




American Staffing Association

The background of the entire page is a photograph of a law library. Tall wooden bookshelves filled with numerous blue and red law books line the walls. A man in a dark suit and glasses is walking from right to left in the foreground, carrying a blue folder. In the bottom left corner, a desk with a red chair and some papers is partially visible.

STATE EMPLOYMENT LAW WORKBOOK PENNSYLVANIA



Employment Law

workbook

Pennsylvania

Participant Name

Company



American Staffing Association

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American Staffing Association
277 S. Washington St., Suite 200
Alexandria, VA 22314-3675
703-253-2020
703-253-2053 fax
americanstaffing.net

The information in this workbook was provided by the law firm Seyfarth Shaw LLP. The workbook is intended as information and not as legal advice. Readers requiring legal or other advice regarding the matters discussed in the workbook should consult with experienced legal counsel.

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Introduction

Certification is a key element in maintaining high standards of professionalism in the staffing industry. The Certified Staffing Professional® and the Technical Services CertifiedSM programs are self-study programs that offer professional credentials to individuals who pass examinations of labor and employment law principles and ethical practices. Both exams test your knowledge of federal and state employment laws.

This workbook is one component of the study materials for the ASA CSP® and TSCSM exams. The workbook covers the following topics:

- Discrimination
- Pre-employment inquiry guidelines
- Family and medical leave
- Wage and hour laws
- Noncompete and other employment agreements
- Workplace safety
- Drug testing
- Workers' compensation

Study questions are included to assist you in preparing for the CSP and TSC exams. An answer key is also included.

In addition to using this workbook, study for the exam using the two textbooks, *Employment Law for Staffing Professionals* and *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements*. These textbooks cover applicable federal laws and serve as authoritative references.

You may also use the online timed practice exam. This practice exam contains the same number of questions that are on the actual online exam. Questions cover the content in this workbook and the two textbooks.

Individuals who pass the CSP or TSC exam will be eligible to use the CSP or TSC designation on all professional correspondence. To maintain the designations, certified individuals must complete at least 30 hours of approved continuing education (CE) within a prescribed period after the award of their CSP or TSC certificate and within each period thereafter as specified by ASA. At least six of the 30 CE hours must pertain to employment law. For more information about certification and continuing education, visit the ASA Web site at americanstaffing.net and click on Education & Certification.

Important State Law Updates

The American Staffing Association understands the importance of keeping up-to-date with changing state laws. The ASA legal team works with the law firm Seyfarth Shaw LLP to track and maintain these state law updates. Before starting your study of this workbook, please visit americanstaffing.net/stateaddendums to see if any laws in your state have changed since this workbook was printed.

Discrimination

Overview

Pennsylvania's primary antidiscrimination law is the Pennsylvania Human Relations Act. The law covers public entities and private businesses with four or more employees.

The HRA does not apply to any individual

- Employed in agriculture or domestic service
- Who as part of his or her employment resides in the residence of the employer
- Employed by his or her parents, spouse, or child

The law prohibits discrimination on the basis of

- Age
- Ancestry
- Color
- National origin
- Non-job-related handicap or disability
- Race
- Religion
- Sex
- The use of a guide or support animal because of blindness, deafness, or physical handicap

Discrimination can take the form of refusing to employ, discharging, or discriminating with respect to compensation, hire, tenure, terms, conditions, or privileges of employment.

Exceptions

The primary exception to this law is referred to as a **bona fide occupational qualification (BFOQ)**.

This means that discrimination in employment is permissible only when the employer can prove a factual basis for believing that all or substantially all members of the class covered by the HRA would be unable to perform the duties of the job involved safely and efficiently. These exceptions have very limited scope and application. The HRA also has a **statutory prohibition against excluding certain classes of people from employment based on assumptions, stereotypes, historical usage** (i.e., "Women have always done this job."), or the absence of dressing rooms or restrooms.

Violations and Complaints

Any protected person who believes that he or she has been subjected to an unlawful employment practice must file a **charge with the Pennsylvania Human Relations Commission within 180 days of the date of the occurrence**. The person may also **file a lawsuit in state court** if the commission issues a notification that the **complaint has been dismissed within one year of filing** and the **lawsuit is filed within two years** after the date of the notice from the commission.

If the commission finds that the employer engaged in an unlawful employment practice, it can order several remedies either alone or in combination. The employer may be required to

- Pay back pay
- Hire or reinstate the individual
- Upgrade the job of the individual with or without back pay
- Reimburse the individual for travel and other reasonable out-of-pocket expenses

- Compensate the individual for loss of work in matters involving the complaint
- Assess a civil penalty or award actual damages caused by humiliation and embarrassment

The commission may also commence an action in court for a preliminary or special injunction.

Classifications Under the Law

Following is an overview of each classification.

Classification

Pennsylvania Law

Age

The HRA protects people who are 40 years or older from age discrimination.

Disability

A protected handicap or disability is defined as **a physical or mental impairment that substantially limits one or more of the person's major life activities; a record of having such impairment; or being regarded as having such impairment.** This does not include the illegal use of or addiction to a controlled substance.

A “non-job-related handicap or disability” means any handicap or disability that does not substantially interfere with the ability to perform the essential functions of the job.

Genetic Disorder

Pennsylvania does not have a genetic-testing law.

Military Service

Pennsylvania has a very strict law covering military status and leave. The law applies to private and public employers. Employment discrimination against people due to their military status is prohibited. An automatic military leave of absence must be granted whenever any employee, in time of war or armed conflict, or during emergencies proclaimed by the governor or by the president of the U.S., enlists or is drafted into the military service. In addition, as long as the employee is on a military leave of absence, the **employee cannot be removed from employment and the employee's duties must be performed either by other employees or by a temporary substitute.**

The employee need not be paid wages by the employer while on military leave. Upon return from the leave, the employee must be reinstated to the **same position or a position of like seniority, status, and pay held before the leave.**

If the employee is not qualified to perform the work due to a disability **sustained while on leave**, the employer must offer the employee any available job that the employee is qualified to perform.

If the employee is a member of the Pennsylvania National Guard and is called to active duty, the employer is required to **maintain any health**

Classification

Pennsylvania Law

insurance or other benefits for the first 30 days of military duty at the employer's expense. After the expiration of the first 30 days, the employee must be given the option of continuing the coverage at the same rates paid by the employer for the insurance coverage, except for coverage for injuries incurred in the line of military duty.

Pregnancy and Maternity

Pregnancy discrimination in employment is prohibited. Excluding applicants or employees from employment because of pregnancy is a violation of the HRA. Pregnancy leave must be regulated by the same employer policy governing temporary disability. Any policy that requires a pregnant employee to take leave automatically at a specified time during pregnancy or to remain away from work after she has recovered from her disability are violations of the HRA.

In Philadelphia, employers must provide reasonable accommodations to employees for needs related to pregnancy, childbirth or a related medical condition, provided the employee requests such accommodation and the accommodation will not cause an undue hardship on the employer. Reasonable accommodations include but are not limited to restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position, and job restructuring. Employers must provide written notice to employees of these rights. The law applies to any employer in Philadelphia who employs at least one non-relative.

Sex and Sexual Orientation

Pennsylvania has prohibitions against sex discrimination and sexual harassment in the private sector similar to federal law.

There is no law addressing sexual orientation in the private sector. There is a separate law governing state employees that specifically prohibits discrimination on the basis of sexual orientation. This law also defines and prohibits sexual harassment. In addition, the cities and counties of Harrisburg, Lancaster, Oxford, Philadelphia, Pittsburgh, York, and the county of Northampton prohibit discrimination on the basis of sexual orientation.

Study Questions

1. Heidi is 72 years old. Is she protected from discrimination under Pennsylvania law?
 - a. Yes
 - b. No
2. It is permissible to require an employee to take three weeks off work after giving birth.
 - a. True
 - b. False

3. Sexual orientation is not a protected category under Pennsylvania's antidiscrimination statute.
 - a. True
 - b. False
4. Sally filed a charge of discrimination against her employer with the Pennsylvania Human Relations Commission. The charge was dismissed. Does Sally have any recourse?
 - a. Yes
 - b. No
5. Joe believes he has been discriminated against because of his national origin. He has 300 days from the alleged discriminatory occurrence to file a charge with the Pennsylvania Human Relations Commission.
 - a. True
 - b. False
6. A bona fide occupational qualification is an exception to the law prohibiting discrimination.
 - a. True
 - b. False
7. In order to be covered by the Pennsylvania Human Relations Act, an employer must have at least 15 employees.
 - a. True
 - b. False
8. Elle is gay. She believes that recently she has been denied a number of employment opportunities because of her sexual orientation. Is Elle protected by state law?
 - a. Yes
 - b. No
9. Gerald is 70 years old. During a recent interview with a staffing company, the staffing coordinator said, "Most of the companies we work with have a younger environment. I am not sure you would fit in." Is Gerald protected under age discrimination laws in Pennsylvania?
 - a. Yes
 - b. No
10. ABC Staffing recently received an order for five male temporary employees to hand out shirts in a men's locker room during an upcoming sporting event. Based on this information, being a man would most likely be considered a bona fide occupational qualification.
 - a. True
 - b. False

Pre-Employment Inquiry Guidelines

Employers may not elicit any information from an applicant regarding the protected classifications. Prior to a job offer, employers may not inquire whether an individual has a disability or inquire about the severity of a disability. However, employers may inquire as to the individual's ability to perform the essential job functions.

Following are guidelines under Pennsylvania law for **employee background checking**.

Category	Pennsylvania Law
Consumer and Credit Reports	Pennsylvania does not have a law addressing consumer and credit reports.
Criminal Records	<p>An employer may consider an applicant's criminal history record information for purposes of deciding whether or not to hire the applicant.</p> <p>However, felony or misdemeanor convictions may only be considered if related to the applicant's suitability for employment in the position. The employer must notify the applicant in writing if the decision not to hire the applicant was based in whole or in part on the criminal history record information.</p> <p>In Philadelphia, employers with 10 or more employees may not include criminal history questions (or a box to check) on employment applications or make adverse employment decisions based on arrests that did not result in convictions. Such employers also may not otherwise require applicants to disclose their criminal history until after the employer accepts the application and conducts the first telephone or in-person interview.</p>
Driving Records	Pennsylvania does not have a law addressing the use of driving records.
Education and Employment History	Pennsylvania does not have a law addressing the use of educational or employment histories.
Fingerprinting	Pennsylvania does not have a law addressing fingerprinting.

Study Question

11. Felony and misdemeanor charges may be considered by an employer in making a hiring decision only to the extent that they relate to the applicant's suitability to work with others.
 - a. True
 - b. False

12. It is lawful for a large financial firm to have the question “Have you ever been arrested?” on their employment application
- a. True
 - b. False

Family and Medical Leave

Pennsylvania has a law that governs **childbearing leave**. It is permissible for an employer to grant a childbearing leave beyond the period of actual disability. However, the leave may not include payment of sickness or disability benefits beyond the terms of the temporary disability policy.

If the employer maintains a written or unwritten employment policy or practice that allows employees leave for purposes of childbearing and child care, **the leave must be equally applicable to both male and female employees. Children by birth or adoption are covered.**

Wage and Hour Laws

Payment of Wages

Unless an exception is made in an employment contract or the employee is paid an annual salary, an employer must pay the employee his or her earnings or **wages semimonthly. The first payment must be made between the first and 15th day of each month and a second payment must be made between the 15th and the last day of each month.** Employers are permitted to pay their employees on a more frequent basis as well. Employees who are discharged or terminated must be paid their wages on the day after termination or discharge. Employers are required at the time of hire to inform the employees of their wages and benefits and when and where they will be paid.

Minimum Wage and Overtime Provisions

Each state has its own minimum wage, which may be the same as or different from the federal minimum wage. To ascertain your state’s minimum wage, contact your state department of labor. (Note: your state agency may go by a name other than the department of labor.)

Critical information about the minimum wage and overtime provisions follows.

Category

Wage Guideline

Legal Day’s Work

Pennsylvania does not recognize the concept of a legal day’s work.

Maximum Hours

The laws in Pennsylvania govern the maximum number of work hours allowed for minors less than 18 years old, employees working in places where air pressure is compressed, and seasonal farm workers.

The regulations regarding work with compressed air are complex. If any employees are working with compressed air, it is recommended that the

Category

Wage Guideline

staffing firm obtain a written agreement from the client to assume legal responsibility for compliance with those regulations.

Seasonal farm workers cannot be required to work more than **10 hours a day, 48 hours a week, or six days a week.**

Meal Periods and Rest Breaks

The laws in Pennsylvania addressing meal periods and rest breaks concern minors less than 18 years old and seasonal farm workers. Seasonal farm workers and minors less than 18 years old cannot be required to work more than five continuous hours without receiving a meal or rest period of at least 30 minutes. A 30-minute break is not compensable, but any break of fewer than 30 minutes is compensable. A seasonal farm worker must also be provided with at least a 24-hour consecutive rest period each calendar week.

Minimum Wage

Wages paid to an employee **may include** the reasonable cost of furnishing the employee with board, lodging, or other facilities.

The secretary of labor and industry may provide by regulations that special certificates be issued to permit the employment of **learners and students at wages lower than the minimum wage.**

Overtime Compensation

Pennsylvania law requires that employees be paid for overtime at **not less than 1½ times their regular rate for overtime hours in excess of 40 hours per week.** This overtime law covers all employees, except those in certain occupations such as

- Domestics
- Employees not subject to civil service laws, including those who hold elective office, their personal staff members, or policy-making appointees
- Employees of newspapers with a circulation of fewer than 4,000 (provided the newspapers have the major part of their circulation within the county where published or within contiguous counties)
- Employees of public amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers that do not operate for more than seven months in any calendar year, or whose average receipts for any six months during the preceding calendar year were not more than one-third of its average receipts for the other six months of the year
- Executive, administrative, or professional employees, including academic administrative personnel for elementary or secondary school teachers (using federal law criteria)
- Farm laborers
- Golf caddies

Category

Wage Guideline

- Maple sap processors (other than maple sap processed into refined sugar)
- Motion-picture theater employees
- Motor carrier employees whose qualifications and maximum hours of service are regulated by the U.S. secretary of transportation
- People delivering newspapers
- Radio or television station announcers, news editors, or chief engineers, with the major studio located in a city or town of 100,000 or less, except where the city or town is part of a standard metropolitan statistical area that has a total population of more than 100,000, or, in a city or town of 25,000 or less, that is part of the metropolitan area that is at least 40 airline miles from the principal city
- Salespeople, parts people, or mechanics primarily engaged in selling and servicing automobiles, trailers, trucks, farm implements, or aircraft, if employed by nonmanufacturing establishments primarily engaged in the business of selling vehicles to ultimate purchasers
- Sailors
- Seasonal employees in nonprofit health or welfare agencies engaged in activities dealing with “handicapped” or exceptional children, or in nonprofit day or resident seasonal recreational camps for campers age 18 or less, that operate for a period of fewer than three months in a year, if the employee is less than age 18 or less than age 24 if a student
- Taxicab drivers
- Telephone company switchboard operators employed by independently owned public telephone companies with no more than 750 stations
- Volunteers in educational, charitable, religious, or nonprofit organizations

Record-Keeping Requirements

Every employer must keep true and accurate record of the hours worked by each employee and the wages paid to each employee for **a period of three years.**

All payroll records or other records or documents relative to the enforcement of Pennsylvania’s wage payment law must be kept open to inspection by the labor and industry secretary or an authorized representative. **Inspections may be made at any reasonable time.** Every employer must permit the representative to interrogate any employee in the workplace, during work hours, concerning the records or documents.

Category

Wage Guideline

Records that are maintained at a central record-keeping office outside of Pennsylvania must be made available for inspection at the place of employment within **seven calendar days following verbal or written notice** from the secretary or an authorized representative. Employers must also provide equipment that is necessary to facilitate review of microfilm records.

Study Questions

13. Pennsylvania law requires that employees be paid overtime at double their regular rate for hours worked in excess of 40 hours per week.
 - a. True
 - b. False
14. Every employer must keep true and accurate records of the hours worked by each employee and the wages paid to each employee for a period of three years.
 - a. True
 - b. False
15. Harold was terminated from ABC Staffing Co. for excessive absenteeism. When does ABC Staffing have to pay Harold his final wages?
 - a. The day of discharge
 - b. The day after discharge
 - c. Within five days of discharge
 - d. None of the above
16. Ronald was terminated by ABC Staffing for intoxication while on the job. ABC Staffing must pay Ronald his final wages on the same date he is discharged.
 - a. True
 - b. False

Noncompete and Other Employment Agreements

Pennsylvania will enforce a noncompete agreement if it is limited in terms of duration and geographic scope to what is reasonably necessary to protect the employer. If an agreement contains no express time or geographical area, a court will supply reasonable terms and enforce the agreement as modified.

An employee's promotion with new duties and higher salary and benefits is considered sufficient consideration for a noncompete agreement to be signed after the start of employment.

Pennsylvania will protect an employer from the unlicensed use of trade secrets by a former employee only if the employee has entered into an agreement not to compete or was bound to secrecy by virtue of a confidential relationship existing between the employer and the employee. An employee cannot be prevented from using the skills and subjective knowledge obtained in a previous job. Agreements to assign to the employer any invention conceived by the employee during and within the scope of employment will be enforced.

Study Question

17. Pennsylvania will enforce a noncompete agreement against a terminated employee if it is merely limited in terms of duration to what is reasonably necessary to protect the employer.
- a. True
 - b. False

Workplace Safety

PennSafe is the state agency in Pennsylvania that is responsible for enforcing safety compliance on the state level. However, because Pennsylvania has never adopted a federally approved safety program, the federal Occupational Safety and Health Administration is primarily responsible for enforcing safety compliance. The laws and regulations of that agency are followed in Pennsylvania.

Study Question

18. OSHA's safety compliance laws and regulations are not followed in Pennsylvania because these issues are governed by PennSafe.
- a. True
 - b. False

Drug Testing

Pennsylvania has no law regulating drug testing in employment.

Workers' Compensation

Workers' compensation coverage is mandatory for all private and public employment with a few exceptions, as noted. Individuals who are injured while in the course of employment are covered employees. Individuals are also covered who go to the aid of a person and suffer injury or death.

Exceptions

Coverage does not include

- Domestic or casual laborers
- People to whom articles are given for cleaning, repair, or other work at home

- Agricultural employers with only one employee who works fewer than 30 days per year or makes less than \$1,200 per year
- Elected public officials

Insurance

Employers may insure with the state fund, self-insure, or purchase insurance from a private company.

Benefits

No compensation is allowed for the first seven days after disability begins, except for medical benefits. If the disability lasts 14 days or more, the employee also receives compensation for the first seven days of disability. Pennsylvania law provides that 50% of Social Security old-age or retirement benefits, 100% of severance benefits, and 100% of benefits from an employer-funded pension plan are offset against workers' compensation benefits.

No compensation may be paid when injury or death is caused by **the employee's violation of the law, including the illegal use of drugs**. The employer must prove that the injury or death was caused by the employee's illegal use of drugs.

If injury or death is caused by intoxication, no compensation may be paid if the injury or death would not have occurred but for the employee's intoxication.

Notice is required within **21 days** of an injury but is excusable for up to 120 days. No compensation is due until notice is given.

Study Questions

19. Carla fell while working and strained her back. Due to her back injury, she was out of work for three days. Under Pennsylvania workers' compensation laws, Carla will be compensated for her missed wages due to the injury.
 - a. True
 - b. False

20. Orlando is a temporary employee for Talented Staffing. While on an assignment, he was under the influence of marijuana, and fell and broke his leg. Is Talented Staffing required to compensate Orlando under Pennsylvania workers' compensation laws?
 - a. Yes
 - b. No

Answer Key to Study Questions

1. a

2. b

3. a

4. a

5. b

6. a

7. b

8. b

9. a

10. a

11. b

12. b

13. b

14. a

15. b

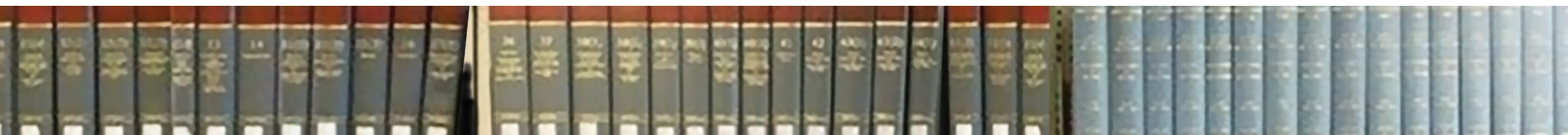
16. b

17. b

18. b

19. b

20. b



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277 S. Washington St., Suite 200
Alexandria, VA 22314-3675
703-253-2020
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