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STATE

Littler on

Florida 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 Florida 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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1.1(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 Florida, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

To reduce instances of misclassification of employees as independent contractors, Florida 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 Florida Department of Revenue, General Tax Administration 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	Florida Commission on Human Relations	Per the Florida Division of Administrative Hearings, the state applies the economic realities test, which relies on precedent from Title VII of the federal Civil Rights Act of 1964 and considers the following: 1. the kind of occupation, with reference to whether the work is usually done under the direction of a supervisor or by a specialist without supervision; 2. the skill required in the particular occupation; 3. the source of the tools and equipment; 4. the location of the work;

[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 is available on the Wage and Hour Division website, *Misclassification of Employees as Independent Contractors*, *available at* https://www.dol.gov/whd/workers/misclassification/.

[6] The Memorandum of Understanding with the Florida Department of Revenue is available at https://www.dol.gov/whd/workers/MOU/fl.pdf.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		5. the method of payment; 6. the manner in which the work relationship is terminated; 7. the provision of employee benefits; 8. whether the work is an integral part of the business of the "employer;" 9. the tax treatment of the hired party; and 10. the intention of the parties.[7] However, there are no cases in which a Florida court has articulated a test for determining independent contractor status under the antidiscrimination law, and there are no relevant definitions provided in the statute.
Income Taxes	Florida Department of Revenue	Florida does not have a personal income tax.[8] However, with respect to local business taxes, Florida has adopted by statute the same independent contractor test that is contained in the state workers' compensation law, which is discussed below.[9]
Unemployment Insurance	Florida Department of Revenue	Statutory test, defining employee to include "[a]n individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee."[10] The following factors are primarily considered in determining independent contractor status: 1. the extent of control which, by agreement, the business may exercise over the details of the work;

[7] *4139 Mgmt., Inc. v. Department of Labor & Emp't*, 763 So. 2d 514, 517 (Fla. Dist. Ct. App. 2000); *see also Assily v. Memorial Hosp. of Tampa*, 2004 Fla. Div. Adm. Hear. LEXIS 2482, at *10 (2004) (citing *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 323-24 (1992)); *Myers v. Central Fla. Investors, Inc*., 2003 Fla. Div. Adm. Hear. LEXIS 294, at **22-23 (2003) (citing *Cobb v. Sun Papers, Inc*., 673 F.2d 337 (11th Cir. 1982) (applying a similar, 11-factor economic realities test, which also considers the length of time during which an individual has worked)).

[8] *See* Florida Dep't of Revenue, *Tax Information for New Residents* (rev. Sept. 2015), *available at* http://floridarevenue.com/dor/forms/current/gt800025.pdf.

[9] FLA. STAT. §§ 205.022, 205.066.

[10] FLA. STAT. § 443.1216(1)(a)(1).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		2. whether the one employed is engaged in a distinct occupation or business; 3. whether the work done in a certain locality is usually done under the direction of the employer or by a specialist without supervision; 4. the skill required in a particular occupation; 5. whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing work; 6. the length of time the person is employed; 7. the method of payment, whether by the time or by the job; 8. whether the work is a part of the regular business of the employer; 9. whether the parties believe they are creating the relationship of employer and employee; and 10. whether the hiring party is or is not in business.[11]
Wage & Hour Laws	Not applicable	Florida enacted a minimum wage statute and an overtime statute in 2005, but they were found unconstitutionally vague and unenforceable.[12] Therefore, there are no applicable wage and hour laws in the state.
Workers' Compensation	Florida Division of Workers' Compensation	Statutory, two-part alternative test. A person is considered an independent contractor if the person meets at least four of the following criteria: 1. maintains a separate business with their own work facility, truck, equipment, materials, or similar accommodations;

[11] These factors are listed on the Florida Department of Revenue's website, which also advises employers that Florida's common-law criteria are similar to, but independent of, the Internal Revenue Service's twenty-factor test for determining independent contractor status. Florida Dep't of Revenue, *Classification of Workers for Reemployment Tax – Employees vs. Independent Contractors*, *available at* https://floridarevenue.com/taxes/taxesfees/Pages/rt_employee.aspx; *see also University Dental Health Ctr., Inc. v. Agency for Workforce Innovation*, 89 So. 3d 1139, 1140-41 (Fla. Dist. Ct. App. 2012) (applying the ten-factor test from the RESTATEMENT OF THE LAW, AGENCY (SECOND) § 220).

[12] *See Posely v. Eckerd Corp.*, 433 F. Supp. 2d 1287 (S.D. Fla. 2006).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		2. holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations; 3. receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual; 4. holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation; 5. performs work or is able to perform work for any entity in addition to or besides the employer at their own election without the necessity of completing an employment application or process; or 6. receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.[13] If the person does not meet four of the six criteria above, an individual may still be presumed to be an independent contractor based on a consideration of the nature of the individual situation in relation to the following tests: 1. the independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work; 2. the independent contractor incurs the principal expenses related to the service or work that the individual performs or agrees to perform; 3. the independent contractor is responsible for the satisfactory completion of the work or

[13] FLA. STAT. § 440.02(d)(1)(a).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		services that the individual performs or agrees to perform; 4. the independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis; 5. the independent contractor may realize a profit or suffer a loss in connection with performing work or services; 6. the independent contractor has continuing or recurring business liabilities or obligations; and 7. the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.[14] Under both of these tests, the individual claiming to be an independent contractor has the burden of proof.[15] Florida workers' compensation law does not allow for persons in the construction industry to be classified as "independent contractors." The person must be classified as either an employee or a business owner.[16]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Florida does not have an approved state plan under the federal Occupational Safety and Health Act.

[14] FLA. STAT. § 440.02(d)(1)(b).

[15] FLA. STAT. § 440.02(d)(1)(c). Other exceptions to the statutory definition of "employee," besides independent contractors, are set forth in the statute.

[16] FLA. STAT. §§ 440.02(c), 440.02(d)(1)(a); Florida Dep't of Fin. Servs., Div. of Workers' Comp., *Frequently Asked Questions*, *available at* http://www.myfloridacfo.com/Division/WC/Employer/faq.htm#.WIZjaE0zV9A (see question on whether it is legal to call workers "independent contractors" to avoid having to have workers' compensation insurance for them).

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 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 simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[17]

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.[18] 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.[19]

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

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

1.2(b)(i) *Private Employers*

Florida employers are prohibited from knowingly hiring, employing, recruiting, or referring for employment aliens who are not authorized to work by immigration laws or the Attorney General of the

[17] 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**.

[18] *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).

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

United States.[20] Florida does not currently, however, require private employers to use an electronic verification system, including E-Verify, to verify the employment eligibility of new hires. Private employers must verify a person's employment eligibility by either using the federal E-Verify system or requiring the person to provide the same documentation that is required by the U.S. Citizenship and Immigration Services on its Employment Eligibility Verification (I-9) form. Effective July 1, 2023, all employers must verify each new employee's employment eligibility within three business days after the first day the new employee begins working. Moreover, all private employers with 25 or more employees are required to use the E-Verify system to verify a new employee's employment eligibility. An employer required to use E-Verify will also be required to certify on the employer's first tax return each calendar year that the employer is in compliance with this law when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system. Where leasing companies are utilized, in the absence of an agreement, the employee leasing company is responsible for compliance with this law.[21] Employers must maintain a copy of the documents provided for at least three years after the initial date of employment and provide the documents to certain enforcement entities upon request.[22]

1.2(b)(ii) *State Contractors*

Employers that contract with Florida state agencies under the direction of Florida's governor must use E-Verify to verify the employment eligibility of: (1) all persons employed by the contractor during the contract term to perform employment duties in Florida; and (2) all persons, including subcontractors, assigned by the contractor to perform work pursuant to the contract. This provision covers all contracts to provide goods or services to the state in excess of nominal value.

State agencies not under the direction of the governor are "encouraged" to use E-Verify to verify current and prospective employees' legal work status, and to require the same of their contractors and subcontractors.[23]

Every public employer, contractor, and subcontractor must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. These entities may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with unauthorized persons.[24]

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

Employers that violate the provisions regarding the employment of unauthorized aliens may be fined for a first violation, regardless of the number of unauthorized aliens hired. Subsequent violations constitute second degree misdemeanor violations, and each unauthorized alien knowingly hired, recruited, employed, or referred for employment constitutes a separate offense.[25]

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[20] FLA. STAT. § 448.09(1).

[21] FLA. STAT. § 448.095

[22] FLA. STAT. § 448.095(3).

[23] Fla. Exec. Order No. 11-116 (May 27, 2011).

[24] FLA. STAT. § 448.095(2).

[25] FLA. STAT. § 448.09(2)-(3).

If a private employer does not appropriately verify employment eligibility of its new employees, the Department of Economic Opportunity will require the employer to provide an affidavit stating that they will comply, that they have terminated the employment of all unauthorized workers in the state, and that the employer will not intentionally or knowingly employ an unauthorized worker in the state. Beginning July 1, 2023, the Department will give employers 30 days to cure the violation. If the Department determines that an employer failed to use the E-Verify system three times in any 24-month period, the Department will impose a daily fine until the employer provides sufficient proof that the noncompliance is cured. Violations of the requirement may lead to suspension or revocation of business licenses.[26]

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").[27] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

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

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

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

[26] FLA. STAT. § 448.095(3).

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

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

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

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

Per Gainesville's Fair Chance Hiring ordinance, unless an arrest or criminal accusation is related to domestic violence, an employer with 15 or more employees in Gainesville may not solicit from the applicant or otherwise inquire through third parties about an arrest or criminal accusation made against the individual that is not currently pending against the applicant; or did not result in a conviction, plea of nolo contendere, or deferred adjudication.[28]

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

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

1.3(a)(v) *Local Guidelines on Employer's Use of Conviction Records*

Gainesville's Fair Chance Hiring ordinance significantly limits a covered employer's use of an applicant's criminal history. "Criminal history" is defined as "a conviction, plea of no contest, or deferred adjudication arising from a felony or misdemeanor criminal accusation made under state law, federal law, or any comparable law of another state."[29]

A covered employer is prohibited from publishing information about a job that states or implies that an individual's criminal history automatically disqualifies them from consideration for the job.[30] A covered employer may not include an inquiry about criminal history in a job application.[31]

Before the employer makes a conditional offer of employment to the applicant, a covered employer may not solicit or consider criminal history.[32] After extending a conditional offer, the employer may then conduct an individualized assessment of the individual's criminal history information. The individualized assessment must take into account the following:

- the nature and gravity of any offenses in the individual's criminal history;
- the age of the individual at the time of the offense
- the length of time since the offense and completion of the sentence
- the nature and duties of the job for which the individual has applied; and
- any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.[33]

Before taking any adverse action on the basis of the individualized assessment, the employer must inform the individual of the basis for the decision, provide the criminal history records used in the assessment,

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[28] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-181(C).

[29] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-180(F).

[30] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-181(A)

[31] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-181(B).

[32] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-181(C).

[33] GAINESVILLE, FLA., CODE OF ORDINANCES § 145-180(I).

and provide the individual with a reasonable opportunity to provide additional context or information showing rehabilitation and good conduct since the offense. The employer who takes adverse action must inform the individual in writing that the adverse action was based on the criminal history and include the notice specified in the ordinance.[34]

The Gainesville Office of Equity and Inclusion has authority to enforce all claims and violations.[35] Employers found in violation shall be issued a notice and a civil citation. The penalty for violations is $500, with half of the penalty recovered awarded to the complainant. The Office has the option of issuing a warning for a first-time violation if the employer attends an appropriate training session on compliance with the ordinance.[36]

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

A person whose juvenile or adult criminal history records have been expunged or sealed may lawfully deny or fail to acknowledge the arrests covered by the expunged or sealed record, with certain exceptions. Relevant exceptions pertaining to private employers cover applicants for positions with direct contact with children, the developmentally disabled, the aged, or the elderly.[37]

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[38] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[39] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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[34] GAINESVILLE, FLA., CODE OF ORDINANCES §§ 145-181(G), (H).

[35] GAINESVILLE, FLA., CODE OF ORDINANCES §§ 145-183.

[36] GAINESVILLE, FLA., CODE OF ORDINANCES §§ 145-184.

[37] FLA. STAT. §§ 943.0585(6), 943.059(6).

[38] 15 U.S.C. §§ 1681 *et seq*.

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

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

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[40]

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

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

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

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

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

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

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

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

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

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

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[41] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

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

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

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

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

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

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

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

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

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

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[42] 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-

[41] 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.

[42] 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.

free workplace.[43] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

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

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

Florida law contains no express provisions mandating preemployment drug or alcohol screening by private employers.

However, an employer may voluntarily choose to promote a drug-free workplace under the Florida Drug-Free Workplace Program.[44] Participating employers may test employees and job applicants for drugs and alcohol, but must first provide notice. This notice must be given to applicants and employees one time only, in writing and prior to testing, within a written policy statement containing all of the information required by law.[45] Moreover, a participating employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required. A notice of the employer's drug-testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants during regular business hours in the employer's personnel office or other suitable locations.[46]

A participating employer may refuse to hire a job applicant or discipline an employee who refuses to submit to drug testing.[47]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

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

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange,

[43] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[44] *See* FLA. STAT. § 440.102. Participation in the program qualifies an employer for workers' compensation insurance discounts and other benefits.

[45] FLA. STAT. § 440.102.

[46] FLA. STAT. § 440.102.

[47] FLA. STAT. § 440.102(7)(f).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[48] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[49] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[50] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[51]
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.[52] 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.[53]

[48] 26 U.S.C. § 36B.

[49] 42 U.S.C. § 18071.

[50] 29 U.S.C. § 218b.

[51] 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.

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

[53] 29 C.F.R. § 2590.606-1.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
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.[54] 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.[55] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[56]
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.[57] 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)

[54] 29 C.F.R. § 825.300(a).

[55] 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.

[56] 29 C.F.R. § 825.300(a).

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

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	relating to their marital status and the number of withholding exemptions they claim.[58]
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.[59]
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.[60]

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-Free Workplace Documents	Employers must include notice of drug testing on vacancy announcements for positions for which drug testing is required. A notice of the employer's drug-testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.[61]
Fair Employment Practices Documents	No notice requirement located.

[58] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[59] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[60] 29 C.F.R. § 531.59.

[61] FLA. STAT. § 440.102(3).

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Tax Documents	No notice requirement located. Florida does not have a state income tax.
Wage & Hour Documents	No notice requirement located.

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.[62] 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).[63]

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

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

[63] 42 U.S.C. § 653a.

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 Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[64] 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 Florida's new hire reporting law.[65]

Who Must Be Reported. Employees newly hired, rehired, or returned to work after being laid off, furloughed, separated, granted an unpaid leave, or terminated must be reported.

Report Timeframe. Florida employers must submit new hire information for employees no later than 20 days of their hiring date. Employers submitting magnetically or electronically must report new employees, if any, at least twice per month by transmissions not less than 12 days and no more than 16 days apart.

Information Required. The information required to be reported includes the employee's name, address, and Social Security number. The report must also include the employer's name, address, and state and federal tax registration or identification numbers.

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

[65] FLA. STAT. § 409.2576.

Form & Submission of Report. The information should be submitted via a federal Form W-4, the Florida Employer New Hire Reporting Form, or a similar form developed by the employer. Reports may be submitted by fax, mail, over the internet, electronically, or magnetically.

Location to Send Information.

Florida New Hire Reporting Center
P.O. Box 6500
Tallahassee, FL 32314-6500
(850) 656-3343
(888) 854-4791
(850) 656-0528 (fax)
(888) 854-4762 (fax)
https://servicesforemployers.floridarevenue.com/Pages/home.aspx

Multistate Employers. Multistate employers that report new hire information electronically or magnetically may designate a single state to which it will transmit the above noted report, provided the employer has employees in that state and the employer notifies the Secretary of Health and Human Services in writing to which state the information will be provided.

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

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

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

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

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

[66] 18 U.S.C. §§ 1832 *et seq.*

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*

Covenants not to compete, also referred to as restrictive covenants, are frequently utilized by Florida employers to protect their businesses. Most often, they are simply contracts between employers and employees that prohibit employees from competing with their employers after termination of the employment relationship. Though such agreements can be unambiguous, issues regarding their enforceability often arise and can be as varied and complex as those involving the enforcement of any contract.

In 1996, the Florida legislature repealed the state's prior covenant not to compete statute except for covenants entered into before July 1, 1996, which remained governed by the prior statute.[67] The successor statute is unusually comprehensive and covers all covenants entered into on or after July 1, 1996.[68] Among other things, the successor statute:

- provides that a restrictive covenant falling within its coverage must be contained in a writing, signed by the person against whom enforcement is sought;
- sets forth specific time limitations for various types of covenants that are presumptively reasonable and enforceable;
- authorizes judicial modification of unreasonable covenants;
- provides that the violation of an enforceable restrictive covenant creates a presumption of irreparable injury to the person seeking enforcement of the covenant;
- bars construing a restrictive covenant against the drafter, or from considering individualized economic or other hardship that might be caused to the person against whom enforcement is sought in assessing the enforceability of a restrictive covenant;
- provides for the award of costs and attorneys' fees; and
- provides for the enforcement of noncompetition clauses by successors or assignees where it has been expressly authorized in the agreement.[69]

The Florida law sets forth some basic requirements for an enforceable covenant not to compete. Generally, an enforceable noncompete covenant must be reduced to writing, have a legitimate business interest, contain reasonable limitations, and be supported by adequate consideration.[70]

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[67] FLA. STAT. § 542.33.

[68] FLA. STAT. § 542.335.

[69] FLA. STAT. §§ 542.335 *et seq.*; *see also Marx v. Clear Channel Broad., Inc.*, 887 So. 2d 405, 408 (Fla. Dist. Ct. App. 2004).

[70] FLA. STAT. § 542.335.

According to Florida law, a party seeking to enforce a restrictive covenant must show the existence of a legitimate business interest, which is restricted by the contract and which the former employee is prohibited from utilizing or appropriating. The 1996 Florida statute governing noncompete agreements sets forth a nonexhaustive list of legitimate business interests that Florida recognizes, including:

1. trade secrets (as defined in the statute);
2. valuable confidential business or professional information that otherwise does not qualify as trade secrets;
3. substantial relationships with specific prospective or existing customers, patients, or clients;
4. customer, patient, or client goodwill associated with: (a) an ongoing business or professional practice, by way of trade name, trademark, service mark, or "trade dress;" (b) a specific geographic location; or (c) a specific marketing or trade area; and
5. extraordinary or specialized training.[71]

The statute further provides that a party seeking enforcement of a restrictive covenant also must show that that restraint is reasonably necessary to protect the legitimate business interest or interests justifying the restriction.[72] "Any restrictive covenant not supported by a legitimate business interest is unlawful and is void and unenforceable."[73]

The burden of proving the reasonableness of a restrictive covenant lies in the party attempting to enforce it.[74] Courts will consider geographic and time restrictions to determine reasonableness. As there are specific geographic measures to determine reasonableness, courts have held:

- a restriction prohibiting a physician from practicing within a ten-mile radius of any of three medical offices within a county was reasonable;[75]
- a restriction prohibiting a physician from practicing in the city the physician worked and within five miles of any company office in the neighboring city was overly broad, and it was reduced to a five-mile radius from the offices in which the physician worked;[76]
- a restriction prohibiting a physician's representative from working in all three counties where the employer had medical imaging offices was overly broad when the employee worked in only one county;[77]
- a restriction prohibiting an employee engaging in property management and maintenance services from performing those services in every county in Florida in which the company had operations (effectively a statewide ban) was overly broad, and was reduced to the two

[71] FLA STAT. § 542.335(1)(b); *see also Southern Wine & Spirits of Am., Inc. v. Simpkins*, 2011 WL 124631, at *3 (S.D. Fla. Jan. 14, 2011) (holding that what can constitute a legitimate business interest is not limited to the factors enumerated within the statute).

[72] FLA. STAT. § 542.335; *Maxxim Med., Inc. v. Professional Hosp. Supply, Inc.*, 2021 WL 11701868, at **22 (M.D. Fla. Sept. 21, 2011).

[73] *Reliance Wholesale, Inc. v. Godfrey*, 51 So. 3d 561, 564 (Fla. Dist. Ct. App. 2010).

[74] FLA. STAT. § 542.335(1)(c).

[75] *Supinski v. Omni Healthcare, P.A.*, 853 So. 2d 526 (Fla. Dist. Ct. App. 2003).

[76] *Southernmost Foot & Ankle Specialists, P.A. v. Torregrosa*, 891 So. 2d 591, 593-94 (Fla. Dist. Ct. App. 2004).

[77] *Open Magnetic Imaging, Inc., v. Nieves-Garcia*, 826 So. 2d 415, 418 (Fla. Dist. Ct. App. 2002).

counties in which the employee worked and a neighboring county, for which she possessed a list of client contacts;[78] and

- a restriction prohibiting an employee from working for a competitor or client throughout the United States or Canada was enforceable where the employer offered evidence to show that the employer had clients in Canada and marketed itself there.[79]

As for time restrictions, the Florida legislature set forth the following presumptively reasonable and unreasonable time limitations for various types of covenants:

- With regard to restrictive covenants sought to be enforced against a former employee, agent, or independent contractor (and not associated with the sale of the assets of a business), "a court shall presume reasonable in time any restraint six months or less in duration and shall presume unreasonable any restraint more than two years in duration."[80]
- With regard to restrictive covenants sought to be enforced against a former distributor, dealer, franchisee, or licensee of a trademark or service mark (and not associated with the sale of the assets of a business), "a court shall presume reasonable in time any restraint one year or less in duration and shall presume unreasonable any restraint more than three years in duration."[81]
- With regard to restrictive covenants sought to be enforced against the seller of all or part of the assets of a business, or any type of equity interest in a business or professional practice, "a court shall presume reasonable in time any restraint three years or less in duration and shall presume unreasonable any restraint more than seven years in duration."[82]
- In determining the reasonableness of a post-termination restrictive covenant predicated upon the protection of trade secrets, "a court shall presume reasonable in time any restraint five years or less in duration and shall presume unreasonable any restraint more than 10 years" in duration.[83] However, a plaintiff may not get the benefit of the five-year reasonableness presumption unless it establishes that the defendant actually misappropriated trade secrets.[84]

One factor that the courts do not consider is whether the limitation causes any individualized economic or other hardship against which enforcement is sought.[85]

Enforceability Following Employee Discharge. Florida courts tend to be pro-employer in enforcing noncompetes after termination. Courts have enforced noncompete agreements that contain a promise not to compete in the event of both voluntary and involuntary termination.[86] In *The Twenty-Four*

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[78] *Continental Grp., Inc. v. Kw Prop. Mgmt., L.L.C.*, 622 F. Supp. 2d 1357, 1378 (S.D. Fla. 2009).

[79] *Proudfoot Consulting Co. v. Gordon*, 576 F.3d 1223 (11th Cir. 2009).

[80] FLA. STAT. § 542.335(1)(d)(1); *see also Torregrosa*, 891 So. 2d at 594.

[81] FLA. STAT. § 542.335(1)(d)(2).

[82] FLA. STAT. § 542.335(1)(d)(3).

[83] FLA. STAT. § 542.335(1)(e).

[84] *Zodiac Records Inc. v. Choice Envtl. Serv.*, 112 So. 3d 587 (Fla. Dist. Ct. App. 2013).

[85] FLA. STAT. § 542.335(1)(g)(1).

[86] *Gold Coast Media, Inc. v. Meltzer*, 751 So. 2d 645 (Fla. Dist. Ct. App. 1999). In *Gold Coast Media*, the employee voluntarily left the company.

Collection, Inc. v. Keller, the court focused only on whether the noncompete was reasonably limited in time and area, and implied that if so valid, it would be enforced regardless of whether the employee had been terminated.[87] In this case, the employer had discharged the employee and thus, the employee argued that the noncompete she executed as part of her employment agreement should not be enforced because it became unduly burdensome. However, in a strongly worded holding, the court said: "We therefore find no basis in the law for the ruling below which, while obviously well-motivated, amounted simply to rewriting a duly-executed and valid contract so as to relieve one of the parties of its burdens. Such a result may no more be permitted in the case of an agreement of this kind than any other . . . [s]ince Ms. Kellller [the employee] agreed not to work for a competitor after she left 24 Collection [the employer], she must be held to that undertaking."[88]

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.

Florida requires that restrictive covenants be supported by adequate consideration.[89] Florida courts have found adequate consideration to support the enforceability of restrictive covenants in the following situations:

- Likely, where the covenant not to compete was signed by the employee at the inception of the employment relationship. While not directly addressing this issue, in *Open Magnetic Imaging, Inc. v. Nieves-Garcia*, the employer failed to inform the employee in her initial offer of employment that she would be required to sign a noncompete as a condition of employment; however, noncompete that she ultimately signed was still enforceable.[90] The court noted: "Where, as here, employment is terminable at will by either the employer or employee, Florida courts have routinely enforced non-compete agreements even where an employee has been requested to execute such agreements after commencement of employment;"[91]
- Where the covenant not to compete was signed by the employee after their employer provided him/her with a salary increase;[92] and,

[87] 389 So. 2d 1062 (Fla. Dist. Ct. App. 1980).

[88] 389 So. 2d at 1064 (citations omitted).

[89] *Wright & Seaton, Inc. v. Prescott*, 420 So. 2d 623, 626-27 (Fla. Dist. Ct. App. 1982).

[90] 826 So. 2d 415, 417-418 (Fla. Dist. Ct. App. 2002).

[91] *Open Magnetic Imaging, Inc.*, 826 So. 2d at 417.

[92] *Criss v. Davis, Presser & LaFaye, P.A.*, 494 So. 2d 525, 527 (Fla. Dist. Ct. App. 1986); (continued employment and salary increase held to be adequate consideration); *Stoneworks, Inc. v. Empire Marble and Granite, Inc.*, 1998 1998 WL 998962, at **4-5 (S.D. Fla. Nov. 19, 1998) (bonus, raise, and continued employment adequate consideration for the non-compete).

- Where the covenant not to compete was signed by the employee in exchange for continued employment.[93]

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.

Florida courts will reform an overbroad agreement. Per the 1996 statute: "If a contractually specified restraint is overbroad, overlong, or otherwise not reasonably necessary to protect the legitimate business interest or interests, a court shall modify the restraint and grant only the relief reasonably necessary to protect such interest or interests."[94]

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

Definition of a Trade Secret. In 1988 Florida adopted, with some revisions, the Uniform Trade Secrets Act (the "Trade Secrets Act"). The Trade Secrets Act defines a *trade secret* as:

> [I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) 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
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[95]

Misappropriation of a Trade Secret. Despite the fact that a trade secret and duty not to disclose may exist, no liability arises unless the trade secret has been misappropriated. To prove *misappropriation* under Florida law, a plaintiff must establish the following:

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

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[93] *Coastal Unilube, Inc. v. Smith*, 598 So. 2d (Fla. Dist. Ct. App. 1992); *Open Magnetic Imaging, Inc.*, 826 So. 2d at 417.

[94] FLA. STAT. § 542.335(1)(c).

[95] FLA. STAT. § 688.002(4); *see also Partylite Gifts, Inc. v. MacMillan*, 2010 WL 5209364, at **4-5 (M.D. Fla. Nov. 24, 2010) (*citing American Red Cross v. Palm Beach Blood Bank, Inc.*, 143 F.3d 1407, 1410 (11th Cir. 1998)).

b. At the time of disclosure or use, knew or had reason to know that her or his knowledge of the trade secret was:

   i. Derived from or through a person who utilized improper means to acquire it;

   ii. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

   iii. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

c. Before a material change of her or his 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.[96]

The Trade Secrets Act defines improper means to include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means."[97] Misappropriation claims must be asserted within three years of the date that the misappropriation is discovered, or would have been discovered by the exercise of reasonable diligence.[98] A party proceeding under the Florida Trade Secrets Act need only describe the misappropriated trade secrets with "reasonable particularity."[99] To the extent that a claim solely relates to misappropriation of a trade secret and does not allege separate and distinct conduct, it will be preempted by the Florida Trade Secrets Act.[100]

A court may enjoin actual or threatened misappropriation of a trade secret.[101] Although an injunction should normally terminate when the trade secret ceases to exist, a court may continue an injunction for an additional time period to eliminate any commercial advantage that otherwise would be derived from misappropriation.[102]

Remedies & Penalties. The Florida Trade Secrets Act provides various remedies for wrongful appropriation of trade secrets. First, a plaintiff can recover actual damages.[103] This means that a defendant who wrongfully appropriated a plaintiff's trade secret would be liable for the lost profit caused by that action. A plaintiff can also recover damages for the unjust enrichment created by misappropriation.[104] Any benefit received by the party who misappropriated the trade secret can constitute unjust enrichment. In other words, a trade secret plaintiff can recover the profit created by the defendant's wrongful use of confidential information. This remedy is determined without reference to the actual losses suffered by the plaintiff and can be awarded in addition to any lost profit damages. If a court determines that neither

[96] FLA. STAT. § 688.002(2); *Treco Int'l S.A. v. Kromka*, 706 F. Supp. 2d 1283, 1286 n.1 (S.D. Fla. 2010).

[97] FLA. STAT. § 688.002(1).

[98] FLA. STAT. § 688.007.

[99] *Treco*, 706 F. Supp. 2d at 1286. *But see American Registry, L.L.C. v. Yonah*, 2013 WL 6332971, at *4 (M.D. Fla. Dec. 5, 2013) ("'[S]oftware,' 'financial data,' 'lists,' and 'information and records' are broad and generic categories of information and provide insufficient notice as to the actual trade secrets misappropriated.").

[100] FLA. STAT. § 688.008(1).

[101] FLA. STAT. § 688.003(1); *see also Godwin Pumps of Am., Inc. v. Ramer*, 2011 WL 2670191 (M.D. Fla. July 8, 2011).

[102] FLA. STAT. § 688.003(1).

[103] FLA. STAT. § 688.004(1).

[104] FLA. STAT. § 688.004(1).

damages nor unjust enrichment is provable, it may order payment of a reasonable royalty for the unauthorized disclosure or use of a trade secret.[105] Nominal damages, however, are not available.[106]

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

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

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

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

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 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.[107]
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.[108]
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.[109]
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.[110]

[105] FLA. STAT. § 688.004(1).

[106] *AlphaMed Pharms. Corp. v. Arriva Pharms., Inc.*, 432 F. Supp. 2d 1319, 1336-37 (S.D. Fla. 2006), *aff'd*, 294 F. App'x 501 (11th Cir. 2008).

[107] 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.

[108] 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.

[109] 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.

[110] 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.[111]
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.[112]
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.[113]
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.[114]
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.[115] The second page includes reference to government contractors.

[111] 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.

[112] 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.

[113] 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.

[114] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[115] 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.[116]
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.[117]
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.[118]
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.[119]
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.[120]
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

[116] 41 C.F.R. §§ 60-300.44, 60-741.44.

[117] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[118] 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.

[119] 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.

[120] 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.[121]
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.[122]
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.[123] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[124]
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

[121] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[122] 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.

[123] 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.

[124] 29 C.F.R. § 13.5.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[125]
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.[126]

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	All employers that permit minors to work must post conspicuous notice informing minors about the provisions of the child labor laws.[127]
Drug-Testing Policy Materials	If an employer maintains a drug-free workplace policy, it has certain additional notice obligations. First, one time only, prior to testing, the employer must give all employees and job applicants for employment a written statement of its policy. Second, a notice of the drug-testing policy must be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available to employees or job applicants during regular business hours in the employer's personnel office or other suitable locations.[128] And third, an employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required.[129]

[125] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[126] 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.

[127] FLA. STAT. § 450.045(2). This poster is available at http://www.myfloridalicense.com/dbpr/reg/childlabor/documents/ChildLaborPoster07.18.16.pdf.

[128] FLA. STAT. §§ 440.101, 440.102(3). Employers must create their own forms to satisfy this posting requirement.

[129] FLA. STAT. § 440.102(3)(c).

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Employment Practices	Employers with 15 or more employees must post conspicuous notice, provided by the Florida Commission on Human Relations, informing employees about the prohibition against workplace discrimination.[130]
Human Trafficking Public Awareness	Certain employers must post notice concerning human trafficking and the hotline for assistance. Notice is required for employers that operate emergency rooms, strip clubs and adult entertainment establishments, and businesses that offer massage or bodywork services for compensation that are not owned by a regulated health care practitioner. The poster must be at least 8.5 inches by 11 inches in size and printed in at least 16-point font type. It must state substantially the following in English and in Spanish: If you or someone you know is being forced to engage in an activity and cannot leave—whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the Florida Human Trafficking Hotline, 1-855-FLA-SAFEto access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.[131]
Human Trafficking Public Awareness – Healthcare Providers	Human Trafficking Public Awareness (Healthcare Providers) Certain healthcare certificate holders/licensees must post in their place of work in a conspicuous place accessible to employees. Required signage must be at least 11 inches by 15 inches in size, printed in an easily legible font and in at least 32-point type. It must state substantially the following in English and in Spanish: If you or someone you know is being forced to engage in an activity and cannot leave, whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity, call the Florida Human Trafficking Hotline, 1-855-FLA-SAFEto access help and services. Victims of slavery and human trafficking are protected under United States and Florida law.[132]

[130] FLA. STAT. §§ 760.02(7), 760.10(10). This poster is available at http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices.

[131] FLA. STAT. § 787.29. Employers must create their own forms to satisfy this posting requirement.

[132] FLA. STAT. § 456.0341.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Unemployment Compensation	All employers must post and maintain accessible notice (RT-83) informing employees about benefits eligibility under the Florida Reemployment Assistance Program and related matters.[133]
Wages, Hours & Payroll: Minimum Wage Poster	All employers paying any employees the state minimum wage must prominently display the current minimum wage poster, which is updated annually. The poster must be at least 8.5 inches by 11 inches and in a format easily seen by employees. The text must be of a conspicuous size. The text in the first line must be larger than the text of any other line, and the text of the first sentence must be in bold type and larger than the text in the remaining lines. The poster must be in English, Spanish, and Creole.[134]
Workers' Compensation	All employers who have secured workers' compensation coverage must post conspicuous notice informing employees of that compliance, carrier information, and what to do if they are injured on the job. The required notice also describes the Anti-Fraud Reward Program.[135]
Workplace Safety: No Smoking Sign (Optional)	In Florida, smoking and vaping is prohibited in enclosed indoor workplaces. Employers may, at their discretion, post "No Smoking" signs. Posters are, however, mandatory for enclosed indoor workplaces where smoking or vaping cessation programs are in place, where medical research is conducted, or where scientific research is conducted. Employers must develop and implement a smoking policy which includes prohibiting smoking and vaping in the workplace.[136]

3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

[133] FLA. STAT. § 443.151(1)(a). This poster is available at http://floridarevenue.com/Forms_library/current/rt83.pdf.

[134] FLA. STAT. § 448.109(2). This poster is available in English at http://www.floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2020-minimum-wage/poster-fl-minimum-wage-2020-english.pdf?sfvrsn=2 and in Spanish at http://www.floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2020-minimum-wage/poster-fl-minimum-wage-2020-spanish.pdf?sfvrsn=2. It is also available in Haitian Creole at http://www.floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2020-minimum-wage/poster-fl-minimum-wage-2020-haitian-creole.pdf?sfvrsn=2.

[135] FLA. STAT. § 440.40. This poster is available at https://www.myfloridacfo.com/docs-sf/workers-compensation-libraries/workers-comp-documents/brochures-and-guides/broken_arm_eng.pdf?sfvrsn=963d4cfc_3.

[136] FLA. STAT. § 386.206(1); *see also* FLA. CONST. art. X, § 20; FLA. STAT. §§ 386.201 *et seq.*; FLA. ADMIN. CODE ANN. r. 64I-4.001. Employers must create their own forms to satisfy this posting requirement.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[137]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[138]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[139]	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	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants;	At least 1 year from the date the records were made, or

[137] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[138] 29 C.F.R. § 1627.3(b).

[139] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(ADA): Personnel Records	• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[140]	from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[141]	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).[142]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • 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	At least 3 years following the date on which the polygraph examination was conducted.

[140] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[141] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[142] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[143]	
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.[144]	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).[145]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[146]	At least 2 years.
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:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code;	3 years from the last day of entry.

[143] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[144] 29 U.S.C. § 1027.

[145] 29 C.F.R. § 1620.32(a).

[146] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[147] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070);	

[147] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[148]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees, and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[149]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);	At least 3 years from the last effective date.

[148] 29 C.F.R. § 516.28.

[149] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[150]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[151]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement.	At least 3 years.

[150] 29 C.F.R. § 516.5.

[151] 29 C.F.R. § 516.6.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[152]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[153]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[154]	3 years after the date of hire or 1 year following the termination

[152] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[153] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[154] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[155]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[156]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[157]	As long as it is in effect and at least 4 years thereafter.

[155] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[156] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[157] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[158]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results,	At least 30 years.

[158] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[159]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[160]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical	*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	At least 30 years.

[159] 29 C.F.R. § 1910.1020(d).

[160] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
and Exposure Records	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.[161]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[162]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[163]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • 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	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." If the contractor has fewer than 150 employees or does not

[161] 29 C.F.R. § 1910.1020(d).

[162] 29 C.F.R. §§ 1904.33, 1904.44.

[163] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[164]	have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[165]	Until final disposition of the complaint, compliance review or action.

[164] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[165] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[166]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee	During the course of the covered contract as well as after the end of the contract.

[166] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[167]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[168]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage;	At least 3 years from the completion of the work records

[167] 29 C.F.R. § 13.25.

[168] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.169	containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[170]	At least 3 years from the last date of entry.

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

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Discrimination	Once a complaint of discrimination has been served, an employer must maintain all records and other evidence that may pertain to the complaint.[171]	Until the matter has been finally determined.
E-Verify	Employers must retain a copy of the eligibility documentation provided by each worker and any official	At least 3 years.

169 29 C.F.R. § 4.6.

170 41 C.F.R. § 50-201.501.

171 FLA. STAT. § 443.171(5).

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	verification generated. If the E-verify system is unavailable for 3 business days after the first day that a new employee begins working for pay, and an employer cannot access the system to verify a new employee's employment eligibility, the employer must use Form I-9 to verify employment eligibility. The employer must document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's inability to access the system, a public announcement of unavailability of the system, or any other communication or notice that the system was unavailable.[172]	
Unemployment Compensation	*Each employing unit must keep true and accurate work records, including, for each employee:* • name and Social Security number; • place of employment within state; • beginning and ending dates of each pay period; • dates on which work was performed during each period; • amount of wages paid each worker and dates of payment; • date hired, rehired, or returned to work; • date of separation; • special payments (listing separately cash payments, reasonable value of other payments) and the nature of such payments; and • address where payroll records are located.[173]	5 years following the calendar year in which the services were rendered.
Workers' Compensation: General	*Employers must at all times maintain the following employment records, with respect to each person:* • name and Social Security number; • each day, month, and year, or pay period, when employed by the employer; • amount of remuneration paid or owed: ▪ if an hourly employee, records must show the day, month, and year of work or service and the number of hours worked per pay period; ▪ if paid on any other basis (other than hourly), records must specify the basis, such as competitive	Current calendar year to date, plus 2 preceding years.

[172] FLA. STAT. §448.095.

[173] FLA. ADMIN. CODE ANN. r. 73B-10.032.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	bid, piece rate, or task, as well as the day, month, and year when earned; • all checks or other records provided to the employee for salary, wage, or earned income; • all Form 1099 or Form W-2 statements issued; • all written contracts or agreements describing the terms of employment; and • all employment and unemployment reports filed. *Employers must also maintain a variety of other materials, including:* • organizational documents (*i.e.*, registrations, articles of incorporation, licenses, etc.); • tax records; • account records (*i.e.*, credit card and bank statements for all accounts, open or closed); • disbursements (*i.e.*, journal, check copies); • any invoices from subcontractors; • all workers' compensation insurance policies, and all endorsements and notices of cancellation, nonrenewal, or reinstatement; • all records pertaining to premium audits; • all written contracts with contractors (general or subcontractors, independent contractors, or employee leasing companies, which specify the terms of reimbursement and performance of work); and • any records that establish the statutory elements of an independent contractor for any worker who claims to be such and not an employee for workers' compensation purposes. Additional requirements apply for employers or contractors that claim exemptions for officers or employees, and for employee leasing companies, labor pools, and temporary labor service providers.[174]	
Workers' Compensation: Record of Injury	*Employers must keep and maintain records of industrial injuries and diseases, using:*	State guide specifies at least 2.5 years.[176] Not

[174] FLA. STAT. § 440.107(5); FLA. ADMIN. CODE ANN. r. 69L-6.015.

[176] Florida Dep't of Fin. Servs., Div. of Workers' Compensation, *Workers' Compensation System Guide*, at 8 (Feb. 2017), *available at* http://www.myfloridacfo.com/Division/WC/pdf/WC-System-Guide.pdf.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
or Death	• Form DWC-1 (First Report of Injury or Illness or similar form approved by the Department); and • Form DWC-1a (Wage Statements). *However, for a first aid case not required to be reported to the claims-handling entity, an employer must maintain a record of the following information:* • employee's name, Social Security number, or other identifying information; • date and time of accident or injury; • employee's occupation; • to whom, and when, the injury was reported; • description of the accident or illness, including the cause of injury; • injury or illness that occurred and affected body part; and • location address of the injury if different than employer's address.[175]	specified in statute or regulations.

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*

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

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

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

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

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

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

[175] FLA. STAT. § 440.35; FLA. ADMIN. CODE ANN. r. 69L-56.401.

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 in Florida, see **1.3(e)(ii)**.

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[177]

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

Florida has two medical marijuana laws that work in tandem. Initially, Florida only permitted the prescription and use of "Low-THC cannabis" (dried cannabis plant flowers with 0.8% or less of THC and more than 10% of cannibidiol) for qualified patients.[178] Later, Florida voters approved a broader medical marijuana law. Moreover, "Low-THC cannabis" is included in the definition of "marijuana" under the general medical marijuana law.[179]

The law does not create a cause of action against an employer for wrongful discharge or discrimination.[180] Also, the law does not limit an employer's ability to establish, continue, or enforce a drug-free workplace program or policy, or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.[181] Employers are not required to accommodate on-site medical marijuana use in the place of employment or any employee working while under the influence of marijuana.[182]

Additionally, the law does not, *e.g.*:

- Affect or repeal laws relating to nonmedical use, possession, production, or sale of marijuana.
- Permit operating any vehicle, aircraft, train, or boat while under the influence of marijuana.
  - "Medical use" does not include use or administration of marijuana in a school bus, a vehicle, an aircraft, or a motorboat, except for low THC cannabis not in a form for smoking.
- Require violating federal law.
- Require a health insurance provider to reimburse any person for expenses related to medical marijuana use.

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[177] 21 U.S.C. §§ 811-12, 841 *et seq*.

[178] FLA. STAT. § 381.986.

[179] FLA. CONST. art. X, § 29; FLA. STAT. § 381.986.

[180] FLA. STAT. § 381.986.

[181] FLA. STAT. § 381.986.

[182] FLA. CONST. art. X, § 29; FLA. STAT. § 381.986.

- Marijuana is not reimbursable under the workers' compensation law.[183]

- Affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, medical marijuana treatment center, or its agents or employees.

- Impair the ability of a party to limit smoking or vaping marijuana on their private property.[184]

"Medical use" does not include use or administration of marijuana in any public place, except for low-THC cannabis not in a form for smoking, or smoking marijuana in an enclosed workplace.[185] A qualified patient who uses in prohibited locations commits a misdemeanor of the first degree.[186] The law does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana.[187]

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.[188]

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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[183] FLA. STAT. § 381.986; *Jones v. Grace Healthcare*, 320 So. 3d 191 (Fla. Dist. Ct. App. 2021) (Affirming decision of judge of compensation claims to deny claim for the authorization of a referral to a physician able to evaluate and write a certification to access medical marijuana).

[184] FLA. CONST. art. X, § 29; FLA. STAT. § 381.986.

[185] FLA. STAT. § 381.986.

[186] FLA. STAT. § 381.986.

[187] FLA. STAT. § 381.986.

[188] 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.[189]

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

Florida's data security statute requires a covered entity to provide notice to affected Florida residents when the entity discovers or is notified of a data security breach.[190] A *security breach* is unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

Covered Entities & Information. Any sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information is considered a covered entity. This also includes governmental agencies. An individual's first name or first initial and last name in combination with any one or more of the following is considered personal information:

- Social Security number;
- driver's license number, identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to the account;
- any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
- a username or email address, in combination with a password or security question and answer that would permit access to an online account.[191]

Exceptions include:

- data that is encrypted or otherwise modified such that it renders the information unusable; and
- information which is lawfully available publicly through federal, local, or state government records or widely distributed media.

Content & Form of Notice. When a covered entity determines there has been a security breach, notice is required.[192] A covered entity is not required to disclose a breach of the security system if, after an appropriate investigation or consultation with relevant federal, state, and local law enforcement agencies, they determine that the breach has not and will not likely result in harm to the individuals whose personal

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

[190] FLA. STAT. § 501.171.

[191] FLA. STAT. § 501.171.

[192] FLA. STAT. § 501.171.

information has been acquired and accessed. Such an investigation must be documented in writing and kept for five years.

Notice to the affected individuals may be in one of the following formats:

- written notice sent to the mailing address of the individual in the records of the covered entity;
- electronic notice sent to the email address for the individual; or
- substitute notice if the covered entity demonstrates that the cost of providing notice would exceed $250,000, the affected class of persons to be notified exceeds 500,000, or the covered entity does not have sufficient contact information.

Substitute notice must consist of conspicuous posting of the notice on the website of the covered entity (if the covered entity maintains a website) and notification by statewide print and broadcast media.

Exceptions include:

- A covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is compliant with this statute. The policy must afford the same or greater protection to the affected individuals as this statute.
- Any person that complies with the notification requirements or security breach procedures of their primary or functional federal regulator.

Notice to individuals affected by the breach must include:

- the date, estimated date, or estimated date range of the breach of security;
- a description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and
- information that the individual can use to contact the covered entity to inquire about the breach of security and the personal information that the covered entity maintained about the individual.

Covered entities must also notify the Florida Department of Legal Affairs in the event of a security breach that affects 500 or more people in the state of Florida. Notice to the Department must include:

- a synopsis of the events surrounding the breach at the time notice is provided;
- the number of individuals in the state who were or potentially have been affected by the breach;
- any services related to the breach being offered, without charge, by the covered entity to individuals, and instructions as to how to use such services;
- a copy of the notice to the affected individuals; and
- the name, address, telephone number, and email address of the employee or agent of the covered entity from whom additional information may be obtained about the breach.

The Department may also request further information from the covered entity, including a police report, incident report, computer forensics report, the entity's policy regarding security breaches, or a description of the steps taken to rectify the breach.

Timing of Notice. Notice must be given without unreasonable delay. Notification must be given to affected individuals and, if required, the Department of Legal Affairs, no later than 30 days following the determination of a breach. An additional 15 days to provide notice may be allowed if good cause for delay is provided in writing to the Department within 30 days after the breach occurred.

Notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation;
- a covered entity needs time to determine the nature and scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.

Additional Provisions. If more than 1,000 persons at a single time will be notified, then the covered entity must also notify all nationwide consumer reporting agencies of the timing, distribution, and content of the notices.

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.[193] 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.[194]

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

[193] 29 U.S.C. § 218(a).

[194] 29 U.S.C. § 206.

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.[195]

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.[196]

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.[197] 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 Florida is $13.00 per hour for most nonexempt employees.[198] Due to a 2020 ballot measure, the minimum wage will increase $1.00 per hour each September 30 until it reaches $15.00 per hour –$14.00 (2025); $15.00 (2026). Afterwards, on January 1, 2028, and each subsequent January 1, the rate is subject to annual review and indexed for inflation.[199] This calculation is based on the percentage change in the federal Consumer Price Index for urban wage earners and clerical workers in the South Region for the 12-month period prior to September 1.

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips an employer may take a maximum tip credit of up to $3.02 per hour. If an employee does not make $3.02 in tips per hour, the employer must make up the difference between the wage actually made and the minimum wage. 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.[200]

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

Florida has expressly adopted the FLSA's definition of *employee*.[201] Accordingly, any exceptions and exclusions from the federal definition would apply to the state minimum wage provision.

3.3(b)(iv) *Local Minimum Wage Ordinances*

The City of Miami Beach enacted a minimum wage ordinance that was supposed to take effect on January 1, 2018.[202] However, a state trial court judge held that the ordinance was invalid in light of a state

[195] 29 U.S.C. §§ 203, 206.

[196] 29 U.S.C. § 3(m)(2)(B).

[197] 29 U.S.C. § 207.

[198] FLA. CONST. art. X, § 24.

[199] FLA. CONST. art. X, § 24(a), (c).

[200] FLA. STAT. § 448.110.

[201] FLA. CONST. art. X, § 24.

[202] MIAMI BEACH, FLA., MUN. CODE §§ 18-920 *et seq*.

preemption statute, which was affirmed on appeal. The state supreme court, after initially agreeing to review the decision, dismissed the appeal.[203]

3.3(c) *State Guidelines on Overtime Obligations*

Florida does not have a separate overtime provision. Therefore, the payment of overtime in Florida is regulated by the federal FLSA, which establishes a 40-hour overtime standard for covered employees.

3.4 Meal & Rest Period Requirements

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

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

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[204] 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.[205]

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.[206] 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.[207] 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,

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[203] *Florida Retail Federation v. Miami Beach*, 2017 WL 11526413 (Miami-Dade Cnty. Cir. Ct. Mar. 27, 2017), *affirmed by* 233 So. 3d 1236 (Fla. Dist. Ct. App. 2017), *appeal dismissed by* 2019 WL 446549 (Fla. Feb. 5, 2019).

[204] 29 C.F.R. § 785.19.

[205] 29 C.F.R. § 785.18.

[206] 29 U.S.C. § 218d.

[207] 29 U.S.C. § 218d(b)(2).

which may be used by an employee to express breast milk.[208] Exemptions apply for smaller employers and air carriers.[209]

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.[210] Lactation is considered a related medical condition.[211] 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.[212] 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 and rest period requirements for adults in Florida.

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

In Florida, minors aged 17 or younger may not work for more than four hours without a meal period of at least 30 minutes. No period of less than 30 minutes is deemed to interrupt a continuous period of work.[213]

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

Employers that violate Florida's child labor laws (including the meal period provision) commit a misdemeanor of the second degree. Each day a violation continues is a separate and distinct offense. Additionally, employers violating the law can be subject to fines up to $2,500 per offense.[214]

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

In Florida, a nursing individual may not be prohibited from breast feeding their baby in any public or private location where she is otherwise authorized to be.[215] Although the statute does not mention employers, it can be construed to include places of employment.[216]

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

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[208] 29 U.S.C. § 218d(a).

[209] 29 U.S.C. § 218d(c), (d).

[210] 42 U.S.C. § 2000gg–1.

[211] 29 C.F.R. § 1636.3.

[212] 29 C.F.R. § 1636.3.

[213] FLA. STAT. § 450.081.

[214] FLA. STAT. § 450.141; FLA. ADMIN. CODE ANN. r. 61L-2.009.

[215] FLA. STAT. § 383.015.

[216] *See* FLA STAT. § 383.015.

in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[217] 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."[218]

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*

Florida law does not define what work activities are considered to be compensable activities. Further, subject to a few exceptions, Florida places no limitation on the number of hours most employees can be required to work. Special rules apply to manual laborers.[219]

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.[220] 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.[221] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

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

[218] *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").

[219] FLA. STAT. § 448.01 (10 hours of work is considered a legal workday); *see also Quaker Oats Co. v. Jewell*, 818 So. 2d 574 (Fla. Dist. Ct. App. 2002), *reh'g denied*, 837 So. 2d 410 (Fla. 2003).

[220] 29 C.F.R. §§ 570.36, 570.50.

[221] 29 C.F.R. § 570.6.

3.6(b) *State Guidelines on Child Labor*

Florida's Child Labor Law[222] limits and regulates the employment of minors (*i.e.*, individuals under the age of 18). It delineates, in great detail, at what ages, in what occupations, and under what conditions minors may be employed.

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

Table 9 details the restrictions on the type of employment prohibited and permitted, by age, under the Florida Child Labor Law.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 18	*In Florida, minors cannot work in situations that place them in clear and present danger to life or limb. Additionally, minors under age 18 cannot work in the following occupations:* • in or around radioactive or explosive materials; • on any scaffolding, roof, superstructure, residential or nonresidential construction, or ladder • six-feet tall; • in or around toxic substances or corrosives; • in any mining occupation; • slaughtering, meat packing, processing, or rendering, except as provided by federal regulations; • operating various power-driven machinery; • in occupations that the state labor department deems hazardous or injurious to minors' life, health, safety, or welfare; • in brick or tile manufacturing; • in wrecking or demolition; • in excavation operations; • in logging or sawmilling; • on electrical apparatus or wiring; • firefighting; or • operating or assisting in operating various pieces of farm equipment.[223] *However, minors under age 18 may work:* • in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations with beer and/or wine licenses; • if age 17 or older, high school graduates, or high school seniors with the principal's written permission, may work at a *bona fide* food service establishment where alcoholic beverages are sold if they do not sell, prepare, or serve beverages and the work duties provide training and knowledge that might lead to advancement in such establishments;

[222] FLA. STAT. §§ 450.001 *et seq*.

[223] FLA. STAT. § 450.061; FLA. ADMIN. CODE ANN. r. 61L-2.004, 61L-2.005.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• as hotel bellhops, elevator operators, etc. when engaged in work that is physically separated from where alcoholic beverages are sold or consumed; • in bowling alleys where alcoholic beverages are sold or consumed if they do not sell, prepare, or serve beverages; • at a *bona fide* dinner theater where alcoholic beverages are sold, if employed as an actor, actress, or musician; and • in theme parks where alcoholic beverages are sold, if they do not sell, prepare, or serve beverages.[224]
Under Age 16	*In Florida, minors under age 16 also cannot work in the following occupations:* • 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; • operation or tending of hoisting apparatus or of any power-driven machinery other than office machines; • public messenger service; • warehousing and storage (except office and clerical work); • communications and electric utilities; • construction (including demolition and repair); • work performed in or about boiler or engine rooms; • occupations involved in agriculture as defined by federal regulations; • operation of a motor vehicle, or service as a helper on motor vehicles; • occupations in connection with transporting persons or property by rail, highway, air, water, pipeline, or other means; • maintaining or repairing machines or equipment; • outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes; • cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking; • operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers; • work in freezers and meat coolers and all work preparing meats for sale (except for wrapping, sealing, labeling, weighing, pricing, and stocking in areas physically separate from freezers and coolers); • loading and unloading goods to and from trucks, railroad cars, or conveyors; or • dispensing, or transporting, servicing, modifying, or altering tanks, cylinders or other equipment used for storing any inert or compound gas, including

[224] FLA. STAT. § 562.13.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	air, which has been compressed to a pressure that exceeds 40 pounds per square inch.[225]
Under Age 15	*In Florida, minors under age 15 also cannot work in the following occupations:* • work involving power-driven machinery; • manufacturing involving the use of industrial machines; • manufacturing, transportation, or use of explosives or highly flammable substances; • sawmills or logging operations; • on any scaffolding; • in heavy work in the building trade; • operating motor vehicles (except a motor scooter which the individual is licensed to operate); • oiling, cleaning, or wiping machinery or shafting or applying belts to pulleys; • repairing elevators or other hoisting apparatus; • work in freezers or meat coolers; • working with meat and vegetable slicing machines; • operation of power-driven laundry or dry-cleaning machinery; • spray washing; • alligator wrestling, or work in connection with snake pits, or similar hazardous activities; or • door-to-door selling of magazine subscriptions, candy, cookies, etc. (except if in connection with Boy or Girl Scouts of America).[226]
Under Age 13	In Florida, minors under age 13 cannot be employed, except as pages in the Florida Legislature, or in the entertainment industry. Minors age 10 or older can be employed in the sales and distribution of newspapers.[227]

Restrictions on Selling or Serving Alcohol. Minors under age 17, even if married or emancipated by the courts, may not work in a place where alcoholic beverages are sold at retail.[228] Minors under 18 years of age may not be employed by any adult entertainment establishments. However, the following exceptions apply.

- Minors under age 18 may work in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises.
- A person age 17 or older or who can furnish evidence that the individual is a senior high school student with written permission of the principal of the individual's high school, or that the

[225] FLA. ADMIN. CODE ANN. r. 61L-2.005.

[226] FLA. STAT. § 450.061.

[227] FLA. STAT. § 450.021.

[228] FLA. STAT. § 450.021.

individual has graduated high school, may work at a *bona fide* food service establishment where alcoholic beverages are sold, provided that the individual does not participate in the sale, preparation, or service of the beverages and that the individual's duties are of such nature as to provide training and knowledge as might lead to further advancement in food service establishments.

- Persons under age 18 may work as bellhops, elevator operators, and others in hotels when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.
- Persons under age 18 may work in bowling alleys in which alcoholic beverages are sold or consumed, so long as they do not participate in the sale, preparation, or service of such beverages.
- Persons under age 18 may work at a *bona fide* dinner theater where alcohol is sold, as long as their employment is limited to the services of an actor, actress, or musician.
- Persons under age 18 may work in theme parks where alcohol is sold, so long as they do not participate in the sale, preparation, or service of alcoholic beverages.[229]

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

In Florida, with limited exceptions, minors age 13 and under cannot work.[230]

Minors 15 years of age or younger may not work:

- before 7:00 A.M. or after 7:00 P.M. when school is scheduled the following day; or
- for more than 15 hours in any one week when school is in session.[231]

On any school day, minors 15 years of age or younger who are not enrolled in a career education program may not work for more than three hours, unless there is no school session the following day.[232]

During holidays and summer vacations, minors 15 years or younger may not work before 7:00 A.M. or after 9:00 P.M., for more than eight hours in one day, or for more than 40 hours in any one week.[233]

Minors 15 years of age or younger may not work for more than six consecutive days in any one week.[234]

Minors 15 years of age or younger may not work for more than four hours continuously without an interval of at least 30 minutes for a meal period.[235]

Minors 16 and 17 years of age may not work:

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[229] FLA. STAT. § 562.13.

[230] FLA. STAT. § 450.021.

[231] FLA. STAT. § 450.081(1)(a).

[232] FLA. STAT. § 450.081(1)(b).

[233] FLA. STAT. § 450.081(1)(c).

[234] FLA. STAT. § 450.081(3).

[235] FLA. STAT. § 450.081(4).

- before 6:30 A.M. or after 11:00 P.M. when school is scheduled the next day;
- for more than eight hours in any one day when school is scheduled the following day, except when the day of work is on a holiday or Sunday; or
- for more than 30 hours in any one week when school is in session. However, a minor's parent or custodian, or the school superintendent or his or her designee, may waive this limitation on a form prescribed by the department and provided to the minor's employer.[236]

On any school day, minors 16 and 17 years of age who are not enrolled in a career education program may not work during school hours.[237]

Minors 16 and 17 years of age who are permitted to work for eight hours or more in any one day as authorized by this section, may not work for more than 4 hours continuously without an interval of at least 30 minutes for a meal period.[238]

The provisions above do not apply to:

- minors 16 and 17 years of age who have graduated from high school or received a high school equivalency diploma;
- minors who are within the compulsory school attendance age limit and who hold a valid certificate of exemption issued by the school superintendent or his or her designee;
- minors enrolled in an educational institution who qualify on a hardship basis, such as economic necessity or family emergency;
- minors 16 and 17 years of age who are in a home education program enrolled in an approved virtual instruction program in which the minor is separated from the teacher by time only; and
- minors in domestic service in private homes, minors employed by their parents, or pages in the Florida legislature.[239]

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

In Florida, unless otherwise indicated, the child labor laws do not apply to a minor under age 17:

- who is or has been married;
- who has been emancipated by the courts;
- who is serving or has served in the U.S. armed forces;
- if a court rules it is in the minor's best interest to work and approves employment, including its terms and conditions; and

[236] FLA. STAT. § 450.081(2)(a).

[237] FLA. STAT. § 450.081(2)(b).

[238] FLA. STAT. § 450.081(4).

[239] FLA. STAT. § 450.081(5).

- who has graduated from an accredited high school or holds a high school equivalency diploma.[240]

Moreover, employment of minors is not prohibited if they are receiving career education furnished by the United States, Florida, or a county or subdivision, nor if they are enrolled in a valid apprenticeship or school district career education program.[241]

Special rules apply to minors in the entertainment industry.[242]

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

Work permits are not required in Florida. However, employers must obtain and maintain proof of age for all minor employees, *e.g.*, photocopy of a birth certificate or driver's license.[243]

The state labor department may also waive the restrictions imposed by the Child Labor Law if it is in a minor's best interests.[244]

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

Employers that violate the Child Labor Law are subject to strict penalties and hefty fines—violations of the statute are considered second-degree misdemeanors and could subject an employer to a maximum fine of $2,500 per offense and 60-days' imprisonment. Each day that the violation occurs is a separate offense.[245]

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).[246]

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

[240] FLA. STAT. § 450.012(3).

[241] FLA. STAT. § 450.161.

[242] FLA. STAT. §450.132.

[243] FLA. STAT. § 450.045.

[244] FLA. STAT. § 450.095.

[245] FLA. STAT. § 450.141.

[246] 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").

> 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.[247]

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.[248]

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.[249] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[250]

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.[251] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a

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

[248] 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.

[249] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[250] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[251] 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.

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.[252]

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.[253]

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

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[254]

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

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[252] 12 C.F.R. § 1005.18.

[253] *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.

[254] 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.

below the highest applicable minimum wage rate or cuts into overtime premium pay.[255] 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.[256] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[257] tools and equipment,[258] and business transportation and travel.[259] 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.[260]

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;[261]
- 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);[262]
- 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);[263]
- 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

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[255] *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).

[256] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[257] 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.

[258] 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).

[259] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[260] 29 C.F.R. § 778.217.

[261] 29 C.F.R. § 531.38.

[262] 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*.

[263] 29 C.F.R. § 531.40.

  - 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;[264]

- 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;[265] 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.[266]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[267]

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.[268] 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.[269]

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

[264] 29 C.F.R. § 531.40.

[265] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[266] 29 C.F.R. § 825.213.

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

[268] 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.

[269] 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.

in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[270]

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.[271]

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.[272]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid in cash, by check, or, with the written consent of the employee, by direct deposit into a financial institution of the employee's choice. *Wages* are defined as all compensation paid by an employer or their agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash. Case law has interpreted the above definition to include commissions, bonuses, vacation pay, severance pay, stock options, and royalties.[273] The term wages may also include vacation pay, annual accrued leave, and accrued sick pay if provided for in the employment agreement that forms the basis for a particular action for wages.[274]

Direct Deposit. Mandatory direct deposit is not permitted in Florida. However, an employer may directly deposit an employee's wages into the employee's account if the employee has authorized direct deposit in writing, and the employee has designated in writing the financial institution of the employee's choice in which the deposit is to be made. The employer must have sufficient funds in the account, credit, or an arrangement with the financial institution for payment of wages.

Employees may not be terminated or disciplined for refusing to authorize direct deposit.[275]

Payroll Debit Card. Payment by payroll debit card is permitted in Florida. A payroll debit card due must be negotiable and payable in cash, on demand, without discount, at some established place of business in Florida, the name and address of which must appear on the instrument or in the payroll debit card issuing materials, and, at the time of its issuance and for a reasonable time thereafter (which must be at

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[270] 29 C.F.R. § 531.36.

[271] 29 C.F.R. § 531.37.

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

[273] *See*, *e.g.*, *Elder v. Islam*, 869 So. 2d 600 (Fla. Dist. Ct. App. 2004); *Speer v. Mason*, 769 So. 2d 1102, 1104 (Fla. Dist. Ct. App. 2000), *review denied*, 857 So. 2d 196 (Fla. 2003).

[274] *See Strasser v. City of Jacksonville*, 655 So. 2d 234, 235-36 (Fla. Dist. Ct. App. 1995).

[275] FLA. STAT. § 532.04.

least 30 days) the maker or drawer must have sufficient funds or credit, arrangement, or understanding with the drawee for its payment.[276]

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

Florida does not have a provision regarding frequency of payment of wages.

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

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

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

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

3.7(b)(v) *Wage Transparency*

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

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

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

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

In Florida, there is no general obligation to indemnify an employee for business expenses. Further, state law contains no express provisions addressing how uniform, tool, and/or equipment expenses incurred during employment are treated in the wage payment, minimum wage, and/or overtime contexts.

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

Florida has not enacted any statutes specifically related to deductions from wages. In the absence of express regulations, employers should err on the side of caution and obtain an employee's consent before implementing a deduction. Employers generally may not deduct wages in a manner that conflicts with the minimum wage requirements of the FLSA as set forth in **3.7(a)(vii)**.

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

Wage Garnishment. Florida has established a statutory procedure by which judgment creditors may reach a debtor's earnings prior to their release by the employer to the debtor employee. A creditor may seek a continuing writ of garnishment from the court. In issuing the writ, the court directs the debtor's employer to pay a portion of the debtor's wages to the creditor until the judgment is satisfied.[277]

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[276] FLA. STAT. § 532.01.

[277] FLA. STAT. § 77.0305.

Florida law, however, establishes certain exemptions limiting a creditor's ability to garnish the wages of certain employees. The "head of family" exemption provides that all of the disposable earnings of a head of family whose disposable earnings are less than or equal to $750 per week are exempt from attachment or garnishment.[278] A *head of family* is defined as "any natural person who is providing more than one-half of the support for a child or other dependent," and includes unmarried, divorced, legally separated, or widowed individuals.[279] Disposable earnings mean that part of the employee's earnings remaining after the deduction of those amounts required or authorized by law.[280]

Employers may garnish the wages of an employee who is considered a head of family and who has disposable earnings totaling $750 per week or more up to the limits set by the federal Consumer Credit Protection Act (CCPA),[281] provided that the employee agrees to the garnishment in writing.[282] The earnings of a person other than a head of family may not be attached or garnished in excess of the limits proscribed by the CCPA.[283] In general, the federal CCPA limits the amount of disposable earnings subject to garnishment to the lesser of: (1) 25% of the employee's weekly disposable earnings; or (2) the amount by which the employee's weekly disposable earnings exceed 30 times the applicable minimum wage.[284] The CCPA excepts court support orders, bankruptcy orders, and any federal and/or state tax liabilities from this rule.[285]

Possible exemptions from garnishment also exist with respect to the earnings payable to a participant or beneficiary of a qualified retirement or profit-sharing plan under the Internal Revenue Code. This exemption does not apply to Qualified Domestic Relations Orders or child support or alimony support orders.[286] Finally, any amounts payable to an employee under workers' compensation are exempt from garnishment, assignment, attachment, execution, and attachment, with the exception of child and/or spousal support orders.[287]

Orders of Support. Florida law provides that, regardless of an employee's status as a head of family, an employee's wages are subject to garnishment or attachment where such garnishment is required in order to satisfy a child support order.[288] Employers are required to fully comply with and answer a writ of garnishment.[289] In fact, it is possible that an employer may be held in contempt of court or subject to other court-ordered relief if it fails or refuses to answer the writ.[290] State law requires employers to provide information regarding an employee who is the subject of a child support order upon receiving a

[278] FLA. STAT. § 222.11(2)(a).

[279] FLA. STAT. § 222.11(1)(c).

[280] FLA. STAT. § 222.11(1)(b).

[281] 15 U.S.C. §§ 1601 *et seq.*

[282] FLA. STAT. § 222.11(2)(b).

[283] FLA. STAT. § 222.11(2)(b).

[284] 15 U.S.C. § 1673(a).

[285] 15 U.S.C. § 1673(b).

[286] FLA. STAT. § 61.12.

[287] FLA. STAT. § 61.14(8)(b).

[288] FLA. STAT. § 61.12.

[289] FLA. STAT. § 77.06.

[290] FLA. STAT. § 77.06.

written demand for the same from the state's family services department.[291] An employer that fails to honor a request for information regarding an employee subject to a child support order may be fined by the agency in an amount not more than $500.[292] Moreover, an employer may be required to pay the agency's attorneys' fees and any costs incurred by the agency in the event that the agency procures a court order compelling the employer to divulge the information.[293]

Florida law requires a court, upon entering a child or alimony support order, to include within that order a provision requiring the deduction from the obligor's wages the amount necessary to satisfy the individual's obligations under the support order. An "income deduction order," among other things, directs an employer to deduct from the employee's income the amount necessary to meet the employee's support obligations and then forward that amount either to the obligee or to a state agency depository.[294] In no case, however, can the amount deducted by the employer exceed the limits set by the federal CCPA. If an employer fails to honor an income deduction order, it will be held directly liable for the amount that should have been deducted, plus any administrative costs and fees associated with collection of the debt.[295] Moreover, the statute creates a cause of action against an employer for an employee who is refused employment, discharged, or otherwise disciplined because the individual is the subject of an income deduction order.[296] A successful plaintiff may recover lost wages and benefits, and further, be entitled to reinstatement and reasonable attorneys' fees.[297]

Florida law requires all employers to honor court orders from other states directing the employer to deduct child support payments from an employee's wages.[298] The statute eliminates the need for holders of out-of-state support orders to convert the order to a Florida court order. Employers that comply with out-of-state income deduction orders are entitled to civil immunity.[299]

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

Minimum Wage. In addition to the establishment of a minimum wage, state law also provides for a private right of action.[300] Employees who are not paid the minimum wage are guaranteed the right to file a civil action to enforce their rights under the law.[301] The Attorney General or other official designated by the Florida legislature similarly has the right to bring an action for enforcement of the minimum wage law.[302]

Employees may also bring actions against employers that discriminate against or take adverse actions against them in retaliation for exercising rights protected under the minimum wage law.[303] The rights

[291] FLA. STAT. § 409.2578.

[292] FLA. STAT. § 409.2578(2)(a).

[293] FLA. STAT. § 409.2578(2)(b).

[294] FLA. STAT. § 61.1301.

[295] FLA. STAT. § 61.1301(2)(e)(5).

[296] FLA. STAT. § 61.1301(2)(e)(10), (2)(j)-(k).

[297] FLA. STAT. § 61.1301(2)(e)(10), (2)(j)-(k).

[298] FLA. STAT. § 88.50211.

[299] FLA. STAT. § 88.5041.

[300] FLA. CONST. art. X, § 24(e).

[301] FLA. CONST. art. X, § 24(e).

[302] FLA. CONST. art. X, § 24(e).

[303] FLA. CONST. art. X, § 24(d).

protected include the right to file a complaint and/or inform any person about any party's noncompliance with the law.[304] The right to inform also encompasses the right to assist individuals in asserting their rights.[305] The law also affords employees the right to institute class action lawsuits similar to those found in FLSA causes of action.[306]

Employers that violate the provisions of the state minimum wage law will be subject to liability for the actual amount of unpaid wages, plus an additional amount equal to the unpaid wages as liquidated damages.[307] Employers will also be liable for reasonable attorneys' fees, costs and other equitable relief as ordered by the court.[308] Equitable relief includes, without limitation, reinstatement and/or injunctive relief.[309] Furthermore, each willful violation will subject an employer to a fine of $1,000 per violation payable to the State of Florida.[310] The statute of limitations for enforcement of rights created under the minimum wage law is four years, and in the case of willful violations, five years.[311]

The Florida Minimum Wage Act explicitly precludes the recovery of punitive damages and provides for a notice requirement, whereby an employee alleging a violation of the law must notify their employer of their intent to file a claim and provide the employer with 15 days to resolve the claim to the satisfaction of the person aggrieved.[312]

Other Wage Disputes. Florida law provides an aggrieved employee with a civil action for unpaid wages and an award of attorneys' fees and costs to the prevailing party.[313]

An employee must bring an action for the recovery of unpaid wages and overtime compensation within two years from the date payment was due.[314] Actions for recovery of a salary allegedly withheld, however, are not subject to the two-year statute of limitations.[315] Further, actions for unpaid bonuses or commissions of executives and salaried employees have been held not to constitute wages and are instead subject to a four-year statute of limitations.[316]

In accord with traditional contract principles, Florida courts hold that where an express contract for employment exists, the two-year limitations period begins to run on the date the contract was breached,

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304 FLA. CONST. art. X, § 24(d).

305 FLA. CONST. art. X, § 24(d).

306 FLA. CONST. art. X, § 24(d).

307 FLA. CONST. art. X, § 24(e).

308 FLA. CONST. art. X, § 24(e).

309 FLA. CONST. art. X, § 24(e).

310 FLA. CONST. art. X, § 24(e).

311 FLA. CONST. art. X, § 24(e).

312 FLA. STAT. § 448.110(6).

313 FLA. STAT. § 448.07(3).

314 FLA. STAT. § 95.11(4)(c); *see also Broward Builders Exch., Inc., v. Goehring*, 231 So. 2d 513, 515 (Fla. 1970).

315 *Broward Builders Exch*., 231 So. 2d at 515.

316 FLA. STAT. § 95.11(3)(k); *see also Richey v. Modular Designs, Inc.*, 879 So. 2d 665, 666 (Fla. Dist. Ct. App. 2004); *Cabanas v. Womack & Bass, P.A.*, 706 So. 2d 68, 69 (Fla. Dist. Ct. App. 1998).

not the date on which the employee was terminated.[317] A court may award attorneys' fees to the prevailing party in an action for wages.[318]

3.7(b)(xi) *Local Wage Payment Ordinances*

Pinellas County has a wage theft ordinance that allows workers who are victims of wage theft to claim and recover unpaid wages. The ordinance applies to employers of one or more employees who perform work in Pinellas County. The ordinance provides notice, posting, and recordkeeping requirements.[319]

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).[320] 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.[321] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[322]

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

In Florida, accrued, but unused vacation time, and annual leave credits are compensable, that is, they are viewed as wages.[323] However, Florida courts have held that benefits given by an employer to an employee as part of a Social Security type scheme—such as pension benefits, workers' compensation benefits, employment disability benefits, sick leave benefits, or unemployment benefits—are considered to be entitlements, not wages, and, therefore, are not recoverable.[324] Because accrued, but unused vacation

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317 *Joseph v. Okeelanta Corp.*, 656 So. 2d 1316, 1319 (Fla. Dist. Ct. App. 1995).

318 FLA. STAT. § 448.08.

319 PINELLAS CTY., FLA., CODE OF ORDINANCES §§ 70-301 *et seq.*

320 29 U.S.C. § 1002.

321 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.

322 490 U.S. 107, 119 (1989).

323 FLA. STAT. § 448.08; *see also Joseph v. Commonwealth Land Title Ins. Co.*, 707 So. 2d 376 (Fla. Dist. Ct. App. 1998) (holding section 448.08 allows a court to award attorneys' fees to the prevailing party in an action for accrued, but unpaid wages); *Strasser v. City of Jacksonville*, 655 So. 2d 234 (Fla. Dist. Ct. App. 1995) (holding annual leave credits and vacation pay qualify as wages within the meaning of section 448.08).

324 *See Coleman v. City of Hialeah*, 525 So. 2d 435 (Fla. Dist. Ct. App. 1988) (holding sick-leave benefits are not wages because such benefits are not given as payment for services rendered by an employee).

time and annual leave credits are considered wages, an employee who successfully sues an employer to recover such payments is entitled to recover their attorneys' fees and costs.

An employer's policy can require forfeiture of accrued sick pay in Florida. In one case, the Florida District Court of Appeal held that a former employee was not entitled to payout of sick leave, but was entitled to payout of annual leave. Policy provisions limiting payout of sick leave at separation to those who retired or resigned in good standing were valid, so the employee was not entitled to accrued but unused sick leave. However, the same provision was not included in a policy concerning annual leave (the policy provided it would be paid out) and there was no common law to support requiring good standing as a pre-condition to receiving accrued benefits, so a payout was required under the policy.[325]

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*

Florida 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.[326] 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).[327] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[328] Here again, states may choose to

[325] *Nabors v. Miami-Dade Cty.*, 796 So. 2d 634 (Fla. Dist. Ct. App. 2001).

[326] 29 U.S.C. § 1144.

[327] 29 U.S.C. § 1161.

[328] 29 U.S.C. § 1167(3).

extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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

In Florida, couples may register as domestic partners in Miami-Dade County, Broward County, Palm Beach County, the City of Orlando, the City of Tampa, the City of Sarasota, and several other counties and cities. However, 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.

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;[329]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[330]
- to take medical leave when the employee is unable to work because of a serious health condition;[331]
- 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.[332] 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.[333] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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[329] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[330] 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).

[331] 29 C.F.R. §§ 825.112, 825.113.

[332] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[333] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

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

Florida does not currently provide state family and medical leave for employees of private employers.

However, Dade County has an ordinance regarding family and medical leave that applies to private employers with 50 or more employees in Dade County that have had employees who have worked in Dade County for 20 or more weeks in the current or preceding year. Employees with 12 months of employment who worked 1,250 hours in the previous 12-month period are eligible for family and medical leave.[334] Permissible reasons for family and medical leave in Dade County mirror those of the federal FMLA; however, included within the group of family members for which an employee may take a leave of absence is a grandparent.[335] The length of leave permitted under the Dade County ordinance governing family and medical leave is 12 workweeks in a 12-month period.

3.9(b) *Paid Sick Leave*

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

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[336] 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*

Florida 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.[337] 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.

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[334] DADE COUNTY, FLA., ORDINANCE § 11A-30.

[335] DADE COUNTY, FLA., ORDINANCE § 11A-31.

[336] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[337] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

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 she is pregnant, as long as she is able to perform her 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.[338] 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 impairment.[339] 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*

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

3.9(d) *Adoptive Parents Leave*

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

An eligible employee may take time off to care for a newly-adopted child as part of the 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*

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

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[338] 29 C.F.R. § 825.202.

[339] 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(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*

Florida 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*

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

3.9(g) *Voting Time*

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

There is no federal law concerning time off to vote.

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

Florida law does not address time off to vote for private-sector employees.

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*

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

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

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

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[340] 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

[340] 28 U.S.C. § 1875.

additional federal statutes.[341] 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 or threaten an employee because of the nature or length of service on a jury. An individual who has been dismissed has a private right of action for a violation of this provision, and may be awarded punitive damages and reasonable attorneys' fees, in addition to compensatory damages.[342]

An employer is not required to compensate an employee during jury service, and failure to continue to compensate an employee during jury service does not constitute a "threat of dismissal."[343] An employee should show the summons to report for jury duty to the employee's immediate superior the following workday after receiving the summons. The employee must be excused from their employment for the period of time that the employee is actually required to attend court, plus reasonable travel time.[344]

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 Florida, an employer must permit an employee to take up to three working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic or sexual violence.[345] An employee is eligible for leave if:

- the employee works for an employer with 50 or more employees;
- the employee has been employed by the employer for three or more months; and
- one of the following apply:
  - the employee is a victim of sexual violence or domestic violence, which includes assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member; or
  - the employee's family or household member is a victim of sexual violence or domestic violence, as outlined above. A *family or household member* includes the following:

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[341] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 9 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).

[342] FLA. STAT. § 40.271.

[343] *Patierno v. State of Fla.*, 391 So. 2d 391 (Fla. Dist. Ct. App. 1980).

[344] FLA. STAT. § 905.37.

[345] FLA. STAT. § 741.313(2)(a).

spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have done so in the past, and persons who have a common child, regardless of whether they have been married. With the exception of persons who have a common child, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.[346]

Purpose of Leave. An eligible employee may take time off from work to:

- seek an injunction for protection against sexual violence or domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence or sexual violence;
- obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence or sexual violence;
- make the employee's home secure from the perpetrator of the domestic violence or sexual violence, or to seek new housing to escape the perpetrator; or
- seek legal assistance in addressing issues arising from the act of domestic violence or sexual violence, or to attend and prepare for court-related proceedings arising from the act of domestic violence or sexual violence.[347]

Sexual violence is defined as any one incident of sexual battery, a lewd or lascivious act, luring or enticing a child, sexual performance by a child, or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed.[348] *Sexual violence* also includes "any crime, the underlying factual basis of which has been found by a court to include an act of sexual violence."[349]

Notice. Except in cases of imminent danger to the health or safety of the employee or a family or household member of the employee, an employee seeking leave from work must provide the employer with appropriate advance notice of the leave as required by the employer's policy, along with sufficient documentation of the act of domestic violence as required by the employer.[350]

Additional Protections & Requirements. The leave may be with or without pay, at the employer's discretion. Before receiving leave, an employee must first exhaust all available annual or vacation leave, personal leave, and sick leave, if applicable, unless the employer waives this requirement.[351]

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[346] FLA. STAT. §§ 741.28, 741.313(1), (3).

[347] FLA. STAT. § 741.313(2)(b).

[348] FLA. STAT. § 784.046(1)(c).

[349] FLA. STAT. § 741.313(1)(e).

[350] FLA. STAT. § 741.313(4)(a).

[351] FLA. STAT. § 741.313(4)(b).

An employee has no greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave. The statute does not limit the employer's right to discipline or terminate any employee for any reason, including reductions in work force or termination for cause or for no reason at all, other than exercising their rights under this section.

A private employer must keep all information relating to the employee's leave under the statute confidential.[352]

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.[353]

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.[354] 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

[352] FLA. STAT. § 741.313(4)(c).

[353] 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)).

[354] 29 C.F.R. § 825.126(a).

country.[355] Notably, leave is only available for covered relatives of military members called to active *federal* service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.

2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

National Guard and Reservists. Employers may not discharge or otherwise discriminate against an individual because the individual:

- belongs to the state National Guard and is required to report for active duty; or
- has an obligation as a member of a reserve component of the armed forces.[356]

An employer may not discharge, reprimand, or in any other way penalize an employee who is a member of the National Guard because of the individual's absence by reason of state active duty.[357]

Health insurance coverage must continue for any member of the Florida National Guard or the U.S. reserves called to active duty or state active duty. Coverage must be continued at the premium in effect for the employee or the employee's dependents, unless the employee requests coverage changes prior to active duty. If possible, an employee must notify their employer of their coverage preferences prior to reporting for active duty.

If the employee elects not to continue coverage while on active duty, coverage must be reinstated at the employee's request upon return from active duty, without a waiting period or disqualification for any condition that existed at the time the employee was called to active duty. Reinstatement must be requested within 30 days after returning to work with the same employer or within 60 days if the policy is an individual policy.[358]

A member of the National Guard who returns to work after serving on state active duty is entitled to return to the same seniority and any other rights and benefits the employee held prior to the leave. The employee is also entitled to any additional seniority they would have attained if the individual had remained continuously employed. Additionally, a member of the National Guard who returns to work after serving on state active duty may not be discharged for a period of one year after the date the member returns to work, except for cause.

An employer is not required to allow a member of the National Guard to return to work if:

- The employer's circumstances have changed so that employment would be impossible or unreasonable.

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[355] 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).

[356] FLA. STAT. § 250.481.

[357] FLA. STAT. § 250.482(1).

[358] FLA. STAT. § 250.341.

- Employment would impose an undue hardship on the employer.
- The employment was temporary and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
- The employer had legally sufficient cause to terminate the member of the National Guard at the time the individual left for state active duty.

An employer may not require any returning National Guard member to use vacation, annual, compensatory, or similar leave during the military leave; however, an employee may choose to use such leave and compensation.[359]

Civil Air Patrol. Employers of 15 or more employees must provide up to 15 days of Civil Air Patrol leave annually to employees who are members of the Civil Air Patrol.[360] *Civil Air Patrol member* means a senior member of the Florida Wing of the Civil Air Patrol with at least an emergency services qualification. To be eligible for the leave, the employee must have worked for the employer for at least 90 days.[361] The statute also prohibits an employer from discharging, reprimanding, or otherwise penalizing an employee due to their absence for Civil Air Patrol leave.[362]

During Civil Air Patrol leave, the employer can permit, but cannot require the employee to use any vacation, annual, compensatory, or similar paid leave.[363] In addition, the employee retains:

- the seniority that the individual has attained at the time the leave began, and any other rights and benefits to which the employee is entitled as a result of the employee's seniority; and
- any additional seniority that the member would have earned if the individual had remained continuously employed, and any other rights and benefits to which the employee would be entitled as a result of the employee's seniority.[364]

The law entitles Civil Air Patrol members to reinstatement after leave. Upon the conclusion of Civil Air Patrol leave, the employee must promptly notify the employer of their intent to return to work. An employee returning from Civil Air Patrol leave may not be discharged from employment for a period of one year after the leave, except for cause.[365]

However, the employer is not required to reinstate the employee if:

- the employer's circumstances have so changed as to make employment impossible or unreasonable;
- employment would impose an undue hardship on the employer;

[359] FLA. STAT. § 250.482(2).

[360] FLA. STAT. § 252.55(7).

[361] FLA. STAT. § 252.55(1).

[362] FLA. STAT. § 252.55(7).

[363] FLA. STAT. § 252.55(7).

[364] FLA. STAT. § 252.55(8).

[365] FLA. STAT. § 252.55(8).

- the employment from which the member takes such leave is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
- the employer had legally sufficient cause to terminate the employee at the time the individual took leave.[366]

Other Military-Related Protections: Spousal Unemployment. An individual is not disqualified for voluntarily leaving work to relocate as a result of the individual's military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.[367]

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 Florida.

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.[368] Employers are also required to comply with all applicable occupational safety and health standards.[369] 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.[370] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

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366 FLA. STAT. § 252.55(8).

367 FLA. STAT. § 443.101(1).

368 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.

369 29 U.S.C. § 654(a)(2).

370 29 U.S.C. § 667(c)(2).

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

Florida does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act.

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*

Drivers in Florida are prohibited from texting while driving.[371] A driver may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data in such a device for the purpose of nonvoice interpersonal communication, including, but not limited to:

- texting;
- emailing; and
- instant messaging.

Wireless communications device means any handheld device used or capable of being used in a handheld manner that is designed or intended to receive or transmit text or character-based messages, access, or store data, or connect to the internet.

These restrictions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, these provisions.

An exception exists for receiving messages that are related to the operation or navigation of the motor vehicle or using a device or system for navigation purposes. An exception is also provided for a driver who is conducting:

- wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function; or
- wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.[372]

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. Employers may not condition employment on the fact that an employee or prospective employee is authorized to carry a concealed weapon or concealed firearm, or terminate or otherwise discriminate against an employee, or expel an invitee, for exercising the right to keep and bear

[371] FLA. STAT. § 316.305.

[372] FLA. STAT. § 316.305.

arms or for exercising the right to self-defense so long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The law does not apply to schools, correctional institutions, nuclear-powered electricity generation facilities, properties where substantial activities are conducted involving national defense, aerospace, or homeland security, properties where the primary business conducted involves combustible or explosive materials, or any other property on which the possession of a firearm is prohibited under any federal law, contract with a federal government entity, or Florida law.[373]

Firearms in Company Parking Lots. In Florida, employers may not:

- prohibit employees and invitees from possessing legally-owned firearms that are locked inside or locked to a private vehicle in a parking lot when the employee or invitee is lawfully in the area;
- inquire about the presence of a firearm in the employee's or invitee's vehicle;
- search a private vehicle in a parking lot to determine whether it contains a firearm;
- take any action against an employee or invitee based on any verbal or written statement regarding the possession of a firearm in a private vehicle for lawful purposes;
- condition employment on the fact that an employee or prospective employee holds or does not hold a concealed-weapons permit;
- condition employment on an agreement by the employee or prospective employee that forbids the employee from keeping a legal firearm locked in their vehicle when the firearm is kept for lawful purposes;
- prohibit or attempt to prevent any employee or invitee from entering the parking lot of the employer's place of business because the employee or invitee's vehicle contains a legal firearm that is out of sight and is being carried for lawful purposes; or
- terminate or otherwise discriminate against an employee, or expel an invitee, for exercising the right to keep and bear arms or for exercising the right to self-defense so long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.[374]

These restrictions do not apply to vehicles owned, leased, or rented by the employer or the employer's landlord. The law also does not apply to schools, correctional institutions, nuclear-powered electricity generation facilities, properties where substantial activities are conducted involving national defense, aerospace, or homeland security, properties where the primary business conducted involves combustible or explosive materials, or any other property on which the possession of a firearm is prohibited under any federal law, contract with a federal government entity, or Florida law.

[373] FLA. STAT. § 790.251; FLA. H.B. 543 (2023).

[374] FLA. STAT. § 790.251.

The law included a distinction compelling certain businesses but not others to allow a customer to secure a gun in a vehicle; however, that portion of the law is subject to a permanent injunction and may not be enforced.[375]

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*

Smoking is prohibited in enclosed indoor workplaces in Florida.[376] The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a smoking and vaping policy that includes the prohibition on smoking and vaping in the workplace. The policy may also include procedures regarding what to do when a violation is witnessed or comes to the attention of the person in charge. In addition, the proprietor in charge of an enclosed indoor workplace may, at their discretion, post "No Smoking" and "No Vaping" signs.[377]

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*

A merchant, storekeeper, employer of male or female clerks, salespeople, cash boys or cash girls, or other assistants, in mercantile or other business pursuits that requires employees to stand or walk during their active duties must furnish suitable chairs, stools, or sliding seats attached to the counters or walls for the employees to use when not engaged in their active work and required to be on their feet in the proper performance of their several duties.[378]

An employer cannot refuse to permit employees to make reasonable use of seats during business hours for purposes of necessary rest, and when use will not interfere with humane or reasonable requirements of employment.

3.10(f) *Workplace Violence Protection Orders*

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

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

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[375] FLA. STAT. § 790.251; *see also Florida Retail Fed'n, Inc. v. Attorney Gen. of Fla.*, 576 F. Supp. 2d 1301 (N.D. Fla. 2008).

[376] FLA. CONST. art. X, § 20; FLA. STAT. §§ 386.201 *et seq.*; FLA. ADMIN. CODE ANN. r. 64I-4.001.

[377] FLA. STAT. § 386.206.

[378] FLA. STAT. § 448.05.

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

Florida 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");[379] (2) the Americans with Disabilities Act (ADA);[380] (3) the Age Discrimination in Employment Act (ADEA);[381] (4) the Equal Pay Act;[382] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[383] (6) the Civil Rights Acts of 1866 and 1871;[384] 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);[385]
- 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.[386] Employees must first exhaust their administrative remedies by filing a

[379] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[380] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[381] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[382] 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.

[383] 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)).

[384] 42 U.S.C. §§ 1981, 1983.

[385] 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.

[386] 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.[387]

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

Florida's main fair employment practices law is the Florida Civil Rights Act (FCRA).[388] The FCRA is closely modeled on Title VII, and Florida courts generally look to and apply federal law dealing with Title VII to claims of unlawful discrimination under the FCRA. The FCRA prohibits discrimination in employment on the basis of:

- race;
- color;
- religion;
- sex;
- pregnancy (includes childbirth and related medical conditions);[389]
- national origin (includes ancestry);
- age;
- handicap; or
- marital status (married, single, divorced, separated, widowed).[390]

An employer may not require proof of vaccination or COVID-19 testing as a condition of contracting, hiring, promotion or continued employment, and is prohibited from discriminating against a person for refusing vaccination, testing, or the use of face coverings.[391]

The Florida Fair Employment Practices law covers employers with 15 or more employees, labor organizations, employment agencies, and labor organizations.[392] Religious organizations and institutions are exempt from the FCRA to the extent they limit employment opportunities to those who subscribe to the tenets of the organization's religious beliefs.[393]

For the purposes of the vaccine, face covering and COVID-19 testing prohibitions, the law applies to all employers.[394]

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[387] 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.

[388] FLA. STAT. §§ 760.01 *et seq*.

[389] Pregnancy is now a statutorily protected stand-alone category. Prior to an amendment to the statute, it was a judicially recognized subset of sex discrimination. *See Delva v. Continental Grp., Inc.*, 137 So. 3d 371 (Fla. 2014).

[390] FLA. STAT. § 760.10.

[391] FLA. STAT. § 381.00316; S.B. 252 (Fla. 2023).

[392] FLA. STAT. §§ 760.02, 760.10.

[393] FLA. STAT. § 760.10(9).

[394] FLA. STAT. § 381.00316; S.B. 252 (Fla. 2023).

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

The Florida Commission on Human Relations (FCHR) is the agency charged with handling claims under the antidiscrimination statutes.[395]

Complaint. Under the FCRA, an individual is required to file a complaint with the Commission or the EEOC within 365 days of the alleged violation. Consistent with federal antidiscrimination laws, the FCRA's remedial scheme requires that an individual first exhaust the individual's administrative avenues of relief by filing a complaint of unlawful discrimination before being granted access to the courts.[396] Employees may only file directly in court if there is no federal or local agency responsible for accepting the alleged discrimination complaint.[397]

Employment complaints and answers to the FCHR questionnaire for employment complaints are confidential.[398]

Investigation. After the complaint is filed, the Commission has 180 days to investigate the allegations of discrimination and make a determination whether "reasonable cause" for the claim exists. If the Commission fails to conciliate or make a determination within this 180-day period, a complainant has the right to proceed with their claim as if the Commission had determined that reasonable cause for the claim exists.

Hearings. If the Commission finds reasonable cause to believe that a violation of the FCRA has occurred, the complainant has two available avenues of redress. The complainant may either bring a civil action against the employer, or continue to pursue their claims at the administrative level by requesting an administrative hearing with the Commission.[399] Once the complainant has elected a forum in which to pursue their claim, however, that forum becomes the exclusive procedure available to him/her. In other words, the complainant may not file a civil action and then pursue their claim at the administrative level.

If the Commission determines that reasonable cause exists, the complainant has one year from the date of the determination in which to commence a civil action in the courts. Otherwise, the claim is barred.[400] If, however, the complainant chooses to pursue a claim at the administrative level, the complainant must file a request for an administrative hearing within 35 days of the Commission's determination of reasonable cause. The Commission may then elect to hear the case in its own right or request that an administrative law judge (ALJ) preside over the hearing.[401]

If the hearing is conducted by a commissioner, and the commissioner concludes that a violation of the FCRA has occurred, the commissioner shall issue a "proposed" order prohibiting the unlawful practice and granting the complainant such affirmative relief, including back pay, as he/she deems necessary under the circumstances. If the hearing is conducted by an ALJ, and the ALJ concludes that a violation has occurred, the ALJ shall issue a "recommended" order to the same effect. The full Commission then has

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[395] The FCHR's website is available at http://fchr.state.fl.us/.

[396] *See Armstrong v. Lockheed Martin Beryllium Corp.*, 990 F. Supp. 1395, 1399 (M.D. Fla. 1997).

[397] *Available at* https://fchr.myflorida.com/employment.

[398] FLA. STAT. § 760.11(12).

[399] FLA. STAT. § 760.11(4).

[400] FLA. STAT. § 760.11(7).

[401] FLA. STAT. § 760.11(6).

90 days in which it may adopt, reject, or modify either the proposed or recommended order, and issue a "final" order consistent with this decision.[402] The final order is a final agency decision, and as such, is appealable as a right.[403]

If the ALJ determines that a violation has not occurred, however, and the Commission adopts this finding and issues a final order dismissing the complaint, the complainant may then appeal this determination as a final agency decision to the Florida District Court of Appeals in accordance with the Florida Administrative Procedure Act, Florida Statutes sections 120.50 to 120.81.[404]

Commission Delay. If more than 180 days elapse since the filing of a complaint of unlawful discrimination with the Commission and the Commission does not issue any finding, then the complainant may proceed as if a reasonable cause determination had been made.[405] The complainant then has four years from the expiration of the 180-day time period to file a lawsuit in court as if the Commission had issued a cause finding.[406]

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

HIV/AIDS. Florida law provides fair employment protections for genetic testing and HIV or AIDS (actual or perceived). Protections provided to persons with disabilities are available for individuals who have or are perceived to have HIV or AIDS. Persons discriminated against on the basis of AIDS have a right of action in the circuit court and may recover the greater of liquidated (up to $5000) or actual damages.[407]

Sickle Cell & Genetic Testing. Florida law also prohibits discrimination on the basis of sickle-cell traits and prohibits mandatory screening for sickle-cell traits as a condition of employment. There are also protections for DNA analysis and genetic testing.[408]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in the jurisdictions listed in Table 10 are subject to local fair employment practices ordinances.

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[402] FLA. STAT. § 760.11(6).

[403] FLA. STAT. §§ 760.11(13), 120.68.

[404] FLA. STAT. §§ 120.68, 760.11(13).

[405] FLA. STAT. § 760.11(8).

[406] FLA. STAT. § 95.11; *see also Joshua v. City of Gainesville*, 768 So. 2d 432, 433 (Fla. 2000). However, if a complainant proceeds as if a reasonable cause determination had been made by the FCHR by filing a lawsuit, the filing of the lawsuit starts the one-year clock that applies in situations where the FCHR has found reasonable cause. *Freeman v. Walgreen Co.*, 407 F. Supp. 2d 1317, 1320-21 (S.D. Fla. 2005) (finding plaintiff's claims for violations of FCRA were initiated too late after the plaintiff filed a complaint within the one-year period of time but did not allege FCRA violations, and nearly four years after filing the initial complaint, filed the complaint alleging FCRA violations).

[407] FLA. STAT. §§ 760.40, 760.50.

[408] FLA. STAT. §§ 448.075, 448.076 (sickle cell), 760.40 (genetic testing).

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
Alachua County	An employer (and its agent) employing five or more employees for each working day in each of four or more consecutive calendar weeks in the current or preceding calendar year must extend antidiscrimination protections on the basis of: genetic information; pregnancy, childbirth, or related medical conditions; race; color; national origin; religion; sex; marital status; age (18 years or older); disability; sexual orientation; and gender identity or expression.[409] An aggrieved individual may file a written, verified complaint with the Alachua County Equal Opportunity Office. The complaint must be filed within 180 days after the date the alleged unlawful practice has most recently occurred.[410]
Broward County	Protected classifications include: race (including traits historically associated with race, like hair texture, hair type, and protective hairstyle); color; religion; sex; national origin; age (at least 18 years of age); marital status; political affiliation; familial status; disability; sexual orientation; pregnancy, childbirth, or a related medical condition; gender identity or expression; and association or relationship with a person with a known disability. The antidiscrimination protections apply to any employer employing five or more employees for each working day in each of 20 or more calendar weeks (weeks need not be consecutive) in the current or preceding calendar year.[411] An aggrieved person may, no later than one year after an alleged discriminatory practice has occurred or terminated, file a complaint with the Human Rights Section of the Broward County Office of Intergovernmental Affairs and Professional Standards against an employer that employs between 5 and 14 employees.[412]
Fort Lauderdale	Employers (and their agents) with five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year must extend antidiscrimination protections on the following bases: race, color, religion, sex, national origin, age (18 or older), marital status, political affiliation, disability (including by association), sexual orientation (being heterosexual, bisexual, or homosexual, or the perception that an individual is heterosexual, bisexual, or homosexual, or the perception that an individual is associated with individuals who are heterosexual, bisexual, or homosexual), pregnancy, childbirth, or a medical condition relating to pregnancy or childbirth, and gender identity or expression (meaning

[409] ALACHUA CTY., FLA., CODE OF ORDINANCES §§ 111.05 (definitions), 111.06, 111.25, and 111.26 (exceptions, including *bona fide* occupational qualification and certain religious programs).

[410] ALACHUA CTY., FLA., CODE OF ORDINANCES §§ 111.09, 111.12.

[411] BROWARD CTY., FLA., CODE OF ORDINANCES §§ 16.1/2-3 (definitions), 16.1/2-33, and 16.1/2-33.1 (exemptions, including certain religious organizations).

[412] BROWARD CTY., FLA., CODE OF ORDINANCES § 16.1/2-44.

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
	gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth).[413] An individual alleging a violation may file a civil action in court within one year after the date on which the discriminatory practice is alleged to have been committed. The aggrieved individual must send the prospective defendant a notice letter outlining their intention to file a lawsuit and a detailed explanation of the grounds for the intended lawsuit at least 21 days before filing the action. The notice letter must be sent by U.S. certified mail, return receipt requested.[414]
Gainesville	Employers (and their agents) with five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year are subject to the following antidiscrimination protections: sexual orientation; race; color; gender; age (not less than 40, not more than 70 years); religion; national origin; marital status; disability; gender identity; and physical or mental disability.[415] Any person claiming to be aggrieved by an unlawful practice may file a written, verified complaint with the City of Gainesville Equal Opportunity Office within 180 days after the date the alleged unlawful practice occurred.[416]
Hillsborough County	Employers employing five or more full-time employees working 30 or more hours per week, or that have more than 15 employees irrespective of the number of hours worked per week in each of 13 or more calendar weeks in the current or preceding calendar years must extend antidiscrimination protections on the basis of: race; color; religion; national origin; sex (including pregnancy, childbirth, and related medical conditions, and sexual harassment is specifically prohibited); age; marital status; disability; sexual orientation; and gender identity expression.[417] An aggrieved individual may report the alleged offense to the Equal Opportunity Administrator for Hillsborough County by filing a written complaint within 180 days after the date of the alleged discriminatory practice.[418]

[413] FORT LAUDERDALE, FLA. CODE OF ORDINANCES §§ 29-2 (definitions), 29-11 (including an exception for bona fide occupational qualification), and 29-12 (exemptions including for certain religious institutions and practices, and bona fide merit or seniority systems).

[414] FORT LAUDERDALE, FLA. CODE OF ORDINANCES § 29-34.

[415] GAINESVILLE, FLA., CODE OF ORDINANCES §§ 8-47 (definitions), 8-48, and 8-49 (exceptions, including religious organizations, *bona fide* occupational qualifications).

[416] GAINESVILLE, FLA., CODE OF ORDINANCES § 8-50.

[417] HILLSBOROUGH CTY., FLA., CODE OF ORDINANCES §§ 30-20 (definitions), 30-22 (exceptions for *bona fide* occupational qualifications, national security, and certain religious organizations).

[418] HILLSBOROUGH CTY., FLA., CODE OF ORDINANCES § 30-27.

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
Jacksonville	Employers (and their agents) employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year are subject to the following antidiscrimination protections: race; color; religion; national origin; sex; sexual orientation; gender identity; marital status; age; and disability.[419] An individual alleging a violation may file a complaint with the Jacksonville Human Rights Commission within 180 days after the date on which the alleged unlawful employment practice or rule violation occurred.[420]
Leon County	Protected classifications include: age (18 years or older); race; color; religion; national origin; ancestry; disability; marital status; familial status; sex; gender; gender identity or expression; and sexual orientation. The antidiscrimination protections apply to employers (and their agents) employing five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year.[421] There is no county-level enforcement agency. An aggrieved person may file a civil action in any court of competent jurisdiction.[422]
Miami Beach	Employers (and their agents) employing five or more employees in each of four or more calendar weeks in the current calendar year must extend antidiscrimination protections on the basis of: race; color; national origin; religion; sex (including pregnancy, childbirth, and related medical conditions); intersexuality; gender identity; sexual orientation; marital and familial status; age (18 years or older); disability; ancestry; height; weight; domestic partnership status; labor organization membership; familial situation; political affiliation; and hair texture and/or hairstyle.[423] An employer must post a workplace poster covering these protections.[424] Any person alleging that an unlawful discriminatory practice has occurred must file a verified, written complaint with the Miami Beach City Manager within 180 days after the alleged unlawful discriminatory practice occurred.[425]

[419] JACKSONVILLE, FLA., CODE OF ORDINANCES §§ 402.107 (definitions), 402.201, 402.208 (defenses), 402.209 (exemptions, including religion), and 402.10 (exceptions).

[420] JACKSONVILLE, FLA., CODE OF ORDINANCES §§ 402.301, 402.302.

[421] LEON CTY., FLA., CODE OF ORDINANCES §§ 9-2 (definitions), 9-26 (additional definitions), 9-27, and 9-28 (exemptions include religious organizations, certain practices by educational institutions based on religion, and *bona fide* occupational qualifications).

[422] LEON CTY., FLA., CODE OF ORDINANCES § 9-4.

[423] MIAMI BEACH, FLA., CODE OF ORDINANCES §§ 62-31 (definitions), 62-57 (religious and educational religious exception for sexual orientation category), 62-86 (discrimination in employment, and 62-111 (exceptions, including *bona fide* occupational qualifications, certain religious educational institutions, and certain religious organizations).

[424] MIAMI BEACH, FLA., CODE OF ORDINANCES § 62-92(b).

[425] MIAMI BEACH, FLA., CODE OF ORDINANCES §§ 62-56 (definitions), 62-58.

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
Miami-Dade County	Employers (and their agents, acting managers, contractors, or subcontractors) that regularly employ five or more employees in Miami-Dade County in each of four or more calendar weeks in the current calendar year are subject to the following antidiscrimination protections: race; color; religion; ancestry; sex; pregnancy; national origin; age (18 years or older); disability; marital status; familial status; sexual orientation; gender identity or expression; and actual or perceived status as a victim of domestic violence, dating violence, or stalking of any individual or any person associated with such individual.[426] Any aggrieved person must file a written, signed complaint with the Director of the Miami-Dade County Commission on Human Rights within 180 days after the alleged unlawful practice occurs.[427]
Orlando	Protected classifications include: race; religion; color; national origin; sex (includes, but is not limited to, pregnancy, childbirth, or related medical conditions); sexual orientation; gender identity; age (at least 40 years); handicap; and marital status. The antidiscrimination protections apply to employers (and their agents) employing more than five full-time employees working more than 30 hours per week, and that have more than 10 employees irrespective of the number of hours per week, in each of 13 or more calendar weeks in the current or preceding calendar year.[428] Any person alleging subjection to an unlawful discriminatory practice may file a complaint with the Orlando Human Relations Department Chapter 57 Review Board within 180 days after the date of the alleged unlawful discriminatory practice.[429]
Palm Beach County	Employers (and their agents) employing 5 or more employees for each working day of four or more calendar weeks in the current or preceding calendar year must extend antidiscrimination protections on the basis of: race; color; religion; sex (including pregnancy, childbirth, and related medical conditions, gender stereotyping, and sexual harassment); national origin; age (at least 40 years); disability; familial status; marital status; sexual orientation; gender identity or expression; and genetic information.[430] An individual alleging a violation of the ordinance may file a complaint with the Palm Beach County Office of Equal Opportunity

[426] MIAMI-DADE CTY., FLA., CODE OF ORDINANCES §§ 11A-2 (definitions), 11A-25 (additional definitions), and 11A-26 (includes exemptions for certain academic employers with religious affiliations and *bona fide* occupational qualifications).

[427] MIAMI-DADE CTY., FLA., CODE OF ORDINANCES § 11A-28.

[428] ORLANDO, FLA., CODE OF ORDINANCES §§ 57.01 (definitions), 57.14 (exception for *bona fide* occupational qualifications, to be interpreted narrowly), and 57.13 (religious exception).

[429] ORLANDO, FLA., CODE OF ORDINANCES § 57.05.

[430] PALM BEACH CTY., FLA., CODE OF ORDINANCES §§ 2-263 (definitions), 2-312, and 2-313 (limitations and exceptions include religious and *bona fide* occupational qualifications).

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
	(OEO) within 180 days of the alleged discriminatory act. An aggrieved party may also file a civil action no later than one year after the date of determination of reasonable cause by the OEO.[431]
Pinellas County	Employers (and their agents) employing 5 or more employees for each working day in each of 13 or more calendar weeks in the current or preceding calendar year are subject to the following antidiscrimination protections: race; color; religion; gender (including sex, pregnancy, childbirth, and related medical conditions, same gender harassment, and sexual harassment); sexual orientation; national origin; age (at least 18 years or legally emancipated); marital status; and disability.[432] Any person alleging that they have been subject to an unlawful discriminatory practice may file a complaint in writing with the Pinellas County Board of County Commissioners within 180 days after the date of the alleged unlawful discriminatory practice.[433]
Sarasota	Employers (and their agents) employing five or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year must extend antidiscrimination protections on the basis of: age (40 or older); color; disability; gender; marital status; national origin; race; religion; sexual orientation; and veteran status.[434] An individual subjected to unlawful discrimination may file a complaint with the City of Sarasota Human Relations Board within 90 days after the date of the alleged unlawful discriminatory practice.[435]
Tampa	Protected classifications include: race; color; religion; national origin; sex (includes, but is not limited to, pregnancy, childbirth, and related medical conditions); sexual orientation; gender identity or expression; age (40 years or older); disability (physical/mental); familial status; and marital status. The antidiscrimination protections apply to employers with five or more full-time employees working more than 30 hours per week or that have more than 15 employees working any number of hours per week in each of 13 or more calendar weeks in the current or preceding calendar year.[436] Any person aggrieved by a violation may, within 180 days after

[431] PALM BEACH CTY., FLA., CODE OF ORDINANCES §§ 2-301, 2-311.

[432] PINELLAS CTY., FLA., CODE OF ORDINANCES §§ 70-51 (definitions), 70-53 (exemptions for certain religious and religious educational organizations).

[433] PINELLAS CTY., FLA., CODE OF ORDINANCES § 70-76.

[434] SARASOTA, FLA., CODE OF ORDINANCES §§ 18-2 (definitions), 18-37 (additional definitions), and 18-38 (exceptions include *bona fide* occupational qualifications, certain religious institutions, certain practices by academic employers with religious affiliations, and national security).

[435] SARASOTA, FLA., CODE OF ORDINANCES §§ 18-19, 18-20.

[436] CITY OF TAMPA, FLA., CODE OF ORDINANCES §§ 12-2 (definitions), 12-17 (additional definitions), 12-18 (most equal employment related definitions under the ADA adopted), 12-26, 12-28 (ADA unlawful employment-related

Table 10. Local Fair Employment Practices Ordinances	
Locality	**Notes**
	the alleged violation has occurred, file a complaint with the City of Tampa's Office of Human Rights.[437]
Volusia County	Employers (and their agents) employing five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year are subject to the following antidiscrimination protections: age (chronological age greater than or equal to 18 years); race; color; religion; national origin; disability; marital status; sex; and personal gender identity.[438] There is no county-level enforcement agency; an aggrieved person may file a civil action in any court of competent jurisdiction against the person alleged to have committed a discriminatory practice no later than one year after the discriminatory practice is alleged to have been committed.[439]
West Palm Beach	Protected classifications include: race; color; national origin; religion; sex; gender identity or expression; genetic information; sexual orientation; disability; marital status; familial status; and age (chronological age of 18 years or older). The antidiscrimination protections apply to employers (and any person acting on behalf of an employer, either directly or indirectly) employing 15 or more employees for wages, salaries, or commissions within the city of West Palm Beach, exclusive of parents, spouse, or children, in each of the four or more calendar weeks in the current year.[440] Any person alleging an unlawful discriminatory practice may file a complaint with the Office of the Mayor no later than one year or 365 days after the date of the alleged unlawful discriminatory practice.[441]

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

defenses adopted), and 12-36 (exemptions, including *bona fide* occupational qualifications, religious exceptions, and national security).

[437] CITY OF TAMPA, FLA., CODE OF ORDINANCES § 12-46.

[438] VOLUSIA CTY., FLA., CODE OF ORDINANCES §§ 36-2 (definitions), 36-27, and 36-28 (exemptions, including for religious organizations and educational religious organizations, *bona fide* occupational qualifications; also, employers may maintain grooming standards and access to private facilities, such as restrooms, as specified in the ordinance).

[439] VOLUSIA CTY., FLA., CODE OF ORDINANCES § 36-4.

[440] WEST PALM BEACH, FLA., CODE OF ORDINANCES §§ 42-32 (definitions), 42-35, and 42-36 (exemptions, including for *bona fide* occupational qualifications, certain educational institutions and practices, and religious organizations).

[441] WEST PALM BEACH, FLA., CODE OF ORDINANCES §§ 42-33 (relevant definitions), 42-42.

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."[442] 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.[443]

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

Florida has two equal pay statutes that protect employees against discrimination in terms of compensation or wages. Both statutes act as gap-fillers—they only apply to employers, labor organizations, or employment agencies that are not subject to the federal FLSA.[444]

The first statute, entitled Wage Discrimination Based on Sex, applies to both public and private-sector employers that employ two or more employees.[445] The statute provides:

> No employer shall discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he or she 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.[446]

Like its federal counterpart, there are several statutory exceptions to this general prohibition, such as payments made pursuant to a *bona fide* seniority system, merit system, or a system that compensates on the basis of the quantity and/or quality of the work performed.[447] The statute provides for the filing of a cause of action within six months from the date of termination, and limits a plaintiff's damages to the recovery of the difference between the wages actually paid and the amount that is determined should have been paid, for a period of one year prior to filing, and the recovery of attorneys' fees and costs.[448]

The second statute, entitled Florida's Equal Pay Law, also prohibits any person from discriminating against a person on the basis of sex, race, or marital status in the areas of loaning money, granting credit, or

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[442] 29 U.S.C. § 206(d)(1).

[443] 42 U.S.C. § 2000e-5.

[444] FLA. STAT. § 448.07(4); *see also Henderson v. Hovnanian Enters., Inc.*, 884 F. Supp. 499, 502 (S.D. Fla. 1995) (finding that plaintiff's claim under Florida's Equal Pay Act was preempted by the FLSA).

[445] FLA. STAT. § 448.07(1)(a), (b).

[446] FLA. STAT. § 448.07(2)(a).

[447] FLA. STAT. § 448.07(2)(a).

[448] FLA. STAT. § 448.07(3).

"providing equal pay for equal services performed."[449] Although there are very few reported cases discussing the Equal Pay Law, one federal court in Florida applied the Title VII framework in analyzing an equal pay claim under that law.[450] The Equal Pay Law, which is broader than the Wage Discrimination Law, includes race and marital status among the protected classes. It also provides a successful plaintiff with greater remedies, including compensatory and punitive damages.[451] A plaintiff has four years to bring a claim under the Equal Pay Law.[452]

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.[453]

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;

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[449] FLA. STAT. § 725.07(1).

[450] *Soto v. Bank of Am., N.A.*, 2005 WL 2861116, at **11-12 (M.D. Fla. Nov. 1, 2005).

[451] FLA. STAT. § 725.07(2); *see also Raulerson v. General Fin. Corp.*, 350 So. 2d 1111 (Fla. Dist. Ct. App. 1977).

[452] *Forehand v. International Bus. Machs. Corp.*, 586 F. Supp. 9 (M.D. Fla. 1984).

[453] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[454]

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.[455] 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.[456] 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."[457]

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.[458]

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[454] 29 C.F.R. § 1636.3.

[455] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[456] 29 C.F.R. § 1636.3.

[457] 29 C.F.R. § 1636.4.

[458] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

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

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[459]

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*

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

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

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

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[460] Multiple decisions of the U.S. Supreme Court[461] 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.[462] 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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[459] 29 C.F.R. § 1636.3.

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

[461] *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).

[462] 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*

Florida does not require private sector employers to provide training related to discrimination and harassment. However, the state has imposed restrictions on the content of voluntary employer-provided training. It is an unlawful employment practices to subject any individual, as a condition of employment, membership, certification, licensing, credentialing, or passing an examination, to training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels the individual to believe any of the following concepts constitutes discrimination based on race, color, sex, or national origin:

- Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual's moral character or status as either privileged or oppressed is necessarily determined by their race, color, sex, or national origin.
- Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin.
- An individual, by virtue of their race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
- An individual, by virtue of their race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the individual played no part, committed in the past by other members of the same race, color, sex, or national origin.
- Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin.[463]

This law may not be construed to prohibit discussion of the concepts listed above as part of a course of training or instruction, provided the training or instruction is given in an objective manner without endorsement of those concepts.[464] Note that the law is the subject of pending litigation. As of August 18, 2022, a federal district court issued an injunction that prohibits the Florida Commission on Human Relations and the Florida Attorney General from enforcing the law's provisions against employers. The state appealed the injunction and is, as of July 1, 2023, awaiting the decision of the appellate court.[465]

[463] FLA. STAT. § 760.10(8).

[464] FLA. STAT. § 760.10(8).

[465] *Honeyfund.com, Inc. v. DeSantis*, 622 F. Supp. 3d 1159 (N.D. Fla. 2022); *appeal filed*, No. 22-13135 (11th Cir. Sept. 19, 2022).

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*

Florida has two statutes—one that applies to public employers and one that applies to private employers—both of which provide protection for employees who engage in certain whistleblowing activities.[466] Florida's Private Whistleblower Act applies to private employers having 10 or more employees, and prohibits employers from disciplining or retaliating against "whistleblower" employees who engage in conduct falling within the ambit of the statute. Under this law, private employers are prohibited from taking disciplinary or retaliatory action against an employee who:

- discloses, or threatens to disclose, to any appropriate governmental agency, under oath and in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation (however, the employee must have brought the activity, policy, or practice in question to the attention of the employer in writing and given the employer a "reasonable opportunity" to correct the violation);
- provides information to, or testifies before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer; or
- objects to, or refuses to participate in, any activity, policy, or practice of the employer that is in violation of a law, rule, or regulation.[467]

Upon a finding that the employer violated the Private Whistleblower Act, a court may order the following relief:

- an injunction restraining continued violation of the act;
- reinstatement of the employee to the same position held before the retaliatory action was taken, or to an equivalent position;
- reinstatement with full fringe benefits and seniority rights;
- compensation for lost wages, benefits, and other remuneration;
- any other compensatory damages available at law; and

[466] FLA. STAT. §§ 112.3187 (public employers), 448.101-448.105 (private employers).

[467] FLA. STAT. § 448.102.

- costs, expenses, and reasonable attorneys' fees.[468]

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)[469] and the Railway Labor Act (RLA)[470] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

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

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

Right-to-Work. Florida is a right-to-work state. Florida's Union Regulation Law, Florida Statutes section 447.03, protects the rights of individuals to organize and form labor organizations for purposes of collectively bargaining with employers.[471] Section 447.03 states:

> Employees shall have the right to self-organization, to form, join, or assist labor unions or labor organizations or to refrain from such activity, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 447.03 works in conjunction with article I, section 6 of the Florida Constitution, also known as the "Right to Work" Amendment, which provides: "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."[472]

Case law under the statute and constitutional amendment hold that the two prohibit union shop arrangements, *i.e.*, arrangements by which the employer and the union agree that the employer may only

[468] FLA. STAT. §§ 448.103, 448.104.

[469] 29 U.S.C. §§ 151 to 169.

[470] 45 U.S.C. §§ 151 *et seq*.

[471] FLA. STAT. § 447.03.

[472] FLA. CONST. art. I, § 6.

hire individuals who are, or are willing to become, members of a particular union.[473] Agency shop agreements, whereby the union and the employer agree that nonunion employees are required to pay initiation fees and union dues on a regular basis, are prohibited.[474] Maintenance of membership agreements, whereby union members are required to remain members of the union throughout the duration of a collective bargaining agreement, are similarly prohibited.

Florida's Union Regulation Law also prohibits employers and unions from discriminating against an individual by discharging or refusing to hire, on the basis of the individual's membership, or nonmembership, in any labor union or organization. The law provides that aggrieved individuals are entitled to seek damages, including costs and reasonable attorneys' fees, from a union or employer, either acting separately or in concert, found to have discriminated on such basis. Furthermore, if it is shown that the union or employer acted willfully and with malice, or with reckless indifference to the rights of the individual, the court also may award punitive damages. The aggrieved individual also may seek injunctive relief as an additional remedy.[475]

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).[476] 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.[477] 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*

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

4.1(c) *State Mass Layoff Notification Requirements*

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

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[473] *See Scherer & Sons, Inc. v. International Ladies' Garment Workers' Union*, 142 So. 2d 290, 295 (Fla. 1962) (noting that Florida's Right-to-Work Law prohibits union shop arrangements).

[474] *Schermerhorn v. Local 1625 of the Retail Clerks Int'l Ass'n*, 141 So. 2d 269 (Fla. 1962), *aff'd*, 375 U.S. 96 (1963).

[475] FLA. STAT. § 447.17.

[476] 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.

[477] 20 C.F.R. §§ 639.4, 639.6.

4.2 Documentation to Provide When Employment Ends

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

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

Table 11. 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.[478] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[479]

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

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	Florida does not require employers to provide notice of the availability of continuation coverage upon employee separation, *unless* the employer has contracted with the insurer to perform administrative requirements.[480]

[478] 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.

[479] 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.

[480] FLA. STAT. § 627.6692(6)(b).

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Unemployment Compensation	**Generally.** Florida does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, an employer generally must post and maintain accessible notice (RT-83) informing employees about benefits eligibility under the Florida Reemployment Assistance Program. Accordingly, it is recommended that an employer provide a copy of the same notice when employment ends.[481] **Multistate Workers.** Florida similarly 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.[482]

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*

Florida's job reference immunity law provides that employers that disclose information regarding a former or current employee upon request of the employee or the employee's prospective employer are immune from civil liability for the disclosure or its consequences, unless it can be shown by clear and convincing evidence that the information disclosed was knowingly false or violated the Florida Civil Rights Act.[483]

However, employers may face liability for *intentionally interfering with the business relationships* of a former employee. Significantly, "the interfering defendant must be a third party, a stranger to the business relationship."[484] Florida courts have recognized claims such as these in situations where a former employer provides another employer with a negative reference regarding a prospective new hire, which results in the plaintiff's failure to procure the job.[485]

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[481] FLA. STAT. § 443.151(1)(a). This poster is available at http://floridarevenue.com/Forms_library/current/rt83.pdf.

[482] *See* FLA. STAT. § 443.221.

[483] FLA. STAT. § 768.095.

[484] *Palm Beach Cty. Health Care Dist. v. Professional Med. Educ., Inc.*, 13 So. 3d 1090, 1094 (Fla. App. Dist. Ct. 2009) (citing *Salit v. Ruden*, 742 So. 2d 381, 386 (Fla. Dist. Ct. App. 1999)).

[485] *Linafelt v. Bev, Inc.*, 662 So. 2d 986, 989 (Fla. Dist. Ct. App. 1995); *Nowik v. Mazda Motors of Am. (East) Inc.*, 523 So. 2d 769 (Fla. Dist. Ct. App. 1988) (plaintiff properly stated a claim for intentional interference with a business relationship where he had established a business relationship with his new employer, successfully interviewed with the company and been offered the position, but he was not hired due to a negative reference

Florida also has a blacklisting law. It provides that a person is guilty of a misdemeanor in the first degree if the individual agrees or conspires with another person for the purpose of preventing any person from procuring work, to cause the discharge of any person from work, or threaten verbally or in writing to injure a person's life, property, or business for the purpose of procuring the discharge of any worker.[486]

from his former supervisor whom it was alleged personally disliked plaintiff and provided the negative reference in bad faith).

[486] FLA. STAT. § 448.045.