



OKLAHOMA

OKLAHOMA QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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At-Will Employment

Oklahoma is an at-will employment state. In Oklahoma, unless an employee is hired under a contract that states otherwise, they may be discharged for any reason if it is not an unlawful reason.

Discrimination is the staple exception to at-will employment. It is unlawful to terminate an employee in retaliation for the employee's exercise of rights under Oklahoma's Workers' Compensation Law or to terminate an employee based on their race, color, sex, pregnancy, age (40 and over), national origin, religion, genetic information, or mental or physical disability, or in retaliation for reporting the employer's illegal conduct. Okla. Stat. Ann. tit. 25, § 1302; Okla. Stat. Ann. tit. 85A, § 7.

Immigration Verification

Oklahoma places no additional employment verification procedures on employers beyond federal I-9 compliance. To discriminate against an immigrant who is legally eligible for employment with respect to compensation or the terms, conditions, privileges, or responsibilities of their employment may constitute national-origin discrimination. Okla. Stat. Ann. tit. 25, § 1302. Per the Oklahoma Taxpayer and Citizen Protection Act, state and local government agencies (as well as private employers with government contracts) are required to use E-Verify for new employees.

Drug Testing

Employers in Oklahoma may require applicants or employees to take a drug test as a condition of employment in the following circumstances:

- Applying for or transferring to a different position;
- For cause – if at any time the employer reasonably believes that the employee may be under the influence of drugs or alcohol*;
- After a workplace accident, causing injury or property damage;
- At random**;
- As part of a routine fitness-for-duty exam*; or
- As a follow-up to a rehabilitation program.

*A public or private employer may request or require an employee to undergo drug or alcohol testing at any time they reasonably believe that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

- a) drugs or alcohol on or about the employee's person or in the employee's vicinity;
- b) conduct on the employee's part that suggests impairment or influence of drugs or alcohol;
- c) a report of drug or alcohol use while at work or on duty;
- d) information that an employee has tampered with drug or alcohol testing at any time;
- e) negative performance patterns; or
- f) excessive or unexplained absenteeism or tardiness.

**A public employer may require random drug testing only of employees who: are police/peace officers; have drug interdiction responsibilities; are authorized to carry firearms; are engaged in activities that directly affect the safety of others; work for a public hospital; work in direct contact with inmates in custody of the Department of Corrections; or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services. Okla. Stat. Ann. tit. 40, § 554.

Under the Oklahoma Medical Marijuana Use and Patient Protection Act enacted on August 29, 2019, no employer may refuse to hire, discipline, discharge, or otherwise penalize an applicant or employee solely on the basis of such applicant's or employee's status as a medical marijuana licensee or solely on the basis of a positive test for marijuana components or metabolites, unless:

- a) The applicant or employee is not in possession of a valid medical marijuana license;

- b) The licensee possesses, consumes, or is under the influence of medical marijuana or medical marijuana products while at the place of employment or during the fulfillment of employment obligations; and
- c) The position is one involving safety-sensitive job duties. Safety-sensitive means any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others. Okla. Stat. Ann. tit. 63, § 427.8; Okla. Stat. tit. 63, § 425.

Jury Duty Leave

Any person who is summoned to serve as a juror and notifies their employer of the summons within a reasonable period of time after receipt and before their appearance for jury duty may not be terminated, removed, or otherwise subject to any adverse employment action because of their service.

An employer is not required to pay an employee for time spent responding to a jury summons or serving on a jury unless the employee has used paid leave for that purpose. It shall be the decision of the employee whether to use paid leave or take leave without pay for absence from employment as a result of jury duty. An employer may not discharge or take other adverse action against an employee because of that employee's absence responding to a jury's summons. An employer may not require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process, or serving on a jury. An employer who takes such adverse action against an employee shall be guilty of a misdemeanor and, upon conviction, shall be punishable by a fine of no more than \$5,000.

A court shall automatically postpone and reschedule the service of a summoned juror who is employed by an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period. Okla. Stat. Ann. tit. 38, § 34.

Voting Leave

An employer who has a registered voter employed or in service shall grant the employee two hours to vote on the day of the election or on a day that in-person absentee voting is allowed by law. If the employee is at such a distance from the voting place that more than two hours are required to attend the elections, then the employee shall be allowed sufficient time to cast a ballot.

An employee is not entitled to time to vote unless the employee notifies their employer orally or in writing of their intention to be absent to vote at least three days before the day of the election or the day of in-person absentee voting. The employer may select the days and hours that such an employee is allowed to vote. An employer does not have to grant time to an employee whose workday begins three hours or more after the time of opening the polls or ends three hours or more before the time of closing the polls. The employer may change the work hours of the employee to allow for three hours before the beginning of work or after the work hours.

Upon proof of voting, an employee shall not be subject to any loss of compensation or other penalty for their absence.

Any employer that fails to comply shall be subject to a civil penalty of not less than \$50 nor more than \$100 Okla. Stat. Ann. tit. 26, § 7-101.

Parental Leave

Oklahoma's Family and Medical Leave policy refers to and follows the federal Family and Medical Leave Act (FMLA). Okla. Stat. Ann. tit. 74, § 840-2.22. Oklahoma law establishes no additional requirements for employers regarding parental leave.

Under the federal FMLA, an employee is entitled to a total of twelve administrative workweeks during any 12-month period for:

1. The birth of a son or daughter of the employee and to care for such son or daughter;

2. Placement of a son or daughter with the employee for adoption or foster care;
3. Care for a spouse, a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition;
4. A serious health condition that makes the employee unable to perform the functions of the employee's position; and
5. Any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. 5 U.S.C.A. § 6382.

Other Leave

Oklahoma law provides that no government entity shall establish a mandatory minimum number of vacation or sick leave days, whether paid or unpaid; or a minimum wage rate that an employer would be required to pay or grant employees for leave. Okla. Stat. Ann. tit. 40, § 160.

Smoking Laws

Oklahoma law prohibits smoking tobacco, marijuana, or vaping marijuana in an indoor workplace. Although there are a few exceptions, an indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and other spaces used or visited by employees. An employer may also prohibit smoking within certain distances of its entrances to the workplace. Employees and visitors should be advised that the workplace is tobacco-free in a notice posted by the employer. Okla. Stat. Ann. tit. 63, § 1-1523.

It is unlawful for an employer to discharge any individual, or otherwise disadvantage any individual because the individual is a nonsmoker or smokes or uses tobacco products during nonworking hours. An employer also cannot require that any employee or applicant for employment abstain from smoking or using tobacco products during nonworking hours as a condition of employment. Okla. Stat. Ann. tit. 40, § 500.

Break Time to Express Milk

An employer may provide reasonable unpaid break time each day to an employee who needs to breastfeed or express breast milk for their child to maintain milk supply and comfort. The break time, if possible, shall run concurrently with any break time, paid or unpaid, already provided to the employee. Employers may make a reasonable effort to provide a private, secure, and sanitary room or other location in close proximity to the work area (other than a toilet stall) for this purpose.

An employer is not required to provide break time to express milk if doing so would create an undue hardship on the operations of the employer.

Every state agency shall allow an employee who is lactating reasonable paid break time each day to use the designated lactation room for the purpose of maintaining milk supply and comfort. Okla. Stat. Ann. tit. 40, § 435.

Meal Breaks

The State of Oklahoma has no law regulating meal breaks or rest periods. An employer is not statutorily required to pay an employee for work performed during a lunch break without the employer's permission and in the absence of an established policy. *Reynolds v. Advance Alarms, Inc.*, 232 P.3d 910, 911 (Okla. 2009), as corrected (Dec. 16, 2009).

Minimum Wage and Overtime

Employers of ten or more full-time employees at any one location and employers with annual gross sales exceeding \$100,000, irrespective of the number of full-time employees, are subject to federal minimum wage. All other employers are subject to the state minimum wage of \$2 per hour. Okla. Stat. Ann. tit. 40, § 197.2; Okla. Stat. Ann. tit. 40, § 197.5.

To compute the minimum wage of any employee coming within the purview of this Act, credit toward the minimum required wage must be given for any tips or gratuities, meals, or lodging received by the employee, up to but not exceeding 50 percent of said wage. Okla. Stat. Ann. tit. 40, § 197.16.

Oklahoma has no set statutory rate for overtime compensation.

Final Payments

Oklahoma requires that whenever an employee's employment terminates, the employer shall pay the employee's wages in full, minus offsets and any amount over which a bona fide disagreement exists, at the next regular designated payday established for the pay period in which the work was performed, either through regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee.

If an employer fails to pay employee wages as required, the employer will be additionally liable to the employee for liquidated damages of two percent of the unpaid wages for each day upon which such failure shall continue after the day the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement, or in an amount equal to the unpaid wages, whichever is smaller. Okla. Stat. Ann. tit. 40, § 165.3.

A "bona fide disagreement" is an honest and sincere belief or assertion based on a dispute of a determinative fact or application of law supported by relevant evidence. Okla. Stat. Ann. tit. 40, § 165.1.

Unemployment Compensation

Oklahoma employers are required to pay a contribution rate to the Oklahoma Unemployment Insurance Trust Fund. The employer contribution amount is based on the total salaries of employees paid at the business. The fund issues temporary income to eligible claimants who become totally or partially unemployed. Employees are not required to pay for their own unemployment benefits.

Workers' Compensation

Oklahoma has two active Workers' Compensation Acts currently in place: the Administrative Workers' Compensation Act and the Workers' Compensation Arbitration Act. Okla. Stat. Ann. tit. 85a. The Administrative Workers' Compensation Act applies to all employers and employees in the state of Oklahoma. Every employer shall pay or provide benefits according to the provisions of the Administrative Workers' Compensation Act for any accidental injury or death of an employee arising out of and in the course of their employment, without regard to fault for such injury, if the employee's contract of employment was made or if the injury occurred in this state. Okla. Stat. Ann. tit. 85A, § 3.

An employer may not retaliate against an employee when the employee has, in good faith:

1. Filed a claim under the Act;
2. Retained a lawyer for representation regarding a workers' compensation claim;
3. Instituted or caused to be instituted any proceeding under the Act; and
4. Testified or is about to testify in any proceeding under the Act.

Okla. Stat. Ann. tit. 85A, § 7.

No agreement by an employee to waive their right to compensation shall be valid. Okla. Stat. Ann. tit. 85A, § 8.

Child Labor

Oklahoma's child labor laws refer to and follow the Federal Fair Labor Standards Act of 1938. Okla. Stat. Ann. tit. 40, § 71.

No child under 16 years of age shall be employed or permitted to work in any of the following occupations:

1. Manufacturing, mining, or processing;
2. Involving the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;
3. Operation of motor vehicles or service as helpers on such vehicles;
4. Public messenger service; and
5. Declared to be particularly hazardous to the health and well-being of minors under 16 years of age by federal laws and regulations or as declared by the commissioner of labor

This does not apply to children working either on farms, for parents, or any entity in which a parent owns an equity interest. Okla. Stat. Ann. tit. 40, § 72.1.

Gun Laws

Under Oklahoma law, it is unlawful for any person to carry upon or about their person, or in a purse or other container belonging to the person, any pistol, revolver, shotgun, or rifle, whether loaded or unloaded, or any blackjack, loaded cane, hand chain, metal knuckles, or any other offensive weapon, whether such weapon is concealed or unconcealed.

Despite the law, there are several exceptions.

1. The proper use of guns and knives for self-defense, hunting, fishing, educational, or recreational purposes;
2. The carrying or use of weapons in a manner otherwise permitted by statute;
3. The carrying, possession, and use of any weapon by a peace officer or other authorized person;
4. The carrying or use of weapons in a courthouse by a district judge;
5. The carrying and use of firearms for living history reenactment;
6. The transporting by a vehicle on a public roadway or carrying of a firearm, concealed or unconcealed, loaded or unloaded, by a person who is 21 years of age or older or a person who is 18 years of age but not yet 21 years of age and is a member or veteran of the United States Armed Forces, Reserves, or National Guard or was discharged under honorable conditions from the United States Armed Forces, Reserves, or National Guard, and the person is otherwise not disqualified from the possession or purchase of a firearm under state or federal law and is not carrying the firearm in furtherance of a crime. Okla. Stat. Ann. tit. 21, § 1272.