



# **ALABAMA**

## **QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW**

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## At-Will Employment

Alabama is an at-will-employment state. *Hoffman-La Roche, Inc. v. Campbell*, 512 So. 2d 725 (Ala. 1987). Generally, either the employer or employee may end the employment relationship at any time and for any reason.

There are three general exceptions to at-will employment under state law: whistleblower protection, anti-discrimination laws, and anti-retaliation laws. Federal whistleblower protection, anti-discrimination, and anti-retaliation laws may otherwise apply.

1. **Whistleblower** – Ala. Code § 36-25-24, which only applies to government employees and not private employers, states that supervisors cannot discharge an employee for reporting a violation of any law. HB 227, first read in the Alabama House on February 22, 2024, would repeal Chapter 25 and add a new Chapter 25b to Title 36. Under this bill, whistleblower protection would be found under Ala. Code § 36-25B-8. Additionally, the bill would clarify that reporting a violation of a law means a communication made in writing, in good faith, by a public servant; and clarify that the statute of limitations for bringing civil actions under this provision is two years after the occurrence of the adverse action taken against the public servant.
2. **Discrimination** – Ala. Code § 25-1-21 – no employer shall discriminate against a worker 40 years of age or older on the basis of age.
3. **Retaliation** – Ala. Code § 25-5-11.1 states that an employee shall not be terminated solely because the employee has maintained an action against the employer for workers' compensation benefits or solely because the employee has filed a written notice of violation of a safety rule pursuant to Ala. Code. § 25-5-11(c)(4).

## Immigration Verification

Ala. Code. § 31-13-15 states that no employer shall knowingly employ, hire, or continue to employ an "unauthorized alien" to work in Alabama. "Continue to employ" means to employ the "unauthorized alien" knowing that the person is or has become not authorized to work, regardless of whether the employer knew of the individual's unauthorized status at the time of employment. Further, the statute states that all employers must use the federal E-Verify system to verify the legal presence of their employees. An employer who uses E-Verify to verify the work authorization of an employee will not be punished for a violation of Ala. Code § 31-13-15 with respect to the employment of that employee. Alabama businesses with 25 or fewer employees may choose to use the Alabama E-Verify Employer Agent Service, which was created to "provide assistance to employers to comply with this process." [verify.alabama.gov](https://verify.alabama.gov).

Penalties for violation of the statute include ordering the business to terminate employees who are unauthorized to work in violation of Ala. Code. § 31-13-15, requiring a sworn, signed affidavit that they have done so, placing the business in a three-year state-wide probationary period where they must file quarterly reports of new employees, and suspending of business licenses/permits for a period of ten business days or less.

In addition, any employers receiving the award of a contract, grant, or incentive by the state or a state-funded entity to a business entity shall not hire or continue to employ an "unauthorized alien within the State of Alabama." Ala. Code § 31-13-9.

## Drug Testing

Alabama has an optional drug-free workplace program that rewards employers for participating by providing a five percent premium discount under the employer's workers' compensation insurance policy. Ala. Code § 25-5-330; Ala. Code § 25-5-332. The participating business must also follow the requirements set forth in Ala. Code. § 25-5-333, which includes a mandatory drug test for potential employees upon extending an offer of employment, reasonable suspicion testing, and follow-up testing in the case of a positive test result. Ala. Code § 25-5-335. The program requires that all results remain confidential. Ala. Code § 25-5-339.

## **Paid Leave Statutes (General)**

Alabama affirmatively bans any city or county within the state from establishing a right to paid leave that is not required by state or federal law. Ala. Code § 25-7-41; *Lewis v. Governor of Alabama*, 816 F. App'x 422 (11th Cir. 2020).

## **Jury Duty Leave**

Upon receiving a summons for jury duty, an employee, on the next day they are engaged in their employment, shall show the jury summons to their supervisor and will be excused from employment for the day(s) required of them serving as a juror. An employer may not require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. In addition, any full-time employee will be entitled to their usual compensation despite the excused absence. Ala. Code § 12-16-8. Employers may not discharge an employee solely because they serve on a jury so long as that employee reports for work on their next regularly scheduled hour after being dismissed. Employees who are fired in violation of this rule have a cause of action against the employer for the discharge and may recover both actual and punitive damages. Ala. Code § 12-16-8.1.

## **Voting Leave**

Employees, with reasonable notice, shall be permitted to take the necessary time to vote so long as it does not exceed one hour. However, if the employee's work hours start at least two hours after the opening of the polls or end at least one hour prior to the closing of the polls, then time off for voting need not be available. Employers may specify the hours during which an employee may leave to vote. Ala. Code § 17-1-5.

## **Election Official Leave**

Applies to all Alabama employers with more than 25 employees. Ala. Code § 17-8-13(b). Employees appointed as election officials under Ala. Code § 17-8-1 may take leave from work to perform election official duties as required and on election day. Ala. Code § 17-8-13(a).

## **Volunteer Firefighter or Emergency Medical Service Provider Leave**

Employees who are volunteer firefighters or emergency medical service providers may take leave to respond to an emergency call prior to the time the employee is due to report to work. Time lost may be charged against the employee for missing work. Ala. Code § 36-21-160.

## **Military Leave**

An employee who is an active member of the Alabama National Guard, the Naval Militia, the Alabama State Guard, the Civil Air Patrol, the National Disaster Medical System, or any other reserve component of the armed services may take leave – without loss of pay, time, efficiency rating, annual vacation, or sick leave – to engage in field or coast defense or other training. Ala. Code § 31-2-13(a).

## **Leave for Crime Victims**

An employee who has been a victim of crime may take leave to respond to a subpoena to testify in a criminal proceeding or to participate in the reasonable preparation of a criminal proceeding. Ala. Code § 15-23-81.

## **Parental Leave**

Under Alabama's unpaid family leave law, "eligible employee" and "employer" are defined in the same way as in the FMLA.

Like the FMLA, covered employers must provide 12 weeks of unpaid family leave to eligible employees for the birth and care of a child born to the employee during the first year of the child's birth, or for the care of a child placed with the employee in connection with adoption within one year of the placement of the child with the employee. An employer who provides paid leave to an employee for the birth and care of a child must also provide the lesser of either: (1) equivalent paid leave; or (2) two weeks' paid leave to an employee for the care of a child placed with the employee in connection with adoption during the first year after the placement of the child with the employee. Ala. Code § 25-1-61.

## Smoking Laws

According to Ala. Code § 22-15A-5, employers have the right to adopt and maintain a written smoking policy that allows employees to designate their work area as non-smoking and prohibits smoking in all common work areas, unless the majority of employees who work in that area agree that it will be allowed. The policy must be communicated to employees within three weeks of its adoption and a written policy must be supplied when asked for. Employers have the right to designate any place of employment non-smoking. However, according to Ala. Code § 22-15A-6, child care facilities, hospitals/doctors' offices, elevators, public transport, government buildings, restrooms, service lines, public areas of aquariums, galleries, libraries, museums, seniors housing, common areas in apartment buildings, polling places, schools, retail establishments (excluding restaurants), and lobbies of multiunit commercial facilities must be non-smoking.

## Break Time to Express Milk

According to Ala. Code § 22-1-13, a mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present. While Alabama does not currently have a state law protecting an employee's right to breastfeed or express milk in the workplace, Alabama employers may still be covered by the requirements of the federal PUMP Act. Additionally, HB 21, pending committee action in the Alabama House, would require employers to provide reasonable break time and a location for employees to express breast milk.

## Meal Breaks

The State of Alabama has no law regulating meal breaks or rest periods for adults. For employees aged 14 or 15, employers must give a 30-minute rest period when the employee works more than five hours continuously. Ala. Code § 25-8-38. However, employers may be subject to the FLSA.

## Minimum Wage, Overtime, and Wage Recordkeeping

Alabama has not adopted a state minimum wage law or an overtime law for adults. As a result, employers subject to the FLSA must pay the federal minimum wage of \$7.25 per hour. Similarly, employers subject to the FLSA must comply with FLSA overtime requirements. Under the FLSA, covered employees must receive overtime pay for hours worked more than 40 in a work week and at a rate of not less than one and one-half times their regular rate of pay.

For employees under 19 years of age, Ala. Code § 25-8-38 requires employers to keep proof of age, as well as copies of time records for one year after the employee's last day. The time records must include the number of hours the employee worked per day, the employee's starting and ending times, and the employee's break times). Children aged 14 and 15 cannot work overtime. Ala. Code § 25-8-36.

## Final Payments

Alabama does not have state laws regarding final payments of wages.

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own that meets Alabama's requirements. To be eligible, the person must be a resident of Alabama, unemployed, worked in Alabama during the past 12 months, earned a minimum amount of wages determined by Alabama guidelines, and be actively seeking work from at least three prospective employers for each week the person collects benefits. Ala. Code § 25-4-77.

## Workers' Compensation

The Alabama Workers' Compensation Act, Ala. Code § 25-5-1, *et seq.*, applies to all employers in Alabama. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Workers' Compensation Act. Ala. Code § 25-5-31. A workplace injury must be immediately reported to the employer; failing to report an injury in a timely manner may result in a denial of benefits. Ala. Code 25-5-78. Employees must make their claim within two years of the accident. Ala. Code § 25-5-80.

Also, Alabama recognizes a claim for retaliation that prohibits discharging an employee solely because the employee sought workers' compensation benefits. Ala. Code § 25-5-11.1.

The Alabama Workers' Compensation Commission administers this law, and additional information regarding the Act may be accessed at [labor.alabama.gov/wc/benefits.aspx](http://labor.alabama.gov/wc/benefits.aspx).

### **Child Labor**

Alabama's child labor laws may be found at Ala. Code §§ 25-8-33 to 61. Employers must obtain a Child Labor Certificate for each location where persons under the age of 18 are employed, and the laws impose time/place restrictions on those employees between the ages of 14 and 17. Effective June 1, 2024, Alabama amended §§ 25-8-32.1 and 25-8-45 to eliminate the "Eligibility to Work" form previously required for 14- or 15-year-olds to present to an employer before being granted employment. Under the new law, the parent or guardian of a 14- or 15-year-old who is employed must notify the minor's head administrator, counselor, or if home-schooled, an instructor of the school, of the name, address, and telephone number of the employer.

No person under 16 years of age shall be employed, except in agricultural service, and except as otherwise provided in Chapter 8. Any person 14 or 15 years of age may be employed outside school hours and during school vacation periods, so long as the person is not employed in, about, or in connection with any manufacturing or mechanical establishment, cannery, mill, workshop, warehouse, or machine shop or in any occupation or place of employment otherwise prohibited by law. The presence of any person under 18 years of age in any restricted business establishment or restricted occupation is sufficient evidence of his or her employment in the establishment. Ala. Code § 25-8-33. Violations of child labor laws may result in civil and criminal penalties. Ala. Code § 25-8-59.

For more information on restrictions for places of work dealing with minors, as well as restrictions on the hours minors may work, see [labor.alabama.gov/uc/childlabor/child-labor.aspx](http://labor.alabama.gov/uc/childlabor/child-labor.aspx).

### **Gun Laws**

An employer may restrict or prohibit an employee from carrying a concealed weapon, even if the employee has a concealed weapon permit, while on the employer's property or while engaged in the employee's duties of employment. Ala. Code § 13A-11-90(a); see also id. § 13A-11-61.3(g)(2).

However, the employer cannot prevent the employee from storing a concealed weapon in his or her private motor vehicle while parked in a public or private area assuming the motor vehicle is parked in a location it is otherwise permitted to be, the firearm is either kept from ordinary observation, or locked in a compartment, and either: (1) the employee has a valid concealed weapons permit; or (2) the weapon is a firearm for legal use of hunting in Alabama other than a pistol, and complies with Ala. Code § 13A-11-90(b)(1)(B). Ala. Code § 13A-11-90. Effective January 1, 2023, however, an employer may not restrict an employee from storing a pistol in his or her vehicle, even without a valid concealed weapons permit, provided that the vehicle is parked in a location it is otherwise permitted to be, and the employee keeps the pistol hidden from outside observation, and if the vehicle is unattended, and locked away. Ala. Code § 13A-11-90(b)(1).

Employers have no duty to confirm or determine an employee's compliance with the gun laws or to patrol or inspect parking lots. Moreover, the presence of the firearm alone does not constitute the employer's failure to provide a safe workplace, and employers are immune from liability for damages relating to a firearm brought onto their property as long as the employer does not commit an affirmative wrongful act that causes another person harm. Ala. Code § 13A-11-91.

If an employer discovers by other means that an employee is transporting or storing a firearm in his or her private motor vehicle, the employer may not take any adverse employment action against the employee based solely on the possession of that firearm if the employee has complied with the requirements in subsection (B) above. Ala. Code § 13A-11-90(d).



## **Additional Laws and Regulations**

### **Employee v. Independent Contractor**

Ala. Code § 25-1-3 requires the Alabama Department of Labor and the Alabama Department of Revenue to follow the IRS's common law test, known as the "20-factor test" to determine the employment status of an individual (i.e., whether the individual is properly classified as an independent contractor or an employee) for purposes of employee benefits relating to employment and unemployment or determining tax liability.

### **Polygraph Testing**

No person may require or demand a person consent to or take a polygraph test as a condition of continued employment within the State of Alabama. Ala. Code § 36-1-8.

### **False or Deceptive Hiring**

Alabama's laws regarding unlawful trade practices may be found in Ala. Code. § 8-19-5.

### **Equal Pay**

The Clarke-Figures Equal Pay Act, found in Ala. Code § 25-1-30, requires equal pay within the same establishment for equal work that requires equal skill, effort, education, experience, responsibility, and performance under similar working conditions, except when payment is made pursuant to any of the following: a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or a differential based on any factor other than sex or race.

### **Human Rights**

Alabama primarily relies on federal legislation for civil rights protections in the labor and employment space, except for the Alabama Age Discrimination in Employment Act (AADEA), which protects workers age 40 and older from discriminatory employment decisions based on age.

### **Disabilities**

Alabama does not have a law prohibiting employers from discriminating on the basis of disability, however, private employers with 15 or more employees may be covered by the federal Americans with Disabilities Act.

### **Genetic Information**

Alabama does not have any laws related to genetic discrimination.

### **References**

Alabama prohibits blacklisting, which is when a person, firm, corporation, or association of persons maintains a list that they use to prevent any person from receiving employment from whomsoever they desire. Ala. Code § 13A-11-123.

### **Medical Marijuana**

The Darren Wesley 'Ato' Hall Compassion Act, which was signed into law on May 17, 2021, allows persons with certain medical conditions to legally access marijuana. Ala. Code § 20-2A-1, *et seq.* The law, however, does not require that employers change their policies regarding the use of medical cannabis, highlighting that employers may still terminate, discipline, refuse to hire, etc., for the use of medical marijuana. Ala. Code § 20-2A-6.

### **Mini-WARN**

Alabama does not have a mini-WARN Act, but the Alabama Department of Labor requires that employers notify the Unemployment Compensation Call Center when laying off 25 or more employees, if those employees work at a single establishment, are laid off for the same reason, and are laid off permanently, indefinitely, or for a period of seven or more days. Ala. Admin. Code 480-4-1-.06 *et seq.*

### **Engaging with Labor Organizations**

Act Number 2024-340, enacted in May 2024, prevents an employer from being eligible for state economic development incentives if the employer engages in certain practices relating to employee representation by a labor organization. These actions include: voluntarily granting recognition rights for employees on the basis of signed labor organization authorization cards if selecting a bargaining representative can be conducted through a secret ballot election; voluntarily disclosing an employee's personal contact information to a labor organization without the employee's prior written consent unless otherwise required by law; and requiring a subcontractor to engage in any of those activities. Ala. Code § 25-7-37(b).

### **Weight Discrimination**

Alabama does not have any laws specifically related to discrimination based on body weight. However, HB 20, introduced in July 2024, would make it unlawful for an individual to deny another individual equal enjoyment of public accommodations or for an employer to discriminate against an applicant or employee based upon the individual's weight or body size. The bill would also create a private right of action against an employer who violates such provisions. HB 20 is currently pending committee action in the Alabama House of Representatives.