



# PENNSYLVANIA

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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## At-Will Employment

Pennsylvania is an at-will employment state, which means that in the absence of a written employment or collective bargaining agreement, either the employer or the employee may terminate employment for any reason that is not contrary to law. *Stumpp v. Stroudsburg Mun. Auth.*, 658 A.2d 333, 335 (Pa. 1995).

Pennsylvania recognizes exceptions for a wrongful discharge claim when an employee's termination clearly violates public policy, including:

- Serving on a jury (*Reuther v. Fowler and Williams, Inc.*, 255 Pa. Super. 28, 386 A.2d 119 (1978));
- Refusing to submit to a polygraph (*Kroen v. Bedway Sec. Agency, Inc.*, 633 A.2d 628, 633 (Pa. Super. 1993));
- Refusing to provide false information to federal investigators (*Hanson v. Gichner Sys. Grp., Inc.*, 831 F. Supp. 403, 406-07 (M.D. Pa. 1993));
- Refusing to engage in unlawful or unethical conduct (*Hansrote v. Amer Indus. Techs., Inc.*, 586 F. Supp. 113, 115 (W.D. Pa. 1984), *aff'd*, 770 F.2d 1070 (3d Cir. 1985));
- Refusing to submit to an unnecessary drug test (*Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 626 (3d Cir. 1992)); and
- Filing a workers' compensation claim (*Shick v. Shirey*, 716 A.2d 1231, 1235 (Pa. 1998)).

## Anti-Discrimination

The Pennsylvania Human Relations Act (PHRA), which applies to any employer with four or more employees in Pennsylvania, prohibits discrimination in employment based on the following protected characteristics: race, color, religious creed, ancestry, age, sex, national origin, disability, and the use of guide or support animals. 16 Pa. Code § 41.201 *et seq.*

"Race" includes ancestry, national origin, or ethnic characteristics; interracial marriage or association; traits associated with race; and Hispanic ancestry, national origin, or ethnic characteristics. 16 Pa. Code § 41.207.

"Sex" includes pregnancy; sex assigned at birth; gender, including a person's gender identity or gender expression; affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality, and asexuality; and differences of sex development, variations of sex characteristics or other intersex characteristics. 16 Pa. Code § 41.206. "Pregnancy" includes the use of assisted reproductive technology; the state of being in gestation; childbirth; breastfeeding; the postpartum period after childbirth; and medical conditions related to pregnancy. 16 Pa. Code § 41.204

The PHRA does not cover employees who live and work outside of Pennsylvania. *Blackman v. Lincoln National Corporation*, 2012 WL 6151732 (E.D. Pa. Dec. 10, 2012).

Pennsylvania also prohibits discrimination on the basis of membership in the National Guard (or other similar reserve component) and because of an individual's orders for active state or federal military duty. 51 Pa. Stat. and Cons. Stat. Ann. § 7309.

## Immigration Verification

As of October 7, 2020, Pennsylvania requires that construction industry employers enroll in and use E-Verify. Staffing agencies supplying employees to those employers must also enroll in and use E-Verify for workers supplied to the construction industry. Employment includes subcontractor arrangements providing workers but does not include subcontractors who are material suppliers. 43 Pa. Stat. § 168.3, *et seq.*

## Drug Testing

Pennsylvania has no general drug-testing law, but specific drug-testing laws may apply to certain employers.

For instance, for motor carrier transportation employees, the Pennsylvania Public Utility Commission's Motor Carrier Transportation Regulations, among other regulations, incorporate the requirements of the U.S. Department of Transportation Federal Motor Carrier Safety Administration's drug and alcohol testing regulations. 52 Pa. Code §§ 37.201, *et seq.*

In addition, a terminated employee cannot receive unemployment compensation if the employee was discharged or suspended because the employee failed to submit to or pass a legitimate drug test conducted under an employer's established substance abuse policy. 43 Pa. Stat. § 802(e.1).

## **Leaves of Absence**

### **Jury Duty Leave**

Under Pennsylvania law, an employer is not required to pay an employee for time spent responding to a jury summons or serving on a jury. 42 Pa. Stat. § 4563(a). However, an employer may not deprive an employee of their seniority position or benefits or discharge, threaten, or otherwise coerce them because the employee receives and/or responds to a summons, serves as a juror, or attends court for prospective jury service. 42 Pa. Stat. § 4563(a). If an employer penalizes an employee in violation of this prohibition, the employee may bring a civil action for recovery of wages and benefits lost because of the violation and for an order requiring the reinstatement of the employee. 42 Pa. Stat. § 4563(c).

Retail or service industry employers with fewer than 15 employees and manufacturing employers with fewer than 40 employees are exempted from these provisions. 42 Pa. Stat. § 4563(d). Employees not entitled to reemployment following jury service shall be excused from jury service upon request to the court. 42 Pa. Stat. § 4563(e).

### **Voting Leave**

Pennsylvania does not have any laws that require an employer to grant its employees leave, either paid or unpaid, to vote.

### **Parental Leave**

The State of Pennsylvania does not require private employers to offer its employees parental leave. However, the federal Family and Medical Leave Act requires employers with 50 or more employees to provide qualifying employees up to 12 weeks of unpaid leave for specified medical or family reasons under certain circumstances. 29 C.F.R. § 825.100, *et seq.*

### **Vacation, Sick, and Bereavement Leave**

Pennsylvania 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 and Medical Leave Act and its requirements.

In Pennsylvania, an employer must pay an employee for accrued vacation upon separation from employment if its policy or contract provides for such payment. [dli.PA.gov](http://dli.PA.gov). Pennsylvania law is silent regarding whether an employer may:

- Establish a policy or enter into a contract denying employees payment for accrued vacation leave upon separation from employment;
- Deny payment for accrued vacation to an employee upon separation from employment if its policy or contract is silent on the matter;
- Require an employee to comply with specific requirements to qualify for payment of vacation leave upon separation from employment, such as giving two weeks' notice or being employed as of a specific date of the year;
- Cap the vacation leave an employee may accrue over time; and
- Implement a "use-it-or-lose-it" policy requiring employees to use their leave by a set date or lose it.

Although no Pennsylvania state statute requires employers to provide paid sick leave to their employees, the cities of Philadelphia and Pittsburgh both have statutes governing paid sick leave.

In Philadelphia, employers with ten or more employees must provide paid sick leave, and employers with nine or fewer employees must provide unpaid sick leave. Employees who have been employed for a minimum of 90 days can earn one hour of sick leave for every 40 hours worked with a maximum of 40 sick leave hours earned in a calendar year. Independent contractors, seasonal workers, adjunct professors, employees hired for less than six months, interns, pool employees, employees covered by collective bargaining agreements, and state or federal employees are not entitled to sick leave. Sick leave can be requested verbally or in writing and must be paid at the worker's normal rate. Employers are required to notify employees that they are eligible for sick leave and the amount of sick leave to which an employee is entitled as well as the terms of its use. Employers cannot require employees to find a replacement worker to use sick leave, and employers cannot retaliate against any employee who exercises their sick leave right. Sick leave can be used for an employee's own health needs, to care for a family member, or for leave due to domestic abuse or assault. Phila Code Ch 9-4100, et al.

In Pittsburgh, private employers must provide each employee at least one hour of paid sick time for every 35 hours worked for the employer within the geographic boundaries of the city of Pittsburgh unless the employer designates a higher amount. Employees of employers with 15 or more employees will accrue a minimum of one hour of paid sick time for every 35 hours worked for the employer within the geographic boundaries of the city of Pittsburgh with a maximum of 40 hours of paid sick time in a calendar year unless the employer designates a higher amount. Employees of employers with fewer than 15 employees will accrue a minimum of one hour of sick time for every 35 hours worked for the employer within the geographic boundaries of the city of Pittsburgh with a maximum of 24 hours of paid sick time in a calendar year unless the employer designates a higher amount. Accrued, unused sick time carries over from one calendar year to the next up to the applicable accrual cap for a covered employee. Employers may not transfer, demote, discharge, suspend, reduce hours of, or directly threaten such actions against a covered employee who requests or uses accrued sick time. Paid Sick Days Act.

### **Witness Duty/Crime Victim Leave**

Employers may not deprive an employee of their employment, seniority or benefits, or threaten or coerce them because the employee attends court because they are a victim of or witness of a crime, or if they are a member of such a victim's family. Employers are not required to compensate the employee for their time off under this section. 18 Pa. Stat. and Cons. Stat. Ann. § 4957. The statute does not define a reasonable amount of leave that may be taken annually.

### **Emergency Response Leave**

Employers may not terminate or discipline an employee who is a volunteer firefighter, a volunteer member of the fire police, a volunteer member of an ambulance service or rescue squad and, in the line of duty, has responded to a call prior to the time they were due to report for work. 35 Pa. Stat. and Cons. Stat. Ann. § 7423. The statute does not define a reasonable amount of leave that may be taken annually.

### **Living Donor Leave**

Pennsylvania employers who are subject to the FMLA must provide leave to an eligible employee (as defined by the FMLA) when the eligible employee must care for themselves, their spouse, child, or parent with a serious medical condition for the preparation and recovery necessary for surgery related to organ or tissue donation. 35 Pa. Stat. Ann. § 6130.5.

### **Smoking Laws**

The Pennsylvania Clean Indoor Air Act prohibits smoking in enclosed workplaces and other "public places" with limited exceptions. 35 Pa. Stat. § 637.3. The scope of the statute is broad. 35 Pa. Stat. § 637.2. A covered workplace is defined as an "indoor area serving as a place of employment, occupation, business, trade, craft, professional[,] or volunteer activity." The Act also mandates that employers prominently post signs prohibiting smoking. 35 Pa. Stat. § 637.4.

A person may not discharge an employee, refuse to hire an applicant for employment, or retaliate against an employee because the individual exercises a right to a smoke-free environment required under the act. 35 Pa. Stat. Ann. § 637.7.

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

Pennsylvania law does not require employers to provide nursing mothers with breaks to express breast milk. However, employers are subject to the Fair Labor Standards Act to provide basic accommodations for breastfeeding mothers at work.

### **Meal and Rest Breaks**

Pennsylvania Labor Laws do not require employers to provide any employee over the age of 17 with any meal or rest breaks, no matter how long their shift. Moreover, mealtimes are excluded from the definition of “hours worked,” unless the employee is required to work during their meal period. 34 Pa. Code § 231.1.

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

Pennsylvania set the minimum wage for nonexempt employees at not less than \$7.25 per hour. 43 Pa. Stat. § 333.104. Pennsylvania’s minimum wage for tipped employees is \$2.83 as long as the requirements set forth in 43 Pa. Stat. § 333.103(d) are met.

Pennsylvania does not have overtime requirements other than those set forth in the federal Fair Labor Standards Act (FLSA). Under Pennsylvania law, employers must keep employee payroll records for three years. 34 Pa. Code § 231.31.

### **Final Payments**

An employer must pay an employee who has been discharged or terminated, quit or resigned, or been laid off all wages due no later than the next regular payday on which the wages would have been paid if employment had continued. 43 Pa. Stat. § 260.5. An employer must send the wages to the employee by certified mail if the employee requests it. 43 Pa. Stat. § 260.5.

### **Unemployment Insurance**

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. These 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. Nothing is deducted from the employee’s wages to pay for this coverage. Unemployment benefits are administered by the State Department of Labor. Additional information regarding the benefits may be accessed at [www.uc.pa.gov/unemployment-benefits/Pages/default.aspx](http://www.uc.pa.gov/unemployment-benefits/Pages/default.aspx).

### **Workers’ Compensation**

The Pennsylvania Workers’ Compensation Act requires employers to provide workers’ compensation to “all persons who perform services for another for a valuable consideration,” with limited exceptions. 77 Pa. Stat. § 22; 77 Pa. Stat. § 431. 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. Under the Act, a workplace injury must be reported to the employer within 21 days of the injury. 77 Pa. Stat. § 631. An employee’s worker’s compensation claim is time-barred after 120 days. Failure to timely report an injury may result in a denial of benefits. 77 Pa. Stat. § 631. Additional information regarding the Act may be accessed at [www.dli.pa.gov/Individuals/Workers-Compensation/Pages/default.aspx](http://www.dli.pa.gov/Individuals/Workers-Compensation/Pages/default.aspx).

### **Child Labor**

The minimum working age is 14, subject to certain exceptions as to working hours and types of work performed.



During the school term, minors aged 14 and 15 may not work more than three hours on school days, eight hours on other days, and 18 hours per school week. 43 Pa. Stat. § 40.3. During summer vacations and other periods when school is not in session, a minor aged 14 or 15 may not work more than eight hours per day and 40 hours per week. 43 Pa. Stat. § 40.3.

Minors who are aged 14 or 15 may not work after 7:00 p.m., or before 7:00 a.m., although they may work until 9:00 p.m., during a school vacation period. 43 Pa. Stat. § 40.3(d)(1). Minors aged 11 and older may distribute or sell newspapers and other publications after 5:00 a.m., and before 8:00 p.m., or up to 9:00 p.m., during a school vacation period. 43 Pa. Stat. § 40.3(d)(1).

When school is in session, minors aged 16 or 17 may not work more than eight hours in a single day and 28 hours per week during a regular school week (includes only Monday through Friday). 43 Pa. Stat. § 40.3(f)(1). Up to eight hours of work on both Saturday and Sunday are allowed in addition to the 28 allowed per school week. However, no minor (other than those employed in news delivery) may work for more than six consecutive days. 43 Pa. Stat. § 40.14(b).

During a school vacation period, minors aged 16 or 17 may not work more than ten hours per day, 48 hours per week, and the minor must voluntarily agree to any hours more than 44 hours in a single week. An employer therefore may not require a minor aged 16 or 17 to work more than 44 hours in a week or retaliate against one who refuses to work those extra hours. 43 Pa. Stat. § 40.3(f)(2).

Pennsylvania labor laws require employers to provide a 30-minute break period to employees aged 14 to 17 who work five or more consecutive hours. 43 Pa. Stat. § 40.3(a).

## **Gun Laws**

Pennsylvania law is silent on whether an employer may permit or prohibit an employee from bringing a firearm onto the employer's premises.

## **Additional Laws and Regulations**

### **Equal Pay**

An employer shall not pay members of the opposite sex unequal wages for equal work on jobs that require equal skill, effort, and responsibility and are performed under similar working conditions. However, if unequal wages are properly attributable to (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) any other factor other than sex, a difference in pay is permitted. 43 Pa. Stat. § 336.3.

### **Medical Marijuana**

Pennsylvania offers medical marijuana identification cards for patients with certain medical conditions. (35 Pa Stat. §§ 10231.103, 10231.301 to 10231.304). Whether an employee who has been terminated due to a positive drug test after ingesting medical marijuana may be eligible for unemployment may depend on the language of an employer's drug policy. *Jack Lehr Electric v. Unemployment Comp. Bd. of Review*, 2021 WL 2324562 (June 8, 2021) ("To render an employee ineligible for UC benefits under Section 402(e.1) of the Law, an employer is required to demonstrate (1) that it had an established substance abuse policy and (2) that the claimant violated the policy.").

Employers may not discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee based solely on the employee's status as a person certified to use medical marijuana. 35 Pa. Stat. § 10231.2103(b). Under Pennsylvania law, employers are not required to accommodate medical marijuana use at a place of employment or commit an act that would put the employer or any person acting on its behalf in violation of federal law. 35 Pa. Stat. § 10231.2103(b). An employer may discipline employees for being under the influence of medical marijuana during work. 35 Pa. Stat. § 10231.2103(b). The law prohibits being under the influence of medical marijuana in certain safety-sensitive jobs, like those involving heights or confined spaces, for instance. 35 Pa. Stat. § 10231.510.

### **Fair Contracting for Health Care Practitioners**

Effective January 1, 2025, Pennsylvania law will prohibit non-compete agreements for osteopaths, doctors, nurse anesthetists, nurse practitioners, and physician assistants.

However, an employer may enforce a non-compete *if* the length of the non-compete period is no more than one year, provided that the health care practitioner left voluntarily. Subject to that exception, any non-compete entered into after the effective date will be deemed contrary to public policy and, as a result, unenforceable by the employer. Act No. 74, Reg. Sess. §3 (Pa. 2024).