



ALASKA

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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At-Will Employment

Alaska remains an at-will employment state. This means, absent a contract to the contrary, and unless the employee can successfully assert a common law or statutory claim (such as under a discrimination or retaliation statute), an employer is free to terminate an employee's employment for any reason or no reason.

1. Common Law Claims

As in some other states, express oral promises may modify an employer's right to terminate at will or change other terms of employment. See *Eales v. Tanana Valley Medical-Surgical*, 663 P.2d 958, 959 (Alaska 1983) (finding that the contract was for employment until retirement, and the employee could be terminated early only for good cause because the contract is one for a definite period); see also *Ramsey v. City of Sand Point*, 936 P.2d 126 (Alaska 1997).

In Alaska, every employment contract is subject to an implied covenant of good faith and fair dealing. See *Luedtke v. Nabors Alaska Drilling, Inc.*, 834 P.2d 1220, 1223 (Alaska 1992). At-will employees may be fired for any reason that does not violate the implied covenant of good faith and fair dealing, and employers may not terminate at-will employees for "reasons antithetical to the implied covenant." *Era Aviation, Inc. v. Seekins*, 973 P.2d 1137, 1139 (Alaska 1999). "The covenant does not have a precise definition but generally requires employers to treat like employees alike and act in a manner that a reasonable person would regard as fair." *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 760–761 (Alaska 2008).

Employment documents, such as an employment handbook or personnel policies, can amount to an implied employment contract that may limit an employer's right to terminate an at-will employee. See *Jones v. Central Peninsula General Hosp.*, 779 P.2d 783, 787 (Alaska 1989). Handbook or personnel policy disclaimers may not be effective in overcoming an employer's implied promise contained in the handbook or the personnel policy if the implied promise creates the impression that employees are to be provided with certain job protections. *Jones*, 779 P.2d at 787–88. Employers have the right to unilaterally change an employment policy prospectively, as long as the employer makes the change after a reasonable time, on reasonable notice to affected employees, and without interfering with the employees' vested benefits. See *Zuelsdorf v. University of Alaska, Fairbanks*, 794 P.2d 932, 934–35 (Alaska 1990).

2. Statutory Claims

In addition to common law claims and claims that might be available under federal law, employees in Alaska are protected from termination for engaging in the following conduct:

- Filing a workers' compensation claim or receiving workers' compensation benefits. Alaska Stat. § 23.30.247(a);
- Filing a wage claim under the Alaska Wage and Hour Act (AWHA) or testifying in connection with a proceeding under the Act. Alaska Stat. § 23.10.135;
- Complaining to an employer or governmental agency about workplace safety issues. Alaska Stat. § 18.60.089; or
- Filing a discrimination claim under the Alaska Human Rights Act (AHRA), testifying in any proceeding regarding such a claim, or otherwise assisting in an AHRA proceeding. Alaska Stat. § 18.80.220(a)(4).

Discrimination

Alaska has its own anti-discrimination statutes in addition to what is required by federal law. The Alaska Human Rights Act (AHRA) makes it unlawful to discriminate against applicants or employees on the basis of race, religion, color, national origin, age, physical disability, mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood. Alaska Stat. § 18.80.220. The AHRA covers all employers who employ one or more employees.

Immigration Verification

Employment eligibility verification is mandated by the federal government. Employers are required to complete I-9 forms within three business days after hiring an employee.

The employee fills out basic information, such as his or her name, date of birth, address, and Social Security number, and then the employer certifies that the employee has presented documentation confirming his or her right to work in the U.S. Alaska places no additional requirement beyond federal I-9 compliance.

Drug Testing

Alaska has a comprehensive statute governing drug and alcohol testing by employers. Alaska Stat. §§ 23.10.600–699. The statute provides a degree of protection from employee claims stemming from drug and alcohol testing, provided the employer follows the statutory requirements. Employers are not obligated to adopt drug testing programs under the statute and will benefit from its protections only if they fully comply with its requirements. However, if an employer has adopted a drug testing policy, Alaska statute mandates that the employer must be careful to follow their own written policies and procedures. Alaska Stat. § 23.10.620. An employee must receive notice of a drug testing program. See *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1136–37 (Alaska 1989).

Jury Duty Leave

Employees may take leave to respond to a jury summons, serve as a juror, or attend court for prospective jury service. Alaska employers are not required to provide paid leave for jury duty when an employee serves on a jury. However, under Alaska law, employees are protected from adverse action when taking leave for jury duty and must be reinstated to their position. Employers are not allowed to threaten, coerce, penalize, or discharge an employee who complies with a jury summons or serves on a jury. Alaska Stat. § 09.20.037.

Voting Leave

Alaska leave laws require employers to provide employees with paid time off to vote, unless there are two hours either between the opening of the polls and the beginning of the employee's scheduled shift or two hours between the end of the employee's shift and the closing of the polls. Alaska Stat. § 15.56.100.

Parental Leave

The AHRA prohibits discrimination against pregnant employees. Alaska Stat. § 18.80.200. It does not, however, contain specific requirements for leaves of absence, transfer, or reasonable accommodation for pregnant employees. Complying with federal law under the Pregnancy Discrimination Act and the Family and Medical Leave Act (FMLA) should satisfy the prohibition against pregnancy discrimination and discrimination due to parenthood included in the AHRA.

There is no state-mandated family leave in Alaska for private-sector employers. However, public employees are entitled to statutorily prescribed pregnancy, childbirth and family leave under Alaska Stat. §§ 39.20.500–550. FMLA would define leave if it is applicable to the employer.

Military Leave

Alaska employers must grant an employee who is a member of an organized militia a leave of absence to perform active state service or an employee who is a member of the Alaska National Guard or the National Guard of another state time off to perform active service under that state's law. Alaska Stat. § 26.05.075(a).

Other Leave

Alaska does not require employers to provide employees with paid sick leave, paid time off, or paid vacation. An employer must comply with whatever policy or agreements it has regarding paid sick leave, paid time off, and paid vacation. Employers do not need to pay their employees for any unused sick leave upon termination unless the employer has a written policy or otherwise has promised to do so.

Break Time to Express Milk

In Alaska, mothers have the right to breastfeed in any public or private location, as long as they are legally allowed to be there. Alaska Stat. § 29.25.080. The federal Fair Labor Standards Act (FLSA) and the federal PUMP Act offer workplace protections for breastfeeding employees, but there are no Alaska-specific laws regarding breastfeeding employees.

Meal Breaks

Alaska labor laws require employers to provide at least a 30-minute break to employees ages 14 – 17 years of age if they work five or more consecutive hours. The break must occur after the first hour and one-half of work but before the beginning of the last hour of work. Alaska Stat. § 23.10.350(c).

Alaska employers are not required to provide breaks to employees ages 18 and older. However, if an employer chooses to provide a break, they must pay their employees for the time on break if it is 20 minutes or less. Meal periods provided by employers of more than 20 minutes do not need to be paid, so long as employees do not perform any work. Alaska Admin. Code tit. 8, § 15.100(c).

Minimum Wage

The minimum wage in Alaska is currently \$11.73 per hour, and it is adjusted annually for inflation. An employer may not apply tips or gratuities to employees as a credit toward payment of the minimum hourly wage. Alaska Stat. § 23.10.065.

Alaska law also provides special wage and hour requirements for labor performed on public works projects. Alaska's Little Davis-Bacon Act affects prime contractors and subcontractors who work on state or political subdivision construction contracts that exceed \$25,000. Alaska Stat. § 36.05.005. Covered workers must receive at least prevailing wage rates for similar work in the same locality. Alaska Stat. § 36.05.010. Prevailing wage rates and fringe benefits are determined by the Alaska Department of Labor and must be stated in the advertised specifications and contract award. Alaska Stat. § 36.05.070. Certified payrolls must be filed weekly with the appropriate Alaska Wage & Hour office.

Wage Payments

The employer must establish monthly or semi-monthly pay periods. Alaska Stat. § 23.05.140(a). Employers also must provide employees with an itemized wage statement with each paycheck, and certain deductions are prohibited. Alaska Admin. Code tit. 8, § 15.160. If employment is terminated by the employer, wages must be paid within three working days after the termination. If the employment is terminated by the employee, payment is due on the next regular payday that is at least three days after the employer received notice of the employee's termination of services. Alaska Stat. § 23.05.140. Failure to do so exposes an employer to monetary penalties. Alaska Stat. § 23.05.140. Under certain circumstances, an employer that furnishes or finances transportation for its employees to the site of employment from their place of hire may be obligated to also provide return transportation. Alaska Stat. § 23.10.380; Alaska Admin. Code tit. 8, § 20.010.

Overtime Issues

Alaska has extensive overtime requirements, including overtime premiums (pay rate of one and one-half times the regular rate of pay) for hours worked in excess of eight hours per day and in excess of 40 hours per workweek. Alaska Stat. § 23.10.060. An employer that fails to pay overtime may be liable for stiff penalties, which could include the actual attorney's fees incurred by the employee. Alaska Stat. § 23.10.110.

While some Alaska overtime requirements differ from the FLSA, Alaska adopts federal wage and hour regulations and definitions where they are not otherwise defined by the AWWA. Alaska Stat. § 23.10.145.

Workers' Compensation

As in other states, Alaska has a complex system of workers' compensation insurance, which provides payments to employees who are unable to work due to a work injury. The Alaska Workers' Compensation Board adjudicates disputes under the workers' compensation system. Alaska Stat. § 23.30.001–041; Alaska Admin. Code tit. 8, § 45.020. Appeals go to the Workers' Compensation Appeals Commission. Alaska Stat. § 23.30.127–128; Alaska Admin. Code tit. 8, § 57.010–990. Any appeal from that body goes to the Supreme Court of the State of Alaska. Alaska Stat. § 23.30.129.

Recordkeeping

In addition to federal recordkeeping requirements, Alaska employers must retain an accurate record of the name, address, and occupation of each person employed, the daily and weekly hours worked by each person

and the wages paid each pay period to each person. These records must be kept on file for at least three years. Alaska Stat. § 23.05.080.

Child Labor

Alaska provides specific restrictions as to types of employment and working hours for employees based on age. The requirements are different for employees 13 years of age or younger (who may only work in newspaper delivery, canning, babysitting, and entertainment performance), 14 – 15 years of age, and 16 – 17 years of age. The requirements are set forth in Alaska Stat. § 23.10.325–370.

Marijuana

Marijuana is legal to use for both medical and recreational purposes in Alaska. Alaska Stat. § 17.37.010; Alaska Stat. § 17.38.010. Employers do not have to accommodate the use of marijuana use in the workplace (Alaska Stat. § 17.37.040(d)) and may take adverse action against an employee based on a positive test for marijuana. Alaska Stat. § 23.10.655; Alaska Stat. § 17.38.220.

Mini-WARN Act

Alaska does not have a mini-WARN Act or other similar layoff notice requirements.