



# **WASHINGTON, D.C.**

## **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

Washington, D.C., is an at-will employment entity, meaning that the assumption will be that even though the parties speak in terms of “permanent” employment, the parties have in mind merely the ordinary business contract for continuing employment that can be terminated at the will of either party. *Sheppard v. Dickstein, Shapiro, Morin Oshinsky*, 59 F. Supp. 2d 27, 32 (D.D.C. 1999) District of Columbia recognizes a “very narrow” public policy exception to the at-will doctrine. *Carl v. Children’s Hosp*, 702 A.2d 159 (D.C. 1997). D.C. Court of Appeals explicit holdings in *Bible Way* and *McManus* that at-will employment relationships do not give rise to interference with contract claims. *Gross v. Davis*, No. CV 01-1486 (GK), 2003 WL 27178762, at \*3 (D.D.C. Mar. 3, 2003).

## District of Columbia Human Rights Act

The D.C. Human Rights Act (DCHRA) prohibits discrimination against residents of the District, as well as visitors and people who work in D.C., on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance (including style of dress and personal grooming), sexual orientation, gender identity or expression, familial status, family responsibilities (including being the subject of proceedings for child support payments), matriculation, political affiliation, genetic information, disability, source of income, sealed eviction record, status as a victim of an intrafamily offense, place of residence or business, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, and homeless status. D.C. Code Ann. § 2-1401.01 *et seq.* Sex includes pregnancy, childbirth, reproductive health decisions, breastfeeding, and related medical conditions. D.C. Code Ann. § 2-1401.05.

## Immigration Verification

The District of Columbia places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify in the District of Columbia.

## Drug Testing

An employer may only test a prospective employee for marijuana use after a conditional offer of employment has been extended unless otherwise required by law. DC Code § 32–931.

## Medical and Recreational Marijuana

D.C.’s drug testing laws are not intended to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace at any time during employment. D.C. Code Ann. § 32-931. However, an employer, employment agency, or labor organization shall treat a qualifying patient’s use of medical marijuana to treat a disability in the same manner as it would treat the legal use of a controlled substance prescribed by or taken under the supervision of a licensed health care professional. D.C. Code Ann. § 2-1402.11.

The Cannabis Employment Protections Amendment Act of 2022 prohibits employers from refusing to hire, terminate, suspend, fail to promote, demote, or penalize an employee based on their use of cannabis, their status as a medical cannabis program patient, or the presence of cannabinoid metabolites in the individual’s bodily fluids in an employer required or requested drug test without additional factors indicating impairment. Exceptions apply for employees in safety-sensitive positions; if the employer’s actions are required by federal statute, federal regulations, or a federal contract or funding agreement; or if the employee used, consumed, possessed, stored, delivered, transferred, displayed, sold, transported, purchased, or grew cannabis at work while performing work for the employer or during the employee’s hours of work. Cannabis Employment Protections Amendment Act of 2022.

## Jury Duty Leave

In the District of Columbia, a juror serving in the Superior Court of the District of Columbia shall be paid an attendance fee of \$30 for each day of actual attendance at the place of trial or hearing, except that jurors employed by a federal, state, or local government or by a private employer who pays regular compensation during the period of jury service shall not be paid an attendance fee. DC Code § 15–718. A person summoned for petit jury service in the Superior Court of the District of Columbia who does not serve on the petit jury shall not be paid an attendance fee.



An employer shall not deprive an employee of employment, threaten, or otherwise coerce an employee with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends Court for prospective jury service. DC Code § 11-1913.

### **Voting Leave**

District of Columbia law allows employees, upon request to the employer, to take at least two hours of paid leave from their scheduled working shift to vote: (i) in an election held in the District if the employee is eligible to vote in the District; or (ii) in an election held in the jurisdiction in which the employee is eligible to vote. However, an employer may require the employee to request the leave a reasonable time in advance and specify the hours during which the employee may take the leave, including by requiring that the employee take the leave during a period designated for early voting instead of on the day of the election. D.C. Code § 1-1001.07a.

### **Family and Medical Leave**

The District of Columbia Family and Medical Leave Act (DCFMLA) gives employees the right to time off work for pregnancy, childbirth, and parenting. The DCFMLA also gives employees the right to take time off for serious health conditions. Employers are covered by the DCFMLA if they have 20 or more employees, but employees may only take leave if prior to the requested leave, they worked for the employer for at least 12 months, consecutively or non-consecutively, in a seven-year period and totaled at least 1,000 hours. Under the DCFMLA, employees are entitled to take up to 16 weeks of family leave in any 24-month period for the birth of a child, assumption of parental responsibility of a child (adoption, foster care, etc.), or for the care of a family member with a serious health condition. D.C. Code § 32-502. An employer is not required to provide paid family leave. Employees are entitled to an additional 16 weeks of medical leave if the employee is unable to perform the functions required of the employee's position. The employer can request certification issued by the health care provider of the employee or family member evidencing the necessity of leave. D.C. Code § 32-504.

### **Paid Leave**

Employers must provide paid annual and sick leave. An employee is entitled to not more than three days of leave without loss of or reduction in pay, leave, or service to make arrangements for or attend the funeral or memorial service for an immediate relative. In addition, an employee shall be entitled to ten days of bereavement leave without loss of pay, leave, or service credit when the employee suffers a stillbirth, or the employee suffers the death of the employee's child under the age of 21 years. D.C. Code § 1-612.03.

Paid leave shall be provided upon the written request of an employee upon notice as provided in this section. The request shall include a reason for the absence involved and the expected duration of the paid leave. If the paid leave is foreseeable, the request shall be provided at least ten days, or as early as possible, in advance of the paid leave. If the paid leave is unforeseeable, an oral request for paid leave shall be provided prior to the start of the work shift for which the paid leave is requested. In the case of an emergency, the employer shall be notified prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner. D.C. Code §32-531.03.

### **Smoking Laws**

The law requires that virtually all establishments and businesses with employees be mostly smoke-free.

This includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer. Private residences are exempt unless used as a childcare, adult day care, or health care facility. D. C. Code § 7–1703. Private and public employers are required to have a separate area with proper ventilation where smoking is permitted. D.C. Code § 7-1703.02.

### **Break Time to Express Milk**

An employer must provide reasonable daily unpaid break time, as required by an employee, so she may express breast milk for her child to maintain milk supply and comfort. The break time for expression of milk, if possible, may run concurrently with any break time, paid or unpaid, already provided to the employee.

An employer is not required to provide such break time if it would create an undue hardship on the operations of the employer. Nevertheless, an employer is required to make reasonable efforts to provide a sanitary room or other location in close proximity to the work area, other than a bathroom or toilet stall, where an employee can express her breast milk in privacy and security. D.C. Code Ann. § 2-1402.82.

### **Meal and Rest Breaks**

District of Columbia labor laws do not have any meal or break requirements for employers, so federal rules apply. The federal rule does not require an employer to provide either a meal (lunch) period or breaks. However, if an employer chooses to do so, breaks – usually of the type lasting less than 20 minutes – must be paid. Meal or lunch periods (usually 30 minutes or more) do not have to be paid, as long as the employee is free to do as they wish during the meal or lunch period.

### **Minimum Wage**

Beginning July 1, 2024, the minimum wage in the District of Columbia increased from \$16.10 per hour to \$17.50 per hour for all workers, regardless of the size of the employer. The law also includes provisions to further increase the minimum wage in subsequent years with new requirements becoming effective September 18, 2024. As of July 1, 2024, the base minimum wage for tipped employees increased to \$10.00 per hour. D.C. Code § 32-1003.

An employer must pay an employee for at least four hours per day if the employee reports for work, but no work is given or fewer than four hours of work are given. This does not apply if the employee is regularly scheduled for fewer than four hours per day. D.C. Mun. Regs. tit. 7, § 7-907. Under these circumstances, unworked time need only be paid at the regular minimum wage.

### **Overtime**

District of Columbia labor laws require employers to pay employees at least one and one-half times their regular rate for all hours worked in a workweek in excess of 40 hours. D.C. Code § 32-1003. Some exceptions apply. An employer must also comply with federal overtime laws. See Fair Labor Standards Act (FLSA). Federal law applies where it benefits employees more; otherwise, District of Columbia law applies.

### **Wage and Recordkeeping**

Employers must pay hourly employees on regular paydays designated in advance by the employer and at least twice per calendar month. D.C. Code Ann. § 32-1302.

At the time of payment, an employer must provide employees an itemized statement showing: the date of the wage payment; gross wages paid; deductions from additions to wages, including a separate line for gratuities; net wages paid; hours worked during the pay period; employee's tip-declaration form for the pay period, delineating cash tips and credit card tips; and any other information the mayor may prescribe by regulation. D.C. Code Ann. § 32-1008.

At the time of hire and whenever such information changes, employers must provide each employee a written notice containing:

- Name of the employer and any "doing business as" names used by the employer;
- Physical address of the employer's main office or principal place of business, and a mailing address, if different;
- Telephone number of the employer;
- Employee's rate of pay and the basis of that rate, including by the hour, shift, day, week, salary, piece, commission, and any allowances claimed as part of the minimum wage, including tip, meal, or lodging allowances, or overtime rate of pay, exemptions from overtime pay, living wage, exemptions from the living wage, and applicable prevailing wages;
- Employer's tip-sharing policy;
- Employee's regular payday designated by the employer in accordance with D.C. Code § 32-1302; and
- Any other such information as the mayor considers material and necessary.

## Final Payments

Generally, under D.C. Code § 32-1303, an employer must issue a final paycheck to a terminated employee no later than the next working day. However, an employee who quits their job is not entitled to a final paycheck until the next regularly scheduled pay date or within seven days, whichever is earlier.

## Unemployment Insurance

Virtually all employers are subject to unemployment insurance taxes under the District of Columbia's unemployment compensation law. DC Code § 51-101 *et seq.*

## Workers' Compensation

In D.C., employers are required to have workers' compensation insurance if they have at least one employee, and domestic workers who are employed for a minimum of 240 hours per calendar quarter must also be covered. Independent contractors do not have to insure themselves. DC Code Ann § 32-1501, *et seq.*

## Child Labor

In the District of Columbia, people under the age of 18 are considered minors for purposes of employment. The District's child labor laws distinguish among minors according to age, type of occupation, and hours of work. DC Code §. 32-201 *et seq.* Both federal and District of Columbia child labor laws apply to most employers. If there is a conflict, the more protective standard applies.

## Gun Laws

There are no gun laws specifically affecting employers in the District of Columbia. However, for an employee to be permitted to carry a gun to their place of work, they must be licensed pursuant to District of Columbia law. D.C. Code § 7-2502.01.

A person is eligible to be issued a license to carry a concealed pistol (concealed carry license) only if they:

- Are at least 21 years of age;
- Meet all of the requirements for a person registering a firearm pursuant to the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.* (2012 Repl. & 2014 Supp.));
- Possess a pistol registered pursuant to the Act;
- Do not currently suffer nor have suffered in the previous five years from any mental illness or condition that creates a substantial risk that they are a danger to themselves or others; provided that if the person no longer suffers such mental illness or condition, and that person has provided satisfactory documentation as required under § 2337.3, then the chief of police may determine that this requirement has been met;
- Have completed a firearms training course or combination of courses, conducted by an instructor (or instructors) certified by the chief of police;
- Have a bona fide residence or place of business: (1) within the District of Columbia; (2) within the U.S. and a license to carry a pistol concealed upon their person issued by the lawful authorities of any state or subdivision of the U.S.; or (3) within the U.S. and meet all registration and licensing requirements pursuant to the Act; and
- Are a suitable person to be so licensed.

## Non-compete Restriction

- The District of Columbia passed new limitations on the creation of non-compete clauses. The new law bans non-compete agreements for most employees earning less than \$150,000 a year (or \$250,000 for medical specialists). DC Code Ann. § 32-581.01 *et seq.*