**Chapter 3: Complying with Federal Laws: Honoring Legal Rights**

**Numerous federal laws apply to fitness facilities and programs. These laws are applicable to fitness facility employees, participants, and programs/services. Given the rise in the number of legal cases involving these federal laws (and related state laws), it is essential that fitness managers and exercise professional learn how to comply with these laws using the information and resources provided in this chapter.**

Review the learning objectives listed on page 65 in the text. After reading this chapter, complete the following study questions. **Instructions:** **Click on the shaded box provided - then type in your answer.**

**Study Questions**

1. List the top four most common discrimination charges that employees filed with the EEOC in 2018.
2. List at least five examples of adverse actions which may constitute sexual discrimination under Title VII of the Civil Rights Act.
3. (1) In *Waller v Blast Fitness Group LLC*, how could Blast Fitness have avoided being held jointly liable for the plaintiff’s damages?

(2) What risk management steps should fitness managers develop and implement to help prevent sexual harassment?

1. (1) What were the findings of an ADA study involving 16 fitness facilities in Wisconsin?

 Hint: See p. 75.

(2) As a fitness manager or exercise professional, what would you do to help prevent the

 ADA discrimination claim made by the plaintiff in *Neal v. PFTN Murfreesboro South,*

 *LLC*?

(3) Describe the court’s ruling and reasoning in *Class v. Towson University*.

1. Title I of the ADA prohibits discrimination by employers based on disability regarding the terms, conditions, and privileges of employment. Describe what “terms, conditions, and privileges of employment” may include.
2. What is the difference in the protections based on discrimination offered by Title VII and Title II of the Civil Rights Act of 1964?
3. (1) An accusation of a       or       of race discrimination can occur if a fitness facility has rules or practices that target, whether intentionally or unintentionally, members of a certain race or national origin.

(2) Describe steps that fitness managers and exercise professionals can take to help prevent violations of Titles II and VII of the Civil Rights Act with regard to race discrimination.

1. (1) Describe which employers are covered under the Age Discrimination in Employment Act (ADEA) of 1967 and which individuals are protected.

(2) What resources are available to help fitness managers develop policies and procedures that will help prevent age discrimination?

1. **True or False:** Place a T or F in the space provided**.**

       A) Title VII of the Civil Rights Act and the ADA apply to employers with 15 or more employees.

       B) State anti-discrimination laws are often less protective of employee or consumer rights than federal anti-discrimination laws.

       C) A female fitness facility manager cannot sexually discriminate against a female employee, because they are of the same gender.

       D) Title VII does not offer protection to homosexual or transgender employees.

       E) Words alone cannot rise to the level of sexual harassment.

       F) Title I of the ADA focuses on employee discrimination and Title III focuses on prohibiting discrimination in places of public accommodation and commercial facilities.

       G) Title III of the ADA only requires fitness facilities to provide access to the facility, e.g., ramps, and access to restrooms/locker rooms.

       H) Although the ADA defines a disability quite broadly, the ADAAA made it more difficult for individuals seeking protection under the ADA to establish they had a disability.

       I) Title III of the ADA requires fitness facilities to meet every need of individuals with disabilities.

       J) Most courts require individuals who are obese to have an underlying physiological condition, such as diabetes or heart disease, in order to fall within the protections of the ADA.

      K) In order to constitute a violation of the ADEA, age discrimination in the form

 of harassment must come from the employee’s supervisor.

       L) Employees do not need to be full-time in order to be protected by the ADEA.

1. Describe three ways fitness managers and exercise professionals may violate privacy laws.
2. Answer the following questions regarding HIPAA.
3. What is PHI and how is “health information” defined?
4. Describe the requirements and purposes of the Privacy Rule.
5. Describe the requirements and purposes of the Security Rule.
6. Describe the requirements of the Breach Notification Rule and how “breach” and “unsecured PHI” are defined.
7. Covered entities and business associates must comply with HIPAA’s Privacy, Security, and Breach Notification Rules.
8. List the requirements of covered entities.
9. Describe when HIPAA may apply to fitness facilities and/or exercise professionals?
10. List the requirements of business associates.

 **NOTE:** The two lists of requirements for covered entities and business associates on pp. 83-84 are partial lists – all requirements are not listed.

1. Efforts to integrate exercise programs and medical care, such as EIM, are expanding. Fitness facilities and exercise professionals wanting to establish a working relationship with health care professionals and organizations may be “business associates” as defined by HIPAA. Why should fitness facilities and exercise professionals demonstrate they have met the requirements of a business associate prior to establishing a working relationship with health care professionals and/or organizations? Hint: See Key Point on p. 85.       **Note:** More on EIM is covered in Chapter 7.
2. The FTCA prohibits unfair and deceptive acts or practices in the marketplace.
3. Describe three elements which make an act or practice **unfair**.
4. Describe three elements which make an act or practice **deceptive**.
5. Explain how the FTC alleged that the acts and practices of Genelink, Inc. and Foru International were unfair and deceptive.
6. What can fitness managers and exercise professionals learn from the two FTCA cases described on p. 86?
7. Explain the heightened standard applied by the FTC with regard to marketing claims involving healthcare services or products.
8. In addition to collecting health/fitness data via health screening questionnaires, fitness assessments, etc., fitness facilities and exercise professionals may collect a participant’s personal health/fitness data from wearable technology (fitness trackers, etc.). Other personal identifiable information (PII) such as credit card and driver’s license data may also collected. Various state privacy laws may be applicable, e.g., invasion of privacy (a tort or civil claim) and data breach notification statutes. What should fitness managers and exercise professionals do to help prevent claims/lawsuits related to data privacy? Hint: See Key Point on p. 90 and Exhibit 3-5 on p. 91.       **Note:** More information on technology, PII, and state statutes regarding data privacy/security is covered in Chapter 10.
9. States may also have statutes regarding privacy in locker rooms such as Wisconsin (see this statute’s requirement on p. 90). How should fitness managers inform facility participants of a law like this?
10. Answer the following questions regarding the Fair Labor Standards Act (FLSA).

(1) Fitness facility employees are covered under the FLSA if they work for covered entities. What criteria are used to determine a covered entity?

(2) Describe the wage requirements of the FLSA.

(3) Why should fitness managers and exercise professionals consult with their legal counsel when utilizing volunteers?

(4) The FLSA considers employee attendance at lectures, meetings, trainings, and similar activities as “working time” and, thus, subject to FLSA’s minimum wage and overtime provisions, unless **all** four criteria are met? List these four criteria.

(5)What was the main issue in the spotlight case, *Mogilevsky v. Wellbridge Club Mgmt.,* *Inc.*?

(6) The Equal Pay Act is part of the FLSA. Equal pay must be given based onsubstantially equal jobs based on the job’s content. List the five factors to determine substantially equal jobs.

1. OSHA requires most private sector employers (e.g., any business with one or more employees) and federal agency employers to ensure a safe work environment for employees. As required by OSHA, employers have a duty to find and correct safety problems in the workplace. List additional requirements of employers.
2. In evaluating whether a wellness product is a low-risk wellness device, how does the FDA determine whether the product poses an inherent risk to a user’s safety?
3. A type of intellectual property protection that applies to words and symbols that identify goods is referred to as a       and intellectual property protection that applies to words and symbols that identify services is referred to as a      .
4. **Matching:** Indicate the correct response in the space provided from the list of terms below.

      Case in which the plaintiff sued the fitness facility for religious discrimination under Title II of the Civil Rights Act.

       State in which it is illegal for employers to refuse to hire qualified employees because the employer perceives them to be obese, as this state’s Supreme Court ruled in *Taylor v. Burlington N. R.R. Holdings, Inc.*

       State that has a broad public accommodation discrimination law that states:

 “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

       Case in which the fitness facility did not violate Michigan’s laws regarding invasion of privacy, sexual harassment and retaliation, but might have violated the Michigan Consumer Protection Act (MCPA).

       Age discrimination case in which a football coach was fired because of his age and the defendant ended paying more than $500,000.

      A form signed by a patient of a health care professional in which the patient allows the health care professional to disclose the patient’s PHI to a third party.

      A section within this federal law that requires an employer to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious harm.

       A federal law that may apply whenfitness facilities sponsor blood tests or conduct finger prick tests to measure certain health markers, such as cholesterol or glucose levels, as part of a pre-activity health screening procedure or as a periodic service to participants.

       A software application in which the Food and Drug Administration (FDA) will apply its regulatory oversight.

       Intellectual property protection for original works of authorship, including literary, musical, and artistic works.

 A. CLIA F. *Cormier v. PF Fitness-Midland, LLC*

 B. California G. Washington

 C. General Duty Clause H. *Moore v. University of Notre Dame*

 D. Copyright I. *Jalal v. Lucille Roberts Health Clubs, Inc*.

 E. Mobile Medical App J. Authorization for Release of Protected Health Information

1. **True or False:** Place a T or F in the space provided**.**

       A) If HIPAA rules are not applicable, fitness facilities and exercise professionals may still be subject to state privacy laws regarding the use or disclosure of PHI.

       B) If the fitness facility or exercise professional collects personal information through its website and/or advertises or posts on social media, it is almost certain that the Federal Trade Commission Act(FTCA) applies to them.

       C) Advertising and social media posts describing the credentials of the facility’s exercise professionals and instructors should be truthful and non-misleading as required by the FTCA.

       D) There is no need to have legal counsel review consumer and expert endorsements prior to using them in the facility’s advertising and marketing.

       E) Courts will use a seven-factor test to determine if an intern or student is considered an employee under the FLSA in all settings (for-profit, nonprofit, and public).

       F) Based on the Equal Pay Act (EPA), employers can reduce the pay of the higher paid employee when correcting a pay differential between employees.

       G) Fitness facilities have faced hefty fines for violating OSHA’s Hazard Communication Standard.

      H) It would not be within the scope of practice of exercise professionals to use a medical device that is used within the legal scope of practice of licensed

 professionals such as physicians or physical therapists.

      I) Laboratories that perform biometric screens (e.g., blood tests) on site at a fitness facility may need to obtain a certificate of waiver under the CLIA.

      J) Peloton was sued for violating music copyright laws.

1. **Case Study:**

Trish the trainer had been working at ABC Fitness for about a year. ABC Fitness is a small fitness facility with 20 employees. Trish was initially hired by Mark, who managed ABC Fitness. Soon after, she and Mark started dating. The relationship lasted about six months, but Trish eventually broke up with Mark because Mark was her supervisor, and the relationship created an uncomfortable dynamic at work. After the split, Mark continued making sexual comments to Trish at work, even in front of Trish’s clients. Trish tried to discuss with Mark that his advances were inappropriate now that they were no longer dating, but Mark dismissed Trish’s concerns, saying that he was just kidding around. Trish felt like there was nothing she could do. Eventually, Trish began to experience anxiety and depression and was forced to take an unpaid leave of absence from work.

(1) Does Trish have a claim against Mark, or ABC Fitness, for sexual harassment under Title VII of the Civil Rights Act of 1964?

(2) What should ABC Fitness have done to limit its liability in this matter?