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STATE

Littler on

Idaho 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 Idaho 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.

ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

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

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

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

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

1.1(b) *State Guidelines on Classifying Workers*

In Idaho, 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).

On September 29, 2022, the Idaho Department of Labor signed a Memorandum of Understanding with the U.S. Department of Labor, Wage and Hour Division with the mutual goals of "working together to address the need for…conducting joint investigations and providing investigation referrals; and coordinat[ing] compliance education, outreach and technical assistance to employers, employees and staff between DOL/WHD and IDOL."[5] The Memorandum of Understanding is in force until September 28, 2027.

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Idaho Commission on Human Rights	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.
Income Taxes	Idaho State Tax Commission	Internal Revenue Service (IRS) 20-factor test.[6]

[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] U.S. Dep't of Labor, Wage and Hour Div. & Idaho Dep't of Labor, *Memorandum of Understanding* (Sept. 29, 2022), *available at* https://www.dol.gov/sites/dolgov/files/WHD/MOU/ID-1-signed.pdf.

[6] The Idaho Income Tax Act defines *employer* and *employee* as they are defined by the IRS. IDAHO CODE §§ 63-3017, 63-3018. Moreover, the Idaho State Tax Commission advises that "Idaho law follows federal law regarding who's an employee and who's an independent contractor" and notes that the IRS assesses the following three characteristics in making the determination: (1) behavior control; (2) financial control; and (3) relationship of the

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Wage & Hour Laws	Idaho Department of Labor	There are no relevant statutes or case law identifying a test for independent contractor status in this context.[7]
Unemployment Insurance	Idaho Department of Labor	"Right to control" test adopted in statute. "Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment unless it is shown: (a) That the worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact; and (b) That the worker is engaged in an independently established trade, occupation, profession, or business."[8]
Workers' Compensation	Idaho Industrial Commission	"Right to control" test. The statutory definition of *independent contractor* is "any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of

parties. Idaho State Tax Comm'n, *Withholding* (March 28, 2019), *available at* https://tax.idaho.gov/i-1026.cfm?seg=typeempl.

[7] Although not setting forth a test, Idaho's Department of Labor has published wage and hour frequently asked questions, which state: "Under Idaho laws an independent contractor is free from direction and control over how the work is performed. Some Idaho laws also require that independent contractors be established businesses, which may include having business expenses and income." Idaho Dep't of Labor, *Labor Laws FAQ, How can I determine if I am an employee when my employer treats me as an independent contractor?*, *available at* https://labor.idaho.gov/dnn/Businesses/Idaho-Labor-Laws/Labor-Laws-FAQ (also recommending that an employee may contact their local Idaho Department of Labor tax representative or contact the IRS and request Form SS-8 to help determine correct status).

[8] IDAHO CODE § 72-1316(4) (emphasis added). Idaho regulations further provide that in determine whether a worker is an employee, these factors may be considered: (1) "The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service;: (2) statements made to the Idaho Department of Labor; (3) "Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks;" and (4) "Whether life, health, or other benefits are provided to the worker at the business entity's expense." IDAHO ADMIN CODE r. 09.01.35.112(01). This regulation further directs that if it cannot be determined if a worker is an employee, then the statutory test to determine independent contractor status is applicable. IDAHO ADMIN CODE r. 09.01.35.112(02). Finally, the regulation discusses many factors to be considering in making the determination of independent contractor status under the statutory test at Idaho Code section 72.1316(4) in extensive detail. *See* IDAHO ADMIN CODE r. 09.01.35.112.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		his work only and not as to the means by which such result is accomplished."[9] In applying the right to control test, the Idaho Supreme Court generally balances the following factors: "(1) direct evidence of such right; (2) the method of payment for the work completed; (3) the party responsible for furnishing the major items of equipment; and (4) the right to terminate the employment relationship at will and without liability."[10]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Idaho does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

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

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

[9] IDAHO CODE § 72-102(17).

[10] *Moore v. Moore*, 269 P.3d 802, 806 (Idaho 2011) (citing *Hernandez v. Triple Ell Transport, Inc.*, 175 P.3d 199, 202 (Idaho 2007)); *see also* Idaho Indus. Comm'n, *Independent Contractor or Employee?*, *available at* https://iic.idaho.gov/employee-or-independent-contractor (Apr. 2013) (providing numerous facts that may be considered in applying the four-factor right to control test). "Furthermore, when a doubt exists as to whether an individual is an employee or an independent contractor under the workers' compensation laws, the Act must be given a liberal construction by the Commission in its fact finding function in *favor of finding the relationship of employer and employee*." *Moore*, 269 P.3d at 806 (quotations omitted) (emphasis added).

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[11]

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.[12] 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.[13]

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*

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

1.2(b)(ii) *State Contractors*

Idaho law prohibits the employment of aliens on any state or municipal public works project, including by any contractor.[14] On all contracts for state projects or services provided to the state and involving state or federal stimulus funds, involved contractors and subcontractors must include notice affirming to the contracting state agency that they have substantiated the employment eligibility of all employees providing services or involved in any way on the project, and those employees are able to legally work in the United States.[15]

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[11] 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**.

[12] *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).

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

[14] IDAHO CODE § 44-1005.

[15] Exec. Order No.2009-10 (May 29, 2009), *available at* https://adminrules.idaho.gov/rules/2010/EXOOrders/out/000910-exo.pdf.

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

Violation of the provisions regarding the employment of aliens on public works projects is punishable by a fine for each person illegally employed, or by imprisonment.[16]

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").[17] 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**.

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

Idaho places no statutory restrictions on a private employer's use of arrest records. However, the Idaho Human Rights Commission discourages employers from inquiring about arrests, as such inquiries will be

[16] IDAHO CODE § 44-1005.

[17] 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.

considered evidence of discrimination, unless the employer can show the business necessity of the inquiry or that the inquiry is related to the job for which the candidate has applied.[18]

Ban-the-Box Law. Idaho has not implemented a state "ban-the-box" law covering private employers.

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

Idaho places no statutory restrictions on a private employer's use of conviction records. According to the Idaho Human Rights Commission, an employer may ask an applicant if the applicant has been convicted of a crime. However, the Commission recommends that after inquiring about criminal history, an employer advise the candidate: "that a criminal record does not constitute an automatic bar to employment, and the nature of the job, the seriousness of the crime and date of the conviction will be considered."[19]

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

Idaho places no statutory restrictions on a private employer's use of sealed or expunged criminal records.

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[20] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[21] 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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[18] Idaho Dep't of Labor, Human Rights Comm'n, *A guide to lawful applications and interviews* (Nov. 2013), at **6-7, 11, *available at* https://labor.idaho.gov/dnn/Portals/0/Publications/GuidetoLawful.pdf.

[19] Idaho Dep't of Labor, Human Rights Comm'n, *A guide to lawful applications and interviews* (Nov. 2013), at *17.

[20] 15 U.S.C. §§ 1681 *et seq*.

[21] 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]."[22]

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

Idaho 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*

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

[22] 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.[23] 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*

In Idaho, an employer cannot require an applicant or employee to take a polygraph test or "any form of a so-called lie detector test" as a condition of employment or continued employment.[24] There are no exceptions to this restriction that are applicable to private employers.[25]

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

A violation of the provisions regarding polygraph examinations is a misdemeanor.[26]

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[23] 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.

[24] IDAHO CODE § 44-903.

[25] IDAHO CODE § 44-904.

[26] IDAHO CODE § 44-903.

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

Under the Idaho Employer Alcohol and Drug-Free Workplace Act, private employers that voluntarily choose to have drug and alcohol free workplaces must follow specific drug and alcohol testing guidelines.[29] Employers may test both prospective employees and employees for drugs and alcohol, and may condition employment and continued employment on the results of the testing—provided the testing is conducted in accordance with the Equal Opportunity for Individuals with Disabilities Act, 42 U.S.C. section 12101.[30] Moreover, employers that choose to implement drug or alcohol tests must publish a written policy consistent with the drug-testing provisions, and this policy must include "a statement that violation of the policy may result in termination due to misconduct" and list all of the types of testing to which employees may be subject.[31] Employers must conduct all testing in accordance with the written policy, and must disseminate the policy by: (1) communicating the written policy to affected employees; and (2) making the policy available for review by prospective employees.[32]

If an employee or prospective employee tests positive for drugs or alcohol, the individual must be provided written notice indicating the result and the findings. Further, the employee or prospective employee must be allowed to explain the positive result with either a medical review officer or another qualified person and to request a retesting of the sample within seven work days.[33]

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[27] 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.

[28] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[29] IDAHO CODE §§ 72-1701 *et seq.*

[30] IDAHO CODE § 72-1702.

[31] IDAHO CODE § 72-1705.

[32] IDAHO CODE § 72-1705(3).

[33] IDAHO CODE § 72-1706. Note, the employee or candidate must cover the costs of any requested re-testing. However, "[i]f the retest results in a negative test outcome, the employer will reimburse the cost of the retest,

A prospective employee's confirmed positive alcohol or drug testing result or refusal to provide a sample may serve as the basis for the employer's refusal to hire that candidate.[34]

Private employers that establish and maintain a drug and alcohol free workplace are eligible to receive deductions on workers' compensation premiums.[35]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

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

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[36] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[37] 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.[38] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a

compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay." IDAHO CODE § 72-1706(2).

[34] IDAHO CODE § 72-1708(1).

[35] IDAHO CODE § 72-1716. Certain state construction contractors and subcontractors must agree to provide drug-free workplaces in order to qualify for construction or improvement projects. IDAHO CODE § 72-1717.

[36] 26 U.S.C. § 36B.

[37] 42 U.S.C. § 18071.

[38] 29 U.S.C. § 218b.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	health plan to some or all employees and a separate notice for employers that do not offer a health plan.[39]
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.[40] 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.[41]
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.[42] 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.[43] 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

[39] 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.

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

[41] 29 C.F.R. § 2590.606-1.

[42] 29 C.F.R. § 825.300(a).

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

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	must also comply with all applicable requirements under federal or state law.[44]
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.[45] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[46]
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.[47]
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.[48]

[44] 29 C.F.R. § 825.300(a).

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

[46] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[47] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[48] 29 C.F.R. § 531.59.

2.1(b) *State Guidelines on Hire Documentation*

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

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	State law directs employers to use the federal exemption certificate (Form W-4) completed at hire by the employee to determine the amount of tax to be withheld from the employee's wages or salary for state income tax purposes.[49] However, the Idaho State Tax Commission now furnishes Form ID W-4 and provides the following guidance: 1. Use the withholding estimator at IRS.gov to estimate your federal withholding. Update the federal Form W-4 with that information. 2. Use page 2 of the pdf Form ID W-4 – Employee's Withholding Allowance Certificate to estimate your Idaho withholding. Fill out Form ID W-4 with that information. 3. Give both W-4 forms to your employer.[50]
Wage & Hour Documents	At the time of hiring, employers must notify employees of their: (1) pay rate; and (2) usual day of payment. If an employee requests, the information must be provided in writing.[51]

2.2 New Hire Reporting Requirements

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

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[52] 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;

[49] IDAHO CODE § 63-3035..

[50] *See* https://tax.idaho.gov/taxes/income-tax/individual-income/update-w-4/.

[51] IDAHO CODE § 45-610.

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

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).[53]

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

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

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

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

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

[53] 42 U.S.C. § 653a.

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.[54] 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 Idaho's new hire reporting law.

Who Must Be Reported. New employees or rehired employees whose previous employment was terminated at least 60 consecutive days prior to reemployment must be reported in Idaho.[55]

Report Timeframe. Employees must be reported within 20 days after the hiring or rehiring date. If submitting electronically, an employer must submit twice per month (if necessary) and not less than 12 days nor more than 16 days apart.[56]

Information Required. The employee's name, address, Social Security number, and date of hire or rehire must be reported along with the employer's name, address, federal tax identification number, and state unemployment insurance account number (if any).[57]

Form & Submission of Report. A federal Form W-4 (however, the date of hire and the employer's state unemployment insurance account number, if any, must be added), new hire reporting form, or other means authorized by the Department of Labor can be used in Idaho. Reports may be submitted by mail, fax, email, magnetic media, or online.[58]

Location to Send Information.

Idaho Commerce and Labor New Hire Reporting
317 West Main Street

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

[55] IDAHO CODE §§ 72-1603, 72-1604.

[56] IDAHO CODE § 72-1604(3).

[57] IDAHO CODE § 72-1604(1).

[58] IDAHO CODE § 72-1604(2).

Boise, ID 83735-0610
(800) 627-3880
(208) 332-7411 (fax)
https://labor.idaho.gov/newhire/

Multistate Employers. Multistate employers that have notified the secretary of HHS that they will transmit new hire reports to Idaho must indicate in the reports whether each employee will be included in the employer's Idaho quarterly wage report for unemployment insurance purposes.[59]

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.[60] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

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

[59] IDAHO CODE § 72-1604(1)(d).

[60] 18 U.S.C. §§ 1832 *et seq.*

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

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

Under Idaho law, "key" employees or independent contractors may enter into a written agreement that protects the employer's legitimate business interests and prohibits that key employee or independent contractor from engaging in employment or a line of business that is in direct competition with the employer's business after termination of employment.[61] The agreement must be reasonable as to duration, geographical area, type of employment, or line of business, and must not impose a greater restraint than is reasonably necessary to protect the employer's legitimate business interest.[62] Under the statute, a *key employee* is an employee who:

> by reason of the employee's investment of time, money, trust, exposure to the public, or exposure to technology, intellectual property, business plan business processes and methods of operation, customers, vendors or other business relationships during the course of employment, have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and as a result, have the ability to harm or threaten an employer's legitimate business interests.[63]

The Idaho statute creates several rebuttable presumptions:

- a covenant with a post-employment term of 18 months or less is reasonable as to duration;
- a covenant is reasonable as to geographic area if it is restricted to the geographic areas in which the key employee or key independent contractor provided services or had a significant presence or influence; and,
- a covenant is reasonable as to type of employment or line of business if it is limited to the type of employment or line of business conducted by the key employee or key independent contractor while working for the employer.[64]

The Idaho Court of Appeals held that customer limitations are permitted as a substitute for geographic limits and that a noncompete will be enforced even when the employer terminates the employment relationship.[65]

Enforceability Following Employee Discharge. Noncompete agreements remain enforceable following employee discharge in Idaho.[66]

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,

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[61] IDAHO CODE §§ 44-2701 *et seq*.

[62] IDAHO CODE § 44-2701.

[63] IDAHO CODE § 44-2702(1).

[64] IDAHO CODE § 44-2704.

[65] *See Insurance Assocs. Corp. v. Hansen*, 723 P.2d 190 (Idaho Ct. App. 1986), *aff'd,* 782 P.2d 1230 (Idaho 1989).

[66] 723 P.2d 190.

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.

By statute, postemployment restrictions of direct competition that exceed a period of 18 months form the time of the key employee's or key independent contractor's termination require consideration, in addition to employment or continued employment.[67] Otherwise, continued employment generally is adequate consideration for a noncompete. In *Insurance Associates Corp. v. Hansen*, the Idaho Court of Appeals held that continued employment for eight to nine months—where the employee would have been terminated had he not signed the agreement—was sufficient consideration.[68]

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

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

Under Idaho's restrictive covenant statute, to the extent an agreement or covenant is found to be unreasonable in any respect, a court is required to limit or modify the agreement or covenant as necessary to reflect the intent of the parties and render it reasonable in light of the circumstances in which it was made, and must specifically enforce the agreement or covenant as limited or modified.[69]

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

Like many states, Idaho has adopted the Uniform Trade Secrets Act.[70] The Idaho Trade Secrets Act prohibits the misappropriation of *trade secrets*, defined as:

> information, including a formula, patter, compilation, program, computer 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

[67] IDAHO CODE § 44-2704(1).

[68] 723 P.2d at 191-92.

[69] IDAHO CODE § 44-2703. At common law, Idaho courts apply equitable principles in modifying content of an unreasonable restrictive covenants ancillary to employment agreements. *Insurance Center, Inc. v. Taylor*, 499 P.2d 1252, 1255 (Idaho 1972).

[70] IDAHO CODE §§ 48-801 *et seq*.

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[71]

Generally, misappropriation is the improper acquisition or disclosure of a trade secret by one who knows or has reason to know it is a trade secret.[72]

A court may enjoin actual or threatened misappropriation.[73] Claimants may be entitled to recover damages for misappropriation, which can include actual losses and the unjust enrichment caused by the misappropriation. If willful and malicious misappropriation exists, the court may award exemplary damages.[74]

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

Idaho has no 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.[75]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[76]

[71] IDAHO CODE § 48-801(5).

[72] IDAHO CODE § 48-801(2).

[73] IDAHO CODE § 48-802.

[74] IDAHO CODE § 48-803.

[75] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[76] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[77]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[78]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[79]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[80]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[81]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[82]

[77] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[78] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[79] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[80] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[81] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

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

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[83] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[84]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[85]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[86]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[87]

[83] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

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

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

[86] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

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

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[88]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[89]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[90]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[91] **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

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

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

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

[91] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	(including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[92]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[93]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[94]

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

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

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Employment Practices: Equal Opportunity Is the Law	According to the Idaho Department of Labor (IDOL), all employers that receive federal financial assistance (under Title I of the Workforce Innovation and Opportunity Act) must post notice of the prohibition against discrimination.[95]

[92] 29 C.F.R. § 13.5.

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

[94] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[95] This poster is included in the packet of required posters prepared by the IDOL, which is available in English at https://labor.idaho.gov/dnn/Portals/0/Publications/requiredposters.pdf and in Spanish at https://www.labor.idaho.gov/wp-content/uploads/publications/requiredpostersspan.pdf?v=080923 [hereinafter *Required IDOL Posters*].

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Employment Practices: Discrimination in Employment	According to the IDOL, all employers must post notice that the state prohibits discrimination in employment, as well as retaliation, and informing employees how to contact IDOL.[96]
Unemployment Compensation	All employers must post and maintain, where readily accessible to employees, a notice summarizing unemployment benefits and instruction for employees on how to file a claim for benefits.[97]
Wages, Hours & Payroll	All employers must post conspicuous notice, at the worksite or where accessible to workers, summarizing the Idaho minimum wage laws.[98]
Workers' Compensation	All employers that have complied with their obligation to secure workers' compensation coverage must post conspicuous notice at the worksite confirming that coverage has been obtained and identifying the carrier.[99]
Workplace Safety: Smoking Area & No Smoking Signs	In Idaho, smoking is prohibited in enclosed indoor areas within places of employment where the public has general and regular access. Employers with five or fewer employees may designate a smoking break room under certain circumstances.[100] "No Smoking" signs must be posted at all entrances to workplaces, and the lettering must be at least one inch in height. Any smoking areas within a place of employment must have a sign posted stating "Warning, Smoking Permitted."[101]

3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth;	At least 3 years from the date of entry.

[96] This poster is included with the Required IDOL Posters.

[97] IDAHO CODE § 72-1368. This poster is included with the Required IDOL Posters.

[98] IDAHO CODE § 44-1507. This poster is included with the Required IDOL Posters.

[99] IDAHO CODE § 72-312. This poster is provided by the workers' compensation carrier.

[100] IDAHO CODE §§ 39-5502, 39-5503; *see, e.g.*, IDAHO ADMIN. CODE r.16.02.23.200.

[101] IDAHO CODE §§ 39-5503, 39-5506.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(ADEA): Payroll Records	• occupation; • rate of pay; and • compensation earned each week.[102]	
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.[103]	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.[104]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and	At least 1 year from the date the records were made, or from the date of the personnel action involved,

[102] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[103] 29 C.F.R. § 1627.3(b).

[104] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• selection for training or apprenticeship.[105]	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.[106]	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).[107]	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 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	At least 3 years following the date on which the polygraph examination was conducted.

[105] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[106] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[107] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[108]	
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.[109]	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).[110]	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.[111]	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; • 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;	3 years from the last day of entry.

[108] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[109] 29 U.S.C. § 1027.

[110] 29 C.F.R. § 1620.32(a).

[111] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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).[112] 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); • 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	

[112] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[113]	
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.[114]	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); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and	At least 3 years from the last effective date.

[113] 29 C.F.R. § 516.28.

[114] 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**
	• sales and purchase records.[115]	
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.[116]	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. *Covered employers with no eligible employees must only maintain the following records:*	At least 3 years.

[115] 29 C.F.R. § 516.5.

[116] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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 GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[117]	

[117] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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).[118]	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.[119]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.

[118] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[119] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[120]	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.[121]	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.[122]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:*	At least 4 years after the later of the date the tax

[120] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[121] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[122] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[123]	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, collection methodology, analytic methods used, and a	At least 30 years.

[123] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[124]	
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.[125]	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 employee exposure or medical records, or information	At least 30 years.

[124] 29 C.F.R. § 1910.1020(d).

[125] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
and Exposure Records	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.[126]	
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.[127]	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.[128]	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 databases, records identifying job seekers contacted	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 have a contract

[126] 29 C.F.R. § 1910.1020(d).

[127] 29 C.F.R. §§ 1904.33, 1904.44.

[128] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[129]	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.[130]	Until final disposition of the complaint, compliance review or action.

[129] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[130] 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.[131]	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.

[131] 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.[132]	
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.[133]	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

[132] 29 C.F.R. § 13.25.

[133] 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.[134]	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.[135]	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**
Income Tax	*According to the Idaho State Tax Commission, employers should keep withholding and tax records, including:* • name, address, and Social Security number of each employee; • dates of employment;	At least 4 years.

[134] 29 C.F.R. § 4.6.

[135] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• dates and amount of all wage payments and taxes withheld; • hours and location of work; • a Form W-4 for each employee; • cancelled payroll checks; • copies of all Forms W-2 and Forms 1099; and • federal Form I-9, Employment Eligibility.[136]	
Unemployment Compensation	*Every employer with at least one employee must make and keep records, for each employee, including:* • full name and home address of worker; • Social Security number; • place of work within state; • date hired, rehired, or returned to work after temporary or partial layoff; • date employment was terminated and whether voluntary, involuntary, or by death, and reason for termination; • wages paid in each pay period, and total wages paid for all periods ending each quarter, showing separately money wages, cash value of other remunerations, and amounts of all bonuses and special commissions; • any special remuneration paid for services performed in more than one quarter of the year, such as annual commissions, bonuses, etc., showing separately money payments and the cash value of other remuneration; and • amounts paid as allowances or reimbursement for travel and other business expenses and the amount of expenses actually incurred and accounted for.[137]	5 full years after the calendar year remuneration was due.
Wages, Hours & Payroll	*All employers must keep and maintain employee and payroll records, including:* • personal information, including name, home address, occupation, sex, and date of birth if under 19; • hour and day when workweek begins; • total hours worked each workday and each workweek; • total daily or weekly straight time earnings; • regular hourly pay rate;	3 years from the last date of the employee's services.

[136] Idaho State Tax Comm'n, *Withholding* (updated Feb. 25, 2019), *available at* https://tax.idaho.gov/i-1026.cfm?seg=pay.

[137] IDAHO CODE § 72-1337; IDAHO ADMIN. CODE r. 09.01.35.081.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total overtime pay for each workweek; • deductions from pay; • total wages paid each pay period; and • date of payment of wages and pay period covered.[138]	
Workers' Compensation	*All employers must keep records of each injury and occupational disease, fatal or otherwise, arising out of and in the course of employment. Records must include:* • a description of the injury or disease; • manner in which the injury or disease occurred; • a statement regarding the time the employee was unable to report to work due to the affliction;[139] and • accurate record of the number and job classification of employees and the wages paid.[140] *Self-insured employers must also maintain workers' compensation claim files, including:* • notice of injury and claim for benefits; • copies of bills for medical care; • copy of lost-time computations, if applicable; • correspondence reflecting reasons for any delays in payment; • employer's supplemental report; and • medical reports.[141]	None specified.

3.1(c) *Personnel Files*

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

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

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

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

[138] IDAHO CODE § 45-610; Idaho Dep't of Labor, *Guide to Idaho Labor Laws*, at 3-4 (Feb. 2020), *available at* https://www.labor.idaho.gov/dnn/Portals/0/Publications/wagehour.pdf.

[139] IDAHO CODE § 72-601.

[140] IDAHO CODE § 72-603.

[141] IDAHO ADMIN. CODE r. 17.01.01.305.

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**, Idaho 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. An employer is, however, prohibited from requiring that an employee take a polygraph test or "any form of a so-called lie detector test."[142]

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 the Idaho Employer Alcohol and Drug-Free Workplace Act, 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.[143]

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

Idaho has no private-employer-related provisions regarding marijuana use.

3.2(d) *Data Security Breach*

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

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

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in the individual's gross income the value of the identity protection services.

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[142] IDAHO CODE § 44-903.

[143] 21 U.S.C. §§ 811-12, 841 *et seq*.

- 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.[144]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[145]

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

When a covered entity becomes aware of a breach, it must conduct a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused.[146] A *security breach* is the illegal acquisition of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information for one or more persons maintained by a covered entity.[147]

Covered Entities & Information. Any agency, individual, or a commercial entity conducting business in Idaho, which owns or licenses computerized data that includes personal information about a resident of Idaho, is considered a covered entity. A covered entity that maintains and complies with a notification procedure included in its information security policy for the treatment of personal information is excluded from coverage under the state if the policy affords the same or greater protection for affected individuals as the data security breach statute. In addition, an entity that complies with the notification requirements or security breach procedures of its primary or functional federal regulator is likewise exempt.[148]

Personal information includes an Idaho resident's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license number or Idaho identification card number; or
- 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.[149]

Exceptions include data that is encrypted or information which is lawfully available publicly through federal, local, or state government records or widely distributed media.

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[144] 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.

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

[146] IDAHO CODE §§ 28-51-104 *et seq.*

[147] IDAHO CODE § 28-51-104(2).

[148] IDAHO CODE § 28-51-105.

[149] IDAHO CODE § 28-51-104(5).

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

- written notice to the most recent address the covered entity has in their records;
- telephonic notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $25,000;
  - the affected class of persons to be notified exceeds 50,000; or
  - the covered entity does not have sufficient contact information.[150]

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.[151]

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

- A law enforcement agency indicates that notification will impede a criminal investigation.
- A covered entity needs to identify the individuals affected.
- A covered entity needs time to determine the nature and scope of the breach.
- A covered entity needs time to restore the reasonable integrity, security, and confidentiality of the data system.[152]

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.[153] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child

[150] IDAHO CODE § 28-51-104(4).

[151] IDAHO CODE § 28-51-104(4).

[152] IDAHO CODE § 28-51-105(3).

[153] 29 U.S.C. § 218(a).

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.[154]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[155]

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.[156]

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.[157] 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 Idaho is currently $7.25 per hour for most nonexempt employees. Idaho's minimum wage will be the same as, and track with, the federal minimum wage.[158]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently in Idaho. If an employee earns tips, an employer may take a maximum tip credit of up to $3.90 per hour. Therefore, the minimum cash wage that a tipped employee needs to be paid is $3.35 per hour. Note that if an employee does not make $3.90 in tips per hour, the employer must make up the difference between the wage actually made, and the minimum wage, which is currently $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.[159]

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

The Idaho Minimum Wage Act does not apply to:

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[154] 29 U.S.C. § 206.

[155] 29 U.S.C. §§ 203, 206.

[156] 29 U.S.C. § 3(m)(2)(B).

[157] 29 U.S.C. § 207.

[158] IDAHO CODE § 44-1502.

[159] IDAHO CODE § 44-1502.

- any employee employed in a *bona fide* executive, administrative, or professional capacity;
- anyone engaged in domestic service;
- any individual employed as an outside salesperson;
- seasonal employees of a nonprofit camping program;
- any child under age 16 working part time or at odd jobs not exceeding a total of four hours per day with any one employer; or
- certain individuals employed in agriculture.[160]

In addition, Idaho law permits an employer, upon receipt of a special certificate or license from the state labor department, to pay subminimum wage to apprentices and to certain workers with disabilities.[161]

3.3(c) *State Guidelines on Overtime Obligations*

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

3.4 Meal & Rest Period Requirements

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

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

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[162] 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.[163]

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.

[160] IDAHO CODE § 44-1504.

[161] IDAHO CODE §§ 44-1505, 44-1506.

[162] 29 C.F.R. § 785.19.

[163] 29 C.F.R. § 785.18.

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.[164] 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.[165] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[166] Exemptions apply for smaller employers and air carriers.[167]

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.[168] Lactation is considered a related medical condition.[169] 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.[170] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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

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

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

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

There are no generally applicable meal or rest period requirements for minors in Idaho.

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

Idaho has no general law governing breast-feeding rights, nor a law governing breast-feeding rights in the workplace.

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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164 29 U.S.C. § 218d.

165 29 U.S.C. § 218d(b)(2).

166 29 U.S.C. § 218d(a).

167 29 U.S.C. § 218d(c), (d).

168 42 U.S.C. § 2000gg–1.

169 29 C.F.R. § 1636.3.

170 29 C.F.R. § 1636.3.

in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[171] 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."[172]

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*

Although Idaho law does not provide an express definition for hours worked, state law addresses whether certain types of work-related activities are compensable. Not all time associated with work is necessarily paid. Idaho law expressly states that the following activities are not considered as time or hours worked:

- time spent before beginning of shift in checking in;
- time spent in going to or returning from lunch;
- time spent in the change room, taking showers, changing clothes, or securing tools and equipment;
- time spent receiving instructions before an actual shift starts;
- time spent on the employer's property after the end of a shift;
- time spent after the end of a shift in returning tools and equipment, receiving or giving orders, and making reports;
- time spent in traveling to or from the place of work;
- time spent in waiting in line for payment of wages or salaries; or
- time spent in any incidental activities before or after work, which may involve activities which are excluded from compensable work time by industry practice, custom, or agreement.[173]

This publication also looks more closely at pay requirements for reporting time, on-call time, and travel time. Idaho, through either statute or state attorney general opinions, has addressed the compensability of on-call time and travel time.

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

[172] *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").

[173] IDAHO CODE § 44-1202.

On-Call Time. Idaho follows the FLSA to determine when an employee is entitled to compensation for on-call time.[174]

Travel Time. In general, an employer is not required to compensate an employee for travel time to and from work as noted above. Moreover, when the custom or practice of a business, industry, plant, mine, factory, or place of work has established the amount of noncompensable time to be spent by an employee in traveling to and from the place of work, such time is not considered "hours worked."[175] For out of town and overnight travel, employers covered by the FLSA should consult the federal provisions.

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.[176] 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.[177] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

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

General Restrictions. Idaho's child labor statute restricts the employment of minors by age and by the type of job (see Table 9). Note that Idaho law contains prohibitions for children 14 and 15 years, but does not include provisions prohibiting any occupation for those 16 and 17 years of age. Employers should adhere to the more stringent federal standard in order to ensure full compliance.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under 16	*Minors under 16 cannot be employed unless they have fulfilled certain educational requirements. Specifically, a minor under age 16 cannot be employed or permitted to work at any occupation while school is in session, unless the minor:* • can read at sight and write legibly simple sentences in the English language;

[174] Idaho Op. Att'y Gen. No. 77-16 (Feb. 22, 1997).

[175] IDAHO CODE § 44-1202; *see also* Idaho Op. Atty. Gen. No. 77-16 (Feb. 22, 1997) (if employee is called back after hours, travel time to and from the workplace is not compensable unless by agreement or policy).

[176] 29 C.F.R. §§ 570.36, 570.50.

[177] 29 C.F.R. § 570.6.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• has received instruction in spelling, English grammar, and geography; • is familiar with the fundamental operations of arithmetic up to and including fractions; or • has similar attainments in another language.[178]
Under 14	*In Idaho, minors under age 14 cannot work in or in connection with:* • mines; • factories; • workshops; • mercantile establishments; • stores; • telegraph or telephone offices; • laundries; • restaurants; • hotels; • apartment houses; • the distribution or transmission of merchandise or messages;[179] or • entertainment, including singing, playing on musical instruments, rope or wire walking, dancing, begging or peddling, as a gymnast, acrobat, or contortionist, or rider, for any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever, or for or in any mendicant or wandering business.[180]

Restrictions on Selling or Serving Alcohol. In Idaho, a minor cannot serve or handle alcohol or packages containing alcohol in establishments where items are prepared or offered for sale. Additionally, a minor cannot work in a saloon, gambling house, house of prostitution, or other immoral place.[181]

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

In Idaho, minors under age 16 cannot work:

- more than 54 hours per week;
- more than nine hours per day;
- between 9:00 P.M. and 6:00 A.M.; or
- during school hours (unless they meet the educational and language requirements described above).[182]

[178] IDAHO CODE § 44-1302.

[179] IDAHO CODE § 44-1301.

[180] IDAHO CODE § 44-1306.

[181] IDAHO CODE § 44-1307.

[182] IDAHO CODE §§ 44-1302, 44-1304.

In Idaho, minors under age 14 cannot work:

- during school hours; or
- between 9:00 P.M. and 6:00 A.M.

However, minors over age 12 may be employed during regular vacations lasting two or more weeks.[183]

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

The prohibition against the employment of children under 16 in entertainment-related occupations does not apply to minors employed as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music.[184]

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

Idaho has no work permit requirements. However, an employer that employs minors between the ages of 14 and 16 must keep a record of their names, ages, and addresses.[185]

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

County probation officers and school trustees enforce Idaho's child labor laws.[186] Employment of a minor under the age of 16 in violation of the Idaho child labor laws may result in a fine of not more than $50. If an employer is notified by a truant officer, probation officer, or school authority of a violation, an employer will be fined not less than $5 nor more than $20 for every day thereafter that such employment continues.[187] Violation of the provision prohibiting a minor from employment in an establishment that sells or serves alcohol or falls under the category of an immoral establishment carries a fine of not less than $50. Violation of the provision prohibiting children from being employed in an entertainment-related occupation carries a fine of $50 to $250 and may also result in imprisonment for six months.[188]

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).[189]

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[183] IDAHO CODE § 44-1301.

[184] IDAHO CODE § 44-1306.

[185] IDAHO CODE § 44-1303.

[186] IDAHO CODE § 44-1308.

[187] IDAHO CODE § 44-1305.

[188] IDAHO CODE § 44-1306.

[189] 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").

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

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[190]

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.[191]

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.[192] 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.[193]

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

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

[191] 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.

[192] 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/.

[193] 12 C.F.R. § 1005.2(b)(3)(i)(A).

statement regarding state-required information or other fee discounts or waivers.[194] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[195]

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.[196]

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.[197]

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.

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[194] 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.

[195] 12 C.F.R. § 1005.18.

[196] *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.

[197] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[198] 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.[199] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[200] tools and equipment,[201] and business transportation and travel.[202] 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.[203]

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;[204]
- 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);[205]
- 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);[206]
- 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;

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[198] *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).

[199] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[200] 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.

[201] 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).

[202] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[203] 29 C.F.R. § 778.217.

[204] 29 C.F.R. § 531.38.

[205] 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*.

[206] 29 C.F.R. § 531.40.

- payments to the employee's store accounts with merchants wholly independent of the employer;
- insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
- voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[207]

- 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;[208] 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.[209]

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.[210]

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.[211] 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.[212]

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

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[207] 29 C.F.R. § 531.40.

[208] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[209] 29 C.F.R. § 825.213.

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

[211] 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.

[212] 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.

reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[213]

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.[214]

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.[215]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid by cash, check, or direct deposit in a financial institution of the employee's choice. Checks must be drawn on banks where suitable arrangements have been made for cashing paychecks without charge to employees.[216]

Direct Deposit. Mandatory direct deposit is not permitted in Idaho. However, with the employee's voluntarily authorization, an employer may deposit wages into an account at a bank, savings and loan association, or credit union of the employee's choice. If the employee revokes the authorization for direct deposit, it is deemed terminated.[217]

Payroll Debit Card. Idaho law does not address the use of wage payment via payroll debit cards.

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

An Idaho employer must pay its employees at least once during each calendar month—on regular paydays designated in advance by the employer. The end of the pay period may not be more than 15 days before the regular payday. If a regular payday falls on a nonworkday, payment must be made on a preceding workday. Upon application, the state labor department may permit an employer to withhold payment of wages more than 15 days after the end of the pay period.[218] An employer may pay its employees on a

[213] 29 C.F.R. § 531.36.

[214] 29 C.F.R. § 531.37.

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

[216] IDAHO CODE § 45-608.

[217] IDAHO CODE § 45-608.

[218] IDAHO CODE § 45-608.

semi-monthly basis, but not more than 15 days following close of a pay period.[219] Monthly pay cycles are permitted for all employees.[220]

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

Upon an employee's discharge or resignation from employment, an employer must pay all wages owed to the employee on the next regularly scheduled payday or within 10 days of separation, with weekends and holidays excluded, whichever is earlier.[221]

If an employee requests in writing to be paid earlier, all wages due the employee must be paid within 48 hours of the request, and weekends and holidays are not counted toward the 48 hours. Nonexempt employees who are not paid on an hourly or salary basis must be paid at least the minimum wage for hours worked in the pay period preceding the separation in accordance with the above schedule. Any additional wages owed must be paid by the next regularly scheduled payday.[222]

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

In Idaho, an employer must provide each employee with a statement of deductions made from the employee's wages for each pay period in which deductions are made.[223] State law does not address whether an employer may deliver wage statements electronically.

3.7(b)(v) *Wage Transparency*

Idaho 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 regarding an employer's schedule of paydays. However, it is recommended that employees receive advance written notice before a change occurs. With respect to a change in pay rate, Idaho employers must notify employees of a wage reduction before work is performed. If an employee requests, notice must be provided in writing.[224]

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

In Idaho, there is no general obligation to indemnify an employee for business expenses. Moreover, state law contains no provisions relating to reimbursement for uniform, tool, or equipment costs incurred during employment.

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

An employer can deduct from an employee's wages if:

- required or empowered to do so by state or federal law; or

[219] IDAHO CODE § 45-608.

[220] IDAHO CODE § 45-608.

[221] IDAHO CODE § 45-606.

[222] IDAHO CODE § 45-606.

[223] IDAHO CODE § 45-609.

[224] IDAHO CODE § 45-610.

- the employee provides written authorization for deductions for a lawful purpose.[225]

Under certain circumstances, an employer can deduct from employee wages for amounts loaned or advanced to the employee from their wages. As described above, a deduction is permissible if the employee provides written authorization for deductions for a lawful purpose. According to the state labor department, "[i]f your employer gives you an advance or draw against your future wages, your employer can withhold the entire amount of that advance or draw from any future paycheck."[226] The labor department cautions, however, that any such deduction cannot reduce the employee's wages below minimum wage.[227]

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

Orders of Support. An Idaho employer that receives an income withholding order issued against an employee for court-ordered child or spousal support must begin withholding wages immediately upon receipt of the order.[228] The employer must also submit an answer to the court that states whether the obligor-employee is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the employee.[229]

The employer must pay over the amounts withheld to the Idaho Department of Health and Welfare within seven business days of withholding.[230] Employers may also deduct $5 from the employee's wages as a processing fee for the administrative costs of each withholding, but the total amount deducted cannot exceed 50% of the employee's disposable income.[231]

An employer that knowingly fails to withhold or pay over amounts withheld for support will be liable for the amount that should have been withheld, as well as for attorneys' fees and court costs, and may be fined up to $100.[232] An employer that discharges, disciplines, or refuses to hire an employee due to an order of support may be liable for a civil penalty of up to $300 per violation. In addition, the employer is liable to the employee for double the amount of lost wages and other damages, reasonable costs and attorneys' fees.[233]

Debt Collection. An employer is also required to comply with a garnishment order issued to enforce a money judgment or other debt as ordered against an employee. Idaho has adopted the federal limits on the amount of an employee's disposable earnings that are subject to garnishment: the lesser of 25% of

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[225] IDAHO CODE § 45-609. In *Smith v. Johnson's Mill*, 536 P.2d 755 (Idaho 1975), the state supreme court held (and the employer acknowledged) an employer violated the general wage deductions statute (then codified as section 45-611) by withholding amounts for building materials an employee received from the employer without obtaining the employee's written authorization (the arrangement was pursuant to an informal, oral agreement).

[226] IDAHO CODE § 45-609; *see also* Idaho Dep't of Labor, *Frequently Asked Questions, available at* https://www.labor.idaho.gov/dnn/Businesses/Idaho-Labor-Laws/Labor-Laws-FAQ.

[227] IDAHO CODE § 45-609; *see also* Idaho Dep't of Labor, *Frequently Asked Questions*.

[228] IDAHO CODE § 32-1206.

[229] IDAHO CODE § 32-1210.

[230] IDAHO CODE § 32-1206.

[231] IDAHO CODE § 32-1210.

[232] IDAHO CODE § 32-1211.

[233] IDAHO CODE § 32-1211.

the employee's disposable income or 30 times the federal minimum wage.[234] An employee's disposable earnings are that part of their earnings that remain after mandatory deductions are made for amounts required by law to be withheld.[235] Employers are allowed to deduct a one-time fee of up to $10 to cover the costs associated with administering a debt collection garnishment.[236]

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

In case of a dispute as to the amount of wages due to an employee, Idaho law requires the employer to pay, without condition and within the time set in the provision governing payment of final wages upon termination, all wages conceded by the employer to be due. The employee retains all remedies the employee might otherwise be entitled to as to any balance claimed. If the employer pays all wages not in dispute within the applicable time limits, no penalties may be assessed unless it can be shown that the employer withheld the remaining balance of wages due willfully, arbitrarily, and without just cause.[237]

The Idaho Department of Labor enforces the state's minimum wage law and is authorized to bring an action in a court of competent jurisdiction to enjoin violations of the law.[238] An employee may file a wage claim with the department to recover unpaid wages.[239] Further, an employee may bring an action for violation of the minimum wage or wage payment provisions. Any action for unpaid wages must be commenced within two years of the alleged violation.[240] A prevailing employee may recover the unpaid wages, treble damages, and attorneys' fees and costs.[241]

An employer may also incur civil penalties for wage and hour violations. If an employer fails to timely pay all wages due an employee, the employee's wages will continue at the same rate as if the employee had rendered services in the manner as last employed until paid in full or for 15 days, whichever is less. However, the maximum penalty cannot exceed $750, and if the employer pays the full amount of the wages prior to the time the employee files a lien, the maximum penalty cannot exceed $500.[242]

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).[243] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare

[234] IDAHO CODE § 11-207.

[235] IDAHO CODE § 11-206.

[236] IDAHO CODE § 11-728.

[237] IDAHO CODE § 45-611.

[238] IDAHO CODE § 44-1508.

[239] IDAHO CODE § 45-615.

[240] IDAHO CODE §§ 44-1508, 45-615.

[241] IDAHO CODE § 45-615.

[242] IDAHO CODE § 45-607.

[243] 29 U.S.C. § 1002.

benefit plan.[244] 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.[245]

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

In Idaho, earned vacation pay and similar paid time off is considered part of an employee's wages.[246] Nonetheless, there is no requirement under Idaho law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, or personal time off. If an employer does establish a policy and promise vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

It is unclear whether an Idaho employer can cap vacation accrual or require a "use-it-or-lose-it" policy or forfeiture upon termination because state statutes and regulations do not address this issue, nor have Idaho courts definitively ruled. However, it appears that in ruling on a question of whether an employee is entitled to vacation pay, the courts will rely upon the language of an employer's policy.[247]

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*

Idaho 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.

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[244] 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.

[245] 490 U.S. 107, 119 (1989).

[246] *See Warnecke v. Nitrocision, L.L.C.*, 2012 WL 5987429 (D. Idaho Nov. 29, 2012); *Whitlock v. Haney Seed Co.*, 759 P.2d 919 (Idaho Ct. App. 1988).

[247] *See, e.g.*, *Hurst v. IHC Health Servs.*, 817 F. Supp. 2d 1202 (D. Idaho 2011).

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.[248] 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).[249] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[250] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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

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

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

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

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

- for the birth or placement of a child for adoption or foster care;[251]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[252]

[248] 29 U.S.C. § 1144.

[249] 29 U.S.C. § 1161.

[250] 29 U.S.C. § 1167(3).

[251] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[252] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

- to take medical leave when the employee is unable to work because of a serious health condition;[253]
- 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.[254] 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.[255] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

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

3.9(b) *Paid Sick Leave*

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

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[256] 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*

Idaho 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

[253] 29 C.F.R. §§825.112, 825.113.

[254] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[255] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[256] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

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.[257] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

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

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[258] 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.[259] 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*

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

[257] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[258] 29 C.F.R. § 825.202.

[259] 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(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*

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

3.9(e) *School Activities Leave*

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

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

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

Idaho 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*

Idaho 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*

Idaho 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*

Idaho 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.[260] Employers are under no federal statutory obligation to pay employees while serving on a jury.

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

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[261] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

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

Leave to Serve on a Jury. An employer may not discharge, threaten, or coerce an employee because an employee receives a jury duty summons, responds to the summons, attends court for prospective jury service, or serves as a juror. An employer is not required to compensate an employee during jury service.[262]

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*

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

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.

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[260] 28 U.S.C. § 1875.

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

[262] IDAHO CODE § 2-218.

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.[263]

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.[264] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.265 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Military Leave. Whenever any active member of the air or army national guard in time of war, armed conflict, or emergency proclaimed by a governor or by the president of the United States is called or ordered by a governor to state active duty, or to duty other than for training, the provisions of the federal

[263] 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)).

[264] 29 C.F.R. § 825.126(a).

[265] 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).

USERRA apply. "Duty other than for training" does not include weekend drill or annual training as part of normal national guard service, and does not include attendance at military schools.[266]

A permanent employee who is a member of the state militia, National Guard, or armed forces reserves is entitled to a leave of absence for military training of not more than 15 working days a year.[267] Employees must give 90 days' notice of the need for a leave of absence for temporary military training with departure and return dates and provide evidence of satisfactory completion of training upon return.[268]

Military leave may be with or without pay, and seniority shall continue to accrue during such period of absence. A temporary military leave of absence does not affect the employees' right to normal vacation, sick leave, bonus, advancement, and other terms of employment normally to be anticipated in their particular position.[269] Employees are also entitled to their existing medical benefits for the first 30 days of a deployment ordered or authorized under the provisions of the National Defense Act, and such entitlement shall not decrease any existing accrued leave balances.[270]

If the employee remains qualified to perform the duties of the position held when ordered to duty, the employee must be restored to that position or one of like seniority, status, and pay. If not qualified because of disability sustained during the period of duty, but qualified to perform duties of any other position, an employer must offer that position for which the employee is qualified to perform which is most similar to the former position in seniority, status, and pay. Any person who is reemployed under this law cannot be fired without cause within one year after qualifying reemployment.[271]

A court can order a noncompliant employer to meet its reemployment obligations and pay the employee lost wages and benefits, along with reasonable attorneys' fees and costs.[272]

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 Idaho.

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

[266] IDAHO CODE § 46-409.

[267] IDAHO CODE § 46-224.

[268] IDAHO CODE § 46-224.

[269] IDAHO CODE §§ 46-224, 46-225.

[270] IDAHO CODE § 46-225.

[271] IDAHO CODE § 46-407.

[272] IDAHO CODE § 46-407.

employees.[273] Employers are also required to comply with all applicable occupational safety and health standards.[274] 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.[275] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

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

Idaho 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*

Idaho law prohibits drivers from operating a motor vehicle while using a mobile electronic device.[276]

Mobile electronic device means a cellular telephone, broadband personal communication device, two-way messaging device, text messaging device, pager, personal digital assistant, laptop computer, computer tablet, stand-alone computer, portable computing device, mobile device with a touchscreen display that is designed to be worn, electronic games, equipment that is capable of playing a video or recording or transmitting video, or any similar electronic device that is used to initiate, receive, or display communication or information. *Mobile electronic device* does not include a radio designed for the citizens band radio service or the amateur radio service of the federal communications commission or a commercial two-way radio communications device, an information or communication system installed within a vehicle, a subscription-based emergency communication device, or a prescribed medical device.[277]

Operate means to drive or assume physical control of a motor vehicle upon a public way, street, road, or highway, including while temporarily stationary because of traffic, a traffic control device (*i.e.*, a traffic signal), or other momentary delays. "Operate" does not include a motor vehicle that is lawfully parked or

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[273] 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.

[274] 29 U.S.C. § 654(a)(2).

[275] 29 U.S.C. § 667(c)(2).

[276] IDAHO CODE § 49-1401A.

[277] IDAHO CODE § 49-1401.

that has pulled to the side of or off the road at a location where it is legal to do so and where the vehicle remains stationary.[278]

The prohibition will not apply to the following:

- operators of authorized emergency vehicles, paid or volunteer public safety first responder during the performance of that person's official duties, and a public or consumer-owned utility employee or contractor acting within the scope of that person's employment when responding to a utility emergency;
- for emergency purposes;
- to use GPS or another navigation system, provided that the operator of the vehicle is not manually entering information into the global positioning or navigation system feature of the device;
- selecting a phone number or name to make or receive a call, provided that the action is performed through one-touch access or voice command;
- using the device in a voice-operated or hands-free mode if the operator of the motor vehicle does not use his hands to operate the device, except through one-touch activation or deactivation of a feature or function of the device; and
- the use of a mobile electronic device by a governmental or commercial user during the performance of that person's official duties, as long as the mobile electronic device is being used in a similar manner as a commercial two-way radio communication device.[279]

The prohibition against cell phone use applies to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the state restriction.

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. Idaho law states that nothing shall be construed to limit the existing rights of a private property owner, private tenant, private employer, or private business entity in conjunction with the right to carry concealed firearms. Presumably, the "existing rights" referenced include the basic right of a private property owner to exclude from the premises individuals carrying concealed handguns.[280]

Firearms in Company Parking Lots. While firearms in employer parking lots is not directly addressed by statute, Idaho law does provide immunities to an employer for maintaining a policy either specifically allowing or not prohibiting the lawful storage of firearms by employees in their personal motor vehicles on the employer's business premises. In July 2024, this immunity is expanded to employers that have a

[278] IDAHO CODE § 49-1401.

[279] IDAHO CODE § 49-1401.

[280] IDAHO CODE § 18-3302(25).

policy of allowing or not prohibiting lawful carry of a firearm on an employee's person on the business premises.[281]

3.10(d) *Smoking in the Workplace*

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

Federal law does not address smoking in the workplace.

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

In Idaho, smoking is prohibited in enclosed indoor areas within places of employment where the public has general and regular access.[282] Employers with five or fewer employees may designate a smoking break room if the break room:

- is not accessible to minors;
- is separated from other parts of the building;
- is not the sole means of entering the building or restrooms; and
- is located in an area where no employee is required to enter as part of their work responsibilities other than regular maintenance.[283]

The break room provisions should not interpreted as requiring employers to provide reasonable accommodation to smokers or to provide break rooms for smokers or nonsmokers. Further, there are no restrictions on an employer that chooses to prohibit all smoking in a workplace.[284]

Posting Requirements. "No Smoking" signs must be posted at all entrances to workplaces, and the lettering must be at least one inch in height. Any smoking areas within a place of employment must have a sign posted stating, "Warning, Smoking Permitted."

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under this law.[285]

General violations of the employment provisions will subject an employer to a fine not to exceed $100; violations of the antiretaliation provision, however, will subject an employer to a civil penalty of not less than $1,000, and no more than $5,000, for each violation.[286]

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.

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[281] IDAHO CODE § 5-341; IDAHO S.B. 1275.

[282] IDAHO CODE §§ 39-5502 *et seq*.; IDAHO ADMIN. CODE r.16.02.23.000 *et seq.*

[283] IDAHO CODE § 39-5503(1).

[284] IDAHO CODE § 39-5503(2), (3).

[285] IDAHO CODE § 39-5506(3).

[286] IDAHO CODE § 39-5506(2), (3).

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

Idaho law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

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

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

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

Idaho 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");[287] (2) the Americans with Disabilities Act (ADA);[288] (3) the Age Discrimination in Employment Act (ADEA);[289] (4) the Equal Pay Act;[290] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[291] (6) the Civil Rights Acts of 1866 and 1871;[292] 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);[293]

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[287] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[288] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[289] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[290] 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.

[291] 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)).

[292] 42 U.S.C. §§ 1981, 1983.

[293] 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.

- 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.[294] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[295]

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

Primary FEP protections in Idaho include:

- race;
- color;
- religion;
- sex;
- national origin (includes ancestry);
- disability (includes regarded as);
- age (40+);[296] and
- genetic information/testing.[297]

Employers also may not require a coronavirus vaccination as a condition of employment unless required by federal law, or in cases where the terms of employment require travel to foreign jurisdictions requiring coronavirus vaccination as the only coronavirus related means of entry or where the terms of employment require entry into a place of business or facility in a foreign jurisdiction where coronavirus vaccination is the only coronavirus related means of entry.[298]

Employers with five or more employees wholly or partially working in Idaho are covered. Exceptions include:

- private clubs;
- religious corporations, associations, or societies with respect to the employment of individuals of a particular religion to perform work connected with the organization's religious activities; and

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

[295] 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.

[296] IDAHO CODE §§ 67-5901 *et seq*.; *see also* IDAHO ADMIN. CODE r. 45.01.01.000 *et seq*.

[297] IDAHO CODE §§ 39-8301 *et seq*.

[298] IDAHO CODE § 73.503.

- religious organizations or entities controlled by religious organizations, including places of worship.[299]

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

The Idaho Commission on Human Rights (ICHR) enforces Idaho's FEP protections. An employee has one year to file a claim with the Idaho Commission on Human Rights.[300]

Instead of proceeding directly to state court, an employee who believes that they have been subject to unlawful discrimination must file a complaint under oath with the commission within one year of the alleged unlawful discrimination.[301] After conducting an investigation, the commission will make a determination regarding whether reasonable grounds exists to believe that unlawful discrimination has occurred. If a reasonable grounds finding is made, and conciliation efforts fail, the commission may file a civil action in district court seeking legal and equitable relief.[302]

After the issuance of an administrative dismissal, a complainant may also file a civil action in district court within 90 days. If a court finds unlawful discrimination has occurred, it may award remedies including, but not limited to, an order to cease and desist from the unlawful practice, an order to employ, reinstate, or grant other employment benefits to the complainant, actual damages including lost wages and benefits, and punitive damages.[303]

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

In addition to the federal and state laws, employers with operations in Ada County and Boise are subject to local fair employment practices ordinances that extend protections on the basis of sexual orientation and gender identity and expression.[304] Neither ordinance provides a specific definition of a covered employer. Under both ordinances, an aggrieved person may file a complaint within 180 days of the alleged discriminatory conduct.[305] However, neither ordinance identifies a specific enforcement agency in which to file the complaint. Further, neither ordinance provides for money damages for violations. In Ada County, However, the complaint will be forwarded to the Ada County Prosecutor's Office for review for a filing decision for a civil infraction. There is no private right of action.[306]

3.11(b) *Equal Pay Protections*

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

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees

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[299] IDAHO CODE §§ 67-5902, 67-5910.

[300] *See* http://humanrights.idaho.gov/.

[301] IDAHO CODE §§ 67-5907, 67-5908.

[302] IDAHO CODE § 67-5907.

[303] IDAHO CODE § 67-5908.

[304] ADA COUNTY CODE §§ 5-15-2, 5-15-3, 5-15-4 (exceptions, including certain religious and expressive associations); BOISE, IDAHO, CITY CODE §§ 6-02-03, 6-02-04 (exceptions, including certain religious and expressive associations).

[305] ADA COUNTY CODE §§ 5-15-6, 5-15-7; BOISE, IDAHO, CITY CODE §§ 6-02-05, 6-02-07.

[306] ADA COUNTY CODE §§ 5-15-6, 5-15-7.

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."[307] 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.[308]

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

Idaho employers are prohibited from prohibited from discriminating among employees in the same establishment on the basis of sex by paying wages to any employee in any occupation at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.[309] Differentials based on established seniority systems or merit increase systems that do not discriminate on the basis of sex are permitted.

An employee alleging a violation of the equal pay law may file a civil action within one year of the alleged violation.[310]

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;

[307] 29 U.S.C. § 206(d)(1).

[308] 42 U.S.C. § 2000e-5.

[309] IDAHO CODE §§ 44-1701, 44-1702.

[310] IDAHO CODE § 44-1704; IDAHO ADMIN. CODE r. 45.01.01.300.

- 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.[311]

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

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[312]

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.[313] 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.[314] 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."[315]

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

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311 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

312 29 C.F.R. § 1636.3.

313 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

314 29 C.F.R. § 1636.3.

315 29 C.F.R. § 1636.4.

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.[316]

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.[317]

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*

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

[316] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[317] 29 C.F.R. § 1636.3.

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.[318] Multiple decisions of the U.S. Supreme Court[319] 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.[320] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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

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

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*

Idaho does not have a general whistleblower law providing protections for private-sector whistleblowers, although there are whistleblower protections for public employees.[321]

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

[319] *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).

[320] 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.

[321] IDAHO CODE § 6-2103.

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)[322] and the Railway Labor Act (RLA)[323] 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*

Idaho is a right-to-work state.[324] It is unlawful for any person or employer to promise or agree to not become a member of a labor organization as a condition of their employment.[325] It is also unlawful for any individual to be required to become a member of a labor organization or pay any dues, fees, assessments, or other charges of a labor organization as a condition of employment.[326] Idaho's Right-to-Work statute makes it unlawful to deduct from wages, earning, or compensation of an employee any union dues, fees, assessments, or other charges unless the employee has first provided a signed written authorization.[327]

An employee who alleges they have been injured by a violation of Idaho's Right-to-Work statute is entitled to injunctive relief and to recover any and all damages, including costs and reasonable attorneys' fees.[328]

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[322] 29 U.S.C. §§ 151 to 169.

[323] 45 U.S.C. §§ 151 *et seq*.

[324] IDAHO CODE § 44-2001.

[325] IDAHO CODE §§ 44-901; 44-2003.

[326] IDAHO CODE § 44-2003.

[327] IDAHO CODE § 44-2004.

[328] IDAHO CODE § 44-2008.

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).[329] 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.[330] 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*

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

4.1(c) *State Mass Layoff Notification Requirements*

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

4.2 Documentation to Provide When Employment Ends

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

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

Table 10. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[331] 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

[329] 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.

[330] 20 C.F.R. §§ 639.4, 639.6.

[331] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
	• the 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.[332]

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

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

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	No notice requirement located. Idaho does not have a state mini-COBRA insurance coverage continuation statute.
Unemployment Notice	**Generally.** Idaho does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, the employer generally must post notice in readily accessible places, informing employees about unemployment insurance and how to file a claim for benefits. Accordingly, it is recommended that an employer provide a copy of that unemployment notice when employment ends.[333] **Multistate Workers.** If a multistate designation has been made, Idaho 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.

[332] 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.

[333] IDAHO CODE § 72-1368. This unemployment notice is included in the packet of required posters prepared by the Idaho Department of Labor, which is available in English at https://labor.idaho.gov/dnn/Portals/0/Publications/requiredposters.pdf and in Spanish at https://www.labor.idaho.gov/businesses/idaho-labor-laws/required-posters/.

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*

Blacklisting is the intentional prevention of the future employment of an employee by the former employer. Blacklisting usually occurs when the former employer makes representations to prospective employers that an individual should not be hired. It should be distinguished from a reference, which is essentially a request for information about job performance. Idaho prohibits employers from maintaining a blacklist, or notifying any other employer that a current or former employee has been blacklisted for the purpose of preventing such employee from receiving employment.[334]

An employer that in good faith provides information about a current or former employee's job performance, professional conduct, or evaluation at the request of the employee or a prospective employer may not be held civilly liable for the disclosure or the consequences of providing that information. If the information is provided at the request of the employee or a prospective employer, there is a rebuttable presumption that the employer is acting in good faith. This presumption can only be rebutted upon a showing of clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead.[335]

[334] IDAHO CODE § 44-201.

[335] IDAHO CODE § 44-201.