



RHODE ISLAND 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

Rhode Island is an at-will employment state. In Rhode Island, employees who are hired for an indefinite period with no contractual right to continued employment are "at-will employees" and therefore subject to discharge at any time for any permissible reason or for no reason at all. *Galloway v. Roger Williams Univ.*, 777 A.2d 148, 150 (R.I. 2001).

Immigration Verification

Rhode Island requires no immigration verification beyond federal I-9 compliance. Rhode Island does not require private employers to use E-Verify.

Drug Testing

Rhode Island law specifies permissible drug testing for prospective and active employees.

Testing of Employees. R.I. Gen. Laws § 28-6.5-1.

Employers may require that an employee submit to a drug test if:

- The employer has reasonable grounds to believe, based on specific aspects of the employee's job performance and specific contemporaneous documented observations concerning the employee's appearance, behavior, or speech, that the employee may be under the influence of a controlled substance, which may be impairing their ability to perform their job;
- The employee provides the test sample in private, outside the presence of any person;
- Employees testing positive are not terminated on that basis but are instead referred to a substance abuse professional for assistance; provided that additional testing may be required by the employer in accordance with this referral; an employee whose testing indicates any continued use of controlled substances despite treatment may be terminated;
- Positive tests of urine, blood, or any other bodily fluid or tissue are confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate;
- The employer provides the test to the employee at the employer's expense, the opportunity to have the sample tested or evaluated by an independent testing facility, and so advises the employee;
- The employer provides the test to the employee with a reasonable opportunity to rebut or explain the results;
- The employer has promulgated a drug abuse prevention policy that complies with the requirements of the law; and
- The employer keeps the results of any test confidential, except for disclosing the results of a "positive" test only to other employees with a job-related need-to-know, and to defend against any legal action brought by the employee against the employer.

Testing of Prospective Employees. R.I. Gen. Laws § 28-6.5-2.

During pre-employment, an employer may require a job applicant to submit to testing of their blood, urine, or any other bodily fluid or tissue if:

- The job applicant has been given an offer of employment conditioned on the applicant receiving a negative test result;
- The applicant provides the test sample in private, outside the presence of any person;
- Positive tests of urine, blood, or any other bodily fluid or tissue are confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate; and
- The authorized pre-employment drug testing does not extend to job applicants for positions with any agency or political subdivision of the state or municipalities, except for applicants seeking employment as a law enforcement or correctional officer, firefighter, or any other position where that testing is required by federal law or required for the continued receipt of federal funds.

Jury Duty Leave

No employer "shall cause any of its employees to suffer the loss of the employee's position, wage increases, promotions, longevity benefit, or any other emolument due to the employer-employee relationship because the employee has been called to serve jury duty." R.I. Gen. Laws § 9-9-28. Employers are not, however, responsible for paying the employee any compensation for the period of jury duty as long as there is no contract or collective bargaining agreement to the contrary. *Id.* A violation of this section is also punishable as a misdemeanor upon conviction. *Id.*

Voting Leave

Rhode Island does not require employers to provide employees with unpaid or paid voting leave.

Parental Leave

An employee who has been employed by the same employer for 12 consecutive months shall be entitled to 13 consecutive work weeks of parental leave or family leave in any two calendar years with at least 30 days' notice of the intended leave unless prevented by a medical emergency. R.I. Gen. Laws § 28-48-2(a).

Parental leave or family leave granted may be unpaid leave. R.I. Gen. Laws § 28-48-2(b). If an employer provides paid parental leave or family leave for fewer than 13 weeks, the additional weeks of leave added to attain the total of 13 weeks required may be unpaid. *Id.*

The employer may request that the employee provide written certification from a physician caring for the person who is the reason for the employee's leave, specifying the probable duration of the employee's leave. R.I. Gen. Laws § 28-48-2(c).

Any employer who allows sick time or sick leave of an employee to be used after the birth of a child shall allow the same time to be used for the placement of a child 16 years of age or younger in connection with the adoption of the child by the employee. R.I. Gen. Laws § 28-48-11.

Smoking Laws

Employees may not smoke in any enclosed area of employment. This ban extends to vaping and e-cigarettes.

"No employer or agent of any employer shall require, as a condition of employment, that any employee or prospective employee refrain from smoking or using tobacco products outside the course of [their] employment, or otherwise discriminate against any individual with respect to [their] compensation, terms, conditions[,] or privileges of employment for smoking or using tobacco products outside the course of [their] employment." R.I. Gen. Laws § 23-20.10-14. Any employer that is a non-profit organization that discourages the use of tobacco products by the general public as one of its primary purposes or objectives is exempt from this requirement. *Id.*

Employers are not prohibited from providing an outdoor smoking space for their employees. R.I. Gen. Laws § 23-20.10-5. Any employer who provides an outdoor area for their employees to smoke must provide an area that is physically separated from the enclosed workplace to prevent the migration of smoke into the workplace. *Id.*

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 an infant child to maintain milk supply and comfort. The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is not required to provide break time under this section if to do so would create an undue hardship on the operations of the employer."

An employer shall 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, where an employee may express milk or breastfeed a child. The Department of Health shall issue periodic reports on breastfeeding rates, complaints received, and benefits reported by both working breastfeeding mothers and employers. R.I. Gen. Laws § 23-13.2-1.

Meal Breaks

All employees are entitled to a 20-minute mealtime within a six-hour work shift and a 30-minute mealtime within an eight-hour work shift. R.I. Gen. Laws § 28-3-14. An employer shall not be required to compensate an employee for this mealtime. *Id.* These meal break requirements do not apply to an employer of health care facilities licensed in accordance with Chapter 17 of Title 23 or an employer that employs fewer than three people on any shift at the worksite. *Id.*

Minimum Wage, Overtime, and Wage Recordkeeping

The Rhode Island minimum wage statute prescribes scheduled increases through January 1, 2025. R.I. Gen. Laws § 28-12-3. As of January 1, 2024, the State of Rhode Island set minimum wage at not less than \$14.00 per hour. *Id.* Refer to the statute for the most current minimum wage. *Id.* The minimum wage will increase to \$15.00 on January 1, 2025. *Id.*

Generally, if an employee works more than 40 hours per week, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. R.I. Gen. Laws § 28-12-4.1. Employers that pay delivery drivers or sales merchandisers an overtime rate of compensation for hours worked of more than 40 hours in any one week may not calculate that overtime rate of compensation by the fluctuating workweek method found under 29 CFR § 778.114.

When retail business employees work on a Sunday or a holiday, or both, at a rate of one and one-half times their regular rate, those hours are excluded from the calculation of overtime pay. R.I. Gen. Laws § 28.12-4.1.

Firefighters may not be employed for an average workweek longer than 42 hours unless the firefighter is compensated at the rate of one and one-half times their regular rate, for all hours worked in excess of 42 hours based upon an average workweek. *Id.* An average workweek shall be calculated utilizing the prior consecutive eight-week period, based upon a seven-day workweek. *Id.*

Final Payments

Payment on Separation by Employer. R.I. Gen. Laws § 28-14-4.

Whenever an employee separates or is separated from the payroll of an employer, the unpaid wages or compensation of the employee shall become due on the next regular payday and payable at the usual place of payment.

Whenever an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between the employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee.

Whenever an employer separates an employee from the payroll as a result of the employer liquidating the business, merging the business, disposing of the business, or moving the business out of state, all wages become immediately due and payable within 24 hours of the time of separation at the usual place of payment. In addition, if the employee has completed at least one year of service with the employer, holiday pay, vacation pay in full or on a prorated basis, and insurance benefits due the employee under a collective bargaining agreement, company policy, or other agreement between the employer and employee shall be considered as unpaid wages due, and payable within 24 hours of the time of separation at the usual place of payment.

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. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Rhode Island Department of Labor and Training. Additional information regarding the benefits may be accessed at dlt.ri.gov.

Workers' Compensation

Rhode Island law requires employers with one employee or more to provide workers' compensation insurance. R.I. Gen. Laws § 28-29-6. Rhode Island law provides certain exemptions. Specifically, sole proprietors, partners, and certain real estate, agricultural, and domestic service employees, are not covered. Police, firefighters, and federal employees are covered under different compensation programs. Municipal employees are only covered if the municipality has chosen to be covered. Independent contractors are not covered. R.I. Dep't of Lab. And Training Workers' Compensation FAQ.

The Workers' Compensation Division of the Rhode Island Department of Labor and Training monitors the workers' compensation system. The Division's website may be accessed at dlt.ri.gov/wc.

Child Labor

Children must be 14 years of age to be employed in businesses or industrial establishments. Children must be at least 16 years of age to be employed in a factory, mechanical, or manufacturing establishment. R.I. Gen. Laws § 28-3-1. Children who are at least 14 years of age but not yet 16 years of age may be employed only between the hours of 6:00 a.m., and 7:00 p.m., (except during school vacations, during which they may be employed until 9:00 p.m.). *Id.*

Employees aged 14 or 15 must have a Special Limited Permit to be employed. Employees aged 16 or 17 may need a Certificate of Age form to be employed. R.I. Dep't of Lab. and Training/Child Labor. These working papers are issued by local school departments upon presentation of proof of age. *Id.*

Gun Laws

Rhode Island has no law restricting the right of employers to prohibit employees from possessing or carrying firearms on work premises, including parking lots.

Additional Laws and Regulations

Polygraph Testing

Polygraphs and other forms of "lie detector" tests are prohibited from being used in Rhode Island as a condition of employment or continued employment. R.I. Gen. Laws § 28-6.1-1. Written examinations purporting to assist in or enable the detection of deception may be used, as long as the results do not form the primary basis for an employment decision. *Id.*

Equal Pay

Wage differentials based on race or color or religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin are prohibited unless those differentials are due to seniority, experience, skill, training, duties performed, shift worked, or other reasonable differentiation unrelated to sex. R.I. Gen. Laws § 28-6-18.

Employers may not prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee or retaliate against an employee who engages in such activities. Employers also may not require employees to enter into a waiver or other agreement that purports to deny an employee the right to inquire into, disclose, or discuss their wages. Employers also may not prohibit employees from aiding or encouraging other employees to exercise their rights to discuss wages. *Id.* at § 28-6-18(f).

Human Rights

Civil Rights (includes disabilities)

The State Fair Employment Practices Act prohibits employment discrimination. The right of all individuals in this state to equal employment opportunities, regardless of race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin, is recognized as and declared to be a civil right. R.I. Gen Laws § 28-5-5. Discrimination on the basis of such protected characteristics is unlawful. R.I. Gen. Laws § 28-5-7.

Genetic Information

Genetic Testing Prohibited. R.I. Gen. Laws § 28-6.7-1.

No employer, employment agency, or licensing agency shall directly or indirectly:

- Request, require, or administer a genetic test to any employee, licensee, or applicant for employment or licensure;
- Affect the terms, conditions, or privileges of employment or licensure, or terminate the employment or licensure of any person who obtains a genetic test;
- Deny employment or deny an application for an occupational license or suspend, revoke, or refuse to renew an occupational license; or take any other action affecting the terms, conditions, or privileges of employment against an employee or a license-holder based directly or indirectly on the refusal of the employee, licensee, or applicant for employment or licensure to:
 - Submit to a genetic test;
 - Submit a family health history or reveal:
 - Whether the employee, applicant, or holder has submitted to a genetic test; or
 - The results of any genetic test to which the employee, applicant, or holder has submitted.
- Otherwise use genetic information to adversely affect the employment, licensure, or application for employment or licensure of any individual; or
- Reveal genetic information about employees, licensees, or applicants.

No person may sell to or interpret for an employer, employment agency, or licensing agency a genetic test of a current or prospective employee or licensee.

Medical Marijuana

R.I. Gen. Laws § 21-28.6-4 articulates protections for qualifying medical marijuana cardholders. Under the law, employers may not refuse to employ, or otherwise penalize, a person solely for their status as a cardholder, *except* to the extent employer action is taken with respect to such person's:

- Use or possession of marijuana or being under the influence of marijuana in any workplace;
- Undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety;
- Operation, navigation, or actual physical control of any motor vehicle or other transport vehicle, aircraft, motorboat, machinery or equipment, or firearms while under the influence of marijuana;
- Violation of employment conditions pursuant to the terms of a collective bargaining agreement; or
- Where the employer is a federal contractor or otherwise subject to federal law such that failure of the employer to take such action against the employee would cause the employer to lose a monetary or licensing-related benefit.

Paid Leave

The Healthy and Safe Families and Workplaces Act requires employers in Rhode Island to allow employees to earn a minimum level of paid leave time to address their own health and safety needs as well as those of their family members. R.I. Gen. Laws § 28-57-2.

Employers with 18 or more employees are required to offer paid sick and safe leave time. All employees employed by an employer of 18 or more employees in Rhode Island shall accrue a minimum of one hour of paid sick and safe leave time for every 35 hours worked up to a maximum of 40 hours per year. Employers with fewer than 18 employees must provide sick and safe leave time, although it does not have to be paid. R.I. Gen. Laws § 28-57-5.

Paid sick and safe leave time may be used by an employee if they are too sick to work, are injured, or have a routine medical appointment. It may also be used to deal with the impact of sexual assault, domestic violence, or stalking. Additionally, employees may use sick and safe leave time to assist a member of their family for the same purposes. R.I. Gen. Laws § 28-57-6.

Employers may have different paid leave policies for different groups of employees, provided all policies provide the same benefits and protections that the law requires, or better. R.I. Gen. Laws § 28-57-14.