



FLORIDA

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

The employer/employee relationship in Florida 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. Florida's Whistle-blower's Act is an exception to the at-will doctrine and provides a cause of action against employers who wrongfully discharge an employee because the employee objected to or refused to participate in the employer's illegal practices. Fla. Stat. § 448.102; *Schultz v. Tampa Elec. Company*, 704 So. 2d 605, 606 (Fla. Dist. Ct. App. 1997). Other than those created by statute, Florida, unlike other states, rarely recognizes an exception to the at-will employment doctrine.

Immigration Verification

Beginning January 1, 2021, a private employer must verify each new employee's employment eligibility by *either* using the E-Verify system *or* requiring the person to provide the same documentation that is required by the U.S. Citizenship and Immigration Services (USCIS) on its Employment Eligibility Verification (I-9) form. Private employers electing to use the I-9 documentation option must maintain a copy of the documentation provided for at least three years after the person's initial date of employment. Public employers have additional requirements. Fla. Stat. § 448.095.

NOTE: Florida participates in the U.S. Citizen and Immigration Services' "Records and Information from DMVs for E-Verify (RIDE)" program. Using RIDE, the E-Verify system can validate the authenticity of Florida driver's licenses used by employees as Form I-9 identity documents.

Drug Testing

The State of Florida allows private employers to implement workplace drug and alcohol testing. Fla. Stat. § 440.101. The drug and alcohol testing programs must conform to specific requirements, which may be found here: Fla. Stat. § 440.102, as well as any rule or regulation adopted by the Agency for Health Care Administration. The employee must be notified that it is a condition of employment that the employee refrain from reporting to work or working with the presence of drugs or alcohol in their body. Employers should approach drug testing cautiously to ensure compliance. Pursuant to the Florida drug-free workplace program, the employer must pay for all required drug tests. Finally, all documents related to drug testing must be kept confidential and must be retained for one year. Fla. Stat. § 440.102 (5)(j).

Jury Duty and Witness Leave

It is unlawful for an employer to discharge, or threaten to discharge, an employee because of their jury service. Fla. Stat. § 40.271. An employer is not required, however, to pay an employee for responding to a jury summons or for serving on a jury. Fla. Stat. § 40.24(7). In addition, employees who receive a subpoena to testify in a judicial proceeding must be permitted to do so without retaliation. Fla. Stat. § 92.57.

Voting Leave

The State of Florida has no specific law requiring time off to vote. However, it is unlawful for an employer to discharge or threaten to discharge any employee for voting or not voting in any state, county, local, or municipal election. Fla. Stat. § 104.081.

Parental Leave

The State of Florida does not require a *private* employer to offer employees parental leave. However, it is unlawful for a *public* employer to discharge or discriminate against a *public* employee because they have requested, or returned from, parental leave. Fla. Stat. § 110.221.

Bereavement Leave

The State of Florida does not require employers to provide employees with bereavement leave or leave to attend funerals.

Vacation Leave

The State of Florida does not require employers to offer vacation benefits, either paid or unpaid.

Sick Leave

The State of Florida does not require employers to offer employees sick leave, either paid or unpaid.

Military Leave

Florida employees who are members of the Florida National Guard (or the National Guard of any other state) or a reserve component of the Armed Forces are eligible for leave for all days during which the employee is engaged in active state duty. Upon completion of state active duty, the employee must promptly notify the employer of his or her intent to return to work. Fla. Stat. § 250.482.

Civil Air Patrol Leave

Employers with 15 or more employees must provide up to 15 days of unpaid Civil Air Patrol leave annually to an employee who is a Civil Air Patrol member. Fla. Stat. § 252.55. Covered employers may not discharge, reprimand, or otherwise penalize a Civil Air Patrol member because of his or her absence for such leave.

Family and Medical Leave

All employers in Florida must adhere to the Family and Medical Leave Act (FMLA). This allows employees to take unpaid leave for various reasons, with the right to reinstatement to their former position. Additionally, Miami-Dade County, Florida, has enacted the Miami-Dade County Family Leave Ordinance (MDCFLO) to provide employees in the county with an alternative means to exercise their rights to family medical leave as enforced by the Florida Commission on Human Rights. Miami-Dade Cnty., Fla., Ordinance, ch. 11A, art. VIII, § 11A-61.

Domestic Violence Leave

An employee may obtain leave to seek an injunction for protection against domestic violence, repeat violence, dating violence, or sexual violence; to obtain medical care or mental health counseling (or both) for the employee or family or household member to address physical or psychological injuries resulting from sexual or domestic violence; to obtain services for domestic or sexual violence from a victim services organizations; to secure the employee's home from the perpetrator of the domestic or sexual violence or to seek new housing to escape the perpetrator; or to seek legal assistance to address domestic or sexual violence issues or to attend and prepare for court-related proceedings concerning domestic or sexual violence. An employee seeking leave under this section must, before receiving the leave, exhaust all annual or vacation leave, personal leave, and sick leave, if applicable, that is available to the employee unless the employer waives this requirement. This section applies only to employers with 50 or more employees. Fla. Stat. § 741.313.

Smoking Laws

Under the Florida Clean Air Act, Fla. Stat. § 386.201, *et seq.*, smoking (including electronic vapor products) is prohibited in all enclosed areas not specifically exempted by statute, including professional offices and other workplaces. Florida's Constitution, specifically Article X, Section 20, further prohibits smoking in enclosed, indoor workspaces, subject to certain exceptions. By law, employers must adopt and implement policies consistent with these laws and are encouraged to "increase public awareness" by posting NO SMOKING signs as deemed appropriate. Fla. Stat. § 386.206.

Break Time to Express Milk

Florida has no law specifically regulating breastfeeding in the workplace but must follow all federal laws regarding the same. Nevertheless, Florida recognizes that breastfeeding a baby is an important and basic act of nurture that must be encouraged in the interests of maternal and child health and family values. A mother may breastfeed her baby in any location, public or private, where the mother is otherwise authorized to be present. Fla. Stat. § 383.015.

Meal Breaks

Florida has no law regulating rest periods. Employees under the age of 18 must be given at least a 30-minute uninterrupted meal break for every four hours of continuous work. Fla. Stat. § 450.081(4).

Minimum Wage

For the last several years, the Department of Revenue and the Department of Economic Opportunity adjusted the minimum wage each year on September 30 based on the percentage increase in the federal Consumer Price Index for Urban Wage Earners and Clerical Workers in the South Region for the prior 12-month period. Fla. Stat. § 448.110. On November 3, 2020, Florida voters approved an amendment to the Florida Constitution, increasing the minimum wage to \$10 per hour on September 30, 2021, and an additional \$1 per hour on each anniversary thereof until \$15 per hour is reached on September 30, 2026. The tipped employee rates of pay are lower, but also increase annually from 2021 through 2026, peaking at \$11.98 per hour on September 30, 2026.

Employers must prominently display a poster substantially similar to the one made available in Subsection Three of Fla. Stat. § 448.109 in a conspicuous and accessible place in each establishment where such employees are employed. Fla. Stat. § 448.109(2). More information about the poster is available [here](#). Employers must still comply with federal wage laws and regulations.

Final Payments

Florida has no law regulating final payments to employees.

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 Florida Department of Economic Opportunity. Additional information regarding the benefits may be accessed at www.floridajobs.org/.

Workers' Compensation

The Florida Workers' Compensation Law, Fla. Stat. § 440.01, *et seq.*, applies to every employer in the construction industry, and every other employer in Florida with four or more employees. 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 law, 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. Florida's Workers' Compensation Law is administered by the Florida Division of Workers' Compensation. Additional information may be accessed at <https://www.myfloridacfo.com/division/wc/>.

It is unlawful to discriminate or retaliate against an employee because they have sought benefits or participated in proceedings under the law. Fla. Stat. §§ 440.105; 440.205. Moreover, if the injured employee is a minor employed, permitted, or suffered to work in violation of any of the child labor laws, the employer shall also be liable to pay such additional compensation as the judge determines in their discretion. Fla. Stat. § 440.54. The total shall not exceed double the amount otherwise payable under this chapter, and the employer, not an insurer, must pay this amount. *Id.*

Additional Laws and Regulations

Florida Civil Rights Act of 1992

The Act, which may be found at Fla. Stat. § 760.01, *et seq.*, mimics federal laws in that it prohibits discrimination because of an individual's race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status. The Act further prohibits discrimination because of an individual's marital status. The Act applies to all employers with 15 or more employees for at least 20 weeks in the current or preceding calendar year. Prior to filing a lawsuit under the Act, an employee has 365 days from the date of the wrongful act to file a complaint with the Florida Commission on Human Relations.

Record-Keeping

Florida has specific laws regarding the time and manner in which certain records must be maintained.

- Fla. Stat. § 443.071; Fla. Admin. Code 73B-10.032: All payroll records must be maintained for five years following the calendar year in which the services were rendered.

- Fla. Stat. § 443.171; Fla. Admin. Code 73B-10.032: All “work records” must be maintained for five years following the calendar year in which the services were rendered.
- Fla. Stat. § 447.07: Any documentation concerning the accounts of any labor organizations must be maintained; however, a specific retention period is not provided.
- Fla. Stat. § 450.045: Any documentation concerning a minor’s proof of age must be maintained for the duration of their employment.
- Fla. Admin. Code 69L-3.004: With regard to workers’ compensation, any documentation concerning injury reports or earnings must be maintained for at least two and one-half years after the date that the injury or illness is reported.

Reference Immunity

An employer who, upon request, discloses information about a former or current employee to a prospective employer of the former or current employee is immune from civil liability for such disclosure or its consequences unless it is shown that the information disclosed by the former or current employer was knowingly false or violated any civil right of the former or current employee. Fla. Stat. § 768.095.

Domestic Violence

An employer that employs 50 or more employees shall permit an employee to request and take up to three working days of leave in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence. This leave may be with or without pay, at the discretion of the employer. Fla. Stat. § 741.313(2)(a). This leave is protected by law, and an employer shall not discriminate or retaliate against an employee exercising their right to such leave. Fla. Stat. § 741.313(2)(a).

Child Labor Laws

Minors of any age may be employed as pages in the Florida Legislature, by the entertainment industry as prescribed in Sections 450.012 and 450.132, and in domestic or farm work in connection with their own homes or the farm or ranch on which they live. Fla. Stat. § 450.021(1). No person ten years of age or younger shall sell or distribute newspapers. No person 13 years of age or younger shall be employed, permitted, or suffered to work in any gainful employment at any time. *Id.*; § 450.021(2)(3). Employers that employ children must keep a photo of the child’s birth certificate in their records, a photo of the child’s driver’s license, an age certificate issued by the district school board of the district in which the child is employed, or a copy of a passport or visa that lists the child’s date of birth. *Id.* § 450.045(1). There are also restrictions on the hours a child may work that can be found at Fla. Stat. § 450.081.

Wage Rate Discrimination Prohibited

Florida prohibits discrimination in pay on the basis of sex. The language of its Act, which is found at Fla. Stat. § 448.07, mirrors the Equal Pay Act.

Unauthorized Aliens

It shall be unlawful for any person to knowingly employ, hire, recruit, or refer for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States. Fla. Stat. § 448.09(1).

Medical Marijuana Law

Amendment 2 to the Florida Constitution allows medical marijuana as a treatment for patients with certain debilitating medical conditions. The law took effect on January 3, 2017. The law shall not “require any accommodation of any on-site medical use of marijuana” at the person’s place of employment and prohibits driving while under the influence of medical marijuana. This suggests an employer may prohibit the use of medical marijuana at work and may prohibit such employees from driving on company business. Although the State of Florida will soon allow the use of medical marijuana, it is still prohibited by federal law. Indeed, the law provides that “nothing in this section requires the violation of federal law or purports to give immunity under federal law.”

The Florida Department of Health is required to issue reasonable regulations necessary for the implementation and enforcement of the amendment. Seek counsel for specific questions concerning the effect of the law on related laws, such as reasonable accommodations under the ADA, drug testing, etc.

New Hire Reporting

Beginning October 1, 2021, in addition to reporting newly hired employees, employers must also notify the state of independent contractor hires if those independent contractors are paid \$600 or more per year. Fl. Stat. § 409.2576(3)(4).

Mini-WARN Act

Florida does not have a mini-WARN Act or other similar notice requirements for group layoffs.

CROWN Act

Both Broward County and the City of Miami Beach have enacted CROWN Act provisions prohibiting discrimination based on traits historically associated with race, including hair textures and styles.