



UTAH

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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At-Will Employment

Utah is an at-will employment state, which means that, in the absence of a written employment agreement or a collective bargaining agreement, either the employer or employee may terminate employment for any reason that is not contrary to law. (*Touchard v. La-Z-Boy Inc.*, 148 P.3d 945, 948 (Utah 2006)).

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

- Refusing to lie on tax and customs documents (*Peterson v. Browning*, 832 P.2d 1280, 1283 (Utah 1992))
- Demanding that the employer comply with banking law (*Heslop v. Bank of Utah*, 839 P.2d 828, 840 (Utah 1992))
Being a target of employer's illegal activity (*Hodges v. Gibson Prods. Co.*, 811 P.2d 151, 157-63 (Utah 1991))

Immigration Verification

Effective May 4, 2022, Utah's E-Verify law requires private employers with 150 or more employees to register with a status verification system (such as E-Verify) and use the verification system to validate the federal legal working status of new employees in accordance with the requirements of the status verification system. Foreign nationals with an H-2A or H-2B visa are exempt from this requirement. Utah Code § 13-47-201. Protections against liability for hiring or refusing to hire an unauthorized alien may apply in certain circumstances. Utah Code § 13-47-202.

Drug Testing

The Utah Drug and Alcohol Testing Act (UDATA) governs pre-employment and employment drug and alcohol testing. The UDATA applies to all private employers in Utah. Utah Code § 34-38-2(4). Generally, employers may, but are not required to, test employees for drugs and alcohol if they comply with the UDATA. Employers that comply with the UDATA are protected from certain liability claims. Utah Code § 34-38-3. To comply with the UDATA, employers must:

- Periodically test employees and management for drugs and alcohol. Utah Code § 34-38-3(1). Notably, however, the UDATA does not specify the frequency or circumstances for testing managers;
- Have a written drug or alcohol-testing policy that it distributes to employees and makes available for review by prospective employees. Utah Code § 34-38-7(1). Within the terms of this policy, an employer may require drug testing for: (a) investigation of possible individual employee impairment; (b) investigation of workplace accidents or theft; (c) maintenance of safety for employees or the general public; or (d) maintenance of productivity, quality of products or services, or security of property or information. Utah Code § 34-38-7(2); and
- Not rely on inaccurate results to take action against an employee in bad faith. Utah Code § 34-38-10(2).

Under the UDATA, any drug or alcohol testing must occur either during or immediately after the employee's regular work period, be deemed work time for compensation purposes, and be paid for by the employer. Utah Code § 34-38-5.

Although medical marijuana is legal in Utah, private employers are not required to accommodate its use. Private employers are also free to have policies restricting the use of medical marijuana by employees or applicants. Utah Code § 26B-4-207.

Jury Duty Leave

An employer is not required to provide annual, vacation, or sick leave to employees who otherwise are not entitled to those benefits under company policies for time spent responding to a jury summons, participating in the jury selection process, or serving on a jury. Utah Code § 78B-1-116. However, an employer may not discharge, threaten, take any adverse employment action, or otherwise coerce an employee regarding employment because the employee receives and/or responds to a summons, serves as a juror, or attends court for prospective jury service. *Id.*

Utah law also does not allow employers to 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 actually serving on a jury. *Id.*

Subpoena Leave

An employer may not deprive an employee of employment or threaten or otherwise coerce the employee regarding employment because the employee attends a deposition or hearing in response to a subpoena. Utah Code § 78B-1-132(1).

Military Leave

All state employees who are members of the organized reserve of the United States Armed Forces, including the Utah National Guard, shall be allowed full pay for all time not in excess of 15 days per year spent fulfilling the service requirements of the armed forces of the United States, including the Utah National Guard. This leave shall be in addition to any annual vacation leave with pay to which an employee may be entitled. Utah Code § 71A-8-102.

County and municipal employees who are members of the organized reserve of the United States Armed Forces, including the Utah National Guard, may be allowed up to full pay for all time not in excess of 15 days per year spent fulfilling the services requirements of the armed forces of the United States, including the Utah National Guard. This leave is at the discretion of the employing county or municipality and, if granted, shall be in addition to annual vacation leave with pay. *Id.*

Voting Leave

Utah law requires an employer to allow an employee to be absent from work on election day for up to two hours between the time the polls open and close if the employee does not have three or more off-duty hours in which to vote while polls are open. Utah Code § 20A-3a-105. An employer may not deduct from an employee's usual salary or wages because of the absence. *Id.*

The employee shall apply for leave before election day. *Id.* An employer may specify when the employee can take voting leave; however, if an employee requests leave either at the beginning or end of a shift, the employer must grant that request. *Id.*

Parental Leave

The State of Utah does not require a private employer to offer parental leave to its employees. However, the federal Family and Medical Leave Act requires employers with 50 or more employees to provide qualifying employees with up to 12 weeks of unpaid leave for specified medical or family reasons under certain circumstances.

Certain public employers are required to offer three weeks of paid parental leave to any individual who has a child born, adopted, or placed with them in foster care or who is appointed guardian of a child or incapacitated adult. Utah Code § 63A-17-511(2)(a)(i). Such employers are also required to offer employees who are eligible up to three weeks of paid postpartum recovery leave for recovery from childbirth. Utah Code § 63A-17-511(2)(a)(ii). Retaliation against employees for taking parental or postpartum leave is prohibited. Utah Code § 63A-17-511(10)(b).

Vacation, Sick, and Bereavement Leave

Utah 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. Utah Admin. Code R610-3-4. However, employers are still subject to the federal Family Medical Leave Act and its requirements.

Legislative Leave

Utah law requires certain public employers to, at a minimum, offer unpaid leave to an employee who is a state legislator on authorized legislative days, unless doing so would impose undue hardship on the employer. This includes the state, municipalities, interlocal entities, counties, institutions of higher education, technical colleges, and local education agencies (i.e. public schools). Utah Code §§ 10-3-1111, 11-13-104, 17-15-33, 53B-2-114, 53B-2a-119, 53G-11-208, 63A-17-513. Employers are prohibited from retaliating against employees for taking legislative leave. *Id.*

Smoking Laws

The Utah Indoor Clean Air Act (UICAA) prohibits the use of cigarettes and e-cigarettes in indoor places of public access, including workplaces, subject to a few limited exceptions. Utah Code § 26B-7-503.

Utah Antidiscrimination Act (UAA)

The UAA prohibits employment discrimination based on: race, color, sex, pregnancy, childbirth, pregnancy-related conditions, age, religion, national origin, disability, sexual orientation, and gender identity. Utah Code § 34A-5-106(1)(a)(i). The UAA applies to employers with 15 or more employees within the state for each working day in each of the 20 or more calendar weeks in the current or preceding calendar year. Covered employers may not do any of the following based on a protected status: refuse to hire or promote, discharge, demote, terminate, retaliate against, harass, or discriminate against regarding compensation or terms, privileges, and conditions of employment. Utah Code § 34A-5-106(1)(g).

Finally, employers may not retaliate against an employee or applicant who opposes an employment practice prohibited by the UAA or files a charge, testifies, assists, or participates in a proceeding, investigation, or hearing under the UAA. Utah Code § 34A-5-106(1)(y).

Break Time to Express Milk

The UAA requires employers to provide reasonable accommodations for pregnancy, childbirth, breastfeeding, and related conditions unless the accommodation would create an undue hardship on the employer's operations. Utah Code § 34A-5-106(1)(g).

Employers are also prohibited from requiring an employee to terminate their employment if an alternative reasonable accommodation may be provided for the employee's pregnancy, childbirth, breastfeeding, or related conditions unless the requested accommodation would create an undue hardship on the employer's operations. Utah Code § 34A-5-106(1)(g). An employer is also prohibited from denying employment opportunities to an employee because it would be required to provide reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions unless the accommodations would create an undue hardship. *Id.* Employers are required to post, in a conspicuous place at the worksite and/or include in the employee handbook, written notice of employees' rights to reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions. Utah Code § 34A-5-106(7)(e).

Employment of Minors

Utah does not require employers to provide breaks, including lunch breaks, for workers 18 years of age or older.

For employees **under 18** years of age, employers are required to provide a meal period of at least 30 minutes for any employee scheduled to work more than five hours. If any employee, regardless of age, cannot be completely relieved of all duties and permitted to leave the workstation or area during the meal period, the meal period must be paid as time worked. Utah Admin. Code 610-2-3.

Employers must provide a paid rest break of at least ten minutes to employees under the age of 18 for every four-hour period or part thereof that is worked. Minor employees must not work over three consecutive hours without a rest break. Utah Admin. Code 610-2-3.

In unusual situations where the requirements for lunch and rest breaks cannot be met, the Utah Antidiscrimination and Labor Division (UALD) may decide whether the general intent of the rules has been met to ensure the attainment of reasonable safeguards for a minor's health, safety, and education. Utah Admin. Code 610-2-3.

Minimum Wage, Overtime, and Wage Recordkeeping

Utah has set the minimum wage for non-exempt employees at not less than \$7.25 per hour. Utah Code § 34-40-103; Utah Admin. Code R610-1-3. Utah law does not specify overtime payment requirements for any employees other than those who work on public works projects; however, federal law still applies. For more information about overtime requirements under the federal Fair Labor Standards Act (FLSA), visit <https://www.dol.gov/agencies/whd/flsa>. A state employee who works overtime will be paid overtime by either taking time off work at the rate of one and one-half times their normal pay rate or by being paid one and one-half times their normal pay. Utah Code § 63A-17-502(3)(b).

Employers must keep payroll records of employees covered by the Utah Minimum Wage Act showing names, addresses, dates of birth, hours worked, and wages paid. Utah Code § 34-40-201. Employers must maintain these records for three years. *Id.*

Employers must keep a true and accurate record of time worked and wages paid to employees working on an hourly or daily basis. Utah Code § 34-28-10. Employers must keep the records on file for at least one year. *Id.*

Employees paid on an hourly basis must be paid at least semi-monthly and on days to be designated in advance by the employer as a regular payday. Utah Code § 34-28-3(1)(a). Employees paid on a salary basis may be paid monthly on or before the seventh day of each month. Utah Code § 34-28-3(1)(d). If a payday falls on a Saturday, Sunday, or legal holiday, an employer shall pay wages earned during the pay period on the day preceding the Saturday, Sunday, or legal holiday. *Id.*, § 34-28-3(1)(c). Upon an employee's hire, employers must inform the employee of the day and place of payment, of the rate of pay, and any change with respect to any of these items prior to the time of the change. Alternatively, the employer may give such notification by posting these facts and keeping them conspicuously posted at or near the place of work where such notice can be seen by each employee as the employee comes or goes to the employee's place of work. Utah Code § 34-28-4(1). Failure to post and to keep posted, any notice, or failure to give notice as prescribed in this section is a Class B misdemeanor. *Id.*, § 34-28-4(2).

On each payday, the employer must give the employee a written or electronic pay statement that states the employee's name; employee's base rate of pay; dates of the pay period for which the individual is being paid; if paid hourly, number of hours the employee worked during the pay period; amount of and reason for any money withheld in accordance with state or federal law, including state and federal income tax, Social Security tax, Medicare tax; and court-ordered withholdings; and the total amount paid to the employee for that pay period. Utah Code § 34-28-3(5)(a).

Final Payments

When an employer separates an employee from the employer's payroll, Utah law requires employers to pay the employee's unpaid wages within 24 hours of the time of separation. Utah Code § 34-28-5(1). An employer meets the 24-hour time frame if the employer either: (1) mails the wages to the employee, and the envelope that contains the wages is postmarked with a date that is no more than one day after the day on which the employer separates the employee from the employer's payroll; or (2) within 24 hours after the employer separates the employee from the employer's payroll, the employer initiates a direct deposit of the wages into the employee's account or hand-delivers the wages to the employee. Utah Code § 34-28-5(1).

Vacation, holiday, sick leave, paid time off, and severance payments and bonuses are considered wages if due under an agreement with the employer or under a policy of the employer. Utah Admin. Code R610-3-4(B).

If an employer fails to pay wages due an employee within 24 hours after the employee has provided a written demand, the employer is required to continue to pay the employee wages from the date of demand until paid, up to 60 days, at the same rate that the employee received at the time of separation. Utah Code § 34-28-5(1).

An employee may recover the penalty accruing to the employee in a civil action that must be commenced within 60 days from the date of separation. However, if the employee fails to make a written demand for payment, the employee may not recover the penalty provided for under the statute. Utah Code § 34-28-5(1)(c).

If an employee does not have a written contract for a definite period and resigns from his or her employment, the wages earned and unpaid together with any deposit held by the employer and properly belonging to the resigned employee for the performance of the employee's employment duties become due and payable on the next regular payday. Utah Code § 34-28-5(2).

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, and additional information regarding the benefits may be accessed at jobs.utah.gov/ui/home; Utah Admin. Code R994-201-101.

Workers' Compensation

The Utah Workers' Compensation Act applies to every employer in Utah that regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under an oral or written contract of hire. Utah Code § 34A-2-103(2)(a). This includes independent contractors; a client under a professional employer organization agreement; any sole proprietorship, corporation, partnership, limited liability company, or similar organization that procures work to be done by a contractor; or the client of a labor service or temp agency that employs loaned workers. Utah Code § 34A-2-103(2), (3)(a), (7).

The right to recover compensation under the Workers' Compensation Act is the exclusive remedy against the employer and any officer, agent, or employee of the employer. Utah Code § 34A-2-105(1). Therefore, an action at law may not be maintained against an employer or against any officer, agent, or employee of the employer, based upon an accident, injury, or death of an employee. Utah Code § 34A-2-105(1).

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 promptly reported to the employer; failure to promptly report an injury may result in a denial of benefits. The Act is administered by the State Board of Workers' Compensation, and additional information regarding the Act may be accessed at insurance.utah.gov/consumer/other/workers-comp.

Child Labor

The legal age to work in Utah is 14 years. Utah child labor laws state that children who are 14 years of age may work in non-hazardous jobs like retail sales, restaurant work, or office work. Utah Code § 34-23-204. Minors (under the age of 18) may not be employed in any hazardous occupation, except as authorized by the Utah Antidiscrimination and Labor Division (UALD) when the minor is under careful supervision in connection with or after completion of an apprentice program, vocational training, or rehabilitation program as approved by the UALD. Utah Code § 34-23-201.

Employers cannot require minors under the age of 16 to work during school hours, more than four hours before and after school hours, more than eight hours in a 24-hour period, or between 9:30 p.m. and 5:00 a.m., unless the next day is not a school day. Utah Code § 34-23-202. Minors under the age of 16 are also not permitted to work more than 40 hours a week. *Id.* Utah no longer has restrictions on maximum working hours for minors aged 16 and 17.

Gun Laws

Under Utah law, an employer cannot establish, maintain, or enforce any policy or rule that has the effect of prohibiting any individual from transporting or storing a firearm in a motor vehicle on any property designated for motor vehicle parking, if: (i) the individual is legally permitted to transport, possess, purchase, receive, transfer, or store the firearm; (ii) the firearm is locked securely in the motor vehicle or in a locked container attached to the motor vehicle while the motor vehicle is not occupied; and (iii) the firearm is not in plain view from the outside of the motor vehicle. Utah Code § 34-45-103.

An employer may establish, maintain, or enforce a policy or rule that has the effect of placing limitations on or prohibiting an individual from transporting or storing a firearm in a motor vehicle on property the employer has designated for motor vehicle parking if certain conditions are satisfied. Utah Code § 34-45-103.

An exemption to this law applies to Utah school premises, government entities, and religious organizations. Utah Code § 34-45-107. Teachers, however, are permitted to bring firearms on campus if they are enrolled in the "School Guardian Program" and follow the guidelines for having and storing a gun on school grounds. Utah Code § 53-22-105.

Post-Employment Restrictive Covenants

An employer and employee may enter into a post-employment restrictive covenant as long as the period of the covenant does not exceed one year. Utah Code § 34-51-201. A violation of this period makes the entire covenant void. *Id.* This law does not apply to non-solicitation, nondisclosure, or confidentiality provisions. Utah Code § 34-51-102(4).

Vaccination or Immunity Status

Subject to some narrow exceptions, employers may not: 1) refuse employment to an individual; 2) bar an individual from employment; or 3) discriminate against an individual with regard to his or her compensation or terms, conditions, or privileges of employment based on that individual's vaccination status or whether the individual has an "immunity passport." Utah Code § 34A-5-113. "Immunity passport" is defined as a "document, digital record, or software application indicating that an individual is immune to a disease, whether through vaccination or infection and recovery." Utah Code § 34A-5-113.

Job Reference Immunity

An employer that, in good faith, provides information about the job performance, professional conduct, or evaluation of a former or current employee to a prospective employer of that employee, at the request of the prospective employer, may not be held civilly liable for the disclosure or the consequences of providing the information. Utah Code § 34-42-1(a). Employers are presumed to be acting in good faith in providing references.

Utah Genetic Testing Privacy Act

When making employment-related decisions, employers may not: 1) access or consider private genetic information; 2) request or require an individual to release private genetic information; 3) request or require an individual or his or her blood relative to submit to a genetic test; or 4) inquire into or consider the fact that an individual or his or her blood relative has taken or refused to take a genetic test. Utah Code § 13-60-204.

Sexual Harassment

Utah law prohibits retaliation against an employee who reports sexual harassment or assault in all workplaces, regardless of size. Utah Code § 34A-5-114(2)(b).

Limitations on Confidentiality Agreements

Nondisclosure and non-disparagement (i.e. confidentiality) agreements regarding sexual misconduct as a condition of employment are void and unenforceable. Utah Code § 34A-5-114(2)(a). Retaliation against an employee for refusing to sign a confidentiality agreement related to sexual misconduct as a condition of employment is prohibited. Utah Code § 34A-5-114(2)(b).

While employees may accept settlement agreements over incidents of sexual misconduct that include confidentiality agreements, employees may withdraw from the agreement for up to three business days from the date of acceptance. Utah Code § 34A-5-114(2)(c).

Any business or individual attempting to enforce a confidentiality agreement related to sexual misconduct that was signed as a condition of employment is liable for all costs, including reasonable attorneys' fees, resulting from legal action to enforce the confidentiality agreement and is not entitled to monetary damages from the breach of such confidentiality agreement. Utah Code § 34A-5-114(3).

Workplace Violence Protective Orders

Utah employers may obtain protective orders if they reasonably believe workplace violence has occurred against the employer or an employee. When seeking a protective order, the employer must make a good faith effort to notify an individual the employer knows is specifically targeted by workplace violence. Utah Code § 78B-7-1102.