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STATE

Littler on

Alabama Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Alabama employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying *economic realities* of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Alabama, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

The Alabama Department of Labor (ADOL) has entered into a partnership with the U.S. Department of Labor (DOL), Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts in order to reduce instances of misclassification of employees as independent contractors.[5]

Marketplace Contractors. Under state law, marketplace contractors are not employees for purposes of the state's wage and hour laws, unemployment insurance laws, and workers' compensation laws. Marketplace contractors are defined as a person or entity that enters into an agreement with a marketplace platform to use its digital network or mobile application to receive connections to third-party individuals or entities seeking services. A marketplace platform offers digital networks or mobile applications that connect marketplace contractors to third-party individuals or accepts service requests from the public exclusively through its digital network or mobile application. Additional requirements apply regarding the control that a marketplace platform has over a marketplace contractor.[6]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Not applicable	Internal Revenue Service (IRS) 20-factor test.[7] Before July 1, 2021, there was no

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding with the ADOL is available at https://www.dol.gov/whd/workers/MOU/al.pdf.

[6] ALA. CODE § 25-4-10.

[7] ALA. CODE § 25-1-3.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		relevant statutory definitions or case law identifying a test for independent contractor status in this context.
Income Taxes	Alabama Department of Revenue (ADR)	IRS 20-factor test.[8]
Unemployment Insurance	ADOL	IRS 20-factor test.[9] Before July 1, 2021, it was the common-law *right to control* test incorporating the IRS 20-factor test.[10]
Wage & Hour Laws	Not applicable	Alabama has no wage and hour laws.
Workers' Compensation	ADOL	Common-law *right to control* test, considering the following factors:

[8] Alabama law establishes that the terms *employee* and *employer* will be defined in accordance with the Internal Revenue Code. ALA. CODE §§ 40-18-70(1)-(3). The ADR has further stated that *the general rule* hinges on the right to control, defining an independent contractor as "one who engages to perform services for another according to his own method and manner, free from direction and control of the employer in all matters relating to the performance of the work, except to the result of the product of his work." 1992 WL 509565, at *1 (Ala. Dep't of Revenue June 2, 1992) (citing *Marvel v. United States*, 719 F.2d 1507, 1514 (10th Cir. 1983)); *see also* ALA. CODE § 25-1-3.

[9] ALA. CODE § 25-1-3.

[10] The statutory definition of *employee* is as follows: "Except as modified by the provisions of Section 25-4-10 defining 'employment,' 'employee,' as used in this chapter, means any individual employed by an employer subject to this chapter, in which employment the relationship of master and servant exists between the employee and the person employing him." ALA. CODE § 25-4-7. In addition, a master-servant relationship arises when an employer:

> has the right to select the employee, the power to discharge him, the right to direct the type of work to be done, and the authority to prescribe the means and methods by which the employee is to perform the work desired. . . . Indeed, courts regard the right to exercise control over the performance of the service as predominant in an employer-employee or master-servant relationship.

Allen v. Briscoe, 628 So. 2d 756, 758 (Ala. Civ. App. 1993) (citing *State Dep't of Indus. Relations v. Montgomery Baptist Hosp., Inc.*, 359 So. 2d 410, 412 (Ala. Civ. App. 1978)). Moreover, ADOL has provided the following guidance regarding classification of workers for unemployment tax purposes: "if a business has the 'right of control' over the worker, whether or not, they actually exercise the right, the worker is an employee. Alabama law further provides that we use the common law factors to assist us in making determinations." Alabama Dep't of Labor, *When is an individual considered an employee?*, *available at* https://labor.alabama.gov/uc/employer.aspx#q30; *see also* Alabama Dep't of Labor, *Common Law Factors with Examples*, *available at* https://labor.alabama.gov/uc/COMMON_LAW_FACTORS_WITH_EXAMPLES.pdf (listing the IRS 20 factors with examples); Alabama Dep't of Labor, *Examples of Independent Contractors and Common Law Employees*, *available at* https://labor.alabama.gov/uc/EXAMPLES_OF_INDEPENDENT_CONTRACTORS_AND_COMMON_LAW_EMPLOYEES.pdf.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		"(1) direct evidence that demonstrates a right or the exercise of control, (2) the method by which the injured individual received payment for his services, (3) whether the equipment is furnished by the alleged employer or not, and (4) whether the individual has the right to terminate."[11] Courts emphasize that it is the reserved right to control, rather than the exercise of that right, that is essential to the finding of whether an employer-employee or independent contractor relationship exists.[12]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. Alabama does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee

[11] *Ex parte Curry*, 607 So. 2d 230, 232-33 (Ala. 1992) (citation omitted). Moreover, it should be noted that "[t]he designation of an individual as an independent contractor in a contract is not necessarily controlling with respect to the issue whether that individual is an independent contractor. " *Jenkins v. American Transp., Inc.*, 195 So. 3d 996, 1001 (Ala. Civ. App. 2015).

[12] *Ex parte Curry*, 607 So. 2d at 232. With regard to the right to control, if it includes only directing what is to be ultimately accomplished, an employer-employee relationship is not established; but, "if an individual retains the right to direct the manner in which the task is to be done or if that individual does in fact dictate the manner of operation, then an employer-employee relationship is established." *Susan Schein Chrysler Dodge, Inc. v. Rushing*, 77 So. 3d 1203, 1208 (Ala. Civ. App. 2011) (quotation omitted).

cannot present the required documents within three business days of hire, they cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the *E-Verify* program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[13]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[14] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[15]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Under the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, employers and business entities are prohibited from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within Alabama.[16]

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[13] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[14] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[15] See Chamber of Commerce of the U.S. v. Whiting, 563 U.S. 582 (2011).

[16] ALA. CODE § 31-13-15(a). A federal court has enjoined several other provisions contained in the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, including those (1) that make it a crime for an unauthorized alien to knowingly apply for work, to solicit work in a public or private place, or to perform work as an employee or independent contractor; (2) that make it a crime to conceal, harbor, shield, or transport illegal immigrants; (3) that prohibit businesses from taking tax deductions for wages paid to illegal workers; and (4) that allow civil actions against employers for the discriminatory practice of discharging or failing to hire legal workers while hiring illegal immigrants. *See United States v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), *cert. denied*, *Alabama v. United States*, 133 S. Ct. 2022 (2013). More information about the Beason-Hammon Alabama Taxpayer and Citizen Protection Act

Moreover, Alabama employers and business entities are required to enroll in and use E-Verify to verify the employment eligibility of all employees.[17]

1.2(b)(ii) *State Contractors*

State government agencies in Alabama are prohibited from awarding contracts or providing grants or other incentives to employers or business entities that knowingly employ, hire for employment, or continue to employ an unauthorized alien within Alabama, or that fail to enroll in and use E-Verify.[18] State contractors must provide documentation of enrollment in E-Verify.[19]

Additionally, a subcontractor on a project paid for by contract, grant, or incentive by the state cannot knowingly employ, hire, or continue to employ an unauthorized alien within Alabama. Subcontractors must also enroll in E-Verify before performing any work on the project and must use E-Verify as required during the performance of the contract.[20]

1.2(b)(iii) *State Enforcement, Remedies & Penalties*

Private Employers. While there is no direct penalty for failing to comply with the E-Verify provisions, an employer that utilizes E-Verify will be immune from liability under the statute for knowingly employing an unauthorized alien.[21] On a finding of a first violation by a court that an employer or business entity knowingly violated the provisions prohibiting the employment or hiring of unauthorized aliens, the court will do all of the following:

- order the business entity or employer to terminate the employment of every unauthorized alien;
- subject the business entity or employer to a three-year probationary period throughout the state. During the probationary period, the business entity or employer must file quarterly reports with the local district attorney of each new employee who is hired in the state;
- order the business entity or employer to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court, stating that the employer has terminated the employment of every unauthorized alien and will not knowingly or intentionally employ an unauthorized alien in the state; and
- direct the applicable state, county, or municipal governing bodies to suspend the business licenses and permits, if such exist, of the entity or employer for a period not to exceed 10 business days, specific to the business location where the unauthorized alien performed work.[22]

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and compliance aides are available from the Alabama Immigration Information Center at http://immigration.alabama.gov/Default.aspx.

[17] ALA. CODE § 31-13-15(b).

[18] ALA. CODE § 31-13-9(a)-(b).

[19] ALA. CODE § 31-13-9(b).

[20] ALA. CODE § 31-13-9(c).

[21] ALA. CODE § 31-13-15(b).

[22] ALA. CODE § 31-13-15(c).

Subsequent violations may result in permanent suspension of an employer's business licenses and permits.[23]

State Contractors. State contractors, subcontractors, and recipients of state grants and incentives may have those contracts cancelled for failure to comply, in addition to business license suspension and revocation.[24]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 (*Title VII*).[25] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of *best practices* for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

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[23] ALA. CODE § 31-13-15(e)-(f).

[24] ALA. CODE § 31-13-9(e) (describing the penalties for first, second, and third violations in detail).

[25] EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq. (Apr. 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Alabama places no statutory restrictions on a private employer's use of arrest records. In addition, Alabama has not implemented a state *ban-the-box* law covering private employers.

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Alabama places no statutory restrictions on a private employer's use of conviction records.

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

An Alabama employer is prohibited from requiring an applicant to disclose any information contained in an expunged record in any application, interview, or in any other way.[26]

There are certain exceptions to this prohibition, however. An individual has a duty to disclose an expunged record to a government regulatory or licensing agency, any utility, or any bank or other financial institution.[27] In addition, applicants for law enforcement or department of corrections positions must disclose expunged criminal records.[28]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[29] governs an employer's acquisition and use of virtually any type of information gathered by a *consumer reporting agency*[30] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

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[26] ALA. CODE §§ 15-27-6(b), 15-27-9 (defining records).

[27] ALA. CODE §§ 15-27-6(b), 15-27-18.

[28] ALA. CODE § 15-27-18.

[29] 15 U.S.C. §§ 1681 *et seq*.

[30] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide *consumer reports* for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

Many states have enacted their own version of the FCRA, referred to as *mini-FCRAs*. While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[31]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Alabama does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history.

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Alabama law contains no express provisions regulating employer access to applicants' or employees' social media accounts.

[31] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[32] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see **Littler on Employment Testing**.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Alabama law contains no express provisions regulating polygraph examinations for applicants or employees.

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[33] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not

[32] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[33] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[34] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see **Littler on Employment Testing**.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Alabama law contains no express provisions mandating preemployment drug or alcohol screenings by private employers.

However, an employer may voluntarily choose to promote a drug-free workplace in order to receive a discount on workers' compensation premiums under the Alabama Drug-Free Workplace Program.[35] To take advantage of the premium discount, an employer must conduct several different types of testing: (1) post-offer testing; (2) reasonable-suspicion testing; (3) fitness-for-duty testing, if routinely scheduled and part of an established policy; (4) follow-up testing after an employee, in the course of employment, enters an employee assistance program or rehabilitation program as a result of a positive test; and (5) post-accident testing. In addition to the foregoing required types of testing, an employer may choose to conduct random or other lawful testing of employees.[36] The statute places no legal duty on employers to conduct drug or alcohol testing, however.[37] Any testing an employer chooses to conduct must conform to the standards and procedures set forth by the Alabama Department of Labor.[38]

Participating employers may test job applicants and employees for drugs and alcohol, but must first provide notice. This notice must be given to applicants and employees one time only, in writing and prior to testing, within a written policy statement containing all of the information required by law.[39] Moreover, a participating employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required. A notice of the employer's drug-testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants during regular business hours in the employer's personnel office or other suitable locations.[40]

Additionally, the Alabama Drug-Free Workplace Program requires that an employer provide all employees with a semiannual education program on substance abuse, in general, and its effects on the workplace, specifically. This program must be a minimum of one-hour in length. In addition to employee education, an employer must also provide all supervisory personnel with a minimum of two hours of supervisory training covering: (1) how to recognize signs of employee substance abuse; (2) how to document and

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[34] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[35] ALA. CODE §§ 25-5-330 *et seq*.

[36] ALA. CODE § 25-5-335(a)-(b).

[37] ALA. CODE § 25-5-334(c).

[38] ALA. CODE § 25-5-334(c).

[39] ALA. CODE § 25-5-334.

[40] ALA. CODE § 25-5-334(c).

collaborate employee substance abuse; and (3) how to refer substance abusing employees for treatment.[41]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[42] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[43] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[44] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[45]
Benefits & Leave Documents: Consolidated Omnibus	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under

[41] ALA. CODE § 25-5-337.

[42] 26 U.S.C. § 36B.

[43] 42 U.S.C. § 18071.

[44] 29 U.S.C. § 218b.

[45] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Budget Reconciliation Act (COBRA)	group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[46] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[47]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[48] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[49] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[50]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 (*Employee Information and Verification*) at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically

[46] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[47] 29 C.F.R. § 2590.606-1.

[48] 29 C.F.R. § 825.300(a).

[49] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[50] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 (*Employer Review and Verification*). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[51] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[52]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[53]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[54]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

[51] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[52] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[53] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[54] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Drug-Free Workplace Program Documents	Employers participating in the Alabama Drug-Free Workplace Program must give written notice to all applicants and employees of the employer's policy, one-time only and prior to any testing. This statement must include: (1) a general description of the employer's policy on substance abuse, identifying the types of testing required (*i.e.*, reasonable suspicion and other bases) and potential consequences for positive test results; (2) notice advising employees about the Alabama law; (3) information about confidentiality; (4) the consequences of refusing a drug test; (5) information about the Employee Assistance Program, if offered, or of resources for seeking assistance programs and organizations; (6) notice that an employee testing positive may contest or explain the result within five working days from written notice of the result; and (7) information about the federal Drug-Free Workplace Act, if applicable to the employer.[55]
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	Each employee must provide the Alabama withholding exemption certificate, Form A-4, on or before the date of hire.[56]
Wage & Hour Documents	No notice requirement located.
Workers' Compensation Documents	At the time an unconditional offer of employment is made, most employers[57] must provide employees with a written warning, in bold type, stating that: "Misrepresentations as to preexisting physical or mental conditions may void your workers' compensation benefits."[58]

[55] ALA. CODE §§ 25-5-330 *et seq.*; *see* ALA. CODE § 25-5-334 (notice requirements).

[56] ALA. CODE § 40-18-73. Additional information and forms are available from the Alabama Department of Revenue at https://revenue.alabama.gov/individual-corporate/withholding-tax/.

[57] ALA. CODE § 25-5-50 (explaining coverage for this provision and excluding, for example, certain employers that regularly employ less than five employees and domestic employers).

[58] ALA. CODE § 25-5-51.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[59] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[60]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

[59] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[60] 42 U.S.C. § 653a.

- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[61] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Alabama's new hire reporting law.[62]

Who Must Be Reported. An employer must report each new hire, recall, or rehire. Under the statute, a *recall* is an individual who was temporarily separated from the same employer. On the other hand, a *rehire* is an individual who was separated from an employer on other than a temporary basis and who is returning to work for the same employer.[63]

Report Timeframe. Employees must be reported within seven days of each new hire, recall, or rehire. However, employers may transmit reports to the department magnetically or electronically, twice per month, not less than 12 days or more than 16 days apart.[64]

Information Required. The information in the report must include the name, address, Social Security number, and date of hire for each employee.[65]

Form & Submission of Report. Employers with five or more employees must report via the internet website. Employers with less than five employees may use the website or may send copies of Form W-4s to the new hire unit.

[61] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[62] ALA. CODE § 25-11-5.

[63] ALA. CODE §§ 25-11-2, 25-11-5.

[64] ALA. CODE § 25-11-5(a).

[65] ALA. CODE § 25-11-5(a).

Location to Send Information.

Alabama Department of Labor
New-Hire Unit
649 Monroe St., Rm. 3205
Montgomery, AL 36131
(334) 353-8491
(334) 242-8956 (fax)
newhire@labor.alabama.gov (email)
https://labor.alabama.gov/nh/NewHireEfile/LogIn.aspx

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a *noncompete*) is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[66] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

[66] 18 U.S.C. §§ 1832 *et seq.*

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Alabama law provides that every agreement restraining the exercise of a lawful profession, trade, or business of any kind is void.[67] Alabama, however, offers six exceptions:

1. A contract between two or more persons or businesses or a person and a business limiting their ability to hire or employ the agent, servant, or employees of a party to the contract where the agent, servant, or employee holds a position uniquely essential to the management, organization, or service of the business.
2. An agreement between two or more persons or businesses or a person and a business to limit commercial dealings to each other.
3. One who sells the good will of a business may agree with the buyer to refrain from carrying on or engaging in a similar business and from soliciting customers of such business within a specified geographic area so long as the buyer, or any entity deriving title to the good will from that business, carries on a like business therein, subject to reasonable time and place restraints. Restraints of one year or less are presumed to be reasonable.
4. An agent, servant, or employee of a commercial entity may agree with such entity to refrain from carrying on or engaging in a similar business within a specified geographic area so long as the commercial entity carries on a like business therein, subject to reasonable restraints of time and place. Restraints of two years or less are presumed to be reasonable.
5. An agent, servant, or employee of a commercial entity may agree with such entity to refrain from soliciting current customers, so long as the commercial entity carries on a like business, subject to reasonable time restraints. Restraints of 18 months or for as long as post-separation consideration is paid for such agreement, whichever is greater, are presumed to be reasonable.
6. Upon or in anticipation of a dissolution of a commercial entity, partners, owners, or members, or any combination thereof, may agree that none of them will carry on a similar commercial activity in the geographic area where the commercial activity has been transacted.[68]

If the covenant falls under one of the exceptions, the agreement must be reduced to writing, signed by all the parties, and supported by adequate consideration to be valid.[69]

Enforceability Following Employee Discharge. While not specifically addressed in the statute, Alabama courts have enforced noncompetes against discharged employees.[70]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something they would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with *consideration* in return for the agreement to be binding. Providing

[67] Ala. Code § 8-1-190(a).

[68] ALA. CODE § 8-1-190(b).

[69] ALA. CODE § 8-1-192.

[70] See Harkness v. Scottsboro Newspaper, Inc., 529 So.2d 1000 (Ala. 1988).

consideration means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Alabama, a noncompete signed before an employee begins employment is invalid.[71] The employer-employee agreement must exist at the time that the agreement is executed.[72] Courts have also held that a change in terms can be adequate consideration.[73] Moreover, Alabama has long held that continued employment of an at-will employee, standing alone, furnishes sufficient consideration to support and validate an otherwise valid noncompetition agreement.[74]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the *all-or-nothing* rule), while others may permit the court to *blue pencil* or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the *reasonableness* rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Under Alabama law, if a contractual provision is overly broad or unreasonable in time restraints, a court may void the restraint in part and reform it to preserve the protectable interest.[75]

2.3(b)(iv) *State Trade Secret Law*

Definition of a Trade Secret. In 1987, Alabama codified its common-law trade secrets doctrine by enacting the Alabama Trade Secrets Act. It defines a *trade secret* as information that:

- is used or intended for use in a trade or business;
- is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process;
- is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret;
- cannot be readily ascertained or derived from publicly available information;

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[71] *Dawson v. Ameritox, Ltd.*, 571 F. App'x 875 (11th Cir. 2014).

[72] *Pitney Bowes, Inc. v. Berney Office Solutions*, 823 So. 2d 659, 662 (Ala. 2001).

[73] *See Digitel Corp. v. DeltaCom, Inc.*, 953 F. Supp. 1486, 1496 (M.D. Ala. 1996) (holding that a modified agreement that outlined the terms of the employee's compensation and made it easier for him to obtain bonuses was adequate consideration).

[74] *Pitney Bowes, Inc.,* 823 So. 2d at 666 (J. Harwood, concurring); *Digitel Corp. v. DeltaCom, Inc.*, 953 F. Supp. 1486 (M.D. Ala. 1996) (noting that the Alabama Supreme Court has held that continued employment and compensation in return for a promise not to compete is adequate consideration for a noncompete); *Daughtry v. Capital Gas Co*., 229 So.2d 480 (Ala. 1969); *see also Corson v. Universal Door Sys., Inc.,* 596 So. 2d 565 (Ala. 1991).

[75] ALA. CODE § 8-1-193.

- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and
- has significant economic value.[76]

Misappropriation of a Trade Secret. Despite the existence of a trade secret and a duty not to disclose it, liability generally does not arise unless the trade secret has been misappropriated. Under Alabama law, misappropriation of a trade secret can occur in four different ways:

1. discovery of a trade secret by improper means;
2. disclosure or use of the trade secret constituting a breach of confidence owed to another;
3. learning of a trade secret from a third person, when the person learning of the trade secret "knew or should have known that (i) the information was a trade secret and (ii) that the trade secret had been appropriated under circumstances" that constitute discovery by improper means or disclosure or use in breach of confidence; or
4. learning information that a person knew or should have known was a trade secret and was disclosed to that person by mistake.[77]

The Alabama Trade Secrets Act defines *improper means* as theft, bribery, misrepresentation, inducement of a breach of confidence, trespass, or "[o]ther deliberate acts taken for the specific purpose of gaining access to the information of another by means such as electronic, photographic, telescopic or other aids to enhance normal human perception, where the trade secret owner reasonably should be able to expect privacy."[78]

A court may enjoin actual or threatened misappropriation of a trade secret.[79] In addition to injunctive relief, the statute allows a claimant to recover actual damages, all profits related to the misappropriation, attorneys' fees, and, in some extreme cases, exemplary damages.[80]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Alabama does not have statutory guidelines addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50

[76] Ala. Code § 8-27-2(1).

[77] Ala. Code § 8-27-3.

[78] Ala. Code § 8-27-2(2).

[79] Ala. Code § 8-27-4(a)(1).

[80] Ala. Code § 8-27-4(a), (b).

employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[81]
Equal Employment Opportunity (EEO) Act (*EEO is the Law* Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[82]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[83]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[84]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[85]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[86]

[81] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[82] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[83] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[84] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[85] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[86] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Occupational Safety and Health Act (*the Fed-OSH Act*)	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[87]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[88]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
***EEO is the Law*Poster with the EEO is the Law Supplement**	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[89] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required *EEO is the Law* Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[90]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[91]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act (*Service Contract Act*) or the Walsh-Healey Public Contracts Act (*Walsh-Healey Act*) must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[92]

[87] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[88] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[89] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[90] 41 C.F.R. §§ 60-300.44, 60-741.44.

[91] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[92] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[93]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[94]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[95]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[96]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[97]

[93] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[94] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[95] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[96] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://forms.oig.hhs.gov/hotlineoperations/posters/OIG Hotline Ops Brochure - Professional Print .pdf.

[97] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	Pay Period or Monthly Notice. A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[98]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[99]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[100]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

[98] ALA. CODE § 25-1-30(e).

[99] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[100] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Child Labor: Abstract	All employers employing minors under 19 years of age must conspicuously post notice, summarizing the permissible hours of work for minors.[101]
Child Labor: Certificates	Prior to employing any minors under age 18, an employer must apply for a Child Labor Certificate from the state. All certificates must be posted publicly and conspicuously at the worksite at all times.[102]
Drug-Free Workplace Program: Employee Assistance	Employers that participate in the Drug-Free Workplace Program must inform employees about assistance programs. If the employer maintains an employee assistance program (EAP), it must disclose benefits, services, policies, and procedures regarding use of the program. Employers that do not maintain an EAP must post, in a conspicuous location, a list of local providers (*i.e.*, drug and alcohol abuse programs, mental health providers, and other resources for assistance with personal or behavioral problems).[103]
Drug-Free Workplace Program: Notice of Drug-Testing Policy	Employers that participate in the Drug-Free Workplace Program and maintain a substance abuse testing policy must post conspicuous notice on the employer's premises describing that policy. Copies must also be made available to employees or applicants, and notice of testing must be included in job vacancy announcements for affected positions.[104]
Human Trafficking Awareness & Hotline	Certain employers are required to post notice concerning the National Human Trafficking Resource Center Hotline. Notice is mandatory for all establishments that require a liquor license and that do not also have a food or beverage permit, or both, hotels that have been cited as nuisances, massage parlors where any employee has been cited for a violation of Alabama Code section 45-13-41, airports, train stations, bus stations, and adult entertainment businesses. The poster must be displayed in English, Spanish, and any other languages deemed appropriate by the Commissioner of Labor.[105]

[101] ALA. CODE § 25-8-38. This poster is available in English at https://labor.alabama.gov/docs/posters/childlaborlawposter_english.pdf and in Spanish at https://labor.alabama.gov/docs/posters/childlaborlawposter_spanish.pdf.

[102] ALA. CODE § 25-8-38; *see also* ALA. CODE § 25-8-45. A Class I certificate is required for employment of minors aged 14 and 15, while a Class II certificate is required for minors aged 16 and 17. Additional information about these requirements and the application process is available at https://labor.alabama.gov/uc/ChildLabor/child-labor.aspx.

[103] ALA. CODE § 25-5-336(b).

[104] ALA. CODE § 25-5-334(c).

[105] ALA. CODE § 13A-6-170. This poster is available in English at https://labor.alabama.gov/docs/posters/dir_nhtrc%20flyer%20english.pdf and in Spanish at https://labor.alabama.gov/docs/posters/dir_nhtrc%20flyer%20spanish.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Unemployment Compensation: Compliance & Benefits	All employers must post conspicuous notice ("Your Job Insurance") informing workers that their workplace is covered by the Alabama Unemployment Compensation Law, that they may be entitled to benefits if they become unemployed, and how they may apply.[106]
Unemployment Compensation: Fraud Is A Crime (Recommended)	The Alabama Department of Labor recommends that employers post this notice, informing employees about the crimes and penalties associated with unemployment compensation fraud.[107]
Unemployment Compensation: Partial Benefits, Computerized Filing (Recommended)	The Alabama Department of Labor recommends that employers post notice informing workers that they may be eligible for partial benefits if, for example, they are temporarily laid off. The notice informs employees that the employer has elected to file partial claims by computer for convenience.[108]
Workers' Compensation Notice	All employers must post conspicuous notice, informing employees who they should notify if they are injured on the job or contract an occupational disease (*i.e.*, the workers' compensation insurance carrier).[109]
Workplace Safety: No Smoking Signs and Smoking Area Signs	In Alabama, and with exceptions, smoking is prohibited in common areas of public places, including workplaces with five or more workers. Employers with enclosed places of employment may adopt written policies regarding smoking. Employers must prominently post "No Smoking" signs (or the pictorial version with the international symbol) where smoking is restricted in workplaces and public places.[110]
Workplace Safety: Workplace Violence Prevention (Recommended)	The Alabama Department of Labor recommends that employers post notice concerning workplace violence prevention, including information about warning signs, procedures, training, and firearms in the parking lot.[111]

[106] ALA. ADMIN. CODE r. 480-4-2-.19. This poster is available at https://labor.alabama.gov/docs/posters/uc_jobinsurance.pdf.

[107] This poster is available at https://labor.alabama.gov/docs/posters/uc_fraudposter.pdf.

[108] ALA. ADMIN. CODE r. 480-4-2-.19. This poster is available at https://labor.alabama.gov/docs/posters/UC_Partial_Poster.pdf.

[109] ALA. CODE § 25-5-290(d). This poster is available at https://labor.alabama.gov/docs/posters/wc_information.pdf.

[110] ALA. CODE § 22-15A-7.

[111] This poster is available at https://labor.alabama.gov/docs/posters/Alabama%20Workplace%20Violence%20Prevention%20Poster.pdf.

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements

Records	Notes	Retention Requirement
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[112]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[113]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[114]	For the full period the plan or system is in effect, and for at least 1 year after its termination.

[112] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[113] 29 C.F.R. § 1627.3(b).

[114] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[115]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[116]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[117]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner;	At least 3 years following the date on which the polygraph examination was conducted.

[115] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[116] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[117] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[118]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[119]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[120]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[121]	At least 2 years.
Fair Labor Standards Act	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*	3 years from the last day of entry.

[118] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[119] 29 U.S.C. § 1027.

[120] 29 C.F.R. § 1620.32(a).

[121] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Payroll Records	• full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[122] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;	

[122] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[123]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[124]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms;	At least 3 years from the last effective date.

[123] 29 C.F.R. § 516.28.

[124] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[125]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[126]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the	At least 3 years.

[125] 29 C.F.R. § 516.5.

[126] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing	

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[127]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[128]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[129]	3 years after the date of hire or 1 year following

[127] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[128] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[129] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[130]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[131]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[132]	As long as it is in effect and at

[130] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[131] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[132] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[133]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used.	At least 30 years.

[133] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Exceptions to this requirement include: • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[134]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[135]	Duration of employment plus 30 years.

[134] 29 C.F.R. § 1910.1020(d).

[135] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[136]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[137]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[138]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later."

[136] 29 C.F.R. § 1910.1020(d).

[137] 29 C.F.R. §§ 1904.33, 1904.44.

[138] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[139]	If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and	Until final disposition of the complaint, compliance review or action.

[139] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[140]	
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[141]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be	During the course of the covered contract as well as after the end of the contract.

[140] 41 C.F.R. §§ 60-1.12, 60-741.80.

[141] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[142]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and	At least 3 years after the work.

[142] 29 C.F.R. § 13.25.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• worker or employee employed in conjunction with the project.[143]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[144]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[145]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

[143] 29 C.F.R. § 5.5.

[144] 29 C.F.R. § 4.6.

[145] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Child Labor: Hours Worked	*All employers that employ minors under the age of 19 must keep on premises, for each minor, either:* (1) a completed Employee Information Form, along with proof of age (*i.e.*, copy of birth certificate, driver's license, or government identification card); or (2) other documents that contain the minor's name, address, telephone number, date of birth, date of hire, and school of attendance.[146]	At least 1 year preceding the last day of the last work period recorded for each employee under 19.
Child Labor: Proof of Age	*All employers that employ minors under the age of 19 must keep on premises, for each minor*, a record of number of hours worked each day, starting and ending times, and meal break times.[147]	60 days preceding the last day of the last work period for each employee under 19.
Income Tax	*All taxpayers must keep and maintain accurate and complete records sufficient to determine their proper tax liability*. All such books, records, and information must be made available for inspection, upon request by the state tax department.[148]	3 years from the due date of the return or from the date the return is filed, whichever is later.
Unemployment Compensation	*All employing units must keep and maintain true and accurate work records. Such records must include, for each employee:* • full name and Social Security number; • state(s) in which services were performed; • date hired, rehired, or returned to work after a temporary layoff; • date of and reason for separation from work; • beginning and ending dates of each pay period; • total remuneration and date of payment(showing separately cash remuneration and the reasonable cash value of noncash remuneration); • amounts paid as allowances or reimbursements for business expenses, date of such payments, and amount	Not less than 5 years after the calendar year in which remuneration was paid and, if not paid, was due.

[146] ALA. CODE § 25-8-38(b)-(e).

[147] ALA. CODE § 25-8-38(b)-(e).

[148] Ala. Code § 40-2A-7; Ala. Admin. Code r. 810-3-70-.02, 810-14-1-.07.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	of expenses actually incurred and accounted for by the employee; and • in periods where the employee has performed services in both covered and noncovered employment, the hours spent in each. *Records must be maintained so that administrators could determine, as to any worker:* • their earnings by week; • any weeks of less than full-time employment; and • any time lost due to the worker's unavailability.[149]	
Wage and Hour: Clarke-Figures Equal Pay Act (CFEPA)	Since September 1, 2019, employers must adopt the record-keeping requirements set out in the Fair Labor Standards Act (FLSA), at 29 C.F.R. part 516.[150]	See Federal FLSA requirements.
Workers' Compensation	All employers must keep records of all injuries, fatal or otherwise, received by employees arising out of or in the course of their employment, for which compensation is either paid or claimed.[151]	None specified.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Alabama law does not address access to personnel files for private-sector employees.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

[149] ALA. CODE § 25-4-116; ALA. ADMIN. CODE r. 480-4-2-.14.

[150] ALA. CODE § 25-1-30(e).

[151] ALA. CODE § 25-5-4.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

As noted in 1.3, Alabama places no statutory restrictions on a private employer's use of criminal records for current employees. Moreover, there are no statutory restrictions on an employer's access to employee credit history or social media, or on an employer's use of polygraph examinations.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see 1.3(e)(i).

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Private employers in Alabama are not prohibited from conducting drug or alcohol tests on their employees. For more information on drug and alcohol testing, and the Alabama Drug-Free Workplace Program, see 1.3(e)(ii).

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[152]

3.2(c)(ii) *State Guidelines on Marijuana*

Alabama has a limited medical marijuana law, allowing the use of Cannabidiol under certain circumstances. The law provides that it is not to be construed to allow or accommodate the prescription, testing, medical use, or possession of any other form of cannabis other than Cannabidiol.[153] The law does not require individual or group insurance organizations providing protection, indemnity, or insurance against hospital, medical, or surgical expenses, or health maintenance organizations to provide payment or reimbursement for prescriptions of CBD.[154] The law does not contain any private-employer-related provisions.

Additionally, when the program takes effect, Alabama will have a general medical marijuana law with various employer-related provisions. Generally, employers can refuse to hire, discharge, discipline, or otherwise take an adverse employment action against an individual with respect to hiring, discharging, tenure, terms, conditions, or privileges of employment as a result, in whole or in part, of that individual's use of medical cannabis, regardless of the individual's impairment or lack of impairment resulting from such use.[155] An individual who is discharged from employment because of that individual's medical cannabis use is legally conclusively presumed to have been discharged for misconduct if the conditions set forth in the state's drug testing law are otherwise met.[156] Notably, the medical marijuana law does not permit, authorize, or establish any individual's right to commence or undertake any legal action against an employer for refusing to hire, discharging, disciplining, or otherwise taking an adverse employment

[152] 21 U.S.C. §§ 811-12, 841 *et seq*.

[153] ALA. CODE § 13A-12-214.3; *see also* former ALA. CODE § 13A-12-214.2 (expired July 1, 2020).

[154] ALA. CODE § 13A-12-214.3.

[155] ALA. CODE § 20-2A-6(a)(3).

[156] ALA. CODE § 20-2A-6(c).

action against an individual with respect to hiring, discharging, tenure, terms, conditions, or privileges of employment due to the individual's medical cannabis use.[157]

Employers can establish or enforce a drug testing policy, including, but not limited to, a policy that prohibits medical cannabis use in the workplace or implementing a drug-free workforce program established per state law.[158] The law does not affect, alter, or otherwise impact:

- The workers' compensation premium discount available to employers who establish a drug-free workplace policy certified by the Department of Labor, Workers' Compensation Division, per state law.
- An employer's right to deny, or establish legal defenses to, the payment of workers' compensation benefits to an employee on the basis of a positive drug test or refusal to submit to or cooperate with a drug test per state law.[159]

An individual who is discharged from employment because of that individual's refusal to submit to or cooperate with a drug test is legally conclusively presumed to have been discharged for misconduct if the conditions set forth in the state's drug testing law are otherwise met.[160]

Under the law, employers are not required to permit, accommodate, or allow medical cannabis use, or modify any job or working conditions of any employee who uses medical cannabis or for any reason seeks to engage in medical cannabis use.[161]

Additionally, employers can adopt an employment policy requiring its employees to notify the employer if an employee possesses a medical cannabis card.[162] The law does not interfere with, impair, or impede, any federal restrictions on employment, including, but not limited to, U.S. Department of Transportation regulations.[163]

Concerning marijuana costs, insurers, organizations for managed care, health benefit plans, or any individual or entity providing coverage for a medical or health care service are not required to pay for or to reimburse any other individual or entity for medical cannabis costs.[164] Additionally, employers, property and casualty insurers, or private health insurers are not required to reimburse an individual for costs associated with medical cannabis use.[165]

Finally, there are other nonemployment prohibitions to consider. For example, the law does not permit any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for undertaking any task under the influence of cannabis, when doing so would constitute negligence, professional malpractice, or professional misconduct, or violation of law, or possessing or using medical

[157] ALA. CODE § 20-2A-6(a)(7).

[158] ALA. CODE § 20-2A-6(a)(4).

[159] ALA. CODE § 20-2A-6(a)(9)-(10).

[160] ALA. CODE § 20-2A-6(c).

[161] ALA. CODE § 20-2A-6(a)(2).

[162] ALA. CODE § 20-2A-6(a)(5).

[163] ALA. CODE § 20-2A-6(a)(6).

[164] ALA. CODE § 20-2A-6(a)(1).

[165] ALA. CODE § 20-2A-6(a)(8).

cannabis in a vehicle unless the medical cannabis is in its original package and is sealed and reasonably inaccessible while the vehicle is moving.[166]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in the individual's gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[167]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[168]

3.2(d)(ii) *State Data Security Breach Guidelines*

The Alabama Data Breach Notification Act of 2018 requires covered entities to provide notice to Alabama residents affected by a security breach.[169] If a covered entity determines that a breach has or may have occurred, it must conduct a good-faith and prompt investigation including assessing the nature and scope of the breach, identifying any sensitive personally identifying information that may have been involved in the breach and the identity of any individuals affected by the breach, determining whether the sensitive personally identifying information has been acquired or is reasonably believed to have been acquired by an unauthorized person and is likely to cause substantial harm, and identifying and implementing measures to restore the security and confidentiality of the systems.

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[166] ALA. CODE § 20-2A-8(b).

[167] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015), available at https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[168] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015).

[169] ALA. CODE §§ 8-38-1 *et seq*.

Under Alabama law, a *breach of security* or *breach* is the unauthorized acquisition of electronic data that contains sensitive personally identifying information. The term does not include the good-faith acquisition of personally sensitive information by an employee or agent of a covered entity, unless that information is used for a purpose unrelated to the business or is subject to further unauthorized use, the release of a public record not subject to confidentiality or nondisclosure requirements, or any lawful investigative, protective, or intelligence activity of law enforcement, a state intelligence agency, or political subdivision.[170]

Covered Entities & Information. The Act defines *covered entity* as a person, sole proprietorship, partnership, government entity, corporation, nonprofit, trust, estate, cooperative association, or other business entity that acquires or uses sensitive personally identifying information. *Sensitive personally identifying information* means an Alabama resident's first name or first initial and last name in combination with one or more of the following:

- Social Security number or tax identification number;
- driver's license number, state-issued identification number, passport number, military identification number, or other unique identification number issued on a government document used to verify one's identity;
- financial account number, including a bank account number, credit card number, or debit card number, in combination with any security code, access code, password, expiration date, or PIN, that is necessary to access the account;
- any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis;
- an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer for identification; or
- username or email address, in combination with a password or security question and answer that would permit access to an online account.

Encrypted or redacted data and information lawfully available publicly through federal, local, or state government records are considered exceptions to the definition of sensitive personally identifying information.[171]

Content & Form of Notice. Notice may be given in writing, sent to the mailing address of the individual, or by email. Notice must include:

- the date, estimated date, or estimated date range of the breach;
- a description of the sensitive personally identifying information that was acquired;
- a general description of the actions taken by the entity to restore the security and confidentiality of the personal information involved in the breach;
- a general description of steps affected individuals can take to protect themselves from identity theft; and

[170] ALA. CODE § 8-38-2.

[171] ALA. CODE § 8-38-1.

- information that the individual can use to contact the covered entity to inquire about the breach.

Substitute notice may be used in lieu of direct notice if direct notice is not feasible due to:

- excessive cost relative to the entity's resources or the cost exceeds $500,000;
- lack of sufficient contact information for those who should be notified; or
- the number of affected individuals exceeds 100,000 persons.

Substitute notice must include a conspicuous notice on the website of the entity for 30 days and notice in print and broadcast media in urban and rural areas where the affected individuals reside.[172]

Timing of Notice. The covered entity must provide notice to any individuals affected by the breach as expeditiously as possible and without unreasonable delay, but no later than 45 days following discovery of the breach. Notice may be delayed upon a written request by law enforcement to prevent interference with a criminal investigation or national security.[173]

Additional Provisions. If more than 1,000 people are affected, the covered entity must also provide notice to the state attorney general as expeditiously as possible, without unreasonable delay. The written notice to the attorney general must include:

- a synopsis of the events surrounding the breach;
- the approximate number of individuals affected;
- any services related to the breach being offered or scheduled to be offered, without charge, by the entity and instructions on how to use those services; and
- the name, address, telephone number, and email address of the covered entity's employee or agent where more information can be obtained.[174]

If more than 1,000 individuals must be notified because of the breach, the entity must also notify all consumer reporting agencies without unreasonable delay.[175]

A knowing violation of the Act will result in a civil penalty of not more than $5,000 per day for each consecutive day that the entity fails to take reasonable action to comply with the law.[176]

Alabama also requires the covered entities to take reasonable measures to dispose, or arrange for disposal, of records containing sensitive personally identifying information.[177]

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[172] ALA. CODE § 8-38-5.

[173] ALA. CODE § 8-38-4.

[174] ALA. CODE § 8-38-6.

[175] ALA. CODE § 8-38-7.

[176] ALA. CODE § 8-38-9.

[177] ALA. CODE §§ 8-38-3.

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[178] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[179]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[180]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[181]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[182] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

Alabama has no state minimum wage provision. Employers covered by the FLSA should consult the federal provisions.

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178 29 U.S.C. § 218(a).

179 29 U.S.C. § 206.

180 29 U.S.C. §§ 203, 206.

181 29 U.S.C. § 3(m)(2)(B).

182 29 U.S.C. § 207.

3.3(c) *State Guidelines on Overtime Obligations*

Alabama does not have a separate, generally applicable overtime provision.[183] Therefore, the payment of overtime in Alabama is regulated by the FLSA, which establishes a 40-hour overtime standard for covered employees.

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[184] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[185]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[186] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[187] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public,

[183] Alabama law includes an overtime provision applicable only to state law enforcement officers. *See* ALA. CODE § 36-21-4.1.

[184] 29 C.F.R. § 785.19.

[185] 29 C.F.R. § 785.18.

[186] 29 U.S.C. § 218d.

[187] 29 U.S.C. § 218d(b)(2).

which may be used by an employee to express breast milk.[188] Exemptions apply for smaller employers and air carriers.[189]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[190] Lactation is considered a related medical condition.[191] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[192] For more information on these topics, see **Littler on Leaves of Absence: Family, Medical & Pregnancy Leaves**.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

There are no generally applicable meal or rest period requirements for adults in Alabama.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

In Alabama, minors aged 14 and 15 cannot be employed for more than five continuous hours without being provided a meal or rest period of at least 30 minutes. A meal or rest period of less than 30 minutes does not interrupt a continuous work period. An employer must document these meal and rest periods.[193]

3.4(b)(iii) *Lactation Accommodation Under State Law*

In Alabama, a mother may breast feed her child in any location where the mother is otherwise authorized to be present.[194] Although the law does not address employers, it can be interpreted to include places of employment.

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[195] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[196]

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[188] 29 U.S.C. § 218d(a).

[189] 29 U.S.C. § 218d(c), (d).

[190] 42 U.S.C. § 2000gg–1.

[191] 29 C.F.R. § 1636.3.

[192] 29 C.F.R. § 1636.3.

[193] ALA. CODE § 25-8-38.

[194] ALA. CODE § 22-1-13.

[195] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[196] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

Alabama law does not address general hours of work or compensable activities.

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[197] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[198] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

Alabama's statutes regulating minors in the workplace are very similar to the provisions of the FLSA. The restrictions on employment of minors are broken down by age and type of work.

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Table 9 summarizes the state restrictions on type of employment by age.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 18	*Minors under age 18 cannot be employed in or at any of the following occupations, positions, or places:*

requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[197] 29 C.F.R. §§ 570.36, 570.50.

[198] 29 C.F.R. § 570.6.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• in or about or in connection with any mine, coke breaker, coke oven, or quarry in any capacity; • in wrecking, demolition, and shipbreaking; • in any tunnel or excavation with a depth of four feet or more; • in roofing, scaffolding, or sandblasting operations; • operating or driving any truck or heavy equipment over three tons gross weight; • logging or around any sawmill, lath mill, shingle, or cooperage-stock mill; • operating any power-driven woodworking, bakery, or paper-products machinery; • upon any steam, electric, diesel, hydraulic, or other railroad; • as firefighters; • operating any stamping machines used in sheet metal or tin ware, or in paper or leather manufacturing, or washer or nut factories; • in or around any steam boiler or rolling mill machinery; • operating any power-driven metal forming, cutting, straightening, drawing, punching, or shearing machines; • operating or assisting in operating any elevators, open-freight elevators, cranes, derricks, or other power-driven hoisting apparatus, with the exception of an unattended automatic passenger elevator; • operating any paper cutting, stapling, corrugating, or punching machines; • assembling, adjusting, cleaning, oiling, or servicing machinery in motion; • operating any circular saws, band saws, or guillotine shears; • in or around any distillery where alcoholic beverages are manufactured, bottled, wrapped, or packed; • manufacturing, storage, or transportation of explosive components; • manufacturing of brick, tile, or similar products; • manufacturing or transportation of dangerous or toxic chemicals or compounds; • in, about, or in connection with, poisonous dyes, dangerous or poisonous gases, compositions of lye in dangerous quantities, dangerous or poisonous acids, or pesticides; • in any activity involving exposure to radioactive substances or ionizing radiation; • around asbestos or other cancer-causing agents; • operating or assisting in operating any job, cylinder, or offset printing presses; • activities involving slaughtering, butchering, and meat cutting; • in any place or occupation which the state labor department may declare dangerous to life or limb or injurious to the health or morals of persons under age 18; or

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• in adult establishments and where alcohol is served.[199]
Under Age 16	*In addition, minors under age 16 cannot work in or at any of the following occupations, positions, or places:* • operating or assisting in operating any sandpaper or wood polishing machinery, any washing, grinding, or mixing machinery, or commercial laundry equipment; • operating or assisting in operating machines used in picking wool, cotton, hair, or any other material; • in any work in or about a rolling mill, machine shop, or manufacturing establishment which is hazardous or dangerous to health, limb, or life; • in proximity to any hazardous or unguarded gearing; • upon any vessel or boat engaged in navigation or commerce within Alabama; • manufacturing or packing of paints, colors, or white or red lead; • occupations causing dust in injurious quantities; • soldering, brazing, heat treating, or welding; • in the building trades; • repairing, painting, or cleaning buildings or structures while working at the top of ladders, lifts, or scaffolds exceeding a height of six feet; • in connection with a junk or scrap metal yard; • assorting, manufacturing, or packing tobacco; • operating any automobile, truck, or motor vehicle, or flagging or directing traffic; • in airport hangars or landing strips or taxi and maintenance aprons; • in connection with any lumberyard; or • in any place or occupation that the state labor department declares dangerous to life or limb or injurious to the health or morals of persons under age 16.[200] Minors under age 16 are permitted to work outside school hours and during school vacations, but not in, about, or in connection with, a manufacturing or mechanical establishment, cannery, mill, workshop, or machine shop. They may also sell fireworks if supervised by a person that is at least age 18.[201]

Restrictions on Selling or Serving Alcohol. In Alabama, individuals under the state legal drinking age (21) cannot serve or dispense alcoholic beverages in any establishment where alcoholic beverages are sold, served, or dispensed for consumption on the premises. Individuals under age 16 cannot work in parts of an establishment where alcoholic beverages are sold, served, or dispensed for consumption on the

[199] ALA. CODE §§ 25-8-43(a), 25-8-44(d).

[200] ALA. CODE § 25-8-35.

[201] ALA. CODE §§ 25-8-33, 25-8-60, and 25-8-61.

premises. However, individuals age 16 or older can work as busboys, dishwashers, janitors, cooks, hostesses, or seaters restricted to leading patrons to seats. Additionally, members of an owner/operator's immediate family who are age 14 or 15 can be employed in establishments where alcoholic beverages are sold, served, or dispensed for consumption on the premises if they do not serve, sell, dispense, or handle alcoholic beverages.[202]

An individual who is less than 21 years of age may be employed by a licensee provided the individual may not handle, serve or dispense alcoholic beverages except as authorized below, and a representative of the licensee who is 21 years or older is in attendance at all times the individual is working.

An individual who is 18, 19, or 20 years of age and is employed by a restaurant or a hotel that is a restaurant or special retail licensee may serve alcoholic beverages, provided all the following conditions are met:

- the employee is working within the scope of employment as a server or busser;
- the employee may not work as a bartender and may not pour or dispense alcohol or deliver alcohol to a guest room; and
- the restaurant or hotel is annually certified as a responsible vendor under the Alabama Responsible Vendor Act.

An individual under 21 years of age who is employed by a wholesale licensee or an off-premises retail licensee may handle, transport, or sell alcoholic beverages, provided the employee is working within the scope of their employment.[203]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

For nonrestricted industries or occupations, limitations apply to minor workers across the board relating to hours worked. Specifically, minors between 16 and 18 years old, who are enrolled in public or private primary or secondary school, may not work between the hours of 10:00 P.M. and 5:00 A.M. on any night preceding a school day.[204] Additionally, minors 16 years old and younger may not work more than eight hours per day and six days or 40 hours per week, and not before 7:00 A.M. or after 9:00 P.M.[205] Minors under the age of 16 may not work from 7:00 P.M. to 5:00 A.M. in distributing newspapers or in other street trades.[206] The school superintendent or headmaster may, however, grant exemptions to this requirement under certain circumstances.[207]

3.6(b)(iii) *State Child Labor Exceptions*

Though the general rule in Alabama is that a minor under age 18 cannot work in any place or occupation that the state labor department may declare dangerous to life or limb or injurious to the health or morals of persons under age 18, this rule does not apply to:

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[202] ALA. CODE § 25-8-44.

[203] ALA. CODE § 28-1-5.

[204] ALA. CODE § 25-8-36(b).

[205] ALA. CODE §§ 25-8-36(b), 25-8-37(b).

[206] ALA. CODE §§ 25-8-36(b), 25-8-37.

[207] ALA. CODE § 25-8-36(b).

- minors aged 16 or 17 enrolled in work-study, student-learner, cooperative education, or similar programs in which employment is an integral part of the course of study and that are registered by the U.S. Department of Labor; or
- employment procured and supervised through the state education department and approved by the state labor department.[208]

State law prohibits minors aged 14 or 15 from working in construction or the building trades. However, such minors who are members of the contractor's immediate family may be employed in occupations involving nonhazardous duties.[209]

Special rules also apply to children who work as models, actors, or performers. Time and hour restrictions fall under the authority of the Alabama Department of Labor for minors under 18 years of age who are employed as models, actors, or performers, except that, as to models, minors under age 16 may not work hours that interfere with school performance.[210] For actors and performers, employment is allowed: (1) only with the written consent of the Alabama Film Office, the state labor department, and the parent or legal guardian of the minor; and (2) only if it has been determined that the activities will not be detrimental to the life, health, safety, welfare, or morals of the minor and will not interfere with the minor's school.[211] Under the law, arrangements must be made to provide the educational equivalent of full-time school attendance for persons less than 16 years of age.[212] A parent, guardian, or other responsible adult must accompany a person under 16 years of age to all rehearsals, appearances, and performances.[213]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

Alabama does not generally require a minor to obtain a work permit. Rather, employers are required to obtain a Child Labor Certificate from the Alabama Department of Labor to employ minors.[214] The parent or guardian off a minor who is 14 or 15 years old must notify the head administrator, counselor, or if home schooled, an instructor of the school which the minor attends, of the name, address and telephone number of the minor's employer.[215] Employers also must maintain a separate file and an employee information sheet for each employee under the age of 19 that shows the employee's name, home address, date of birth, date of hire, proof of age, and school of attendance, along with time records showing check in and out times, number of hours worked each day, and break times.[216] An eligibility-to-work form allows the employment of a person 14 or 15 years of age who has a satisfactory school record to work outside school hours or during vacation periods in occupations not prohibited under state law.[217]

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[208] ALA. CODE § 25-8-43.

[209] ALA. CODE § 25-8-35.

[210] ALA. CODE §§ 25-8-60, 25-8-61.

[211] ALA. CODE § 25-8-60.

[212] ALA. CODE § 25-8-60.

[213] ALA. CODE § 25-8-60.

[214] ALA. CODE § 25-8-45.

[215] ALA. CODE §25-8-32.1.

[216] ALA. CODE § 25-8-38(b).

[217] ALA. CODE §§ 25-8-37(a), 25-8-46(b).

Similarly, a Child Labor Certificate allows the employment of persons aged 14 through 17 in occupations not prohibited by state law.[218]

Employers are required to keep posted, in a conspicuous place where any person under 19 years of age is employed, a printed notice stating the maximum number of hours persons under 19 years old may be permitted to work on each day of the week.[219] Employers that employ persons less than 19 years of age must maintain time records stating the hours worked each day, starting and ending times, and break times.[220] The employer must retain the records required by this section for not less than one year preceding the last day of the last work period recorded for each minor employee.[221]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Commissioner of the Alabama Department of Labor enforces the state's child labor laws.[222] The law affords the Commissioner, or a representative, wide access to records and allows entry without prior notice or warrant into any place of business for the purpose of routine inspections designed to aid the enforcement of the child labor laws.[223] Violations of child labor provisions are considered Class C misdemeanors and are subject to civil penalties. Second and subsequent convictions are considered Class B misdemeanors and are subject to civil penalties.[224] Employers that violate child labor laws are subject to a civil penalty of $300, except that violation of the provisions prohibiting certain occupations may result in a civil penalty of $5,000 to $10,000.[225]

Antiretaliation Provisions. Additionally, Alabama employers are prohibited from discriminating against employees as a result of their opposition to any unlawful child labor practice or because they made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing regarding a child labor practice claim.[226]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

[218] ALA. CODE § 25-8-45.

[219] ALA. CODE § 25-8-38(a).

[220] ALA. CODE § 25-8-38(b).

[221] ALA. CODE § 25-8-38(b).

[222] ALA. CODE § 25-8-52.

[223] ALA. CODE § 25-8-52.

[224] ALA. CODE § 25-8-59.

[225] ALA. CODE § 25-8-59.

[226] ALA. CODE § 25-8-57.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[227]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[228]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[229]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[230] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[231]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement

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[227] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[228] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[229] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[230] 12 C.F.R. § 1005.18; see also Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E) (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it? (Sept. 4, 2020), available at https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[231] 12 C.F.R. § 1005.2(b)(3)(i)(A).

that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[232] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[233]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[234]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[235]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

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[232] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[233] 12 C.F.R. § 1005.18.

[234] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[235] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[236] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[237] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[238] tools and equipment,[239] and business transportation and travel.[240] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[241]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[242]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[243]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[244]

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[236] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[237] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[238] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[239] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[240] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[241] 29 C.F.R. § 778.217.

[242] 29 C.F.R. § 531.38.

[243] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[244] 29 C.F.R. § 531.40.

- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[245]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[246] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[247]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[248]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[249] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is

[245] 29 C.F.R. § 531.40.

[246] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[247] 29 C.F.R. § 825.213.

[248] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[249] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[250]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[251]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[252]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[253]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Alabama does not have a provision regarding the authorized instruments of payment for employee wages.

3.7(b)(ii) *Frequency of Payment Under State Law*

Alabama does not have a generally applicable provision regarding frequency of payment of wages.[254]

3.7(b)(iii) *Final Payment Under State Law*

Alabama law does not specify when final wages must be paid to discharged employees or to employees who voluntarily quit. It is recommended, however, that employers pay final wages no later than the next regularly scheduled pay date following the employee's termination or resignation.

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[250] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[251] 29 C.F.R. § 531.36.

[252] 29 C.F.R. § 531.37.

[253] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[254] However, public service corporations engaged in transportation with 50 or more employees must pay employees as often as once every two weeks or semi-monthly, within 15 days of the close of the pay period. ALA. CODE § 37-8-270.

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Alabama does not require employers to furnish their employees with earning statements each pay period. In the absence of an applicable state law, an employer would be subject only to the relevant federal law. Although federal law does require employers to provide W-2 forms once a year, the law does not generally require statements with each wage payment.

3.7(b)(v) *Wage Transparency*

Alabama law does not address whether an employer may prohibit employees from disclosing their wages or from discussing and inquiring about the wages of other employees.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

There are no general notice requirements under Alabama law regarding making a change to regular paydays or an employee's rate of pay. Employers, however, should consider providing employees with advance written notice before a change occurs.

3.7(b)(vii) *Paying for Expenses Under State Law*

In Alabama, there is no general obligation to indemnify an employee for business expenses.

3.7(b)(viii) *Wage Deductions Under State Law*

Alabama law does not address deductions from wages.

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Debt Collection. Under Alabama law, when an employer is served with a writ of garnishment regarding one of its employees, the employer is required to respond to the court within 14 days of receipt of a support order and to begin withholding funds from the employee's wages to satisfy the garnishment.[255] As such, following receipt of a garnishment order, an employer is required to withhold the amount of unpaid earnings subject to garnishment, but in no case can the amount withheld exceed the lesser of: (1) 25% of the debtor's disposable earnings for that week; or (2) "the amount by which the debtor's disposable earnings for that week exceed 30 times the federal minimum hourly wage in effect when payable."[256] *Disposable earnings* is defined as "that part of the earnings of a debtor remaining after deduction of amounts required by law to be withheld . . . [and] shall not include periodic payments pursuant to a pension, retirement, or disability program."[257]

Upon receipt of an order of garnishment, an employer must provide a copy to the obligor-employee.[258] The employer must generally pay the garnished funds to the court after 30 days from the date of the first retention of any sum from the employee's wages, salaries, or other compensation.[259] Payments thereafter must be at least monthly.[260] If the employee's employment is terminated, the employer must report the

[255] ALA. CODE § 30-3-64.

[256] ALA. CODE § 5-19-15.

[257] ALA. CODE § 5-19-15.

[258] ALA. CODE § 30-3D-502(a).

[259] ALA. CODE § 6-10-7(b).

[260] ALA. CODE § 6-10-7(b).

termination to the court and pay to the court all sums withheld from the employee's compensation within 15 days of the termination of employment.[261]

Child Support. If the garnishment or wage-payment order stems from an order for support, the amount withheld may not exceed the federal limits.[262] Generally, amounts withheld are to be remitted within seven days of withholding, but if the support payment is a monthly payment and the employer uses more frequent pay periods, the employer may withhold at each pay period a portion of the monthly support that will amount to the entire monthly support payment when accumulated.[263]

The employer must withhold the obligation amount as directed by the income withholding order. That being said, if an employer receives an order issued by another state, the employer must apply the withholding law of the state of the employee's principal place of employment in determining the following:

- the employer's fees for processing;
- the maximum amount permitted to be withheld;
- the time period for withholding and forwarded funds subject to the order;
- the priorities for withholding and allocating income withheld for multiple support orders; and
- any withholding terms or conditions not specified in the order.[264]

Importantly, an employer that fails to withhold court-ordered support may be held in contempt of court and may be liable for up to the entire amount owed.[265] Moreover, an employer that pays an employee in a manner intending to protect the employee's wages from being garnished or withheld as child support payments will be personally liable for the amount of child support owed.[266]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Because Alabama law does not have minimum wage, overtime, or wage payment provisions, state labor law does not provide any special mechanism for redressing wage and hour violations.

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[267] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare

[261] ALA. CODE § 6-10-7(a).

[262] *See* 15 U.S.C. §§ 1671 *et seq*.

[263] ALA. CODE § 30-3-61(b).

[264] ALA. CODE § 30-3-61(b).

[265] ALA. CODE § 30-3-69.

[266] ALA. CODE § 30-3-69.1.

[267] 29 U.S.C. § 1002.

benefit plan.[268] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[269]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Alabama law does not require employers to provide vacation pay, sick pay, or other personal time off. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively, and the employer must apply the vacation policy in a nondiscriminatory manner. Therefore, employers should draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

Because vacation pay is a matter of contract or employer policy in Alabama, it is likely that an employer may establish a vacation policy with a cap on accrual and/or a "use-it-or-lose-it" provision.[270] Further, an Alabama employer can require forfeiture of accrued vacation. However, if an employer's vacation policy does not contain a forfeiture provision, payout is required when employment ends, and employees are entitled to a proportionate share of vacation according to time in service.[271]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Alabama does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a

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[268] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[269] 490 U.S. 107, 119 (1989).

[270] *See Group W Cable, Inc. v. Gargis*, 545 So. 2d 819 (Ala. Civ. App. 1989) (court noted but did not discuss the validity of the following provisions: (1) vacation had to be taken in the year during which the employee was entitled to use it; and (2) unused vacation did not carry over into another year and payment of unused vacation would not occur).

[271] See *Amoco Fabrics & Fibers Co. v. Hilson*, 669 So. 2d 832 (Ala. 1995).

couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[272] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[273] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[274] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Alabama does not recognize either domestic partnerships or civil unions. Accordingly, state law does not address the issue of whether an employee's domestic partner or civil union partner would be considered an eligible dependent for purposes of employee benefits.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[275]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[276]

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[272] 29 U.S.C. § 1144.

[273] 29 U.S.C. § 1161.

[274] 29 U.S.C. § 1167(3).

[275] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[276] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

- to take medical leave when the employee is unable to work because of a serious health condition;[277]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[278] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[279] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Alabama law does not address family and medical leave for private-sector employees.

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[280] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Alabama's Adoption Promotion Act provides unpaid leave for birth and adoptive parents.

Covered Employers and Employees. Employers that are subject to the federal FMLA are covered. Likewise, employees that are eligible for leave under the federal FMLA are eligible for leave.

Purpose and Length of Leave. Covered employers must provide 12 weeks of leave to eligible employees for the birth and care of the employee's child or for the care of an adopted child placed with the employee. The leave must be taken within one year of the birth or placement of the child. The leave will run concurrently with any other leave provided under federal law. Leave may be taken intermittently only if the employer and employee agree.

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[277] 29 C.F.R. §§ 825.112, 825.113.

[278] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[279] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[280] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

Payment During Leave. The leave need not be paid.

An employer may not penalize an employee for exercising their rights under the law.[281]

For more information, see **3.9(d)(ii)**.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[282] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow employees with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the individual is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for the employee's own serious health condition, such as severe morning sickness.[283] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the

[281] ALA. CODE §§ 25-1-60 *et seq.*

[282] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[283] 29 C.F.R. § 825.202.

impairment.[284] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Alabama law does not address pregnancy leave for private-sector employees.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Alabama's Adoption Promotion Act provides unpaid leave for birth and adoptive parents.

Covered Employers and Employees. Employers that are subject to the federal FMLA are covered. Likewise, employees that are eligible for leave under the federal FMLA are eligible for leave.

Purpose and Length of Leave. Covered employers must provide 12 weeks of leave to eligible employees for the birth and care of the employee's child or for the care of an adopted child placed with the employee. The leave must be taken within one year of the birth or placement of the child. The leave will run concurrently with any other leave provided under federal law. Leave may be taken intermittently only if the employer and employee agree.

If an employee requests leave to care for an adopted child who is ill or has a disability, the employer must consider the request as it would consider a comparable request due to complications that arise from the birth of an employee's child.

Notice Required. If the need for leave is foreseeable based on when a child is expected to be placed for adoption, the employee must give the employer at least 30 days' notice of their intention to take leave, or, if the placement requires leave to begin in less than 30 days, the employee must provide notice as soon as practicable.

Payment During Leave. The leave need not be paid. However, if an employer provides paid leave to an employee for the birth and care of a child born to the employee, it must also provide either an equivalent

[284] EEOC, Notice 915.003, EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015), available at https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; see also EEOC, Facts About Pregnancy Discrimination (Sept. 8, 2008), available at https://www.eeoc.gov//facts/fs-preg.html.

paid leave or two weeks of paid leave, whichever is less, to an employee on leave for the care of a child placed with the employee for adoption, within the first year after the placement. If two employees are eligible for these paid leave benefits due to the placement of the same child for adoption, the employer need only provide paid benefits to one of the two employees.

An employer may not penalize an employee for exercising their rights under the law.[285]

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Alabama law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Alabama law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

In Alabama, upon reasonable notice to the employer, an employee who is a registered voter can take up to one hour of leave for the purpose of voting in primary and general elections.[286] However, if the employee's shift commences at least two hours after the opening of the polls, or ends at least one hour prior to closing of the polls, the employer is not required to provide voting leave time.[287] The employer may specify the hours during which an employee may take leave for voting and the employee must provide reasonable notice to the employer.[288]

Election Officials. Additional leave applies to employees who have been appointed precinct election officials.[289] Such employees must be excused from employment to perform their duties and may not be penalized for taking that time off. To take advantage of this provision, proper documentation of the appointment, including the dates of the required service, must be furnished to the employer at least seven

[285] ALA. CODE §§ 25-1-60 *et seq.*

[286] ALA. CODE § 17-1-5.

[287] ALA. CODE § 17-1-5.

[288] ALA. CODE § 17-1-5.

[289] ALA. CODE § 17-8-13.

days before the anticipated absence.[290] Employers with 25 or fewer employees are exempt from this requirement. Employers need not compensate employees who take leave time to serve as precinct election officials.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Alabama law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[291] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[292] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Jury Duty. In Alabama, an employer is required to provide *paid* leave for a full-time employee's participation on a jury.[293] Employees cannot be required or requested to use annual leave, vacation time, unpaid leave, or sick leave for time spent responding to a jury duty summons.[294] When requesting leave for jury duty, employees must provide the summons to their immediate supervisors before they may be excused from their employment.[295]

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[290] ALA. CODE § 17-8-13(a).

[291] 28 U.S.C. § 1875.

[292] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[293] ALA. CODE § 12-16-8(c).

[294] ALA. CODE § 12-16-8(b).

[295] ALA. CODE § 12-16-8(a).

For small employers, a court will automatically reschedule the service of a summoned juror who is an employee of an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer also has been summoned to appear during the same period.[296]

Employers are prohibited from discharging employees required to serve on a jury, provided the employees report for work on their next regularly scheduled hour after being dismissed from jury duty.[297] Workers discharged in violation of the law may sue their employers for both compensatory and punitive damages.[298]

Leave to Comply with a Subpoena. In Alabama, crime victims are able to respond to a subpoena to testify in a criminal proceeding or participate in the preparation of a criminal proceeding without intimidation, threats, fear of the loss of employment, or the actual loss of employment.[299] This leave applies to victims of a felony involving physical injury, the threat of physical injury, or of a sexual offense, or any offense involving spousal abuse or domestic violence.[300] The term *victim* includes an employee who is the spouse, sibling, parent, child, or guardian of a victim, where that primary victim has been killed or incapacitated.[301]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

As described in **3.9(i)(ii)**, crime victims are able to respond to a subpoena to testify in a criminal proceeding or participate in the preparation of a criminal proceeding without intimidation, threats, fear of the loss of employment, or the actual loss of employment.[302] This leave applies to victims of a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence.[303]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed

[296] ALA. CODE § 12-16-8(e).

[297] ALA. CODE § 12-16-8.1(a).

[298] ALA. CODE § 12-16-8.1(b).

[299] ALA. CODE § 15-23-81.

[300] ALA. CODE § 15-23-60.

[301] ALA. CODE §§ 15-23-60, 15-23-61.

[302] ALA. CODE § 15-23-81.

[303] ALA. CODE § 15-23-60.

information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[304]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.305 An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.306 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service Leave. An Alabama statute provides leave rights for active members of the Alabama National Guard, Naval Militia, the Alabama State Guard organized in lieu of the National Guard, the Civil Air Patrol, the National Disaster Medical System, and reserve components of the U.S. armed forces,

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[304] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[305] 29 C.F.R. § 825.126(a).

[306] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

regardless of who employs them.[307] The state's protections for military leave and reinstatement extends to members of the national guard of any state who are employed in Alabama. Coverage also extends to members of the state guard or naval militia who are called, drafted, or ordered into the service of the United States.[308] Covered service members are entitled to a military leave of absence without loss of pay, time, efficiency rating, annual vacation, or sick leave. Unlike USERRA, however, the statute does not articulate responsibilities on the part of the employee in order to be eligible for leave, such as advance notice. No employee granted a leave of absence with pay need be paid for more than 168 working hours per calendar year.[309]

Additionally, a separate Alabama statute provides for specific benefit and leave protection for public employees and students.[310] Specifically, Alabama law allows public employees to continue their health benefits while serving on active duty in the U.S. armed forces.[311] Further, students must be provided a military leave of absence, such that they are restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of the military duty.[312]

Employers may also be subject to federal regulation regarding military leave rights. Alabama law specifically provides that any active member of the Alabama National Guard or a member of the national guard of another state employed in Alabama, in time of war, armed conflict, or emergency proclaimed by the governor or U.S. President, who is called into state active duty or federally funded duty (other than training) is subject to the provisions of USERRA.[313] Further, National Guard active members called to active duty for a period of 30 days or more are eligible for military differential pay and restoration of annual leave or sick leave.

Other Military-Related Protections: Spousal Unemployment. In Alabama, military spouses can receive unemployment benefits if they voluntarily quit to permanently relocate due to a spouse's change of station orders, activation orders, or unit deployment orders. If benefits are paid, employer accounts will not be charged, and experience ratings will not be affected.[314]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

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[307] ALA. CODE § 31-2-13.

[308] ALA. CODE § 31-2-13.

[309] ALA. CODE § 31-2-13.

[310] ALA. CODE §§ 31-12-1 *et seq*.

[311] ALA. CODE §§ 31-12-5 to 31-12-7.

[312] ALA. CODE § 31-12-3.

[313] ALA. CODE § 31-12-2. This statute does not, however, apply to normal National Guard and reserve weekend drill, annual training, and required schools as described in U.S. Code title 32, section 502(a) through (e) and other related statutes. ALA. CODE § 31-12-4.

[314] Ala. Code § 25-4-78.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Emergency Responder Leave. An employer may not terminate an employee who is a member of a volunteer fire department or an emergency medical service who is late or fails to report to work while responding to an emergency call. The leave may be unpaid, and the employee must attempt to provide advance notice of the required leave. Upon request an employee must provide a statement from the volunteer fire department or emergency medical service indicating that the employee was responding to an emergency call.[315]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[316] Employers are also required to comply with all applicable occupational safety and health standards.[317] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[318] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Alabama does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Although Alabama has no comprehensive statutory scheme governing occupational safety and health, an Alabama statute generally requires employers to furnish employment that is reasonably safe for workers.[319]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

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[315] ALA. CODE § 36-21-160.

[316] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[317] 29 U.S.C. § 654(a)(2).

[318] 29 U.S.C. § 667(c)(2).

[319] ALA. CODE § 25-1-1.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Alabama, like the majority of other states, prohibits texts and phone calls while driving. Under state law, a driver may not operate a motor vehicle while using a wireless telecommunications device or a stand-alone electronic device unless they are using a voice-based communication that is automatically converted by the device to be sent as a message in a written form, or they are using the device for navigation of the vehicle using a global positioning system.[320]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. An Alabama employer can restrict or prohibit an employee from carrying firearms while on its property or while engaged in employment duties, even if the individual has a concealed-weapon permit. An employer can regulate or prohibit employees from carrying or possessing firearms, firearms accessories, or ammunition during and in the course of employee's official duties.[321]

Firearms in Company Parking Lots. An employer cannot restrict or prohibit the transportation or storage of a lawfully possessed pistol or ammunition for that pistol in an employee's privately owned motor vehicle while parked or operated in a public or private parking area, provided that the employee satisfies all of the following conditions:

- the motor vehicle is operated or parked in a location where it is otherwise permitted to be; and
- the pistol is either: (1) in a motor vehicle attended by the employee and kept from ordinary observation within the person's motor vehicle; or (2) in a motor vehicle not attended by the employee, kept from ordinary observation, and locked within a compartment, container, or in the interior of the person's privately owned motor vehicle or in a compartment or container securely affixed to the motor vehicle.

An employer cannot restrict or prohibit the transportation or storage of a lawfully possessed firearm legal for use for hunting in Alabama other than a pistol, or ammunition for that firearm, in an employee's privately owned motor vehicle while parked or operated in a public or private parking area if the employee satisfies all of the following:

- the employee possesses a valid Alabama hunting license;
- the weapon is unloaded at all times while on the property;
- it is during a season under which hunting is permitted under state law;
- the employee has never been convicted of specified crimes nor is subject to a domestic violence order;

[320] ALA. CODE § 32-5A-350.1.

[321] ALA. CODE § 13A-11-90.

- the employee has no documented prior workplace incidents involving the threat of physical injury or that resulted in physical injury;
- the vehicle is operated or parked in a location in which it is permitted to be; and
- the firearm is either: (1) in a motor vehicle attended by the employee and kept from ordinary observation within the person's motor vehicle; or (2) in a motor vehicle not attended by the employee, kept from ordinary observation, and locked within a compartment, container, or in the interior of the person's privately owned motor vehicle or in a compartment or container securely affixed to the motor vehicle. [322]

If an employer believes an employee presents a risk of harm to the employee or others, however, it can ask whether the employee has a firearm in the person's vehicle. If the employee does have a firearm, the employer can make any necessary inquiries to establish that the employee satisfies the above requirements.[323]

The law provides numerous examples of whether adverse action can be taken against an employee based on firearms possession in a vehicle. An employer cannot take adverse action against an employee based solely on the presence of a firearm if, through lawful inquiries or by other means, an employer discovers the employee has a firearm in their vehicle and satisfies the above requirements. However, an employer can take adverse action against an employee if the employee does not satisfy the above requirements.[324]

The law allows an employer to make a complaint to law enforcement officials based upon information and belief credible evidence exists that:

- the employee's vehicle contains a prohibited firearm or stolen property or prohibited or illegal items other than a firearm; or
- an employee made a threat to cause bodily harm to the employee or others.[325]

An employer can take adverse action against an employee if law enforcement officials legally discover a prohibited firearm, or other illegal items, in the employee's vehicle. However, if the employee satisfies all requirements, does not possess a prohibited firearm and suffers an adverse action, the employee can seek monetary damages and may, if the demand for money damages is not satisfied within 45 calendar days, file a private lawsuit. If the aggrieved employee prevails, the employee can be awarded compensation, including lost wages, benefits, or other remuneration lost because of the termination, demotion, or other adverse action.[326]

Additionally, the law specifies that the presence of lawful firearms or ammunition on an employer's property does not by itself constitute a failure to provide a safe workplace. Moreover, an employer does not have a duty:

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[322] ALA. CODE § 13A-11-90.

[323] ALA. CODE § 13A-11-90(c).

[324] ALA. CODE § 13A-11-90(c).

[325] ALA. CODE § 13A-11-90(e).

[326] ALA. CODE § 13A-11-90.

- to patrol, inspect, or secure: (1) parking lots, garages, or other parking areas provided for employees; or (2) private vehicles located in a parking lot, garage, or other parking area provided for employees; or
- to investigate, confirm, or determine whether an employee is complying with laws relating to firearms or ammunition ownership, possession, transportation, or storage.[327]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

In Alabama, smoking is prohibited in common areas of public places, including elevators, restrooms, lobbies, and hallways; workplaces of four of more people; schools, child care and day care facilities; nursing homes and senior citizen residences; retail establishments; buses and government buildings (except in private offices); and on public transportations.[328]

Exceptions apply for retail tobacco stores and tobacco businesses, limousines under private hire, hotel and motel rooms (except those designated as nonsmoking), and patient areas in chemical dependency treatment or mental health centers.[329] For establishments that offer both a no-smoking and a smoking area, existing physical barriers and ventilations systems may be used to minimize the effect of the smoke on areas where smoking is prohibited, but no more than one-fourth of a facility may be designated as smoking permitted.[330]

Written Policy Requirements. Employers of five or more workers must have a written policy regarding restrictions on smoking.[331] Employers that adopt, implement, or maintain a written smoking policy must stipulate in the policy that:

1. every employee has the right to designate their work area as a no-smoking area and post the area with appropriate employer-provided signs; and
2. smoking is prohibited in all common work areas unless a majority of the employees who work in the area agree to designate a smoking area.

Additionally, the policy must be communicated to all employees within three weeks of its adoption and supplied in writing upon request to any existing or prospective employee.[332]

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[327] ALA. CODE § 13A-11-91.

[328] ALA. CODE §§ 22-15A-4, 22-15A-6.

[329] ALA. CODE § 22-15A-4.

[330] ALA. CODE § 22-15A-6(b).

[331] ALA. CODE §§ 22-15A-3, 22-15A-4.

[332] ALA. CODE § 22-15A-5.

Posting Requirements. Employers must prominently post and properly maintain no-smoking signs in enclosed workplaces.[333] They also must post designated smoking areas with appropriate signage.[334]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Alabama law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Alabama law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[335] (2) the Americans with Disabilities Act (ADA);[336] (3) the Age Discrimination in Employment Act (ADEA);[337] (4) the Equal Pay Act;[338] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[339] (6) the Civil Rights Acts of 1866 and 1871;[340] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;

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[333] ALA. CODE § 22-15A-7.

[334] ALA. CODE § 22-15A-7.

[335] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[336] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[337] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[338] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[339] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[340] 42 U.S.C. §§ 1981, 1983.

- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[341]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[342] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[343]

3.11(a)(ii) *State FEP Protections*

Alabama has enacted a specific statute prohibiting discrimination by private employers, the Alabama Age Discrimination in Employment Act (AADEA).[344] Alabama does not, however, have a state administrative agency that is responsible for enforcing this statute. The AADEA prohibits employers, employment agencies, and labor organizations from discriminating against workers who are 40 years of age and older.[345] Employers with 20 or more employees are covered by the AADEA.[346]

While there is little case law addressing the substantive provisions of the AADEA, it is generally interpreted consistently with the federal ADEA.[347] For example, under both federal and Alabama law, there is a floor for protection under the act; that is, individuals must be at least 40 years of age to be protected by these statutes.[348] The AADEA specifically provides that, "[a]ny employment practice authorized by the federal Age Discrimination in Employment Act shall also be authorized by this article and the remedies, defenses, and statutes of limitations, under this article shall be the same as those authorized by the federal Age Discrimination in Employment Act."[349]

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[341] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[342] The EEOC's website is available at http://www.eeoc.gov/.

[343] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[344] ALA. CODE § 25-1-20 *et seq*.

[345] ALA. CODE § 25-1-21.

[346] ALA. CODE § 25-1-20.

[347] *See Robinson v. Alabama Cent. Credit Union*, 964 So. 2d 1225, 1228-29 (Ala. 2007) (citing cases and confirming that the same evidentiary framework applied to federal age discrimination claims should be applied to claims under the AADEA); *see also Lambert v. Mazer Disc. Home Ctrs., Inc.*, 33 So. 3d 18, 23 (Ala. Civ. App. 2009) (reviewing standard for establishing *prima facie* case of discrimination under AADEA).

[348] ALA. CODE § 25-1-21.

[349] ALA. CODE § 25-1-29.

Notably, an aggrieved employee need not file a charge or otherwise pursue an administrative action prior to filing suit under the AADEA.[350] For a claim under the AADEA to be timely, a plaintiff must either file an action in state court or file a charge with the EEOC within 180 days of the occurrence of the alleged discriminatory act.[351]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

Alabama does not have a state administrative agency that is responsible for enforcing the AADEA.

3.11(a)(iv) *Additional Discrimination Protections*

Affirmative Action Plans. Any employer that implements an affirmative action plan must include in that plan provisions for American Indians or Alaskan Natives.[352]

Prohibition of Disability Discrimination in Public Employment & Employment Supported by Public Funds. By statute, Alabama has declared a state policy that the blind, the visually handicapped, and other individuals with physical disabilities be employed "in the state service, the service of the political subdivisions of the state, in the public schools and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied." State policy is that an individual with a disability may be employed in service of the state, its political subdivisions, public schools, or "in all other employment supported in whole or in part by public funds on the same terms and conditions as a person who is not disabled, and an employer may not refuse employment to an individual with a disability on the basis of his or her disability alone."[353] This requirement does not apply where the disability prevents the performance of the "work involved."[354] It is unclear whether this statute creates a private cause of action.[355]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees be paid equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs "the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[356] The prohibition

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[350] ALA. CODE § 25-1-29; *see also Bonham v. Regions Mortg., Inc.*, 129 F. Supp. 2d 1315, 1321 (M.D. Ala. 2001) (concluding that "because it is self-evident that the [AADEA's] purpose and prohibition are like the ADEA's … it follows that these principles [governing the order and allocation of proof in cases under Title VII, which have been adopted for ADEA cases] should govern in AADEA cases as well").

[351] *Newman v. Career Consultants, Inc*., 470 F. Supp. 2d 1333, 1342 (M.D. Ala. 2007).

[352] ALA. CODE § 25-1-10.

[353] ALA. CODE § 21-7-8).

[354] ALA. CODE § 21-7-8.

[355] *See Ethridge v. State of Ala*., 847 F. Supp. 903, 908 (M.D. Ala. 1993) ("Whether § 21-7-8 creates a private cause of action appears to be an open question, and the language of the statute and dearth of case law provide little guidance."); *Mobile Fire Fighters Ass'n v. Personnel Bd. of Mobile Cnty.*, 720 So. 2d 932, 939 (Ala. 1998) (declining to decide "whether § 21-7-8 affords an implied private right of action").

[356] 29 U.S.C. § 206(d)(1).

does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[357]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Under the state's Clarke-Figures Equal Pay Act, an employer cannot pay any of its employees at wage rates less than the rates paid to employees of another sex or race for equal work within the same establishment on jobs the performance of which requires equal skill, effort, education, experience, and responsibility, and performance under similar working conditions.[358]

However, a wage differential is permitted where made pursuant to any of the following:

- a seniority system;
- a merit system;
- a system that measures earnings by quantity or quality of production; or
- a differential based on any factor other than race or sex.[359]

The Act also prohibits an employer from refusing to interview, hire, promote, or employ an applicant for employment, or retaliating against an applicant for employment because the applicant does not provide wage history. *Wage history* means the wages paid to an applicant by the applicant's current or former employer.[360]

An individual alleging a violation of the statute may file a civil action within two years after the act of discrimination giving rise to a cause of action. The individual must plead with particularity in demonstrating that the individual was paid less than someone for equal work despite possessing equal skill, effort, education, experience, and responsibility, and that the applicable wage schedule at issue was or is not correlated to any permissible wage differential conditions. An employer found to be in violation of the statute is liable to the affected individual in an amount equal to the wages and interest of which the employee is deprived by reason of the violation.[361]

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[357] 42 U.S.C. § 2000e-5.

[358] ALA. CODE § 25-1-30(b).

[359] ALA. CODE § 25-1-30(b).

[360] ALA. CODE § 25-1-30(c).

[361] ALA. CODE § 25-1-30(h).

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[362]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[363]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

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[362] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[363] 29 C.F.R. § 1636.3.

An employee seeking a reasonable accommodation must request an accommodation.[364] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[365] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[366]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
    - the composition, structure, and functions of the workforce; and
    - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[367]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and

[364] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[365] 29 C.F.R. § 1636.3.

[366] 29 C.F.R. § 1636.4.

[367] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

- allowing an employee to take breaks to eat and drink, as needed.[368]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Alabama law does not address pregnancy accommodations for private-sector employees.

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[369] Multiple decisions of the U.S. Supreme Court[370] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[371] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see **LITTLER ON HARASSMENT IN THE WORKPLACE** and **LITTLER ON EMPLOYEE TRAINING**.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Alabama.

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have

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[368] 29 C.F.R. § 1636.3.

[369] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[370] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); see also *Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[371] EEOC, Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 18, 1999, available at http://www.eeoc.gov/policy/docs/harassment.html; see also EEOC, Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see **Littler on Whistleblowing & Retaliation**.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Alabama does not have a general whistleblower law addressing protections for private-sector whistleblowers, although there are whistleblower protections for public employees.[372]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[373] and the Railway Labor Act (RLA)[374] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see **LITTLER ON UNION ORGANIZING** and **LITTLER ON COLLECTIVE BARGAINING**.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Alabama's right-to-work law states that "the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization."[375] As such, employees cannot be required to become or remain a member of a union as a condition of employment or continuation of employment. Nor can they be obligated to pay any dues, fees, or other charges of any kind to a labor union or organization as a condition of employment.[376] Similarly, an employee may not be

[372] ALA. CODE §§ 36-26A-1 *et seq*.

[373] 29 U.S.C. §§ 151 to 169.

[374] 45 U.S.C. §§ 151 *et seq*.

[375] ALA. CODE § 25-7-30.

[376] ALA. CODE §§ 25-7-32, 25-7-34.

required to *refrain* from membership in any labor union or labor organization as a condition of employment or continuation of employment.[377]

With respect to elections, the Alabama constitution guarantees the right of individuals to vote by secret ballot, including in elections for designating and authorizing employee representation.[378]

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[379] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[380] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Alabama does not have a state mini-WARN law requiring advance notice to employees of a plant closing.

4.1(c) *State Mass Layoff Notification Requirements*

An Alabama employer must notify the unemployment claims office nearest the place of employment as soon as the date of a mass separation and the number of workers involved is determined—and in no event later than the date of the actual separation.[381] A *mass separation* is a separation of 25 or more workers employed by a single establishment (permanently or for an indefinite period or for an expected duration of at least seven days) at or about the same time and for the same reason.[382]

There is no provision specifying a penalty for failure to notify the unemployment claims office of a mass separation. However, the Unemployment Compensation Law provides that any violation of its provisions for which a penalty is not provided will be punished by a fine of not less than $50 or more than $500 and/or imprisonment for longer than 12 months.[383]

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[377] ALA. CODE § 25-7-33.

[378] ALA. CONST. of 1901, art. VIII, § 177(d).

[379] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[380] 20 C.F.R. §§ 639.4, 639.6.

[381] ALA. ADMIN. CODE r. 480-4-3-.10.

[382] ALA. ADMIN. CODE r. 480-4-1-.06(ah).

[383] ALA. CODE § 25-4-145(a)(4).

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 10 lists the documents that must be provided when employment ends under federal law.

Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[384] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[385]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under state law.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	No notice requirement located.
Unemployment Notice	In addition to posting in a place easily accessible by employees, every employer must provide notification of the potential availability of unemployment benefits to individual employees at the time of their separation from employment. Notices may be made by letter, email, text

[384] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[385] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	message, or flyer, and must contain the language set forth in the state administrative rule.[386] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify the employee as to the jurisdiction under whose unemployment compensation law the employee's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, an employer must notify the employee as to the procedure for filing interstate benefit claims. In addition to the above notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[387]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Alabama prohibits the "blacklisting" of employees. *Blacklisting* is the intentional prevention of the future employment of an employee by the former employer. Blacklisting usually occurs when the former employer makes representations to prospective employers that an individual should not be hired. It should be distinguished from a reference, which is essentially a request for information about job performance.

After discharging an employee from its service, an Alabama employer that maintains a blacklist or notifies another employer that an employee has been blacklisted is guilty of a misdemeanor.[388]

[386] ALA. ADMIN. CODE r. 480-4-2-.19. A sample "Notice of Availability of Unemployment Compensation" is available at https://labor.alabama.gov/egov/Notice%20of%20Availability%20of%20Unemployment%20Compensation.pdf. The poster is available at https://labor.alabama.gov/docs/posters/uc_jobinsurance.pdf.

[387] ALA. ADMIN. CODE r. 480-4-2-.27.

[388] ALA. CODE § 13A-11-123.