



SOUTH CAROLINA

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

In South Carolina (with few exceptions), if an employee is employed for an indefinite period of time, the employment relationship is considered to be “employment-at-will.” This means that both the employer and employee can end the relationship at any time, for any reason, or for no reason at all, as long as the reason is not against the law.

Hiring Employees

Employment Licenses

(S.C. Code § 41-8-20(A))

In South Carolina, all private employers are granted a state employment license allowing them to hire employees within the state. A private employer may not employ a person unless this employment license is in effect and not suspended or revoked.

Criminal Background Check

No South Carolina state statute prohibits consideration of criminal conviction records in employment decisions. Rules may differ at the local level.

Some employers are required to perform criminal background checks of job applicants, including, but not limited to, school districts, charter schools, private security firms, investigation agencies, fire departments, and alcohol retailers. (S.C. Code §§ 59-25-115, 40-18-20, and 40-18-80).

References

(S.C. Code § 41-1-65)

South Carolina law protects an employer from civil liability that responds to a written request concerning a current or former employee. However, the employer may lose immunity if it knowingly or recklessly discloses false information. The employer may disclose to a prospective employer:

- Written employee evaluations;
- Official personnel notices that formally record the reasons for separation;
- Whether the employee was voluntarily or involuntarily released from service and the reason for the separation;
- Information about job performance; and
- Dates of employment, pay level, and wage history.

Drug and Alcohol Testing

(S.C. Code § 41-1-15)

South Carolina allows drug testing of job applicants. South Carolina's Drug-Free Workplace Act is optional for employers, and those who choose to participate must follow specific requirements outlined in the Act. For example, employers are required by state law to keep the results of such tests confidential, as well as any other information, interviews, reports, statements, and memoranda, written or otherwise, received through a testing program.

Medical Testing

(S.C. Code § 1-13-85(B)-(C))

If an offer of employment is made, an employer may then require a medical examination before the commencement of employment duties, but only if the examination is required of all applicants and is job-related and consistent with business necessity. An employer may not conduct a medical examination or make inquiries of job applicants regarding the presence, nature, or severity of a disability. Rather, an employer may only inquire about the ability of an applicant to perform job-related functions.

Immigration and E-Verify

(S.C. Code § 41-8-20(B))

The South Carolina Illegal Immigration Reform Act requires all employers to verify the legal status of new employees.

In addition to completing and maintaining the federal Employment Eligibility Verification Form (Form I-9), an employer must also verify the status of new employees through E-Verify within three business days after hiring the employee. Any employer who does not comply with these requirements and/or knowingly employs an unauthorized alien may have their private employer's license suspended or revoked.

Equal Employment Opportunity (EEO) and Diversity and Employee Relations

South Carolina Human Affairs Law

(S.C. Code § 1-13-10 *et seq.*)

The South Carolina Human Affairs Law (SCHAL) applies to employers with 15 or more employees. The SCHAL mirrors federal law pertaining to protections against wage and employment discrimination based on race, religion, color, sex (including pregnancy, childbirth, and related medical conditions), age, national origin (including ancestry), and disability. The SCHAL also prohibits harassment based on these protected characteristics.

South Carolina employers are prohibited from retaliating against employees who oppose an unlawful employment practice or who are involved in an investigation, proceeding, or hearing under the SCHAL.

Discrimination Against Pregnant Workers

(S.C. Code §§ 1-13-30; 1-13-80)

The SCHAL requires an employer with 15 or more employees to provide reasonable accommodations to individuals with medical needs arising from pregnancy, childbirth, or related medical conditions (including, but not limited to, lactation). Reasonable accommodations may include more frequent or longer breaks; a private place, other than a bathroom stall, for expressing milk; a modified food or drink policy; seating or allowing the employee to sit more frequently; assistance with manual labor; temporary transfer to a less-strenuous or less-hazardous vacant position; job restructuring or light duty; modified equipment or devices; and modified work schedules.

Discrimination Against Smokers

(S.C. Code § 41-1-85)

A South Carolina employer is prohibited from basing personnel actions, such as employment, discipline, demotion, retaliation, or termination, on an employee's tobacco use outside the workplace.

Discrimination Based on Political Opinions

(S.C. Code § 16-17-560)

In South Carolina, it is unlawful to terminate an employee because of political opinions or the exercise of political rights and privileges.

Wage, Hours, and Benefits

Wage Statements

(S.C. Code § 41-10-30)

Employers with five or more employees must provide each employee with an itemized statement for each pay period showing gross pay and any deductions made.

Wage Deductions

(S.C. Code § 41-10-40)

Employers with five or more employees must pay employees in United States cash or negotiable instruments and are prohibited from making deductions from employee wages unless the deductions are legally required by state or federal law (e.g., for employment taxes) or the employer has notified the employee in writing of the amount and terms of the deductions.

Unemployment Compensation

(S.C. Code § 41-35-10 *et seq.*)

In South Carolina, the Department of Employment and Workforce administers unemployment benefits and determines eligibility on a case-by-case basis.

Applicants must meet these three eligibility requirements in collecting unemployment benefits in South Carolina: (1) Past earnings must meet minimum requirements; (2) the unemployment must be through no fault of the applicant; and (3) the applicant must be available to work and actively seeking employment.

Workers' Compensation

(S.C. Code § 42-1-10 *et seq.*)

Every South Carolina employer and employee, with certain exceptions, is presumed to be covered by the state's Workers' Compensation Act. The exceptions include:

- Railroad and railway express companies and their employees;
- Certain casual employees;
- Federal employees in South Carolina;
- Businesses with fewer than four employees;
- Agricultural employees;
- Certain real estate salespersons; and
- Corporate officers (through election).

Employers covered by the Act must:

- Maintain insurance sufficient for the payment of compensation; and
- Provide satisfactory proof to the Workers' Compensation Commission of their ability to pay compensation as required for an injured employee.

Administration and Oversight:

- South Carolina Department of Insurance: Approves rates and classifications for all workers' compensation insurers; and
- Workers' Compensation Commission: Administers the Act and ensures that the workers' compensation system is fair, equitable, and responsive to the needs of South Carolina citizens. The Commission collaborates with the Governor, General Assembly, and its many constituents.

South Carolina employers are prohibited from retaliating against employees who institute, in good faith, any proceeding under South Carolina's workers' compensation laws.

Health Care Continuation Coverage

(S.C. Code § 38-71-770)

South Carolina's Health Care Continuation Coverage Law requires that group health insurance policies issued to employees include continuation of coverage for all employees or members who have been continuously insured for at least six months and whose coverage has been terminated for any reason (other than non-payment of premium). Continuation coverage is available for the remainder of the month when coverage terminates, plus six months, as long as the group policy or a successor policy remains in force and the employee or member makes timely premium payments.

Organizational Exit

(S.C. Code §§ 41-10-10, 41-10-50, and 41-10-60)

An employer with five or more employees must pay terminated employees (whether voluntary or involuntary) all wages due within 48 hours of the day of termination or on the next regularly scheduled payday, not to exceed 30 days after termination.

Attendance and Leave

South Carolina has fewer laws relating to required leaves for private employees than many other states but does have mandated leave laws, such as:

- Maternity Leave: Covers employers with 15 or more employees. (See *supra* SCHAL);
- Jury Duty and Subpoena Compliance Leave: All employers must provide unpaid jury and subpoena leave for all full-time and part-time employees. (S.C. Code § 41-1-70);
- Crime Victim/Witness Subpoena Compliance Leave: Employers of victims and witnesses must not retaliate against or suspend or reduce the wages and benefits of a victim or witness who lawfully responds to a subpoena. A willful violation of this provision constitutes contempt of court. (S.C. Code § 16-3-1550);
- Military Leave: All employees that are either enlisted or commissioned members of the National Guard or Reserve are entitled to leaves of absence for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days in any one year to engage in required military service. (S.C. Code § 8-7-90);
- Bone Marrow Donation Leave: All employers who employ 20 or more employees may provide paid bone marrow donation leave for employees who work an average of 20 or more hours per week, excluding independent contractors. (S.C. Code § 44-43-80);
- Lactation Break Time: The South Carolina Lactation Support Act covers any person or entity employing at least one employee, and all employees are eligible for this leave. (S.C. Code § 41-1-130; See *also supra* SCHAL); and
- Meal and Rest Breaks: There is no state law requirement for meal or rest breaks.

Paid Leave Mandates

(S.C. Code § 41-1-25)

South Carolina law prohibits political subdivisions from establishing, mandating, or otherwise requiring an employee benefit, including, but not limited to:

- Paid days off for holidays;
- Paid sick leave;
- Paid vacation leave; and
- Paid personal necessity leave.

State Employees

South Carolina has numerous leave laws that apply only to state employees, including but not limited to: sickness (S.C. Code § 8-11-40(A)); care of sick family members (S.C. Code § 8-11-40(C)); recuperation from physical attacks on the employee while on the job (S.C. Code § 8-11-40(B)); organ donation (S.C. Code § 8-11-65(A)); and death of immediate family members (S.C. Code § 8-11-177).

Employer Retaliation

South Carolina employers are prohibited from retaliating against employees who ask or take leave for:

- Jury duty and subpoena compliance leave;
- Lactation break time; and
- Military leave.

Health and Safety

(S.C. Code § 41-15-10 *et seq.*)

South Carolina operates a state-specific occupational health and safety program that applies to all employers. Certain exceptions apply (e.g., maritime employers, employers on military bases, and employers in Area D of the Savannah River Site and the Three Rivers Solid Waste Authority). In addition, South Carolina is a State Plan state and has some unique statutes, including regulations for the construction industry.

Discrimination for Filing Complaints and Instituting Proceedings

(S.C. Code § 41-15-510)

An employer in South Carolina is prohibited from discriminating against an employee who has filed a complaint or instituted, or caused to be instituted, any proceeding under or relating to statutes, rules, or regulations regarding occupational safety and health, or who testified, or is about to testify, in any such proceedings or because of the exercise by such employee on behalf of themselves or others of any right afforded by such statutes, rules, or regulations.

Breastfeeding at Work

(S.C. Code §§ 63-5-40 and 41-1-130; *See also supra* SCHAL)

A woman may breastfeed her child in any location where the mother and her child are authorized to be located. In addition, employers must make reasonable efforts to provide workers with reasonable break time and space to express breast milk at work, as detailed in the South Carolina Lactation Support Act, enacted in 2020.

Smoking at Work

(S.C. Code § 44-95-10 *et seq.*)

The South Carolina Clean Indoor Air Act prohibits a person from smoking in certain public indoor areas, including facilities providing children's services, health care facilities (except for employee break areas), elevators, arenas, and auditoriums. Smoking is permitted in other public buildings, but the owner, manager, or agent in charge of the premises must make every reasonable effort to prevent designated smoking areas from impinging upon designated smoke-free areas. In areas where smoking is permitted, an employer must conspicuously display signs designating smoking and non-smoking areas. However, signs are not required for private offices.

Guns at Work

(S.C. Code § 23-31-210 *et seq.*)

Employers may prohibit employees from bringing weapons into the workplace. South Carolina has a Concealed Weapons Permit (CWP) law. South Carolina is not an open-carry state. The gun must be concealed, and the holder must have a CWP. The CWP holder can carry the gun everywhere except:

- Police stations, sheriff's departments, jails, prisons, or other law enforcement facilities;
- Courthouses and courtrooms;
- Polling places on election days;
- School or college athletic events not related to firearms;
- Offices or meeting places of government entities;
- Daycares and preschools;
- Places where firearms are prohibited by federal laws;
- Churches or religious sanctuaries, unless permission is given by the head of the facility;
- Hospitals, medical clinics, doctor's offices, or other places where medical services are rendered unless given permission by the head of the facility;
- Homes, apartments, or other dwellings, unless with the express permission of the person living at the residence; and
- Businesses or other establishments that post "No Concealed Weapons Allowed" signs or that otherwise express that they do not want concealed weapons on their premises.

To keep concealed weapons out of a business, the employer or owner must post a sign that is clearly visible from the outside of the building. It must be at least eight inches wide and at least 12 inches tall. It must state "NO CONCEALABLE WEAPONS ALLOWED" in black, one-inch-tall, all-capital letters at the bottom of the sign and centered between the lateral edges of the sign. It also must have a black silhouette of a handgun inside a circle seven inches in diameter with a diagonal line that runs from the lower left to the upper right at a 45-degree angle. It must be placed between 40 and 60 inches from the bottom of the building's entrance door.

Child Labor

(S.C. Code § 41-13-5 *et seq.*)

South Carolina restricts the occupations in which minors may be employed and the number of hours and times during which they may work.

Minors Under 14 Years of Age

(S.C. Code Regs. § 71-3105)

Generally, minors under the age of 14 may not be employed. However, minors of any age may be employed in the following manners: working on a farm (with some restrictions), delivering newspapers, performing in radio, television, movies, or theatrical productions, or working for their parents in family-owned businesses (except manufacturing or hazardous jobs). There are exceptions for the employment of student-learners.

Minors Aged 14 and 15

(S.C. Code Regs. § 71-3106)

Minors aged 14 and 15 may not work in the following occupations:

- Manufacturing, mining, or processing;
- The operation or tending of hoisting apparatuses or of any power-driven machinery other than office machines;
- The operation of motor vehicles or service as helpers on such vehicles;
- Public messenger service;
- Occupations in connection with:
 - transportation of people or property by rail, highway, air, water, pipeline, or other means;
 - warehousing and storage;
 - communications and public utilities; or
 - construction (including demolition and repair), except certain office or sales work.
- Work performed in or about boiler or engine rooms;
- Work in connection with maintenance or repair of the establishment, machines, or equipment;
- Outside window-washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes;
- Cooking and baking, with certain exceptions;
- Occupations that involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, food choppers, cutters, and bakery-type mixers;
- Work in freezers and meat coolers and all work in the preparation of meats for sale, with certain exceptions;
- Loading and unloading goods to and from trucks, railroad cars, or conveyors;
- All occupations in warehouses, except office and clerical work.

In addition, minors aged 14 and 15 may not work:

- During school hours;
- More than 40 hours a week when school is not in session;
- More than 18 hours a week when school is in session;
- More than eight hours a day when school is not in session;
- More than three hours a day when school is in session;
- Before 7:00 a.m.;
- After 7:00 p.m. during the school year; and
- After 9:00 p.m. during the summer break.

Minors Aged 16 and 17

(S.C. Code Regs. § 71-3107)

Minors aged 16 and 17 may not work, with certain exceptions, in occupations involving:

- Manufacturing or storing explosives;
- Driving a motor vehicle or working as an outside helper on any public road, highway, in or about any mine (including an open pit mine or quarry), place where logging or sawmill operations are in progress, or any excavation;
- Logging or operating a sawmill, lathe mill, shingle mill, or cooperage-stock mill;
- Operating, helping to operate, setting up, adjusting, repairing, oiling, or cleaning certain power-driven woodworking machines and equipment;
- Exposure to radioactive substances and ionizing radiations;
- Operating power-driven hoisting apparatuses;
- Operating power-driven metal forming, punching, and shearing machines, and setting up, adjusting, repairing, oiling, or cleaning those machines;
- Operating or assisting in operating power-driven paper-products machines, including but not limited to, arm-type wire stitchers or staplers, circular or band saws, or corner-cutter or mitering machines;
- Manufacturing clay construction products and silica refractory products;
- Operating power-driven fixed or portable machines, except machines equipped with fully automatic feed and ejection;
- Wrecking, demolition, and shipbreaking operations;
- Roofing operations;
- Excavating, working in, or backfilling (refilling) trenches;
- In or about slaughtering and meat-packing establishments; rendering plants; or wholesale, retail, or service establishments;
- Operating power-driven bakery machines; and
- Mining, other than coal.