APPENDIX 3

Glossary of Employment Law Related Terms
ADA. The ADA, or Americans with Disabilities Act, is a law overseen by the US Department of Labor. It prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities.

ADVERSE IMPACT. An employment practice that appears neutral, but has a discriminatory effect on a protected group.

AFFIRMATIVE ACTION. A program to remedy present effects of past discrimination – usually involving analysis of the workforce to determine areas where minorities and women are underutilized and may include preferential treatment for underutilized categories.

ALLEGATION. An assertion or claim. Often used to refer to the statements that a plaintiff makes in a complaint, setting forth what he/she intends to prove.

AMERICANS WITH DISABILITIES ACT. See ADA.

APPEAL. Exercising resort to a higher court.

ARBITRATION. A process of dispute resolution, not involving a court, in which the parties agree in advance to be bound by the decision of a third party.

ATTORNEY/CLIENT PRIVILEGE. A legal concept in which certain communications between a client and his/her attorney may remain confidential. It is designed to encourage “full and frank” disclosure so that attorneys are better able to provide effective counsel to clients.

BAD FAITH. Actions based upon fraud, dishonestly, ill will, not by an honest mistake or carelessness.

BENEFITS. In Equal Employment Opportunity law, refers to non-salary items provided to employees, such as vacation pay, sick pay, health and life insurance, pensions, etc.

BREACH. The violation of a legal duty, as in “breach of contract” or “breach of warranty”.

BRIEF. A document prepared by a lawyer and submitted to a court in support of a legal position being advanced by an attorney, containing arguments and legal citations.

BURDEN OF PROOF. During a trial, the obligation to prove a position being taken. For example, in a lawsuit based upon a breach of contract, the plaintiff has the burden of proving the existence of a contract, the breach of the contract and the damages. If he/she does not satisfy his/her burden of proof, the defendant wins; if he/she does, the defendant must then go forward to rebut what the plaintiff has proved. Whichever side has the burden of proof must first introduce evidence to satisfy it before the other side has any obligation to proceed.

CIVIL CASE OR CIVIL ACTION. A lawsuit brought by private parties to enforce or protect private rights, such as medical malpractice, divorce or breach of employment contract. This is in contrast to a criminal case, which involves a charge by the state or federal government against a defendant alleging a public wrong, such as armed robbery.
CONSOLIDATED OMNIBUS BENEFITS RECONCILIATION ACT (COBRA). Employers are required by federal law and by the majority of states to offer employees the right to continue as members of group health insurance plans for extended periods after separation from employment and in certain other instances (e.g., reduction in hours, dependent loss of coverage, divorce, legal separation). COBRA coverage is paid fully by the former employee with no company contributions.

COMPLAINANT. The person who files a charge or brings a complaint.

COMPLAINT. The cause or subject of complaint, a grievance. In law, a formal charge or accusation.

CONCERTED ACTIVITY. An act of two or more employees banding together in protest over wages or working conditions. This activity is protected by the National Labor Relations Act as it applies to disciplining and discharging employees.

CONSTRUCTIVE DISCHARGE. Describes a situation in which an employee is forced to quit because an employer has made working conditions intolerable.

DEPARTMENT OF LABOR. See also DOL.

DEPOSITION. The testimony given under oath and recorded verbatim by a court reporter, usually in connection with court proceedings.

DEFENDANT. A person (or company) sued in a civil proceeding or accused in a criminal proceeding.

DIRECT EXAMINATION. The questioning of a witness by the party who called the witness to testify. Leading questions are not permitted on direct examination.

DISABLED INDIVIDUAL. Under federal law, any individual who (1) has a physical or mental impairment that substantially limits one or more of his/her major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment. A disability is substantially limiting if it is likely to cause difficulty in securing, retaining or advancing in employment. The term “Qualified Disabled Individual” refers to a disabled individual who is capable of performing the essential function of a particular job with reasonable accommodation to his/her handicap.

DISCOVERABLE. Information, generally documents, that are available for legal subpoena including both hard copies and available electronically, such as E-mails.

DISCOVERY. That stage in a lawsuit, after the pleadings are filed and before trial, in which each party is given the right to discover facts known to the other parties.

DISCRIMINATION. As generally used in personnel law, discrimination refers to the adverse treatment of an employee, whether intentional or unintentional, based, for example, on race, color, national origin, religion, sex, disability, age or veteran status. The term also includes the failure to remedy the effects of past discrimination.

DISPARATE IMPACT. The result of an employer’s action or policy which is not unlawful on its face, but affects one or more classes of employees differently than other classes of employees. In anti-discrimination law, concern with disparate impact deals with unequal treatment received by members of a protected class or classes.

DISPARATE TREATMENT. Differential treatment of employees or applicants based directly on race, religion, sex, national origin, disability, age or veteran status.
DOL. The US Department of Labor oversees a number of federal sub-agencies. Among them: the Office of Federal Contract Compliance Programs (OFCPP), Occupational Safety and Health (OSHA), the Wage and Hour Division, and the Veteran’s Employment and Training Service (VETS).

EAP. An Employee Assistance Program is an employee benefit program offered by many employers. EAPs are intended to help employees deal with personal problems that might adversely impact their job performance, health, and well-being. EAPs generally include short-term counseling and referral services for employees and their household members. Employees may self-refer, or in some cases Supervisors may also refer employees based upon unacceptable performance or conduct issues.


EEOC GUIDELINES. Positions expressed by the EEOC that don’t have the force of law when issued, but tend to be supported by the courts and hence law. These positions are outlined in various EEOC publications, such as “Discrimination Because of Sex”, “Discrimination Because of Religion”, etc.

EMPLOYEE ASSISTANCE PROGRAM. See EAP.

EMPLOYMENT-AT-WILL. A traditional American rule in private sector employment is that the employer is free to fire any employee for any reason – or for no reason at all. In the past, there have been only four types of exceptions to “at-will” terminations:
1. Employees covered by union agreement
2. Employees with individual employment contracts
3. Members of a “protected class” under anti-discrimination laws.
4. Public sector employees, generally considered to have constitutionally protected “property” interest in their jobs and due process rights

While these exceptions continue to apply, new limitations on the employer’s right to discharge have emerged over the last few years. These include:
1. Discharge in violation of public policy
2. Discharge breaching an implied contract
3. Discharge breaching an implied duty of good faith and fair dealing

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, (The EEOC). Created by Title VII of the Civil Rights Act of 1964. The purposes of the Commission are to end discrimination based on race, color, religion, age, sex, disability or national origin in hiring, promotion, firing, wages, testing, training, apprenticeships and all other conditions of employment.

EXEMPT. Employees whose positions meet specific tests established by Fair Labor Standards Act (FLSA), and therefore, are exempt from overtime pay requirements.

FAIR LABOR STANDARDS ACT. See FLSA.

FAMILY MEDICAL LEAVE ACT (FMLA). This law provides for unpaid leaves of absence for employees needing time off for issues such as to take care of an employee’s own serious medical condition, child adoption, to take care of a child or parent with a serious health condition, or to care for a covered service member with a serious injury or illness if the eligible employee is the service member’s spouse, son, daughter, parent, or next of kin (military caregiver leave).

FMLA. See Family Medical Leave Act.

FRAUD. False representation of fact designed to deceive the other party into relying on it.

FLSA. The Fair Labor Standards Act, (or FLSA) is overseen by the US Department of Labor. The act prescribes standards for basic minimum wage and overtime pay.
GOOD FAITH AND FAIR DEALING. A concept that basically means acting on the basis of ones intentions and beliefs. The court would look to see that the employer did not act out of malice toward the employee and that there was no attempt to defraud or seek an unconscionable advantage over the employee.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA). This act seeks to ensure that employee’s health and medical information is kept private from those who do not need access to it. Other provisions ensure that when an employee changes jobs he/she will be able to get insurance coverage without a waiting period for pre-existing conditions.

INTERROGATORY. A written question which one party to a lawsuit may require another party to answer under oath, during the discovery stage of the litigation.

JUST CAUSE (Also called “PROBABLE or REASONABLE CAUSE”). Good and sufficient reason related to the needs of business operations and supported by demonstrable fact. As an example, should two supervisors see a fellow employee at work in possession of alcohol and smell it on his/her breath, reasonable cause to test has been established.

LIBEL. The act of defamation of another’s character in written form. See also “Slander”.

LITIGATION. The act or process of litigation or carrying on a suit in a court of law or equity; also a lawsuit.

MALFEASANCE. A wrongful act for which there is no legal excuse.

MALICE. An intentional act done for the purpose of causing harm to another.

MISFEASANCE. Improperly performing an act which, if done correctly, is proper.

NEGLIGENCE. The failure of a person to do what a reasonable prudent person would do under similar circumstances.

NATIONAL LABOR RELATIONS BOARD. See NLRB.

NLRB, or NATIONAL LABOR RELATIONS BOARD. Is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

NON-EXEMPT. Employees whose positions do not meet Fair Labor Standards Act (FLSA) exemption tests, hence must be paid one and one-half times their regular rate of pay for hours worked in excess of 40 hours per week, computed at an hourly rate. Some states may require additional payments.

OFCCP, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. The OFCCP is a subordinate agency of the Department of Labor, or DOL. It is charged with enforcing affirmative action and equal employment opportunity on those who do business with the Federal government.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. See OFCCP.

PLAINTIFF. A person who brings case before a court of law; a complaint. See also “Defendant”.

PLEADINGS. The formal allegations of the parties to a lawsuit set forth in the plaintiff’s complaint and the defendant’s answer.

POST ACCIDENT. The company retains the right to have any employee involved in an occupational accident/injury submit to a “post accident” drug test.
PRIMA FACIE. In law, adequate to establish a fact or raise a presumption of fact unless refuted at first sight, at first view; or before further examination.

PROTECTED CLASS. Any group (or member of that group) specified in and therefore protected by, anti-discrimination laws.

PUNITIVE DAMAGES. Punitive damages are sums of money awarded by a court to a plaintiff as additional punishment to a defendant for a serious wrong. Unlike compensatory or actual out-of-pocket damages, punitive damages are based upon a different public policy consideration – that of punishing a defendant or setting an example for similar wrong doers. Punitive damages are usually awarded in addition to compensatory or actual damages, and punitive damages are not covered under the provisions of insurance policies.

QUALIFIED PRIVILEGE. A specific right, exemption or benefit. An excuse which permits a person to do or not do something that would otherwise be required.

REASONABLE CAUSE (Also called “JUST or PROBABLE CAUSE”). Good and sufficient reason related to the needs of business operations and supported by demonstrable fact. As an example, should two supervisors see a fellow employee at work in possession of alcohol and smell it on his/her breath reasonable cause to test has been established.

RELEASE. The relinquishing of a claim or a right, usually by a written document, as a part of a settlement or compromise agreement.

RETAIATION. Various federal and state statutes provide that an employer may not take certain types of retaliatory personnel action against an employee who discloses or threatens to disclose an employer’s policy or practice that violates a particular statute, or more generally, presents substantial dangers to public health or safety.

SEXUAL HARASSMENT. Unlawful sexual harassment can arise in the following circumstances:
1) When submitting to such conduct is an open or implied condition of an individual’s employment;
2) When submitting to or rejecting such conduct is used as the basis for employment decisions affecting the individual;
3) When the unwelcome conduct interferes with an individual’s job performance or creates an intimidating, hostile, or offensive work environment.

SLANDER. The act of defaming another verbally. See also “Libel”.

STATUTE. A law, an established rule, passed by a legislative body and set forth in a formal document.

SUBPOENA. A legal writ commanding production of either an identified witness or for information.

SUMMARY JUDGEMENT. A decision by a judge that there is no factual or legal issue in the case; so therefore, it is decided without the necessity of a trial.

TORT. The law of private wrongs, other than breach of contract, governing the behavior of persons and spelling out their obligations to each other. The courts provide a remedy for these wrongs in the form of an action for damages. Assault is an example of a tort, also intentional infliction of emotional distress, personal injury, etc.

WAIVER. The relinquishment of a right or claim. A person can voluntarily waive a right or claim, or a waiver can be implied from a person’s actions or conduct.
WEINGARTEN RIGHTS. An NLRB ruling allowing for bargaining unit employees to request a fellow employee sit in with them during any meeting in which the employee is either under investigation or in which disciplinary action is likely to result during the meeting. Management is not required to notify an employee of this right, but if requested must be accommodated. For meetings in which management is merely informing an employee of management’s decision, such as in a discharge, Weingarten Rights do not apply.