was prepared under the direction of Linda G. Morra, Director, Education and Employment Issues, who may be reached on (202) 512-7014 if you or your staff have any questions. Other major contributors are listed in appendix III.

Janet L. Shikles

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Assistant Comptroller General

Executive Summary

Purpose

Like many industrialized nations, the United States employs several different strategies for protecting workers. One strategy for setting workplace standards is through the enactment of statutes that directly set the terms and conditions of employment and relies on agencies and the courts for enforcement.

Another strategy is to encourage the direct resolution of workplace problems by the parties themselves, rather than through judicial or regulatory recourse. The appropriate use of both of these strategies can contribute to increased worker productivity while reducing workplace conflict.

With the Secretaries of Labor's and Commerce's Commission on the Future of Worker-Management Relations examining these and other issues, the Chairmen and Ranking Minority Members of the House Education and Labor Committee and its Subcommittee on Labor-Management Relations requested that GAO study issues related to the framework of federal workplace regulation. Specifically, they asked GAO to (1) identify and analyze the characteristics of the major statutes comprising the framework and (2) describe the actual experiences of a wide range of employer and employee representatives with workplace regulation.

To address these issues, GAO

- surveyed the literature and consulted with experts to identify and analyze the major statutes and executive orders on workplace regulation, and
- interviewed a broad range of 36 employers and union and employee committee representatives of organizations of varying sizes and industries and in different states to determine their actual experiences operating under these statutes.

The requesters realized that those interviewed will not be representative of all employers and unions, but nevertheless believe that the results will be useful.

Background

Many federal statutes governing the workplace, for example the Occupational Safety and Health Act (OSHA), fall under a "command and control" model; that is, the statute or regulation is the command, and government enforcement efforts such as inspections or filing suit in the courts are the control. Other statutes, such as the National Labor Relations

Act (NLRA), are more process oriented, specifying the context within which employers, workers, and unions may negotiate different concerns.

The effectiveness of command and control regulation is influenced by many factors, including the available level of regulatory resources, the sanctions for noncompliance, and the ease of employer compliance. In some instances, command and control regulation can be enhanced by increasing the involvement of employers and workers in aspects of the regulatory process. For example, GAO has identified strengthened roles for employers and workers as one of several main options to improve workplace health and safety.[1]

The executive branch of the federal government is currently considering alternative strategies for regulating the workplace. In March 1993, the President asked the Secretaries of Labor and Commerce to form a Commission on the Future of Worker-Management Relations to address issues such as the extent to which the present legal framework and practices of collective bargaining could change to improve productivity and reduce conflict. Recognizing the need to make government work better and cost less, the administration has also initiated the National Performance Review (NPR) under the direction of the Vice President. A key component of the NPR is an enhanced emphasis on customer service. Consistent with this goal, the administration issued Executive Order 12862, which requires all federal agencies and departments to become more customer driven and provide services equal to the "best in business."

Results in Brief

The magnitude, complexity, and dynamics of workplace regulation pose a challenge for employers of all sizes. Such regulation has expanded and continually changed during the last 60 years, not only with the passage of new laws but also with the consequences of judicial decisions and the promulgation of new and revised regulations. For example, although only 7 of the 26 key statutes and one executive order on workplace regulation—primarily covering areas like labor-management relations, minimum wages, and unemployment insurance—were in place by 1940 and 8 by 1960—they doubled by 1970 and reached 19 by 1980. These complex workplace regulations, however, are but one part of broader regulatory duties, such as environmental and tax requirements, with which employers must comply.

[1]See Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

The wide variety of 36 employers and union representatives that GAO interviewed generally supported the need for workplace regulations. They frequently voiced concerns, however, with the operation of the overall regulatory process of many agencies and about whether the agencies' regulatory goals were being achieved. For example, while most of the employers said that they could comply with workplace-related paperwork requirements without undue burden, many said that certain paperwork requirements had questionable value in meeting the law's objectives. Many of the employers GAO interviewed believe that the current regulatory approach used by many agencies is largely adversarial, characterized by poor communication, unfair and inconsistent enforcement, and vague laws and regulations that increase the potential for lawsuits. Most unions GAO talked to agreed with this assessment, although they also believed that many agencies were often not vigorous enough in enforcing existing regulatory protections.

The employer and union representatives that GAO interviewed generally called for changing agencies' approaches toward regulation. They urged agencies to develop a more service-oriented approach to workplace regulation: improving information access and educational assistance to employers, workers, and unions, and permitting more input into agency standard setting and enforcement efforts. Many of the employers—both large and small—remarked that they were rarely confident that they knew all the laws and regulations for compliance and often could not get accurate information on the applicable statutes or on how to comply. They suggested making accurate information about employer and employee rights and compliance responsibilities more accessible. Employers that GAO interviewed generally also urged that agencies abandon what they saw as a "gotcha" approach to enforcement and recognize good faith compliance efforts. Overall, they advised that agencies collaborate more closely with them during the regulatory process. Unions suggested that their role be expanded during agencies' enforcement procedures such as greater participation in Fair Labor Standards Act backwage settlements.

Principal Findings

Federal Workplace Regulation Is Complex and Constantly Changing

Employers face an extensive network of workplace requirements that specify a wide variety of employee protections. Congress has amended laws resulting in new workplace requirements. Numerous implementing

regulations—the actual rules that affect employers in their employment relations—are constantly changing. In addition, some federal agencies issue administrative decisions that may modify workplace requirements. For example, the National Labor Relations Board (NLRB), an independent agency that enforces the NLRA, derives most regulatory requirements from administrative case law. The amount of federal workplace regulation facing a particular employer varies, however, depending on the employer's number of employees and industry and whether it is a federal contractor. Of the 26 statutes and one executive order, 16 apply to employers across all industries, with the remainder applying only to employers who are federal contractors or only operating in particular industries.

Yet most of the employers GAO interviewed said that federal workplace regulation was an important concern but often not the most important regulatory area they faced. They often indicated that state, nonworkplace, or industry-specific regulations equaled or overshadowed federal workplace regulation. Smaller employers often mentioned a primary concern with nonfederal regulations, such as state licensing laws or workers' compensation programs. Larger employers were somewhat more likely to focus on federal workplace regulation but also mentioned a concern with environmental, tax, and other regulatory areas. As an official from a large auto manufacturer explained:

"In terms of compliance burdens, workplace regulation is not as significant as other issues: taxes, trade, and environmental issues loom far larger."

Employers Report a Variety of Compliance Strategies

Employers that GAO talked to typically had different compliance strategies, depending on their size. Smaller employers that GAO interviewed more generally relied on outside legal staff, contracted out their health, pension, and other benefits administration, and often relied on contractors for payroll processing. Larger employers reported that they generally maintained in-house human resource departments, health and safety units, and legal staffs to comply with many workplace requirements. However, some pension benefit requirements were considered so complex that even many larger companies contracted out for some compliance duties. An official from a large hotel management company asserted:

"The only thing ERISA [the Employee Retirement Income Security Act of 1974] has done is to enrich consulting companies. They [the regulations] are so confusing that [consulting] companies must be hired to ensure compliance."

Employers Expressed Uncertainty About Their Level of Regulatory Compliance

Although smaller employers that GAO interviewed appeared to be the least aware of workplace requirements, even larger employers felt unsure of all the rules that applied to their operations. An official from a hospital complained:

"The sheer volume and nitty-gritty of regulations make compliance difficult."

This lack of confidence and awareness has contributed to a widespread employer fear of noncompliance among the employers we interviewed. As an official from a small software company explained:

"We always use common sense but because of our lack of knowledge we are never sure of our compliance."

Some employers expressed a concern that statutes and regulations had vaguely stated or ambiguous requirements which they believed increased the potential for lawsuits. Several employers, for instance, thought that various definitions under the Americans with Disabilities Act (ADA) were ambiguous, leaving them confused about their responsibilities. For example, officials of a large electronics manufacturer said:

"We have concerns about the definition of mental disability under the ADA...We don't know how the courts will interpret this concept and believe that it may create future legal problems and litigation."

Union representatives that GAO talked to also discussed the difficulty of getting accurate information from some government agencies. They believed that this contributed to many workers' lack of awareness of their workplace rights. For example, officials of a local union representing health care workers described problems getting accurate information from the local Wage and Hour Division office:

"When we contacted the local office we got confusing information, and different and contradictory answers on subsequent phone calls. This happened in the middle of an organizing effort and the union's credibility was questioned because of the information we had gotten from DOL [the Department of Labor]."

Employers and Unions Report Concern With Implementation of Workplace Laws

GAO found that employer and union representatives interviewed generally supported the legislative goals of federal workplace regulation. For example, most employers supported OSHA's goal of ensuring each employee a safe and healthful workplace. Many had serious concerns,

however, with how some agencies carried out their regulatory missions. For example, employers that GAO interviewed thought that some agencies enforced regulations inconsistently across regions and that some agencies had a petty attitude toward regulatory enforcement, focusing on minor infractions, and failed to consider good faith compliance efforts. For example, an official at a large paper manufacturer with facilities in several states said:

"The interpretation of standards by [federal OSHA] inspectors will vary from region to region; some are stricter than others. Inspectors can interpret the standards differently from state to state. We have been cited for a violation in one state that was acceptable in another state."

In addition, officials from the company stated that some agencies lacked the resources to process complaints in a timely and effective manner and had ill-trained staff.

Most union representatives that GAO spoke to agreed with this assessment, although they also believed that many agencies were not vigorous enough in enforcing regulatory protections. For example, officials of an international union believed:

"Enforcement of FLSA [Fair Labor Standards Act] by the Wage and Hour Division is a low priority at DOL. DOL needs to be more aggressive with respect to enforcing FLSA."

Employers and Unions Suggest More Service-Oriented Approach by Agencies

Most employers and union representatives urged agencies to adopt a more service-oriented approach to regulation. They viewed such an approach as fostering a more collaborative relationship between employers, unions, and workers that could ultimately ease compliance and help to achieve legislative goals. Proposed elements include

- making information more accessible to employers, workers, and unions;
- providing more technical and education assistance to employers, workers, and unions; and
- permitting more input from employers and unions into agencies' standard-setting and enforcement procedures.

Some employers and unions that GAO spoke to also identified various forms of alternative dispute resolution, including arbitration and mediation, as potentially useful vehicles to reduce workplace conflict. Employers and union representatives that GAO interviewed suggested ways

to improve service orientation, including the use of toll-free information hotlines and the expanded use of new information technologies. For example, an official from a small software company suggested:

"What is needed from the federal government is a fool's guide to regulation."

Recommendations

GAO is making no recommendations.

Agency Comments

Labor reiterated GAO's caution that the findings from the small number of interviews conducted are not generalizable to either the employer or employee representative communities as a whole. Thus, care should be exercised in drawing conclusions from them. Nevertheless, Labor took these interview comments very seriously and found the essential substance of the report to be entirely consistent with Labor's recent initiatives to enhance its operations.

GAO emphasizes that its findings are based on a small number of cases. However, while not generalizable, GAO believes that the detailed, qualitative information collected provides important insights into employers' and unions' experiences concerning federal workplace regulation. The case studies include a widely varied group: large, medium, and small size employers from over 20 different industries and 16 states; local and international unions; and nonunion labor-management workplace committees. Labor points out that many of GAO's findings are consistent with initiatives Labor has underway and some previous GAO studies.[2] Additionally, GAO's findings resonate with the experiences of many members of the labor-management advisory committee that assisted the study.

Labor also had numerous technical comments as did NLRB and the Equal Employment Opportunity Commission who reviewed relevant sections of the report. The comments were incorporated where appropriate.

[2]See Occupational Safety & Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991), and Occupational Safety & Health: Employers' Experiences in Complying With the Hazard Communication Standard (GAO/HRD-92-63BR, May 8, 1992).

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Appendixes

Related GAO Products

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Abbreviations

ADA	Americans with Disabilities Act
ADEA	Age Discrimination in Employment Act
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
CWHSSA	Contract Work Hours and Safety Standards Act
DOL	Department of Labor
DOT	Department of Transportation
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
EPPA	Employee Polygraph Protection Act
ERISA	Employee Retirement Income Security Act
FLSA	Fair Labor Standards Act
FMCS	Federal Mediation and Conciliation Service
FMLA	Family and Medical Leave Act
HCS	Hazard Communication Standard
IRCA	Immigration Reform and Control Act
IRS	Internal Revenue Service
MSDS	Material Safety Data Sheet
MSHA	Mine Safety and Health Act
MSPA	Migrant Agricultural and Seasonal Worker Protection Act
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NPR	National Performance Review
PBGC	Pension Benefit Guaranty Corporation
PWBA	Pension Welfare Benefits Administration
RLA	Railway Labor Act
SAR	Summary Annual Report
SPD	Summary Plan Description
OFCCP	Office of Federal Contract Compliance Programs
OSHA	Occupational Safety and Health Act
UI	Unemployment Insurance
VPP	Volunteer Protection Program
WARN	Worker Adjustment and Retraining Notification Act
WHD	Wage and Hour Division

Introduction

Like many industrialized nations, the United States employs several different strategies for protecting employees in the workplace. One strategy to set workplace standards is through the enactment of statutes that directly set the terms and conditions of employment and relies on agencies and the courts to enforce these standards. Another strategy is to encourage the direct resolution of workplace problems by the parties themselves, rather than to seek resolution through judicial or regulatory recourse. The appropriate use of both of these strategies can contribute to increased worker productivity while reducing workplace conflict. In March 1993, the Secretaries of Labor and Commerce established the Commission on the Future of Worker-Management Relations. The Commission is investigating the condition of U.S. labor-management relations, and seeking to identify changes that can be made in existing laws to facilitate the regulatory process. In recognition of the importance of these issues, the Chairmen and Ranking Minority Members of the House Education and Labor Committee and its Subcommittee on Labor-Management Relations requested that we study issues related to the framework of federal workplace regulation.

Background

Many federal statutes, such as those covering the environment, consumer protection, and other areas, fall into what has been defined as a "command and control" model of regulation. In this model, a government agency attempts to control or shape the behavior of a regulated community through the enforcement of certain rules or commands which embrace the objectives of the legislation. Many federal workplace statutes also correspond to this model including the Occupational Safety and Health Act (OSHA),[3] the Fair Labor Standards Act (FLSA), and the Family and Medical Leave Act (FMLA). Each of these laws has associated regulations requiring employer compliance and, although the method of enforcement may vary, each of the laws is enforced through compliance inspections, administrative adjudication, or the courts.

The effectiveness of command and control regulation is influenced by many factors, such as the level of available regulatory resources and sanctions for noncompliance. Agencies may need large numbers of compliance officers to police the regulated community, especially if

[3]The administering agency of OSHA, the Occupational Safety and Health Administration in the U.S. Department of Labor, issues, after full public participation, occupational safety and health standards specifying the particular actions that must be taken by covered employers to protect the safety and health of workers. The Occupational Safety and Health Administration then conducts workplace inspections to determine compliance with these standards, and where violations are discovered, civil and in some cases criminal sanctions may be imposed. Administrative and court review of agency enforcement actions is available under the enabling statute.

sanctions for noncompliance are small. For example, the penalties for OSHA violations have historically been small—the average penalty for a serious violation was $750 in fiscal year 1993—criminal sanctions are infrequent and a conviction is rare. Yet federal OSHA and the state-operated safety and health programs have approximately 2,000 compliance officers to enforce standards in over 6.5 million workplaces. To conduct health and safety inspections at each workplace even on a biennial basis would require far more than the number of officers currently available.

Regulatory compliance is also influenced by the employers' awareness of regulatory requirements. For example, in a randomly selected mail survey to almost 2,000 employers concerning their experience with OSHA's Hazard Communication Standard, we found that 58 percent of all small employers—those with 10 or fewer employees—were out of compliance with the standard. However, over half of all small employers also reported little or no awareness of the standard or were not knowledgeable about its key requirements.[4]

In some instances, agencies may enhance the effectiveness of command and control regulation in the workplace by increasing the involvement of employers and workers. For example, we have identified strengthened roles of employers and workers as one of several options that could improve workplace health and safety. Such strengthened roles could be achieved through the expanded use of worksite health and safety programs, joint labor-management health and safety committees and various proposals that increase employee participation in the OSHA inspection process.[5]

The executive branch of the federal government is also considering alternative strategies for regulating the workplace. In March 1993, the President asked the Secretaries of Labor and Commerce to form a Commission on the Future of Worker-Management Relations. The Commission includes former Secretaries of Labor, and representatives from business, labor, and academia. The Commission is investigating labor-management relations in the United States and will report back to the Secretaries regarding the following issues:

[4]Occupational Safety & Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991).

[5]These proposals include involving workers in actual OSHA inspections, verifying the abatement of workplace hazards, and increasing workers' participation in negotiations involving the settlement of OSHA violations. See Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990) and Occupational Safety & Health: Worksite Safety and Health Programs Show Promise (GAO/HRD-92-68, May 19, 1992).

- the extent to which new methods or institutions should be encouraged or revised to enhance workplace productivity through labor-management cooperation and employee participation;
- the extent to which changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay; and
- the extent to which action should be taken to encourage workplace problems to be directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies.

The Commission delivered its preliminary findings to the Secretaries of Labor and Commerce in May 1994,[6] and will present its final report in December 1994. The requesters also asked that we share our findings with the Commission to assist it in completing its report.

Recognizing the need to improve government operations, the administration initiated the National Performance Review (NPR) under the direction of the Vice President. The NPR was a major management reform effort with the goal of identifying ways to make government work better, regulate more effectively, and lower costs. The report's recommendations were organized by four key principles: cutting red tape, putting customers first, empowering employees to get results, and cutting back to basics.[7]

A key component of the NPR is an enhanced emphasis on customer service. Consistent with this goal, the administration issued Executive Order 12862, which requires all federal agencies and departments to become more customer driven and provide services equal to the "best in business." All executive agencies and departments that provide significant services directly to the public were directed to take steps to improve their service. These actions should include

- surveying customers to determine the kinds and quality of services they want and their level of satisfaction with existing services;
- providing customers with choices in both the sources of service and the means of delivery;
- making information, services, and complaint systems easily accessible; and

[6]Fact-Finding Report: Commission on the Future of Worker Management Relations, May 1994, U.S. Departments of Labor and Commerce.

[7]From Red Tape to Results: Creating a Government That Works Better and Costs Less, Report of the National Performance Review, Vice President Al Gore (Sept. 7, 1993).

- providing the means for addressing customer complaints.

In response to Executive Order 12862, individual departments and agencies have also initiated efforts to foster continuous improvements in agency efforts. For example, the President has begun to develop performance agreements with agency heads that concentrate on the agencies' desired outcomes; such agreements can help agencies focus on achieving programmatic goals and objectives. The Department of Labor has an agreement that focuses on improving customer service and implementing various "reinvention" initiatives that concentrate on enhancing the Department's operations and fulfilling its regulatory mission.

Objectives

With the Secretaries of Labor's and Commerce's Commission on the Future of Worker-Management Relations examining issues of improving worker protections, resolving workplace conflict and enhancing workplace productivity, the Chairmen and Ranking Minority Members of the House Education and Labor Committee and its Subcommittee on Labor-Management Relations requested that we study issues related to the framework of federal workplace regulation. Specifically, they asked us to identify, describe, and analyze the major statutes that comprise the framework of federal workplace regulation, including

- the statutory definition of employers and employees,
- the statutory coverage by industry type or employer size,
- the characteristics of the enforcement mechanism,
- recordkeeping and disclosure requirements, and
- the nature and extent of federal statutory preemption.

We also were asked to study the experiences of a broad range of employers and employee representatives operating within this framework. In response, we conducted in-depth interviews of employers' and employees' experiences and obtained their views on a range of related issues, including their concerns about the framework's operation and their suggestions for improvement.

Methodology: Identification of the Major Federal Statutes Comprising the Framework of Federal Workplace Regulation

We reviewed various federal statutes to identify those we believed to be the major statutes and executive orders comprising the framework of federal workplace regulation, focusing primarily on those overseeing the relationship between employers and workers in private sector workplaces. Working with an expert legal consultant, Labor's Office of the Solicitor and an advisory group consisting of employer and labor union representatives, we defined the general framework of federal workplace regulation as consisting of 26 laws and one executive order. (See appendix I.) We classified these statutes and executive orders as listed below.

Labor Standards

- Fair Labor Standards Act
- Davis-Bacon Act
- Service Contract Act
- Walsh-Healey Public Contracts Act
- Contract Workhours and Safety Standards Act, and
- Migrant and Seasonal Agricultural Worker Protection Act

Benefits

- Employee Retirement and Income Security Act
- Group health plan continuation coverage provisions under The Consolidated Omnibus Budget Reconciliation Act of 1985
- Unemployment Compensation provisions of the Social Security Act,[8] and
- Family and Medical Leave Act

Civil Rights

- Title VII of the Civil Rights Act
- Equal Pay Act (which amended the Fair Labor Standards Act)
- Executive Order 11246
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Section 503 of the Rehabilitation Act, and
- Anti-retaliatory provision of the Surface Transportation Assistance Act

Occupational Health and Safety

- Occupational Safety and Health Act,
- Federal Mine Safety and Health Act, and
- Drug Free Workplace Act

Labor Relations

- National Labor Relations Act,

[8]In this report, these provisions will be referred to as the Unemployment Compensation program.

- Labor Management Reporting and Disclosure Act, and
- Railway Labor Act

Employment Decisions: Hiring and Separations

- Employee Polygraph Protection Act,
- Veterans' Reemployment Rights law as enacted by the Selective Training and Service Act and subsequent amendments,[9]
- Employment provisions of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act, and
- Worker Adjustment and Retraining Notification Act

For each of these statutes and the executive order we analyzed and described key aspects of its provisions regarding

- the extent to which it preempted state law,
- the definition of employer and employee for coverage purposes and other coverage limitations,
- civil and criminal sanctions for violations,
- employer and employee recourse to agency enforcement actions, and
- reporting and disclosure requirements.

We reviewed this information with outside experts and legal staff from the agencies charged with carrying out each statute and executive order. We present summary information on these characteristics in chapter 2. See volume II of this report for the detailed characteristics of each statute and executive order.

Methodology: Employer and Employee Experiences Operating Within the Framework of Federal Workplace Regulation

We used a case study approach to collect information on actual employer and employee representatives' experiences with workplace regulation. We selected our 36 sites according to requester interests, advisory group suggestions, and to ensure a broad mix of industries, employer sizes, and geographic location. Although our results are not generalizable to either the employer or employee communities as a whole, they provide detailed, qualitative information on strategies and efforts to comply with current federal workplace regulation from a broad range of perspectives.

We selected 24 employers for our case study sites based on several criteria, including their industry, number of employers, geographic dispersion, the presence of a collective bargaining agreement covering at least one of their facilities (see figure 1.1) and their participation in some

[9]Throughout this report, we will refer to this act as the Veterans' Reemployment Rights law.

form of alternative resolution procedure regarding workplace disputes.[10] To obtain views of employees, we conducted site visits with officials from 10 international unions and local unions, many of whom represented workers either at the employers we visited or in the same industries.

We also visited worker representatives of two labor-management workplace committees in facilities not covered by a collective bargaining agreement. (See figure 1.2.) We used our advisory group to help identify prospective employers and unions for interviews. Because of the manner in which we selected our sites, the information we collected is not representative of the views of all employers or unions, regardless of their size or industry.

[10]Examples of these procedures include the use of internal company or industrywide binding arbitration procedures.

Figure 1.1: Characteristics of Employers GAO Visited

Industry of employer case study	Employer size[a]			Multi-state operation[b]	Worker representation	
	0 to 75	76 to 499	500+		Presence of a collective bargaining agreement[c]	Presence of a labor-management committee[d]
Manufacturing						
Metal fabricator	✓					
Auto parts[e]		✓				✓
Metal products		✓			✓	✓
Textiles		✓				✓
Auto parts and assembly			✓			✓
Electronics			✓	✓		✓
Oil Refining			✓	✓	✓	✓
Paper			✓	✓	✓	✓
Services						
Restaurants	✓					
Securities	✓					
Software design/consulting	✓					
Insurance		✓				✓
Retail-mail order		✓				✓
Employee leasing-1			✓	✓		
Employee leasing-2			✓	✓	✓	
Hospital			✓			✓
Hotel management			✓	✓	✓	✓
Retail-department stores			✓	✓	✓	
Temporary employment			✓	✓		
Construction						
Commercial	✓				✓	✓
Homebuilding	✓					
Commercial-project management[f]			✓		✓	✓
Transportation/Other						
Fruit packing		✓				✓
Trucking			✓	✓	✓	
Subtotal	6	6	12			
Total	24			9	9	14

[a]Total number of employees in the firm.

[b]Those employers that have operations in more than one state.

[c]Employers who have at least some employees covered by a collective bargaining agreement.

[d]Employers who had some form of joint labor-management committee in at least some of their facilities. These committees could be concerned with a variety of workplace issues (for example health and safety to productivity) and exist in both union and nonunion environments.

[e]Although the parent employer had multi-state operations, this case study was conducted at an individual branch facility.

[f]Although the parent employers had multi-state operations, this case study was of a joint venture at a single construction project.

Figure 1.2: Characteristics of Unions and Labor-Management Committees GAO Visited

Primary industry	Union: Local	Union: International	Primary focus of labor-management committee	Represents workers of an employer site visit a[a]
Unions				
Auto workers	✓			✓
Construction	✓			✓
Electronics/telecommunications		✓		
Health care 1	✓			
Health care 2	✓			
Heavy manufacturing		✓		✓
Hotels and restaurants	✓			✓
Oil refining	✓			✓
Paper manufacturing	✓			
Trucking	✓			✓
Labor Management Committees				
Paper manufacturing			Safety and health	✓
Retail-mail order			General workplace concerns	✓
Subtotal	8	2	2	
Total	12			8

[a]Represents at least some employees of one or more of the employers we visited.

We defined smaller employers as those with fewer than 75 employees, medium-size employers as those with 75 to 500, and larger employers as those with over 500 employees. Six of the employer sites were smaller employers, 6 were medium-size employers, and 12 were larger employers. About one-half of all employers we visited were in service-related industries (11), about one-third were in manufacturing industries (8), and we visited three employers in construction and one employer each in the transportation and agricultural packing industries. All but one of our employers (23 out of 24) had some form of employer-financed pension plan, health plan, or both. Seven of the 8 manufacturing employers had some form of worksite labor-management committee—most involving health and safety issues—while only 3 of the nonmanufacturing sites had committees of any type.

Five of the 7 local unions represented employees at facilities operated by the employers we visited. The other three local unions and the two international unions we visited represented workers in industries where we visited employers. Of the worker representatives of the labor-management committees we spoke with, one committee dealt primarily with occupational health and safety issues, while the other addressed general issues concerning working conditions.

During our visits to each employer, we asked about their experiences and strategies in complying with workplace regulation. During our visits to employers and employee representatives, we inquired about their experiences, if any, with the enforcement of workplace regulation, their concerns about and perceived benefits of workplace regulation, and suggestions they might have on solving those problems or improving regulation. Except where noted, the information we collected from employers and unions is based on their actual experiences with particular regulations and enforcement agencies.[11] We have included some background information about the characteristics of employers' and unions' experiences with particular regulatory agencies in appendix I.

We developed separate "employer" and "employee representative" interview protocols that we used to conduct our interviews and pretested them to ensure that all questions were fair, relevant, and easy to understand and answer. We extensively interviewed those persons at each site whom the employer or union believed to be most knowledgeable about workplace regulation and regulation in general. Where necessary,

[11]If the interviewees at a particular site reported no experience with the agency or agencies enforcing a particular statute, the interviewers moved on to other areas of inquiry.

we followed up our initial extensive interviews with telephone interviews to clarify information or obtain additional data.

To encourage interviewee candor and openness, we obtained a pledge from our congressional requestors guaranteeing that interviewee identities and the identities of their business or organization would be kept confidential and not be disclosed. We did not attempt to independently verify the accuracy of the information they provided to us or substantiate their examples of particular regulatory difficulties. We conducted our review from August 1993 to April 1994 in accordance with generally accepted government auditing standards.

Employers Face an Extensive Network of Workplace Regulation

"The requirements are like an octopus: the regulations are extremely complex and the company needs outside expertise to remain in compliance."—An official from a large retail company describing Employment Retirement Income Security Act and COBRA

"Knowing about all the changes that occur in the laws is also difficult....No one really has the time to read comprehensively the laws and changes to them."—An official from a medium-size textile manufacturer

"Although workplace regulations are serious, time-consuming and expensive, in the scheme of things, federal workplace regulation is not the worst thing."—An official from a large hospital

Federal workplace regulation has greatly expanded over the last 60 years, generally imposing new obligations on employers in order to protect workers. The continued growth and frequency of regulation leaves today's employers facing an extensive network of workplace rules. Workplace regulation undergoes frequent change from many sources, including actions by the Congress, the relevant agencies and review commissions, and the courts. The number of federal workplace-related requirements that affect a particular employer varies primarily by the employer's number of employees, its industry, and whether it enters into federal contracts. However, the employers we interviewed said that, in general, while workplace regulation was an important concern to their companies, nonlabor-related regulation equaled or overshadowed workplace regulation.

Federal Workplace Regulation Has Grown to Cover a Wide Variety of Workplace Activities

Relying largely on its constitutional authority to regulate interstate commerce, the Congress has passed many laws regulating the workplace of employers engaged in, or whose business activities affect interstate commerce. These laws, which change to meet the ever-expanding and increasingly complicated conditions of commerce, cover a wide variety of activities ranging from labor-management relations to pensions, family leave, and the setting of prevailing and minimum wages. (See table 2.1.)

In addition to workplace regulation imposed by the enactment of statutes or the issuance of executive orders, employers and workers face obligations and protections established by regulation and case law. Federal agencies issue regulations clarifying and expanding upon the laws, and courts make decisions interpreting the laws. Most federal workplace regulatory requirements are enforced by agencies within the Department of Labor (Labor), but the Equal Employment Opportunity Commission

(EEOC) and the National Labor Relations Board (NLRB) also enforce workplace regulations.

Table 2.1: Description of Major Statutes and Executive Orders Governing Workplace Regulation[a]

Statute	Description	Principal enforcement agency
Labor Standards		
FLSA	Establishes minimum wage, overtime pay and child labor standards	Labor - WHD[b]
Davis-Bacon Act	Provides for payment of prevailing local wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors on federal contracts for construction, alteration, repair, painting or decorating of public buildings or public works	Labor - WHD
Service Contract Act	Provides for payment of prevailing local wages and fringe benefits and safety and health standards for employees of contractors and subcontractors providing services under federal contracts	Labor - WHD
Walsh-Healey Act	Provides for labor standards, including wage and hour, for employees working on federal contracts for the manufacturing or furnishing of materials, supplies, articles or equipment	Labor - WHD
CWHSSA	Establishes standards for hours, overtime compensation, and safety for employees working on federal and federally financed contracts and subcontracts	Labor - WHD
MSPA	Protects migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing	Labor - WHD
Benefits		
ERISA	Establishes uniform standards for employee pension and welfare benefit plans, including minimum participation, accrual and vesting requirements, fiduciary responsibilities, reporting and disclosure requirements	Labor - PWBA,[c] PBGC[d], IRS[e]
COBRA	Provides for continued health care coverage under group health plans for qualified separated workers for up to 18 months	Labor - PWBA Treasury - IRS
Unemployment Compensation	Authorizes funding for state unemployment compensation administrations and provides the general framework for the operation of state unemployment insurance programs	Labor - ETA[f]
FMLA	Entitles employees to take up to 12 weeks of unpaid, job-protected leave each for specified family and medical reasons such as the birth or adoption of a child or an illness in the family	Labor - WHD
Civil Rights		
Title VII	Prohibits employment or membership discrimination by employers, employment agencies, and unions on the basis of race, color, religion, sex, or national origin; prohibits discrimination in employment against women affected by pregnancy, childbirth, or related medical condition	EEOC[g]
Equal Pay Act	Prohibits discrimination on the basis of sex in the payment of wages	EEOC
EO 11246	Prohibits discrimination against an employee or applicant for employment on the basis of race, color, religion, sex, or national origin by federal contractors and subcontractors, and requires federal contractors and subcontractors to take affirmative action to ensure that employees and applicants for employment are treated without regard to race, color, religion, sex, or national origin	Labor - OFCCP[h]
ADEA	Prohibits employment discrimination on the basis of age against persons 40 years and older	EEOC
ADA	Prohibits employment discrimination against individuals with disabilities; requires employer to make "reasonable accommodations" for disabilities unless doing so would cause undue hardship to the employer	EEOC

(continued)

Statute	Description	Principal enforcement agency
Rehabilitation Act (Section 503)	Prohibits federal contractors and subcontractors from discriminating in employment on the basis of disability and requires them to take affirmative action to employ, and advance in employment, individuals with disabilities	Labor - OFCCP
Anti-retaliatory provision - STAA	Prohibits the discharge or other discriminatory action against an employee for filing a complaint relating to a violation of a commercial motor vehicle safety rule or regulation or for refusing to operate a vehicle that is in violation of a federal rule, or because of a fear of serious injury due to an unsafe condition	Labor - OSHA[j]
Occupational Health and Safety		
OSHA	Requires employers to furnish each employee with work and a workplace free from recognized hazards that can cause death or serious physical harm	OSHA
MSHA	Requires mine operators to comply with health and safety standards and requirements established to protect miners	MSHA[j]
Drug Free Workplace Act	Requires recipients of federal grants and contracts to take certain steps to maintain a drug free workplace	OFCCP
Labor Relations		
NLRA	Protects certain rights of workers including the right to organize and bargain collectively through representation of their own choice	NLRB[k]
LMRDA	Requires the reporting and disclosure of certain financial and administrative practices of labor organizations and employers; establishes certain rights for members of labor organizations and imposes other requirements on labor organizations	Labor - OAW[l]
Railway Labor Act	Sets out the rights and responsibilities of management and workers in the rail and airline industries and provides for negotiation and mediation procedures to settle labor-management disputes	NMB[m]
Employment Decisions: Hiring and Separations		
Polygraph Protection Act	Prohibits the use of lie detectors for pre-employment screening or use during the course of employment	Labor - WHD
Veterans Reemployment Act	Provides reemployment rights for persons returning from active duty, reserve training, or National Guard duty	Labor - VETS[n]
IRCA (employment provisions)	Prohibits the hiring of illegal aliens and imposes certain duties on employers; protects employment rights of legal aliens; authorizes but limits the use of imported temporary agricultural workers	Labor - WHD
WARN	Requires employers to provide 60 days advance written notice of a layoff to individual affected employees, local governments, and other parties	None[o]

(Table notes on next page)

[a]Many statutes are complex and contain a multitude of requirements, rights, and remedies. The information presented has been simplified for illustrative purposes.

[b]Wage and Hour Division.

[c]Pension Welfare Benefit Administration.

[d]Pension Benefit Guaranty Corporation.

[e]Internal Revenue Service.

[f]Employment and Training Administration.

[g]Equal Employment Opportunity Commission.

[h]Office of Federal Contract Compliance Programs.

[i]Occupational Safety and Health Administration.

[j]Mine Safety and Health Administration.

[k]National Labor Relations Board.

[l]Office of the American Workplace.

[m]National Mediation Board.

[n]Veterans' Employment and Training Service.

[o]Although ETA wrote WARN's implementing regulations, there is no principal enforcement agency because the law is enforced privately through the courts.

Over the last 60 years, the Congress, largely relying on its constitutional authority to regulate interstate commerce, has enacted laws expanding the federal regulation of workplace activity to many new areas such as child labor, pensions, labor-management relations, and occupational safety and health.[12] In many of these areas federal regulation followed scattered state efforts to regulate the workplace. For example, Massachusetts passed the nation's first child labor law in 1836 and the first factory inspection law to improve occupational safety and health in 1877.

Most of the statutes and the executive order comprising the framework of federal workplace regulation were put in place during three periods: 1931 to 1940, 1963 to 1974, and 1986 to 1993. (See figure 2.1.) Those statutes that the Congress enacted before 1940 either set basic labor standards regulating minimum wages, prevailing wages, or overtime pay (for example, the Fair Labor Standards Act and the Davis-Bacon Act) or

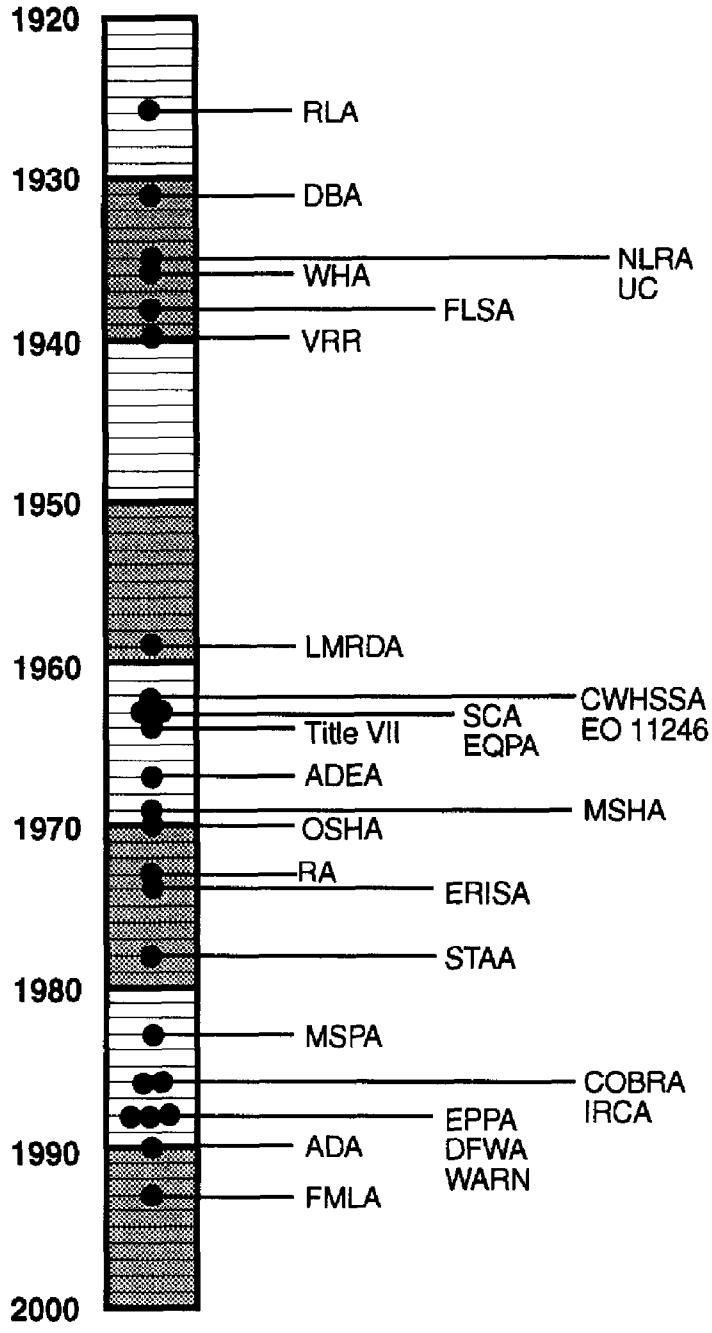
[12]The Constitution gives the Congress the authority to regulate interstate commerce. A large fraction of the workforce is engaged in interstate commerce. For example, Labor's Wage and Hour Division, which, among other laws enforces the Fair Labor Standards Act (FLSA), estimates that the FLSA covers about 113 million workers—96 percent of the workforce—through its interstate commerce provision.

established broad rules governing the conditions under which workers and employers may bargain collectively (Railway Labor Act and the National Labor Relations Act).[13] While 7 statutes had been enacted by 1940, only 8 major statutes were in place as of 1960. The Congress initiated a second wave of workplace legislation during the 1960s and early 1970s that addressed civil rights issues, and regulated new areas such as employee pensions. This activity increased the number of statutes and executive orders enacted to 16 by 1970 and 19 by 1980. Finally, during the mid-1980s the Congress passed a series of labor standard statutes that addressed generally narrower workplace issues not covered during the two earlier periods. For example, the Employee Polygraph Protection Act addresses the use of polygraphs in the workplace and the Workers' Adjustment Notification and Retraining Act (WARN) addresses the issue of employee notification of layoff in the event of a reduction in business operations.[14]

[13]The main difference between these two kinds of statutes is that the agreements reached under the latter type—labor-management statutes—are directly protective only of employees in unionized workplaces where bargaining has been successful. These agreements do not affect nonunionized workplaces or those where, for one reason or another, agreements are not achieved. On the other hand, basic labor standards mandate minimum protection of all employees, without regard to union status.

[14]These laws provide a narrower scope of protections than the Occupational Health and Safety Act which addresses more wide-ranging issues of workplace safety and health, and the National Labor Relations Act, which governs collective bargaining issues between employers and unions.

Figure 2.1: Legislative Chronology



ADEA	Age Discrimination in Employment Act
ADA	Americans With Disabilities Act
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
CWHSSA	Contract Work Hours and Safety Standards Act
DBA	Davis-Bacon Act
DFWA	Drug-Free Workplace Act
EPPA	Employee Polygraph Protection Act
ERISA	Employee Retirement Income Security Act
EQPA	Equal Pay Act (amendments to the Fair Labor Standards Act)
EO 11246	Executive Order 11246
FLSA	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
IRCA	Immigration Reform and Control Act (amendments to the Immigration and Nationality Act)
LMRDA	Labor-Management Reporting and Disclosure Act
MSHA	Federal Mine Safety and Health Act
MSPA	Migrant and Seasonal Agricultural Worker Protection Act
NLRA	National Labor Relations Act
OSHA	Occupational Safety and Health Act
RLA	Railway Labor Act
RA	Rehabilitation Act - Section 503
SCA	Service Contract Act
STAA	Surface Transportation Assistance Act (Anti-retaliatory provision)
Title VII	Title VII of the Civil Rights Act
UC	Unemployment compensation provisions of the Social Security Act
VRR	Veterans' reemployment rights provisions of the Selective Training and Service Act
WHA	Walsh-Healey Act
WARN	Workers Adjustment and Retraining Notification Act

This growth in workplace regulation occurred as federal and some state governments increased regulation in other areas such as environmental safety and consumer protection. For example, the Congress has increased regulation of pharmaceuticals, consumer products, and the environment as illustrated by the creation of the Food and Drug Administration, the Consumer Product Safety Commission, and the Environmental Protection Agency, among others.[15]

Workplace Regulation Today: Complex and Varied

Employers and workers currently face an extensive network of workplace requirements covering a wide variety of workplace activities. The framework of federal workplace regulation provides a wide variety of rights for employees and due process protections for employers. Many sources of regulatory change, such as congressional, agency, and review commission actions, and judicial interpretation can affect employers' and workers' rights and responsibilities. Employers also face a combination of federal and state laws that further increase regulatory responsibilities. The actual number of requirements that affect a particular employer varies primarily by its size, industry, and in some cases its clients.

Employers Face Combination of Federal and State Workplace Regulation

Because federal, state, and local governments have authority to regulate various workplace activities, employers face a complicated interaction of workplace statutes and regulatory requirements. This complexity occurs because of the varied nature of the federal-state relationship within each of these areas of workplace regulation. (See figure 2.2.) The regulatory relationships fall into three general categories: federal dominance or preemption; dual control, in which the states exercise varying degrees of authority depending on the activity; and a defined federal-state "partnership." Most workplace activities are subject to some form of dual federal-state control.

[15]State and local governments have also been active in regulating employers in areas such as insurance and consumer protection.

[a]Many statutes are complex and contain a multitude of requirements, rights and remedies. The information presented has been simplified for illustrative purposes.

[b]STAA does not explicitly preempt state law and various conflicting case law on the issue.

[c]Federal law preempts state law with regard to improprieties in the election of union officers.

The Congress has constitutional authority to preempt state regulation of any aspect of workplace activity in interstate commerce. Federal preemption of state regulation may be explicitly stated in a statute or may be implied from a statute's broad and comprehensive scope of coverage. However, the mere enactment of federal legislation in a particular area does not supersede state law regulation in that area.[16] Federal law does not supersede state law unless the Congress has shown a clear intention to do so or there is an irreconcilable conflict between the federal and state law.[17] ERISA, for example, is one of the few statutes in the area of workplace regulation that explicitly provides for federal preemption. A few of the statutes we reviewed have been held by the courts to preempt state regulation because of the comprehensive nature of the statute. For example, immigration laws, which would include the Immigration Reform and Control Act (IRCA), have been held to preempt state law because the federal law provides for such a broad and comprehensive plan that state law ". . .stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[18] Similarly, the National Labor Relations Act (NLRA) has been held to preempt state regulation of activities covered by that act, except in the area of union security provisions.[19]

The Congress has allowed federal and state efforts to regulate the workplace to coexist in different forms. Some laws, such as FLSA, provide that states may enact requirements exceeding those in the federal statute. For example, some states such as California have child labor law provisions that are more stringent than those specified in the FLSA for some occupations and industries. California restricts hours of work for minors ages 16 and 17 while the federal law allows unlimited hours of work. Other laws, such as Title VII, provide for concurrent federal and state jurisdiction through coordinated enforcement. Title VII requires complaints of unlawful employment practices to first be filed at the state or local level if state or local law prohibits the alleged practice. A

[16]Jones v. Rath Packing Co., 430 U.S. 519, 525-26 (1977).

[17]Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

[18]Hines v. Davidowitz, 312 U.S. 52, 67 (1940).

[19]Guss v. Utah Labor Board, 353 U.S. 1 (1957).

complaint may also be filed with the federal Equal Employment Opportunity Commission. To the extent that state and local workplace standards coincide with, or supplement federal requirements, employers may face additional amounts of regulation.

Finally, several laws provide for a more defined federal-state partnership. The Occupational Safety and Health Act allows the states to set safety and health standards where the federal government approves the state program as being at least as effective as the federal program, and provides funds of up to 50 percent of program costs as incentives for states to run the program. Safety and health standards of states that do not have approved programs are preempted by federal regulation—even if the state standards are more stringent—unless no federal standard exists for the area. The federal Unemployment Compensation program provides for federal-state coexistence in another similar way; it provides federal funds to states to run their own unemployment compensation programs that must be approved by the federal government.[20]

Employers and Unions Face Many Sources of Regulatory Change

The regulatory environment is constantly changing. A multitude of sources affect the regulatory environment: congressional action, agency issuance of new and revised regulations, new interpretations by review commissions of existing rules, and administrative and judicial decisions may also alter the regulatory responsibilities of employers and the protections afforded to workers. To keep up with new regulatory developments, employers, unions, and workers need to monitor many of these sources on a regular basis. These actions take place on federal, state, and local levels.

The Congress may change laws resulting in new workplace requirements and regulations; some laws have been amended numerous times since their enactment. For example, the Fair Labor Standards Act has been amended 25 times since its enactment in 1938 and the federal Unemployment Compensation Insurance (UI) provisions have been amended 21 times through 1987.[21] In both cases, the amendments often broadened the scope of legislative coverage, granting rights to workers and placing new responsibilities on employers who were previously

[20]States have considerable autonomy in setting eligibility amounts and other key provisions of their unemployment insurance programs. See Unemployment Insurance: Trust Fund Reserves Inadequate (GAO/HRD-88-55, Sept. 26, 1988).

[21]See Unemployment Insurance: Trust Fund Reserves Inadequate (GAO/HRD-88-55, Sept. 28, 1988), pp. 107-108. In addition, P.L. 102-318, enacted in 1992, extended emergency UI benefits to 33 weeks.

exempt from coverage. The Congress has also modified regulatory requirements by passing specific riders to appropriations bills that are reauthorized on an annual basis. For example, the Congress has annually passed restrictions on health and safety inspections of workplaces with 10 or fewer workers since the late 1970s and, more recently, restrictions on the implementation of prevailing wage laws affecting construction helpers.

Federal agencies are also a major source of regulatory change—they issue regulations that precisely define the responsibility or obligations of employers and others under the law. The Department of Labor issues regulations under a number of laws affecting the workplace. For example, Labor issues regulations under OSHA that set specific limits on employee exposure to hazardous substances, such as asbestos and lead, and set out measures that employers must take to protect employees from exposure to these hazards.

Independent review commissions, administrative tribunals, and the courts also affect regulatory requirements by issuing decisions interpreting the law. For example, administrative law judges in Labor issue decisions on how various laws, such as FLSA and CWHSSA, should be applied to findings of fact.

Because of the frequency of administrative or judicial decisions, workers' rights and employers' compliance responsibilities are often changed even when the Congress infrequently amends those statutes and few agency regulations are issued. For example, the Congress amended the NLRA significantly only three times since its initial enactment in 1935 and NLRB has rarely promulgated regulations. However, cases brought before administrative law judges may result in changes to requirements affecting employers and employees; the body of case law developed by the NLRB in 1993 alone included more than 1,200 decisions.

For any individual statute, employers and employees must keep abreast of new developments from many of these sources of regulatory change. For example, employers and employees monitoring occupational safety and health regulations must be aware of the federal regulations issued by the Occupational Safety and Health Administration or the state regulations issued by federally approved state occupational safety and health programs. In addition, they must review the regulatory implications of decisions reached by the Occupational Safety and Health Review Commission, an independent agency that adjudicates OSHA enforcement actions, and the consequences of federal court decisions regarding OSHA's

regulatory authority, its regulations, enforcement procedures and other issues.

Statutory Coverage Varies Primarily by Employer Size and Industry

The coverage provisions of the major statutes comprising the framework vary by a number of different criteria, including industry, employer size, or whether the employer is a federal contractor. (See figure 2.3.) For example, 8 statutes restrict their coverage only to particular industries or occupations. MSHA covers the mining industry alone while the Railway Labor Act covers airlines and rail carriers. Six statutes and 1 executive order only cover employers who have federal contracts or contracts financed with federal funds, and of these, 4 statutes also restrict coverage to employers with federal contracts in specific industries or involving the employment of particular occupations.

Of the 26 statutes and 1 executive order comprising the framework of federal workplace regulation, 16 generally cover employers regardless of their industry or whether or not they are a federal contractor. Of these 16 statutes, there is significant variation in coverage according to an employer's size. All of them cover employers with 100 or more employees and 14 statutes cover employers with 25 or more employees. However, only 9 cover employers with fewer than 15 employees, and 1 of these 9 statutes—ERISA—only covers employers with some form of pension or other welfare benefit plan. (See figure 2.4.) Employers with fewer than 15 employees account for a significant proportion of all employers in the nation. For example, in 1991, 85 percent of all work establishments employed 14 or fewer employees.[22]

The number of federal statutes or executive orders covering a particular employer may vary significantly, given the restrictions in coverage of all 26 statutes and 1 executive order. For example, a federal contractor with over 100 employees who provides tax-qualified pension and health benefits could be subject to up to 23 of the 26 statutes and 1 executive order.[23] In contrast, those employers with 14 or fewer employees who

[22]Establishments are places of work and not employers, so this figure overstates the number of employers with fewer than 15 employees.

[23]This assumes that the employer is not involved in the agriculture, mining, airlines, railway, or trucking industries, and has construction, supply or service contracts with the federal government. Such an employer would be excluded from MSHA, MSPA, the anti-retaliatory provision of STAA, and the Railway Labor Act but covered by all others.

provide no tax-qualified benefits, are not organized by a labor union, and are not federal contractors could be covered by as few as 6 statutes.[24]

[24]These would be FLSA, OSHA, the Unemployment Compensation program, the Employee Polygraph Protection Act, IRCA, and the Equal Pay Act. The NLRA would also cover the employer to the extent that employees engaged in concerted activity.

Figure 2.3: Significant Limitations in the Applicability of the Major Statutes and Executive Order Comprising Framework of Federal Workplace Regulation[a]

Statute	Minimum number of employees necessary for coverage	Federal contractors: Federal contract necessary for coverage	Federal contractors: Minimum contract size necessary for coverage	Federal contractors: Limited to specific industry	Major exemptions
Labor Standards					
FLSA	1				Individuals employed in agriculture by immediate family; employees in executive, administrative, or professional capacity, or outside salesmen
Davis-Bacon Act	1	✓	$2,000	Construction	
Service Contract Act	1	✓	$2,500	Service	
Walsh-Healy Act	1	✓	$10,000	Contractors in materials, supplies or equipment	
CWHSSA	1	✓		Employers of laborers and mechanics	
MSPA	1			Commercial farms	Individuals employed by immediate family members, labor unions, nonprofit organizations, any custom combine, hay harvesting, or sheep shearing operation
Benefits					
ERISA[b]	1				
COBRA	20				
Unemployment Compensation	1				
FMLA	50				
Civil Rights					
Title VII	15				Religious corporations, associations, educational institutions, or societies with respect to the employment of individuals of a particular religion to perform work connected with the entity
Equal Pay Act	1				Religiously oriented schools or universities; Indian reservations
EO 11246	1				
ADEA	20				Employees under age 40
ADA[c]	25				
Rehabilitation Act (Section 503)	1		$10,000		
Anti-retaliatory provision-STAA	1			Trucking	Trucks carrying fewer than 10,000 pounds and fewer than 10 passengers including the driver

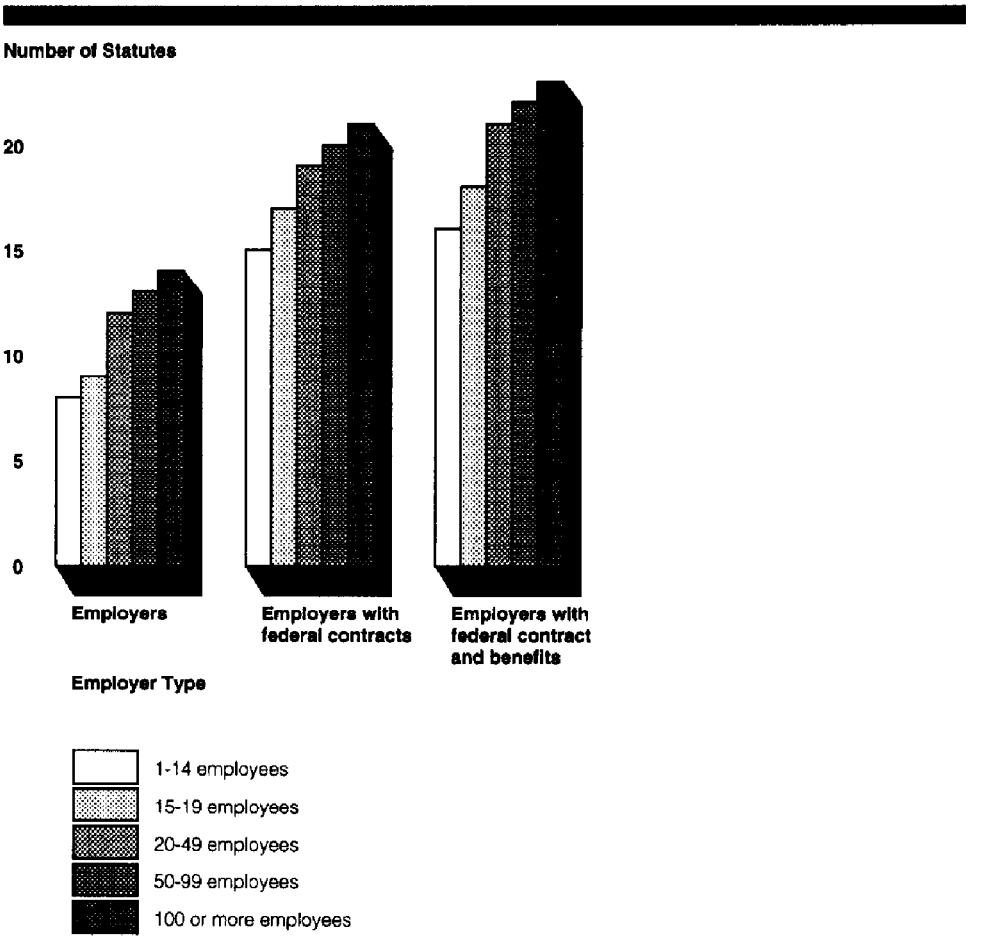
Statute	Minimum number of employees necessary for coverage	Federal contractors: Federal contract necessary for coverage	Federal contractors: Minimum contract size necessary for coverage	Limited to specific industry	Major exemptions
Occupational Health and Safety					
OSHA	1				Working conditions in industries regulated by other federal statutes, for example, mining and nuclear energy
MSHA	1			Mining	
Drug Free Workplace Act	1	✓	$25,000		
Labor Relations					
NLRA	1				Agricultural laborers, domestics, employees covered by the Railway Labor Act, management employees, confidential employees, and supervisors
LMRDA	1				
Railway Labor Act	1			Rail and air carriers	Rail operations in coal mines
Employment Decisions: Hiring and Separations					
Polygraph Protection Act	1				Experts under contract to the Departments of Defense or Energy working on atomic energy; selected employees in security and pharmaceutical industries
Veterans' Reemployment	25				
IRCA	1				
WARN	100				
Total		7	6	8	

[a]Many statutes are complex and contain a multitude of requirements, rights, and remedies. The information presented has been simplified for illustrative purposes.

[b]ERISA covers employers with any number of employees. However, the employer must have provided some form of health, pension or other welfare benefit plan to their employees.

[c]Applies to firms of 15 or more after July 26, 1994.

Figure 2.4: Coverage of Major Statutes and Executive Order Comprising Framework of Federal Workplace Regulation, by Employer Size



Note: Figure excludes four statutes that apply only to specific industries but are not federal contractors.

Some statutes cover employers of a particular size but exclude particular classes of employees working for those employers. For example, FLSA, which provides for the payment of minimum and overtime wages by every employer engaged in interstate commerce, excludes professional, administrative and executive employees from certain provisions of the act. NLRB decisions have excluded management and confidential employees from coverage of the NLRA, even when their employer is covered by the act. FMLA allows employers to exclude from coverage the highest paid 10 percent of a covered employer's staff under certain conditions.

Variations in the statutory definition of employer and employee and judicial interpretations of these decisions further complicate the coverage issue. Some statutes, like WARN, exclude part-time employees when determining the number of workers affected to satisfy the statute's provision on coverage. Temporary workers employed by the temporary employment agency and not by the client employer do not count for coverage of the client employer. In other cases, employers may classify workers as independent contractors.[25] Independent contractors are generally not counted to meet the minimum coverage limitations of most statutes and client employers do not have to withhold payroll or social security taxes from the contractor's pay.

Sanctions for Violations and Employee Recourse Vary Widely Among Statutes

The major statutes of the framework of federal regulation include a variety of sanctions for violation of their provisions. The most common sanctions are civil nonmonetary remedies, such as reinstatement, hiring, promotion, injunction, or debarment; 24 of the 26 statutes and 1 executive order provided for either debarment or some other nonmonetary remedy, such as an injunction, or the reinstatement, hiring or promotion of an employee. (See figure 2.5.) Other common statutes provided for monetary sanctions. For example, 17 statutes permitted the reimbursement of unpaid wages to the affected employee.

[25]Independent contractors are self-employed workers who provide services. Employers must notify the Internal Revenue Service (IRS) when they classify an employee as an independent contractor. The IRS applies a set of criteria for determining whether a worker is an independent contractor. See glossary.

Figure 2.5: Enforcement Sanctions and Remedies Available Under the Major Statutes and Executive Order Comprising Framework of Federal Workplace Regulation[a]

Statute	Civil monetary penalties (maximum)	Other civil sanctions: Monetary remedies: Unpaid wage	Other civil sanctions: Monetary remedies: Liquidated or punitive damages[b]	Other civil sanctions: Equitable remedies: Debarment	Other civil sanctions: Equitable remedies: Other	Criminal sanctions (maximum)
Labor Standards						
FLSA	$10,000 for each child labor violation; $1,000 for each repeat or willful violation of minimum wage or overtime requirements	✓	✓		✓	6 months imprisonment for repeat; $10,000 or 6 months imprisonment for willful violations
Davis-Bacon Act		✓		✓	✓[c]	
Service Contract Act		✓		✓	✓[c]	
Walsh-Healey Act		✓	✓	✓	✓[c]	
CWHSSA	$10 for each day of violation	✓	✓	✓	✓[c]	$1,000 and/or 6 months imprisonment
MSPA	$1,000 per violation	✓			✓[d]	$1,000 and/or 1 year for willful violation; $10,000 and/or 3 years for repeat and willful violation
Benefits						
ERISA	Up to $1,000 per day for reporting requirements Up to 5% of the amount of a prohibited transaction; up to 100% if not corrected within 90 days[f]				✓[e]	$5,000 and/or imprisonment of 1 year; $100,000 for a corporation
COBRA	$100 per day for failure to comply with notice requirements				✓[e]	
Unemployment Compensation[g]						
FMLA	$100 for each willful violation of posting requirements	✓	✓		✓[h]	
Civil Rights						
Title VII	$100 for each willful violation of posting requirements	✓	✓		✓[h,i]	State or local criminal penalties may apply

Statute	Civil monetary penalties (maximum)	Other civil sanctions: Monetary remedies: Unpaid wage	Other civil sanctions: Monetary remedies: Liquidated or punitive damages	Other civil sanctions: Equitable remedies: Debarment	Other civil sanctions: Equitable remedies: Other	Criminal Sanctions (maximum)
Equal Pay Act	$100 for each willful violation	✓	✓		✓[h]	6 months for report violations
EO 11246		✓		✓	✓[i]	
ADEA		✓	✓		✓[h]	$500 for interfering with authorized EEOC representative and/or up to 1 year imprisonment for repeat interference
ADA		✓	✓		✓[h,i]	State or local criminal penalties may apply
Rehabilitation Act (Section 503)		✓		✓	✓[i]	
Anti-retaliatory provision-STAA		✓			✓[h]	
Occupational Health and Safety						
OSHA	$5,000 to 70,000 for each willful violation; up to $70,000 for each repeat violation; up to $7,000 for serious, other-than-serious, or posting violation or for each day of failure to abate hazard				✓[j]	$500,000 for a corporation and $250,000 and/or 6 months imprisonment for an individual for a willful violation that results in death of employee; 1 year if prior conviction $200,000 for an organization and $100,000 and/or 6 months imprisonment for an individual for false statements in a required certified document
MSHA	$50,000 for each violation; $5,000 per day for failure to abate hazard; miners may be fined up to $250 for willful violation of smoking standards				✓[k]	$500,000 for an organization and $250,000 and/or 1 year imprisonment for an individual for willful violation; 5 years for repeat and willful violation $500,000 for an organization, $250,000 and/or 5 years imprisonment for making false statements in a required certified document
Drug Free Workplace Act				✓	✓[l]	

Statute	Civil monetary penalties (maximum)	Other civil sanctions: Monetary remedies: Unpaid wage	Other civil sanctions: Monetary remedies: Liquidated or punitive damages[b]	Other civil sanctions: Equitable remedies: Debarment	Other civil sanctions: Equitable remedies: Other	Criminal sanctions (maximum)
Labor Relations						
NLRA	[k]				✓[i]	[k]
LMRDA	$10,000				✓[i]	$10,000 and/or 5 years imprisonment for violation of fiduciary provisions, $10,000 and/or 1 year imprisonment for willful violation of bonding provisions
Railway Labor Act						$20,000 and/or imprisonment of 6 months for offense and each day of willful refusal to comply
Employment Decision: Hiring and Separations						
Polygraph Protection Act	$10,000	✓			✓[h,j]	
Veterans' Reemployment		✓			✓[c,h]	
IRCA	$1,000 per violation for misrepresentation of material fact or failure to perform obligation(s); $10,000 for hiring illegal aliens				✓[d]	$3,000 and/or imprisonment of 6 months for each violation
WARN	$500 per day	✓				
Total		17	8	7	24	
	14	17		24		13

[a]Many statutes are complex and contain a multitude of requirements, rights, and remedies. The information presented has been simplified for illustrative purposes.

[b]Liquidated damages is a monetary estimate of actual damages, punitive damages is damages as a form of punishment that is above the actual loss suffered.

[c]Breach of contract provisions invoked.

[d]Suspension of revocation of special employment privilege.

[e]Elimination of tax deductibility of plan contributions.

[f]Employers may also be fined 20 percent of the amount recovered from a fiduciary violation pursuant to a settlement agreement or court order involving the Secretary.

[g]Sanctions targeted top noncomplying state UI program.

[h]Reinstatement, hiring, or promotion.

[i]Restraining order or injunction.

[j]Abatement of hazard; imminent danger situations.

[k]Miners can be ordered withdrawn from the mine until hazard is abated.

[l]There are penalties for interfering with the performance of the duties of a member of the NLRB or its agents.

More than half (14) of the 26 statutes and 1 executive order provide for the assessment of civil monetary penalties in the event of a violation. Maximum penalties range from $1,000 to $70,000. However, in many cases the average assessed penalties are far lower. For example, in 1993, the maximum penalty permitted for a serious OSHA violation was $7,000 and for a child labor law violation it was $10,000. However, the average penalty actually assessed for a serious federal OSHA violation was $750 and for a FLSA child labor violation, $909. Similarly, 13 laws provided for criminal sanctions in the event of egregious violations. However, at least in some cases, these are rarely applied. For example, FLSA criminal sanctions for child labor violations have never been successfully pursued and, since 1989, OSHA has referred fewer than 50 cases for criminal action, only a small percentage of which have been pursued by the Justice Department.

Enforcement and Due Process Provisions Include Alternative Dispute Resolution

The major statutes and the executive order comprising the framework of federal workplace regulation provide various means for employees and agencies to enforce regulatory sanctions as well as corresponding protections for employers. (See figure 2.6.) These enforcement and due process provisions vary for employees and employers and from statute to statute. About half of the statutes permit employees a private right of action—the right to sue in court on their own behalf to obtain relief outside of the enforcement agency's action. Depending on the statute, employers also have a variety of protections and recourse, including informal meetings and negotiation before any adverse action, administrative hearings, and appeals to court. In addition, some statutes and implementing regulations provide for alternative dispute resolution procedures such as informal conferences and mediation.

An employee's ability to initiate a private right of action varies by statute. (See figure 2.6.) Some statutes give employees the unqualified right to sue the employer. For example, more than half (17) of the 26 statutes and 1 executive order we reviewed give employees the right to sue in court on their own behalf to obtain relief outside of the enforcement agency's action. However, some of these statutes qualify that right—3 of these 17 laws require the employee to exhaust administrative remedies before instituting a lawsuit. Another 4 of these 14 statutes extinguish the employee's right of action if the cognizant federal agency institutes court action on their behalf.

Although they may not permit employees to sue in court to obtain relief outside of the agency's action, another 8 of the statutes in the framework give employees the right to challenge an employer's action by filing a complaint with an administrative agency. The administrative agency is empowered to conduct a hearing and issue an order ruling on the issues raised in the complaint. Under these statutes, the employee has the right to then appeal unsatisfactory decisions.

The major statutes and the executive order comprising the framework of federal workplace regulation provide different time periods within which employees may file lawsuits in court. Many statutes such as the FLSA, FMLA, and the Employee Polygraph Protection Act generally permit a private right of action to be filed within two or three years of the employer's alleged violation.[26] Under the FLSA, section 503 of the Rehabilitation Act and the ADA, employees may not sue until notified by the appropriate agency that the agency will not be filing suit on their behalf, which may be too late to fall within the period the employee is allowed to sue. A couple of statutes, such as ERISA which allows 6 years in some cases and the Veterans' Reemployment Rights law, which explicitly provides that no time limit applies, provide a longer time period to file in court.

Where a statute requires the exhaustion of administrative remedies, an employee has a much shorter time to institute court action—generally a significant amount of time already has been consumed in the administrative process. These times also vary from statute to statute. For example, under Title VII, the ADEA, and the ADA, an employee has 90 days to act after the exhaustion of administrative remedies; under OSHA 60 days; and under MSHA 30 days.

[26]Under the FLSA, section 503 of the Rehabilitation Act and the ADA, employees may not sue until notified by the appropriate agency that the agency will not be filing suit on their behalf, which may be too late to fall within the period the employee is allowed to sue.

Employers also have a variety of protections and recourse. Employers have the right to an administrative or judicial appeal, or both, under some statutes. Those statutes that authorize an agency to take action against an employer without going to court, such as the NLRA and the Davis-Bacon Act, either explicitly provide or have regulations that provide the employer with the right to have a hearing. Employers (as well as employees) generally have the right to appeal adverse agency decisions to court. The time within which such appeals are required to be instituted varies from 10 days to 60 days, depending on the statute.

Some statutes also provide for alternative dispute resolution procedures—informal means of resolving problems before pursuing traditional legal avenues. A few of the statutes we reviewed require the enforcing agency to attempt to informally settle proposed charges against an employer before proceeding with formal action. For example, Title VII, ADEA, and ADA require the Equal Employment Opportunity Commission to attempt to eliminate alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Regulations under some statutes, such as OSHA and MSHA, provide an opportunity for the employer to request an informal conference to discuss a proposed citation and/or penalty. Two other statutes—the NLRA and the RLA, have provisions that encourage parties involved in labor disputes to use conciliation and mediation to resolve disputes.[27] Even when the statute or regulation does not require such negotiation, many agencies generally are anxious to negotiate settlements with employers.

[27]Title II of the NLRA established an independent agency, the Federal Mediation and Conciliation Service, to settle such disputes through conciliation and mediation.

Figure 2.6: Forms of Recourse Under the Major Statutes and Executive Order Comprising Framework of Federal Workplace Regulation[a]

Statute	Private right of action available to employee	Private right available after exhaustion of administrative remedies	Number of days to initiate formal appeal of administrative decision
Labor Standards			
FLSA	✓[b]		15
Davis-Bacon Act	✓[c]		30
Service Contract Act			30
Walsh-Healey Act			20
CWHSSA	✓[c]		30
MSPA	✓	✓	30
Benefits			
ERISA	✓	✓[e]	30 for reporting and disclosure violations
COBRA	✓	✓	60
Unemployment Compensation			
FMLA	✓[b]		15
Civil Rights			
Title VII	✓	✓	
Equal Pay Act	✓[b]		
EO 11246			20
ADEA	✓[b]		
ADA	✓	✓	
Rehabilitation Act (Section 503)			20
Anti-retaliatory provison-STAA			30
Occupational Health and Safety			
OSHA			15
MSHA			30
Drug Free Workplace Act			
Labor Relations			
NLRA	✓[d]		
LMRDA	✓[e]		
Railway Labor Act			10
Employment Decisions: Hiring and Separations			
Polygraph Protection Act	✓		
Veterans' Reemployment	✓		
IRCA	✓		
WARN	✓		
Total	17	5	

[a]Many statutes are complex and contain a multitude of requirements, rights, and remedies. The information presented has been simplified for illustrative purposes.

[b]Private right of action extinguishes if federal agency brings suit on employee's behalf.

[c]Private right of action exists only when government has withheld insufficient amounts from contractor to pay underpaid employees.

[d]Private right of action exists only to enforce the terms of a collective bargaining agreement.

[e]Private right of action is against labor organizations only.

Employers Must Comply With Many Paperwork and Recording Rules

Virtually all of the statutes and the executive order comprising the framework of federal workplace protections require employers to comply with various paperwork or recording duties. These responsibilities take many forms: requiring that forms be completed or filed with particular federal agencies, collecting particular business data such as payroll records (FLSA), filing workforce profile information (Title VII of the Civil Rights Act), or recording occupational injury data (Occupational Safety and Health Act). (See figure 2.7.) Fourteen statutes require employers either to post notices in the workplace informing employees of their rights or provide written notice or information to employees when particular events occur. For example, employers must post a notice approved by the Secretary of Labor explaining a worker's rights and responsibilities to take family and medical leave under FMLA, and must issue a revised Summary Plan Description to all plan participants whenever there is a material change in a pension plan under the Employee Retirement Income Security Act. In addition, every statute and executive order which requires records to be kept requires the retention of records for at least 1 year, but more typically for 3 years or more.

Figure 2.7: Reporting and Disclosure Requirements of Major Federal Workplace Statutes and Executive Order Comprising Framework of Federal Workplace Regulation[a]

Statute	Reporting/disclosure requirements: Forms must be completed or filed with agency	Payroll or other business data must be collected	Notices must be posted in workplace	Data on injuries and/or complaints required	Years records must be maintained
Labor Standards					
FLSA		✓	✓		2-3
Davis-Bacon Act	✓	✓	✓		3
Service Contract Act		✓	✓		3
Walsh-Healey Act		✓	✓		2-3
CWHSSA	✓	✓			3
MSPA	✓	✓	✓		3
Benefits					
ERISA	✓		✓		6
COBRA					
Unemployment Compensation	✓	✓			3
FMLA		✓	✓		2-3
Civil Rights					
Title VII	✓	✓	✓	✓	1-3
Equal Pay Act		✓	✓	✓	2-3
EO 11246	✓	✓	✓		
ADEA		✓	✓	✓	1-3
ADA		✓	✓	✓	1-3
Rehabilitation Act (Section 503)			✓	✓	1
Anti-retaliatory provison-STAA					
Occupational Health and Safety					
OSHA	✓		✓	✓	5[b]
MSHA	✓		✓	✓	1[c]
Drug Free Workplace Act	✓		✓	✓	1-5
Labor Relations					
NLRA			✓[d]		
LMRDA	✓				5
Railway Labor Act			✓		
Employment Decisions: Hiring and Separations					
Polygraph Protection Act	✓		✓		3
Veterans' Reemployment					
IRCA	✓	✓	✓		3
WARN			✓[e]		
Total	13	14	21	8	

[a]Many statutes are complex and contain a multitude of requirements, rights, and remedies. The information presented has been simplified for illustrative purposes.

[b]Records of employee exposures must be retained for 30 years because of long latency periods associated with chronic illnesses.

[c]Records of mine accidents, injuries, and illnesses must be retained for 5 years.

[d]Posting required in certain remedies.

[e]Although WARN has no requirements for posting information, it requires the notification of all affected employees and other selected parties of a reduction in operations.

Small Employers Reported More Contracting Out as Part of Compliance Strategy

Employers we talked to typically had different compliance strategies depending on their size, with smaller employers more likely to contract out key workplace requirements than larger employers. Small employers we interviewed more generally relied on outside legal staff; contracted out their health, pension, and other benefits administration; and often relied on contractors for payroll processing. Some employers of all sizes relied on unions to administer their health and pension plans as part of their collective bargaining agreement. In contrast, large employers reported that they generally maintained in-house human resource departments, health and safety units, and legal staff to comply with many workplace requirements.[28] The larger companies were also more likely to administer their own health and welfare plans. However, some ERISA pension benefit requirements were considered to be so complex that even many larger companies said they contracted out for compliance duties, such as the filing of Form 5500.

Partly because of the complexity of the requirements, some large employers we talked to who were federal contractors relied on outside expertise to administer their affirmative action plans, including their annual affirmative action reports, for compliance with the Office of Federal Contract Compliance Programs.

[28]Although many maintained their own legal staff, some larger employers also reported selectively using outside legal staff for certain types of litigation.

Workplace Regulation Important but Not Sole Regulatory Concern for Many Employers We Interviewed

Employers that we interviewed said that federal workplace regulation was an important business concern but often not the most important regulatory issue they faced. Small employers often reported primary concern with nonfederal or nonworkplace regulations,[29] while larger employers were more likely to focus on federal workplace regulation.[30] Most of the employers we spoke to said that nonworkplace or industry-specific regulations were cited as at least as important or more important than workplace regulations. This was true regardless of employer size, although workplace issues were generally less of a concern for smaller employers. Employers of all sizes and union representatives we talked to believed that federal workplace regulations were significant but other types of regulations equaled or overshadowed their importance. A small diner owner said that state health and county liquor regulations are predominant concerns:

"Without a liquor license and a clean bill of health, I'd be out of business."

Several employers were more concerned about the difficulties of complying with environmental or tax regulations than with workplace regulations. For example, a small homebuilder explained how state and county environmental laws cause "the biggest headaches" for him:

"Worksites have had almost daily inspections of erosion control and solid waste... Subcontractors and utility companies often create erosion problems at sites...then we're held responsible...Hazardous chemical regulations are so strict and detailed that even haulers must have state permits. This makes it very difficult and expensive to get rid of waste. The Clean Air Act causes confusion because of conflicting signals. We used to burn trash but now we don't know what to do with it."

And a medium-size insurance company told us:

"Workplace regulations are a fact of life that we can easily live with. They are doable and pose very few problems. Insurance industry regulations and tax requirements are much more complicated and take more time to administer than workplace regulations. One employee's time is devoted solely to calculating the amount of insurance funds that can be built up on a policy; any miscalculation results in hefty IRS fines."

[29]The exemption of smaller employers from many federal workplace statutes—COBRA, WARN, FMLA, and many civil rights laws—may contribute to this perspective. See figure 2.4 for the statutory coverage of the framework of federal workplace regulation.

[30]Some large employers we spoke with pointed out that because we interviewed human resource personnel, they placed great significance on workplace-related issues. They said that their tax or legal departments might have provided a different view.

Unions made similar comments about employers where they represented workers. For example, an official from an international union said:

"In most of our industries, employers would quickly give in on all of the workplace regulation, and in other areas too, if they could get out of a lot of the environmental rules they consider overly restrictive...they'd give their right arm for this."

Large employers in labor intensive industries like hotels, retail trade, and temporary employment said that they were more likely to identify federal workplace regulation as the most significant set of regulations affecting their operations. With more employees and high turnover, these employers must process and maintain more paperwork on their staff and train more management employees. Officials at a large retail company, for example, described how:

"The cost of administering workplace regulations is very great when you have a large number of stores and are spread out over many states. It is a truly monumental task for labor-intensive firms like ours which also have high turnover; you are always training management and employees to do new things or bringing others up to speed on items which haven't changed."

High staff levels can make compliance with workplace regulations more of a task. As officials from a large hotel employer described it:

"We must deal with many employees and all the individual behavior that comes with that. As a result, compliance is time-consuming and expensive."

Employers, Unions Support Workplace Protections but Have Concerns With How Laws Are Carried Out

"I don't believe that regulation is bad...However, unintelligent or inconsistent regulation—or the smallest amount of badly enforced regulation—is worse than no regulation at all."—An official from a small securities company

The employer and union representatives we interviewed strongly supported the general goals of the statutes comprising the framework of federal workplace regulation. However, they often had concerns with how agencies carried out these laws. Employers, in particular, believed that the current regulatory approach is largely adversarial, characterized by poor communication and limited access to information, unfair and inconsistent enforcement, and vague laws and regulations that increased the potential for lawsuits. Union representatives generally agreed with this assessment but also thought that many agencies failed to be sufficiently vigorous in their enforcement efforts. Some employers and unions perceived existing regulations as not keeping pace with the implications of the growth of new business structures, work practices, and employer-employee relationships.

Employers and Unions Voice Support for the Statutes and Objectives of the Current Framework

The employers and union representatives that we interviewed generally supported the statutory objectives as well as the actual statutes comprising the framework of federal workplace regulation. These objectives address many different aspects of workplace activity, ranging from the prohibition of employment discrimination on the basis of race, color, religion, sex, or national origin; the maintenance of a safe and healthful workplace; to the protection of workers' rights to organize and bargain collectively.

Employers we interviewed generally supported most major workplace statutes. For example, many employers, both large and small, stated that OSHA is necessary to protect workers. A human resource official from a large retail company had a typical response:

"OSHA is a very important statute and has really contributed to the protection of employees in the workplace...The enactment of OSHA has really forced many corporations to change their health and safety practices in the workplace."

A representative of a large electronics manufacturer who was involved in safety and health issues was:

"...absolutely convinced that OSHA's rules have reduced workplace injuries and illnesses....For the company, OSHA provides a baseline standard with which the firm can judge its own program."

Figure 3.1 highlights employer comments supporting the objectives of many workplace statutes.

Union officials that we interviewed also supported most workplace statutes, believing that they have led to major improvements in the protections enjoyed by workers and have provided a baseline of benefits upon which workers could improve upon through collective bargaining agreements. They believed that federal workplace regulations provide union members with protection when bargaining agreements do not address a particular workplace issue and that they may also provide model language for incorporation into collective bargaining agreements.

Figure 3.1: Selected Employer Comments Supporting the Framework of Federal Workplace Regulation

Large oil refinery:
EEO laws have helped overcome a major problem in society over the years...These laws push and guide managers and supervisors to treat workers fairly.

Large retail company:
It is necessary to have civil rights laws on the books to protect employees from employment and other forms of discrimination.

There has to be some regulation of pension plans, especially in cases of bankruptcy.

FMLA is a good law. People should not lose their jobs for circumstances outside of their control, like being pregnant or being sick.

Large electronics company:
Federal civil rights laws are generally beneficial both for us and the nation. A diverse workforce is a healthy and positive thing and workers need protection against discrimination in the workplace.

Wage and hour regulation is necessary to protect low wage employees from abuse.

WARN is a good act; notification is the right thing for employers to do.

Joint construction partnership:
Discrimination laws are needed to explain that culturally we just are not there yet and we need to have these laws in place to deal with these issues.

Medium-size textile company:
It is only fair and equitable to give people notice [under WARN] that the business is going to shut down; it allows them to make plans for their future.

Small diner owner (who recently paid a $10,000 fine for an overtime violation):
Overtime rules are very important to protect the employee.

Small homebuilder:
The intent of ERISA is good: to encourage saving.

Inadequate Communication With Regulatory Agencies, Employers and Unions Say

Employer and union representatives that we interviewed described a generally poor level of communication with many government agencies. More specifically, they identified problems in getting accurate compliance information from agencies, inadequate notification regarding proposed agency enforcement actions, and inadequate lead times for regulatory compliance.

Many Interviewed Employers Unaware of Some Workplace Requirements

Many of the employers that we interviewed, particularly small employers, exhibited a lack of awareness and knowledge of many workplace requirements. Large employers, however, were also unsure of some rules and had difficulty getting information. This lack of confidence and difficulty in getting accurate information contributed to a general employer fear of being sued. Several unions we talked to also mentioned difficulty in getting accurate information from government agencies and believed that workers were unaware of their workplace rights.

Many of the small employers we visited indicated a lack of knowledge or awareness of many workplace regulatory requirements. For example, a small software design firm commented on a number of different regulatory areas including minimum wages and civil rights:

"We're not sure what the various laws under this area require, especially with respect to overtime pay. We do hire temporary college students on an hourly basis. The firm pays these students well above minimum wage but does not pay time and one-half for overtime...We are concerned about [the] uncertainty of the specific requirements under each of the laws and that we might not be in compliance because of ignorance...Information from the federal government on what the requirements are and what must be done to comply would be extremely helpful."

In fact, the FLSA generally requires overtime pay for employees who work over 40 hours per week, including college students. The same company incorrectly assumed that they were not covered by NLRA:

"The company is of the opinion that the National Labor Relations Act does not apply to our employees. Because the company is employee-owned (all but one employee owns company stock), it is our position that the NLRA doesn't have any effect on the firm."

Although larger employers generally said they were aware of most workplace requirements, no employer was confident that it knew all of the rules that applied to its business operations. A comment typical of those we heard came from an official at a medium-size textile firm regarding civil rights compliance:

"...Although we don't think that we have any problems in complying with the federal laws, we are never really sure that we are in compliance...It is difficult for smaller companies such as ours to understand all the details in the laws and to be sure that we are correctly interpreting them."

Some union officials also noted lack of knowledge about some regulatory areas. For example, officials from a local union representing health care employees described confusion they had about WARN regulations:

"We do not understand the concept of WARN, and find it very confusing...Recently we had a nursing home close and it had around 100 employees. Because we had no access to the home's employment records to determine the exact number of employees, we weren't sure if WARN applied or not."[31]

These union officials believed that an additional problem was that workers were unaware of their rights under these laws. As officials from a local union representing employees in the hotel and restaurant industry explained:

"Employees are often unwilling to file overtime or minimum wage violation claims...Part of the problem is that there is inadequate enforcement of these claims. However, many employees and some employers are simply unaware of their rights and responsibilities under the law."

Some Employers Misinformed About Workplace Requirements

Even some employers who believed that they were fairly knowledgeable about workplace regulations indicated a misunderstanding or had misinformation about certain regulatory requirements. For example, an official at a large transportation company believed that OSHA required employers to record every single work-related injury, even those requiring no more than a band-aid. In fact, OSHA requires employers to record only

[31]In this instance, the union was unaware that neither the WARN act nor the implementing regulations provide any pre-layoff discovery process; the only alternative to obtain the needed information is to sue. Confusion over WARN regulations also exists in the employer community. For example, our report, Dislocated Workers: Worker Adjustment and Retraining Notification Act Not Meeting Its Goals found that one reason for confusion may be the general language in the provisions and lack of clear implementing regulations. Despite Labor's efforts to clarify the law, many employers surveyed still found the rules for determining the number of workers laid off to trigger notification unclear. See GAO/HRD-93-18 (Feb. 23, 1993), pp. 30-31.

substantial injuries, such as those resulting in death, lost workdays, or medical treatment other than first-aid. A construction management company believed that child labor laws did not apply to them because the firm does not hire anyone under 17. However, provisions of the FLSA prohibit anyone under 18 from working at hazardous occupations with tools such as power saws, which are often used in construction.

Employers, Unions Describe Difficulty Getting Compliance Information

Employers and union representatives we interviewed reported difficulty getting information from regulatory agencies.[32] In addition, they believed that they sometimes received incomplete or inaccurate information from the relevant agency. This makes compliance difficult. For example, an official from a large oil refining company had a problem getting information from OSHA:

"Maintaining the injury and illness records required by OSHA is largely not a problem. The difficult part is determining which illnesses are OSHA-recordable illnesses...We feel we cannot get a correct answer from OSHA on this: we can call 3 levels there and get 3 different interpretations."

In another case, a medium-sized fruit packaging firm eager to participate in OSHA's Voluntary Protection Program (VPP) told us that they could not get OSHA to return their telephone calls about the program.[33] After interviewing a diner owner who had questions about his responsibilities under the Employee Polygraph Protection Act (EPPA) and FMLA, we contacted WHD of the Department of Labor in Philadelphia to obtain this compliance information, with little success.[34] Most small employers we visited agreed with the comment of an official from a small securities

[32]Many federal agencies currently make some efforts to disseminate compliance information to the public. For example, Labor recently began publishing a handbook on employer compliance requirements for many of the statutes it enforces. Several of its divisions, such as OSHA and WHD, make information pamphlets on compliance requirements for the statutes they enforce available to the public and issue fact sheets and press releases regarding their programs. In addition, many statutes require employers to post information on workers' rights and responsibilities in the workplace. See figure 2.7.

[33]OSHA's Voluntary Protection Program (VPP) is designed to encourage and reward employers who increase workplace safety and health on their own and promote cooperation between employers, employees and OSHA. In return for meeting certain guidelines for self-inspection and increased worker education and training, employers are not subject to unannounced inspections from OSHA. See glossary.

[34]The owner wanted to know whether he could require his employees to take polygraphs and under what conditions he had to provide family leave benefits. The WHD official said that although his agency had jurisdiction over these laws and he was the correct person to contact, he could not provide any information concerning restrictions on the use of polygraphs. He was unable to determine whether EPPA permitted restaurants to require employees to take polygraph tests. He was also unable to provide any compliance information about the FMLA.

company about their experience with workplace regulation and its associated costs:

"For small business, there's no access to information on federal and state regulations. Small businesses don't deal with regulations often enough to become familiar with them; they don't have the time to study every applicable law and regulation. Accessing even minimal information is difficult and hiring a private attorney is very expensive."

Unions[35] also described difficulties obtaining information. Officials from a local union representing hotel and restaurant workers talked about their difficulties getting information from regulatory agencies:

"The local has difficulty getting information from state OSHA[36] regarding the OSHA violation and inspection record of particular employers, even though these are public records."

A local representing health care workers had similar problems:

"We went to DOL to get information on a pension plan when we were making an organizing effort. We finally had to get the information under the Freedom of Information Act which meant that it took about 6 to 9 months to get."

That poor agency communications contribute to a more adversarial relationship among government, employers, and unions is exemplified by comments from officials at a large electronics manufacturing company:

"There is a need for employers to get questions answered from DOL on workplace issues without fear of a compliance audit. For example, we can write to the state labor commissioner in California about labor standards regulations and other laws to get opinions on how to be in compliance. We don't believe that we could write to federal agencies without an inspector showing up to determine compliance."

[35]The worker representatives of the two nonunion labor-management workplace committees we talked to generally did not have much comment on most aspects of workplace regulation.

[36]Under the Occupational Safety and Health Act, states are permitted to operate their own OSHA programs. Although states operate these programs, the Department of Labor is responsible for approving state programs and monitoring states' performance to make sure that they remain "at least as effective" as the federal program. In addition, state-operated OSHA programs can receive up to 50 percent of their funding from federal OSHA. Our recent report, Occupational Safety and Health: Changes Needed in the Combined Federal-State Approach, found that OSHA's oversight of these programs has substantial weaknesses. See GAO/HEHS-94-10 (Feb. 28, 1994), p. 3.

Lack of Notification Reported on Purpose or Results of Agency Investigations

Some employers and unions we visited also illustrated what they believed to be agencies' poor communication efforts through their failure to inform employers and provide unions clear explanations of the purpose or results of particular investigation efforts in a timely manner. For example, officials from a medium-size mail order catalogue company said:

"PBGC responds quickly to mistakes, but always with form letters. When we try to contact them, there never seems to be anyone to talk to about the problem. The form letters are not very clear about what is wrong with the benefit plan."

In other instances, employers we visited alleged that some agencies would give misleading information. For example, an official from a large retailing company said:

"Occasionally, a federal Wage and Hour Division compliance officer may visit a store to check records and say that they are not investigating a specific complaint when they are actually investigating one. In other cases, WHD may enter a store and announce that they are investigating a complaint when in fact they are not."

Officials from a local union representing health care workers related this experience:

"The union filed a complaint that nurses were not getting paid for overtime worked...The Wage and Hour Division Office never reported its [investigation] results to the union...Now when the local has questions about hours, we feel we get better results by calling state officials."

Employers Say Inadequate Lead Times Hinder Regulatory Compliance

Some employers we interviewed also mentioned a problem with inadequate compliance lead times when an agency promulgates new regulations. In particular, employers noted a lack of adequate time to comply with the FMLA. It should be noted that the law itself, not DOL, specified a statutory deadline by which DOL regulations had to be issued. For example, benefits officials from a large hotel management company said:

"[Implementing] FMLA was a headache for us. Because we waited for DOL's regulations to be issued—it would have meant rework if we hadn't waited—we had only one month to implement the policy before it took effect. To comply by the deadline, we spent a lot of time, pulling people off their regular jobs for assistance."

An official from a large electronics manufacturer stated:

"...we had only two months to prepare for the law because the interim regulations only came out in June 1993 but we were required to be in compliance by August 1993. This short implementation period (coupled with our operating in states with their own medical leave laws) made it difficult for us to develop one FMLA policy for all of our employees."

Many Employers and Unions Interviewed Believe Enforcement Could Be More Fair, but for Different Reasons

Employers and union representatives interviewed generally believed that some agencies did not always enforce regulations fairly and consistently, although they sometimes disagreed about the actual problems with agencies' enforcement efforts. They indicated that certain agencies did not have the resources necessary to fulfill their mission effectively, had staff who were often poorly trained and ignorant of regulatory requirements, and applied rules in an inconsistent manner across the country. Many employers we interviewed believed that the agencies' adversarial approach to regulatory enforcement was exemplified in agency staffs' "gotcha" attitude, which often failed to consider employers' good faith compliance efforts. In contrast, union representatives believed that agencies were often not vigorous enough in enforcing existing laws, although they believed that some statutes did not have sanctions strong enough to deter violators.

Employers and Unions Identify Lack of Agency Resources as Contributing to Delays

While many employers and unions we interviewed praised individual staff and agency offices for their hard work and effort, they still believed that certain regulatory agencies lacked the resources and staff to ensure adequate or timely enforcement. They voiced the most concerns about OSHA and EEOC. A large oil refining company applied to be an OSHA VPP site one year ago but the paperwork is still not completed. The firm believes that the backlog on VPP applications is due, in part, to OSHA's lack of resources. Regarding EEOC, several employer and union representatives believed that a lack of staff contributed to an overwhelming caseload and delays in settling cases. This perception is consistent with our findings during a 1993 study that found that EEOC's responsibilities and workload had generally increased over the years and questioned the agency's ability to meet its statutory responsibilities.[37] A local union representing health care workers was concerned about the extensive amount of time it takes the NLRB to render decisions. Figure 3.2 illustrates employer and union representative comments identifying exemplary agency efforts to provide services, while figure 3.3 highlights employer and union representative comments on the implications of inadequate resources for strong regulatory enforcement.

[37]EEOC: An Overview (GAO/T-HRD-93-30, July 27, 1993).

Figure 3.2: Selected Employer and Union Comments Praising Exemplary Regulatory Agency Performance

Metal fabricator:
The state OSHA program is excellent and has been very useful in helping us comply with safety and health regulations.

Large hospital:
The WHD staff in our state are wonderful. They generally provide good information and are willing to answer questions on the telephone without having to know the name of the company. They need to have a public relations office, however, to inform the public. At the moment, you have to approach them.

Large paper manufacturer:
OSHA compliance officers are fair and competent...and knowledgeable...We praise the process safety management standard because of its development and substance. It is very well-written, easy to understand, based on sound management principles and provides a good model for how to operate. We would have had to design a process anyway.

Large oil refinery:
OSHA has allowed our staff to attend the Training Institute. This has been a very positive experience. The price is reasonable, and the courses are excellent...This is a good opportunity for industry representatives to discuss issues with OSHA's compliance officers in a non-adversarial way.

Large leasing company:
The best thing about OSHA is their free consultative service; it's one of the last of the good deals. The consultants are all former OSHA compliance officers so they're very knowledgeable.

Large auto manufacturer:
We believed the WHD staff were competent, cooperative and friendly. We have been inspected by WHD officials and have had only good experiences with them...The inspectors were very professional.

Local union representing health care workers:
The OSHA inspection process works well in unionized situations...OSHA will follow up on its inspections, write reports and provide us with copies of their reports.

Another local union representing health care workers:
The NLRB has nice, well-meaning staff. They would like to do the right thing and they work hard. They would like to see the law work.

Local union representing manufacturing workers:
EEOC prepared a technical assistance manual for use with respect to the ADA legislation...it was well laid out and quite helpful.

Figure 3.3: Selected Employer and Union Comments on Level of Resources of Regulatory Agencies

Large construction management company:
Federal OSHA will never have sufficient funds to conduct all necessary inspections or enough resources to conduct inspections on construction projects...Because OSHA is stretched so thin, inspectors cannot and do not check that frequently...As a result of this understaffing, small construction contractors cut corners and do sub-standard work because they know they won't get caught by OSHA inspectors.

Local hotel workers union:
EEOC is totally ineffective in enforcing the law and totally overburdened with its existing case load. It is very hard to get EEOC staff to work on a complaint quickly. EEOC staff routinely take the employer's word on complaints...The laws need more enforcement. More funding and staffing is needed for effective EEO enforcement.

Local union representing construction workers:
OSHA also tends to do inspections close to its area offices; this could be due, in part, to the fact that OSHA is understaffed. There are 6 inspectors for [our part of the state] with approximately 130,000 sites to inspect. It is easier [for OSHA] to inspect [in the city] rather than have to travel outside the city.

Large electronics manufacturer:
The biggest problem for us regarding civil rights is that both state and federal EEOC are swamped with complaints and don't have the resources to do their jobs effectively. We don't believe that EEOC typically investigates active complaints fully before it brings charges.

Medium-size food packer:
There are only two OSHA inspectors available to cover their area of our state. . . We would like to see more OSHA inspectors be available to help with improving safety operations.

Some Employers and Unions Interviewed Report Need for Additional Staff Training

Some employers and union representatives we visited also believed that certain enforcement agency staff are not trained well and not knowledgeable when dealing with various industries. EEOC and federal and state OSHA were most often mentioned. In one example, officials from a large transporation company discussed their view of EEOC staff:

"EEOC staff are not competent, professional, and are far below the standards of other government agents. There is a lot of staff turnover. This situation is consistent across states."

A large electronics manufacturer had two recent state health and safety inspections of several of the company's facilities. They describe the company's experience:

"In both cases, the quality of the inspection was poor. In both cases, we were cited for fairly minor violations and upon review, the citations were dropped by the state OSHA

program.... Although the agency is improving, they remain not as well trained as we would have hoped."

A safety and health official from an international electronics union who was generally positive about OSHA's regulatory efforts, still thought that additional training could improve the agency's effectiveness:

OSHA's settlements can be fair and well thought out. One settlement, for example, includes requirements for a labor-management committee and better standards...On the other hand, OSHA inspectors are not knowledgeable about our industry, but we don't expect them to be. For example, very few inspectors in the regions know enough about ergonomics to conduct a thorough investigation...OSHA officers need more training and education."

Some Employers Interviewed Report That Agencies Lack Consistency and Flexibility in Enforcement

Some employers we talked to expressed frustration with both the inconsistency of agency enforcement efforts and, conversely, the agencies' inability to tailor enforcement of the regulations to the specific workplace.[38] They noted inconsistencies across states, across agencies, or within a state between the federal and state regulatory agencies. The issue of inconsistent enforcement was raised by many employers with respect to OSHA, as illustrated by comments from this official at a large multi-state manufacturer:

"The interpretation of standards by inspectors will vary from region to region; some are stricter than others. Because there is no single, strict OSHA interpretation, inspectors can interpret the standards differently from state to state. We have been cited for a violation in one state that was acceptable in another state."[39]

A medium-size metal products manufacturer was frustrated by inconsistency within a single office:

"Inspectors inconsistently applied the same safety and health standards at different times. Different inspectors seemed to have different criteria as to what was considered safe or unsafe; the same inspector would change his mind from one visit to the next as to what was an acceptable practice and what was not. We now use a 'learn as we go' approach; we wait to respond to the results of state OSHA inspections."

[38]Agencies employ a variety of enforcement strategies for particular statutes. For example, MSHA generally inspects mines two to four times each year, while OSHA targets inspections to complaints, worksites in hazardous industries and certain other conditions. WHD enforces the FLSA child labor regulations by targeting inspections to complaints and specific industries and other criteria but enforces the FMLA and the Employee Polygraph Protection Act only in response to complaints. The NLRB and the EEOC enforce statutes under their jurisdiction by responding to charges.

[39]This comment covered different federal OSHA regions and offices as well as differences across state-operated safety and health programs, where some variation might be expected.

Many Interviewed Employers Believe "Gotcha" Attitude Discourages Constructive Relationship

Many employers we interviewed believed that some regulatory agencies, like OSHA, EEOC, and OFCCP have a "gotcha" attitude during their enforcement efforts. They indicated that this attitude fails to acknowledge some employers' good faith compliance efforts and inhibits a more constructive relationship in trying to resolve problems. These concerns are highlighted in figure 3.4.

Figure 3.4: Selected Employer Comments on Agency Attitudes Towards Enforcement

Large hospital:
OSHA has conducted several inspections at our facility, which we believe were done on a "gotcha" approach...The reports can be nigpling and ridiculous. The inspectors were determined to come up with findings on strict adherence of the standards, without considering the reasonableness of how the standards may apply in the situation...The hospital is not allowed to interpret the regulations and standards for the situations at hand. The standards are enforced too rigidly.

Medium-size fruit packing company:
[OSHA inspectors] found two small picky items to report and the company was fined. We find OSHA's approach to their inspection a "gotcha" attitude, irksome. We would like to see a more proactive involvement by OSHA to earnestly try to improve the safety conditions within the plant in a positive way.

Large employee leasing company:
An OSHA inspector found that the OSHA log entries were incorrect. Instead of citing one violation for the whole log, he cited every entry as a violation, resulting in 60 violations.

Large construction management company:
Due to the nature of the industry, we just cannot meet [OFCCP's] goals in one year. Even if you make a "good faith effort" you are at the mercy of the auditor. We do an extensive amount of monitoring to help meet the high standard. However, we never know which direction they are headed until audited.

Large transportation company:
EEOC's approach is wrong: they assume the employer is guilty, so employers must prove they're innocent. Their first question is always, "Would you like to talk settlement?" Instead, they should be asking for information on whether the employer is wrong or right. This approach is pervasive; I hear the exact same questions from EEOC in many cases.

Unions Interviewed Report Lackadaisical Enforcement From Some Agencies

Most of the union representatives we interviewed had concerns about regulatory agencies' enforcement efforts. They believe that agency enforcement is not sufficiently vigorous. In some cases, agencies do not respond to requests for inspections, in other cases union representatives believe that inspections are not thorough or that agency officials interpret standards to favor employers. Union representatives think this lack of enforcement makes workers reluctant to exercise their rights, such as

filing discrimination or wage violation complaints. Figure 3.5 illustrates union officials' views on regulatory agencies' enforcement efforts.

Figure 3.5: Selected Union Comments on Agency Attitudes Towards Enforcement

Large international union:
Labor fails to enforce the requirements of employers and labor relations consultants to report on activities intended to restrict employees' rights to bargain collectively.

We do not believe that PBGC did a good job monitoring and enforcing ERISA. They were very slow in carrying out their work and relied too much on IRS for monitoring and enforcement. We do not feel that Labor aggressively pursued fiduciary violations and in rare instances when they did, Labor only provided a "slap on the wrist" for misuse of pension fund assets.

Local union representing paperworkers:
We resolve all our civil rights complaints through out contract. We have never gotten a response from our state EEOC in spite of calling 10 times. The company tried to call also and was just as frustrated. We don't even see the EEOC as a resource and consider it irrelevant.

Local union representing carpenters:
There is no enforcement of prevailing wage determinations or anti-kickback provisions.

Local union representing manufacturing workers:
The lack of enforcement [under COBRA] is a significant problem, and we suspect the problem is due to understaffing. There are instances where employees were not notified of their right to continued benefits and other instances where health benefits were denied to entitled former employees.

Local union representing health care workers:
We feel that the Department of Labor (WHD) investigators did not conduct a good thorough investigation of an overtime complaint, and did not talk to the people we would have interviewed.

Local union representing hotel and restaurant workers:
A major problem with FLSA, as with other laws, is that employees are often unwilling to file overtime or minimum wage violation claims unless they are laid off, fired, or they quit. This is true regardless of whether the employee is a union member or not or whether the employee is an immigrant or not. Part of the problem is that there is inadequate enforcement of these claims.

EEO laws and the EEOC are important because the local doesn't have the resources to push through every civil rights complaint completely through its grievance procedure and must rely on EEOC to pursue these complaints. The problem with federal EEOC is primarily with its enforcement efforts. EEOC is totally ineffective in enforcing the law and totally overburdened with its existing case load. It is very hard to get EEOC staff to work on a complaint quickly. EEOC staff routinely take the employer's word on complaints and the quality of EEOC's staff varies.

Employers Interviewed Identify Concerns About Vague Laws and Regulations

Employers we interviewed identified concerns about vague language in laws and regulations that they believed hinder their ability to comply and leave them subject to lawsuits. Some employers that we interviewed mentioned difficulties with the regulations associated with new statutes like the FMLA and the Americans With Disabilities Act (ADA). They also had questions about the interpretation of various federal statutes. For example, employers were uncertain about the meaning of the term "reasonable accommodation" under the ADA. This lack of clarity, employers said, combined with the lack of understanding of federal regulations, contributed to a fear of being sued. Figure 3.6 highlights some of these concerns.

Figure 3.6: Selected Employer Comments on Vague Laws and Regulations

Large hospital:
We were initially delighted that such a law [FMLA] was being passed and have even spoken publicly in support of the law. However, as it was implemented the regulations were creating major problems. It is the only statute where we could not even understand the intent of the implementing regulations, let alone the detail.

Medium-size insurance company:
The terms and conditions of FMLA are unclear. After attending three seminars on the Act, [I'm] still unclear about what intermittent leave means and how to apply it. I believe the definition conflicts with "serious injury." For example, if someone needs to go to therapy on an intermittent basis (once a week), is that really a serious injury?

Large oil refining company:
[ADA's] lack of definition of reasonable accommodation is the biggest problem. The law is defined overly inclusively. We can accommodate what is normally thought of as a disability but the non-traditional disabilities (e.g., back problems) will be the difficult ones to accommodate. In general, industry is very concerned about the liability implications of the ADA's ambiguity.

Large temporary employment agency:
Regarding ADA, we are very uncertain about what is considered a disability. Is someone who is severely overweight disabled? Is a short person disabled if the job calls for stacking books in a high shelf?

Large hotel management firm:
The firm worries a lot about civil rights. Even if we do everything right, we are vulnerable. We might do a good job establishing intent and compliance but we're vulnerable to the final consequences even if the company does all it can....Employers bear the burden for individual employee choices. For example, a sexual harassment case arose at one of the local properties. It was an egregious case between a manager and a worker, both of whom had received training in sexual harassment. Headquarters sent people to the local hotel to investigate and determined that the manager clearly harassed the employee. We terminated the [manager]. The worker sued anyway. The company settled and ended up paying a substantial settlement...What did we do wrong? What could we have done to avoid it? We did everything we could.

There are grey areas regarding [FLSA] exemptions for our professional sales force: are they administrative (exempt) or professional?...Relying on our attorney for advice, we have decided, rightly or wrongly, that when in doubt, go with non-exempt status.

Employers Interviewed Say Most Paperwork Requirements Manageable but Sometimes of Limited Value

Many employers that we interviewed said that they had routinized most workplace-related paperwork requirements so that they posed little difficulty to their daily operations. Several also identified requirements, like OSHA's requirement to record data on workplace injuries, as having positive effects for their business or for society. However, many employers we interviewed also questioned the value of some requirements, despite their ability to comply, and viewed others, especially those regarding ERISA and FMLA, as particularly onerous, confusing, or expensive to meet.

Many of the employers had routinized procedures to such an extent that the requirements became an accepted part of doing business. For example, most of the employers we talked to said that, regarding FLSA payroll record requirements, they had automated payroll systems and viewed payroll recordkeeping as a routine clerical function. Most employers believed that the EEO-1 forms required by Title VII of the Civil Rights Act, state Unemployment Insurance program reporting forms, and the worker notifications triggered by WARN and COBRA did not pose difficulties.[40]

Employers also told us that they considered some paperwork requirements to be useful to their operations. Officials at a large paper manufacturer believed that maintaining OSHA-required injury logs was an important way to help prevent and investigate workplace injuries. Officials at a large hospital agreed, saying that they "would have created an injury log even if OSHA hadn't required it."

Health and safety staff at a medium-size auto parts manufacturing plant had similar views:

"We had no problems complying with the OSHA 200 injury and illness log...We believe that maintaining an OSHA injury log is a very important requirement and support it...."

However, the positive view of OSHA's injury reporting requirements was not universally shared. An official we spoke to at a large trucking company stated that, in his industry, although similar data must be reported to OSHA and the Department of Transportation (DOT), the forms are different, making more work for them. He said:

[40]Two employers with high employee turnover said they experienced some difficulties with COBRA. However, even here the problem was more the cost of providing the benefit rather than the paperwork requirements for administration. For example, a large hotel management company said that although "the paperwork is very cumbersome and confusing...they suffer a loss ratio of 800 percent....Workers who opt for the benefits are usually the sickest ones; financially, they kill us...As a low-paying industry with high turnover, COBRA requirements hurt us disproportionately..."

"The OSHA form 200 is burdensome and redundant. The state and DOT require similar reports that ask for many of the same things but all forms are just different enough that one won't suffice for the other...."

In other cases, many employers we interviewed either did not understand the purpose of some paperwork requirements or questioned their value in meeting the objectives of the law, even though they were able to comply fairly easily. For example, to complete the I-9 forms required by IRCA, employers we visited described how their staff checked identification documents, processed and maintained the forms, and incorporated the paperwork into their hiring process with little difficulty.[41] As one employer described it, "It's just something we have to do." Yet many of these and other employers questioned its value in deterring illegal immigration, like this official at a medium-sized mail order firm:

"[The I-9] seems like it doesn't mean much,...[Company] staff feel silly having to explain to new workers why it needs to be filled out....We'd love it if the law went away... although IRCA is not a problem to comply with,...it is a ridiculous law; it serves no purpose. We have never heard of anyone catching an illegal immigrant [through the I-9 requirement], and there are many migrant workers in the area."

Officials from a medium-size fruit packer echoed these sentiments:

"The rules serve absolutely no purpose other than to alienate our workers...IRCA is a joke, just requiring employers to jump through hoops to enforce the law. Even though we are fairly sure that there are some illegal aliens, there are no 'undocumented' workers...We know of a flea market about 8 miles away where anyone can get a social security number and card for $20 each. When we place documents that we know for certain are official next to these, we cannot tell them apart...As much as 50 percent of our field workers may be illegal."

Some employers also questioned the Material Safety Data Sheet (MSDS) requirement of OSHA's Hazard Communication Standard.[42] Employers told us that they generally had no problems collecting MSDSs and maintaining accessible files on them. Even so, several employers could not understand the value of maintaining these MSDSs when, in their opinions, they were either too technical for workers to understand or useless to workers who

[41]The Immigration Reform and Control Act of 1986, which amended the Immigration and Nationality Act, requires all employers to complete an Employment Eligibility Verification Form, or "I-9," to verify the employee's identity and eligibility to work in the United States.

[42]OSHA's Hazard Communication Standard requires that employers maintain a file of MSDSs for the hazardous chemicals they use in their businesses. MSDSs contain information on particular characteristics of chemicals, including their chemical and common names, physical characteristics, hazards, recommended handling precautions, and emergency treatment.

were illiterate or only read Spanish.[43] For example, the officials at the medium-sized fruit packing company told us:

"The MSDS sheets...are only available in English and some of the workers at the company only speak Spanish....[and] some are not literate in any language. This local area...is 70 percent Hispanic...The words [on the MSDSs] are very technical...If the worker cannot read the MSDS they are missing key information that may be needed in an emergency and may end up hurting other workers."

A large oil refinery official voiced similar concerns:

"The MSDSs are not useful to the employees on the floor. They are useful to the safety specialists but the technical parts of them are beyond what the operator can understand and are just filed away. For all of their effort, workers don't get many benefits from this information."

Officials from a local union representing workers in paper mills where strong chemicals are used said:

"MSDS sheets show how to handle certain chemicals, but they don't tell what the limits of exposure are. The workers cannot understand the MSDS. They do help some but they could help a lot more. They have too much information and are provided about too many chemicals. As a result, they are too often ignored when they are needed. It's like crying wolf."

Employer's negative views concerning MSDSs were not unanimous. The health and safety staff of a large auto parts manufacturing plant liked the MSDS requirements and used them in their employee training programs on the handling of hazardous substances. Company officials believed that the MSDS helped to improve the employee awareness of workplace hazards and a safer workplace.[44]

Employers described some paperwork requirements that they found to be particularly burdensome. These included paperwork requirements

[43]In a 1991 report, we cited several studies which found that many MSDSs are written in language far above the average worker's reading ability. From a representative survey of employers in selected industries, we also found that 55 percent of all employers who received MSDSs believed that all or almost all of them were too technical for the typical employee. See Occupational Safety & Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991), p. 5.

[44]The MSDS may provide the beneficial effect of removing chemical hazards from the workplace. We found that despite MSDSs' weaknesses in format and language, almost 30 percent of employers surveyed said they replaced a hazardous chemical with a less hazardous one because of information they received on an MSDS. See Occupational Safety and Health: Employers' Experiences in Complying with the Hazard Communication Standard (GAO/HRD-92-62BR, May 8, 1992), pp. 6-7.

concerning FMLA, the Office of Federal Contract Compliance Programs, and ERISA. According to these employers, such recordkeeping can be cumbersome and costly, and many reported concerns about tracking FMLA's intermittent leave provisions.[45] For example, officials from a medium-size mail order company told us:

"[The paperwork requirements of] FMLA will require some extra work.... The complicated part of the paperwork is the rolling period aspect of intermittent leave."

Officials from a large hospital described their concerns about the FMLA's paperwork regarding the tracking of intermittent leave:

"Recordkeeping under FMLA has the potential for being [a] tremendous [burden] for us. Each hour of leave used (vacation, sick, etc.) must be designated beforehand (not retroactively) as to whether it is part of the employee's FMLA allotment or not. It was imposed by an accounting rather than a human resource management mentality...It is a nightmare of paperwork that will be potentially extremely costly and fundamentally alters the relationship of the hospital with its employees."

Many employers also told us about concerns with paperwork requirements associated with the annual affirmative action report necessary to meet OFCCP federal contractor regulations. A large paper manufacturing company official had this to say:

"Much paperwork is required under Executive Order 11246 for our affirmative action plans, but the process is antiquated (from the 1960s) and should be done away with, or modernized and streamlined. Our company has over 70 different facilities. Each facility must prepare an affirmative action plan and the plan is at least 3 inches thick. EEO-1s are fine and there should be some awareness to the political correctness of a company's actions, but the information [required] in the affirmative action plans is silly, and [comprises] artificial categories."

Employers we talked to typically described completing these forms as cumbersome, complicated, and time-consuming.

[45]FMLA states that under some circumstances, employees may take intermittent leave—taking leave in smaller amounts than the 12 weeks permitted by the act through a reduction of the normal weekly or daily work schedule. Intermittent leave is allowed when it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work. See glossary.

Employers we interviewed reserved their most serious concerns for paperwork required by ERISA.[46] Many believed that the law and associated requirements were extremely complex. A medium-sized insurance company told us they pay a contractor $25,000 annually to administer the company's pension plan. It used to manage the plan in-house but:

"Because the requirements were so complicated and we were required to have an actuary for certification, we were forced to contract out.... We are concerned about the extensive amount of time it takes to complete them."

Employers, small and large, believed ERISA's statutes and requirements were too complex to be administered in-house. Many contract out for help and expertise. A large hotel employer voiced concerns about this body of regulation:

"We wonder if anyone ever looks at the 5500 forms. It requires lots of information, including irrelevant information, that we can't understand the need for...We spend a lot of money complying with ERISA, much of it to consultants. If our consultant makes a mistake on any of the financial or paperwork requirements, the employer (and the employees) ends up paying."

Employers and Unions Say They Want More Input in Agency Processes

Some employers and most union officials that we interviewed said that they wanted greater input on parts of the agencies' regulatory processes. Employers sought more input on the standard setting aspects of the regulatory process.[47] In contrast, union officials more often sought inclusion in aspects of the agency's enforcement efforts and negotiations over penalties and other sanctions. They identified OSHA and FLSA as particular areas of concern. They believed that this lack of input generally led to inferior regulation and reduced protection for workers. Figure 3.7 illustrates employer and union concerns about exclusion from various regulatory processes.

[46]Among other paperwork duties, ERISA requires employers to complete several forms, including the Form 5500 series for Labor's Pension Welfare Benefits Administration (PWBA) and the Internal Revenue Service, and Summary Annual Reports and Summary Plan Descriptions for PWBA. See glossary.

[47]Under the Administrative Procedure Act, agencies are generally required to solicit public comment before publishing a final regulation, including changes in existing regulation. However, agencies are not required to have public hearings. Under this act, some specific statutes provide for hearings on rules.

Figure 3.7: Selected Employer and Union Comments on Input Into Regulatory Process[a]

Large electronics manufacturer:
We have had some minor problems with OSHA over the provisions of several regulations. The bloodborne pathogens standard is an example of regulations which are confusing...The standard ignored a number of common sense real life questions. OSHA could have written a better standard had it consulted with us. ...Our biggest concern about OSHA is that like a lot of other federal regulatory activities there may be lots of dialogue with one industry to the exclusion of others. They don't look at, or consult with, a broad enough section of the regulated community.

Large paper manufacturer:
Regulations under WARN are very obviously not written by someone who has actually been involved in a business situation, but [are] a result of the bureaucratic process. They are unrealistic from a business standpoint.

Large hospital:
Regarding FMLA, DOL should include employers rather than CEO's of Fortune 500 companies to come up with the details of the law. The problem is not in the basic philosophy but in the implementation.... Let employers write the implementing regulations.

Local union representing construction workers:
OSHA will have a conference with the employer to discuss what citations have been made based on the inspection. This will likely include fines levied against the employer for safety violations. But very often they negotiate and fines end up being reduced. The union may object but other interested parties such as the union are not able to be participants in these informal conferences.

International union:
A few years ago, [we] did face some pension difficulties with [one] pension plan as the company went into bankruptcy. In this situation, the Pension Benefit Guaranty Corporation and the company struck some deals regarding the pension plan which where not always favorable to the workers and neither the union nor other worker representatives had any say in those agreements.

[a]The bloodborne disease standard establishes for employees exposed to blood, infectious materials, and other body fluids that contain bloodborne pathogens (see glossary). This was one of OSHA's largest rulemaking efforts; the agency received public comments from thousands of participants.

Some Employers and Unions Believe That Regulations Are Failing to Address New Workplace Developments

Some employers and union representatives we interviewed also reported the inability of current workplace rules to regulate different forms of business organizations, work practices, or employer-employee relationships without causing employers some difficulty or failing to protect workers adequately. Some employers cited examples including the application of existing civil rights protections to temporary employees, agencies' inability to address alternative corporate structures for compliance purposes, and recent NLRB decisions covering the use of labor-management workplace committees in nonunion settings. Several union officials that we talked to also described problems that they believed resulted in some workers not having adequate workplace protections. In particular, they reported current IRS regulations governing the classification of employees as independent contractors, which they believe are too lax in permitting employers to reclassify employees as independent contractors to avoid making various pension, unemployment insurance, workers compensation, and other payments.

Officials from a large temporary employment company had concerns regarding their rights and liabilities as a "co-employer" under civil rights laws:

"The question of co-employment liability is a definite problem for us. Generally, we try to work with the customer to make sure that all laws and regulations are being met. This does not always work. Last year, for instance, we were named in a civil lawsuit filed by a temporary employee [we had referred] against another company. The woman filed a suit [against the client company] for an act that discriminated against her because [of her race]. [The client company] said it was not the employer and that we were responsible. Although the issue of responsibility was never clearly defined by the court, the court said the client company was the co-employer and liable [in this instance]. However, we felt we should have never been named because the employee never reported the incident to us and there was no way for us to rectify the situation."

Some employers are developing forms of organization that are based on functional operation rather than geographic location. However, because some agencies do not recognize those forms of organization, the employers may experience additional regulatory difficulties. For example, officials from a large electronics manufacturing company said:

"...One problem with OFCCP is that it requires us to provide information on a geographic basis. However, our company operates and hires employees on a business group basis.... The company is organized by business groups or [type of] operations rather than by geographic site. Personnel in our manufacturing or fabrication group work with each other

across each geographic location, as do [our] chip design and software groups. Thus, at any one geographic location or site, the members of a particular group will actually be in closer contact with members of their business group at other geographic locations than with members of other groups at their own geographic site...OFCCP does not take into account a firms' corporate structure in placing its paperwork requirements on companies.... This results in an additional data collection burden on us. Further, it may make us appear statistically out of compliance with OFCCP affirmative action requirements when we really are in compliance..."

Some employers and union officials we interviewed had comments related to the regulation and the growth in the number of independent contractors. Two employers described a growing tendency of employees voluntarily terminating their employment to become independent contractors but then maintaining their health benefits through their previous employer for the entire COBRA benefit period. Although they believed that such actions could increase employer's health care costs, both employers did not believe that it was a major problem. However, an official from an international union had a concern with the application of the current IRS definition of independent contractor:

"...Many large firms in our industry are increasingly laying off craft and technical workers and rehiring them as independent contractors. This permits the companies to avoid making pension contributions as well as [avoid] paying a variety of other taxes (Unemployment Insurance, social security, etc.). Individual employees can file with IRS for a determination of employee status. In many cases in our industry, IRS has ruled that the workers are not independent contractors. However, employees have to know their rights and find out how and where to file a petition. In addition, unions or other third parties are unable to file with IRS for employee status determinations."

Finally, many employers throughout the nation have been using some variation of quality circle or total quality management teams to improve workplace productivity and communications. However, many employers interviewed said that recent NLRB case decisions like Electromation have raised questions as to whether such committees are "employer-dominated unions" and, thus, illegal under the NLRA.[48] They said they were uncertain as to what constitutes legal cooperation between workers and management.

[48]Two recent NLRB decisions (Electromation and Dupont) have ruled that certain types of labor-management committees, in certain situations—for example during a union organizing drive—violate section 8(a)(2) of the NLRA which prohibits the formation of employer-dominated "company" unions. See glossary.

Employers and Unions Urge Greater Service Orientation From Regulatory Agencies

"...Good regulation requires four things: (1) access to information on the regulations, (2) clarification of grey areas, (3) agency dialogue with the regulated population, and (4) good enforcement...."—An official from a small securities company

The employer and union representatives we interviewed urged regulatory agencies to develop a more service oriented approach by making information more accessible, improving educational outreach to employers, workers, and unions, and allowing greater input into agency standard setting and enforcement efforts. Several employer and union representatives suggested more staff and training for regulatory agencies to improve agencies' service orientation. They also identified various forms of alternative dispute resolution, including mediation and arbitration, as potentially useful vehicles to reduce workplace conflict. Employers and union representatives also suggested legislative changes to workplace statutes. Although many employer and union representatives we interviewed called for some reform of the National Labor Relations Act, the two groups have different perspectives on the provisions to be changed.

Employers, Unions Interviewed Say Better Access to Agency Information Needed

Many employers and union representatives we interviewed had recommendations for improving employer and worker access to regulatory information. They urged that agencies provide better access to information in many different regulatory areas, including civil rights, occupational health and safety, family and medical leave, and pensions. Employer and union representatives we visited had many suggestions on how to provide this access, including

- establishing toll-free hot-lines, the use of computer bulletin boards, software, and disks to transmit regulatory information and assist employers in developing their own regulatory policies;
- setting up information offices with staff who would be available to answer questions, provide education and outreach services, and issue regularly published newsletters on regulatory developments; and
- making the Federal Register and guidance associated with regulatory requirements more readable, and issuing regulations and related information in languages in addition to English.

Employers, Unions Interviewed Say Increased Collaboration in Regulatory Process, Greater Outreach Effort Needed

Many employers and unions we visited suggested that government agencies could foster greater compliance by increasing the amount of technical assistance they provide to employers and educating workers more effectively about their rights. Several employers and unions also urged that agencies collaborate more closely by allowing for greater input by union and employer representatives during the regulatory standard setting and enforcement processes.

Improved education and technical assistance was identified by employer and employee representatives as one way to foster greater collaboration between regulatory agencies, workers and unions. Several employers we visited recommended an expansion of OSHA's Voluntary Protection Program (VPP). Other employers suggested getting greater input during the regulatory process beyond public comment from smaller businesses, writing regulations in clearer more understandable language, making existing standards more streamlined or performance oriented, expanding resources for training and education for workers and employers, and improving interagency coordination. Most of the suggestions from employers and union representatives involved OSHA, although some targeted other agencies.

Union representatives we talked to identified increasing worker and employer knowledge about their rights and responsibilities under the laws that would foster compliance and fair enforcement. A local union representing health care workers told us:

"The best way of assuring that civil rights and other laws are enforced properly is to educate employees of their rights."

An official from an international electronics union added:

"Education is crucial: the only way to compensate for the lack of personnel—which is not going to change—is to expand educational activities. If outreach and education were sufficient and employers were educated, there would be no need for on-site consultations."

Union representatives also mentioned that union input into the enforcement of OSHA, FLSA, and ERISA would be desirable. Like employers, most suggestions from the union representatives we interviewed focused on OSHA where they sought greater labor participation in discussions on citations and penalties. One union official representing paperworkers sought more inclusion in the settlement process:

"We don't like how we are left out of the process after the inspection has been made, even though we may have been involved in initiating the process—filing the complaint. The only input we are currently allowed is on the abatement time. We should be allowed to participate all the way through the process: we should have input into the remedy, the settlement process."

A local union official representing health care workers felt strongly that there should be more and direct union involvement in the procedures for settling wage and overtime claims for workers.

Some Employers Interviewed Suggest Streamlining Statutes and Agency Consolidation

Some employers believed that streamlining the statutes themselves could reduce regulatory confusion, especially for small employers. One employer we visited suggested that the Congress reexamine the number of agencies that regulate the workplace with the aim of coordinating federal workplace regulation both within and across agencies. However, another employer believed that because of the wide variety of workplace regulations and the need for detailed knowledge of particular regulations and how they apply to different industries, agency consolidation could actually impede agency performance and regulatory oversight.

Some employers we talked to suggested that the Congress review some statutes in order to make the provisions more uniform. They believe that uniformity would make it easier for employers to understand their responsibilities and comply with them. As officials from a construction management company explained:

"The various lawmaking bodies need to provide clear direction. For example, a discrimination claim plays out differently under the various acts. Employers act pro-actively or defensively because there are so many issues to consider. It becomes virtually impossible to know them all. If you were a small employer, you would be entirely overwhelmed. As a result, employers end up with interpretative battles at the agency level and the civil level."

One employer believed that consolidating agencies into a single agency overseeing workplace regulations could reduce the amount of workplace regulation. Officials from a large electronics manufacturer said:

"There are too many different agencies and laws regulating the workplace...Congress should look to consolidate some of these agencies and streamline some of the many federal statutes in a more rational manner. An example of the variation in regulation is the large

number of posting and notices employers must comply with. These notifications come from many state and federal government agencies and can fill up an entire plant wall."

However, another employer disagreed with this assessment, fearing that agency consolidation could erode even the current level of knowledge of agency staff. Officials from a large auto manufacturer explained:

"Agency consolidation would be a step backwards...The workplace is not overregulated; abuse of the laws must be reduced. You'd get an agency that was a jack of all trades and a master of none....What is really needed is to further increase the expertise of each group and refine their duties...Consolidation would only make it a lot worse."

Many Agencies Need More Staff and Training, Employers and Unions Interviewed Say

Some employers and employee representatives suggested that within the current structure improved training for agency staff and increased staffing and resources could improve the regulatory process. Several employers and unions recommended that EEOC staff be given additional training to improve their case handling and provide EEOC with additional staff resources. They believe that such increases could increase EEOC's effectiveness; employers also believe it would help them handle civil rights complaints.

Several employers stated that EEOC staff currently do not have sufficient personnel and training to do their jobs properly. For example, an official of a large transportation company indicated:

"EEOC needs to better train its workers, be fair and reasonable, ask for only necessary documentation when they open a case, and reduce turnover somehow."

A large retail employer had a similar opinion, believing that state EEO staff were typically not well-trained and could benefit from additional training and staff.

Officials from a large international union agreed that agencies such as OSHA, EEOC, and WHD need more resources and better trained staff to be effective. A health and safety official from a large international union stated:

"OSHA lacks the personnel to fulfill its regulatory mandate. With only 1,100 [federal] inspectors, there is no way they can enforce regulations in so many workplaces."

Like employers, union representatives cited the need to reduce EEOC's overwhelming caseload and expedite the resolution of cases. In a typical example, representatives of a local union of hotel workers noted that EEOC was "...totally overburdened with its existing caseload" and said "More funding and staffing is needed for effective EEO enforcement." Officials from a local union representing construction workers believed that WHD needed more resources to conduct prevailing wage surveys effectively under the Davis-Bacon Act. They said that WHD wage surveys are based on incorrect data, resulting in inaccurate prevailing wage determinations. Our recent report found that wage determinations were based on low-quality data and that the average age of a wage survey is more than 7 years.[49]

Some Employers and Unions Identified Alternative Dispute Procedures as Useful to Resolve Workplace Conflict

Several employers we interviewed discussed their experiences with various forms of alternative dispute resolution to resolve workplace disputes, including binding arbitration and mediation, that could help to reduce lawsuits. Some employers we talked to established company programs to resolve workplace disputes; others have used existing mediation services, like the Federal Mediation and Conciliation Service (FMCS) and industrywide arbitration procedures. These employers believe that alternative dispute resolution practices show promise in protecting workers and generally supported their expansion to avoid lengthy litigation. Most union officials believed that encouraging the use of binding arbitration during the negotiation of first contracts would reduce workplace conflict and better protect workers' rights.

One employer we interviewed had established an internal binding arbitration procedure to resolve certain types of workplace disputes like terminations. Officials described a procedure they use where any employee who has been terminated has three days within which he or she can appeal the firing to an internal peer review panel.[50] Under this procedure, workers can appeal their terminations within 3 days by choosing one of two panels to hear their appeal—one panel is composed of six workers and one manager, another panel is composed of three senior managers. Most workers choose the worker-dominated panel. The workers who sit on the panel are chosen randomly by the company.[51] Workers employed on the same work team as the terminated employee are

[49]Davis-Bacon Act (GAO/HEHS-94-95R, Feb. 7, 1994), pp. 2, 3, and 6.

[50]The panels did not adjudicate other types of workplace disputes like sexual harassment or discrimination.

[51]Participating employees' names are randomly selected. Selected employees are not required to participate.

not allowed to sit on the panel. A company official described a typical hearing:

"An administrative staff member (management person) presents the case to the panel as to why the person was terminated. The employee has an opportunity to rebut. A question and answer period follows. The panel members then vote in a secret ballot to either uphold or reinstate the [worker]. Reinstated [workers] receive back wages and their old job. The decisions of the panel are binding and cannot be overridden by the company. The entire process takes about two hours."

In 1993, the company held about 80 panels. Although the panel system was not established to discourage workers from filing suits, company officials believe that it probably reduces litigation somewhat. They indicate that such procedures hold promise for expansion and point out that court decisions on issues raised by such panels are comparable to those reached through formal binding arbitration.

Some employers we interviewed also suggested that some form of binding arbitration be utilized to resolve workplace disputes. For example, a representative of a large electronics manufacturer stated:

"We believe that employees typically do not do well relying on individual civil suits to obtain redress...Some sort of binding arbitration procedure or a 'labor court' which would resolve complaints more quickly would be more effective in protecting workers' rights. A more specialized approach to labor law is needed; employees should not have to rely increasingly on litigation to exercise their rights in the workplace."

The official from a small securities firm who served on industry arbitration panels supported the idea of an industrywide arbitration panel, but believed that his industry's procedure as currently structured did not work effectively on employment discrimination cases.[52] He believed that this was because the arbitrators often have no understanding of the civil rights

[52]Through the Federal Arbitration Act of 1925, the securities industry has a long-standing practice of using mandatory binding arbitration as a legislated alternative to litigation in the resolution of industry and employment-related disputes. A registered brokerage representative files a discrimination complaint for arbitration with a Self Regulating Organization. These organizations, such as the New York Stock Exchange and the National Association of Securities Dealers, operate and regulate markets in the securities industry and enforce standards of conduct for member firms. They require registered representatives to file a U-4 form that sets certain conditions of employment, including the mandatory use of arbitration to resolve all disputes that cannot be settled with their companies. Federal and state courts have upheld the legality of U-4 forms: signatories must undergo mandatory arbitration in lieu of court litigation. The organization selects arbitrators to serve on an arbitration panel. Arbitrators are classified as "industry" arbitrators—professionals from the industry associated with a member firm, such as retirees, attorneys, or accountants or "public" arbitrators who are not from the industry. Panel members review evidence from both parties and render a decision based on their views of the case. These decisions are usually final and binding.

laws that protect workers from discriminatory practices in the workplace before coming to their current employer:[53]

"Arbitration is very effective when it focuses on industry practice issues but not when it comes to discrimination cases. Some of the arbitrators and panelists are industry people who are very familiar with securities but know nothing about [employment] discrimination...Moreover, the briefs prepared for arbitrators are usually short because everyone is so familiar with securities issues. But in discrimination cases, short briefs are insufficient to fully educate arbitrators and provide enough information for a fully-informed decision. More detail and preparation time are needed. The result is that people don't get fair judgments because no one knows the law, yet the complainants can't get satisfaction outside this process."

Several union officials we talked to also suggested that Congress amend the NLRA to require binding arbitration during the negotiation of a first contract at a newly organized bargaining unit. As one official from an international union explained:

"Even after a workplace is organized it is very difficult to get a first contract. Only about a quarter of all newly organized workplaces get a first contract. A requirement of binding arbitration in the event of a bargaining impasse would ensure that employees receive a collective bargaining agreement without having to resort to a work stoppage or other type of workplace conflict."

Some employers suggested a greater regulatory reliance on mediation to resolve civil rights and other workplace conflicts to avoid the high costs of litigation. For example, officials from a large hotel management company reported that they had some success using a nonbinding mediation process to avoid civil rights lawsuits. They recommended the expansion of such procedures as a means to resolve workplace disputes, for example, making EEOC require mediation as a practice before litigation.[54]

[53]Our recent report, Employment Discrimination: How Registered Representatives Fare in Discrimination Disputes (GAO/HEHS-94-17, Mar. 30, 1994), found that the Securities and Exchange Commission does not know whether the industry is fairly and impartially resolving discrimination disputes. Arbitrators are not assigned to panels on the basis of subject matter expertise. When considering employment or discrimination cases, it may be appropriate for the panel to include at least one arbitrator with expertise in employment or discrimination law. See GAO/HEHS-94-17, pp. 3, 9, and 12.

[54]EEOC already requires conciliation before litigation. Conciliation involves an agency official facilitating an agreement between the two parties; mediation requires a non-agency official to assist the parties in reaching an agreement.

A few employers we interviewed had taken advantage of existing alternative dispute resolution services like those offered by the FMCS.[55] These employers were generally positive about FMCS or had constructive suggestions to improve its services. For example, officials at a large retail department store company said:

"We often deal with mediators from the Federal Mediation and Conciliation Service during contract disputes and have found them very useful in resolving contract difficulties."

An official from an international electronics union agreed:

"FMCS staff have been very valuable during negotiations and strike situations. This has been true especially for major disputes like some of the bargaining rounds we've had...."

Although their experience was less positive, officials from a large oil refining company believed that FMCS provided a useful function and "could provide a better service if they became specialists in certain industries...."

Employers, Unions Interviewed Suggest Legislative Changes in Some Areas

Employers and union representatives we interviewed recommended legislative changes in a number of different areas. Larger employers generally had more suggestions than smaller employers. Although many employers had concerns about current labor law's treatment of labor-management committees, they generally supported existing law. Union representatives' greatest legislative concern was with reform of the NLRA.

Both employers and employee representatives we interviewed had suggestions for amending legislation in many regulatory areas. Smaller employers, perhaps because they are not covered by as many laws, typically had fewer and less specific suggestions for legislative changes than larger employers and many of their recommendations addressed state rather than federal workplace laws. For example, owners of a small commercial construction company suggested changes to their state's unemployment insurance law, while officials from a small securities company wanted to amend recent state health insurance legislation. The owner of a small homebuilding company urged reform of his state's workers' compensation program.

Larger employers we interviewed had many suggestions for amending many workplace statutes, such as workers' compensation and

[55]Employers and unions engaged in bargaining under the NLRA may request the services of FMCS to resolve disputes.

unemployment insurance laws. A number of suggestions also addressed issues of federal preemption of state laws (FMLA and FLSA), expanding employers' scheduling flexibility regarding the use of alternative work schedules (FLSA) and reducing potential civil rights lawsuits. Some large employers, while concerned with federal workplace regulation, favor federal preemption of state regulation. These employers said they preferred one policy or requirement covering their employees in all states. This is evident in their views on family and medical leave policy and OSHA.

Multi-state employers were more likely to favor federal workplace regulation over state workplace regulation; several cited family and medical leave[56] as a good candidate for federal preemption. For example, officials from a large hotel management company complained:

"Family and Medical Leave Act compliance is inefficient because of the inconsistency across states. It's hard for a multi-state firm to comply with inconsistent state policies. It requires more administrative effort and is cumbersome.

"We have had to generate several different forms to cope with the variety of regulations. We would like to see the federal government 'own' the policy and preempt state laws. The Family and Medical Leave Act should be the standard throughout the country."

Officials from a large paper manufacturer agreed:

"When the federal law conflicts with the state law, it just adds a layer of difficulty for the employer and it is costly. Having federal pre-emption would be better."[57]

This multi-state employer also identified OSHA as another statute that should have federal preemption. They were troubled by states that:

"...have their own way of doing things, making it difficult for the company to develop and monitor a single corporate policy. It is only about 6 to 10 states that differ markedly but that drives us crazy...Some states, for instance, require firms to record an illness from hearing loss at a decibel level that differs from federal standards. Because our statistics are based on the latter, we must keep two sets of records...And keeping up with the changes in both federal and state regulations is very burdensome."

[56]FMLA does not supersede state medical leave laws that are more "generous" than the federal statute. See figure 2.2.

[57]Some smaller employers preferred state law over federal statutory coverage. For example, officials from a medium-size fruit packing company preferred the state family leave law to FMLA because the state law did not require employers who offer health benefits to continue providing those benefits to workers taking leave. They believed that while offering health benefits puts them at a competitive disadvantage with other packers who did not provide any benefits, having to pay these additional health costs under FMLA puts them at an even greater disadvantage.

Union officials also had recommendations for modifying workplace laws, many of which concentrated on expanding coverage of existing laws to smaller employers and part-time employees, expanding the magnitude and duration of existing benefits, and providing workers and unions with more input in pension administration. Union officials sought greater participation in OSHA's settlement process than is now allowed, and supported current congressional efforts to reform the Occupational and Safety and Health Act.

Many large employers and union representatives we visited suggested amendments to NLRA that would improve labor-management relations. Unions generally mentioned changes that would expedite certification procedures, prohibit certain management practices, increase penalties, and reduce delays. However, many employers focused on legislative changes that would reduce NLRB restrictions on the use of labor-management workplace committees and often opposed changes suggested by the unions.

The union representatives we visited identified labor law reform—amendment of the NLRA—as their most important area of legislative change. Union representatives we talked to were virtually unanimous in stating that the NLRA currently was not protecting workers' rights to organize. Unions mentioned the inadequacy of existing penalty violations that are compounded by lengthy delays in enforcement. In response, they suggested that the Congress amend the act to permit a card check certification process similar to one used in several Canadian provinces to protect workers' rights to organize without coercion, increasing the penalties for unfair labor practices, establishing some form of binding arbitration in the event of an impasse during first contract negotiations, and expanding access rights to employees during organizing drives.

Union representatives also described problems facing unionized workers from employers' use of striker replacements, including their use to punish strikers. To address these concerns, most union representatives we interviewed urged the Congress to pass the Workplace Fairness Act, which would prohibit the use of striker replacements.

Employers' perspectives were more mixed regarding labor law reform. Most small employers interviewed had no experience with the NLRA and often were not familiar with the law. Some of the larger employers felt comfortable with existing law, with some expressing strong opposition to

the changes proposed by the unions. Some employers with unionized employees had less difficulty with proposals to ban striker replacements, although they said they did not support the legislation.

Many larger employers we interviewed voiced concern about the consequences of recent NLRB cases on labor-management workplace committees. They believed that the Congress may have to amend the NLRA to avoid greater restrictions on the use of labor-management workplace committees like those specified in the Electromation and Dupont cases[58] in future NLRB decisions. (See figure 4.1.) Companies feared that the board could expand existing decisions to prohibit their use of labor-management committees to such an extent that their productivity and competitiveness would be eroded. Some employers also disagreed with the idea that the government should regulate such committees under any circumstances. In contrast, some unionized employers discounted the effect of the Electromation decision on nonunion employers and reported no effect on their own operations from the cases. Unions we spoke with generally supported the decisions.

[58]Employer concerns center upon two recent NLRB decisions (Electromation and Dupont), which have ruled that certain types of labor-management committees, in certain situations—for example, their establishment during a union organizing drive—violate section 8a(2) of the NLRA, which prohibits the formation of employer-dominated unions. The fear is that this prohibition could be expanded to prohibit the formation of total quality management teams and other forms of labor-management committees established in a nonunion setting.

Figure 4.1: Selected Employer and Union Comments on the Electromation Decision

International union:
Electromation does not pose much of a problem for employers. The decision is narrowly written and employers can implement most types of workplace committees in nonunion settings.

Local union representing health care workers:
We haven't seen anything to worry about whether certain committees in our bargaining units could be handling activity that is really the union's responsibility.

International union:
We support the Electromation and related decisions. Such committees have no role in the workplace when they are used to thwart workers from exercising their choice to join an independent union.

Large paper manufacturer:
The Electromation case is only an issue in non-union facilities. Where there are unions present, the company gets them involved in the employer/employee committee process.

Large hospital:
There is much confusion in the employer community over how the Electromation case affects...employee groups who deal with certain decision-making functions...[We have] concerns about whether an employer can act in a progressive manner...The message of the Electromation case is that the employer creates employee action committees at its own peril. If the union knocks at the door, the employer will be penalized for having involved workers.

Large hotel management company:
Because of Electromation, we don't feel we have enough flexibility to conduct in-house labor-management discussions. The decision left a cloud of ambiguity about when cooperation is legal. We believe it discourages and inhibits labor-management cooperation.

Large oil refining company:
We thought we had excluded all those things that related to collective bargaining from the quality discussions, but under Electromation this might be thought of as collective bargaining. Also, when addressing these issues with non-union [committees], we are afraid we might be perceived as inhibiting unions by creating de facto unions...The government must recognize the need for clearer delineation between bargaining and quality issues...[However, it is true, as Electromation argues,] that there are some companies who would use quality issues to bust unions.

Medium-size textile company:
I am afraid that [our company's] involvement of staff in these committees might be determined to be illegal. Government should not be saying that companies can do this and can't do that.

Conclusions and Agency Comments

Over the last few years, the public debate on federal regulation has moved away from a narrow focus on economic competitiveness and the costs of particular regulatory requirements. Today this discussion increasingly concerns issues of regulatory implementation: when the government decides to regulate, what is the most appropriate rulemaking strategy, and how can regulatory goals be achieved more efficiently and at lower cost. The purposes of the Commission on the Future of Worker-Management Relations, the National Performance Review, Executive Order 12862, and the agency and department performance agreements are all examples of this shift in policy discourse.

We believe that the information collected from our in-depth interviews of a broad range of 24 employers headquartered in 16 different states and from over 20 different industries and 12 employee representatives, provides an important contribution to this discussion. Rather than opposing most workplace laws and their accompanying regulatory requirements, the employers and union representatives we talked to strongly supported the objectives behind most of the statutory framework of workplace regulation. The fundamental concern of many of the employers and unions revolved around the difficulties they had with how agencies carry out their responsibilities. Many of the employers we talked to believed that the current regulatory approach used by many agencies is largely adversarial, characterized by poor communication, unfair and inconsistent enforcement, and consists of vague laws and regulations that increase the potential for lawsuits. Most unions agreed with this assessment, although they also believed that many agencies were not vigorous enough in enforcing existing regulatory protections.

The employer and union representatives we interviewed generally called for changing agencies' approaches toward regulation. Further, they urged agencies to develop a more service-oriented approach to workplace regulation in order to facilitate compliance and achieve regulatory goals. We were told this meant making accurate information about regulatory rights and responsibilities more accessible; providing more technical assistance, education, and outreach to employers, unions, and workers; upgrading the skill levels of agency staff; and collaborating more closely with employers and unions during various phases of the regulatory process.

Although these opinions are based on interviews with a very small number of employers and unions, they are indicative of the need for change. This

work provides yet another piece to the puzzle of how to make regulation work better.

Agency Comments

Labor took seriously the comments from the employer and employee representatives cited in the report and believed that the essential substance of the report was entirely consistent with Labor's recent initiatives to enhance its operations. However, although Labor found credible our finding that employers and employee representatives articulated general support for regulation of the workplace, Labor believed that the anecdotal statements cited did not convey a completely balanced view of regulation from these groups. Labor reiterated our caution that the findings from the small number of interviews we conducted were not generalizable to either the employer or employee representative communities as a whole. Thus, care should be exercised in drawing conclusions from them.

We emphasize that our findings are based on a very carefully drawn but very small number of cases. Yet, despite its limitations, we believe that the detailed, qualitative information collected from many hours of personal interviews provides important insights into employers' and unions' experiences concerning federal workplace regulation. The case studies include a widely varied group; large, medium, and small size employers from a broad range of industries and a wide variety of states; local and international unions; and non-union labor-management workplace committees. Many of the findings presented in our report are consistent with those obtained from an earlier mail survey we sent to almost 2,000 randomly selected employers in the construction, manufacturing and selected service industries focusing on employers' experiences in complying with OSHA's Hazard Communication regulation.[59] We noted that the suggestions and concerns articulated in many of the interviews anticipated some of Labor's recent initiatives to improve its service orientation and that our findings also resonate with many members of the broad based labor-management advisory committee that provided assistance on this assignment. The information presented in this report is additional anecdotal evidence that we offer for consideration in the public discussion on workplace regulation.

[59]See Occupational Safety & Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991), and Occupational Safety & Health: Employers' Experiences in Complying With the Hazard Communication Standard (GAO/HRD-92-63BR, May 8, 1992).

Labor also questioned whether we had made any efforts to obtain information corroborating or verifying particular interview comments. In our case studies, we collected information about employers' and employee representatives' actual experiences with different types of federal workplace regulation. For example, we explicitly asked each employer about his or her enforcement experiences under each workplace statute and asked employers only to comment further in those areas where they had experience. Unless specified, employer comments are based on these experiences. Information about each employer's enforcement experience with a federal agency overseeing workplace regulation that they reported to us is contained in appendix I. Many of the employers we interviewed indicated that they had considerable experience with at least some federal agencies overseeing workplace regulation.

To facilitate cooperation, we obtained a pledge from our congressional requesters keeping the identities of the interviewees and their organizations confidential. Thus, we were limited in our ability to independently verify the accuracy of certain reported information because in some cases such verification efforts could have compromised confidentiality.

Labor also expressed concerns about misleading information some employers reported about the laws and their statutory requirements. We have reviewed and clarified these comments, incorporating technical revisions into the report where appropriate. We believe the inaccurate statements from some interviewees further demonstrates the lack of information employers have concerning their regulatory duties. This finding about the employers' lack of regulatory knowledge and awareness is also consistent with the findings from our prior work analyzing employers' experiences in complying with OSHA's Hazard Communication Standard.

Methodology

We reviewed various federal statutes to identify those we believed to comprise the framework of federal workplace regulation, focusing primarily on those statutes overseeing aspects of the relationships between private sector employers and workers. We used a case study approach to collect information on actual employer and employee representatives' experiences with workplace regulation. We selected our sites according to requester interests, advisory group suggestions, and to ensure a broad mix of industries, employer sizes and geographic location. Although our results are not generalizable to either the employer or employee representative communities as a whole, they provide detailed, qualitative information on actual strategies and efforts to comply with current federal workplace regulation.

Identification of the Major Federal Statutes Comprising the Framework of Federal Workplace Regulation

Focusing on the laws governing aspects of the relationship between employers and workers in private sector workplaces, we reviewed various federal statutes to identify those we believed to be the major statutes and executive orders comprising the framework of federal workplace regulation. Working with an expert legal consultant, Labor's Office of the Solicitor and an advisory group consisting of employer and labor union representatives, we defined the framework of federal workplace regulation as consisting of 26 statutes and one executive order.

To identify this framework, we first listed the major federal laws that govern the workplace. We built an inventory of about 200 labor-related statutes and executive orders using data from the Department of Labor and other sources.[60] Because we wished to focus primarily on the typical relationship between employers and workers in private sector workplaces, we eliminated certain statutes and executive orders from our list according to criteria we developed in consultation with an expert legal consultant and an advisory group consisting of employer and labor union representatives. We eliminated statutes that:

- primarily focused on criminal issues;
- applied to public employees or a small subset of private sector workers (e.g., federal, state, and local government employers; the U.S. Postal Service; business operations occurring in federal parks, forests, and other public lands; employers who operate primarily under the jurisdiction of

[60]We obtained a list of "laws affecting the workplace" from Labor's Office of the Assistant Secretary for Policy, which compiles a list of all statutes and regulations, including executive orders, that it believes affect workplaces. In addition, we conducted a search of the legal literature to identify any other federal laws that might belong in this group.

Indian reservations; and activities of U.S. employers and employees occurring in workplaces located on foreign soil);

- primarily had a nonworkplace focus or covered fairly small, highly regulated industries (for example, statutes governing issues such as tax-related employment incentives like the targeted jobs tax credit, mechanics' liens or related methods of payment claims enforcement, the nonworkplace regulation of chemicals, oversight of the nuclear industry); and
- concerned labor-related programs that were not related solely to labor-management issues (for example, job training programs for welfare recipients, and employment programs for disadvantaged youth).

Applying the criteria to our list left us with 26 statutes and one executive order. We defined this group of statutes and the executive order as the major statutes comprising the framework of federal workplace regulation. (For the list of the statutes and the executive order, see Chapter 1.).

Employer and Employee Experiences Within the Framework of Federal Workplace Regulation

We selected 24 employers for our case study sites based on several criteria, including their industry, number of employers, geographic dispersion, the presence of a collective bargaining agreement covering employees in at least one of their facilities and their participation in an alternative resolution procedure regarding workplace disputes. To obtain the views of employees, we conducted site visits with officials from 10 international unions and local unions, many of whom represented workers either at the employers we visited or in industries in which the employers we visited conducted their operations. We also visited worker representatives of two labor-management workplace committees in facilities not covered by a collective bargaining agreement.

We established a labor-management advisory group composed of representatives from a broad range of the business and labor communities to help identify prospective employers and unions for interviews. Because of the manner in which we selected our site visits, the information we collected is not representative of the views of all employers or unions, regardless of their size or industry.

Site Selection Criteria

We selected employers for our case study sites using the following criteria:

- Industry mix: Because some major statutes were more significant for some industries than others, we included employers from a variety of different

industries. To cover employer experiences with many of our major statutes, we also selected employers to ensure that at least one had a pension or health plan, and that at least one was a federal contractor.

- Employer size: Our site visits included a range of employer sizes because the coverage of some major statutes varies by employer size, and we believe that smaller employers choose different compliance strategies than larger employers.
- Geographic dispersion: Since some states have a greater degree of state or local workplace regulation than others, and this local regulation may interact with federal regulation, we ensured that our employers were located in a number of different states. We also selected some multi-state employers because state regulation may have particularly important implications for them.
- Presence of collective bargaining agreements: We selected some employers who had at least some employees covered by a collective bargaining agreement, employers with some form of permanent labor-management workplace committee[61] established outside the scope of a collective bargaining agreement, and employers with no employees covered by any collective agreements or committees.
- Participation in an alternative dispute resolution procedure: We included some employers who had implemented or participated in an alternative resolution procedure for workplace disputes.[62]

The sites were located in 16 states and the District of Columbia. Employers we visited represented over 20 different industries, including at least one employer each from the health care, manufacturing, and construction sectors. We generally conducted our visits with employers at the headquarters facilities of each employer, although we also made one visit to an employer's branch plant. We used our advisory group to help identify prospective employers and unions for interviews. Because of the manner in which we selected our site visits, the information we collected is not representative of the views of all employers or unions, regardless of their size or industry.

Our site visits included a range of employer sizes. Using the number of employees as a criteria, our sample of employers ranged from one with 11 employees to one with over 500,000 employees. Although the majority of

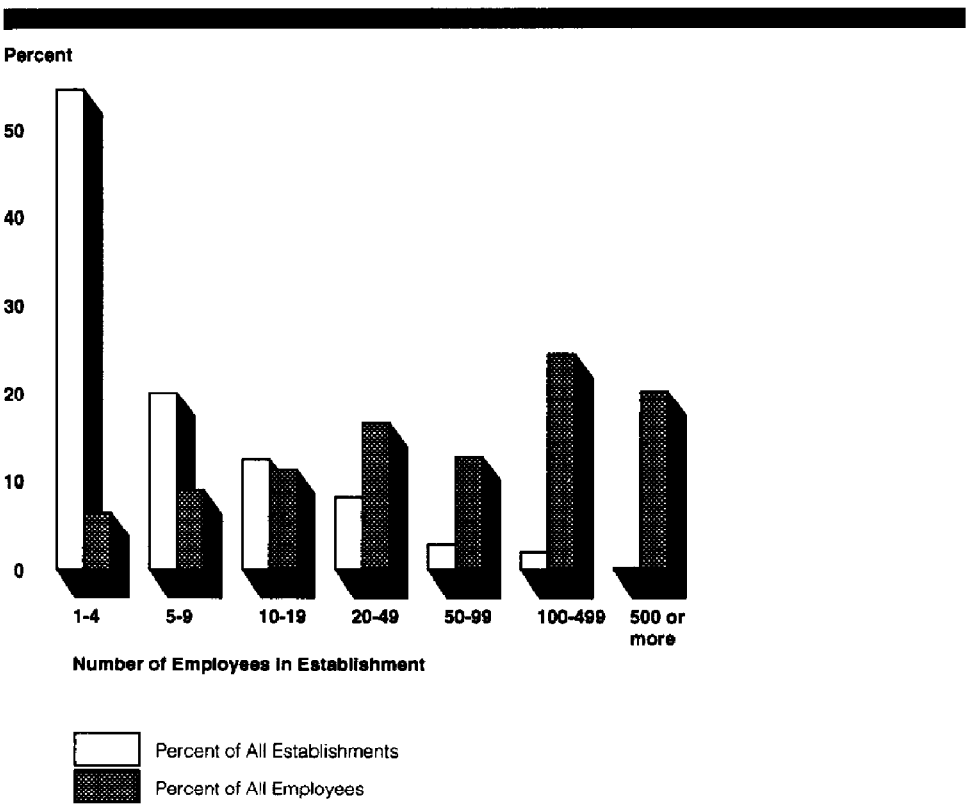
[61]These committees may vary in scope and structure from labor-management health and safety committees to total quality management or customer satisfaction teams where employee and management representatives may resolve certain workplace disagreements. We collected information on the structure of these committees during our site visits.

[62]Examples of such procedures include employers in the securities industry which resolve employment discrimination complaints through an industrywide binding arbitration procedure.

employers operating in the U.S. economy are small, with most establishments employing fewer than 5 workers, they account for a much smaller number of all employees. (See figure I.1.) The size groups represented by our sample of employers account for over 75 percent of all employees.

To obtain the views of employees, we talked with officials from international unions and local unions, many of whom represented workers either at the employers we visited or in the same industries of our employers' operations. We also visited worker representatives of two labor-management workplace committees in facilities not covered by a collective bargaining agreement.

Figure I.1: Percent of U.S. Business Establishments and Employees by Establishment Size



Case Study Protocols

During our visit to each employer and employee representative, we asked about their experiences in the following areas:

- Overall procedures and strategies for complying: how employers comply with federal regulatory requirements.
- Strategies for record-keeping and reporting requirements: how employers comply with federal recordkeeping and other paperwork duties.
- Significance of state and federal regulatory overlap: employer and employee representatives' perceptions concerning the extent to which federal regulations or federal and state regulations overlapped or conflicted.
- Perceptions of federal regulatory enforcement: employer and employee representatives' experience with the enforcement of federal workplace statutes.
- General concerns with federal workplace regulation: aspects, if any, of existing federal workplace statutes and regulations that employers and employee representatives perceive as "serious" problems or important concerns.
- Positive aspects of federal workplace regulation: features of existing federal regulations that employers and employee representatives think are beneficial, either to the employers or employees.
- Suggestions or changes that would improve federal workplace regulation: employer and employee representatives' suggestions for modifying federal regulation to facilitate employer compliance.
- The relative importance of federal workplace regulation: employer and employee representatives' perspectives concerning the relative significance of federal workplace regulation compared with other types of regulation (for example, environmental regulations) that may concern employers.

We developed separate employer and employee representative interview protocols to conduct our interviews. To ensure that our protocol captured the necessary information, we pretested it with four employers of varying sizes and industries, and two unions. The employer pretests included a small manufacturing employer, a hospital, a large construction management firm, and a large multi-state hotel employer, including one of its individual hotel units and one of its food service operations. The unions were a local union primarily representing employees in the retail food industry and a local representing carpenters.[63] Using the pretest results and comments from our advisory group, we revised the topic agenda to ensure that all questions were fair, relevant, and easy to understand and answer. In addition, we tested the protocol to ensure that participation would not be burdensome for the respondent.

[63]Most of the key themes that emerged during the pretests were validated by the employer, union, and committee site visits.

We sent a set of background information questions to employers and unions for completion before our site visits. Using this background information, we customized our protocol for each individual site visit. Prior to our visits, we also asked each employer and union to arrange meetings for us with those persons they believed to be most knowledgeable about workplace regulation in general. For smaller employers, we generally interviewed the owner of the company, accompanied by one or more staff.[64] For larger employers, the interviews usually included representation from the employer's general counsel, occupational safety and health department, or the employers' benefits department. In many cases, employer interview participants included representatives from the employers' corporate human resource departments.[65] Most of our visits were to the headquarters facility of each employer.[66] GAO staff trained in workplace regulatory issues conducted the site visit interviews between October 1993 and February 1994.

At the international unions, interviewees included representatives from the research and health and safety departments, benefits departments, and in some cases a general counsel. Local union interviewees most often included an elected local union official as well as organizers, local union business agents, or other local union staff.[67] To encourage interviewee candor and openness, we obtained a pledge from our congressional requesters stating that our interviews were not compliance audits and that interviewee identities and the identities of their businesses or organizations would not be disclosed.[68]

[64]We extensively interviewed representatives at each site, with many meetings lasting three or more hours and in most cases, we conducted additional telephone interviews to clarify information or obtain additional data. Depending on the availability of key personnel, at some sites we conducted our interviews with the employers' or unions' representatives as a group. At other sites, we conducted separate interviews with each participant.

[65]A possible concern is that because the employment of human resources department personnel is related to the processing of workplace regulations, they may impart a pro-regulatory bias in their comments. This concern was not a problem at smaller employers and some medium-sized employers where the company owner participated in the interviews. Even at larger employers, we generally included in the interviews some employer representatives from departments other than human resources. In addition, this potential bias may be balanced during other interviews by employer representatives we interviewed who had been involved in agency enforcement efforts that resulted in fines or other sanctions for the firm. In these cases, it could be argued that the employer representatives might convey an anti-regulatory bias in their comments.

[66]We included one visit to an employer at the branch plant level and several pre-tests were conducted at branch facilities.

[67]The employer identified those representatives of the nonunion labor-management committees they believed were most knowledgeable about workplace regulatory issues.

[68]This pledge seemed particularly important in securing the cooperation of the employers we interviewed. Union representatives appeared less concerned with confidentiality.

Information on Employers' Experience With Workplace Regulatory Enforcement Efforts

Our purpose in gathering information from the employers, unions and committees was to describe their actual experiences in operating under various aspects of workplace regulation, including their compliance strategies and their experiences with the enforcement efforts of particular federal agencies.[69] For example, we explicitly asked each employer about their enforcement experiences under each workplace statute, discussing them in further detail only in those instances where they said they had actual experiences with a particular agency. Except where otherwise noted, this report presents information that interviewees stated was their organization's actual experience with workplace regulation.

Employer experience with the enforcement efforts of at least some federal agencies overseeing workplace regulation was fairly widespread. The overwhelming number of employers we talked to reported enforcement experiences with at least one federal agency and in many cases said that they had experiences with two or more agencies.[70] (See figure I.2.) Only two employers, a small securities firm and software consulting company, reported no experience with any of these agencies.[71] Over half of all participants said that they had enforcement experiences with two or more federal agencies. In addition, about two-thirds of the participating employers said that they had been inspected by either federal OSHA or a state-operated health and safety program that is overseen by federal OSHA.

[69]For each statute and the executive order, we asked employers about their experiences with the relevant enforcement agencies under that statute.

[70]We define enforcement experience as an instance where the employer representative said that the company had been involved in an inspection, audit, compliance review or similar action conducted by a federal agency overseeing workplace regulation or a state-operated health and safety program during the previous few years.

[71]One of these employers reported actual enforcement experience with industry-specific federal agencies that provided some workplace related oversight.

Figure I.2: Summary of Employers' Enforcement Experiences by Federal Agency

Industry of employer case study	Employer size[a]			Multi-state operation[b]	Worker representation	
	0 to 75	75 to 499	500+		Presence of a collective bargaining agreement[c]	Presence of a labor-management committee[d]
Manufacturing						
Metal fabricator	✓					
Auto parts[e]		✓				✓
Metal products		✓			✓	✓
Textiles		✓				✓
Auto parts and assembly			✓			✓
Electronics			✓	✓		✓
Oil Refining			✓	✓	✓	✓
Paper			✓	✓	✓	✓
Services						
Restaurants	✓					
Securities	✓					
Software design/consulting	✓					
Insurance		✓				✓
Retail-mail order		✓				✓
Employee leasing-1			✓	✓		
Employee leasing-2			✓	✓	✓	
Hospital			✓			✓
Hotel management			✓	✓	✓	✓
Retail-department stores			✓	✓	✓	
Temporary employment			✓	✓		
Construction						
Commercial	✓				✓	✓
Homebuilding	✓					
Commercial-project management[f]			✓		✓	✓
Transportation/Other						
Fruit packing		✓				✓
Trucking			✓	✓	✓	
Subtotal	6	6	12			
Total	24			9	9	14

We did not independently verify the accuracy of the data provided by the employer and employee representatives, either about their experiences with federal agencies or about their compliance strategy with particular laws and regulations. For some types of information, for example, the facts related to a particular OSHA inspection, such verification could have compromised the confidentiality of the case study participants.[72] Other information we collected regarding participants' reaction or interpretation of the experiences they reported to us is ultimately judgmental. We conducted our review from August 1993 to March 1994 in accordance with generally accepted government auditing standards.

[72]Such verification would have required the examination of individual employer inspection case files which could have led to the identification of participating employers or unions.

Comments From the Department of Labor

U.S. Department of Labor

Solicitor of Labor
Washington, D.C. 20210

May 24, 1994

Mr. Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

Thank you for providing the Department of Labor with the draft General Accounting Office (GAO) report entitled, "WORKPLACE REGULATION: Agencies Need to Become More Service Oriented, Say Employers and Unions." The purpose of this letter is to provide you with technical comments and corrections on the draft which we believe you should take into consideration before publishing the report. Enclosed you will find a "marked up" version of Volumes I and II which corrects numerous citations and other misstatements of the laws.[1]

We take seriously the comments from employers and employee representatives that GAO quotes throughout Volume I. We know we can do a better job to regulate and enforce. At the direction of Secretary Reich, the Department is undergoing major reinvention efforts, one aspect of which is to be as customer friendly as possible, without compromising our statutory mandates to protect the working men and women of this Nation.

Many of our component agencies, such as the Occupational Safety and Health Administration, the Wage and Hour Division, the Office of Federal Contract Compliance Programs, and the Pension and Welfare Benefits Administration, are undertaking a wholesale review of the manner and methods in which they conduct their regulatory and enforcement activities. We recognize that changes in the economy (such as information technology advancements and the growth of the contingent workforce) require us to continually reexamine our approaches to best enforce laws and facilitate their goals.

An important element of our regulatory and enforcement reinvention efforts is increasing the level of coordination and cooperation between the agencies that make up the Labor Department. The Secretary created an Enforcement Council, which I chair, consisting of the leaders of each agency with enforcement responsibilities. We have also reinvented our

[1] If GAO has not already done so, you may wish to send a copy of the draft to the Equal Employment Opportunity Commission and the National Labor Relations Board for their technical review.

regulatory process. And we continue to explore the creative and innovative uses of technology in our enforcement and regulatory programs.

It is in the context of our embrace of change and reinvention that we reviewed the comments in the draft report. We view the draft as an appropriate first step to a systematic survey of employers and employees and their representatives to determine their views on the effectiveness of the Department in its regulatory and enforcement activities. However, there are technical problems with the report as drafted which we believe may weaken or undercut its credibility.

Our primary concern is that the underlying survey technique seems to be inappropriate for a final report which makes conclusory statements. The report is based on thirty-six on-site interviews, twenty-four of employers and twelve of employee representatives. Such a limited sample is appropriate at the initial stage to give you an indication of views and areas of further study based on a formal statistical analysis of a larger scientifically drawn sample.

The comments may be reflective of sentiment in the employer and employee communities, but such a limited non-random sample does not allow for credible generalized findings. For example, there is no indication in the draft report that GAO "went behind" the interviews. We think it would be important to know whether the critical employers quoted were ever the subject of a DOL enforcement effort. Did GAO check to determine if the scenarios described ever occurred or were they based on perception? What was the context of the statement quoted? In addition, the opinion of a relatively small number of employers compared to the total universe of employers may not represent reality throughout the country.[2]

Now on p. 20.

In point of fact, the report, at page 1-11, admits to a lack of representativeness: "Because of the manner in which we selected our site visits, the information we collected **is not representative of the views of all employers or unions**, regardless of their size or industry." (Emphasis added.) This survey design calls into question the ability of the GAO to make broad generalizations such as those in the chapter subheadings.

[2] You may wish to compare the surveyed population in this report with the population GAO surveyed in its 1992 report entitled, "Employers' Experiences in Complying with the Hazard Communication Standard" for which GAO surveyed approximately 2,000 construction, manufacturing, and selected service industry employers.

The report does state that both employers and employees support the need for regulation of the workplace; a statement that we believe to be true. Beyond that, the anecdotal statements do not present a fully balanced picture of our regulatory activities. This should not be viewed as a surprising result since two-thirds of the sample were chosen due to the fact that they are employers who are the subject of, rather than the primary beneficiary of, workplace regulation and enforcement.

However, many employers do want to maintain safe workplaces, provide secure pensions, and even find jobs or training for employees affected by plant closings. We would welcome a report based on surveys that identify constructive examples and ideas for the Department to consider as it reinvents its regulatory and enforcement efforts. Instead of focusing on problems, the Department could then focus on solutions.

In addition, a few of your interviewees were misinformed or held misperceptions about the laws and their statutory mandates. It is important not to give this misinformation a GAO stamp of approval by repeating them. We believe it would be helpful for GAO to address such misperceptions and incorrect statements and indicate what is driven by law, as distinguished from the Department of Labor's discretionary acts.

Now on p. 57.

For example, on page 3-18 one employer criticized the OSHA-200 log as requiring the recording of "every single injury, even those requiring no more than a band-aid." In fact, the statute and regulations exclude from the recordkeeping requirement minor injuries requiring only first aid treatment. See, 29 U.S.C. 657(c)(2) and 29 C.F.R. 1904.12(c)(3).[3]

Now on p. 70.

In another example, the quote at the bottom of page 3-18 implies, in the context of the report, that the Department of Labor requires employers to complete the employment verification Form I-9 and complains about its utility. To the contrary, the Immigration Reform and Control Act of 1986 required the Attorney General, not the Secretary of Labor, to designate or establish a form on which employers attest that they have verified that an employee is not an unauthorized alien by examining documentation demonstrating employment authorization and identity. We believe GAO should point out such conflicts between perception and statutory mandate.

[3] This exclusion has been recognized in the 1988 GAO Report, "Assuring Accuracy in Employer Injury and Illness Records": "Labor requires employers to keep (1) a listing (called the OSHA log) of job-related employee illnesses or injuries that required more than first aid . . . ." (At page 2.)

3

Now on p. 61.

A third example is found on page 3-9 where an employer complained about the lack of time to prepare for implementation of the Family and Medical Leave Act. Here again, in the context of the report, this may be read as a "rush to judgement" by the Department of Labor. GAO should make it clear that the Department of Labor had no discretion in this regard; it was the Congress that established unusually short deadlines for the promulgation of the regulations by the Secretary.[4]

The report appears to not take into account the full significance of certain realities of our political and legal systems that are beyond the control of the Labor Department. For example, employers quoted in the report justly complain that some regulations and enforcement policies are not uniformly applied. Yet the report does not acknowledge our federalist system wherein the Department (along with other Federal agencies) and state governments share the responsibility for enforcing minimum labor standards. In this regard, the report should explain that, in addition to the Federal OSHA law, over twenty states are state plan states which administer their own programs which must be "at least as effective in providing safe and healthful employment and places of employment."[5] In the Fair Labor Standards Act context, the report should note the multiplicity of Federal District Courts[6] and thirteen U.S. Courts of Appeal, many of which have their individual slant on the interpretation of the Act.

Further, employers quoted in the report voiced concern over significant ambiguities in statutory and regulatory language. The report should explain that congressional compromises born of efforts to accommodate legitimate competing interests frequently produce ambiguously worded statutes. We attempt to clarify these ambiguities by promulgating interpretive regulations. However, this agency, as well as most others, will often have difficulty predicting every possible contingency that might arise in the workplace. We strive for that ideal, but our history has shown us that it can take years of experience to understand fully all of the implications of a congressional enactment and adapt the regulations accordingly.

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[4] Section 404 of the Act reads: "The Secretary shall prescribe such regulations as are necessary to carry out title I and this title not later than 120 days after the enactment of this Act."

Now on pp. 64 and 34.

[5] Many of the quotes regarding OSHA are actually complaints about State run programs. See pages 3-12 and 3-13.

[6] There are eighty-nine district courts in the fifty states plus one in the District of Columbia and one in Puerto Rico with corresponding jurisdiction.

Given the draft report's problematic methodology, care should be taken not to overstate the nature or breadth of its findings. The draft includes numerous instances of bold, conclusory headlines and subheadlines that are, in reality, based on the comments of only one or two employers drawn from an already small sample. Taking statements out of context or generalizing from a single statement by an individual employer may mislead readers.

Now on p. 69.

A subheadline, on page 3-17, states, "Value of Some Paperwork Requirements Questioned." All of the quotes are from employers, none from employee representatives. And, further, the text underneath actually contains quotes stating the value of certain paperwork requirements cited, such as OSHA-200 log. Similarly, the discussion of the OSHA Material Safety Data Sheets (MSDS) highlights some employer complaints in the text of the report, but the statement that, "Some employers did believe that the MSDS requirement had value" is buried in a footnote.[7]

Now on p. 61.

Another potentially misleading headline appears on page 3-9: "EMPLOYERS AND UNIONS BELIEVE ENFORCEMENT UNFAIR AND INCONSISTENT." It stretches credibility to state that employers and unions truly "agree" on the Department of Labor's enforcement activities.

The report should be careful not to present these conjectures as conclusions either directly or by implication. There is a risk of these statements being taken out of context, with not only damaging results to the Department of Labor, but also to the credibility of the General Accounting Office.

CONCLUSION:

Although the draft report itself does not make any specific recommendations, GAO in Chapter 4 sets forth some conclusory recommendations based on its interviews. The Department of Labor welcomes suggestions for improvements and the following actions are being undertaken:

- We are taking great steps to provide better access to agency information.

[7] This is especially troubling in light of the fact that, on the basis of a nationally representative survey of employers, GAO concluded that "about 30 percent of the employers said they replaced hazardous chemicals used in their workplaces with less hazardous ones because of information they received on an MSDS." (See, "Employers' Experiences in Complying with the Hazard Communication Standard", May 1992.)

5

- Within budget constraints we are placing heightened emphasis on training of agency staff.

- We are indeed exploring greater use of alternative dispute procedures.

- The Secretary's Performance Agreement with the President committed the Department to improved customer service which includes increased collaboration in standard setting and enforcement procedures.

- We strongly support reform of the Occupational Safety and Health Act. We defer comment on amendments to the National Labor Relations Act until the Commission on the Future of Worker-Management Relations has issued its report and we have had an opportunity to review the recommendations it may make.

The essential substance of the draft report is entirely consistent with what we are trying to do at the Department of Labor, which is the reason we are so concerned about the report's accuracy. In this light, we urge the General Accounting Office to consider these comments and those reflected in the attached "marked up" copy of the report. We recommend deferring the issuance of the report in final form until these matters have been addressed. We would be pleased to offer any assistance you may need to make this report as complete and accurate as possible.

Sincerely,

Thomas S. Williamson, Jr.

Thomas S. Williamson, Jr.

Enclosure

6

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Glossary

Affirmative Action Plan	Labor's Office of Federal Contract Compliance Programs (OFCCP) conducts affirmative action compliance reviews by, among other things, examining an employer's written documents and records, including a written affirmative action plan. An affirmative action plan details the steps a contractor will take and has already taken to ensure equal employment opportunity. Under executive order 11246, an employer's affirmative action plan compares the employment of women and minorities in the employer's workforce with the availability of women and minorities in the labor force, establishes goals and timetables if necessary, and sets out actions to increase the number of minorities and women in its workforce when a conspicuous imbalance in the employer's workforce is shown by the underrepresentation of minorities and women.
Annual Return/Report Form 5500	ERISA requires the Annual Return/Report of Employee Benefit Plans, or Form 5500 Series, to be filed with Treasury's Internal Revenue Service (IRS) on an annual basis by employee pension and welfare benefit plan administrators or sponsors. Employee welfare benefit plans with fewer than 100 participants are generally exempt from annual reports. The form requires a variety of financial data on the benefit plan, including the plan's income and expenses, and assets and liabilities.
Binding Arbitration	Binding arbitration is the final and enforcing interpretation and resolution of a dispute by a neutral person voluntarily designated by the mutual agreement of all parties. The great majority of all collective bargaining agreements governed by the National Labor Relations Act provide for final and binding arbitration of disputes that arise under the contract, rather than seeking enforcement and interpretation through the courts. The Supreme Court has ruled that decisions reached by arbitrators are final and binding interpretations of the collective bargaining agreement, as long as the parties agree to arbitrate the issue, the contract is followed by the arbitrator in reaching the decision, the contract specifies that arbitration is final and binding, and no gross errors or procedural unfairness occur.
Bloodborne Pathogens Standard	The Occupational Safety and Health Administration's bloodborne pathogens standard prescribes safeguards to protect workers who may be occupationally exposed to blood, other potentially infectious materials, and certain other body fluids that contain bloodborne pathogens such as human immunodeficiency virus (HIV) and hepatitis B virus. The standard identifies how to determine who has occupational exposure and how to

reduce workplace exposure to bloodborne pathogens. It also includes preventative measures and other requirements, such as recordkeeping requirements.

Card Check Certification

Under NLRA, in representation campaigns, the union usually obtains recognition cards from a majority of the employees in the proposed unit and then seeks voluntary recognition from the employer. Under the Act, an employer does not have to recognize a union voluntarily even if the union has obtained cards from a majority of the employees, but can simply decline recognition. If an employer declines to recognize a union, a Board-supervised election results, or the Board can issue a bargaining order if employer misconduct would preclude a fair election. This contrasts with most Canadian provinces, where the provincial labor boards will grant automatic certification when a union demonstrates majority or a small super majority (55 percent) support. In Ontario, automatic certification may also result from employer misconduct during an organizing campaign, regardless of the level of union support.

COBRA Rights

Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with 20 or more workers to extend existing health insurance coverage for up to 18 months to employees who leave work for any reason and to those whose work hours are reduced. Eligible individuals must receive a notice informing them of their rights under COBRA and describing the law. They have 60 days from the date of notification to elect coverage. Participants can elect to maintain, at their own expense, coverage under their health plan at a cost that is comparable to what it would be if they were still members of the employer's health group.

Co-Employment (Joint Employment)

The distribution of the legal rights and responsibilities of an employer among more than one entity. For example, joint employer status may be determined when more than one company performs management services or exerts significant control over employees in a manner that meaningfully affects the terms and conditions of employment. Others identify co-employment in cases where one entity acts like a fiscal employer—essentially performing human resource and personnel functions—while another entity acts as the direct or common law employer who hires, fires, and controls employee activities directly.

Consultation Assistance	OSHA's consultation assistance is a free service available to employers who need help in establishing and maintaining a safe and healthy workplace. Assistance includes identifying and correcting hazards, appraising work practices, and developing and implementing workplace safety and health programs, training, and education. No penalties or citations are issued when consultants identify hazards and the employer's identity is not reported to OSHA's inspection staff.
Disability	Under the Americans With Disabilities Act (ADA) and the Rehabilitation Act, section 503, a person has a disability if she or he has a physical or mental impairment that substantially limits one or more major life activity, a record of a substantially limiting impairment, or is regarded as having such an impairment.
Dupont Case (311 NLRB No. 88, May 28, 1993)	In this NLRB case involving the Dupont company, the Board ruled that the company's six safety committees and one fitness committee were employer-dominated labor organizations within the meaning of NLRA, and the employer violated the act when it bypassed the union in dealing with the committees. The employer had established these committees unilaterally and declined to bargain with the union over health and safety issues. The safety committees dealt with employer complaints over safety, bringing them to management to get them corrected. It also provided monetary awards to employees who met work safety requirements.
EEO-1 Form	The Employer Information EEO-1 survey is mandated by Title VII of the Civil Rights Act and Executive Order 11246. Based on the number of employees and federal contract activities, employers with over 100 employees are required to file an EEO-1 report every year with the Joint Reporting Committee (the Committee consists of the Equal Employment Opportunity Commission and Office of Federal Contract Compliance Programs). The survey asks for data on the company, the major activities of the establishment, and the sex and race/ethnic category of employees by various occupations.
Electromation (309 NLRB No. 139, Dec. 16, 1992)	In the NLRB case involving Electromation Inc., the board ruled that the company's employee participation plans or "Action Committees" were unlawfully dominated labor organizations and violated section 8(a)(2) of NLRA. The company had created the committees several months before the

union presented a recognition demand and the committees continued to operate during the subsequent union organizing drive.

Ergonomics Standard

Ergonomics involves the assessment of the location, position and physical dimensions of work tools, working postures, repetitive motions and forceful actions that may result in a variety of long-term chronic conditions such as repetitive cumulative trauma disorders, musculoskeletal injuries and other stress-related injuries. Cumulative trauma disorder is any physical disorder that develops from or is aggravated by the cumulative application of biomechanical stress to tissues and joints, such as bursitis, ligament and muscle sprains, or nerve entrapment. California's state OSHA program is proposing ergonomic standards that would establish minimum requirements for controlling occupational exposure to the risk of developing cumulative trauma disorder.

Experience Rating

A financing principle where the state Unemployment Insurance taxes paid by individual employers reflect the benefit payment amounts that their former employees receive (maintaining a positive relationship between an employer's tax rate and its experience with unemployment). Under experience rating, employers with many unemployed workers receiving Unemployment Insurance benefits—a high experience rating—would pay a higher state Unemployment Insurance tax rate.

Federal Mediation and Conciliation Service

An independent government agency established by Title II of NLRA to mediate and conciliate labor disputes. The Federal Mediation and Conciliation Service's objective is to prevent or minimize work stoppages caused by disputes between labor and management in industries affecting interstate commerce.

FLSA Exemptions

Some employees are exempt from minimum wage or overtime provisions, or both, as defined under the Fair Labor Standards Act. Exemptions from both minimum wage and overtime, for example, can include executive, administrative and professional employees, outside sales personnel, or employees of certain seasonal amusement or recreational establishments. Examples of workers exempted from overtime provisions can include sales persons, employees of motion picture theaters, and farmworkers.

Hazard Communication Standard

OSHA's hazard communication standard requires that employees receive information and training concerning chemical hazards in their workplaces. Chemical manufacturers and importers must evaluate each chemical substance they produce or import to determine if it is hazardous. For each hazardous chemical, they must prepare a Material Safety Data Sheet (see MSDS). Employers using hazardous chemicals must maintain a worker-accessible file of MSDSs for all hazardous substances used in the workplace and develop a written program describing how they will meet the standard's requirements.

Independent Contractor

Independent contractors are self-employed individuals who provide services. For tax purposes, the conditions for classifying a worker as an employee or an independent contractor come from common law, where the degree of control, or right to control, that a business has over a worker governs the classification. Typically, if a worker must follow instructions on when, where, and how to do the work, he or she is more likely to be classified as an employee. The IRS has 20 common law rules for determining whether an individual is an employee or an independent contractor. When a business classifies a worker as an employee, the business must withhold income and social security, including medicare taxes, as well as pay other employee-related payroll taxes like unemployment insurance. Businesses need not withhold taxes on independent contractors, although they must report payments of more than $600 to the IRS on an information return.

Intermittent Leave Provisions

The Family and Medical Leave Act provides that under some circumstances, employees may take intermittent leave by taking time off in blocks or reducing the normal weekly or daily work schedule. Intermittent leave is allowed when it is medically necessary to care for a seriously ill family member or because the employee is seriously ill and unable to work. Use of intermittent leave for birth or placement for adoption or foster care is subject to the employer's approval. If the need for such leave is foreseeable, the employee is responsible for scheduling the treatment so it does not unduly disrupt the employer's operations, subject to the approval of the health care provider. In such cases, the employer may also transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave than the employee's regular job.

Leave Entitlement	An employer covered by FMLA must grant an eligible employee up to 12 weeks of unpaid leave for one or more of the following reasons: • the birth or placement of a child for adoption or foster care, • to care for an immediate family member with a serious health condition, or • to take medical leave when the employee is unable to work because of a serious health condition.
Material Safety Data Sheet (MSDS)	OSHA's hazard communication standard requires chemical manufacturers and importers to identify chemicals that are hazardous to workers. For each chemical deemed hazardous, chemical manufacturers and importers must prepare an MSDS providing details on its properties, hazards, safe use, and handling. Employers must maintain a file of MSDSs for the chemicals they use in their business and make it accessible to workers.
Medical/Parental Leave	See leave entitlement.
Minimum Wage	FLSA sets standards of pay for employees of firms engaged in interstate and foreign commerce. Employees covered by the act must receive a minimum wage of $4.25 an hour for any hours worked up to 40 hours a week. Beyond 40 hours, the employer must be paid the minimum wage on 1.5 times the regular hourly rate if subject to the act's overtime provisions. (See overtime pay below.)
National Mediation Board	An agency created by the Railway Labor Act to mediate labor disputes in the railroad and air transport industries and to conduct elections allowing workers to choose a bargaining representative.
Notification of Reductions in Force	Under the Worker Adjustment and Retraining Notification Act, employers with 100 or more employees must provide at least 60 days advance notice of an impending closure or mass layoff affecting 50 or more workers to the state dislocated worker unit, local officials in the affected communities, and affected workers or their representatives.
OSHA Form 200	OSHA requires employers to maintain a log on the worksite of job-related/occupational injuries and illnesses. For each work-related

illness and for each injury that requires more than first aid, the employer must provide certain data, including a brief description of the injury or illness, and the number of days that the employee was away from work or assigned restricted duties. Employers are also required to describe each injury and illness on a supplementary record of occupational injuries and illnesses.

Overtime Pay

FLSA sets standards for covered employers regarding the payment of overtime wages. Unless specifically exempted, employees covered by the act must receive overtime pay for hours worked in excess of 40 hours per week at a rate not less than time and one-half of the employee's regular rate of pay. The act does not limit the number of hours employees may work in any workweek, as long as they are paid in accordance with the FLSA's requirements. FLSA defines a workweek as a fixed and regularly recurring period of 7 consecutive 24-hour periods. A hospital or residential care establishment, however, may pay overtime on the basis of a 14-day work period instead of a workweek.

Prevailing Wages

According to the Davis-Bacon Act and the Service Contract Act, the prevailing rate is the rate of wages and fringe benefits paid to a majority of workers in the classification of similar jobs in the area or, where there is no majority, the average wage rate. The Secretary of Labor, through WHD, is responsible for calculating the prevailing rate.

Programmed Inspections

OSHA conducts targeted health or safety inspections. Programmed or targeted inspections are conducted at worksites that OSHA selects for inspection; unprogrammed inspections are conducted in response to complaints from employees, dangerous situations, the occurrence of workplace fatalities, and other instances. OSHA area offices and some state programs determine their targeted safety inspections for high-hazard manufacturing worksites on the basis of state industry injury incidence rankings and worksite lists received from headquarters. Other targeted inspections that do not rely on lost workday injury rates are used for health inspections and for safety inspections of construction, nonmanufacturing, and low-hazard manufacturing industries.

Reasonable Accommodation

Under the Americans with Disabilities Act and section 503 of the Rehabilitation Act, an employer is required to make a reasonable

accommodation—that is, any change or adjustment to a job or work environment—in order to provide an equal employment opportunity to a qualified applicant or employee with a disability, unless this would impose an undue hardship on the operation of the employer's business. Examples of reasonable accommodation include: making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring, modification of work schedules; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying exams, training materials, or policies; or providing readers or interpreters. An employer is not required to lower quality or production standards to make an accommodation or provide personal use items, such as eyeglasses or hearing aids.

Serious Health Condition

Regulations promulgated under the FMLA define a serious health condition as an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care in a hospital, hospice, or residential medical care facility;
- any period of incapacity requiring absence of more than 3 calendar days from work, school, or other regular daily activities that also involves continuing treatment by a health care provider; or
- continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days, and for prenatal care.

Settlement Procedure (OSHA)

An employer receiving a citation and proposed penalty from OSHA can opt to participate in an informal conference with local OSHA officials to negotiate an informal settlement agreement. The employer, OSHA Area Office Director and at least one other OSHA employee hold an informal conference where they discuss, among other things, the type of violation, the amount of the penalty, the abatement actions to be taken, and the date by which abatement must occur. OSHA encourages employers to ask for these conferences to resolve disputed citations and penalties without resorting to litigation, which can be time-consuming and expensive.

State Operated Safety and Health Programs

OSHA authorizes states to operate their own safety and health programs. Labor approves state programs and monitors their performance to make

sure the programs remain "at least as effective" as the federal one. The state must submit a detailed plan that describes how it will ensure workers' safety and health through appropriate legislation, standard-setting, enforcement procedures, adequate funding and staff training, and sufficient personnel. When OSHA gives a state final approval, it relinquishes its right to concurrent enforcement. Federal OSHA provides up to 50 percent of program costs to state programs. State-administered programs differ from OSHA in that they cover state and local government employees; OSHA does not. As of the end of February 1994, OSHA had given final approval to 13 of the 21 state programs and has operational status agreements, which informally limit federal enforcement authority, with the remaining 8 states.

Summary Annual Report (SAR)

ERISA requires employers with benefit plans to complete a Summary Annual Report. This report contains simplified information from the Annual Return/Report, or Form 500, on the financial activities of welfare and pension plans. It must be provided to all participants annually.

Summary Plan Description (SPD)

ERISA requires the administrator of an employee benefit plan to provide every participant and beneficiary with a Summary Plan Description that is easy to understand by the average person. The description must include information such as a description of benefits and how the plan operates, the circumstances that may result in disqualification or ineligibility, how to calculate the amount of benefits, and how to file a claim. Copies of the Summary Plan Description and any updates must be filed with the Secretary of Labor. ERISA requires an update every time there are material changes to the plan. Participants must be provided with all updated versions of the SPD that reflect changes in the plan.

Unemployment Insurance Appeals Board (Commission)

Each state has an unemployment insurance board or commission that decides appeals by both claimants and employers generally based on records prepared at the first level of appeal. Some state boards or commissions hold hearings where additional evidence is presented. Other state boards or commissions allow the parties to appear before them to offer oral argument.

Unfair Labor Practices

NLRA prohibits employers, unions or their agents from engaging in certain activities against each other or against employees that the Congress has

designated as unfair labor practices. Examples of unfair labor practices by employers include discrimination against employees because of union membership, and interference with an employee's right to organize. Examples of unfair labor practices by unions include interference with employee rights, or coercion of employers. The NLRB is authorized to enforce these unfair labor practice provisions.

Union Security Clause

Union contract provisions requiring union membership are referred to as union security clauses. There are three basic kinds of union security clauses, all of which are enforced by the union:

- The union shop clause requires that an employee become a union member on or after 30 days of employment (or after the 7th day in the construction industry), or the effective date of the contract, whichever comes later.
- The maintenance of membership clause requires that each employee who is a union member on the effective date of the contract must remain a member, but the initial decision is voluntary. The employee can resign membership during a specified period before the contract's termination date. Membership is automatically renewed for anyone who does not resign during this period.
- The agency shop clause provides that employees do not have to join the union but must pay a service fee. Under section 14(b) of the Taft Hartley amendments of NLRA, states may enact legislation that prohibits the negotiation of union security clauses in collective bargaining.

Voluntary Protection Program (VPP)

OSHA's Voluntary Protection Program is designed to recognize the success of employers who have integrated safety and health programs into their workplace, motivate others to do the same, and promote cooperation between employers, employees, and OSHA. To be accepted in VPP, employers must implement OSHA's voluntary guidelines. These guidelines describe comprehensive safety and health programs in which employers inspect their own worksites and correct hazards in order to reduce accidents and injuries. Employers must also demonstrate management commitment, employee involvement, adequate worksite hazard identification, adequate plans to implement controls, and training and education efforts to support the safety and health programs. Once accepted, VPP participants are not subject to programmed or random OSHA inspections.

Workers' Compensation Appeals Board	A state entity that issues decisions on disputed workers' compensation claims. State appeals boards are very different; no single definition can describe a typical appeals board. Some state boards handle initial decisions and appeals. Other states, like California's appeals board, hear cases appealed from first-level initial decisions. Further appeals are handled by the state court of appeals.

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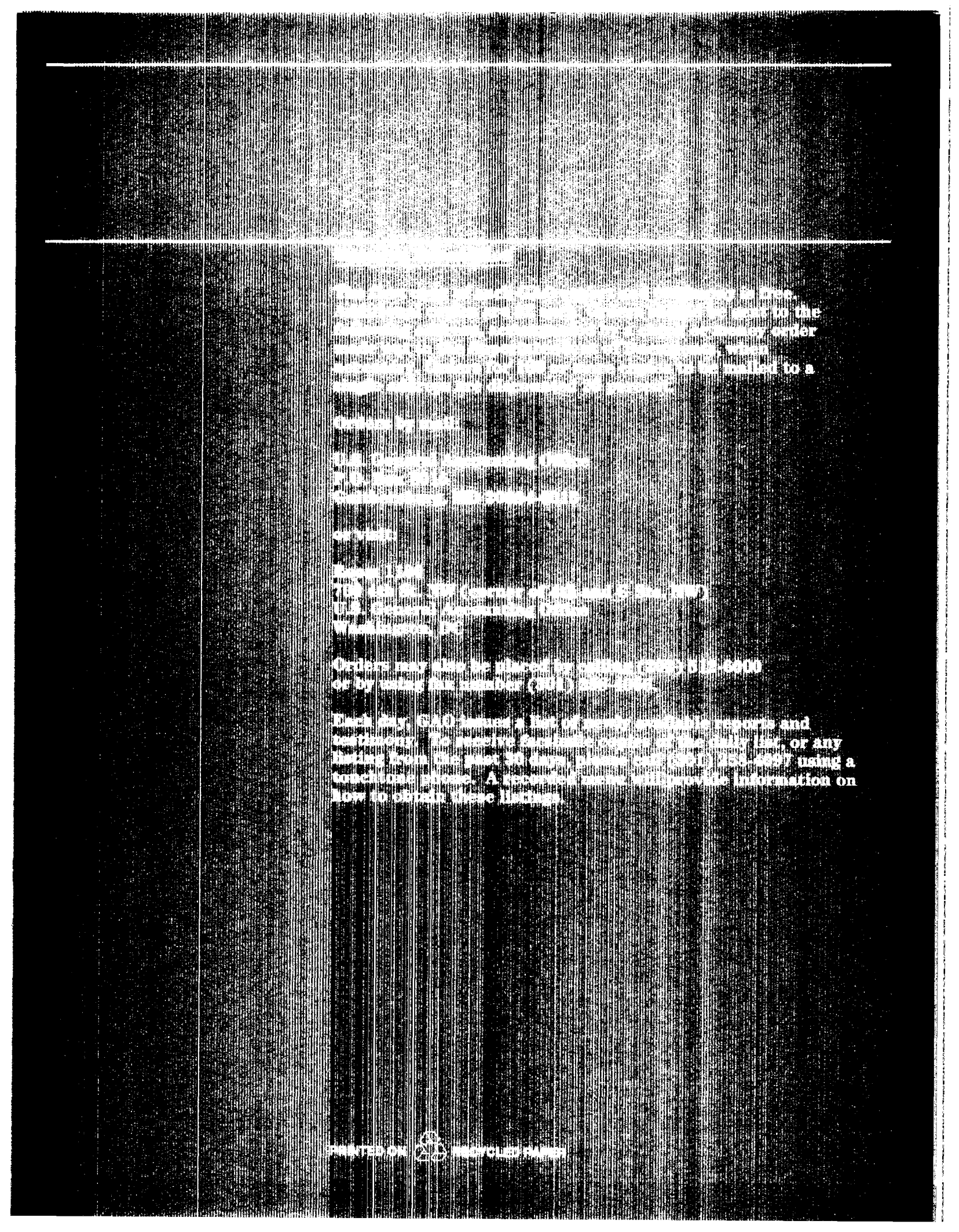

GAO

United States General Accounting Office
Report to Congressional Requesters

June 1994

Federal Regulation

Information on Selected Employer and Union Experiences

GAO/HEHS-94-138 Volume II

Preface

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This volume of GAO's report on workplace regulation identifies various characteristics of the 26 major statutes and 1 executive order comprising the framework of federal regulation of the workplace, including

- a brief summary of the statute or the executive order,
- scope of coverage,
- nature of penalties,
- reporting and disclosure requirements of each act or executive order, and
- enforcement.

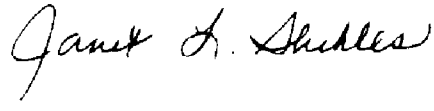
The 26 statutes and executive order appear in the following order:

- Fair Labor Standards Act
- Davis-Bacon Act
- Service Contract Act
- Walsh-Healey Act
- Contract Work Hours and Safety Standards Act
- Migrant and Seasonal Agricultural Worker Protection Act
- Employee Retirement Income Security Act
- Group health plan continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985
- Unemployment Compensation Program provisions of the Social Security Act
- Family and Medical Leave Act
- Title VII of the Civil Rights Act
- Equal Pay Act (amendment to the Fair Labor Standards Act)
- Executive Order 11246
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Section 503 of the Rehabilitation Act
- Anti-Retaliatory provision of the Surface Transportation Assistance Act[1]
- Occupational Safety and Health Act
- Federal Mine Safety and Health Act
- Drug Free Workplace Act
- National Labor Relations Act
- Labor Management Reporting and Disclosure Act
- Railway Labor Act
- Employee Polygraph Protection Act
- Veterans Reemployment Rights law as enacted by the Selective Training and Service Act and related statutes

[1]This provision is an example of similar provisions in many other statutes—such as the Fair Labor Standards Act, the Occupational Safety and Health Act, and the Employee Retirement Income Security Act—that prohibits employers from punishing employees for exercising certain rights.

- Employment provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act
- Worker Adjustment and Retraining Notification Act

A description of our methodology in selecting these statutes is in volume I.



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Contents

Abbreviations

ADA	Americans with Disabilities Act
ALJ	administrative law judge
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1986
DOL	Department of Labor
EEOC	Equal Employment Opportunity Commission
FMLA	Family and Medical Leave Act
INS	Immigration and Naturalization Service
NLRB	National Labor Relations Board
OFCCP	Office of Federal contract Compliance Programs
OSHA	Occupational Safety and Health Act
SAR	summary annual report
SMM	summary of material modification
SPD	summary plan description

Fair Labor Standards Act (29 U.S.C. 201 et seq.)	Establishes minimum wage, overtime pay, and child labor standards.
Coverage	Covers all employees of employers engaged in interstate commerce or the production of goods for interstate commerce, and that meet a volume-of-business requirement; also covers all employees engaged in interstate commerce or in production of goods for commerce, or in domestic service covered by the law, and all federal, state, and local government employees. Does not apply to businesses with fewer than two employees. 29 U.S.C. 203, 206, 207.
Definitions	Employee: Any individual employed by an employer, including federal government employees, and state and local government employees, except for state and local elected officials and their staff members or personal appointees; but does not include anyone employed in agriculture by their immediate family. 29 U.S.C. 203(e). Employer: Includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization. 29 U.S.C. 203(d).
Recordkeeping and Disclosure Requirements	Every employer must maintain and preserve payroll records with certain information, including names and addresses of employees, the time and day each employee's workweek begins, each employee's hours worked each workday, total daily or weekly hours, and total wages for each pay period. The records must be maintained for 2 or 3 years depending on the type of record. Other requirements apply for certain types of employees, such as tipped employees. 29 C.F.R. 516.1.
Enforcement and Penalties	The Secretary of Labor is authorized to supervise the payment of the unpaid minimum wages and overtime compensation. The Secretary may bring an action in any court of competent jurisdiction to recover unpaid minimum wages, overtime compensation, and liquidated damages.

Penalties assessed may be deducted from any sums the United States owes to the person charged, or recovered in an action brought by the Secretary, or ordered by the court and paid to the Secretary. 29 U.S.C. 216(b).

There is a private right of action under the act. However, the employees right to sue is extinguished if the Secretary of Labor elects to sue on their behalf. 29 U.S.C. 216(b),(c).

Any person convicted of willfully violating the act is subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both; except that imprisonment is only available when a person has been convicted of a prior willful violation. 29 U.S.C. 216(a).

Any employer who violates the minimum wage or maximum hours provisions is liable to the employee or employees affected in the amount of their unpaid wages and in an additional equal amount as liquidated damages, and is subject to a civil penalty not to exceed $1,000 per violation for repeated or willful violations. 29 U.S.C. 216(b).

Any employer who violates the provisions relating to retaliation against an employee is liable for such legal or equitable relief as may be appropriate, including employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. 29 U.S.C. 216(b).

Any person who violates the provisions of the act relating to child labor, or any regulation issued under that section, is subject to a civil penalty not to exceed $10,000 for each employee who was the subject of such a violation. 29 U.S.C. 216(e).

Davis-Bacon Act (40 U.S.C. 276a et seq.)	Provides for payment of prevailing local wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors on federal government contracts for construction, alteration, repair, painting, or decorating of public buildings or public works.
Coverage	Covers laborers and mechanics of contractors and subcontractors of the United States and District of Columbia governments on contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public works or public buildings. Does not differentiate by firm size. 40 U.S.C. 276a(a).
Definitions	Laborer or mechanic: Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. It includes apprentices, trainees, and helpers. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Laborers and mechanics are covered without regard to the nature of their contractual relationship with the contractor or subcontractor. 29 C.F.R. 5.2(m).
Recordkeeping and Disclosure Requirements	Each contractor and subcontractor working on a contract covered by the act is required to furnish weekly statements on the wages paid each employee. These records must be preserved for 3 years from the date of completion of the contract. 29 C.F.R. 5.5(a)(3).
Enforcement and Penalties	The Department of Labor is authorized to investigate allegations of violations of the act. The contracting agency is authorized to withhold from payment to the contractor amounts by which the contractor or subcontractor underpaid workers under the act. 40 U.S.C. 276a(a). The Comptroller General is authorized to pay underpaid workers from any payments withheld under the contract any wages found to be due. The Comptroller General is further authorized and is directed to distribute throughout the government a list of contractors and subcontractors he finds "disregarded" their obligations to employees under the act; the listed parties are ineligible to do business with the government for 3 years. 40 U.S.C. 276a-2(a).

Contractors and subcontractors who "disregard" the requirements of the act are subject to contract termination, payment of any additional cost for completion of the work, and ineligibility for federal contracts for 3 years. 40 U.S.C. 267a-1, 276a-2(a). Contractors and subcontractors are also subject to civil or criminal penalties for the falsification of records. 18 U.S.C. 1001.

Employees have a private right of action against the contractor to recover wages due when the amount the government has withheld is insufficient. 40 U.S.C. 276a-2(b).

Service Contract Act (41 U.S.C. 351 et seq.)	Provides for payment of prevailing local wages and fringe benefits and safety and health standards for employees of contractors and subcontractors providing services under federal contracts.
Coverage	Covers employees of contractors and subcontractors, the federal and District of Columbia governments on contracts in excess of $2,500 for the furnishing of services. Does not differentiate by firm size. 41 U.S.C. 352.
Definitions	Employer: Any contractor or subcontractor subject to the terms of the act; does not include the U.S. government, its agencies, or instrumentalities. 29 C.F.R. 4.1a.
Recordkeeping and Disclosure Requirements	Contractors and subcontractors performing work subject to the act are required to make and maintain for 3 years from the completion of work records containing basic employment information, including worker classification, number of daily and weekly hours worked, rate of pay and fringe benefits, and any deductions, rebates, or refunds. 29 C.F.R. 4.6(g)(1). The contractor must post notice in a prominent and accessible place to all employees at the worksite of the requirements of the act regarding payment of compensation and fringe benefits. 29 C.F.R. 4.185.
Enforcement and Penalties	The Department of Labor is authorized to investigate and hold hearings and make findings of fact to enforce the act. The contracting agency has authority to withhold payment due the contractor in order to cover amounts owed underpaid workers. If the payments withheld under a contract are insufficient to reimburse all service employees, the federal government may bring an action against the contractor or subcontractor to recover the balance due. Any sums thus recovered shall be paid directly to the underpaid employees. 41 U.S.C. 352-354; 29 C.F.R. 4.187. Any violations of the minimum wage or fringe benefit requirements of the act makes the responsible party liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due any employee engaged in the performance of such contract. The contract may upon written notice be canceled and the original contractor will be liable for any additional cost incurred. Willful violators are subject to the sanction of being ineligible for federal contracts for a period of 3 years. 41 U.S.C. 352.

Walsh-Healey Act (41 U.S.C. 35 et seq.)	Provides for labor standards, including wage, hour, safety, and health, for employees working on federal contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment.
Coverage	Covers employees of contractors and subcontractors of the U.S. and District of Columbia government on contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies, articles, or equipment. 41 U.S.C. 35. Protections extend only to employees engaged in or connected to the manufacture, fabrication, assembly, handling, supervision, or shipment of materials required under the contract. It does not apply to office or custodial work, nor to anyone in an executive, administrative, professional, or outside salesperson capacity. Does not differentiate by firm size. 41 C.F.R. 50-201.102.
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	Contractors must keep basic labor records as well as a record of injuries. 41 C.F.R. 50-201.501, 502. Contractors must post notice of the requirements of the act in a prominent and readily accessible place at the worksite. 41 C.F.R. 50.201.101.1.
Enforcement and Penalties	The Department of Labor is authorized to investigate allegations of violations of the act. Any employer, employee, labor or trade organization, or other interested person or organization may report a breach or violation, or apparent violation to the Department. After a report or complaint has been filed, or upon his own motion, the Secretary of Labor may issue a formal complaint stating the charges. Charged parties have the right to a hearing before an administrative law judge. The administrative law judge issues an order including findings of fact and conclusions of law and the amount of damages due (if a violation was found) and whether debarment from federal contracting is warranted. The decision of the administrative law judge is final unless a petition for review is filed within 20 days. 41 U.S.C. 36; 41 C.F.R. 50-203.1-203.12. Any breach of the act renders the responsible party liable for liquidated damages to the federal government plus whatever damages are owed to any employees under the contract. The federal government has the right to enter into open-market purchases for the completion of the contract and to charge the original contractor any additional cost incurred. 41 U.S.C. 36.

Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.)	Establishes standards for hours, overtime compensation, and safety for employees working on federal and federally financed contracts and subcontracts. It requires an employer on covered contracts to pay time-and-a-half for hours in excess of 40 in a week.
Coverage	Covers laborers and mechanics of contractors and subcontractors of the U.S. and District of Columbia governments and federally financed or assisted contracts and subcontracts except that it does not apply to contracts for transportation, or for transmission of intelligence information, or for purchase of supplies or materials or articles ordinarily available in the open market; also does not apply to contracts covered by the Walsh-Healey Act. Does not differentiate by firm size. 40 U.S.C. 329.
Definitions	Laborer or mechanic: Includes at least those workers whose duties are manual or physical in nature, as distinguished from mental or managerial, and includes watchmen and guards. Laborers and mechanics are considered employed regardless of any contractual relationship with the contractor—even if they are independent contractors of the contractor, they are considered "employed by" contractors and are covered by the act to the extent that they perform the duties of a laborer or mechanic. 40 U.S.C. 329; 29 C.F.R. 5.2(m),(o).
Recordkeeping and Disclosure Requirements	Each contractor and subcontractor engaged in construction work covered by the act is required to furnish weekly statements of the wages paid each of its employees who worked during the preceding weekly payroll period. These records must be preserved for 3 years from date of completion of the contract. 29 C.F.R. 3.3.
Enforcement and Penalties	The Secretary of Labor has authority to sue to enforce compliance with safety standards. 40 U.S.C. 330. Designated inspectors report violations to the government, together with names of workers who were permitted or required to work in violation of the act. Amount of unpaid wages and liquidated damages are administratively determined and that amount may be withheld from payment to contractor. Employers have the right to appeal the withholding

of money as liquidated damages to the head of the agency for which the contract work was done. 40 U.S.C. 330.

Employers who fail to pay proper overtime wages are liable for unpaid wages and liquidated damages of $10.00 per day for each employee who should have been paid overtime wages but was not so paid. 40 U.S.C. 328(b)(2).

Anyone who intentionally violates any provision of the act is guilty of a misdemeanor and subject to a fine of up to $1,000, imprisonment for up to 6 months, or both. 40 U.S.C. 332.

For noncompliance with safety standards, contract may be canceled by contracting agency and contractor may be charged additional costs for new contract to complete the work called for under the old contract. 40 U.S.C. 333(b).

For aggravated or willful or grossly negligent violations of the act, contractor/subcontractor is subject to disbarment for a period not to exceed three years. 40 U.S.C. 330(d); 29 C.F.R. 5.12(a)(1).

Employees have a private right of action against the contractor to recover wages due when the amount the government has withheld is insufficient. 40 U.S.C. 330(b).

Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.)	Provides protections for migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing.
Coverage	Applies to agricultural employers generally—i.e., any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker. 29 U.S.C. 1802(2). Covers individuals employed in agricultural employment of a seasonal or other temporary nature, who are required to be absent overnight from their permanent place of residence; does not include any immediate family member of an agricultural employer or a farm labor contractor, or any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under the act. 29 U.S.C. 1802(8).
Definitions	Employer: Meaning as found in the Fair Labor Standards Act—i.e., includes any person acting directly or indirectly in the interest of any employer in relation to an employee. Employee: Meaning as found in the Fair Labor Standards Act— i.e., any individual employed by an employer.
Recordkeeping and Disclosure Requirements	Each farm labor contractor, agricultural employer, and agricultural association that recruits any migrant agricultural worker is required to ascertain and disclose in writing to each such worker who is recruited for employment the following information: place of employment; wage rates to be paid; crops and kinds of activities on which the worker may be employed; period of employment; transportation, housing, and any other employee benefits to be provided, and any costs to be charged for each of them; existence of any strike or other work stoppage, slowdown, or interruption of the operations by employees at the place of employment; and the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers. 29 U.S.C. 1821, 1831.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant agricultural worker is required to post in a conspicuous place at the place of employment a poster provided by the Secretary setting forth the rights and protections afforded such workers under the act, including the right of a migrant agricultural worker to have, upon request, a written statement provided by the farm labor contractor, agricultural employer, or agricultural association of the information described in this section. 19 U.S.C. 1821, 1831.

Each farm labor contractor, agricultural employer, and agricultural association that provides housing for any migrant agricultural worker is required to post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing. 20 U.S.C. 1821, 1823.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant agricultural worker is required, with respect to each such worker, to make, keep, and preserve records for 3 years of the following information: the basis on which wages are paid; number of piecework units earned, if paid on a piecework basis; number of hours worked; total pay period earnings; specific sums withheld and the purpose of each withholding. The employers also are required to provide each worker, for each pay period, an itemized written statement of this information. 29 U.S.C. 1821, 1823.

Each farm labor contractor is required to provide to any other farm labor contractor, and to any agricultural employer and agricultural association to which such farm labor contractor has furnished migrant agricultural workers, copies of all records with respect to each such worker that such farm labor contractor is required to retain. The recipient of such records is required to keep them for a period of 3 years from the end of the period of employment. 29 U.S.C. 1821, 1823.

Enforcement and Penalties

The Department of Labor has authority to enforce the act. The Secretary of Labor may petition any appropriate district court of the United States for temporary or permanent injunctive relief if the Secretary determines that the act, or any regulation under the act, has been violated. 29 U.S.C. 1852.

The Secretary may impose a civil money penalty of not more than $1000 for each violation of the act or any regulation. 29 U.S.C. 1853(a). The

person assessed has the right to a hearing before an administrative law judge. If no hearing is requested, the assessment constitutes a final and unappealable order. If a hearing is requested, the initial agency decision is made by an administrative law judge, and such decision becomes the final order unless the Secretary modifies or vacates the decision. A final order may be appealed to federal district court within 30 days from the date of such order. 29 U.S.C. 1853(c),(d).

Any person who willfully and knowingly violates the act or any regulation under the act is subject to a fine of not more than $1000 or imprisonment for a term not to exceed one year, or both. Conviction for any subsequent violation of the act or any regulation subjects person to a fine of not more than $10,000 or prison for a term not to exceed three years, or both. If a farm labor contractor who commits a violation of section 1816 (prohibition on hiring illegal aliens) has been refused issuance or renewal of, or has failed to obtain, a certificate of registration, or is a farm labor contractor whose certificate has been suspended or revoked, the contractor, upon conviction, is subject to a fine of not more than $10,000 or imprisonment for a term not to exceed three years, or both. 29 U.S.C. 1851.

There is a private right of action for employees under the act. Any person aggrieved by a violation of the act or any regulation under the act by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the U.S. having jurisdiction of the parties. If the court finds that the respondent has intentionally violated any provision of the act or any regulation under the act, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation, or other equitable relief. In determining damages to be awarded, the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation. Any civil action brought under this section is subject to appeal. 29 U.S.C. 1854.

Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.)	Establishes uniform standards for employee pension and welfare benefit plans, including minimum participation, accrual, and vesting requirements, fiduciary responsibilities, and reporting and disclosure requirements.
Coverage	Applies to any employer or employee organization, or both, engaged in commerce or any industry affecting commerce, that maintains a covered employee benefit plan. Does not differentiate by firm size. 29 U.S.C. 1003.
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	Every person subject to a reporting and disclosure requirement must maintain records of sufficient detail for matters of disclosure for a period of not less than 6 years. Plan administrators must generally file an annual financial report (Form 5500) and file a summary plan description (SPD) every 5 years or every 10 years if no changes; receive a summary of material modification (SMM). The plan administrator is required to furnish each plan participant or beneficiary receiving benefits a summary annual report (SAR) of financial information and an SPD when he or she becomes a participant in the plan, or every 5 years if there have been modifications or changes in the plan, or every 10 years if there have been no changes; and must give an accrued benefit statement to the participant upon request. In addition, the plan administrator must disclose copies of the plan, relevant plan documents, collective-bargaining agreements, and certain other relevant materials upon request of plan participant or beneficiaries. 29 U.S.C. 1021-1027.
Enforcement and Penalties	The Department of Labor has authority to enforce the act. The Secretary may assess civil monetary penalties. There are no punitive damages available. Civil money penalties are available for failure to furnish participant requested materials, failure to file annual reports, and for prohibited transactions involving plans not covered by 4975 of the Internal Revenue Code. 29 U.S.C. 1132. Willful violation of the reporting and disclosure provisions subject a person to a fine of not more than $5,000, imprisonment not to exceed 1 year, or both, except when not an individual, the fine may not exceed $100,000. 29 U.S.C. 1131.

There is a private right of action under the act. A civil action may be brought by a participant, beneficiary, or by the Secretary of Labor for civil or equitable relief or to enforce provisions of the law. 29 U.S.C. 1132(g).

Group Health Plans Continuation Coverage Under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (29 U.S.C. 1161 et seq.)	Requires employer-sponsored group health plans to allow employees who would lose coverage as a result of certain events to continue coverage at their own expense for up to 18 months.
Coverage	Applies to all group health plans, except those for which employer maintaining the plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. 29 U.S.C. 1161.
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	None.
Enforcement and Penalties	Under 162(i)(2) of the Internal Revenue Code, if an employer plan fails to comply with the continuation coverage requirements, the employer is subject to losing income tax deductions for all of its group health insurance expenses. A plan administrator who fails to comply with COBRA's notice requirements is subject to a fine of up to $100 per day. 29 U.S.C. 1132(c). There is a private right of action under the act, individual participants or beneficiaries may sue to enforce their rights to continuation coverage. 29 U.S.C. 1132(a).

Unemployment Compensation Act Provisions of the Social Security Act (42 U.S.C. 501 et seq.)	Authorizes federal grants for state unemployment compensation administrations and provides the general framework for the operation of state unemployment compensation programs.
Coverage	Determined by state law.
Definitions	No relevant definitions in federal statute.
Recordkeeping and Disclosure Requirements	Determined by state law.
Enforcement and Penalties	Penalties against individuals are determined by state law.

Family and Medical Leave Act (29 U.S.C. 2601 et seq.)	Requires employers to allow employees to take up to 12 weeks of unpaid, job-protected leave to take care of a sick child, spouse, or parent; for the birth or adoption of a child; or for the employee's own serious health condition.
Coverage	Applies to all employers who have 50 or more employees who work 20 or more calendar weeks in the current or preceding year, and whose businesses affect commerce. 29 U.S.C. 2611(4)(A).
Definitions	Eligible employee: An employee who has been employed (i) for at least 12 months by the employer with respect to whom leave is requested and (ii) for at least 1,250 hours of service with such employer during the previous 12-month period; does not include any federal officer or employee covered by another law or any employee at a worksite where the employer stations fewer than 50 people if the total number of company employees within 75 miles of that worksite is fewer than 50. 29 U.S.C. 2611(2). Employer: Any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year; includes (i) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; (ii) any successor in interest of an employer; and (iii) any "public agency" as defined by the Fair Labor Standards Act. 29 U.S.C. 2611(4).
Recordkeeping and Disclosure Requirements	Employers are required to make, keep, and preserve records pertaining to compliance with this act in accordance with the Fair Labor Standards Act. The regulations state that records will not be required for submission more than once during any 12-month period, unless there is reasonable cause to believe a violation of the act has occurred or the Department of Labor has a complaint. There is no order or form required. Employers must keep the following records: (1) basic payroll and identifying employee data; (2) dates that leave covered by the act is taken; (3) if leave is taken in increments of less than one full day, the hours of the leave; (4) copies of the employee notices of leave furnished to the employer under act, if in writing, and copies of all general and specific notices given to employees as required under the act and the regulations; (5) any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves; (6) premium

payments of employee benefits; and (7) records of any dispute between the employer and an employee regarding designation of leave as leave under the act, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Each employer is required to post and keep posted a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of the act and information pertaining to the filing of a charge. 29 U.S.C. 2619.

Enforcement and Penalties

The Secretary of Labor has the same investigative authority as provided under the Fair Labor Standards Act. 29 U.S.C. 2616.

Procedures for complaint resolution and investigations under the Fair Labor Standards Act must be followed in handling complaints under the act. 29 U.S.C. 2616(b)(1).

District courts have jurisdiction, for cause shown, in an action brought by the Secretary (1) to restrain violations, including restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due eligible employees; or (2) to award such other equitable relief as may be appropriate including employment, reinstatement, and promotion. 29 U.S.C. 2617(d).

Any employer who violates the rights provided employees under this law is liable to any eligible employee for damages equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost due to a violation; or in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost, any actual monetary losses sustained by the employee as a direct result of the violation, such as providing care, up to a sum equal to 12 weeks of wages or salary for the employee; and the interest on the amount described above calculated at the prevailing rate; and an additional amount as liquidated damages equal to the sum of the amount described above and the interest described above, except that if an employer who has violated the act proves to the satisfaction of the court that the act or omission was in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of the act, the court may reduce the amount of the liability. 29 U.S.C. 2617(a)(1).

An action to recover damages or equitable relief may be maintained against any employer (including a public agency) in any federal or state court of competent jurisdiction by one or more employees for and on behalf of (a) the employees; or (b) the employees and other employees similarly situated. 29 U.S.C. 2617(a)(2).

There is a private right of action under the act. Eligible employees who are not permitted to take leave or who are denied reinstatement at the end of the leave, in violation of the act, may file a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief. However, this right is terminated if the Secretary of Labor elects to file suit. 29 U.S.C. 2617(a)(4).

Title VII of the Civil Rights Act (42 U.S.C. 2000e et seq.)	Prohibits employment or membership discrimination by employers, employment agencies, and unions on the basis of race, color, religion, sex, or national origin; prohibits discrimination in employment against women affected by pregnancy, childbirth, or related medical condition.
Coverage	Applies to all industries. However, does not apply to an employer with respect to the employment of aliens outside any state, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. 42 U.S.C. 2000e-1. Does not apply to employers with fewer than 15 employees for each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person. 42 U.S.C. 2000e (b).
Definitions	Employee: One employed by the employer, but does not include any person elected to public office in any state or political subdivision, or any of an elected official's personal staff, or an appointee on the policymaking level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. 42 U.S.C. 2000e(f). Employer: A person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include (1) the United States, a corporation wholly owned by the federal government, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service; or (2) a bona fide private membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code. 42 U.S.C. 2000e(b).
Recordkeeping and Disclosure Requirements	There are several standard reports required by the Equal Employment Opportunity Commission. Employers having 100 or more employees, certain joint labor-management committees, local unions that have 100 or more members, state and local governments, elementary and secondary schools that have 15 or more employees, and institutions of higher education that have 15 or more employees, are all required to file different reports containing information relating to employment practices. The Commission retains the right to ask for additional information and requires employers to keep records for 1-3 years. 29 C.F.R. 1602.

Enforcement and Penalties

The act established the Equal Employment Opportunity Commission, which is empowered to prevent anyone from engaging in unlawful employment practices, i.e., employment discrimination based on race, color, religion, sex or national origin. Aggrieved parties have the right to file a complaint with the Commission based on an unlawful employment practice. The Commission is empowered to investigate the claim, and if the Commission determines that there is reasonable cause to believe the charge is true, it is required to attempt to eliminate the unlawful practice by informal methods of conference, conciliation, and persuasion. If the Commission is unable to secure a conciliation agreement, it may bring a civil action against any respondent named in the charge. Where the respondent is a government, governmental agency or political subdivision, the Commission must refer the charge to the Attorney General, who may bring a civil action against the respondent. 42 U.S.C. 2000e-5(b).

In the case of an alleged unlawful employment practice occurring in a state or one of its political subdivisions, which has a state or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a state or local authority to grant or seek relief from such practice or to institute criminal proceedings. No charge may be filed by the person aggrieved before the expiration of sixty days after proceedings have been commenced under state or local law unless such proceedings have been earlier terminated. 42 U.S.C. 2000e-5(c).

If within 30 days after a charge has been filed with the Commission or within 30 days after expiration of any deferral period the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or a political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, government agency, or political subdivision. If a charge filed with the Commission has been dismissed by the Commission or if the Commission fails to file a civil action within a specified period, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or

the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. 42 U.S.C. 2000e-5(f)(1).

Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of the act, the Commissioner, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of charge. 42 U.S.C. 2000e-5(f)(2).

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay, or any other equitable relief as the court deems appropriate. 42 U.S.C. 2000e-5(g).

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by the act, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights provided, the Attorney General may bring a civil action in the appropriate district court of the United States. 42 U.S.C. 2000e-6(a).

There is a private right of action under the act. In any case where the Commission or the Attorney General does not bring a civil action, the charging party may bring a civil action in federal district court against the respondent. 42 U.S.C. 2000e-5(f)(1).

Equal Pay Act (29 U.S.C. 206(d))

Prohibits discrimination on the basis of sex in the payment of wages.

The Equal Pay Act was an amendment to the Fair Labor Standards Act in 1963. For information, see the Fair Labor Standards Act discussions. Under 29 U.S.C. 206(d)(3), wages withheld in violation of the equal pay provisions are deemed to be unpaid minimum wages or unpaid overtime compensation under the Fair Labor Standards Act.

Executive Order 11246	Prohibits discrimination against an employee or applicant for employment on the basis of race, color, religion, sex, or national origin by federal contractors and subcontractors, and requires the contractors and subcontractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin.
Coverage	Applies to contractors and subcontractors who perform government contracts or federally assisted construction contracts that total at least $10,000 in a 12-month period. 41 C.F.R. 60-1.1, 60-1.5. The order applies to firms of all sizes. Nonconstruction contractors with 50 or more employees and federal contracts in excess of $50,000 have greater affirmative action obligations. There are some exemptions. For example, religiously oriented schools may employ employees of a particular religion if the organization is, in whole or part, owned, managed, supported, or controlled by a particular religion or religious corporation. Contractors on or near Indian reservations may publicly announce a preference in employment for Native Americans living on or near the reservation. 41 C.F.R. 60-1.5.
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	Covered employers are required to file Standard Form 100 (EEO-1) annually. 41 C.F.R. 60-1.7. The Director of the Office of Federal Contract Compliance Programs (OFCCP) or the applicant (for federal assistance involving a construction contract) may require the employer to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for the administration of the order. 41 C.F.R. 60-1.7(a)(3). Federal agencies are directed to require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) whether it has developed and has on file at each establishment affirmative action programs; and (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and (iii) whether it has filed all reports due under the applicable filing requirements. 41 C.F.R. 60-1.7(b).

Special recordkeeping requirements exist for nonconstruction contractors with 50 or more employees and a contract in excess of $50,000, for construction contractors, and with respect to employee selection procedures used by all covered contractors. 41 C.F.R. 60-2, 60-3, and 60-4.

Enforcement and Penalties

The Director of OFCCP, Department of Labor, is responsible for enforcing the order. Violations of the order, equal opportunity contract clause, the regulations, or applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial proceedings to enforce the order. Violations may be found based on (i) a complaint investigation; (ii) analysis of an affirmative action program; (iii) the results of an on-site review of the contractor's compliance with the order and its regulations; (iv) a contractor's refusal to submit an affirmative action program; (v) a contractor's refusal to allow an on-site compliance review; (vi) a contractor's refusal to supply records or other information as required by regulations or construction industry requirements; (vii) any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the order, or of the rules and regulations. 41 C.F.R. 60-1.26(a).

If the investigation of a complaint, or a compliance review, results in a determination of violation, and the violations have not been corrected in accordance with conciliation procedures, OFCCP may institute an administrative enforcement proceeding to enjoin the violations, to seek appropriate relief (which may include back pay), and to impose sanctions. If the contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow the compliance agency access to its premises for an on-site review, and if conciliation efforts are unsuccessful, OFCCP may go directly to administrative enforcement proceedings to enjoin the violations, and impose appropriate sanctions. 41 C.F.R. 60-1.26(a)(2).

Whenever the Director has reason to believe that there is substantial or material violation of the contractual provisions of the order or of the rules or regulations he or she may refer the matter to the Solicitor of Labor to institute administrative enforcement proceedings or refer the matter to the Department of Justice to enforce the contractual provisions of the order, to seek injunctive and/or other relief, including back pay. 41 C.F.R. 60-1.26(a)(2).

If it is determined after a hearing (or after the contractor has waived a hearing) that the contractor is violating the order or the regulations, the Secretary shall issue an administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate. 41 C.F.R. 60-1.26(d).

Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings, the Attorney General may bring a civil action in the appropriate federal district court, requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the order. 41 C.F.R. 60-1.26(e).

The Attorney General may, subject to approval by the Director, initiate independent investigations of employers he/she has reason to believe may be in violation of the order. If, upon investigation, the Attorney General determines that a violation has taken place, he shall make reasonable efforts to secure compliance with the contract provisions of the order. If the efforts are unsuccessful, the Attorney General may, with the approval of the Director, bring a civil action in the appropriate federal district court. 41 C.F.R. 60.1.26(f).

The Director shall distribute periodically a list to all executive agencies and departments giving the names of prime contractors and subcontractors who have been declared ineligible for contracts under the regulations and the order. 41 C.F.R. 60-1.30.

Violations of the order may result in the institution of administrative or judicial enforcement proceedings. The order is enforced primarily through administrative proceedings instituted by OFCCP to enjoin violations, obtain make-whole relief, and impose federal contract sanctions, including contract cancellation, suspension, or debarment. Violations may be referred to the Department of Justice for enforcement. 41 C.F.R. 60-1.26(e)(3).

Age Discrimination in Employment Act (29 U.S.C. 621 et seq.)	Prohibits discrimination on the basis of age against people 40 years and older, in employment and employee benefits.
Coverage	Applies to all employers engaged in industry affecting commerce who have 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Covers only employees aged 40 and older. 29 U.S.C. 623, 630.
Definitions	Employer: A person engaged in an industry affecting commerce who has 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term also means (1) any agent of such person and (2) a state or political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state, and any interstate agency, but such term does not include the United States or a corporation wholly owned by the United States. 29 U.S.C. 630(b). Employee: An individual employed by any employer except that the term shall not include any person elected to public office in any state or political subdivision of any state by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set out above does not include employees subject to the civil service laws of a state government, government agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country. 29 U.S.C. 630(f).
Recordkeeping and Disclosure Requirements	The Equal Employment Opportunity Commission has the power to require recordkeeping. Every employer must make and keep payroll and other personnel records for 3 years. The records must contain basic information, such as name, address and date of birth, as well as rate of pay and compensation earned each week. 29 U.S.C. 626(a), 29 C.F.R. 1627.3. Employers must also keep a record for 1 year of all job applications, resumes, or any other form of employment inquiry whenever submitted in response to an advertisement or anticipated job openings, including

records pertaining to the failure or refusal to hire any individual. 29 C.F.R. 1627.3.

Employers must also keep records pertaining to promotion, demotion, transfer, selection for training, layoff, recall or discharge of any employee, job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings, test papers completed by applicants or candidates for any position that disclose the results of any employer administered aptitude or other employment test considered by the employer in connection with any personnel action, and any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work. 29 C.F.R. 1627.3(b)(1).

Every employer is required to keep on file copies of any employee benefit plans, such as pension and insurance plans, as well as copies of any seniority systems and merit systems that are in writing, for the full period the plan or system is in effect and for at least 1 year after its termination. If the plan or system is not in writing, a memorandum fully outlining the terms of such plan or system and the manner in which it has been communicated to the affected employees, together with notations relating to any changes or revisions thereto, shall be kept on file for a like period. 29 C.F.R. 1627.3(b)(2).

A record related to any enforcement action must be kept until a final disposition is made. 29 C.F.R. 1627.3(b)(3).

Employment agencies and labor organizations must keep similar specific records as well. 29 C.F.R. 1627.4, 1627.5.

Notices must be posted in conspicuous places by every employer, employment agency, and labor organization that has an obligation under the act. 29 C.F.R. 1627.10.

Enforcement and Penalties

The act is enforced consistent with procedures provided in the Fair Labor Standards Act. The Equal Employment Opportunities Commission is responsible for enforcing the act. Amounts owed to a person as a result of a violation of the act are deemed to be unpaid minimum wages or unpaid overtime compensation. Liquidated damages are only available in cases of willful violations of the act. A court enforcing the act has authority to grant judgements compelling employment, reinstatement or promotion, or

enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under the act. Before instituting any action under this section, the Equal Employment Opportunity Commission must attempt to eliminate the discriminatory practices or practices alleged, and to gain voluntary compliance with the requirements of the act, through informal methods of conciliation, conference, and persuasion. 29 U.S.C. 626(b).

Criminal penalties may be imposed if an individual forcibly resists, opposes, impedes, intimidates, or interferes with a duly authorized representative of the EEOC while engaged in the performance of duties under the act. Violators are subject to a fine of not more than $500 or imprisonment for not more than one year, or both; however, no person may be imprisoned under this section except when there has been a prior conviction of the act. 29 U.S.C. 629.

There is a private right of action under the act. Any person aggrieved may bring a civil action in any court of competent jurisdiction. However, the private right of action by an individual will terminate upon the commencement of an action by the EEOC to enforce the right of such employee under the act. 29 U.S.C. 626(c).

Americans With Disabilities Act (42 U.S.C. 12101 et seq.)	Prohibits employment discrimination (and discrimination in other areas) against individuals with disabilities, and requires employers to make "reasonable accommodations" for disabilities unless doing so could cause undue hardship to the employer.
Coverage	Title I (Employment) does not apply to employers with fewer than 15 employees, private membership clubs, the federal government or corporations wholly owned by the government, or Indian tribes; does not apply to employers with fewer than 25 employees prior to July 7, 1994; after that date, will not apply to employers with fewer than 15 employees. 42 U.S.C. 12111.
Definitions	Employee: An individual employed by an employer. 42 U.S.C. 12111(4). Employer: A person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for 2 years following the effective date of this title (7/26/92), an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, or an agent of such person. An employer does not include the United States, a corporation wholly owned by the government of the United States, a Native American tribe, or a bona fide private membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code. 42 U.S.C. 12111(5).
Recordkeeping and Disclosure Requirements	Employers are required to preserve personnel records for 1 to 3 years. 29 C.F.R. 1602.14.
Enforcement and Penalties	Same enforcement as Title VII of the Civil Rights Act. 42 U.S.C. 12117. Penalties are compensatory and equitable relief, attorney fees and costs. 42 U.S.C. 12117(a).

Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793)	Prohibits government contractors and subcontractors from discriminating in employment on the basis of disability, and requires them to take affirmative action to employ, and advance in employment, individuals with disabilities.
Coverage	Applies to all government contracts and subcontracts for the furnishing of personal property and supplies or services (including construction) in excess of $10,000. Does not differentiate by firm size. 29 U.S.C. 793(a).
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	Employers are required to maintain for 1 year records regarding complaints and actions taken on the complaints. 41 C.F.R. 60-741.52.
Enforcement and Penalties	The Department of Labor has authority to enforce the act. Complaints may be filed with the Director of the Office of Federal Contract Compliance Programs, Department of Labor. Complaints are then referred to the contractor for resolution. If the complainant is dissatisfied with the contractor's resolution, there is a DOL investigation. The regulations provide for administrative hearings and judicial appeal. 41 C.F.R. 60-741, subpart B.

Anti-Retaliatory Provision of the Surface Transportation Assistance Act (49 U.S.C. App. 2305)	Prohibits the discharge or other discriminatory action against an employee for filing a complaint or instituting a proceeding relating to a violation of a commercial motor vehicle safety rule or regulation or for refusing to operate a vehicle that is in violation of such a rule or regulation, or because of fear of serious injury due to an unsafe condition.
Coverage	Covers private-sector employees of commercial motor carriers who in the course of their employment directly affect commercial motor vehicle safety, and covers employees working with motor vehicles with gross vehicle weight ratings of 10,000 or more pounds, those designed to transport more than 10 passengers including the driver, and those used in the transport of hazardous materials. Does not differentiate by firm size. 49 U.S.C. app. 2301 (1),(2).
Definitions	Employee: (1) A driver of a commercial motor vehicle (including an independent contractor while in the course of personally operating a commercial motor vehicle), (2) a mechanic, (3) a freight handler, or (4) any individual, other than an employer, who is employed by a commercial motor carrier and who in the course of his or her employment directly affects commercial motor vehicle safety; but such term does not include employees of federal, state, or local governments who are acting within the course of such employment. 29 C.F.R. 1978.101. Employer: Any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate such a vehicle in commerce, but such term does not include federal, state, or local governments. 49 U.S.C. app. 2301.
Recordkeeping and Disclosure Requirements	None.
Enforcement and Penalties	The Department of Labor has authority to enforce the act. An employee or someone on the employee's behalf may file a complaint with the Occupational Safety and Health Commission within 180 days after a violation occurs. 29 C.F.R. 1978.102. The Commission is required to

investigate and gather data. 29 C.F.R. 1978.103. After the investigation, and within 60 days of filing of the complaint, the Assistant Secretary must issue written findings as to whether there is reasonable cause to believe that a violation has occurred. If he finds reasonable cause, he shall accompany his findings with a preliminary order. The order will include, where appropriate, a requirement that the named person abate the violation, reinstate the complainant to his or her former position, together with compensation (including back pay), and payment of compensatory damages. At complainant's request, the amount awarded may also include the complainant's costs and expenses (including attorney's fees) reasonably incurred filing the complaint. 29 C.F.R. 1978.104.

Within 30 days of receipt of the findings or preliminary order the complainant or the named person, or both, may file objections to the findings or preliminary order and request a hearing on the record. 29 C.F.R. 1978.105

The administrative law judge (ALJ) is required to issue a decision within 30 days after the close of the record. The decision must contain appropriate findings, conclusions, and, if a violation is found, an order pertaining to the remedy which, may provide for reinstatement of a discharged employee and may issue complainant's costs and expenses if complainant prevailed. Within 120 days after the issuance of the ALJ's decision and order, the Secretary shall issue a final decision and order. 29 C.F.R. 1978.109. Within 60 days of a final order, any person adversely affected or aggrieved may file a position for review with the U.S. Court of Appeals for the circuit in which the violation occurred. Whenever any person fails to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in federal district court. 29 C.F.R. 1978.113.

If, in response to a complaint the Secretary determines a violation has occurred he shall order (i) the person who committed such violation to take affirmative action to abate the violation; (ii) such person to reinstate the complainant to complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, and (iii) compensatory damages. The Secretary, at the request of the complainant, may assess a sum equal to the aggregate amount of all costs and expenses reasonably incurred by the complainant in bringing the complaint. 49 U.S.C. App. 2305(c)(2)(B).

Occupational Safety and Health Act (29 U.S.C. 651 et seq.)	Requires employers to provide employees with work and a workplace free from recognized hazards that can cause death or serious physical harm; provides for the establishment of safety and health standards that employers and employees must adhere to.
Coverage	Applies to all employment performed in a workplace in the United States and certain enumerated commonwealths, territories and possessions. Self-employed persons are not covered. The act also does not cover safety in industries regulated by other federal agencies, such as mining and much of the nuclear industry, for which safety is regulated by other federal agencies. It applies to employers regardless of size, but appropriations legislation has limited OSHA inspection activity with respect to small, low-hazard businesses. 29 U.S.C. 653.
Definitions	Employee: A person employed by a business that affects commerce. 29 U.S.C. 652. Employer: A person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a state. 29 U.S.C. 652.
Recordkeeping and Disclosure Requirements	Every employer must keep and make available records relating to occupational illnesses and injuries in the manner specified by regulations in 29 C.F.R. 1904. Among other things, OSHA regulations require employers to keep logs and summaries of occupational illness and injuries; to disclose certain injury, illness, and exposure records to OSHA, employees, and their representatives; and to make an oral report to OSHA of any incident resulting in the death of one or more employees or the inpatient hospitalization of three or more employees. 29 U.S.C. 657(c). In addition, the Department of Labor has issued regulations requiring recordkeeping in connection with specific health or safety hazards—e.g., in connection with employee exposure to particular toxic substances in the workplace.
Enforcement and Penalties	The Secretary of Labor has the authority to inspect and investigate workplaces. If the Secretary finds a violation, he may issue a citation (which provides a period for correction) and propose a penalty and provide a period for the employer to contest. If an employer fails to notify

the Secretary that he intends to contest within 15 days and an employee has not informed the Secretary that they consider the time for abatement to be unreasonable, the order becomes final and is unappealable. If the employer or an employee notifies the Secretary of intention to contest, a hearing is set before the Occupational Safety and Health Commission. If after a final order is issued the Secretary has reason to believe an employer has failed to correct a violation for which a citation has been issued within the stated period, the employer is liable for additional penalties. If an employer shows a good faith effort to comply with the abatement requirements of a citation, and the abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements in such citation. 29 U.S.C. 659.

The potential civil penalty for willful violations is $70,000, with a $5,000 minimum. Maximum available penalty for serious and other-than-serious violations is up to $70,000 for each repeat violation, and up to $7,000 for failure to post required documents. 29 U.S.C. 666.

Any employer who willfully violates any standard, rule, order, or regulation and that violation caused death to any employee, shall, upon conviction, be punished by a fine of up to $250,000 for an individual and $500,000 for an organization or by imprisonment for not more than 6 months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be imprisonment for up to one year. 29 U.S.C. 666.

Any person who gives advance notice of any inspection to be conducted under the act, without authority from the Secretary or his designees, is subject, upon conviction, to a fine of up to $250,000 for an individual and $500,000 for an organization or imprisonment for up to six months, or both. 29 U.S.C. 666.

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to the act shall, upon conviction, be subject to a fine of up to $100,000 for an individual and $200,000 for an organization or imprisonment for up to 5 years, or both. 29 U.S.C. 666.

Federal Mine Safety and Health Act (30 U.S.C. 801 et seq.)	Requires mine operators to comply with health and safety standards and requirements established to protect miners.
Coverage	Applies to all coal and other mines, the products of which enter interstate commerce, or the operations or products of which affect interstate commerce, and each operator of a mine, and every miner working in a mine. Does not differentiate by size of business. 30 U.S.C. 801, 803.
Definitions	None relevant.
Recordkeeping and Disclosure Requirements	Each operator is required to maintain at the mine office a supply of Mine Accident, Injury, and Illness Report Form 7000-1, and to report each accident, occupational injury, or occupational illness at the mine. 30 U.S.C. 813(h), 30 C.F.R. 50.20.
Enforcement and Penalties	Authorized representatives of the Secretary of Labor are required to make frequent inspections and investigations of health and safety conditions, including causes of accidents in mines. 30 U.S.C. 813(a). The Secretary of Labor while conducting an investigation of any accident or other occurrence may hold hearings, and sign and issue subpoenas for attendance and testimony of witnesses and the production of documents. 29 U.S.C. 813(b). Whenever a representative of the miners or a miner himself has reasonable grounds to believe that a violation of a mandatory health or safety standard exists, the representative or the miner has a right to obtain an immediate inspection by giving notice to the Secretary or his representative. If, upon investigation, the Secretary finds a violation of a mandatory health or safety standard, he shall issue a citation to the operator, fixing a reasonable time for abatement. If the violation has not been abated in the time prescribed and no extension is appropriate, an authorized representative of the Secretary may issue a withdrawal order (an order withdrawing everyone from the mine and prohibiting all but specified individuals from entering the mine) until the violation is abated. A representative of the Secretary can also issue withdrawal orders when an imminent danger is discovered, or for certain violations by an operator

who has been determined to have a pattern of violations. A representative of the Secretary can require that a miner found lacking in safety training be withdrawn from the mine until such training is received. While the miner is receiving training and prohibited from entering the mine, he may not be discharged, or discriminated against and may not lose compensation. 30 U.S.C. 813(g).

The civil penalty for violation of the act or a mandatory health or safety standard is a fine of up to $50,000 for each violation. The civil penalty for failure to correct a violation for which a citation has been issued within the time provided for correction is a fine of up to $5,000 for each day during which the violation continues. 30 U.S.C. 820(a). Miners may be fined $250 for willful violation of smoking standards. 30 U.S.C. 820(g).

Any operator who willfully violates a mandatory health or safety standard or knowingly fails or refuses to comply with any order to correct a violation is, upon conviction, subject to a fine of up to $250,000 for an individual and $500,000 for an organization, or imprisonment for up to one year, or both; except that if the conviction is for a violation committed after the first conviction of such operator under the act, punishment shall be imprisonment for up to 5 years. 30 U.S.C. 820(d).

In addition, civil penalties may be assessed and criminal proceeding pursued against corporate directors, officers, or agents who knowingly or willfully violate mandatory standards or fail to comply with orders. 30 U.S.C. 820(c).

A person who gives advance notice of any inspection conducted under the act is, upon conviction, subject to a fine of up $250,000 for an individual, imprisonment for not more than six months, or both. 30 U.S.C. 820(e).

Whoever knowingly makes any false statement or representation in any application, record, or other document filed or required by the act is, upon conviction, subject to a fine of up to $250,000 for an individual and $500,000 for an organization, imprisonment for not more than 5 years, or both. 30 U.S.C. 820(f).

Drug Free Workplace Act (41 U.S.C. 701 et seq.)	Requires federal contractors and federal grantees to take certain steps to maintain a drug free workplace.
Coverage	Applies to all federal grantees and federal contractors with contract amounts of $25,000 or more. 41 U.S.C. 701, 702.
Definitions	Employee: The employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract. 41 U.S.C. 706.
Recordkeeping and Disclosure Requirements	Federal grantees and contractors must publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's or contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. 41 U.S.C. 701(a)(1)(A),(B), 702(a)(1)(A),(B). Grantees and contractors must offer drug-free awareness programs to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the grantee's or contractor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties imposed upon employees for drug abuse violations. 41 U.S.C. 701(a)(1)(A),(B), 702(a)(1)(A),(B). The grantee or contractor must notify the employee that, as a condition of employment, the employee must abide by the terms of the grant or contract and must notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction. 41 U.S.C. 701(a)(1)(A),(B), 702(a)(1)(A),(B). The contractor or grantee must notify the contracting or granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction. 41 U.S.C. 701(a)(1)(A),(B), 702(a)(1)(A),(B). The contractor or grantee must impose a sanction on, or require satisfactory participation in a drug abuse assistance or rehabilitation

program by, any employee who is so convicted, and such employee must make a good faith effort to continue to maintain a drug-free workplace through implementation of provisions of the act. 41 U.S.C. 701(a)(1)(A),(B), 702(a)(1)(A),(B).

Enforcement and Penalties

Contracting agencies enforce the act. If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, appropriate action shall be initiated by a contracting officer of the agency. Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any federal agency, and for participation in any future procurement by any federal agency for a period specified, not to exceed 5 years. 41 C.F.R. 701(b)(2),(3).

Each grant or contract awarded by a federal agency shall be subject to suspension of payments under the grant or contract, or termination, or both, and the contractor or grantee shall be subject to suspension or debarment if the head of the agency determines that (1) the contractor or grantee has made a false certification; (2) the contractor or grantee has failed to carry out the requirements of the contract relating to notice of a drug free policy and setting up of a drug free awareness program; or (3) such a number of the employees of the contractor or grantee have been convicted of violations of criminal drug statutes for illegal activities occurring in the workplace as to indicate the contractor or grantee has failed to make a good faith effort to provide a drug-free workplace as required by the act. 41 U.S.C. 701(b), 702(b).

National Labor Relations Act (29 U.S.C. 151 et seq.)	Protects certain rights of workers, including the right to organize and bargain collectively through representation of their own choice.
Coverage	Applies to all employers and employees in their relationships with labor organizations whose activities affect commerce. Does not differentiate by firm size. 29 U.S.C. 141(b).
Definitions	Employer: Any person acting as an agent of an employer, directly or indirectly, but does not include the United States or any wholly owned government corporation, or any Federal Reserve bank, or any state or political subdivision thereof, or any person subject to the Railway Labor Act, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization. 29 U.S.C. 152. Employee: Includes any employee, and is not limited to the employees of a particular employer, unless the act explicitly states otherwise, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but does not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his or her home, or any individual employed by his or her parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, or by any other person who is not an employer as herein defined.
Recordkeeping and Disclosure Requirements	None.
Enforcement and Penalties	The National Labor Relations Board has authority to enforce the act. Whenever it is charged that any person has engaged or is engaging in any unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, has the power to issue a complaint stating the charges in that respect and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency. No

complaint may be issued, however, for any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board, unless the aggrieved person was prevented from filing such charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. 29 U.S.C. 160(b).

Any person who willfully resists, prevents, impedes, or interferes with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this act is subject to a fine of not more than $5,000 or imprisonment for up to 1 year, or both. 29 U.S.C. 162.

The Board has authority, upon issuance of a complaint charging that any person has engaged or is engaging in an unfair labor practice, to seek appropriate temporary relief or a restraining order in federal district court. 29 U.S.C. 162.

Labor-Management Reporting and Disclosure Act (29 U.S.C. 401 et seq.)	Requires reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers; establishes basic rights for members of labor organizations; and provides standards for the election of officers of labor organizations.
Coverage	Applies to unions and any employer engaged in an industry affecting commerce that may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The United States, states, and their political subdivisions are excluded. Does not differentiate by firm size. 29 U.S.C. 402.
Definitions	Employee: Any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion from a labor organization in any manner or for any reason inconsistent with the requirements of the act. 29 U.S.C. 402(f). Employer: Any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees; or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee, but does not include the United States or any corporation wholly owned by the United States, or any state or political subdivision thereof. 29 U.S.C. 402(e).
Recordkeeping and Disclosure Requirements	Every employer who in any fiscal year made (1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except certain payments or loans such as those made by a bank or other credit institution; (2) any payment (including reimbursed expenses) to any of his or her employees, or any group or committee of such employees to

persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees; (3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; (4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or (5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in (4) above is required to file with the Secretary of Labor a report showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433.

Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object is, directly or indirectly, (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding is required to file within 30 days after entering into such agreement or arrangement a report with the Secretary containing the name

under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary prescribes. 29 U.S.C. 433.

Enforcement and Penalties

The Department of Labor has authority to enforce the act. Whenever it appears that any person has violated or is about to violate any of the provisions of Title II of the act, including the reporting and disclosure requirements, the Secretary of Labor may bring a civil action for such relief (including injunctions) as may be appropriate. 29 U.S.C. 440.

The Secretary has the power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of the act (except subchapter II (Bill of Rights of members of labor organizations)) to make an investigation and in connection therewith to enter such places and inspect such records and accounts and question such persons as he deems necessary to enable him to determine the facts. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report or any other matter which he deems to be appropriate as a result of such an investigation. The Secretary may issue subpoenas for the testimony of witnesses and production of records. 29 U.S.C. 521.

Willful violations of bonding provisions are punishable by a fine of up to $10,000, or imprisonment for up to 1 year, or both. 29 U.S.C. 439(a). There is a $10,000 penalty and/or 5 years imprisonment for violation of fiduciary provisions. 29 U.S.C. 501(c).

Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the act is subject to a fine of up to $10,000, or imprisonment for up to 1 year, or both. 29 U.S.C. 439(b).

Any person who willfully makes a false entry in or wilfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of the act is subject to a fine of up to $10,000, or imprisonment for up to 1 year, or both. 29 U.S.C. 439(c).

Each individual required to sign reports under the act is personally responsible for the filing of such reports and for any statement contained therein which he knows to be false. 29 U.S.C. 439(d).

There is a private right of action under the act for individuals to sue labor organizations. 29 U.S.C. 412.

Railway Labor Act (45 U.S.C. 151 et seq.)	Sets out the rights and responsibilities of management and workers regarding labor organizing and labor disputes in the rail and airline industries and establishes the National Railroad Adjustment Board and the National Mediation Board to help resolve labor disputes and prevent work stoppages in these industries.
Coverage	The act applies only to collective-bargaining agreements covering employees of rail and air carriers. Does not differentiate by firm size. Does not cover certain rail operations in coal mines. 45 U.S.C. 151.
Definitions	Employee: Every person in the service of a carrier who does work defined as that of an employee in the orders of the Interstate Commerce Commission. 45 U.S.C. 151(fifth).
Recordkeeping and Disclosure Requirements	The act requires carriers to post notification to employees that all disputes between the carrier and its employees will be handled according to the requirements of the act. Carriers must post, verbatim, the act's provisions relating to representation, organization, and collective bargaining, and the prohibition against agreements to join or not join unions. 45 U.S.C. 152(eighth).
Enforcement and Penalties	The representative of a carrier's employees may apply to the United States Attorney to institute and prosecute all necessary proceedings for the enforcement of the act's provisions and for the punishment for all violations, and for costs and expenses. 45 U.S.C. 152 (tenth). A willful violation is a misdemeanor. Upon conviction, an offender is subject to a fine of not less than $1,000 nor more than $20,000, or imprisonment, or both. 45 U.S.C. 152(tenth).

Employee Polygraph Protection Act (29 U.S.C. 2001 et seq.)	Prohibits the use of lie detectors for preemployment screening or during the course of employment.
Coverage	Applies to any employer engaged in or affecting commerce or in the production of goods for commerce. 29 U.S.C. 2002. The act applies to all employees of covered employers regardless of their citizenship status and to foreign corporations operating in the United States. 29 C.F.R. 801.3. It does not apply to federal, state, or local government employees. It applies to all other industries with the specific exception of polygraph examinations given by the federal government in the performance of any counterintelligence function, to experts under contract to the Defense Department, or any of their contractors, or any experts or contractors working for the Department of Energy in connection with atomic energy defense. It also does not apply to the examination in the performance of any intelligence or counterintelligence function, of anyone employed by, consulting for, assigned to, or detailed to the National Security Agency, Defense Intelligence Agency, Central Intelligence Agency, or under contract with the Federal Bureau of Investigation. Does not differentiate by firm size. 29 U.S.C. 2006.
Definitions	Employee: Includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee. 29 U.S.C. 2001.
Recordkeeping and Disclosure Requirements	Every employer subject to the act shall post and keep posted a notice explaining the act. Records must be kept for 3 years from the date the examination was conducted. The employer must keep, in connection with an ongoing investigation involving economic loss or injury, the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee; in connection with an investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation; with respect to employees examined under any exemptions for private employers, a copy of the written statement that sets forth the time, place, and rights of the examinee; a copy of the notice to the examiner of persons to be examined;

and all opinions and reports prepared by the examiner. The examiner himself or herself must keep copies of all written opinions, reports, charts, written questions, lists, and other records relating to polygraph tests. 29 C.F.R. 801.30.

Enforcement and Penalties

The Department of Labor has authority to enforce the act. An employer who violates any provision of the act may be assessed a penalty of not more than $10,000. 29 U.S.C. 2005(b),(c).

The Secretary of Labor may issue subpoenas to compel attendance at any hearing or investigation. Federal district court may issue temporary or permanent restraining orders and injunctions, and such legal or equitable relief incident thereto as is appropriate, including, but not limited to, employment, reinstatement, promotion and the payment of lost wages and benefits. 29 U.S.C. 2004(b).

The rights and procedures provided by the act may not be waived by contract or otherwise, unless such waiver is part of a written settlement agreed to an signed by the parties to the pending action or complaint under the act. 29 U.S.C. 2005(d).

There is a private right of action under the act. An employer who violates this law is liable to the employee or the prospective employee affected by such violation for such legal or equitable relief as may be appropriate, including, but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits. No such action may be commenced more than 3 years after the date of the alleged violation. 29 U.S.C. 2005(c).

Veterans Reemployment Rights Law (38 U.S.C. 4301 et. seq.)	Provides reemployment rights for people returning from active duty or reserve training in the armed forces or National Guard.
Coverage	Applies to all employers, whether private or public organizations, including the United States and the states and their subdivisions. Covers all veterans who are discharged honorably in any of the services including reserves, Public Health, and National Guard. Until July 26, 1994, it applies to employers having 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. On and after July 26, 1994, it applies to employers having 15 or more employees for 20 or more such weeks. 38 U.S.C. 4307 (c)(1)(A),(B).
Definitions	Employer: Includes agent of employer; does not include the United States, a corporation wholly owned by the government of the United States, an Indian tribe, or a bona fide private membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code for purposes of complying with the requirement that employers make reasonable accommodation for disabled veterans. 38 U.S.C. 4307(c)(1)(A),(B).
Recordkeeping and Disclosure Requirements	None.
Enforcement and Penalties	The act is enforced through filing suit in court. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such state or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided by the act, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to require such employer to comply with the act. No fees or court costs may be assessed against any person who applies for such benefits. No state statute of limitations applies to any proceedings under the act. 38 U.S.C. 4302.

If the employer, who is a private employer or a state or political subdivision, fails or refuses to comply with the act, the district court of the United States for any district in which such private employer maintains a place of business, or in which such state or political subdivision thereof exercises authority or carries out its functions, has the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in the act. 38 U.S.C. 4302.

Employment Provisions of the Immigration and Nationality Act, as Amended by the Immigration Reform and Control Act (8 U.S.C. 1101 et seq.)	Prohibits the hiring of illegal aliens and imposes certain duties on employers in hiring; prohibits employment discrimination against legal aliens; and authorizes but limits the use of imported temporary agricultural workers.
Coverage	Applies to all employers without regard to industry or size. However, special provisions are made for the hiring of people in certain occupations. For example, any employer may file a petition with the Attorney General to hire aliens who are outstanding professors or teachers, multinational executives or managers, members of the professions with advanced degrees or aliens of exceptional ability, skilled workers or professionals, or certain unskilled laborers. 8 U.S.C. 1154(a)(1)(D); 8 C.F.R. 204.5(c). A group or association of employers of seasonal agricultural workers may request the Secretaries of Labor and Agriculture to raise the number of such workers allowed into the country to perform such services based on a showing of need. 8 U.S.C. 1161 (a)(7)(A).
Definitions	H-2A worker: A nonimmigrant coming temporarily to the United States to perform agricultural labor or services. 8 U.S.C. 1101(a)(1)(ii)(a), 1188(i)(2).
Recordkeeping and Disclosure Requirements	Verification of Employment Eligibility: (1) A person or entity that hires or recruits or refers for a fee an individual for employment must ensure that the individual properly fills out section 1 of Form I-9 and presents evidence of identity and employment eligibility. Employers or their agents must physically examine documentation and complete section 2 of Form I-9. (2) If an individual's employment authorization expires, employer, recruiter, or referrer must reverify on Form I-9 that the individual is still authorized to work. 8 C.F.R. 274a.2. A person or entity who employs special agricultural workers (ending with fiscal year 1992) whose status was changed from temporary to permanent residence shall furnish to the government, and in certain circumstances to

the alien, a certificate indicating the number of days the worker was employed by that employer for seasonal agricultural services. 8 U.S.C. 1161(b)(2)

Farm labor contractors, agricultural employers, or agricultural associations that are also family or small businesses under 29 U.S.C. 1803 shall not knowingly provide false or misleading information to an alien special agricultural worker concerning the terms, conditions, or existence of agricultural employment. 8 U.S.C. 1161(f)(2).

Employers shall make available, for public examination, the labor condition application filed with the Secretary of Labor. 8 U.S.C. 1182(n)(1).

Farm labor organizations and associations of agricultural employers may receive applications from individuals seeking to enter the United States temporarily to perform special agricultural services. 8 U.S.C. 210(b)(2)(A).

An employer must attest on a designated form that it has verified that an individual it has hired is not an unauthorized alien. The form must be retained and be available for inspection by the Immigration and Naturalization Service or Department of Labor. 8 U.S.C. 274A.

Enforcement and Penalties

The Immigration and Naturalization Service (INS) has authority to enforce the act. It may issue subpoenas to obtain employment records from employer of special agricultural workers to verify employee's eligibility as an alien lawfully admitted for temporary residence. 8 U.S.C. 1225; 8 C.F.R. 210.3(b)(4), 287.4.

Complaints involving violations of the employment of aliens section of the act may be filed with INS. INS may investigate without filing a formal complaint. Alleged violators are entitled to a hearing before an administrative law judge. 8 U.S.C. 1324a(e); 8 C.F.R. 274a.9.

The Secretary of Labor is directed to establish a process for the receipt, investigation and disposition of complaints regarding a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact regarding conditions that justifying hiring alien nurses. The Secretary shall conduct an investigation if he believes there is reasonable cause that a facility fails to meet conditions attested to. If a basis exists, opportunity for a hearing is available within 60 days. 8 U.S.C. 1182(m)(2)(E)(ii),(iii).

The Secretary of Labor is directed to establish a process for the receipt, investigation, and disposition of complaints regarding a petitioner's failure to meet conditions specified in an application or a misrepresentation of a material fact in an application for employment of non-immigrants in specialty occupations or as fashion models. 8 U.S.C. 1182(n)(2)(A).

The Attorney General is directed to provide a process for reviewing and acting upon petitions by employers to impart aliens to work as executives, managers, or to impart special knowledge in a U.S. subsidiary or affiliate. 8 U.S.C. 1184(c)(2)(C).

Violations of 8 U.S.C. 1161(b)(2) (failing to provide certification or making false statements of a material fact), may result in civil monetary penalties. 8 U.S.C. 1161(f)(4).

If a facility fails to meet a condition attested to or makes a misrepresentation of a material fact, regarding the hiring of alien nurses, the Secretary of Labor may impose administrative remedies, including civil monetary penalties of up to $1,000 per violation, and shall order the payment of any back pay due. Future petitions may not be approved for at least 1 year. 8 U.S.C. 1182(m)(2)(E)(iv), (v).

If an employer willfully fails to meet the wages or working conditions attested to, or fails to meet another condition attested to or makes a misrepresentation of a material fact, regarding the hiring of temporary nonimmigrant workers in specialty occupations or as fashion models, the Secretary of Labor shall notify the Attorney General and impose such other administrative remedies as he deems appropriate, including the imposition of civil monetary penalties not to exceed $1,000 per violation. The Attorney General shall not approve petitions filed by the employer for at least 1 year. If back pay is due, the Secretary shall order such payment. 8 U.S.C. 1181(n)(2)(C), (D).

Violations of section 274A of Act (hiring of aliens, verification and documentation requirements): Criminal - up to $3,000 for each violation, imprisoned for not more than 6 months; Civil - cease and desist order enjoining of pattern or practice violations and fines on a sliding scale from $100 to $10,000. 8 U.S.C. 274A(e)(4); 8 C.F.R. 274a.10.

Workers Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.)	Requires employers to provide advance written notice of plant closings and mass layoffs.
Coverage	Applies to business enterprises that employ 100 or more employees, excluding part-time employees; or 100 or more employees including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime. It covers the permanent shutdown of a single site of employment or an identifiable unit within a single site of employment that results in an employment loss during a 30-day period for 50 or more employees, excluding part-time employees, or a mass layoff or action that is not a closing and results in an employment loss during a 30-day period for between 50 and 500 workers (excluding part-time workers) at a single site of employment if that number is at least 33 percent of the work force at the single site of employment or for more than 500 workers (excluding part-time workers). 29 U.S.C. 2101.
Definitions	Affected employees: Employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer. 29 U.S.C. 2101(5). Single site of employment: A single facility or plant or a group of related facilities, like a campus or multibuilding factory. 20 C.F.R. 639.3(i).
Recordkeeping and Disclosure Requirements	Employers are required to serve written notice of a plant closing or mass layoff at least 60 days, with some exceptions, before the event takes place—they must give notice to affected employees or their representatives, the state dislocated worker unit, and the chief elected official of a unit of local government. 29 U.S.C. 2101; 20 C.F.R. 639.4, 639.7. Notice to the relevant state dislocated worker unit and to a designated local official must contain specific information: (1) name and address of employment site where layoff is to occur and the name and telephone number of a company official to contact for further information; (2) a statement as to whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement to that effect; (3) the expected date of the first separation and the anticipated schedule

for making separations; (4) the job titles of positions to be affected and the number of affected employees in each job classification; (5) an indication as to whether or not bumping rights exist; and (6) the name of each union representing affected employees and the name and address of the chief elected officer of each union. Notices containing some of this same information must also be sent to representatives of affected employees or the employees themselves if they are not represented. 20 C.F.R. 639.6, 639.7.

Enforcement and Penalties

Enforcement is in the courts through private actions instituted by employees. Employees, their representatives and units of local government may initiate civil actions against employers believed to be in violation of the act. The Department of Labor has no legal standing in any enforcement action and is not in a position to issue advisory opinions. 29 U.S.C. 2104; 20 C.F.R. 639.1(d).

Any employer who orders a plant closing or mass layoff in violation of the Act is liable to each employee who suffers an employment loss as a result of the closing for back pay for each day of violation and benefits under an employee benefit plan, including the cost of medical expenses incurred during the employment loss which would has been covered under an employee benefit plan, including the cost of medical expenses incurred during the employment loss which would have been covered under an employee benefit plan if the employment loss had not occurred. The liability is calculated for the period of the violation, up to a maximum of 60 days, but in no event for more than one-half the number of days the employee was employed by the employer. 29 U.S.C. 2104.(a).

Any employer who violates the notice provisions for the act with respect to a unit of local government shall be subject to a civil penalty of up to $500 per day. A person seeking to enforce liability under the Act may sue in any district court of U.S. for any district in which the violation is alleged to have occurred or in which the employer transacts business. 29 U.S.C. 2104(a)(3).

The remedies described above are the exclusive remedies for any violation of the act. A Federal court shall not have the authority to enjoin a plant closing or a mass layoff. 29 U.S.C. 2104(b).

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