



IDAHO

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

Idaho is an at-will-employment state. In Idaho, this means that unless an employee is hired under a contract that includes a specific duration of employment and/or limits the reasons why the employee may be discharged, the employer may discharge the employee for any reason or no reason as long as it is not an unlawful reason. *Venable v. Internet Auto Rent & Sales, Inc.*, 329 P.3d 356, 360 (Idaho 2014). Idaho has a narrow exception to at-will-employment where the employer's motivation for the termination contravenes public policy. *Id.* The Idaho Supreme Court has said that "[t]he public policy exception has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations[,] or who exercise certain legal rights or privileges." *Sorensen v. Comm Tek, Inc.*, 118 Idaho 664, 668 (1990). The claimed public policy exception must be generally rooted in "case law or statutory language." *Edmondson v. Shearer Lumber Prod.*, 75 P.3d 733, 738 (Idaho 2004). The public policy exception has been applied in instances such as protecting participating in union activities (*Watson v. Idaho Falls Consol. Hosps., Inc.*, 111 Idaho 44 (1986)), reports of electrical building code violations (*Ray v. Nampa Sch. Dist. No. 131*, 120 Idaho 117), compliance with a court-issued subpoena (*Hummer v. Evans*, 129 Idaho 274), and serving on a jury (*Sorensen v. Comm Tek, Inc.*, 118 Idaho 664). However, the public policy exception does not extend to terminations based on the free speech of an employee who is employed by a private-sector employer. (*Edmondson v. Shearer Lumber Products*, 139 Idaho 172). Employers in Idaho must also abide by Idaho Code Title 67 Chapter 59, which mirrors Title VII of the Civil Rights Act of 1964.

Non-Compete Agreements

Idaho law regulates the use of non-compete agreements in employment contracts. Idaho Code § 44-2701 provides that, to be enforceable, a non-compete agreement must:

- Protect the employer's legitimate business interests;
- Only prohibit the employee or independent contractor, after termination, from engaging in employment or a line of business that directly competes with the employer's business;
- Be reasonable in:
 - duration;
 - geographical area; and
 - the type of employment or line of business restricted;
- Not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interests; and
- Only restrict "key employees" or "key independent contractors," as defined under Idaho Code § 44-2702(1).

There is a rebuttable presumption that an employee or independent contractor who is among the highest-paid five percent of the employer's employees or independent contractors is a "key employee" or a "key independent contractor." If the "key employee" or "key independent contractor" is not among the highest compensated workers, it is the employer's burden to establish the existence of a "key employee" or "key independent contractor" under Idaho Code § 44-2702(1).

Immigration Verification

Employers in Idaho should refer to federal employment eligibility verification rules, but Idaho does not require private employers to use the E-Verify system.

Retaliation

While Idaho does not have an anti-retaliation or whistleblower protection law that applies to private-sector employers, Idaho courts recognize common law claims for retaliatory discharge and termination in violation of public policy where the employer's motivation for the termination contravenes public policy. *Bollinger v. Fall River Rural Elec. Coop., Inc.*, 152 Idaho 632 (Idaho 2012). What constitutes sufficient public policy to protect an at-will employee from termination for whistleblowing should be considered a question of law. *Quiring v. Quiring*, 130 Idaho 560 (1997).

Drug Testing

Idaho regulates drug and alcohol testing by employers. Idaho Code § 72-1702 grants private employers the right to “test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment[,] provided the testing requirements and procedures are in compliance with 42 U.S.C. § 12101. “The employer must pay for the testing and the employee must be compensated as if the time spent testing was normal work time.” Idaho Code § 72-1703. Idaho Code also requires employers to have a written testing policy. Idaho Code § 72-1705. The written policy must include:

- The consequences of violating a substance abuse policy;
- The types of tests that will be conducted; and
- An explanation of the testing procedures to be used.

An individual whose test comes back positive must be given the opportunity to explain the result and has the right to be retested. Idaho Code § 72-1706. The results must be sent by written notification to employees and applicants and specify the types of substances identified. *Id.*

Under Idaho law, the employer may test for these reasons but are not limited to this list only: baseline, pre-employment, or post-accident.

When a workplace accident occurs and the employee’s blood alcohol content evidences intoxication, that alone does not necessarily mean intoxication was the substantial cause of the accident. *Giles v. Eagle Farms, Inc.*, 339 P.3d 535, 540 (Id. 2014). Idaho Code § 72-208 does not contain a presumptive standard.

Note: Idaho is one of only a few states without some sort of policy allowing residents to possess products with even low amounts of THC. In Idaho, any amount of THC is illegal, and marijuana is illegal in all forms.

Paid Leave

Idaho does not require private employers to compensate employees during time off for vacation, holiday, bereavement, or sick leave. However, an employer will be required to pay for leave that is included as either an express or implied provision of the employee’s contract. *Ferguson v. City of Orofino*, 131 Idaho 190 (1998).

Emergency Response Leave

Idaho does not have an emergency response leave law that applies generally to private employers.

Crime Victim Leave

Idaho does not have a crime victim leave law that applies generally to private employers.

National Guard Leave

Any member of the Idaho National Guard who is ordered to duty by the Governor, or any Idaho employee who is a member of the National Guard of another state and who is called into active service by the Governor of that state, and who at the time of such order to duty is employed by any employer other than the United States government, is entitled to reemployment. Idaho Code Ann. § 46-407.” Additionally, Idaho employees are eligible to take up to 15 days of leave each year to attend training for either the National Guard or the reserve components of the U. S. Armed Forces. Idaho Code Ann. § 46-224.

Jury Duty Leave

In Idaho, employers are prohibited from threatening, discharging, disciplining, or otherwise penalizing, including communicating the intention to take action against an employee summoned for and attending jury duty. Idaho Code § 2-218(1). However, there is no Idaho law requiring employers to pay employees while an employee is serving jury duty. An employer who is found to have violated Idaho Code § 2-218(1) may be fined not more than \$300. Idaho Code § 2-218(2). If any employer discharges an employee for attending court for jury service or serving as a juror, the employee may bring a civil action within 60 days of discharge for recovery of treble the amount of wages lost and request an order requiring reinstatement of the employee. Idaho Code §

2-218(3). If the employee is successful in the lawsuit, the employee is also allowed recovery of a reasonable attorney's fee. *Id.*

Voting Leave

Idaho does not have a law that requires an employer to grant its employees leave, either paid or unpaid, to vote.

Parental Leave

There is no Idaho statute providing for pregnancy or parental leave.

Smoking Laws

Smoking is not allowed in a public place or a publicly owned building. Idaho Code § 39-5503. Additionally, no employer or other person in charge of a public place or publicly-owned building or office shall knowingly or intentionally permit the smoking of tobacco products. Idaho Code § 39-5506. However, an employee breakroom in a small business employing five or fewer employees may designate an employee breakroom for smoking. Idaho Code § 39-5503. This designated breakroom cannot be accessible to minors, must be separated from other parts of the building, is not the sole means of entrance or exit, and is not in an area that an employee is required to enter for work responsibilities (not including custodial or maintenance work when it is unoccupied). *Id.* Additionally, a "Warning: Smoking Permitted" sign must be prominently posted with letters of at least one inch in height. *Id.*

There are no laws to prevent employers from having a nicotine-free hiring policy. In fact, the Central District Health Department voted in 2011 to stop hiring smokers. The Adad County Sheriff's Office has had a similar policy since 2002. Private employer Blue Cross of Idaho has also instituted a nicotine-free hiring policy. There is nothing in Idaho law to protect employees' rights to engage in legal activities when they are off duty. As of today, nicotine-free hiring policies are still allowed.

Break Time to Express Milk

Idaho has no specific legislation to protect or support breastfeeding mothers in the workplace.

Meal Breaks

Idaho law does not require an employer to provide breaks or meal periods.

Minimum Wage

Idaho's required minimum wage is the same as the federal minimum wage rate. Idaho Code § 44-1502. Idaho's minimum wage is \$7.25 per hour. For tipped workers, the minimum cash wage is \$3.35 per hour. *Id.* If tips do not at least equal the minimum wage, the employer must make up the difference. *Id.*

Final Payments

A discharged employee must be paid all wages due on the next regularly scheduled payday or within ten days of layoff or termination, whichever is earlier. Idaho Code § 45-606.

An employer is only required to pay accrued vacation to an employee upon separation from employment if their policy or contract requires it. *Ferguson v. City of Orofino*, 953 P.2d 630 (1998); *Jackson v. Minidoka Irrigation Dist.*, 563 P.2d 54 (1977). Idaho law does not require vacation or sick pay, so an employer may determine its policy regarding vacation or sick pay and whether it is payable upon separation.

Unemployment Insurance

Idaho has an unemployment insurance system administered by the Idaho Department of Labor that requires most Idaho employers to contribute to the state unemployment insurance fund. Idaho Code § 72-1315.

Employers are required to remit unemployment insurance taxes and submit certain related reports quarterly. Idaho Code § 72-1311. Unemployed workers must meet certain criteria to qualify for unemployment insurance benefits.

Workers' Compensation

Idaho has a workers' compensation program that is administered by the Industrial Commission and contained in Idaho Code § 72-102, *et seq.* The workers' compensation laws apply to all public and private entities employing one or more employees. Idaho Code § 72-204 and § 205. There are limited exclusions found in Idaho Code § 72-213.

Under common law, Idaho has a public policy exception to its at-will-employment doctrine. Because the right to collect workers' compensation benefits has been endorsed by an Idaho statement, an employer who retaliates against an employee for invoking that right would probably be in violation of public policy. *Berrett v. Clark County School District No. 161*, 454 P.3d 555, 569 (Idaho 2019) (citing *Sorenson v. Comm Tek, Inc.*, 799 P.2d 70, 74 (1990)).

An injury for purposes of workers' compensation is "caused by an accident arising out of and in the course of any employment covered by the worker's compensation law." Idaho Code § 72-102. Injuries suffered because of the employee's willful intention to injure themselves or another are not covered. Idaho Code § 72-208. If intoxication is the reasonable and substantial cause of an injury, there is no coverage, unless the employer permitted the employee to remain at work knowing the employee was intoxicated. *Id.*

Whistleblower Protections

Idaho Protection of Public Employees Act safeguards public employees from retaliation in a whistleblower case. Idaho Code § 6-2102. Whistleblowers in the private sector are protected from retaliation by federal law only.

Firearm/Weapon Laws

Idaho employers have immunity from civil damages if a lawsuit arises out of the employer's policy to allow or not prohibit employees from storing firearms in their vehicles on the employer's premises. Idaho Code § 5-341. Idaho has no law prohibiting an employer from restricting or banning employees from bringing weapons onto the workplace premises. Policies can include bans on firearms, allowing firearms, requiring reporting to the supervisor if the employee possesses a concealed carry permit and intends to carry, or any other requirement or prohibition the employer sees fit to institute.

Additional Laws and Regulations

Child Labor Laws

People under the age of 14 cannot be employed in certain industries and/or types of work. Idaho Code § 44-1301. People under the age of 14 may not be employed during the regular school hours of the public school district in which the child resides, before 6:00 a.m. or after 9:00 p.m. *Id.* Violations of the Child Labor Laws found in Idaho Code §§ 44-1301 and 1302 may be fined \$50.

WARN Laws

Idaho does not have a statute mandating notice for terminations. Employers in Idaho must follow the federal Worker Adjustment and Retraining Notification Act (WARN).