



# OHIO

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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## At-Will Employment

Ohio is an at-will employment state, which means that in the absence of a written employment agreement or a collective bargaining agreement providing otherwise, either the employer or the employee may terminate employment for any reason that is not contrary to law. *Wiles v. Medina Auto Parts*, 773 N.E.2d 526, 529 (Ohio 2002).

Ohio recognizes an exception to the employment-at-will doctrine when the termination of an employee clearly violates public policy. *Dohme v. Eurand Am., Inc.*, 956 N.E.2d 825 (Ohio 2011). The existence of such a public policy may be discerned by the courts based on sources such as the Ohio and the United States Constitution, legislation, and administrative rules and regulations, as well as common law. *Id.* An employer's right to terminate an otherwise at-will relationship may also be limited by an implied contract where the facts and circumstances may imply a contract, even if the employer does not provide a written employment agreement. *Dunn v. Bruzzese*, 874 N.E.2d 1221 (Ohio Ct. App. 2007). Establishing an implied contract of employment requires proof of all the elements of a contract. *Id.*

In addition, an Ohio employer's right to terminate an otherwise at-will relationship may be limited by promises made to the employee within the doctrine of promissory estoppel. *Mers v. Dispatch Printing Co.*, 483 N.E.2d 150 (Ohio 1985). Ohio recognizes the promissory estoppel exception when the employer makes an unambiguous and clear promise of continued employment on which the employer should have reasonably expected its employee to rely, and the employee relied on the promise to their detriment. *Id.*

## Immigration Verification

Ohio places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under Ohio state laws.

## Drug Testing

Ohio has not enacted any general employment drug or alcohol testing laws. However, Ohio employers working as federal contractors are required to provide a drug-free workplace (41 U.S.C. § 8102).

Ohio law requires drug testing for contractors working on public improvement contracts and for ambulance driver applicants for licensed medical transportation companies. Ohio Rev. Code § 153.03(B); Ohio Rev. Code § 4766.15(A)(3).

## Jury Duty Leave

It is unlawful for an employer to persuade or attempt to persuade any juror to avoid jury service; intimidate or threaten any juror in that respect; or remove or otherwise subject an employee to an adverse employment action as a result of jury service if the employee provides reasonable notice of their absence to serve on a jury. Ohio Rev. Code § 2313.19(A). It is also unlawful for an employer to require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. *Id.* § 2313.19(B). Ohio state law does not require the employer to compensate the employee for time taken to serve on a jury. *Id.*

## Voting Leave

Ohio law prohibits employers from terminating or threatening to terminate an employee for taking a reasonable amount of time to vote on an election day. Ohio Rev. Code § 3599.06. Ohio law does not specify whether an employer may designate the hours used for voting leave. *Id.* An employer may not refuse to permit an employee to serve as an election official on registration or election day. *Id.* An employer who violates this law may be required to pay a fine of not less than \$50 but no more than \$500. *Id.*

## **Military Family Leave**

Ohio's Military Family Leave Act extends to employers who employ fifty or more employees. Ohio Rev. Code § 5906.01(C). Under the Act, eligible employees may take up to ten days or 80 hours (whichever is less) of unpaid leave once per calendar year. To be eligible for such leave, the employee must satisfy the following conditions:

- **Employment Duration:** The employee must be employed by the employer for at least 12 consecutive months and at least 1,250 hours in the 12 months immediately preceding commencement of the leave.
- **Family Relationship:** The employee must be the parent, spouse, or a person who has or had legal custody of a person who is a member of the uniformed services when that member is called for active duty longer than 30 days or is injured, wounded, or hospitalized while serving on active duty.
- **Notice:** The employee must provide 14 days' notice of intended leave for active-duty deployment or two days' notice of intended leave for injuries. No notice is required for leave taken because of critical or life-threatening injuries.
- **Time Frame:** Leave must be taken no more than two weeks prior to or one week after the employee's date of deployment.
- **Exhaustion of Other Leave:** The employee must exhaust all available forms of leave, except sick leave or disability leave.

Although employers are not required to pay salary or wages during the period of the time the employee is on military family leave, employers must continue to provide the employee with any benefits. Upon the completion of the leave taken, the employer must restore the employee to the position the employee held prior to taking that leave or a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.

Ohio Rev. Code § 5906.02.

## **Crime Victim Leave**

All Ohio employers must provide Crime Victim Leave. Ohio Rev. Code § 2930.18. Eligible employees include crime victims, the victim's family members, or representatives. Ohio does not state the permissible leave for a crime victim, but employers must allow such employees to participate (at the prosecutor's request) in preparation for a criminal or delinquency proceeding, to attend a criminal or delinquency proceeding if the employee's attendance is reasonably necessary to protect the interests of the victim, or to attend a criminal or delinquency proceeding if the employee's attendance is pursuant to their constitutional and statutory rights.

## **Parental Leave**

The Ohio Civil Rights Act, which applies to all employers with four or more employees, prohibits discrimination on the basis of sex. Ohio Rev. Code § 4112.02. The regulations interpreting this law (contained in the Ohio Administrative Code) prohibit employers from penalizing employees because they need time off from work for pregnancy or childbirth. Ohio Admin. Code § 4112-5-05(G)(5).

Ohio employers with four or more employees must grant a reasonable amount of leave to eligible female employees for pregnancy-related disabilities and childbirth. Ohio Revised Code § 4112.02; Ohio Admin. Code § 4112-5-05(G). Upon returning to work, the employee must be reinstated to her original position or to a position of like status and pay, without loss of service credits. Ohio Admin. Code § 4112-5-05(G).

Effective as of 2021, the State of Ohio grants up to six consecutive weeks of paid leave for stillbirth, birth, or adoption for full- and- part-time state employees who work 30 or more hours per week. Ohio Rev. Code § 124.136(C). To qualify for leave, an employee must be listed on the child's birth certificate or be a legal guardian of, and reside with, the child. Ohio Rev. Code § 124.136(B)(2)(a). If adopting, employees may elect to receive five thousand dollars for adoption expenses in lieu of receiving the paid leave benefit. *Id.*

Leave may not be more than six consecutive weeks, which shall include four workweeks of paid leave for full-time employees and a pro-rated amount of paid leave for part-time employees. Ohio Rev. Code § 124.136(C). There is a 14-day waiting period during which employees will not receive paid leave. During the remaining four weeks, employees will receive 70 percent of their base rate of pay. *Id.* Parental leave is counted against FMLA entitlement. Ohio Rev. Code § 124.136(D).

### **Other Leave**

Ohio law does not require private employers to provide employees with vacation, bereavement, or sick leave, either paid or unpaid. If an employer chooses to provide such benefits, it must comply with the terms of its established policy or employment contract. However, employers are subject to the federal Family Medical Leave Act and its requirements.

### **Smoking Laws**

In Ohio, smoking is prohibited throughout the entire indoor workplace and outside immediately adjacent to entrances or exits to the building. Ohio Rev. Code § 3794.02. An employer may designate the entire workplace as non-smoking. Ohio Rev. Code § 3794.05. Smoking is permitted outdoors, including outdoor patios that are physically separate from enclosed areas, if windows and doors prevent migration of smoke into enclosed areas. Ohio Rev. Code § 3794.03(F).

Ohio law requires employers to post "No Smoking" signs or the international "No Smoking" symbol at each entrance to the workplace. All signs must contain a telephone number for reporting violations. Ohio Rev. Code 3794.06(A).

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

Ohio law does not require employers to provide nursing mothers with breaks to express breast milk. However, employers are subject to the federal Fair Labor Standards Act requirement to provide basic accommodations for breastfeeding mothers at work. The Act also requires that employers provide a reasonable break time for an employee to express breast milk for one year after the child's birth.

### **Meal Breaks**

Ohio law does not specifically require meal or rest breaks, except for minors. Ohio law requires employers to provide employees under the age of 18 years a 30-minute uninterrupted break when working more than five consecutive hours. Ohio Rev. Code § 4109.07(C). The meal break may be an uninterrupted break.

### **Minimum Wage, Overtime, and Wage Recordkeeping**

Ohio's minimum wage rate is adjusted annually according to the Consumer Price Index. Ohio Rev. Code § 4111.02; Ohio Const. Art. II, § 34a. The 2024 minimum wage rate in Ohio is \$10.45 per hour. The employer can pay tipped employees \$5.25 per hour if the employee's tips bring the total hourly wage up to the state minimum wage. The 2024 Ohio minimum wage rate applies to employees of businesses with annual gross receipts of more than \$385,000. Ohio businesses whose annual gross receipts are \$385,000 per year or less may pay employees a minimum wage equal to that of the federal minimum wage (currently \$7.25 per hour).

Ohio's minimum wage rate is scheduled to increase on January 1, 2025. The 2025 minimum wage rate in Ohio is \$10.70 per hour. The employer can pay tipped employees \$5.35 per hour if the employee's tips bring the total hourly wage up to the state minimum wage. The 2025 Ohio minimum wage rate will apply to employees of businesses with annual gross receipts of more than \$394,000 per year. Ohio businesses whose annual gross receipts are \$394,000 per year or less may pay employees a minimum wage equal to that of the federal minimum wage.

Employers must still comply with federal wage laws and regulations.

Provisions governing overtime pay can be found under Ohio Rev. Code § 4111.03. Generally, if an employee works more than 40 hours, the employee must be compensated at a rate of one and one-half times the employee's regular rate of pay. This does not apply to agricultural employees. *Id.*

Employers are not required to pay overtime on activities that are preliminary or postliminary to the principal employment activity, and activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours also are not subject to overtime pay. Ohio Rev. Code § 4111.031. Employers are not required to pay the overtime wage rate to compensate for an employee's commute. *Id.* However, such exceptions do not apply if the employee performs the task during the regular workday or during prescribed hours or performs the task at the employer's specific direction. Ohio Rev. Code § 4111.031(B).

Further, the overtime exemption does not apply when the employee performs the activity pursuant to an express provision of a written or unwritten contract or collective bargaining agreement, or when the employee performs the activity pursuant to a custom or practice applicable to the activity at the establishment or other place where the employee is employed and the custom or practice is not inconsistent with an applicable contract or collective bargaining agreement. Ohio Rev. Code § 4111.031(C).

Every employer must make and keep a record of the name, address, and occupation of each of their employees, the rate of pay, the amount paid each pay period to each employee, and hours worked each day and each work week for a period of at least three years, available for copying and inspection by the director of the Ohio Department of Commerce. Ohio Rev. Code § 4111.08.

An employer who pays an employee less than the wages the employee is entitled to under Ohio Rev. Code § 4111.03 is liable to the employee for the full amount of the overtime wage rate, less any amount paid to the employee, and for the costs and reasonable attorney's fees as may be allowed by the court. *Id.* Any agreement between an employer and employee to work for less than the overtime wage rate is no defense to a legal action. Ohio Rev. Code § 4111.10.

### **Final Payments**

Ohio employers must pay employees on or before the first day of each month for all work done during the first half of the preceding month, and on or before the fifteenth day of each month for all wages earned during the second half of the preceding month. Ohio Rev. Code Ann. § 4113.15. These same provisions apply to employees who are separated from employment.

### **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. Unemployment benefits are administered by Ohio's Department of Job and Family Services, and additional information regarding the benefits may be accessed on the Department's website.

### **Workers' Compensation**

Under the Ohio Workers' Compensation Act, all non-self-insured Ohio employers must pay insurance premiums for exclusive coverage with the Ohio Bureau of Workers' Compensation. This coverage includes indemnity and medical benefits for injury, occupational disease, and death claims that occur in the course of, and arising out of, employment. Ohio Rev. Code § 4123.54. Certain employers may be exempted from this requirement if they are approved for self-insured status. Ohio Rev. Code 4123.35(B).

Employers not approved for self-insured status are known as state-fund employers. A state fund or self-insured employer must post their Certificate of Coverage in a highly visible location in the workplace. Ohio Rev. Code § 4123.54(F). Furthermore, Ohio employers cannot opt out of workers' compensation coverage – the law is compulsory and is the exclusive remedy for employment injuries. Ohio Rev. Code § 4123.01.

### **Child Labor**

Except in limited situations, children 13 years of age or younger may not work in Ohio. Youth who are 14 or 15 years of age may work in a broader range of jobs but are significantly limited in the number of hours per day and per week they may work, especially when school is in session. Youth who are 16 or 17 years of age may

work in a broad range of jobs but cannot work in those jobs that have been explicitly deemed to be too hazardous. Ohio Rev. Code § 4109.02.

### **Gun Laws**

Under Ohio law, public and private employers cannot establish, maintain, or enforce any policy or rule that prohibits a person with a valid concealed handgun license from storing the firearm or ammunition in the person's privately owned motor vehicle that is parked in a permitted location on the employer's property. An employer may require that employees lock firearms and ammunition in the trunk, glove box, or another enclosed compartment or container within the privately owned vehicle. Ohio Rev. Code § 2923.1210.

Concealed weapons are banned from government buildings (including police stations, jails, and courtrooms), airports and airplanes, places of worship, or any place where the carrying of a concealed weapon is prohibited by federal law.

### **Additional Laws and Regulations**

#### **Equal pay**

The Ohio Equal Pay Law (EPL) prohibits discrimination in the payment of wages based on race, color, religion, sex, age, national origin, or ancestry for jobs that require equal skill, effort, and responsibility and are performed under similar conditions. The EPL also prohibits retaliating against an employee for alleging a violation of the EPL or participating as a witness in an equal pay claim proceeding. Ohio Rev. Code § 4111.17.

#### **Medical Marijuana**

Ohio law authorizes the use of medical marijuana. However, employers are not required to permit or accommodate the use, possession, or distribution of medical marijuana by their employees Ohio Rev. Code § 3796.28(A)(1).

Ohio law does not prohibit employers from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person due to that person's use, possession, or distribution of medical marijuana. Ohio employers are permitted to enforce a drug-testing policy, drug-free workplace policy, or zero-tolerance drug policy. Ohio Rev. Code § 3796.28(A)(2)-(3).

#### **Past Compensation Inquiries**

The cities of Columbus, Toledo, and Cincinnati, Ohio, prohibit employers from asking prospective employees about past compensation. Employers in these cities may not ask about a prospective employee's wage or salary history. Employers who violate this prohibition could face civil fines of up to \$5,000.