



ARKANSAS

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

In Arkansas, the employer/employee relationship is governed by the at-will employment doctrine. This means that either party may terminate the relationship at any time, with or without cause, and with or without notice. An employer, however, shall not discharge an employee solely for refusing to participate in, or refusing to remain silent about, illegal activities, or in violation of a well-established public policy. *Sterling Drug, Inc. v. Oxford*, 743 S.W.2d 380 (1988); *Palmer v. Council on Economic Education*, 40 S.W.3d 784 (2001). Further, the express terms and conditions of an employment manual or handbook presented by the employer may narrow and restrict the at-will employment doctrine by creating an “implied contract”. *Ball v. Ark. Dep’t. Comm. Punishment*, 340 Ark. 424 (2000).

In *Marlow*, the Arkansas Supreme Court concluded that because it has “held that when an employee brings a wrongful-discharge action in violation of public policy[,] there is an exclusive contract cause of action, attorneys’ fees may be properly awarded in this type of case at the circuit court’s discretion pursuant to Ark. Code Ann. section 16–22–308.” *Marlow v. United Sys. of Ark., Inc.*, 2013 Ark. 460, 2013 WL 6047032 (Ark. 2013).

Minimum Wage, Overtime, and Wage Recordkeeping

Beginning January 1, 2021, the State of Arkansas set minimum wage at not less than \$11 per hour. Ark. Code Ann. § 11-4-210 (a)(3). Employers must still comply with federal wage laws and regulations. The employer can pay tipped employees \$2.63 per hour if the employee’s tips bring the total hourly wage up to the state minimum wage. Ark. Code Ann. § 11-4-212. For full-time students attending any accredited institution of education and employed to work not more than 20 hours during weeks that school is in session and 40 hours when school is not in session, the minimum wage is 85 percent of the minimum wage provided in Section 11-4-210. Ark. Code Ann. § 11-4-210(b). Provisions governing overtime pay can be found at Ark. Code Ann. § 11-4-211. Generally, if an employee works more than 40 hours, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. This does not apply to agricultural employees. Covered employers must make and keep, for a period of not less than three years, a record of the name, address, and occupation of each of its employees, the rate of pay, the amount paid each pay period to each employee, and such other information as the director of the Department of Labor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions or regulations of this subchapter. Ark. Code Ann. § 11-4-217(a).

Meal Breaks

The State of Arkansas has no law requiring an employer to provide meal breaks or rest periods. The state only requires paying the employee for the time they work during a break. However, the administrative rules from the Arkansas Department of Labor and Licensing provide that rest periods of short duration, running from five minutes to about 20 minutes, are common in the industry and should be counted as hours worked. Ark. Admin. Code 235.01.1-108.

Break Time to Express Milk

An employer shall provide reasonable unpaid break time each day to an employee who needs to express milk unless to do so would provide an undue hardship on the operations of the employer, and an employer shall make a reasonable effort to provide a private, secure, and sanitary room or other location, other than a toilet stall, where an employee can express milk. Ark. Code Ann. § 11-5-116. The room or location provided may include the employee’s normal workspace if the space meets the requirements of this section. *Id.* § 116(b)(2).

Final Payments

The State of Arkansas requires an employer to issue a final paycheck with all wages due by the next regular payday. Ark. Code Ann. § 11-4-405(a). If an employer fails to make a final payment within seven days of the next regular payday, the employer owes the employee double wages. Ark. Code Ann. § 11-4-405(b). No state law regulates final payments to employees who resign voluntarily.

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Arkansas Department of Workforce Service. Additional information regarding the benefits may be accessed at dws.arkansas.gov/.

Workers' Compensation

The Arkansas Workers' Compensation Act, Ark. Code Ann. §§ 11-9-101, *et seq.*, applies to all employers in Arkansas with three or more employees, with very few exceptions. Employees who suffer work-related injuries and/or occupational diseases may be eligible to receive several types of benefits. Under the Act, a workplace injury must be reported to the employer immediately; failing to report an injury in a timely manner may result in a denial of benefits.

The Act is administered by the Arkansas Workers' Compensation Commission. Additional information regarding the Act may be accessed at www.awcc.state.ar.us/. If an employer discriminates against an employee because they have asserted their rights under the Act, the employer may have to pay a fine to the Second Injury Trust Fund and cover the employee's costs and reasonable attorney's fees.

Child Labor

Generally, 14 is the minimum age for employment under Arkansas state law. Ark. Code Ann. § 11-6-104. However, children under the age of 16 are not permitted to work in any occupation dangerous to life and limb, or injurious to the health and morals of the child, including at any saloon, resort, or bar where intoxicating liquors of any kind are sold or dispensed. Ark. Code Ann. § 11-6-105. However, at age 16, a child can be employed for most work unless the work is declared hazardous by the U.S. Department of Labor. Ark. Code Ann. § 11-6-107. Beginning in 2023, the Youth Hiring Act dispensed with the state's requirement that children under the age of 16 must obtain permission from the Department of Labor to work (repealed Ark. Code Ann. § 11-6-109). Notably, children between the ages of 16 and 18 are not subject to the provisions of this chapter if they are a graduate of any high school, vocational school, or technical school or are married or a parent. Ark. Code Ann. § 11-6-102.

Immigration Verification

Arkansas places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under Arkansas state law.

Paid and Unpaid Leave

Parental Leave

The State of Arkansas does not require a private employer to offer parental leave to its employees. However, the employer may be subject to the federal Medical Leave Act and its requirements. The Arkansas Civil Rights Act of 1993 prohibits discrimination based on gender, which includes pregnancy, childbirth, and related medical conditions. Ark. Code Ann. §§ 16-123-101, *et seq.* The Act applies to employers with nine or more employees in 20 or more calendar weeks. Ark. Code Ann. § 16-123-102(5). The federal Pregnancy Discrimination Act requires an employer with 15 or more employees to provide the same leave benefits to pregnant employees as are provided for other temporarily disabled employees. 42 U.S.C. §§ 2000e *et seq.* Moreover, under the Arkansas Uniform Attendance and Leave Policy, public employers must treat maternity leave as any other leave for sickness or disability, including catastrophic leave. Ark. Code Ann. § 21-4-209; Ark. Code Ann. § 21-4-214. Additionally, individuals employed by a public school district are eligible to receive up to 12 weeks of paid maternity leave. Ark. Code Ann. § 6-17-122.

Jury Duty Leave

It is unlawful for an employer to persuade or attempt to persuade any juror to avoid jury service; to intimidate or to threaten any juror in that respect; or remove or otherwise subject an employee to adverse employment action as a result of jury service. It is also unlawful for an employer to require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. Ark. Code Ann. § 16-31-106. No Arkansas state law requires the employer to pay wages while an employee is on jury duty.

Military Leave

The State of Arkansas requires public employers to provide members of the U.S. Armed Forces with 15 days of paid leave per year for training and other duties, in addition to necessary travel time. Ark. Code Ann. § 21-4-212(a). Also, any employee on active military service shall be placed on extended military leave without pay and will be reinstated to his or her previous or equivalent position within 90 days of release from active duty. During any military leave of absence, the public employer must preserve all rights, privileges, and benefits of the employee. Ark. Code Ann. § 21-4-212. In 2023, Arkansas added specific laws regarding additional paid military leave for certain state officials, including police officers, sheriffs, and firefighters. Ark. Code Ann. §§ 14-15-506, 14-52-114, 14-53-113.

Voting Leave

On election days, each employer in the state must schedule the work hours of employees so each employee will have an opportunity to vote. Ark. Code Ann. § 7-1-102. However, the law does not require an employer to pay an employee for his or her time off to vote.

Other Leave

The State of Arkansas does not require private employers to offer employees paid vacation or sick leave. But, in the event an employer chooses to provide such benefits, it must comply with the terms of its established employment policy. *St. Edward Mercy Med. Ctr. v. Ellison*, 946 S.W.2d 726 (Ark. App., Div. 4 1997). However, an employer may be subject to the federal Family Medical Leave Act and its requirements. In addition, the Arkansas Uniform Attendance and Leave Policy applies to public employers and requires that public employees receive paid sick leave for sickness; injury; medical, dental, or optical treatment; or the death or serious illness of an immediate family member. Ark. Code Ann. § 21-4-206. Private employers must also grant an employee an unpaid leave of absence to allow the employee to serve as an organ donor or a bone marrow donor if the employee requests a leave of absence in writing. If a private employer chooses to pay the employee while on this type of leave, then the employer is entitled to a credit against its Arkansas withholding tax liability. Ark. Code Ann. § 11-3-205. An employee of a public employer may be granted up to three days of paid leave per calendar year for participation in the Healthy Employee Lifestyle Program. Ark. Code Ann. § 21-4-106.

Discrimination in the Workplace **Arkansas Civil Rights Act of 1993**

The Act, which may be found at Ark. Code Ann. §§ 16-123-107, *et seq.*, mimics Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, as amended, in that it prohibits discrimination because of an individual's race, religion, sex, national origin, or disability. The Act applies to all employers with nine or more employees for at least 20 weeks in the current or preceding calendar year. In 2023, the Act was amended to include protections against racial, ethnic, and national origin discrimination due to natural, protective, or cultural hairstyles. Ark. Code Ann. § 16-123-102(9)–(13).

Gender Discrimination

Arkansas prohibits discrimination based on sex and provides that employers shall pay employees equal compensation for equal services, and no employer shall discriminate against an employee solely on the basis of that employee's sex. See Ark. Code Ann. § 11-4-601. Discrimination "because of gender" includes "on account of pregnancy, childbirth, or related medical conditions." *Greenlee v. J.B. Hunt Transport Services, Inc.*, 342 S.W.3d 274, 277 (Ark. 2009) (citing Ark. Code Ann. § 16-123-102(1)). Relatedly, "no employer shall discriminate in the payment of wages as between sexes or shall pay any female in his or her employ salary or wage rates less than the rates paid to male employees for comparable work." Ark. Code Ann. § 11-4-610(a). Nothing "prohibit[s] a variation in pay based on a difference in seniority, experience, training, skill, ability, differences in duties and services performed, differences in the shift or time of the day worked, or any other reasonable differentiation except difference in sex." *Id.* § 11-4-610(b).

Age Discrimination

In Arkansas, it is unlawful for a public employer to refuse to hire or to discharge any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of the individual's age or

classify employees in any way that would deprive any individual of employment opportunities because of the individual's age. Ark. Code Ann. § 21-3-203(a).

Genetic Information in the Workplace Act

The Act, which may be found at Ark. Code Ann. §§ 11-5-401, *et seq.*, provides that an employer “shall not seek to obtain or use a genetic test or genetic information...for the purposes of distinguishing between or discriminating against, or restricting any right or benefit to...an employee or prospective employee.” Ark. Code Ann. § 11-5-403.

References

Pursuant to Ark. Code Ann. § 11-3-204, a current or former employer may disclose the following information about an employee to a prospective employer *upon receipt of written consent from the current or former employee*: date and duration of employment; current pay rate and wage history; job description and duties; last performance evaluation; attendance information; results of drug test administered within one year prior to the request; threats of violence, harassing actions or threatening behavior related to the workplace or directed at another employee; whether the employee was voluntarily or involuntarily separated from employment and the reasons for separation; and whether the employee is eligible for rehire. Ark. Code Ann. § 11-3-204(a)(1). A school district may disclose this information with or without consent. Ark. Code Ann. § 11-3-204(a)(2). The employer disclosing the information has a rebuttable presumption that it acted in good faith. Ark. Code Ann. § 11-3-204(a)(3). The immunity does not apply if the employer discriminated against the employee or violated a federal or state discrimination law.

Written consent by the employee must be signed and dated; should be separate from the employment application or, if on the application, appear in bold letters and larger typeface; and should otherwise include language similar to “I (applicant) hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer).” Ark. Code Ann. § 11-3-204(b).

Non-Compete Agreements

Generally, a non-compete agreement is enforceable if it is part of an enforceable employment contract so long as the employer has a protectable business interest and the non-compete is limited with respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer. Ark. Code Ann. § 45-75-101.

Additional Laws and Regulations

Medical Examinations

It is unlawful to require an employee or applicant, as a condition of employment or continued employment, to submit to or take a physical, medical examination, or drug test unless the physical, medical examination, or drug test is provided at no cost to the employee or applicant and a copy is provided – free of charge – to the employee or applicant upon a written request of the applicant or employee. Ark. Code Ann. § 11-3-203(a)(1). However, if an employee tests positive for an illegal drug, the employer and employee may agree in writing who will bear the cost of future drug tests or screens required as a condition of continued employment. Ark. Code Ann. § 11-3-203(a)(3).

Gun Laws

Section 5-73-306(18)(A)(i) of the Arkansas Code restricts an individual's right to carry a firearm in “[a]ny place at the discretion of the person or entity exercising control over the physical location of the place by placing at each entrance to the place a written notice that is clearly readable at a distance of not less than ten feet (10') that ‘carrying a handgun is prohibited.’”

However, with some exceptions, an employee is allowed to transport or store a legally owned firearm in the employee's private motor vehicle in the private employer's parking lot when the firearm is lawfully possessed and stored out of sight inside a locked private motor vehicle. Ark. Code Ann. § 11-5-117.

Ark. Code Ann. § 5-73-322 allows an employee (staff member) of a public university, public college, or public community college, who has completed a training course provided by the Division of Arkansas State Police, to possess a concealed handgun “in the buildings and on the grounds, whether owned or leased by the public university, public college[,] or college community” where they are employed, unless otherwise prohibited by Section 5-73-306, or if they are a staff member and the governing board of the college does not expressly disallow it. Ark. Code Ann. § 5-73-322(b)–(c).

Smoking Laws

Under Section 20-27-1804(b) of the Arkansas Clean Indoor Air Act of 2006, Ark. Code Ann. §§ 20-27-1801, *et seq.*, smoking is prohibited in all public places and enclosed areas within places of employment, including common areas, employee lounges, restrooms, etc. Discrimination or retaliation from any individual or business subject to the smoking prohibitions against those who report violations of this Act is prohibited. Ark. Code Ann. § 20-27-1804(b)(2). Moreover, all employers must give employees notice of the prohibitions upon application for employment. Ark. Code Ann. § 20-27-1804(b)(3).

Drug Testing

Under Ark. Code Ann. § 11-3-203, employers cannot require employees to submit or take a drug test as a condition of employment or continued employment unless the employer provides free of charge, both the drug test and a copy of the report for the employee. However, under the Workers’ Compensation Act, employers can receive an insurance premium discount of five percent for establishing a drug-free workplace policy. The Workers’ Compensation Drug-Free Workplace Program, Ark. Code Ann. §§ 11-14-101 to -112 includes guidelines and requirements for workplace drug testing.

The Commercial Driver Alcohol and Drug Testing Act applies to employers required to comply with the Federal Motor Carrier Safety Regulations and implements a mandatory drug and alcohol testing program. Ark. Code Ann. § 27-23-201 *et. seq.* Employers should confer with counsel regarding drug testing to navigate compliance with state and federal anti-discrimination laws.

Medical Marijuana

In November 2016, by constitutional amendment, the State of Arkansas legalized medical marijuana with the Medical Cannabis Amendment of 2016 (MCA). Among other things, it is unlawful for an employer to discriminate against an applicant or employee based on the individual’s past or present status as a “qualifying patient” under the MCA. Any claim must be filed within one year of the alleged discrimination. Damages under the MCA have been capped in accordance with the statutory caps in the state’s Civil Rights Act. Finally, in addition to other defenses, an employer cannot be held liable for excluding (or removing) an applicant (or employee) from a “safety-sensitive position” based on the employer’s good faith belief that the applicant or employee was engaged in the current use of medical marijuana. An employer is also allowed to establish and implement a substance abuse or drug-free workplace policy that includes a drug testing program that follows state and federal law, and an employer can take action based on a good faith belief that a qualifying patient possessed or used marijuana while on work premises or during work hours. Ark. Const. amend. XCVIII, § 3(f)(3)(B).