INDIANA
QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

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

At-Will Employment

Indiana is an at-will employment state. Generally, employers may discharge employees for any reason or no reason. However, there are three primary exceptions to the employment-at-will doctrine: (1) adequate independent consideration (e.g., assurance from the employer of job security or permanency); (2) violation of statutory right or duty (e.g., workers' compensation retaliation); and (3) promissory estoppel (e.g., employee relied upon employer promise to detriment). *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712 (Ind. 1997).

Right-to-Work Laws

Indiana is a right-to-work state. No employer, labor organization, or person may require an individual to become or remain a member of a labor organization or pay dues, fees, or assessments (or charitable donation substitutes) as a condition of employment, new or continued. Ind. Code §§ 22-6-6.

Immigration Verification

Employers in Indiana should refer to federal employment eligibility verification rules. Indiana encourages, but does not require, private employers to use the E-Verify system. A state agency or political subdivision must use the E-Verify system for any employees hired or public contracts entered into after June 30, 2011. Ind. Code § 22-5-1.7.

Drug Testing

Indiana is one of the few states without laws restricting employer drug testing of employees. Certain professions (e.g., childcare, home health care, contractors) may have specialized requirements. *See* Ind. Code §§ 12-17.2-3.5-12.1, 4-13-18-6. Employers are therefore free to drug test applicants and employees as long as the testing is not otherwise discriminatory or unlawful.

Jury Duty Leave

An employer may not subject an employee to an adverse employment action (e.g., termination, demotion, discipline) for responding to a jury summons or serving on a jury. Indiana does not require employers to pay an employee for responding to a jury summons or serving on a jury, nor can an employer require an employee to use annual leave, vacation leave, or sick leave for time spent related to jury duty. If an employer with ten or fewer employees has one employee summoned for jury duty while another is currently serving, the employer may request the summoned employee's jury duty be delayed until the other employee finishes jury duty. Ind. Code §§ 35-44.1-2-12, 33-28-5-24.3.

Voting Leave

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

Witness Duty Leave

Employers may not dismiss an employee, deprive an employee of benefits, or threaten dismissal or deprivation of benefits because the employee has received or responded to a subpoena in a criminal proceeding. Employers are not required to give paid leave for an employee to respond to a subpoena. Ind. Code § 35-44.1-2-12.

Military Family Leave

Indiana's Military Family Leave applies to employers with at least 50 employees working during the preceding 20 weeks. An employee who has been employed for at least 12 months; has worked at least 1,500 hours during the previous 12 months; and is the spouse, parent, grandparent, child, or sibling of a person who is ordered to active duty may be entitled to Military Family Leave. Eligible employees may take a leave of absence during one or more of these periods: (1) the 30 days before active-duty orders are in effect; (2) a period in which the person ordered to active duty is on leave while active-duty orders are in effect; or (3) the 30 days after the active-duty orders are terminated. The leave of absence allowed each calendar year may not exceed a total of ten working days. Employers may elect to provide or allow substitution of earned paid vacation leave or personal leave, except for paid medical or sick leave, available to the employee to cover any part of the ten-day period of such leave. Ind. Code § 22-2-13-11.

Employees must request such leave, in writing with a copy of the active-duty orders if available, at least 30 days in advance, unless the active-duty orders are issued less than 30 days before the requested leave is to begin. Employers may request written verification of an employee's eligibility for leave. Ind. Code § 22-2-13-12.

Upon return from leave, employees must be restored to the positions they held before the leave or an equivalent position. Ind. Code § 22-2-13-13.

Military Leave & Military Training Leave

Members of the Indiana National Guard are entitled to a leave of absence in addition to the member's regular vacation period for the total number of days that the member is on state active duty. The leave of absence may be with or without loss of time or pay at the employer's discretion. Ind. Code § 10-16-7-6.

Employers must provide a temporary leave of absence not to exceed 15 days per calendar year to a person who, as a reserve member of the armed forces of the U.S., is called upon to receive temporary military training. The employee must provide the employer with evidence of the dates of departure and return as soon as practicable; and furnish the employer, upon the employee's return, evidence of satisfactory completion of training. Employees must be restored to their previous or a similar position upon their return. This leave may be with or without pay at the discretion of the employer. Ind. Code § 10-17-4-4.

Emergency Response Leave

Employees who are volunteer firefighters or volunteer members of a volunteer emergency medical services association who have notified their employer of their status in writing are entitled to leave to respond to a fire or emergency if the call to respond was received before the time that the employee was to report to employment. Employees may also request leave from their supervisor to respond to a call received after the employee has reported to work. Employers may not discipline employees for an injury sustained as a result of such volunteer work, or because of an absence from work due to an injury, subject to limitations. Ind. Code § 36-8-12-10.7.

Civil Air Patrol Leave

Employees who are members of the Civil Air Patrol who have notified their employer of their status in writing are protected from discipline in certain circumstances. Employers may not discipline an employee for being absent for engaging in emergency services related to membership in a civil air patrol when orders were received before the employee was to report to work, nor may an employer discipline a civil air patrol member who, upon receiving authorization from their supervisor, leaves work to engage in an emergency services operation. Employers may request a written statement from the officer in charge of the civil air patrol confirming the employee's engagement in an emergency services operation at the time of their absence. However, employers may reject an employee's notification of his or her membership when the employee is deemed an essential employee. In this case, employers may use disciplinary action for an employee's absence for an emergency service operation. Ind. Code § 10-16-19-2.

Parental/Medical Leave

There is no Indiana statute providing for parental/medical leave, but the federal Family and Medical Leave Act of 1993 (FMLA) gives eligible employees the right to take unpaid time off to care for a new child as part of their 12-week leave entitlement in a 12-month period. 5 U.S.C. § 6382. An eligible employee is one who has worked for the employer for at least 12 months and has worked at least 1,250 hours during the past 12 months. Employers must adhere to the FMLA if they have at least 50 employees for at least 20 weeks in the current or previous year.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember is entitled to a 26-week leave during a 12-month period to care for the service member.

Other Leave

In Indiana, employers are not required to provide employees with vacation benefits, holiday leave, or bereavement leave, either paid or unpaid.

However, if an employer promises vacation time to the employee, the employee must receive that time or save it for use, or payment at a later date. But, if an employer places a condition on the vacation's use or prevents the employee from using the vacation after a certain time, the employee is not entitled to that vacation pending those circumstances. *See Comm'r of Lab. ex rel. Shofstall v. Int'l Union of Painters & Allied Trades AFL-CIO, CLC Dist. Council 91*, 991 N.E.2d 100, 103 (Ind. 2013).

Indiana law does not require employers to provide employees with sick leave benefits, paid or unpaid, but an employer in Indiana may be required to provide an employee with unpaid sick leave in accordance with the FMLA or other federal laws.

Indiana prohibits any city or county in the state from establishing a right to paid leave that exceeds the requirements of federal or state law. Ind. Code § 22-2-16-3.

Smoking Laws

Nearly all indoor public places (including most places of work) are smoke-free due to the Indiana Smoke-Free Air Law (2012). Smoking is still permitted in bars, tobacco shops, gaming facilities, membership clubs, and other similar establishments.

Break Time to Express Milk

Indiana has no specific legislation to protect or support breastfeeding mothers in the workplace. However, to the extent reasonably possible, private employers in Indiana employing 25 or more employees, as well as public employers in Indiana, must provide a private location other than a toilet stall, where an employee can express breast milk in privacy during any period away from the employee's assigned duties. Furthermore, employers must, to the extent reasonably possible, provide a refrigerator or other cold storage for keeping expressed breast milk or allow the employee to provide her own cold storage device for keeping expressed breast milk. See Ind. Code § 22-2-14-2; Ind. Code § 5-10-6-2(b).

If the mother is protected by the Fair Labor Standards Act (FLSA), employers are required to provide reasonable break time for an employee to express breast milk for their nursing child.

For public employers, the state and political subdivisions must provide a female employee reasonable paid break time each day to express breast milk for the employee's infant child. If possible, the break time must run concurrently with any normal break time given to the employee. However, public employers are not required to provide the additional break time if the break time would unduly disrupt the operations of the state or political subdivisions. See Ind. Code § 5-10-6-2(a).

In general, a woman may breastfeed her child anywhere the woman has a right to be. See Ind. Code § 16-35-6.

Pregnancy and Childbirth Accommodation

Indiana's Pregnancy and Childbirth Accommodation law applies only to employers with 15 or more employees.

An employee may request, in writing, an accommodation related to pregnancy, childbirth, or any related medical conditions. The employer must respond to the employee's request within a reasonable amount of time but the employer is not required to provide an accommodation. Employers may not discipline, terminate, or retaliate against an employee for requesting or using such an accommodation. Ind. Code § 22-9-12-1 *et seq.*

Meal Breaks

Indiana has no statute regulating breaks for meals except with respect to minors. If the FLSA applies to the employer, then an employee who takes a break that is 20 minutes or less must be paid for the break time at their normal rate. An employer does not have to pay for a break if it is longer than 20 minutes and the employee is relieved of all work during the break.

Certain other categories of workers, such as airline pilots, truck drivers, and workers covered by a union collective bargaining agreement, may be entitled to mandatory breaks under other applicable regulations or by contract.

Minimum Wage

Indiana's required minimum wage tracks the federal minimum wage rate: $7.25 per hour. Ind. Code § 22-2-2-4(c).

Unemployment Insurance

Indiana has an unemployment insurance system administered by the Indiana Department of Workforce Development that requires most Indiana employers to contribute to the state unemployment insurance fund. More information is available here: https://www.in.gov/dwd/indiana-unemployment/. *Ind. Code § 22-4-2-1 et seq.*

Workers' Compensation

Indiana has a workers' compensation program that is administered by the Indiana Workers Compensation Board. The workers' compensation laws apply to all public and private entities employing one or more employees. More information related to Indiana workers' compensation laws is available here for employers: https://www.in.gov/wcb/employers/, for individuals: https://www.in.gov/wcb/employees/who-is-eligible/

COVID-19 Vaccine Mandate Restrictions

Indiana does not allow employers to mandate that employees receive a COVID-19 immunization without providing exceptions. Employers must allow employees to opt out of the immunization based on 1. Medical reasons, 2. Religious reasons, or 3. Employee immunity from a prior infection with COVID-19. See Ind. Code § 22-5-4.6-5.

Unless an employer waives documentation requirements for the exemptions, the employee must provide the employer with a written exemption statement. For a medical exemption, the employee must submit a signed and dated statement from a licensed physician, physician assistant, or advanced practice registered nurse who has examined the employee stating that in their professional opinion, the COVID-19 immunization is medically contraindicated for the employee. For a religious exemption, the employee must indicate in writing that the employee declines the COVID-19 immunization because of a sincerely held religious belief. For a prior infection exemption, the employee must present a laboratory test result cleared by the FDA including a PCR, antigen, antibody, or serology test. An employee may request that an employee submit a new laboratory test result once every three months.

However, if an employee claims one of the three listed exemptions, an employer may require the employee to submit to COVID-19 testing up to twice a week. The COVID-19 test must be approved by the FDA, the least invasive testing option available, and does not create an undue burden on the employee to receive the test. See Ind. Code § 22-5-4.6-5.

A contract, bid specification, or agreement entered after March 31, 2022, may not contain a requirement for an employee to receive a COVID-19 immunization that limits the rights and protections of an employee. See Ind. Code § 22-5-4.6-8.

Overtime

Both the federal Fair Labor Standards Act (FLSA) and the Indiana Minimum Wage Law require employers to pay employees one and one-half times their regular rate of pay when employees work more than 40 hours during a workweek. Ind. Code §§ 22-2-2-4.

Indiana exempts executive, administrative, or professional employees from its overtime requirements if they have the authority to hire or fire other employees and earn a minimum of $150 or more. Ind. Code §§ 22-2-2-3.

Firearm/Weapon Laws

Indiana prohibits any person (including employers) from adopting or enforcing a rule or policy that prohibits an employee from possessing a firearm or ammunition that is locked in the trunk or glove box or stored out of plain sight of the employee's locked vehicle. Ind. Code § 34-28-7-2.

Wage Payment Laws

Employers must pay each employee at least semimonthly or biweekly. Upon separation or termination, employees must be paid their final wages on or before the next regular payday. Ind. Code Ann. § 22-2-5-1; Ind. Code Ann. § 22-2-9-2.

For each pay period, employers must provide employees with a statement that includes hours worked by the employee, wages paid to the employee, and a list of deductions made. Ind. Code Ann. § 22-2-2-8.

Additional Laws and Regulations

Minimum Age

As of July 1, 2021, employers employing five or more minors must use the Indiana Department of Labor's Youth Employment System (YES) site to track and report minor-employee information.

Minors under the age of 18 are prohibited from working in any occupation designated as "hazardous" by the FLSA, with certain exceptions. Ind. Code Ann. § 22-2-18.1-23.

Like most states, Indiana restricts the hours of employment and types of employment for which minors are eligible. Restrictions largely depend on the age of the minor and whether they are in school; these restrictions are detailed in Ind. Code §§ 22-2-18.1-17 *et seq*.

Tipped Employees

Tipped employees must be paid at least the minimum wage. The employer is required to pay a base hourly wage of $2.13 an hour. If the employee is not compensated at a rate equal to the minimum wage after adding any tips the employee received to the base hourly wage of $2.13 an hour, the employer must pay the employee the difference.

If the employee earns more than the minimum wage after adding the tips the employee received to the hourly wage of $2.13 an hour, the employer has fulfilled the obligation. A tipped employee means any employee engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips. Ind. Code Ann. § 22-2-2-4.