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STATE

Littler on

# Alaska 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 Alaska 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 Alaska, as elsewhere, an individual who provides services to another for payment is generally 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).

To reduce instances of misclassification of employees as independent contractors, Alaska 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.[5] The Alaska Department of Labor and Workforce Development has an agreement with the Wage and Hour Division.[6]

**Table 1. State Tests for Classifying Workers**

| Purpose of Determining Employee Status | State Agency | Test to Apply |
|---|---|---|
| **Fair Employment Practices Laws** | Alaska State Commission for Human Rights | There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. |
| **Income Taxes** | Not applicable | Alaska has no state income tax. |
| **Unemployment Insurance** | Alaska Department of Labor and Workforce Development, | Statutory, adopting the ABC test.<br><br>*Employment* is defined as "service performed by an individual whether or not the common-law relationship |

[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.

[6] The Memorandum of Understanding with the Alaska Department of Labor and Workforce Development is available at https://www.dol.gov/whd/workers/MOU/ak.pdf.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | Unemployment Insurance | of master and servant exists, unless and until it is shown" that:<br>A. the individual is "free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;"<br>B. the service is "performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed;" and<br>C. the individual is "customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed[.]"[7] |
| **Wage & Hour Laws** | Alaska Division of Labor Standards & Safety, Wage and Hour Administration | "Economic realities" test under the federal Fair Labor Standards Act.[8] |
| **Workers' Compensation** | Alaska Department of Labor and Workforce Development, Division of Workers' Compensation | Statutory test. The workers' compensation law does not apply to an independent contractor, defined as a person who:<br>1. has an express contract to perform services;<br>2. is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom, or entity for which, the services are provided to specify the desired results, completion schedule, or range of |

[7] ALASKA STAT. § 23.20.525(a)(8); *see also* Alaska Dep't of Labor & Workforce Dev., *Do you have contract labor?* (rev. June 2016), *available at* http://labor.alaska.gov/estax/forms/contract.pdf; *Tachick Freight Lines v. State, Dep't of Labor*, 773 P.2d 451, 453 (Alaska 1989) ("The statutory definition is controlling, and the employer must show that all three prongs of the 'ABC test' . . . are met.") (citation omitted).

[8] There is not a definition of employer or employee, or an independent contractor test in Alaska's Wage and Hour Act. However, any term not defined in the Act or through regulation, is defined as in the FLSA and its regulations. ALASKA STAT. § 23.10.145. Moreover, in at least two cases, the Supreme Court of Alaska has indicated it will rely on federal case law under the FLSA to distinguish between employees and independent contractors under the Alaska Wage and Hour Act. *See Jeffcoat v. State, Dep't of Labor*, 732 P.2d 1073, 1075-76 (Alaska 1987); *Doellefeld v. Lodoen*, 2008 WL 4531650 (Alaska Oct. 8, 2008) (applying the FLSA-based framework set forth in *Jeffcoat* to determine employment status under the Alaska Wage and Hour Act).

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | work hours, or to monitor the work for compliance with contract plans and specifications, or federal, state, or municipal law;<br>3. incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services, except that materials and equipment may be supplied;<br>4. has an opportunity for profit and loss as a result of the services performed for the other individual or entity;<br>5. is free to hire and fire employees to help perform the services for the contracted work;<br>6. has all business, trade, or professional licenses required by federal, state, or municipal authorities for a business or individual engaging in the same type of services as the person;<br>7. follows federal Internal Revenue Service requirements by:<br>a. obtaining an employer identification number, if required;<br>b. filing business or self-employment tax returns for the previous tax year to report profit or income earned for the same type of services provided under the contract; or,<br>c. intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and,<br>8. meets at least two of the following criteria:<br>a. the person is responsible for the satisfactory completion of services that the person has contracted to perform and is subject to liability for a failure to complete the contracted work, or maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person's business;<br>b. the person maintains a business location or a business mailing address separate from the location of the individual for whom, or the |

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| | | entity for which, the services are performed; or,<br>c. the person provides contracted services for two or more different customers within a 12-month period or engages in any kind of business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.[9] |
| **Workplace Safety** | Alaska Department of Labor and Workforce Development, Alaska Occupational Safety and Health (AKOSH) | While Alaska has an approved state plan under the federal Occupational Safety and Health Act, there are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. |

## 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 cannot present the required documents within three business days of hire, the employee 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

[9] ALASKA STAT. § 23.30.230(a)(12); *see also* ALASKA STAT. § 23.30.395(19) (employee is a person who is not an independent contractor per section 23.30.230 and who, under a contract of hire, express or implied, is employed by an employer) and Alaska Dep't of Labor and Workforce Dev., Div. of Workers' Comp., *Workers' Compensation Requirements for Employers*, *available at* http://labor.state.ak.us/wc/er-profit.html.

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.[10]

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.[11] 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.[12]

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*

Alaska does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Alaska should follow federal law requirements regarding employment eligibility and verification.

## 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").[13] 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

[10] 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.

[11] *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).

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

[13] 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.

 

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 at **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**.

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

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

Generally, criminal justice information may be provided to a person for any purpose.[14] However, access to nonconviction criminal or corrective treatment information is limited only to the individual subject of the record.[15] A separate provision provides that criminal justice information may be provided to a person specifically authorized by state or federal law to receive that information.[16]

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

Alaska 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*

A person about whom criminal justice information has been sealed may deny the existence of that information, and may deny the existence of an arrest, charge, conviction, or sentence in that information.[17] Of note, only past conviction or current offender information about a person that beyond a reasonable doubt resulted from mistaken identity or false accusation may be sealed.[18] Moreover, Alaska does not have a law allowing the expungement of criminal records.[19]

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[14] ALASKA STAT. § 12.62.160(b)(8).

[15] ALASKA STAT. § 12.62.160(b)(8), (10).

[16] ALASKA STAT. § 12.62.160(b)(6).

[17] ALASKA STAT. § 12.62.180(d); *see also* Dep't of Public Safety Statewide Servs., *Frequently Asked Questions*, *available at* https://dps.alaska.gov/Statewide/R-I/Background/FAQ.

[18] ALASKA STAT. § 12.62.160(b).

[19] Dep't of Public Safety Statewide Servs., *Frequently Asked Questions*.

**Juvenile Records.** No person may use sealed juvenile records, except by court order for good cause shown.[20]

### 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[21] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[22] 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.

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]."[23]

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

Alaska 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.

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[20] ALASKA STAT. § 47.12.300(d), (f).

[21] 15 U.S.C. §§ 1681 *et seq*.

[22] 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).

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

 

### 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*

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

### 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.[24] 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

[24] 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.

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*

In Alaska, an employer cannot request, suggest, or require that a job applicant or employee submit to a polygraph or other lie-detecting device test as a condition of employment.[25] There are no exceptions to this provision applicable to private employers.[26]

### 1.3(d)(iii) *State Enforcement, Remedies & Penalties*

A violation of the lie-detector prohibition is a misdemeanor, punishable by a fine, imprisonment, or both.[27]

### 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.[28] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[29] 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.

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[25] ALASKA STAT. § 23.10.037(a).

[26] ALASKA STAT. § 23.10.037(b).

[27] ALASKA STAT. §§ 23.10.037(d), 23.10.670.

[28] 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.

[29] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

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

Under Alaska law, an employer can only carry out drug or alcohol testing or retesting after adopting a written policy and informing employees of the policy.[30] However, alcohol and drug testing by employers is voluntary, unless federal or state law specific to the employer's industry otherwise creates an obligation to test.[31] If the employer chooses to test, it must inform prospective employees that they must undergo drug testing.[32] An employer may inform employees by distributing a copy of the policy to each employee subject to testing or making the policy available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual, or posting in a place accessible to employees.[33]

The written policy on drug and alcohol testing must include, at a minimum:

- a statement of the employer's policy regarding drug and alcohol use by employees;
- a description of those employees or prospective employees who are subject to testing;
- the circumstances under which testing may be required;
- the substances as to which testing may be required;
- a description of the testing methods and collection procedures to be used, including an employee's right to a confirmatory drug test to be reviewed by a licensed physician or doctor of osteopathy after an initial positive drug test result in accordance with state law;
- the consequences of a refusal to participate in the testing;
- any adverse personnel action that may be taken based on the testing procedure or results;
- the right of an employee, at the employee's request, to obtain the written test results and the obligation of the employer to provide written test results to the employee within five working days after a written request to do so, if the written request is made within six months after the test date;
- the right of an employee, at the employee's request, to explain in a confidential setting, a positive test result; if the employee requests in writing an opportunity to explain the positive test result within 10 working days after the employee is notified of the test result, the employer must provide an opportunity, in a confidential setting, within 72 hours after receiving the employee's written notice, or before taking adverse employment action; and
- a statement of the employer's policy regarding the confidentiality of the test results.[34]

Moreover, the policy must identify which employees or positions are subject to testing.[35]

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[30] ALASKA STAT. § 23.10.620(a).

[31] ALASKA STAT. § 23.10.615.

[32] ALASKA STAT. § 23.10.620(a).

[33] ALASKA STAT. § 23.10.620(a).

[34] ALASKA STAT. § 23.10.620(b).

[35] ALASKA STAT. § 23.10.620(e).

### 1.3(f) *Additional State Guidelines on Preemployment Conduct*

Alaska law prohibits an employer from inducing a person to change work places or move to Alaska to work by means of "false or deceptive representations, false advertising, or false pretenses" concerning the kind and character of the work to be done, the amount of compensation, or the conditions of employment.[36] A worker who alleges they have suffered damages caused by false or deceptive representations has a right of action and may recover damages and reasonable attorneys' fees.[37]

# 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:<br>• 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;<br>• 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[38] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[39] if the employee purchases a qualified health plan through the exchange; and<br>• 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.[40]<br><br>The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a |

[36] ALASKA STAT. § 23.10.015.

[37] ALASKA STAT. § 23.10.030.

[38] 26 U.S.C. § 36B.

[39] 42 U.S.C. § 18071.

[40] 29 U.S.C. § 218b.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | health plan to some or all employees and a separate notice for employers that do not offer a health plan.[41] |
| **Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)** | 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 group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[42]<br><br>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.[43] |
| **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.[44] 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.[45]<br><br>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 |

[41] 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.

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

[43] 29 C.F.R. § 2590.606-1.

[44] 29 C.F.R. § 825.300(a).

[45] 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.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | must also comply with all applicable requirements under federal or state law.[46] |
| **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 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.[47] 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.[48] |
| **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.[49] |
| **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.[50] |

[46] 29 C.F.R. § 825.300(a).

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

[48] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[49] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[50] 29 C.F.R. § 531.59.

### 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.

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| **Benefits & Leave Documents** | No notice requirement located. |
| **Drug & Alcohol Testing Documents** | As mentioned in **1.3(e)(ii)**, an employer can implement drug or alcohol testing only after adopting a written policy and informing employees of the policy.[51] If the employer chooses to establish such a program, it must inform *prospective employees* about the policy and that they must undergo drug testing.[52] Further details, including the requirements for the written policy, are discussed in **1.3(e)(ii)**. |
| **Fair Employment Practices Documents** | No notice requirement located. |
| **Tax Documents** | No notice requirement located. Alaska does not have a state income tax.[53] |
| **Wage & Hour Documents** | At the time of hiring, all employers must notify employees, in writing, of:<br>• day and place of wage payment; and<br>• rate of pay, which includes all remuneration for service, including:<br>▪ basic hourly rate of pay;<br>▪ commissions;<br>▪ accrued vacation or holiday pay;<br>▪ cash value of board and lodging, if customarily furnished by the employer; and<br>▪ other similar advantages or fringe benefits received or anticipated to be received by an individual in the course of service that are a contractual condition of the employment.<br><br>Employers may give this notice by posting a notice, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as the employee comes or goes to the place of work.[54] |
| **Wage & Hour Documents** | The Alaska employee tips regulation prohibits employers from handling or taking possession of an employee's tips, except when delivering the |

[51] ALASKA STAT. § 23.10.620(a).

[52] ALASKA STAT. § 23.10.620(a).

[53] Alaska Dep't of Revenue, Tax Div., *Personal Income Tax, available at* https://tax.alaska.gov/programs/programs/index.aspx?10001.

[54] ALASKA STAT. § 23.05.160; *see also* ALASKA ADMIN. CODE tit. 8, § 25.030(3).

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | tip to the employee when a customer uses a credit card or redistributing tips to employees under a tip pooling arrangement.<br><br>Though not specific to hiring, an employer must provide written notice to all tipped employees of a tip pooling arrangement. Any change to such arrangement must be provided in writing on the payday before the payday on which the change becomes effective. A tip pooling arrangement cannot be retroactive.[55] |

## 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.[56] 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).[57]

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[55] *Tipped employee* is defined as an employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips whose primary duty is direct customer service. A *tip pooling arrangement* is an agreement under which a portion of a tipped employee's tips is collected for distribution among other tipped employees. Tip pooling arrangements include all *service employees*. *Service employee* means an employee whose primary duty is to deliver or assist in the delivery of services to a customer, and includes a host, hostess, order-taker, server, busser, dishwasher, or cook. ALASKA ADMIN. CODE tit. 8, § 15.907.

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

[57] 42 U.S.C. § 653a.

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;
- 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<br>Administration for Children and Families<br>Office of Child Support Enforcement<br>Multi-State Employer Registration<br>Box 509<br>Randallstown, MD 21133<br>Fax: (410) 277-9325 | Register online by submitting a multistate employer notification form over the internet.[58]<br><br>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 Alaska's new hire reporting law.

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

**Who Must Be Reported.** Employers must report employees who are newly hired, rehired, or those returning to work.[59]

**Report Timeframe.** If an employer submits magnetically or electronically, it must do so twice per month, but not less than 12 days nor more than 16 days apart. If an employer does not report magnetically or electronically, the federal Form W-4 or equivalent form provided by the employer must be reported not later than 20 days after the hiring or rehiring date of an employee.[60]

**Information Required.** The employer must report the employee's name, address, and Social Security number as well as the employer's name, address, and identification number assigned by the Internal Revenue Service.[61]

**Form & Submission of Report.** The Form W-4, New Hire Reporting form, or an employee's own form containing the required information are acceptable forms for the report. Reports may be submitted by fax, first-class mail, magnetic tape, or electronic transfer.[62]

**Location to Send Information.**

Child Support Services Division New Hire Reporting Section, MS-14
550 West 7th Avenue, Suite 310
Anchorage, AK 99501
(877) 269-6685
(907) 269-6089
(907) 787-3181 (fax)
(908) 787-3197 (fax)
www.childsupport.alaska.gov

**Multistate Employers.** An employer that does business in Alaska and has employees in at least one other state can report new hires to the state directory of the state where the employee works if the employer provided written notification to the U.S. Secretary of HHS.[63]

## 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 their 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.

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[59] ALASKA STAT. § 25.27.075(a).

[60] ALASKA STAT. § 25.27.075(b).

[61] ALASKA STAT. § 25.27.075(a).

[62] ALASKA STAT. § 25.27.075(a), (b).

[63] ALASKA STAT. § 25.27.075(c).

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.[64] 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**.

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

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

Alaska law contains no statutory provisions regarding noncompete agreements. While the case law on noncompete agreements in Alaska is sparse, Alaska courts caution that noncompetes are disfavored as restraints upon trade because they impose hardships on those seeking to earn a living.[65] Courts apply varying degrees of scrutiny depending on the form of the agreement.[66] For example, noncompetes ancillary to employment contracts "are scrutinized with particular care because they are often the product of unequal bargaining power."[67]

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

Restrictive covenants require an employee to promise not to do something the employee 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 *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.

The Supreme Court of Alaska has upheld an agreement signed at the beginning of employment; however, the consideration issue was not specifically raised and addressed in the decision.[68]

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[64] 18 U.S.C. §§ 1832 *et seq.*

[65] *Wenzell v. Ingram*, 228 P.3d 103, 110 (Alaska 2010).

[66] *See Wenzell*, 228 P.3d at 110; *Data Mgmt. v. Greene*, 757 P.2d 62 (Alaska 1988).

[67] 228 P.3d at 110 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 188 (1981)).

[68] *See Data Mgmt. v. Greene*, 757 P.2d 62 (Alaska 1988).

### 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.

In Alaska, if an overbroad noncompete can be reasonably altered to render it enforceable, a court must do so, unless it determines the noncompete was drafted in bad faith; the burden of showing good faith is on the employer.[69] The Alaska Supreme Court has rejected the "blue pen" approach, adopting instead a "reasonable alteration" approach.[70]

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

Alaska is one of the many states to have adopted the Uniform Trade Secrets Act. Alaska prohibits unauthorized use of trade secrets. The Alaska Uniform Trade Secrets Act defines *trade secret* as information that "derives independent economic value, actual, or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" and reasonable efforts are made to maintain its secrecy.[71] *Misappropriation* means:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it or who owed a duty to the person seeking relief to maintain its secrecy or limit its use, or was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
    c. before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[72]

The court may enjoin actual or threatened misappropriation of trade secrets. The injunction may continue for a reasonable period of time in order to eliminate the commercial advantage that would have otherwise

[69] 757 P.2d at 64-65.

[70] 757 P.2d at 64-65.

[71] ALASKA STAT. § 45.50.940(3).

[72] ALASKA STAT. § 45.50.940(2).

been derived from the misappropriation.[73] In addition to injunctive relief, a complainant may recover damages for the actual loss caused by the misappropriation.[74]

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

Alaska does not have statutory authority 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 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.[75] |
| **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.[76] |
| **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.[77] |
| **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.[78] |

[73] ALASKA STAT. § 45.50.910.

[74] ALASKA STAT. § 45.50.915.

[75] 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.

[76] 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.

[77] 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.

[78] 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.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **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.[79] |
| **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.[80] |
| **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.[81] |
| **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.[82] |
| 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.[83] The second page includes reference to government contractors. |

[79] 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.

[80] 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.

[81] 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.

[82] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[83] 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.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **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.[84] |
| **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.[85] |
| **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.[86] |
| **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.[87] |
| **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.[88] |
| **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 |

[84] 41 C.F.R. §§ 60-300.44, 60-741.44.

[85] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[86] 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.

[87] 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.

[88] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | 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.[89] |
| **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.[90] |
| **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.[91]<br><br>**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.<br><br>**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).[92] |
| **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.[93] |

[89] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[90] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[91] 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.

[92] 29 C.F.R. § 13.5.

[93] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

| Table 5. Federal Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **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.[94] |

### 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.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Child Labor: Summary of Child Labor Law** | All employers must post conspicuous notice summarizing the state restrictions on child labor.[95] |
| **Drug-Testing Policy** | Employers that implement a drug testing program must notify employees of the policy. Notice may be accomplished by a conspicuous workplace posting, but employers may also distribute a copy of the policy or include it in an employee handbook.[96] |
| **Unemployment Compensation** | All employers must post and maintain notice, in places readily accessible to employees, informing them about unemployment coverage and how to file for benefits. The notice must be posted and kept on the premises of the employer or on the premises where the employer's operations are being carried on in three conspicuous places, at the office of the employer, at the mess house or boarding house if there is one, and in some conspicuous place on the premises.[97] |

[94] 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.

[95] ALASKA STAT. § 23.10.105. This poster is available at http://labor.alaska.gov/lss/forms/child-labor-law-summary.pdf.

[96] ALASKA STAT. § 23.10.620.

[97] ALASKA STAT. § 23.20.335. This poster is available at http://labor.alaska.gov/lss/forms/1012.pdf.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Wages, Hours & Payroll: Alaska Wage and Hour Act** | All employers must post conspicuous notice informing employees about the state minimum wage and overtime laws.[98] |
| **Wages, Hours & Payroll: Wage Payment Notice** | All employers must give employees written notice about pay rate changes no later than the payday before a change occurs. Notice can be provided by conspicuously displaying the information at or near a location where it can be seen by employees as they come and go.[99] |
| **Workers' Compensation** | All employers must post and maintain notice informing employees of the employer's workers' compensation coverage and carrier. Notice must be displayed on the premises of the employer or on the premises where the employer's operations are being carried on in three conspicuous places: (1) at the office of the employer; (2) at the mess house or boarding house if there is one; and (3) in some conspicuous place on the premises.[100] |
| **Workplace Safety: No Smoking Signs** | Smoking is prohibited in places of employment.[101] Employers must conspicuously display a sign that either: (a) Reads "Smoking Prohibited by Law--Fine $50"; (b) include the international symbol for no smoking; or (c) include the words "No Puffin" with a pictorial representation of a puffin holding a burning cigarette in a red circle crossed with a red bar. Likewise, a person in charge of a building at which smoking is prohibited within a specific distance from the entrance of the building must conspicuously display a sign that reads "Smoking within (number of feet) Feet of Entrance Prohibited by Law--Fine $50" visible from the outside of each entrance to the building.[102] |
| **Workplace Safety: OSHA Emergency Information Poster** | All employers are required to post conspicuous notice with requirements for reporting fatalities and serious injuries. The notice also includes telephone numbers for ambulance service, police, fire department, and others.[103] |

[98] ALASKA STAT. § 23.10.105. This poster is available at http://www.labor.state.ak.us/lss/forms/sum-wh-act-2018.pdf.

[99] ALASKA STAT. § 23.05.160.

[100] ALASKA STAT. § 23.30.060. An employer obtains this poster from the insurance company.

[101] ALASKA STAT. § 18.35.301.

[102] ALASKA STAT. § 18.35.306. The poster is available at http://dhss.alaska.gov/dph/Chronic/Pages/Tobacco/SmokefreeWorkplace/signs.aspx.

[103] This poster is required by the Alaska Division of Labor Standards and Safety and is available at http://www.labor.state.ak.us/lss/forms/EmergInfo.pdf.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Workplace Safety: It's Your Right to Know** | All employers must display notice in a prominent place on the business's premises, informing employees of their right to a safe workplace, including the right to know about toxic substances.[104] |

### 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:*<br>• employee's name, address, and date of birth;<br>• occupation;<br>• rate of pay; and<br>• compensation earned each week.[105] | 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:*<br>• job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual;<br>• promotion, demotion, transfer, selection for training, recall, or discharge of any employee;<br>• job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;<br>• test papers completed by applicants which disclose the results of any employment test considered by the employer;<br>• results of any physical examination considered by the employer in connection with a personnel action; and<br>• any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[106] | At least 1 year from the date of the personnel action to which any records relate. |

[104] ALASKA STAT. § 18.60.068. This poster is available at http://labor.alaska.gov/lss/forms/right-to-know.pdf.

[105] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[106] 29 C.F.R. § 1627.3(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Age Discrimination in Employment (ADEA): Benefit Plan Documents** | *Employer must keep on file any:*<br>• employee benefit plans, such as pension and insurance plans; and<br>• copies of any seniority systems and merit systems in writing.[107] | For the full period the plan or system is in effect, and for at least 1 year after its termination. |
| **Title VII & the Americans with Disabilities Act (ADA): Personnel Records** | *Employers must preserve any personnel or employment record made, including:*<br>• requests for reasonable accommodation;<br>• application forms submitted by applicants;<br>• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination;<br>• rates of pay or other terms of compensation; and<br>• selection for training or apprenticeship.[108] | 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:*<br>• 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<br>• retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[109] | 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).[110] | Most recent form must be retained for 1 year. |

[107] 29 C.F.R. § 1627.3(b).

[108] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[109] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[110] 29 C.F.R. § 1602.7.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **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:*<br>• 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;<br>• the notice to the examiner identifying the person to be examined;<br>• copies of opinions, reports, or other records given to the employer by the examiner;<br>• 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<br>• 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.[111] | At least 3 years following the date on which the polygraph examination was conducted. |
| **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.[112] | 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).[113] | 3 years. |
| **Equal Pay Act: Other** | *Covered employers must maintain any additional records made in the regular course of business relating to:*<br>• payment of wages;<br>• wage rates;<br>• job evaluations; | At least 2 years. |

[111] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[112] 29 U.S.C. § 1027.

[113] 29 C.F.R. § 1620.32(a).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • job descriptions;<br>• merit and seniority systems;<br>• collective bargaining agreements; and<br>• other matters which describe any pay differentials between the sexes.[114] | |
| **Fair Labor Standards Act (FLSA): Payroll Records** | *Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth, if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins;<br>• regular hourly rate of pay for any workweek in which overtime compensation is due;<br>• basis on which wages are paid (pay interval);<br>• amount and nature of each payment excluded from the employee's regular rate;<br>• hours worked each workday and total hours worked each workweek;<br>• total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;<br>• total premium pay for overtime hours;<br>• total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments;<br>• total wages paid each pay period;<br>• date of payment and the pay period covered by the payment;<br>• 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<br>• 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 | 3 years from the last day of entry. |

[114] 29 C.F.R. § 1620.32(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | each workweek).[115] 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:*<br>• a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;<br>• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070);<br>• 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);<br>• 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<br>• hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[116] | |
| **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:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins;<br>• total wages paid each pay period;<br>• date of payment and the pay period covered by the payment; and<br>• basis on which wages are paid in sufficient detail to permit calculation for each pay period of the | 3 years from the last day of entry. |

[115] 29 C.F.R. §§ 516.2, 516.5.

[116] 29 C.F.R. § 516.28.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | employee's total remuneration for employment including fringe benefits and prerequisites.[117] | |
| **Fair Labor Standards Act (FLSA): Agreements & Other Records** | *In addition to payroll information, employers must preserve agreements and other records, including:*<br>• collective bargaining agreements and any amendments or additions;<br>• individual employment contracts or, if not in writing, written memorandum summarizing the terms;<br>• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);<br>• certain plans and trusts under FLSA section 7(e);<br>• certificates and notices listed or named in the FLSA; and<br>• sales and purchase records.[118] | At least 3 years from the last effective date. |
| **Fair Labor Standards Act (FLSA): Other Records** | *In addition to other FLSA requirements, employers must preserve supplemental records, including:*<br>• basic time and earning cards or sheets;<br>• wage rate tables;<br>• order, shipping, and billing records; and<br>• records of additions to or deductions from wages.[119] | 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:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours per pay period;<br>• additions to or deductions from wages and total compensation paid;<br>• 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);<br>• if FMLA leave is taken in increments of less than one full day, the hours of the leave; | At least 3 years. |

[117] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[118] 29 C.F.R. § 516.5.

[119] 29 C.F.R. § 516.6.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • copies of employee notices of leave furnished to the employer under the FMLA, if in writing;<br>• copies of all general and specific notices given to employees in accordance with the FMLA;<br>• any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;<br>• premium payments of employee benefits; and<br>• records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement.<br><br>*Covered employers with no eligible employees must only maintain the following records:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours worked per pay period;<br>• additions to or deductions from wages; and<br>• total compensation paid.<br><br>*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.*<br><br>*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:*<br>• FMLA eligibility is presumed for any employee employed at least 12 months; and<br>• 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. | |

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | *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 family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[120] | |
| **Federal Insurance Contributions Act (FICA)** | *Employers must keep FICA records, including:*<br>• copies of any return, schedule, or other document relating to the tax;<br>• 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:<br>▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card;<br>▪ 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;<br>▪ amount of each such remuneration payment that constitutes wages subject to tax;<br>▪ 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<br>▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; | At least 4 years after the date the tax is due or paid, whichever is later. |

[120] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • the details of each adjustment or settlement of taxes under FICA; and<br>• 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).[121] | |
| **Immigration** | Employers must retain all completed Form I-9s.[122] | 3 years after the date of hire or 1 year following 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:*<br>• 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.[123] | 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:*<br>• employee's name, address, and account number;<br>• total amount and date of each payment;<br>• the period of services covered by the payment;<br>• the amount of remuneration that constitutes wages subject to withholding;<br>• the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; | 4 years after the return is due or the tax is paid, whichever is later. |

[121] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[122] 8 C.F.R. § 274a.2.

[123] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • an explanation for any discrepancy between total remuneration and taxable income;<br>• the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and<br>• other supporting documents relating to each employee's individual tax status.[124] | |
| **Income Tax: W-4 Forms** | Employers must retain all completed Form W-4s.[125] | As long as it is in effect and at least 4 years thereafter. |
| **Unemployment Insurance** | *Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:*<br>• total amount of remuneration paid to employees during the calendar year for services performed;<br>• amount of such remuneration which constitutes wages subject to taxation;<br>• 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;<br>• information required to be shown on the tax return and the extent to which the employer is liable for the tax;<br>• an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and<br>• 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.[126] | 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:*<br>• 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 | At least 30 years. |

[124] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[125] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[126] 26 C.F.R. § 31.6001-4.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | methodologies, calculations, and other background data relevant to an interpretation of the results obtained;<br>• biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and<br>• 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.<br><br>*Exceptions to this requirement include:*<br>• 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;<br>• 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<br>• biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[127] | |
| **Workplace Safety / the Fed-OSH Act: Medical Records** | *Employers must preserve and retain "employee medical records," including:*<br>• medical and employment questionnaires or histories;<br>• results of medical examinations and laboratory tests;<br>• medical opinions, diagnoses, progress notes, and recommendations;<br>• first aid records;<br>• descriptions of treatments and prescriptions; and<br>• employee medical complaints.<br><br>*"Employee medical record" does not include:*<br>• physical specimens;<br>• records of health insurance claims maintained separately from employer's medical program; | Duration of employment plus 30 years. |

[127] 29 C.F.R. § 1910.1020(d).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • records created solely in preparation for litigation that are privileged from discovery;<br>• records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and<br>• 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.[128] | |
| **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.[129] | At least 30 years. |
| **Workplace Safety: Injuries and Illnesses** | *Employers must preserve and retain records of employee injuries and illnesses, including:*<br>• OSHA 300 Log;<br>• the privacy case list (if one exists);<br>• the Annual Summary;<br>• OSHA 301 Incident Report; and<br>• Old 200 and 101 Forms.[130] | 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:*<br>• current AAP and documentation of good faith effort; and<br>• AAP for the immediately preceding AAP year and documentation of good faith effort.[131] | Immediately preceding AAP year. |

[128] 29 C.F.R. § 1910.1020(d).

[129] 29 C.F.R. § 1910.1020(d).

[130] 29 C.F.R. §§ 1904.33, 1904.44.

[131] 41 C.F.R. § 60-1.12(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **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:*<br>• 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;<br>• other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and<br>• 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;<br>▪ 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;<br>▪ 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).<br><br>*Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:*<br>• gender, race, and ethnicity of each employee; 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."<br><br>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. |

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[132] | |
| **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:*<br>• 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<br>• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[133] | Until final disposition of the complaint, compliance review or action. |
| **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:*<br>• name, address, and Social Security number;<br>• occupation(s) or classification(s);<br>• rate or rates of wages paid;<br>• number of daily and weekly hours worked;<br>• any deductions made; and<br>• total wages paid.<br><br>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.[134] | 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:*<br>• employee's name, address, and Social Security number;<br>• employee's occupation(s) or classification(s);<br>• rate(s) of wages paid (including all pay and benefits provided);<br>• number of daily and weekly hours worked;<br>• any deductions made; | During the course of the covered contract as well as after the end of the contract. |

[132] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[133] 41 C.F.R. §§ 60-1.12, 60-741.80.

[134] 29 C.F.R. § 23.260.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • total wages paid (including all pay and benefits provided) each pay period;<br>• a copy of notifications to employees of the amount of accrued paid sick leave;<br>• 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;<br>• 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 designated in records as paid sick leave pursuant to the EO);<br>• a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests;<br>• 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;<br>• any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;<br>• the relevant covered contract;<br>• the regular pay and benefits provided to an employee for each use of paid sick leave; and<br>• any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[135] | |
| **Davis-Bacon Act** | *Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents);<br>• daily and weekly number of hours worked; and<br>• deductions made and actual wages paid. | At least 3 years after the work. |

[135] 29 C.F.R. § 13.25.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:*<br>• registration of the apprenticeship programs;<br>• certification of trainee programs;<br>• the registration of the apprentices and trainees;<br>• the ratios and wage rates prescribed in the program; and<br>• worker or employee employed in conjunction with the project.[136] | |
| **Service Contract Act** | *Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• rates of wage;<br>• fringe benefits;<br>• total daily and weekly compensation;<br>• the number of daily and weekly hours worked;<br>• any deductions, rebates, or refunds from daily or weekly compensation;<br>• list of wages and benefits for employees not included in the wage determination for the contract;<br>• any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and<br>• a copy of the contract.[137] | 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:*<br>• wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week;<br>• the period in which each employee was engaged on a government contract and the contract number;<br>• name, address, sex, and occupation;<br>• date of birth of each employee under 19 years of age; and | At least 3 years from the last date of entry. |

[136] 29 C.F.R. § 5.5.

[137] 29 C.F.R. § 4.6.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • a certificate of age for employees under 19 years of age.[138] | |

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

Table 8 summarizes the state record-keeping requirements.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Fair Employment Practices** | All employers must maintain records of race, age, and sex of applicants and employees.[139] | 2 years. |
| **Fair Employment Practices: Complaints of Discrimination** | *If the employer is being investigated, it must maintain all records relevant to the complaint including:*<br>• application forms;<br>• records of race, age, and sex of applicants;<br>• position descriptions;<br>• classification studies;<br>• payroll data;<br>• personnel files (including application forms and records pertaining to hiring, promotion, demotion, transfer, layoff or termination, compensation, and selection for training or apprenticeship);<br>• any other records relevant to the employment status of employees and applicants made in the ordinary course of business; and<br>• records of persons or classes in similar or related circumstances as the person or class who filed a complaint with the Alaska State Commission for Human Rights.[140] | Until final disposition of the complaint. |
| **Unemployment Compensation** | *All employers must maintain the following records for each employee:*<br>• beginning and ending date of each pay period;<br>• total wages paid each pay period;<br>• name and Social Security number of each employee; | 5 years. |

[138] 41 C.F.R. § 50-201.501.

[139] ALASKA STAT. § 18.80.220; ALASKA ADMIN CODE tit. 6, § 30.810.

[140] ALASKA ADMIN. CODE tit. 6, §§ 30.810, 30.840.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • wage rate, method of wage computation, and hours of work;<br>• wages paid for each employee each period (showing separately money wages, cash value of other remuneration, and special payments);<br>• dates of hire and return to work after layoff; and<br>• date and cause of each termination and suspension.<br><br>All accounting, cash, payroll, and tax records of the employer must be available for inspection by the state labor department.[141] | |
| **Wages, Hours & Payroll** | *All employers must maintain the following records for each employee:*<br>• name, address, and occupation;<br>• rate of pay;<br>• daily and weekly hours worked;<br>• wages paid each pay period; and<br>• any other payroll information required to be maintained under the FLSA for three years.[142] | 3 years. |
| **Workers' Compensation** | Employers must keep records of employee injuries, containing information on the disease, other disability, or death that occurred.[143] | None specified. |
| **Workers' Compensation: Self-Insured Employers** | Self-insuring employers must maintain all records necessary to complete and verify the accuracy of all reports and documents submitted to the board.[144] | 3 years. |
| **Workplace Safety: General** | All employers must maintain records necessary to comply with state and federal OSHA regulations.[145] | See federal requirements. |
| **Workplace Safety: Hazardous Communications** | *In addition to the requirements of the Federal Hazard Communication Standard (29 C.F.R. § 1910.1200), employers in Alaska must maintain physical agent data sheets for each physical agent present in the workplace, with the following information:* | None specified. |

[141] ALASKA STAT. § 23.20.105; ALASKA ADMIN. CODE tit. 8, § 85.020.

[142] ALASKA STAT. §§ 23.05.080, 23.10.100; ALASKA ADMIN. CODE tit. 8, § 15.900.

[143] ALASKA STAT. § 23.30.065.

[144] ALASKA ADMIN. CODE tit. 8, § 46.120.

[145] ALASKA STAT. § 18.60.030(7).

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • the name of the physical agent;<br>• description of the physical agent;<br>• health hazards of the physical agent, including signs and symptoms of exposure, and medical conditions that may be aggravated by exposure;<br>• permissible exposure limit;<br>• whether the agent is a carcinogen or potential carcinogen;<br>• any generally applicable precautions or safety procedures;<br>• any generally applicable control measures, work practices, or personal protective equipment;<br>• appropriate emergency or first aid procedures related to exposure to the physical agent;<br>• the date of preparation of the physical agent data sheet, or the date of the last change to the sheet; and<br>• name, address, and telephone number of the person in charge of preparing and distributing the sheet.[146] | |

### 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*

In Alaska, an employer must allow an employee or former employee to inspect and make copies of their personnel file and other personnel information maintained by the employer. An employer may establish reasonable rules for viewing the files during regular business hours, and may charge reasonable costs for any copies requested.[147]

*Personnel file and other personnel information* means all papers, documents, and reports pertaining to a particular employee that are used by the employer to determine the employee's eligibility for employment, promotion, compensation, transfer, termination, or other adverse personnel action, including:

- applications;
- notices of commendation, warning, or discipline;
- authorization for withholding or deductions from pay;

[146] ALASKA ADMIN. CODE tit. 8, § 61.1110.

[147] ALASKA STAT. § 23.10.430.

- records of hours worked and leave records;
- formal and informal employee evaluations;
- reports relating to the employee's character, credit, work habits, compensation, and benefits;
- medical records; and
- letters of reference or recommendations from third parties, including former employers.

Medical records should be maintained separately from other personnel records.[148]

Personnel information subject to inspection does not include:

- information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy;
- information relating to an ongoing investigation of a violation of a criminal or civil statute by an employee; or
- an employer's ongoing investigation of employee misconduct.[149]

## 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**.

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

As noted in **1.3**, Alaska 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. However, Alaska prohibits the use of a polygraph or other lie-detecting device test for applicants and employees.

### 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*

For information on drug and alcohol testing for applicants and employees under Alaska law, including requirements for a drug testing policy, see **1.3(e)(ii)**.

[148] ALASKA ADMIN. CODE tit. 8, § 15.910(d).

[149] ALASKA ADMIN. CODE tit. 8, § 15.910(d).

### 3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[150]

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

Alaska law permits medical and recreational marijuana use.

**Medical Marijuana.** The medical marijuana laws do not require any accommodation of any medical use of marijuana in any place of employment.[151]

**Recreational Marijuana.** An employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace. The law does not affect employers' ability to have policies restricting employee marijuana use. An employer that occupies, owns, or controls private property can prohibit or otherwise regulate marijuana possession, consumption, use, display, transfer, distribution, sale, transportation, or growing on or in that property.[152]

### 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 their 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.[153]

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

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[150] 21 U.S.C. §§ 811-12, 841 *et seq*.

[151] ALASKA STAT. § 17.37.040.

[152] ALASKA STAT. § 17.38.220.

[153] 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.

 

- proceeds received under an identity theft insurance policy.[154]

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

When a covered entity becomes aware of a security breach, notice is required. However, a covered entity is not required to disclose a breach of the security system if, after a reasonable investigation and after written notification to the Alaska Attorney General, the covered entity determines that there is not a reasonable likelihood that harm to the consumers has resulted or will result. The determination must be documented in writing and be maintained for five years. Such documentation is considered a public record and is open to public inspection.[155]

**Covered Entities & Information.** Any person that owns or licenses unencrypted data that includes personal information is covered. Waivers under this statute are void. Under the Alaska statute, *personal information* means information in any form on an individual that is not encrypted or redacted, or is encrypted and the encryption key has been accessed or acquired and consists of a combination of an individual's name and one of the following:

- Social Security number;
- driver's license number or state identification card number;
- account, credit, or debit card number;
- personal security code; or
- password, identification number, or other access codes for financial accounts.[156]

**Content & Form of Notice.** Notice may be in one of the following formats:

- written notice to the most recent address of the state resident;
- electronic notice if the covered entity's primary method of communication with the individual is by electronic means or is consistent with the federal e-sign act.; or
- substitute notice if the covered entity demonstrates that: (1) the cost of providing notice would exceed $150,000; (2) the affected class of subject individuals to be notified exceeds 300,000 persons; or (3) the covered entity does not have sufficient contact information to provide notice.[157]

Substitute notice consists of:

- electronic mail notice if the covered entity has electronic mail addresses for the individuals subject to the notice;
- conspicuous posting of the notice on the website of the covered entity if it maintains one; and

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

[155] ALASKA STAT. § 45.48.010.

[156] ALASKA STAT. § 45.48.090(7).

[157] ALASKA STAT. § 45.48.030.

 

- notification to major statewide media.[158]

**Timing of Notice.** Notice must be given in the most expedient manner possible and without unreasonable delay. Notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation. However, once the covered entity is notified in writing that disclosure of the breach will no longer interfere with the investigation, notice must be made; or
- a covered entity needs time to determine the nature and scope of the breach.[159]

## 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.[160] 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.[161]

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.[162]

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.[163]

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158 ALASKA STAT. § 45.48.030.

159 ALASKA STAT. § 45.48.020.

160 29 U.S.C. § 218(a).

161 29 U.S.C. § 206.

162 29 U.S.C. §§ 203, 206.

163 29 U.S.C. § 3(m)(2)(B).

### 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.[164] 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*

### 3.3(b)(i) *State Minimum Wage*

The minimum wage in Alaska is $11.73 per hour for most nonexempt employees. Alaska's minimum wage statute provides that the state minimum wage rate must be at least $1.00 more than the federal minimum wage. The minimum wage is annually adjusted for inflation on January 1.[165]

### 3.3(b)(ii) *Tipped Employees*

Alaska does not permit an employer to take a tip credit against payment of the minimum wage.[166]

### 3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

Alaska's minimum wage provisions do not apply to the following subminimum wage employees:

- an individual whose earning capacity is impaired by physical or mental deficiency, age, or injury, at the wages and subject to the restrictions and for the period of time that are fixed by the state labor commissioner;
- an apprentice at the wages that are approved by the labor commissioner; or
- a learner at the wages and subject to the restrictions and for the periods of time that are fixed by the labor commissioner.[167]

However, while the statute permits the state commissioner to allow for such subminimum wages, the Department of Labor and Workforce Development repealed the accompanying regulation and therefore eliminated the ability to pay subminimum wages to individuals whose earning capacity is impaired by physical or mental deficiency, age, or injury.[168]

### 3.3(c) *State Guidelines on Overtime Obligations*

**Overtime.** Employers employing four or more employees must pay employees one-and-one-half times their regular rate for all hours worked over eight in a day or 40 in a week. An employee's regular rate is the basis for computing overtime, regardless of whether paid on a piece-rate, commission, salary, or any other basis. However, voluntary flexible work plans may be authorized by the state labor department.[169]

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[164] 29 U.S.C. § 207.

[165] ALASKA STAT. § 23.10.065.

[166] ALASKA STAT. § 23.10.065.

[167] ALASKA STAT. § 23.10.070.

[168] ALASKA ADMIN. CODE tit. 8, § 15.120 (repealed 2018).

[169] ALASKA STAT. § 23.10.060; ALASKA ADMIN. CODE tit. 8, § 15.100.

**Salaried Employees.** In Alaska, an employee paid on a salary basis alone does not excuse an employer from overtime pay requirements. The following applies to employees who are paid on a salary basis but are not exempt from overtime requirements:

- An employment contract for salaried employees in nonexempt types of work must be in writing and specify the number of straight and overtime hours an employee is expected to work each day. The contract must also specify straight and overtime rates for each workday and week.
- If the contract fails to enumerate the daily and weekly hours for which the salary is intended to compensate, or if the actual hours worked deviate from the hours specified in the contract without a corresponding adjustment in hourly pay, then the salary will be considered to be compensation for an eight-hour workday/40-hour workweek and overtime will be computed on that basis.[170]

**Employees Paid at a Daily Rate.** The following applies to employees who are not exempt from overtime and are paid at a daily rate:

- The employee must be compensated for overtime according to a written employment contract. The contract must state the applicable straight time and overtime rates if the daily rate is compensation for a set number of hours in a day.
- If the employee works overtime hours not covered by the daily rate identified in the employment contract, an employer must pay the overtime rate for hours worked in excess of the hours established in the contract, as well as all hours worked on days after 40 straight time hours in a week.
- An employer must maintain hourly rates by reducing the employee's pay for those days that the employee worked less than the hours specified in the contract. If the wages are not reduced, then the daily rate is considered to compensate an employee for a variable number of hours worked and overtime must be computed as follows:
  - each week, an employer must calculate the straight time rate of pay by dividing the total amount paid at the daily rate by the total number of hours worked in the week; and
  - an employer must pay one-half of the straight time rate for each overtime hour worked in the week to bring the employee's wages up to one-and-one-half times the regular rate for hours worked over eight hours in a day and 40 hours in a week. This calculation must be performed separately each week.[171]

### 3.3(d) *State Guidelines on Overtime Exemptions*

Before turning to some of the overtime exemptions in Alaska, it is important to reiterate that federal wage and hour laws do not preempt state laws[172] and that the law most beneficial to the employee will apply. Therefore, even if an employee meets one of the exemptions discussed below under state law, if the

[170] ALASKA ADMIN. CODE tit. 8, § 15.100.

[171] ALASKA ADMIN. CODE tit. 8, § 15.100.

[172] 29 U.S.C. § 218(a).

 

employee does not meet the requirements of the federal exemption (or vice versa), including the salary thresholds, then the employee will not qualify as exempt.[173]

### 3.3(d)(i) *Executive, Administrative & Professional Exemptions*

Under Alaska law, an employee is covered by the executive, administrative, or professional exemption if the employee is paid on a salary or fee basis no less than twice the state minimum wage for the first 40 hours of work in a week, excluding employer-furnished board or lodging. Aside from the salary basis requirement, Alaska follows the FLSA for determining whether the executive, administrative, or professional exemption applies.[174]

### 3.3(d)(ii) *Computer Professional Exemption*

The state's overtime provisions do not apply to an individual employed as a "computer system analyst, computer programmer, software engineer, or other similarly skilled worker," which has the same meaning as in, and is interpreted according to, the FLSA.[175]

### 3.3(d)(iii) *Commissioned Sales Exemption*

The overtime provisions do not apply to an individual employed in the capacity of a "salesman who is employed on a straight commission basis," which is defined as an employee:

- who is customarily and regularly employed on the business premises of the employer;
- who is compensated on a straight commission basis for the purpose of making sales or contracts for sales, consignments, shipments, or obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and
- whose primary duty is making sales or contracts for sales, consignments, shipments, or obtaining orders for service or the use of facilities for which a consideration will be paid by the client or customer.[176]

A *straight commission* means a fixed percentage of each dollar of sales an employee makes.[177]

### 3.3(d)(iv) *Outside Sales Exemption*

Alaska's overtime provisions do not apply to an individual employed in the capacity of an *outside salesman*, which is defined as an employee:

- who is customarily and regularly away from the employer's place of business; and

[173] Until 2021, state courts in Alaska required employers to prove that overtime exemptions applied using the standard of beyond a reasonable doubt. In *Buntin v. Schlumberger Tech. Corp*., 487 P.3d 595 (Alaska 2021), however, the state high court reversed the precedent and now employers must prove that exemptions apply by a preponderance of the evidence, bringing the state standard in line with federal law.

[174] ALASKA STAT. § 23.10.055.

[175] ALASKA STAT. § 23.10.055.

[176] ALASKA STAT. § 23.10.055; ALASKA ADMIN. CODE tit. 8, § 15.910.

[177] ALASKA STAT. § 23.10.055; ALASKA ADMIN. CODE tit. 8, § 15.910.

- whose primary duty is making sales or contracts for sales, consignments, or shipments, or obtaining orders for services or for use of facilities for which consideration will be paid by the client or customer.[178]

## 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.[179] 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.[180]

#### 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.[181] 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.[182] 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, which may be used by an employee to express breast milk.[183] Exemptions apply for smaller employers and air carriers.[184]

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[178] ALASKA STAT. § 23.10.055.

[179] 29 C.F.R. § 785.19.

[180] 29 C.F.R. § 785.18.

[181] 29 U.S.C. § 218d.

[182] 29 U.S.C. § 218d(b)(2).

[183] 29 U.S.C. § 218d(a).

[184] 29 U.S.C. § 218d(c), (d).

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.[185] Lactation is considered a related medical condition.[186] 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.[187] 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 Alaska. However, the state labor department determines what constitutes "hours worked" based on federal regulations, which include those addressing the compensability of meal and/or rest periods. Accordingly, employers should consult the federal requirements as discussed in **3.4(a)(i)**.[188]

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

Alaska requires a 30-minute break period for minor employees under age 18 who are scheduled to work six or more consecutive hours. The break must occur after the first hour-and-a-half of work, and before the beginning of the last hour of work.[189] Moreover, a minor employee under age 18 who works five consecutive hours without a break is permitted to take a 30-minute rest period before continuing work. The break requirements may be modified by a collective bargaining agreement covering employees under age 18, or by mutual agreement between the employer and employee.[190]

### 3.4(b)(iii) *State Enforcement, Remedies & Penalties*

Failure to provide unpaid break periods as required for minor employees renders the employer liable for minimum wage for any break that the employee did not receive or received late.[191] A claim for minimum wage in lieu of the unpaid break is enforceable under the state's minimum wage claim procedure as discussed in **3.7(b)(x)**.[192]

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185 42 U.S.C. § 2000gg–1.

186 29 C.F.R. § 1636.3.

187 29 C.F.R. § 1636.3.

188 ALASKA STAT. § 23.10.095; ALASKA ADMIN. CODE tit. 8, § 15.105; *see also* Alaska Dep't of Labor, *Employment Practices and Working Conditions Wage and Hour Administration Pamphlet 100*, *available at* http://labor.state.ak.us/lss/forms/pam100.pdf (Feb. 2015) (noting federal regulations, including those concerning meal and rest periods, that have been adopted by reference).

189 ALASKA STAT. § 23.10.350.

190 ALASKA STAT. § 23.10.350.

191 ALASKA STAT. § 23.10.350.

192 ALASKA STAT. § 23.10.350.

### 3.4(b)(iv) *Lactation Accommodation Under State Law*

In Alaska, an individual can breast feed in any location where the individual is authorized to be.[193] Although the law does not mention employers, it can be construed to include places of employment.[194]

## 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]

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*

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Alaska law addresses the compensability of on-call time and travel time.

**On-Call Time.** Employees are entitled to on-call pay if an employer requires them to remain on-call on the employer's premises or other place of employment, or so close to either that the time cannot be used effectively for their own purposes. However, employees are not entitled to on-call pay if an employer does not require employees to remain on or near the employer's premises or other place of employment, but instead must merely leave word with the employer where they may be reached by cell phone, beeper, or other means. Any time employees must actually respond to a call is compensable.[197]

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[193] ALASKA STAT. §§ 01.10.060, 29.25.080.

[194] *See* ALASKA STAT. §§ 01.10.060, 29.25.080.

[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 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] ALASKA ADMIN. CODE tit. 8, § 15.910; *Air Logistics of Alaska, Inc. v. Throop*, 181 P.3d 1084 (Alaska 2008) (key inquiry is to what extent employees can use their time for their own purpose; second factor is the employment agreement); Alaska Dep't of Labor and Workforce Dev., *Frequently Asked Questions About Wage and Hour*, *available at* http://labor.state.ak.us/lss/forms/employee_faq.pdf.

**Travel Time.** Alaska has adopted the federal regulations for determining whether travel time is compensable.[198]

## 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.[199] 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.[200] 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*

Alaska restricts the hours and types of jobs minors may perform. The general purpose of these statutes is to ensure that minors are not employed in an occupation or manner detrimental to their health, safety, or well-being.

### 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 work:*<br>• in an occupation that is dangerous to life or limb or injurious to minors' health;<br>• in hazardous excavation;<br>• underground in mines;<br>• as hoisting engineers in mines; and<br>• on the premises of a business offering adult entertainment.<br><br>*Further restrictions are in place in the following industries, subject to exceptions:*<br>• plants or establishments manufacturing, selling, or storing fireworks, explosives, ammunition, or articles containing explosive components;<br>• motor vehicle driver and outside helper; |

[198] ALASKA STAT. § 23.10.095; ALASKA ADMIN. CODE tit. 8, § 15.105.

[199] 29 C.F.R. §§ 570.36, 570.50.

[200] 29 C.F.R. § 570.6.

| Table 9. State Restrictions on Type of Employment by Age | |
|---|---|
| | • mining;<br>• logging;<br>• operation of a sawmill, lath mill, shingle mill, or cooperage-stock mill;<br>• operation of power-driven woodworking machines;<br>• occupations involving exposure to radioactive substances and to ionizing radiations;<br>• occupations in hospitals, clinics, dental, orthodontic, or other medical or dental offices that involve exposure to bloodborne pathogens;<br>• operation of power-driven hoisting apparatus;<br>• operator of or helper on certain power-driven metal forming, punching, and shearing machines, including setting-up, adjusting, repairing, oiling, or cleaning these machines;<br>• occupations in or about slaughtering and meat packing establishments, rendering plants, or wholesale, retail, or service establishments;<br>• operation of power-driven bakery machines;<br>• operating or assisting to operate certain power-driven paper-products machines, including setting-up, adjusting, repairing, oiling, or cleaning these machines;<br>• the manufacture of clay construction products and of silica refractory products;<br>• operation of circular saws, band saws, and guillotine shears;<br>• wrecking, demolition, and shipbreaking operations;<br>• roofing operations;<br>• excavation operations;<br>• installation, operation, or maintenance of electrical equipment energized at voltages exceeding220, the outside erection and repair of any electrical wires including telegraph and telephone lines, and meter testing; and<br>• canvassing, peddling, solicitation of door-to-door contributions, or acting as an "outside salesman."[201] |
| **Age 17** | *Minors age 17 can drive automobiles or trucks on public roadways in the course of their employment only if:*<br>• driving is during daylight hours;<br>• the minor holds a state drivers' license and has no traffic violations at the time of hire or during employment (does not include equipment violations);<br>• the minor has successfully completed a state-approved driver education course;<br>• the vehicle has seat belts for the driver and passengers and the minor has been instructed that seat belts must be used by the driver and passengers when driving;<br>• the vehicle does not exceed 6,000 pounds of gross vehicle weight; |

[201] ALASKA STAT. § 23.10.350; ALASKA ADMIN. CODE tit. 8, §§ 05.050 to 05.230.

| Table 9. State Restrictions on Type of Employment by Age | |
|---|---|
| | • driving does not involve towing vehicles, route deliveries, or route sales, the transportation for hire of property (including goods), passengers, or urgent, time-sensitive deliveries;<br>• driving does not involve more than two trips away from the primary place of employment per day for the purpose of delivering property (including goods) of the employer to a customer that are not urgent time-sensitive deliveries, or for the purpose of transporting passengers (if transportation is not for hire);<br>• driving does not involve transporting more than three passengers (including employees of the employer);<br>• driving does not involve going beyond a 30-mile radius from the place of employment; or<br>• driving is only occasional and incidental to employment.<br><br>Additionally, minors cannot drive automobiles or trucks on public roadways in or about any mine, open pit, or quarry, a place where logging or sawmill operations are located, or excavation.[202] |
| **Ages 14 & 15** | *Minors age 14 and 15 cannot work in:*<br>• manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or workplaces where goods are manufactured, mined, or otherwise processed;<br>• occupations that involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;<br>• the operation of motor vehicles or serve as helpers on such vehicles;<br>• public messenger service;<br>• occupations in or about canneries or other seafood processing plants or establishments involving cutting, slicing, or butchering;<br>• work involved in the operation of any floating plant, which includes the loading and unloading of boats, barges, or scows;<br>• work performed in or about boiler or engine rooms or retorts;<br>• work in connection with maintenance or repair of establishments, machines, or equipment;<br>• outside window washing that involves working from windowsills, and all work requiring the use of ladders or scaffolds or their substitutes;<br>• occupations that involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers;<br>• work in freezers and meat coolers, and all work preparing meats for sale;<br>• loading and unloading goods to or from trucks, railroad cars, or conveyors;<br>• all occupations in warehouses (except office and clerical work);<br>• occupations involving the use of sharpened tools; or |

[202] ALASKA ADMIN. CODE tit. 8, § 05.060.

| Table 9. State Restrictions on Type of Employment by Age | |
|---|---|
| | • except for office or sales work in connection with these occupations (which is permitted), occupations in connection with:<br>▪ transportation of persons or property by rail, highway, air, water, pipeline, or other means;<br>▪ warehousing and storage;<br>▪ communications and public utilities; or<br>▪ construction (including demolition and repair).[203] |
| **Age 14 & Older** | *Minors age 14 and older may perform the following work:*<br>• office and clerical work, including the operation of office machines;<br>• cashiering, selling, modeling, artwork, work in advertising departments, window trimming, and comparative shopping;<br>• price marking and tagging by hand or by machine, assembling orders, packing, and shelving;<br>• bagging and carrying out customer orders;<br>• errand and delivery work by foot, bicycle, and public transportation;<br>• clean-up work, including the use of vacuum cleaners and floor waxers, and grounds maintenance including the use of power-driven monofilament cutters (does not include the use of power-driven mowers or power-driven cutters with metal blades);<br>• cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods; or<br>• work in connection with cars and trucks if confined to the following: dispensing gasoline and oil, courtesy service, car cleaning, washing and polishing, and other permitted occupation, but not including work involving:<br>▪ the use of a pit, rack, or power-operated lifting apparatus;<br>▪ operating a pneumatic tire machine;<br>▪ inflating any tire mounted on a rim equipped with a removable retaining ring; or<br>▪ dispensing propane.[204] |
| **Under Age 14** | In Alaska, minors under age 14 cannot be employed in an occupation outside school hours except in domestic employment, baby-sitting, handiwork in and about private homes, newspaper delivery or sales, or warehouse work in canneries casing cans under competent supervision.[205] |

**Restrictions on Selling or Serving Alcohol.** In Alaska, individuals under age 21 cannot sell or serve alcohol or work on a licensed premise (*e.g.*, a bar). An individual aged18, 19, or 20 can be employed within the licensed premises of a hotel, restaurant or eating place, but cannot sell, serve, deliver, or dispense alcohol.

[203] ALASKA ADMIN. CODE tit. 8, § 05.010.

[204] ALASKA ADMIN. CODE tit. 8, § 05.020.

[205] ALASKA STAT. § 23.10.335.

Minors age 16 or 17 may work at licensed premises if:

- their employment does not involve serving, mixing, delivering, or dispensing alcohol;
- their parent or guardian provides written consent; or
- the state labor department provides an exemption from the general prohibition.[206]

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

**Under Age 18.** In Alaska, minors under age 18 cannot be employed more than six days per week.[207]

**Under Age 16.** In Alaska, minors under age 16 cannot be employed:

- more than a combined total of nine hours per day (includes hours at school and work);
- between 9:00 P.M. and 5:00 A.M.; and
- more than 23 hours per week (outside school hours), with limited exceptions.[208]

**Under Age 14.** In Alaska, minors under age 14 cannot be employed outside school hours, with limited exceptions.[209]

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

Alaska's child labor law restrictions do not prohibit employment of a minor under the direct supervision of a parent in a business owned and operated by the parent.[210]

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

In Alaska, minors between ages 14 and 17 must have the state labor department's written authorization to work, unless the department has issued regulations or orders relating to the particular job or field. However, written authorization is not required for emancipated minors.

Additionally, written authorization is not required to perform specific listed jobs duties if the employer has in advance obtained the department's approval for a minor to perform that job and the employer files the written consent from the minor's parent or guardian. However, an employer may not change any of the listed duties without the department's prior approval.

Work training during school hours is permitted if the employer has on file an unrevoked written statement from the minor's school coordinator or representative setting out the periods during which the minor may work and certifying that employment will be confined to those periods and will not interfere with the minor's health and well-being. The writing must also contain a statement signed by the principal of the minor's school stating that the employment will not interfere with the minor's schooling.[211]

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[206] ALASKA STAT. §§ 4.16.049, 23.10.355.

[207] ALASKA STAT. § 23.10.350.

[208] ALASKA STAT. § 23.10.340.

[209] ALASKA STAT. § 23.10.335.

[210] ALASKA STAT. § 23.10.330.

[211] ALASKA STAT. § 23.10.332; ALASKA ADMIN. CODE tit. 8, §§ 05.030, 05.040, and 05.045.

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

The Alaska Department of Labor and Workforce Development enforces the state's child labor laws. A person who violates these laws is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $500, or by imprisonment for not more than 90 days, or both.[212] A person who employs a minor on the premises of a business that offers adult entertainment is guilty of a Class A misdemeanor for the first offense and a Class C felony for the second and each subsequent offense.[213]

## 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.

### 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).[214]

**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.[215]

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.[216]

**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.[217] The "prepaid rule" regulation defines

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[212] ALASKA STAT. § 23.10.370.

[213] ALASKA STAT. § 23.10.370.

[214] 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").

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

[216] 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.

[217] 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 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.[218]

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 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.[219] 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.[220]

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.[221]

### 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

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*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/.

[218] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[219] 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.

[220] 12 C.F.R. § 1005.18.

[221] *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.

 

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.[222]

### 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.

### 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.[223] 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.[224] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[225] tools and equipment,[226] and business transportation and travel.[227] 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.[228]

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[222] 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.

[223] *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).

[224] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[225] 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.

[226] 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).

[227] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[228] 29 C.F.R. § 778.217.

### 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;[229]
- 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);[230]
- 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);[231]
- 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;[232]
- 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;[233] 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.[234]

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

[229] 29 C.F.R. § 531.38.

[230] 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*.

[231] 29 C.F.R. § 531.40.

[232] 29 C.F.R. § 531.40.

[233] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[234] 29 C.F.R. § 825.213.

 

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.[235]

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.[236] 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 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.[237]

**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.[238]

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.[239]

**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.[240]

### 3.7(b) *State Guidelines on Wage Payment*

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

**Authorized Instruments.** Wages may be paid by cash, negotiable check, draft, order or—with an employee's consent—via direct deposit in a bank, savings and loan or credit union of the employee's

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

[236] 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.

[237] 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.

[238] 29 C.F.R. § 531.36.

[239] 29 C.F.R. § 531.37.

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

 

choice. The negotiable instrument must be payable to the employee in full and without delay when presented to a bank or depository within Alaska.[241]

**Direct Deposit.** Mandatory direct deposit is not permitted in Alaska.[242] However, an employee may voluntarily authorize an employer to make payment by deposit in a bank, savings and loan or credit union of the employee's choice.[243]

**Payroll Debit Card.** Alaska law does not expressly address wage payment via payroll debit cards.

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

An employer and employee may agree to monthly pay periods in an annual initial contract of employment. Otherwise, an employer must establish monthly or semi-monthly pay periods at the employee's election.[244]

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

In Alaska, the timing of an employee's final wage payment depends on the reason for leaving employment. At the conclusion of employment, all wages, salaries, or other compensation for labor or services become due immediately and must be paid within the time limits set forth below at the place where the employee is usually paid or at a location agreed upon by the employer and employee.[245]

If the employer terminates the individual's employment, regardless of the cause for the termination, payment is due within three working days after the termination.[246] Employers must pay an employee who voluntarily quits by the next regular payday that is at least three working days after the employer received notice of the employee's resignation.[247] Employees who go on strike, are temporarily laid off or are subject to a lockout must be paid on or before the next regular payday.[248]

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

Employers in Alaska must provide employees a statement of earnings and deductions for each pay period. The written statement must contain the following information:

- rate of pay;
- gross wages;
- net wages;

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241 ALASKA STAT. §§ 23.10.040, 23.10.043.

242 The state labor department has informally advised that direct deposit cannot be a condition of employment. *See* Email Response, Joe Dunham, Statewide Supervising Investigator, Wage and Hour Administration, Alaska Dep't of Labor and Workforce Dev. (June 9, 2014).

243 ALASKA STAT. § 23.10.043.

244 ALASKA STAT. § 23.05.140.

245 ALASKA STAT. § 23.05.140.

246 ALASKA STAT. § 23.05.140.

247 ALASKA STAT. § 23.05.140.

248 ALASKA STAT. §§ 23.05.140, 23.05.170.

- the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- federal income tax deductions;
- federal Insurance Contribution Act deductions;
- Alaska Employment Security Act contributions;
- board and lodging costs;
- advances;
- straight time and overtime hours actually worked; and
- other authorized deductions.[249]

An employer may provide wage statements electronically.[250]

### 3.7(b)(v) *Wage Transparency*

Alaska 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*

Employers must give employees written notice about payday and place of payment changes no later than the payday before a change occurs. Notice can be provided by conspicuously displaying the information at or near a location where it can be seen by employees as they come and go.[251]

Similarly, employers must give employees written notice about pay rate changes no later than the payday before a change occurs. Notice can be provided by conspicuously displaying the information at or near a location where it can be seen by employees as they come and go.[252] The Alaska Department of Labor and Workforce Development provides this example to employees: "if your normal payday (the day you are paid your wages) is on the 20th of the month, your employer could give you written notice of a change in your rate of pay any day up to and including the 20th. All work done by you after the 20th would be at the new rate."[253]

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

In Alaska, there is no general obligation to indemnify an employee for business expenses. However, state law contains specific provisions addressing reimbursement for transportation, uniforms, and tools and equipment.

**Transportation.** An employer that furnishes, finances, agrees to furnish or finance, or in any way provides transportation for a person from the place of hire to a point inside or outside the state to employ the person must provide the person with return transportation to the place of hire from which transportation

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[249] ALASKA ADMIN. CODE tit. 8, § 15.160.

[250] ALASKA ADMIN. CODE tit. 8, § 15.160.

[251] ALASKA STAT. § 23.05.160.

[252] ALASKA STAT. § 23.05.160.

[253] Alaska Dep't of Labor and Workforce Dev., *Employees' Frequently Asked Questions* (rev. Jan. 2017), *available at* http://labor.state.ak.us/lss/forms/employee_faq.pdf.

was furnished or financed, or to a destination agreed upon by the parties, with transportation to be furnished or financed:

- on or after employment terminates for good cause, beyond the control of the person, or on or after the termination of the contract of employment or a renewal of the contract; and
- upon the employee's request within 45 days after employment terminates.

When employment terminates, subsistence of the employee may not continue longer than 10 days after the termination or until transportation is available, whichever occurs first.[254]

According to the Department of Labor and Workforce Development, an employer is not required to pay for an employee's return transportation if the employee was terminated for fighting, intoxication, lying on a job application, or having unexcused absences from duties for more than three consecutive scheduled workdays. If an employee voluntarily quits, the employer is not required to pay for the employee's return transportation unless the employee quit because the employer misrepresented wages, lodging, or working conditions, or for health or safety reasons.[255]

**Uniforms, Tools & Equipment.** An employer cannot require an employee to purchase a uniform, tools, or equipment if:

- the items are required by the federal, state, or local safety or health codes; or
- the nature of the employer's business requires the use of the items, and
  - the items are distinctive and advertise or are associated with the employers' products or services (however, clothing that constitutes a uniform may advertise the products or services if the employer customarily sells it to the public); or
  - the items cannot be worn or used during the employee's normal social activities.[256]

An employer can deduct a security deposit from an employee's wages to ensure the return of employer-issued uniforms, tools, or equipment clean and in a state of good repair, if:

- the deduction is based on a written agreement;
- the total deposit does not exceed the cost of the item; and
- the deduction does not reduce the employee's wage below the minimum wage, or reduce the employee's overtime compensation below one-and-one-half times the contractual rate of pay.[257]

[254] ALASKA STAT. § 23.10.380.

[255] Alaska Dep't of Labor and Workforce Dev., *Employees' Frequently Asked Questions* (rev. Jan. 2017).

[256] ALASKA ADMIN. CODE tit. 8, § 15.165.

[257] ALASKA ADMIN. CODE tit. 8, § 15.160.

 

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

**Permissible Deductions.** An employer and employee can enter into a written agreement to provide for deductions of an employee's monetary obligations.[258] State law permits an employer to take deductions for the following purposes, if the employee agrees in writing to:

- sums paid for the employee's benefit to a creditor, donee, or other third party. However, the employer, or any person acting in the employer's behalf or interest, cannot derive any profit or benefit from the transaction;[259]
- amounts loaned to the employee by the employer, if the deduction does not reduce the employee's gross pay below minimum wage or cut into the employee's overtime pay, and the employee does not sign a "blanket" authorization at the time of hire to cover future deductions.[260]

An employer may also deduct from wages, based on a written agreement signed by the employee, to reimburse the employer for the reasonable cost of furnishing board and lodging, if:

- board and lodging facilities of the employer are "customarily" furnished (per federal law), by the employer and voluntarily used by the employees;
- cost to the employee for using board and lodging facilities is reasonable and the employer makes no profit; and
- the employer provides prior written notice to the employee with a basic description of the board or lodging, the amount to be deducted, a statement that the employee's acceptance of board or lodging deduction is voluntary, and has the employee's signature and written acceptance.

Unless the employer and the employee have executed a written agreement, before the deduction, the employer cannot retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.[261]

The state labor department will determine the reasonable cost of board and lodging, in accordance with federal law. A deduction of $15 per day or less for board and lodging will not require a special determination, unless evidence indicates that the charge is unreasonable for the facilities provided or the employer makes a profit.[262]

**Prohibited Deductions.** A written agreement for deductions payable to the employer or a person acting on the employer's behalf or interest is invalid if it reduces an employee's wage rate below minimum wage or overtime rate, or if it requires an employee to reimburse the employer for any of the following:

- customer checks returned due to insufficient funds or any other reason;

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[258] ALASKA ADMIN. CODE tit. 8, § 15.160.

[259] ALASKA ADMIN. CODE tit. 8, § 15.160.

[260] Alaska Dep't of Labor & Workforce Dev., *Employees' Frequently Asked Questions* (rev. Jan. 2017), *available at* http://www.labor.state.ak.us/lss/forms/employee_faq.pdf.

[261] ALASKA ADMIN. CODE tit. 8, § 15.160.

[262] ALASKA ADMIN. CODE tit. 8, § 15.160.

- nonpayment for goods or services as a result of theft or credit default;
- cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;
- lost, missing, or stolen property, unless the employee admits willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or
- damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.[263]

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

**Orders of Support.** An Alaska employer is required to comply with a court-issued order of wage assignment for child or spousal support.[264] The order is binding upon an employer upon service of a copy of the order and until further order of the court.[265] For each payment made pursuant to the order, the employer is permitted to deduct an administrative fee of $1 from other wages or salary owed to the employee.[266] A wage assignment made under a court order of support takes priority over other wage assignments or garnishments unless otherwise ordered by the court.[267]

An employer may not terminate an employee's employment because the employee is subject to an order of support.[268]

**Garnishment for Debt.** An Alaska employer must also comply with a wage garnishment order, sometimes referred to as a continuing lien on wages, issued by a court against a debtor-employee. As under federal law, Alaska law provides that a certain portion of a debtor-employee's income is exempt from garnishment. The employee is entitled to an exemption of their weekly net earnings up to $350.[269] If the employee's earnings are the sole support for the employee's household, up to $550 of his/her weekly net earnings are exempt.[270]

An employee's weekly net earnings are calculated by subtracting from the employee's weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an employee paid on a monthly basis are determined by subtracting from the monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an employee paid semi-monthly are calculated by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.[271]

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[263] ALASKA ADMIN. CODE tit. 8, § 15.160.

[264] ALASKA STAT. § 25.27.070(a).

[265] ALASKA STAT. § 25.27.070(b).

[266] ALASKA STAT. § 25.27.070(b).

[267] ALASKA STAT. § 25.27.070(c).

[268] ALASKA STAT. § 25.27.070(d).

[269] ALASKA STAT. § 9.38.030(a).

[270] ALASKA STAT. § 9.38.050(b).

[271] ALASKA STAT. § 9.38.030(a).

A writ of garnishment or continuing lien on wages remains in effect until the debt is satisfied, but may terminate sooner if the employee's employment terminates or if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.[272]

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

The Alaska Department of Labor and Workforce Development enforces the state's wage and hour laws. An employer that violates Alaska's minimum wage and overtime laws may be held liable for any unpaid wages and, unless the employer demonstrates good faith with clear and convincing evidence, an additional equal amount as liquidated damages.[273] A prevailing employee may also recover attorneys' fees and costs.[274]

An employee may file suit for damages individually and on behalf of other similarly situated employees. The employee may also assign their wage claim to the state labor commissioner.[275] An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages must be commenced within two years of the alleged violation.[276]

An employer is prohibited from discharging or in any other manner discriminating against an employee because the employee has filed a complaint, commenced any proceeding for violations of the wage and hour laws, or has testified or is about to testify in such a proceeding.[277]

Violations of the wage and hour laws are also punishable by a fine of up to $2,000, or by imprisonment for up to 90 days, or both. Each day a violation occurs constitutes a separate offense.[278]

## 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).[279] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[280] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state

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[272] ALASKA STAT. § 9.38.035.

[273] ALASKA STAT. § 23.10.110.

[274] ALASKA STAT. § 23.10.110.

[275] ALASKA STAT. § 23.10.110.

[276] ALASKA STAT. § 23.10.130.

[277] ALASKA STAT. § 23.10.135.

[278] ALASKA STAT. § 23.10.140.

[279] 29 U.S.C. § 1002.

[280] 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.

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.[281]

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

**Generally.** In Alaska, an employee's rate of pay includes accrued vacation or holiday pay and other similar advantages or fringe benefits received or anticipated to be received by an individual in the course of service that are a contractual condition of the employment.[282] Nonetheless, there is no requirement under Alaska law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, or personal time off. If an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to 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 accrued vacation or personal time off is considered to be part an employee's rate of pay and a vested right, it is unlikely that an employer's vacation policy can include a "use-it-or-lose it" provision or a forfeiture clause.[283] In *Pyramid Printing Co. v. Alaska State Commission for Human Rights*, the Supreme Court of Alaska, in describing vacation pay characteristics, cited with approval other courts' statements that an employee earns vacation pay not as a gratuity or a gift, but as additional wages for services performed, and that the consideration for vacation with pay is the employee's year-long labor.[284] Likewise, according to the state labor department, an employee is entitled to vacation pay or sick leave only if the employer has promised that the employee will receive these payments:

> Sick leave [and] vacation pay … are benefits provided to an employee, allowing them to be paid while not working. Therefore, an employer only has to pay these benefits if the employer has a policy to pay such benefits, or has made a promise or has a contract with [its employees] to pay these benefits. The Department enforces an employer's own rules for these kinds of payments.[285]

**Notice Requirements.** At the time of hiring, employers must provide written notice to employees of, among other items, accrued vacation or holiday pay and other similar advantages or fringe benefits received or anticipated to be received by an individual in the course of service that are a contractual condition of the employment. Employers may give this notice by posting a statement of the facts, and keeping it posted conspicuously at or near the place of work where the statement can be seen by each employee as they come or go to the place of work. Also, employers must notify employees, in writing, of changes concerning these items on the payday before the change occurs.[286]

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[281] 490 U.S. 107, 119 (1989).

[282] ALASKA ADMIN. CODE tit. 8, § 25.030.

[283] *Pyramid Printing Co. v. Alaska State Comm'n for Human Rights*, 153 P.3d 994 (Alaska 2007).

[284] 153 P.3d 994 at 1000 (citations omitted).

[285] Alaska Dep't of Labor & Workforce Dev., *Employees' Frequently Asked Questions* (rev. Jan. 2017), *available at* http://labor.state.ak.us/lss/forms/employee_faq.pdf.

[286] ALASKA STAT. § 23.05.160; ALASKA ADMIN. CODE tit. 8, § 25.030 (definition of *rate of pay*).

### 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*

Alaska 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 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.[287] 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).[288] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[289] 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*

Alaska does not solemnize or recognize civil unions. Domestic partnership benefits are available for state employees and for public employees of the City and Borough of Juneau. Other than the provisions applicable to public employees, state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee benefit plans.

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[287] 29 U.S.C. § 1144.

[288] 29 U.S.C. § 1161.

[289] 29 U.S.C. § 1167(3).

## 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;[290]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[291]
- to take medical leave when the employee is unable to work because of a serious health condition;[292]
- 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.[293] 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.[294] 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*

Alaska 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

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[290] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[291] 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).

[292] 29 C.F.R. §§ 825.112, 825.113.

[293] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[294] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[295] 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*

Alaska law does not address paid sick leave for private-sector employees.

## 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.[296] 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 individuals 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 employee 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 her own serious health condition, such as severe morning sickness.[297] 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

[295] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[296] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[297] 29 C.F.R. § 825.202.

impairment.[298] 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*

Alaska does not specifically require employers to offer pregnancy disability leave. As noted in **3.11(c)(ii)**, however, there are specific discrimination protections for pregnant 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 employee's 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*

Alaska law does not address adoptive parents leave for private-sector employees.

### 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*

Alaska 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*

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

[298] 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.

### 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 Alaska, employees who are qualified voters who do not have "sufficient time outside working hours" to vote at a state election must be provided "as much working time as will enable voting." Employees have *sufficient time outside working hours* to vote if they have two consecutive hours to vote between when the polls open and their shift starts, or two consecutive hours between when their shift ends and the polls close. Unless employees have sufficient time outside working hours, time off to vote must be paid.[299]

### 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*

There is no statutory requirement for private-sector employers in Alaska.

### 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.[300] 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.[301] 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*

**Leave to Serve on a Jury.** An employer may not discharge, threaten, coerce, or penalize an employee because the employee responds to a jury service subpoena, attends court for prospective jury service, or

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[299] ALASKA STAT. § 15.15.100.

[300] 28 U.S.C. § 1875.

[301] *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).

serves as a juror. An employer is not required to compensate an employee for time spent on jury service or in court for prospective jury service.[302]

### 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*

In Alaska, an eligible employee may take time off from work to respond to a subpoena or a request by a prosecuting attorney to attend a court proceeding for the purpose of giving testimony. The time off must be given without penalty. A penalty is any action affecting the employment status, wages, and benefits payable to the victim, including:

- demotion or suspension;
- dismissal from employment; and
- loss of pay or benefits, except pay and benefits that are directly attributable to the victim's absence from employment to attend the court proceeding.[303]

**Eligibility.** An employee is eligible for time off if:

- the employee is the victim of the crime at issue;
- the victim is a minor, incompetent or incapacitated, and the employee is:
  - living in a spousal relationship with the victim; or
  - the victim's parent, adult child, guardian, or custodian; or
  - the victim is deceased, and the employee (who has not been accused of committing the crime):
    - was living in a spousal relationship with the deceased victim prior to their death; or
    - is the deceased victim's parent, adult child, sibling, grandparent or grandchild, or has been legally designated as an interested person.

An employee who is the perpetrator of the crime is not eligible for time off.[304]

**Compensation.** There is no requirement that the employee be compensated for absences taken pursuant to the statute. Specifically excluded from the definition of a prohibited penalty are pay and benefits directly attributable to the victim's absence from work to attend court proceedings.[305]

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[302] ALASKA STAT. § 09.20.037.

[303] ALASKA STAT. § 12.61.017.

[304] ALASKA STAT. §§ 12.55.185, 12.61.900, and 12.61.017.

[305] ALASKA STAT. § 12.61.017.

## 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 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.[306]

**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.[307] 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.[308] 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.

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[306] 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)).

[307] 29 C.F.R. § 825.126(a).

[308] 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).

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 Leave.** Employers may not discriminate in employment against members of the state National Guard, naval militia, or a member of the National Guard of another state.[309] Further, employees who are members of the organized state militia are entitled to a leave of absence to perform active state service when ordered by the governor.[310]

Upon release from state service, or discharged from hospitalization that arose from active service, employees are entitled to reinstatement to their previous position or a position of like pay, seniority, and benefit level the employee would have had if the employee had not taken leave, provided they report for work at the beginning of the first workday following return from duty or hospitalization. If an employee fails to return to work, the employer may impose whatever discipline is provided by the employer's rules of conduct for unexcused absences from work.[311]

Employees who are no longer qualified to perform the duties of their previous position because of a service-related permanent disability are entitled to a comparable position, including pay and benefits, provided they request reemployment within 30 days of being released to full-time work by their treating physician.[312]

An employee is not entitled to return to the employee's former position, or a comparable position, at the pay, seniority, and benefit level the employee would have had if:

- the employer's circumstances have changed, making employment impossible or unreasonable; or
- employment would impose an undue hardship on the employer.[313]

The Alaska Department of Labor and Workforce Development enforces this statute. An employee may file a complaint no sooner than 30 days after giving notice to the department. The action must be brought within two years.[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.

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

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

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[309] ALASKA STAT. § 26.05.340.

[310] ALASKA STAT. § 26.05.075(a).

[311] ALASKA STAT. § 26.05.075(b).

[312] ALASKA STAT. § 26.05.075(c).

[313] ALASKA STAT. § 26.05.075(h).

[314] ALASKA STAT. § 26.05.075(e).

## 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.[315] Employers are also required to comply with all applicable occupational safety and health standards.[316] 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.[317] 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*

Alaska, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[318] Thus, Alaska is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. The Alaska Occupational Safety and Health Act ("AKOSH Act") was enacted to reduce the incidence of work-related accidents and health hazards.[319] The AKOSH Act requires employers to do "everything necessary to protect the life, health, and safety of employees," including the following:

- comply with the all occupational safety and health standards adopted by the Department of Labor and Workforce Development;
- furnish and prescribe the use of suitable protective equipment, safety devices, and safeguards as are required for the work and workspace;
- adopt and prescribe control or technological procedures, and monitor and measure employee exposure in connection with hazards, as may be necessary for the protection of employees; and

[315] 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.

[316] 29 U.S.C. § 654(a)(2).

[317] 29 U.S.C. § 667(c)(2).

[318] 29 U.S.C. § 667.

[319] ALASKA STAT. § 18.60.010.

- furnish to each employee employment and a place of employment that are free from recognized hazards that, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to the employees.[320]

If employees are or may be exposed to a toxic or hazardous substance or physical agent in the workplace, employers must post notifications that comply with the AKOSH Act.[321] Employers must also conduct safety education programs for employees beginning a new work assignment that may result in exposure to a toxic or hazardous substance or a physical agent.[322]

The AKOSH Act also requires employers to report to the nearest office of the division of labor standards and safety any fatal accident, or any accident that results in an employee's in-patient hospitalization, loss of an eye, or amputation.[323] In the event of an employment accident that results in a fatality or in the in-patient hospitalization of two or more employees, the equipment, material, or product related to the injury may not be moved until clearance is given. If the equipment, material, or product needs to be moved, the employer must submit a detailed investigative report of the accident.[324]

A representative of the Department of Labor and Workforce Development may enter the work place unannounced during regular working hours, with "reasonable limits in a reasonable manner," and inspect and investigate all relevant conditions, structures, machines, devices, equipment, and materials, and question the employer or employee.[325] In conducting their inspections and investigations, the department may issue subpoenas requiring the attendance of witnesses and the production of paper and records.[326] Any employee who is required to appear at a board hearing or judicial proceeding, either by request or subpoena of the employer or the OSHA Review Board, must be compensated for their time.[327]

At the employee's request, an employer must provide a copy of the OSHA form or equivalent written information for the toxic or hazardous substance or physical agent to which the employee may be exposed. If the copy or information is not provided within fifteen calendar days of the request, the employer must insure that employees are not exposed to the substance to which the information pertains until the requested copy or information is provided.[328]

An employee who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists may also request an inspection by giving notice to the Department of Labor and Workforce Development.[329]

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[320] ALASKA STAT. § 18.60.075.

[321] ALASKA STAT. § 18.60.068.

[322] ALASKA STAT. § 18.60.066.

[323] ALASKA STAT. § 18.60.058.

[324] ALASKA STAT. § 18.60.058.

[325] ALASKA STAT. § 18.60.083.

[326] ALASKA STAT. § 18.60.083.

[327] ALASKA STAT. § 18.60.098.

[328] ALASKA STAT. § 18.60.067.

[329] ALASKA STAT. § 18.60.088.

**Antiretaliation Provisions.** An employee who has filed a complaint, caused a proceeding to be initiated, testified, or otherwise exercised a right to which they are afforded under the AKOSH Act may not be discharged or discriminated against.[330]

### 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.

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

In Alaska, it is a criminal offense to text while driving. The crime of "driving while texting" is defined as "communicating on a computer, or while a screen device is operating if the person is driving a motor vehicle" and:

1. the vehicle has a television, video monitor, portable computer, or any other similar means capable of providing a visual display that is in full view of a driver in a normal driving position while the vehicle is in motion, and the monitor or visual display is operating while the person is driving; or
2. the person is reading or typing a text message or other nonvoice message or communication on a cellular telephone, personal data assistant, computer, or any other similar means capable of providing a visual display that is in the view of the driver in a normal driving position while the vehicle is in motion and while the person is driving.[331]

Additionally, a driver may not install or alter such equipment that would allow the images to be viewed by the driver in a normal driving position while the vehicle is in motion.[332]

These strict prohibitions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, state law.

Prohibited uses exclude equipment that is displaying navigational or global positioning or maps. Portable cellular telephones or personal data assistants being used for voice communication or displaying caller identification information also do not violate the statute.[333]

### 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.** In Alaska, employers may prohibit the possession of firearms within a *secured restricted access area*, meaning the area beyond a secure point where visitors are screened and does not

[330] ALASKA STAT. § 18.60.089.

[331] ALASKA STAT. § 28.35.161.

[332] ALASKA STAT. § 28.35.161(b).

[333] ALASKA STAT. § 28.35.161.

 

include common areas of ingress and egress open to the general public.[334] Employers must post a conspicuous notice prohibiting firearms at each entrance to the restricted area.[335]

**Firearms in Company Parking Lots.** Employers may not adopt a policy that prohibits an individual from storing a locked firearm in a legally parked vehicle; except that, employers may prohibit firearms in a locked vehicle within 300 feet of or in a "secured restricted access area" that does not include common areas of ingress and egress open to the public. Employers may also prohibit possession of firearms in vehicles, owned, leased, or rented by the employer.

Employers are not liable for injury or damage resulting from the storage of a firearm in an individual's vehicle.[336]

### 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*

Alaska law prohibits smoking in many public places, including workplaces. Smoking is prohibited in a place of employment. Smoking is also prohibited outdoors at a place of employment that has declared the entire campus or outside grounds or property to be smoke-free, and within 20 feet of an entrance, open window, or heating or ventilation system air intake vent at an enclosed area at a place where smoking is prohibited or within 10 feet of an entrance to a bar or restaurant that serves alcoholic beverages.[337] The prohibition against smoking in a place of employment includes a vehicle. Unless the owner or operator prohibits it, however, an employee may smoke in a vehicle that is a place of employment when the vehicle is used exclusively by one person.[338]

*Place of employment* means work areas, private offices, hotel and motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, vehicles, and other employee work areas that are under the control of an employer. *Smoking* means using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.[339]

An employer may not permit an employee, customer, or other person to smoke inside an enclosed area at a place of employment. The owner, operator, manager, or other person who manages a building or other place where smoking is prohibited may not provide ashtrays or other smoking accessories for use in that building or place.[340]

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[334] ALASKA STAT. § 18.65.800(d).

[335] ALASKA STAT. § 18.65.800(d).

[336] ALASKA STAT. § 18.65.800.

[337] ALASKA STAT. § 18.35.301.

[338] ALASKA STAT. § 18.35.301.

[339] ALASKA STAT. § 18.35.399.

[340] ALASKA STAT. § 18.35.311.

An employer may provide an outdoor stand-alone shelter for smokers. The employer may not require an employee, customer, or other person to enter a stand-alone shelter for a purpose other than smoking. A stand-alone shelter cannot be used to sell food or drinks and must not be within 20 feet of an entrance, open window, or heating or ventilation system air intake vent at an enclosed area at a place where smoking is prohibited or within 10 feet of an entrance to a bar or restaurant that serves alcoholic beverages.[341]

The statute includes an antiretaliation provision. An employer may not discharge or in any other manner retaliate against an employee because the employee cooperates with or initiates enforcement of a requirement under the statute.[342]

An employer in charge of a place or vehicle where smoking is prohibited must conspicuously display in the place or vehicle a sign that:

- reads "Smoking Prohibited by Law--Fine $50";
- includes the international symbol for no smoking; or
- includes the words "No Puffin" with a pictorial representation of a puffin holding a burning cigarette enclosed in a red circle crossed with a red bar.[343]

A person in charge of a building at which smoking is prohibited within a specific distance from the entrance of the building must conspicuously display a sign that reads "Smoking within (number of feet) Feet of Entrance Prohibited by Law--Fine $50" visible from the outside of each entrance to the building.[344]

Violation of the requirement to enforce a nonsmoking workplace carries a fine of up to $300. Violation of the antiretaliation provision carries a fine of up to $500.[345]

### 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*

Alaska 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

[341] ALASKA STAT. §§ 18.35.301, 18.35.311.

[342] ALASKA STAT. § 18.35.326.

[343] ALASKA STAT. § 18.35.306.

[344] ALASKA STAT. § 18.35.306.

[345] ALASKA STAT. § 18.35.340.

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*

Alaska 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");[346] (2) the Americans with Disabilities Act (ADA);[347] (3) the Age Discrimination in Employment Act (ADEA);[348] (4) the Equal Pay Act;[349] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[350] (6) the Civil Rights Acts of 1866 and 1871;[351] 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;
- 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);[352]
- 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.[353] Employees must first exhaust their administrative remedies by filing a

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[346] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[347] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[348] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[349] 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.

[350] 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)).

[351] 42 U.S.C. §§ 1981, 1983.

[352] 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.

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

 

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.[354]

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

The Alaska Human Rights Law prohibits discrimination, retaliation, or harassment on the basis of:

- race;
- religion;
- color;
- national origin;
- age;[355]
- sex;
- physical or mental disability (includes being treated as);
- marital status or changes in marital status;
- pregnancy;
- parenthood;[356]
- National Guard or Naval Militia status;[357] or
- DNA sample / analysis (DNA or genetic typing and testing).[358]

Employers with one or more employees in Alaska are covered. Exceptions include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit.[359]

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

An employee alleging a violation of the Alaska Human Rights Law may file an administrative complaint with the Alaska State Commission for Human Rights within 180 days of the alleged violation or may elect to file suit in court.[360]

### 3.11(a)(iv) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Anchorage or Juneau are subject to local fair employment practices ordinances.

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[354] 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.

[355] Note, however, that the opportunity to obtain employment without discrimination because of age is not a civil right. ALASKA STAT. § 18.80.210.

[356] ALASKA STAT. §§ 18.80.200, 18.80.210, 18.80.220, and 18.80.300.

[357] ALASKA STAT. § 26.05.340.

[358] ALASKA STAT. §§ 18.13.010 *et seq*.

[359] ALASKA STAT. § 18.80.300.

[360] *See* ALASKA STAT. § 18.80.100; *see also* http://humanrights.alaska.gov/.

- **Anchorage.** Public or private employers that employ one or more persons must extend antidiscrimination protections on the basis of: race; color; sex (including pregnancy and parenthood); sexual orientation; gender identity; religion; national origin; marital status; age (not intended to conflict with any laws relating to the rights and activities of minors); and physical or mental disability.[361] An individual alleging a violation of the ordinance may file a written complaint with the Anchorage Equal Rights Commission within 180 days from the date of the alleged discriminatory act or practice.[362]
- **Juneau.** Protected classifications include: race; color; age; religion; sex; familial status (including marital status, change in marital status, pregnancy, or parenthood); disability; sexual orientation; gender identity; gender expression; and national origin.[363] The antidiscrimination protections apply to any person who employs four or more persons exclusive of that person's parents, spouses, or children.[364] There is no city-level enforcement agency that handles antidiscrimination claims; an aggrieved party may petition a court to enjoin or remedy an alleged violation.[365]

### 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 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."[366] The prohibition 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.[367]

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

The Alaska Human Rights Law prohibits discrimination in compensation on the basis of a protected classification. It also prohibits discrimination in wage payment on the basis of gender or employing a

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[361] ANCHORAGE, ALASKA, CODE OF ORDINANCES §§ 5.20.010, 5.20.040, and 5.20.090 (religious exemptions).

[362] ANCHORAGE, ALASKA, CODE OF ORDINANCES § 5.40.010.

[363] JUNEAU, ALASKA, CODE OF ORDINANCES §§ 41.05.010, 41.05.025 (lawful practices).

[364] JUNEAU, ALASKA, CODE OF ORDINANCES § 41.05.045.

[365] JUNEAU, ALASKA, CODE OF ORDINANCES § 41.05.040.

[366] 29 U.S.C. § 206(d)(1).

[367] 42 U.S.C. § 2000e-5.

 

female in an occupation at a salary or wage rate less than that provided to a male employee for work of comparable character or work in the same operation, business, or type of work in the same locality.[368]

Since the equal pay protections are housed in the Alaska Human Rights Law, an employee alleging a violation may file an administrative complaint within 180 days of the alleged violation or may elect to file suit in court.[369]

### 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.[370]

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;

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[368] ALASKA STAT. § 18.80.220.

[369] ALASKA STAT. § 18.80.100.

[370] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

 

- 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).[371]

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

An employee seeking a reasonable accommodation must request an accommodation.[372] 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.[373] 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."[374]

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.[375]

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

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[371] 29 C.F.R. § 1636.3.

[372] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[373] 29 C.F.R. § 1636.3.

[374] 29 C.F.R. § 1636.4.

[375] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

 

- 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
- allowing an employee to take breaks to eat and drink, as needed.[376]

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*

Alaska law does not specifically address pregnancy accommodations for private-sector employees. Under the Alaska Human Rights Law, however, employers are prohibited from discriminating against employees on the basis of pregnancy with respect to the terms and conditions of employment if the reasonable demands of the position do not require that a distinction be made based on pregnancy.[377]

## 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.[378] Multiple decisions of the U.S. Supreme Court[379] 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.[380] 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**.

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[376] 29 C.F.R. § 1636.3.

[377] ALASKA STAT. § 18.80.220.

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

[379] *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).

[380] 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.

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

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

## 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 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*

There is no general whistleblower law addressing protections for private-sector whistleblowers in Alaska.

### 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)[381] and the Railway Labor Act (RLA)[382] 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.

[381] 29 U.S.C. §§ 151 to 169.

[382] 45 U.S.C. §§ 151 *et seq*.

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

Alaska has not passed any right-to-work laws or other notable laws pertaining to private-sector unions or union activities.

# 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).[383] 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.[384] 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*

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

#### 4.1(c) *State Mass Layoff Notification Requirements*

Alaska does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

## 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.[385] The notice must be provided not later than the earlier of: |

[383] 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.

[384] 20 C.F.R. §§ 639.4, 639.6.

[385] 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.

| Table 10. Federal Documents to Provide at End of Employment | |
|---|---|
| **Category** | **Notes** |
| | • 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<br>• 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.[386] |

### 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. Alaska does not have an insurance coverage continuation statute. |
| **Unemployment Notice** | **Generally.** Each employer must provide each separated employee written information about unemployment insurance benefits. It must be provided as soon as practicable, but no later than seven days after the employee's separation. The information must include instructions on how to file a claim for unemployment benefits and the division contact information for filing the claim. The employer must deliver the information either in person, by mail to the employee's last known address, or by email, if correspondence in that form was previously authorized.[387]<br><br>Additionally, an employer must provide employees a statement showing deductions made from the employee's wages for employee contributions. The employer must provide the statement within 30 days after the end of the calendar year for which the deductions were made, or within 30 days after the termination of the employee's service, whichever is earlier. The statement must contain: |

[386] 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.

[387] ALASKA ADMIN. CODE tit. 8, §§ 85.060, 85.440.

| Table 11. State Documents to Provide at End of Employment | |
|---|---|
| | • employer's name, address, and identification number, exactly as they appear on the employer's contribution report;<br>• employee's name and Social Security number;<br>• gross wages paid to the employee during the year; and<br>• amount of employee contributions deducted.[388]<br><br>In addition, Alaska employers generally must post and maintain notice, in places readily accessible to employees, informing them about unemployment coverage and how to file for benefits.[389] Accordingly, it is recommended that an employer provide a copy of the unemployment notice when employment ends.<br><br>**Multistate Worker.** Alaska does not require that employees be notified as to the jurisdiction under whose unemployment compensation law services have been covered. It is recommended, however, that an employer provide notice of the jurisdiction where services will be covered for unemployment purposes. Additionally, employers should follow that state's general notice requirement, if applicable.[390] |

## 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*

Under Alaska law, an employer that discloses information about the job performance of a current or former employee to a prospective employer or former employee, is presumed to be acting in good faith and may not be held liable for the disclosure or its consequences. The presumption of good faith may be rebutted upon a showing that the employer: (1) recklessly, knowingly, or with a malicious purpose disclosed false or deliberately information; or (2) disclosed information in violation of a civil right of the employee.[391]

[388] ALASKA ADMIN. CODE tit. 8, § 85.030(h).

[389] ALASKA STAT. § 23.20.335; ALASKA ADMIN. CODE tit. 8, § 85.060. This poster is available at http://labor.alaska.gov/lss/forms/1012.pdf.

[390] *See* ALASKA STAT. §§ 23.20.85, 23.20.090; ALASKA ADMIN. CODE tit. 8, §§ 85.100 to 85.110.

[391] ALASKA STAT. § 09.65.160.