



MISSISSIPPI

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

Mississippi is an at-will employment state. *Brandi's Hope Cmty. Servs., LLC v. Walters*, No. 2022-CA-00188-COA, 2023 WL 4071594, at *6 (Miss. Ct. App. June 20, 2023). This means that absent an express employment agreement, either party may terminate the employment relationship at any time, with or without cause, and with or without notice, with the exception of reasons independently declared legally impermissible. *Id.* at *6. Mississippi courts have explained, however, that employers may not fire employees for one of the public policy reasons detailed in *McArn v. Allied Bruce-Terminix Co., Inc.*, nor may they fire employees for reasons “independently declared legally impermissible” by state or federal law, specifically including express legislative action. 626 So. 2d 603 (Miss. 1993); 603 So. 2d 356 (Miss. 1992). Under the *McArn* exception, an employer shall not discharge an employee solely for refusing to participate in or refusing to remain silent about, illegal activities. *McArn* at 607. Specifically, the Mississippi Vulnerable Persons Act contains an exception to Mississippi’s at-will employment doctrine that specifically addresses reports of suspected abuse and provides that: “No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section...” Miss. Code Ann. § 43-47-37(5)(b).

Notably, the reporting of illegal acts (or the whistleblower) exception applies only if the acts complained of by the employee warrant the imposition of criminal penalties, as opposed to mere civil penalties. *Frank v. City of Flowood*, No. 2015-CA-00620-COA, 2016 WL 1564267, at *5 (Miss. Ct. App. Apr. 19, 2016).

Finally, absent a disclaimer to the contrary, the terms and conditions of an employer’s employment manual or handbook may impose contractual obligations upon the employer and otherwise narrow and restrict the at-will employment doctrine. *Bobbitt v. The Orchard, Ltd.*, 603 So. 2d 356 (Miss. 1992).

Anti-Discrimination Laws

Mississippi does not have a general anti-discrimination law that applies to private employers.

Military Protection

Mississippi law prohibits discrimination because of an individual’s current or former military service. Miss. Code Ann. § 33-1-15. After military leave, military personnel who are still qualified to perform the duties of their previous position are entitled to be restored to their previous or similar positions at the same status, pay, and seniority. *Id.* at § 33-1-19.

Equal Pay for Equal Work

Mississippi employers are prohibited from paying an employee at a wage rate less than the rate at which an employee of the opposite sex is paid for equal work on a job, with certain exceptions. Miss. Code Ann. § 71-17-5.

Immigration Verification

Mississippi requires all employers to use E-Verify to ensure employment eligibility for all newly hired employees, pursuant to the Mississippi Employment Protection Act. Miss. Code Ann. § 71-11-3. An employer’s failure to comply shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three years, the loss of any license, permit, certificate, or other document granted to the employer by any agency, department, or government entity in the state of Mississippi for the right to do business in Mississippi for up to one year, and a fine of not less than \$1,000.00 nor more than \$10,000.00, or both.

NOTE: Mississippi was the first state to participate 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 Mississippi driver’s licenses used by employees as Form I-9 identity documents.

Drug Testing

The Mississippi Drug and Alcohol Testing of Employees law is voluntary. If an employer elects to follow the statute, the employer must follow the terms of the law without exception.

The law states that an employee who may be required to submit to a drug/alcohol test must be given, at least 30 days before the implementation of a drug/alcohol testing program, a written policy that contains: (1) a general statement of the employer's policy on employee drug use; (2) a statement advising the employee of the existence of the Mississippi Drug and Alcohol Testing of Employees law; (3) a general statement concerning confidentiality; (4) procedures for how employees can confidentially report the use of prescription or nonprescription medications; (5) circumstances under which drug and alcohol testing may occur; (6) the consequences of refusing to submit to a drug/alcohol test; (7) information on opportunities for assessment and rehabilitation if the employee has a positive confirmed test; (8) a statement that an employee who receives a positive drug/alcohol test may contest the accuracy of the result or have an opportunity to explain it; (9) a list of all drugs for which the employer might test; and (10) a statement regarding any applicable collective bargaining agreement or contract. Miss. Code Ann. § 71-7-3.

If an employer implements a drug-free workplace program meeting certain requirements, they may be eligible for a discount on their workers' compensation insurance policy. Miss. Code Ann. § 71-3-207.

Leave Laws

The State of Mississippi does not require private employers to offer paid or unpaid vacation or paid or unpaid sick leave to employees. However, an employer in Mississippi may be required to provide an employee unpaid sick leave in accordance with the federal Family and Medical Leave Act or other federal laws.

Jury Duty Leave

Mississippi employers must permit their employees to serve on a jury upon receipt of a summons. Employers may not require the employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent serving on a jury. Miss. Code Ann. § 13-5-35.

However, Mississippi employers are not required to provide annual, vacation, or sick leave to employees who otherwise are not entitled to such benefits under company policies. Miss. Code Ann. § 13-5-35(2).

Voting Leave

Mississippi does not specifically require an employer to offer its employees time off to vote. If an employee's regular working hours do not otherwise allow the employee time to vote, an employer may allow the employee to take vacation or leave time so the employee has "the necessary time to cast [their] vote." Miss. Code Ann. § 23-15-871(3). The employer may not, however, direct or coerce, directly or indirectly, an employee to vote or not vote. Miss. Code Ann. § 23-15-871(1).

Military Leave

Employees who are members of any reserve component of the U.S. Armed Forces who, in order to perform duties or receive training with the U.S. Armed Forces or any state military, are entitled to return to their position upon satisfactory completion of such duty or training. In the event the employee's previous position is not available, they are entitled to be restored to a similar position with the same status, pay, and seniority. This section applies to private employers. Miss. Code. Ann § 33-1-19.

Crime Victim Leave

Employees who are victims of a crime must be permitted to respond to a subpoena to testify in a criminal proceeding or to participate in the reasonable preparation of a criminal proceeding without the loss of employment or the threat of loss of employment. Miss. Code. Ann. § 99-43-45.

Smoking Laws

A public or private employer may not condition employment on an employee's or an applicant's decision to abstain from smoking or their use of other tobacco products in nonwork areas during nonwork hours, provided that the employee complies with applicable laws or policies regulating smoking on the premises of the employer during working hours. Miss. Code Ann. § 71-7-33. Certain counties have banned smoking in bars

and restaurants or enclosed workspaces, but the State of Mississippi has not enacted any ban on smoking applicable to private workplaces.

Break Time to Express Milk

Employers may not prohibit an employee from expressing breast milk during any meal period or other break period provided by the employer. Miss. Code Ann. § 71-1-55. Licensed childcare facilities must provide breastfeeding employees with a sanitary place with an electrical outlet, comfortable chair, and nearby access to running water that is not a toilet stall, to breast-feed their children or express milk. A refrigerator must be available for storage of expressed breast milk. Miss. Code Ann. § 43-20-31. Employers should also refer to the similar requirements under the Fair Labor Standards Act.

Meal and Rest Breaks

The State of Mississippi has no law regulating meal breaks or rest periods.

Minimum Wage

The State of Mississippi has no law regulating minimum wage. However, those employers subject to the federal Fair Labor Standards Act are subject to the \$7.25 minimum wage under that Act. Employers should always consult the federal child labor laws before employing a minor under 18 years of age.

Final Payments

The State of Mississippi has no law regulating final payments to employees. However, such payments should be made to employees no later than their normal payday, and no deduction should take them below minimum wage, and the Mississippi Uniform Disposition of Unclaimed Property Act, Miss. Code Ann. § 89-12-1, *et seq.*, requires employers to turn over any unclaimed wages to the state.

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 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 Mississippi Department of Employment Security, and additional information regarding the benefits may be accessed at mdes.ms.gov.

Workers' Compensation

The Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-1, *et seq.*, applies to every employer in Mississippi with five 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 Act. The Act is administered by the Mississippi Workers' Compensation Commission, and additional information regarding the Act may be accessed at mwcc.ms.gov/#/home.

Unlike some states, Mississippi does not recognize a claim for retaliation under the Act.

Gun Laws

A public or private employer may not establish, maintain, or enforce any policy or rule that has the effect of prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated parking area. Miss. Code Ann. § 45-9-55. However, a private employer *may prohibit* an employee from transporting or storing a firearm in a vehicle in parking areas provided by the employer that has restricted or limited access through the use of a gate, security station, or other means of restricting or limiting general public access to the property. *Id.* at § 45-9-55(2). Further, these limitations do not apply to vehicles that are owned or leased by the employer and used by the employee in the course of their business. *Id.* § 45-9-55(3).

Mississippi employers should have proper signage and policies in place regarding any prohibition on firearms within the workplace.

Finally, in 2016, the Mississippi Supreme Court held the state legislature “independently declared” that terminating an employee for having a firearm inside their locked vehicle is “legally impermissible.” *Swindol v. Aurora Flight Scis. Corp.*, 2016 WL 1165448, at *7 (Miss. Mar. 24, 2016); Miss. Code Ann. §45-9-55(5).

Additional Laws and Regulations

Minimum Age

The minimum age of employment in Mississippi is 14, and employees aged 14 – 16 must comply with certain requirements, including the compulsory school attendance law. Miss. Code Ann. § 71-1-19.

Protecting Freedom of Conscience from Government Discrimination Act

The Act, codified at Miss. Code. Ann. §11-62-1 *et seq.*, allows a religious organization to decide “whether or not to hire, terminate[,] or discipline an individual whose conduct or religious beliefs are inconsistent with those of the religious organization...” Miss. Code Ann. § 11-62-5(1)(b). The statute also prohibits state government from acting against an employer who establishes “sex-specific standards or policies concerning employee or student dress or grooming, or concerning access to restrooms, spas, baths, showers, dressing rooms, locker rooms[,] or other intimate facilities or settings” based on a sincerely held religious belief or moral conviction. *Id.* at (6). Notwithstanding, employers governed by Title VII of the Civil Rights Act of 1964 (those with 15 or more employees) should know that the Equal Employment Opportunity Commission (EEOC) has interpreted and enforced Title VII to prohibit discrimination based on religion, gender identity and expression, or sexual orientation. Moreover, reliance on contrary state law is not a defense to violating Title VII.

WARN Laws

Mississippi does not have a state act governing mass layoffs. However, the federal Worker Adjustment and Retraining Notification Act (WARN Act) requires employers to provide 60 days’ notice before covered plant closings and mass layoffs. The notice must be provided to the affected employee or their representative (e.g., a union), appropriate local officials, and the state’s dislocated worker unit. An employer who engages in a mass layoff and does not give their employees 60 days’ notice of the impending job terminations may be liable for up to 60 days’ pay and benefits to those employees who lost their jobs.