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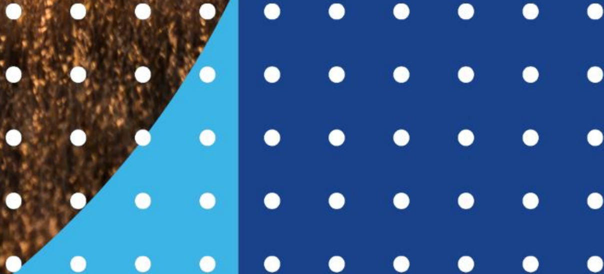
Littler on

Kansas 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 Kansas 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.

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

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

---

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

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

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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 Kansas, 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).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practices Laws	Kansas Human Rights Commission	Interpreting state law, at least one U.S. District Court has adopted a "hybrid common law-economic realities" test for determining independent contractor status under Kansas's antidiscrimination law.[5] While considering the economic realities of the relationship, the test focuses on an employer's right to control the means and manner by which the worker performs the work. Other factors that may also be considered in applying the test include: "(1) the kind of occupation, with reference to whether the work usually is done under the direction of a supervisor or is done by a specialist without supervision; (2) the skill required in the particular occupation; (3) whether the "employer" or the individual in question furnishes the equipment used and the place of work;

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

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

[5] *Parsells v. Manhattan Radiology Grp., L.L.P.*, 255 F. Supp. 2d 1217, 1229 (D. Kan. 2003).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		(4) the length of time during which the individual has worked; (5) the method of payment, whether by time or by the job; (6) the manner in which the work relationship is terminated; *i.e.*, by one or both parties, with or without notice and explanation; (7) whether annual leave is afforded; (8) whether the work is an integral part of the business of the "employer;" (9) whether the worker accumulates retirement benefits; (10) whether the "employer" pays social security taxes; and (11) the intention of the parties."[6] Overall, the "totality of the circumstances surrounding the working relationship between the parties" is considered.[7]
Income Taxes	Kansas Department of Revenue	Common-law "right to control" test.[8] Generally, an individual is considered an independent contractor "if the employer controls or directs only the result of the work and not the means and methods of accomplishing the result."[9] The right to discharge the worker without cause and at-will status is evidence in favor of a finding that the employer has the right of direction and control.[10]

[6] 255 F. Supp. 2d at 1229 (citations omitted).

[7] 255 F. Supp. 2d at 1229 (citations omitted).

[8] The Kansas Department of Labor investigates worker misclassification cases under several laws, including with respect to the reporting of wages for withholding tax, unemployment tax, and workers' compensation. Kansas Dep't of Revenue, *Frequently Asked Questions* (2006), *available at* https://www.ksrevenue.org/faqs.html. The Department of Labor and the Department of Revenue have published joint guidance on the classification of workers, and together these guides provide a "test" to be used to classify workers under the state income tax laws. *See* Kansas Dep't of Labor, *Worker Misclassification* (rev. Aug. 2022), *available at* https://www.dol.ks.gov/home/showpublisheddocument/328/638364886717470000; *Misclassification of Workers* (2017), *available at* https://www.kdor.ks.gov/Apps/Misc/Miscellaneous/MisclassFAQ; Kansas Dep't of Revenue, *Frequently Asked Questions* (2006), *available at* https://www.ksrevenue.org/faqs-taxii.html.

[9] Kansas Dep't of Revenue, *Frequently Asked Questions* (2006); *see also* Kansas Dep't of Labor, *Worker Misclassification Employee or Independent Contractor?* (rev. Oct. 2013).

[10] Kansas Dep't of Revenue, *Frequently Asked Questions* (2006).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		The following factors are also considered in determining independent contractor status: • "Is the one performing the services engaged in a separately established occupation or business? • Is the work usually performed without supervision in that locality? • What skill is required in performing the services and accomplishing the desired result? • Who supplies the tools, equipment, and place of work for the person doing the work? • Is the performance of services an isolated or continuous event? • What is the method of payment, whether by time, a piece rate, or by the job? • Is the work part of the regular business of the employer? • What is the extent of actual control exercised by the employer over the manner and means of performing the services? • Are the services performed for the benefit or convenience of the employer as an individual or for the employer's business enterprise? • Can the worker make business decisions that would result in a financial profit or loss for the worker? Investment of the worker's time is not sufficient to show a risk of loss."[11]
Unemployment Insurance	Kansas Department of Labor	Statutory test. The statutory definition of *employment* includes any individual who is deemed an employee under the common-law rules. In addition, the employer-employee relationship arises "if the business for which activities of the individual are performed retains not only the right to control the end result of the activities performed, but the manner and means by which the end result is accomplished."[12]

[11] Kansas Dep't of Revenue, *Frequently Asked Questions* (2006).

[12] KAN. STAT. ANN. §§ 44-703(i)(1)(B), 44-703(i)(3)(D). The Kansas Supreme Court, in applying the statutory test, explained that the central inquiry is "whether the employer has the right of control and supervision over the work of the alleged employee and the right to direct the manner in which the work is to be performed, as well as the result which is to be accomplished." *Hartford Underwriters Ins. Co. v. Dep't of Human Res.*, 32 P.3d 1146, 1151 (Kan. 2001). The court also listed 20 factors to be considered in determining whether there is an employer-

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Wage & Hour Laws	Kansas Department of Labor	Economic realities test[13] under the federal Fair Labor Standards Act (FLSA) and the Internal Revenue Service (IRS) 20-factor test.[14]
Workers' Compensation	Kansas Department of Labor	Common-law "right to control" test.[15]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Kansas does not have an approved state plan under the federal Occupational Safety and Health Act.

employee relationship, while emphasizing that the right to control is still primary. *Hartford*, 32 P.3d at 1151-52; *see also Amy's Spa Servs. v. Kansas Dep't of Lab.*, 2018 WL 560984 (Kan. Ct. App. Jan. 26, 2018).

[13] The Kansas Wage Payment Act defines an *employee* as "any person allowed or permitted to work by an employer." KAN. STAT. ANN. § 44-313. Under the interpreting regulations, *allowed or permitted to work* does not include an independent contractor, as defined by "rules, regulations, and interpretations of the United States secretary of labor for the purposes of the fair labor standards act." KAN. ADMIN. REGS. § 49-20-1.

[14] *Craig v. FedEx Ground Package Sys.*, 335 P.3d 66 (Kan. 2014) (holding that company drivers were employees, not independent contractors). The Kansas Supreme Court acknowledged in *Craig* that in the regulations administering the Kansas Wage Payment Act, the FLSA is cited in the definition of independent contractor, thus suggesting the Kansas Department of Labor's intent for the FLSA economic realities test to apply in Kansas Wage Act cases. 335 P.3d at 75. However, the court emphasized that there is an overlap between the economic realities test and the IRS 20-factor test, such that the 20-factor test should be used as a "tool" in wage-hour cases, because the 20-factor test "includes economic reality considerations, while maintaining the primary focus on an employer's right to control." 335 P.3d at 76. Before analyzing each factor in the 20-factor test, the court cautioned, "perhaps the most fundamental principle is that form should not be elevated over substance, *e.g.*, if a worker is hired like an employee, dressed like an employee, supervised like an employee, compensated like an employee, and terminated like an employee, words in an operating agreement cannot transform that worker's status into that of an independent contractor." 335 P.3d at 81.

[15] *See McCubbin v. Walker*, 886 P.2d 790, 795 (Kan. 1994) (noting that the most important factor to determine a worker's status is the right to control the manner and methods the worker uses in completing a particular test, and also noting that "for a person to be an employee or an independent contractor there must be a contractual relationship between the person desiring to have the work done and the person doing the work"); *see also* Kan. Dep't of Labor, *Workers' Compensation Frequently Asked Questions*, *available at* https://www.dol.ks.gov/workers-compensation/injuries-at-work#:~:text=Employer%20Responsibilities,-Unless%20self%2Dinsured&text=The%20critical%20test%20in%20determining,employer%20exercises%20over%20the%20worker (noting "[t]he critical test in determining whether or not someone is an employee is the degree of control the employer exercises over the worker."). In applying the common-law "right to control" test, Kansas courts have considered numerous factors, including the IRS 20-factor test and other factors set forth in the Restatement (Second) of Agency § 220(2) (1957). *See, e.g.*, *Hill v. Kansas Dep't of Labor, Div. of Workers' Comp.*, 210 P.3d 647, 654 (Kan. Ct. App. 2011); *Knorp v. Albert*, 28 P.3d 1024, 1028 (Kan. Ct. App. 2001).

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1.2 Employment Eligibility & Verification Requirements

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

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

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[16]

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.[17] 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.[18]

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*

It is illegal for a Kansas employer to knowingly employ an illegal alien if the employer has knowledge of the individual's illegal status.[19] However, these provisions do not apply to any alien who entered the United States illegally, but who by federal law is now legally permitted to stay, either temporarily or

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[16] 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.

[17] *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).

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

[19] KAN. STAT. ANN. § 21-6509.

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permanently.[20] An employer that knowingly employs an illegal alien in Kansas commits a Class C misdemeanor.[21]

Other than this prohibition, Kansas does not have a generally applicable employment verification statute requiring employers to use E-Verify or another electronic verification method. Therefore, private-sector employers in Kansas should follow federal law requirements regarding employment eligibility and verification.

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

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

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

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[22] 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.

[20] KAN. STAT. ANN. § 21-6509(c).

[21] KAN. STAT. ANN. § 21-6509(b).

[22] 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.

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

The Kansas Human Rights Commission (KHRC) takes the position that any written or oral inquiry into arrests is not acceptable.[23]

Criminal Records Access. An employer may require an applicant to sign a release allowing the employer to access the applicant's criminal history record information in order to determine the applicant's fitness for employment. However, an employer cannot require that an employee or prospective employee inspect or challenge their criminal history record information for the purpose of obtaining a copy of the record in order to qualify for employment.[24] *Criminal history record information* "means all data initiated or collected by a criminal justice agency on a person pertaining to a reportable event, and any supporting documentation."[25] Thus, the statutory definition does not distinguish between arrest and conviction records, and the provision is applicable to both.

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

The KHRC takes the position that any written or oral inquiry into an applicant's conviction record is acceptable if the inquiry is job-related.[26] In addition, the provision regarding criminal records access, discussed in 1.3(a)(ii), is applicable to both arrest and conviction records.

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

A person whose record of arrest, conviction, or diversion has been expunged may state in any employment application that they have never been arrested, convicted, or diverted with respect to the crime, subject to certain exceptions.[27] These exceptions include candidates applying for certain licenses or for employment in certain job categories, such as law enforcement, or when a court specifies other circumstances when disclosure is appropriate.[28]

1.3(a)(v) *State Enforcement, Remedies & Penalties*

An employer that violates the provision regarding criminal record access is guilty of a Class A misdemeanor.[29]

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[30] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[31] regarding job applicants for use in

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23 Kansas Human Rights Comm'n, *Guidelines on Equal Employment Practices: Preventing Discrimination in Hiring*, *available at* http://www.khrc.net/hiring.html.

24 KAN. STAT. ANN. § 22-4710.

25 KAN. STAT. ANN. § 22-4701(b).

26 Kansas Human Rights Comm'n, *Guidelines on Equal Employment Practices: Preventing Discrimination in Hiring*.

27 KAN. STAT. ANN. § 21-6614(k)(1).

28 KAN. STAT. ANN. § 21-6614(i)(2)-(3) (listing all the exceptions).

29 KAN. STAT. ANN. § 22-4710(b).

30 15 U.S.C. §§ 1681 *et seq*.

31 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

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hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[32]

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

Kansas's mini-FCRA law requires that whenever an employer denies an applicant employment either in whole or in part because of a consumer report, an employer must so advise the individual and supply the name and address of the consumer reporting agency that made the report.[33]

Consumer Report. Notwithstanding the need for notice to an individual before adverse action is taken, Kansas employers can obtain consumer reports for employment purposes.[34] A *consumer report* means any written, oral, or other communication of information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or collected for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.[35] *Employment purposes*, when used in

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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).

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

[33] KAN. STAT. ANN. § 50-714(a).

[34] KAN. STAT. ANN. § 50-703.

[35] KAN. STAT. ANN. § 50-702(c).

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connection with a consumer report, means a report used to evaluate an individual for employment, promotion, reassignment, or retention as an employee.[36]

Investigative Consumer Reports. An employer can also obtain an "investigative consumer report" for employment purposes, but it is subject to additional restrictions. Specifically, an employer cannot obtain or cause to be prepared an investigative consumer report unless:

- it clearly and accurately discloses that an investigative consumer report, including information as to character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure:
  - is made in writing, and mailed or otherwise delivered not later than three days after the date on which the report was first requested; and
  - includes a statement informing the individual of the right to request additional disclosures, discussed below, upon written request; or
- the report is to be used for employment purposes for which the individual *has not* specifically applied.[37]

Within a reasonable period of time after receiving the disclosure described above, and upon written request, an employer must reveal the nature and scope of the investigation requested.[38] This additional disclosure must be written, and mailed or otherwise delivered not later than five days after the date on which the request for the disclosure was received or the investigative report was first requested, whichever is later.[39]

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom the individual is acquainted or who may have knowledge concerning any such items of information. However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.[40]

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

An employer that willfully violates the Kansas credit provisions may be liable for actual damages, punitive damages, and in the case of a successful action, costs and reasonable attorneys' fees.[41] An employer that negligently fails to comply with the credit provisions is liable for the same penalties, with the exception that punitive damages are not available.[42] Violations may also result in criminal liability.[43]

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[36] KAN. STAT. ANN. § 50-702(g).

[37] KAN. STAT. ANN. § 50-705(a).

[38] KAN. STAT. ANN. § 50-705(b).

[39] KAN. STAT. ANN. § 50-705(b).

[40] KAN. STAT. ANN. § 50-702(d).

[41] KAN. STAT. ANN. §§ 50-715, 50-717 (jurisdiction of the courts).

[42] KAN. STAT. ANN. §§ 50-716; 50-717 (jurisdiction of the courts).

[43] KAN. STAT. ANN. § 50-720.

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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*

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

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[44] 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

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[44] 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.

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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*

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

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

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

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[45] 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.[46] 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*

Kansas law contains no express provisions regulating preemployment drug or alcohol screening by private employers.

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.

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[45] 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.

[46] 41 U.S.C. §§ 8101 *et seq.*; *see also* 48 C.F.R. §§ 23.500 *et seq*.

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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[47] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[48] 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.[49] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[50]
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.[51] 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

[47] 26 U.S.C. § 36B.

[48] 42 U.S.C. § 18071.

[49] 29 U.S.C. § 218b.

[50] 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.

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

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	administrators must send separate COBRA rights notices to each address.[52]
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.[53] 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.[54] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[55]
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.[56] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

[52] 29 C.F.R. § 2590.606-1.

[53] 29 C.F.R. § 825.300(a).

[54] 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.

[55] 29 C.F.R. § 825.300(a).

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

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
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.[57]
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.[58]
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.[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.
Employee Invention Documents	If an employment agreement contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must provide, "at the time the agreement is made, a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless" the invention: • "relates directly to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or

[57] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[58] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[59] 29 C.F.R. § 531.59.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	• results from any work performed by the employee for the employer."[60] If needed, the employee bears the burden of proving the conditions specified above. Moreover, the employee must "disclose, at the time of employment or thereafter, all inventions being developed by [him or her], for the purpose of determining employer and employee rights in an invention."[61]
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	According to the Kansas Department of Revenue, all employees must provide employers with a signed Kansas Withholding Allowance Certificate (K-4), for use in computing Kansas withholding.[62]
Wage & Hour Documents	If an employee requests, an employer must notify him/her, in writing or as required by a collective bargaining agreement, of the employee's: (1) pay rate; and (2) day and place of payment.[63]
Workplace Safety: Smoke-Free Workplace Documents	Generally speaking, smoking is prohibited in enclosed places of employment in Kansas. Covered employers must provide a smoke-free workplace and must adopt and maintain a written smoking policy that prohibits smoking in all areas of the place of employment. This policy must be communicated to all new employees upon hiring, and to any applicant or employee upon their request.[64]

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.[65] State new hire reporting laws must include these minimum requirements:

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[60] KAN. STAT. ANN. § 44-130(c).

[61] KAN. STAT. ANN. § 44-130(d).

[62] Kansas Dep't of Revenue, *Kansas Withholding Tax (KW-100)* (rev. November 2018), *available at* https://www.ksrevenue.org/pdf/kw100.pdf (establishing this requirement under the department's general authority to administer the state tax laws). Tax and withholding forms, including Form K-4, are available at http://www.ksrevenue.org/forms-perstax.html.

[63] KAN. STAT. ANN. § 44-320.

[64] KAN. STAT. ANN. § 21-6110.

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

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1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[66]

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.

[66] 42 U.S.C. § 653a.

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

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[67] 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 the new hire reporting law in Kansas.

Who Must Be Reported. Employees who are newly hired, or rehired employees returning to work following a separation of greater than 60 consecutive days, must be reported.[68]

Report Timeframe. New employees must be reported within 20 days of the employee's date of hire, rehire, or return to work, or within 20 business days from the date the newly-hired employee first receives wages or other compensation from the employer.[69]

Information Required. The employee's name, address, Social Security number, and the date services for remuneration were first performed along with the employer's name, address, and federal tax identification number must be reported.[70]

Form & Submission of Report. An employer should submit the federal Form W-4 with the information from boxes 1, 2, 8, and 10 or an equivalent, alternative report (*e.g.*, printed lists). Reports may be submitted by mail, fax, or via the internet (by entering data directly at the state's website).

Location to Send Information.

New Hire Directory
P.O. Box 3510
Topeka, KS 66601-3510
(888) 219-7801
(888) 219-7798 (fax)
https://www.dol.ks.gov/employers/new-hire-directory

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

[68] KAN. STAT. ANN. § 75-5743(b).

[69] KAN. STAT. ANN. § 75-5743(a).

[70] KAN. STAT. ANN. § 75-5743(a).

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

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

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

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

In Kansas, there is no general statute of applicability regarding noncompete agreements. Generally, Kansas courts will uphold noncompetition agreements that are valid. The test for validity is "whether the competitive restraint is reasonable under the circumstances and not adverse to the public welfare."[72] Kansas courts will defer to the contracting rights of the parties, however, only legitimate business interests may be protected through the agreement. In testing reasonableness, courts will consider the following questions:

1. Does the covenant protect a legitimate business interest of the employer?
2. Does the covenant create an undue burden on the employee?

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[71] 18 U.S.C. §§ 1832 *et seq.*

[72] *Caring Hearts Personal Serv. v. Hobley*, 130 P.3d 1215, 1222 (Kan. Ct. App. 2006).

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3. Is the covenant injurious to the public welfare?
4. Are the time and territorial limitations contained in the covenant reasonable?[73]

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

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Under Kansas law, there is a presumption that consideration is present in all contracts.[74] The courts have held that an increase in salary is valid consideration for post-employment noncompetes.[75] Continued employment is, as a matter of law, insufficient; however, the presence of sufficient consideration in continued employment does present a question of fact.[76]

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

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

In Kansas, courts have the equitable power to modify a restrictive covenant.[77]

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

Kansas is one of many states that have adopted a version of the Uniform Trade Secrets Act, the Kansas Uniform Trade Secrets Act (KUTSA), which serves to protect the secrecy and value of certain types of

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73 *Idebis v. Wichita Surgical Specialists, P.A.*, 112 P.3d 81, 86-87 (Kan. 2005); *Caring Hearts Personal Serv.*, 130 P.3d at 1222.

74 *Evco Distrib. v. Brandau,* 626 P.2d 1192, 1198 (Kansas Ct. App. 1981).

75 *See, e.g.*, *Uarco, Inc. v. Eastland*, 584 F. Supp. 1259 (D. Kan. 1984).

76 *Puritan-Bennett Corp. v. Richter*, 657 P.2d 589, 591-92 (Kansas Ct. App. 1983), *modified*, 679 P.2d 206 (Kansas 1984) ("[W]e hold that continued employment should not as a matter of law be disregarded as consideration sufficient to uphold a covenant not to compete. Ordinarily, the presence of a benefit or detriment to a promisor, sufficient to constitute consideration, is a question of fact, as is the question of what constitutes consideration when that issue is controverted."); *see also Amedisys, Inc. v. Interim Healthcare of Wichita, Inc*., 2015 WL 847135 (D. Kan. Feb. 26, 2015).

77 *Eastern Distrib. Co. v. Flynn*, 567 P.2d 1371, 1378-79 (Kan. 1977); *Graham v. Cirocco*, 69 P.3d 194, 200 (Kansas Ct. App. 2003); *see also Puritan-Bennett Corp. v. Richter*, 657 P.2d 589, 593 (Kan. Ct. App. 1983), modified, 679 P.2d 206 (Kan. 1984).

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business information.[78] Under the KUTSA, a *trade secret* means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other person who can obtain economic value from its disclosure or use, and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[79]

An employer may have a cause of action if a trade secret is misappropriated. *Misappropriation* means:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of the disclosure or use, knew or had reason to know that his knowledge of the trade secret was
        i. derived from or through a person who had utilized improper means to acquire it;
        ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
        iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
    c. before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[80]

If a party is found to have misappropriated or threaten to misappropriate a trade secret, a court may issue an injunction. In extreme cases, an injunction may require payment of a reasonable royalty if the prohibitive injunction is inequitable.[81] Additionally, a claimant may be entitled to damages.[82]

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

While many states are silent on the issue of employee inventions and ideas, Kanas provides statutory guidelines. Generally, under Kansas law, any provision in an employment agreement which requires an employee assign any of the employee's right to an idea or invention shall not apply when no equipment, supplies, facilities, or trade secrets of the employer was used and which was developed wholly on the employee's personal time.[83] However, two exceptions exist:

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[78] KAN. STAT. ANN. §§ 60-3320 *et seq*.

[79] KAN. STAT. ANN. § 60-3320(4).

[80] KAN. STAT. ANN. § 60-3320(2).

[81] KAN. STAT. ANN. § 60-3321.

[82] KAN. STAT. ANN. § 60-3322.

[83] KAN. STAT. ANN. § 44-130(a).

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1. the invention relates to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or
2. the invention results from any work performed by the employee for the employer.[84]

Any provision in an agreement which is prohibited shall be void, against public policy.[85]

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.[86]
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.[87]
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.[88]
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.[89]

[84] KAN. STAT. ANN. § 44-130(a).

[85] KAN. STAT. ANN. § 44-130(b).

[86] 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.

[87] 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.

[88] 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.

[89] 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.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[90]
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.[91]
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.[92]
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.[93]
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.[94] The second page includes reference to government contractors.

[90] 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.

[91] 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.

[92] 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.

[93] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[94] 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.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[95]
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.[96]
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.[97]
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.[98]
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.[99]
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

[95] 41 C.F.R. §§ 60-300.44, 60-741.44.

[96] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[97] 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.

[98] 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.

[99] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[100]
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.[101]
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.[102] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[103]
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

[100] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[101] 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.

[102] 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.

[103] 29 C.F.R. § 13.5.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[104]
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.[105]

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**
Benefits & Leave: Vacation Pay, Sick Leave, and Related Policies	Upon employee request, an employer must provide—either in writing or through a posted notice accessible at the workplace—notice of the employer's practices and policies concerning vacation pay, sick leave, and any other benefits (for example, holiday pay) to which the employee is entitled and which affect wages payable to the employee.[106]
Child Labor	Employers that employ minors under 16 years of age must conspicuously post, near the principal entrance, and maintain notice summarizing the state's restrictions on child labor.[107]
Fair Employment Practices	Employers with four or more employees must conspicuously post at the workplace, where readily seen by employees and applicants, a set of four notices concerning the prohibition against discrimination in

[104] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[105] 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.

[106] KAN. STAT. ANN. § 44-320(c). Employers must create their own forms to satisfy this notice requirement.

[107] KAN. STAT. ANN. § 38-605. Although the statute requires display of the poster by employers that employ minors aged 16 or younger. This poster is available at https://www.dol.ks.gov/home/showpublisheddocument/86/638363383544000000.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	employment, public accommodations, and housing. The fourth poster in this equal opportunity set is in Spanish.[108]
Human Trafficking Poster	All employers that are covered by the state unemployment compensation law, workers compensation law, child labor law, age discrimination act, or state act against discrimination must post notice offering help to victims of human trafficking in a prominent and accessible location. Specifically, the following businesses must post the notice so it is visible to members of the public: sexually oriented businesses, massage parlors, healthcare facilities, convenience stores and truck stops, and rest areas and visitors centers under state supervision or control. The notice must be at least 8.5" x 11" and must be legible.[109]
Unemployment Compensation	All employers must post notice in a conspicuous, readily accessible place in each workplace, informing employees that the employer is covered by unemployment insurance and how to file for benefits.[110]
Wages, Hours & Payroll: Wage Payment Notification	Upon employee request, an employer must provide—either in writing or through a posted notice accessible at the workplace—notice to the employee of any changes to: (1) their rate of pay; or (2) the day and place of payment.[111]
Workers' Compensation	Employers covered by the workers' compensation statute must post notice in one or more conspicuous places advising employees what to do in case of injury while on the job and informing them of the insurance carrier.[112]
Workplace Safety: Notice offering Help to Victims of Human Trafficking	A notice offering help to victims of human trafficking must be posted in a prominent and accessible location in sexually oriented businesses, massage parlors, healthcare facilities, convenience stores and truck

[108] KAN. STAT. ANN. §§ 44-1012, 44-1114; KAN. ADMIN. REGS. § 21-44-3. These posters are available at https://www.dol.ks.gov/employers/workplace-laws/posters-in-the-workplace.

[109] KAN. STAT. ANN. § 75-759; KAN. ADMIN. REGS. § 16-21-1. This poster is available at https://ag.ks.gov/public-safety/human-trafficking.

[110] KAN. STAT. ANN. § 44-709; KAN. ADMIN. REGS. § 50-3-1. This poster is available at https://www.dol.ks.gov/home/showpublisheddocument/100/638363383565870000. It includes the necessary information in English and in Spanish.

[111] KAN. STAT. ANN. § 44-320(b); KAN. ADMIN. REGS. § 49-16-2. Employers must create their own forms to satisfy this notice requirement.

[112] KAN. ADMIN. REGS. § 51-12-2. This poster is available https://www.dol.ks.gov/home/showpublisheddocument/276/638544781815170000.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	stops, and rest areas and visitors centers under state supervision or control.[113]
Workplace Safety: No Smoking Signs	Generally speaking, smoking is prohibited in enclosed places of employment in Kansas. Covered employers (with one or more employees) must provide a smoke-free workplace and must post conspicuous "No Smoking" signs where smoking is prohibited.[114]

3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[115]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;	At least 1 year from the date of the personnel action to which any records relate.

[113] KAN. STAT. ANN. § 75-759. The Attorney General of Kansas Human Trafficking Resources poster and KDOL Human Trafficking Brochure are available at https://ag.ks.gov/docs/default-source/publications/human-trafficking-brochure.pdf?sfvrsn=e41758af_26 and available in additional languages at https://ag.ks.gov/public-safety/human-trafficking.

[114] KAN. STAT. ANN. § 21-6111. Approved signs in English and Spanish area available from the Kansas Department of Health and Environment at http://www.kssmokefree.org/no_smoking_sign.html.

[115] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[116]	
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.[117]	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 • selection for training or apprenticeship.[118]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[119]	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

[116] 29 C.F.R. § 1627.3(b).

[117] 29 C.F.R. § 1627.3(b).

[118] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[119] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[120]	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 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.[121]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[122]	At least 6 years after documents are filed or would have been filed but for an exemption.

[120] 29 C.F.R. § 1602.7.

[121] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[122] 29 U.S.C. § 1027.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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).[123]	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.[124]	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; • 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;	3 years from the last day of entry.

[123] 29 C.F.R. § 1620.32(a).

[124] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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).[125] 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 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.[126]	
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;	3 years from the last day of entry.

[125] 29 C.F.R. §§ 516.2, 516.5.

[126] 29 C.F.R. § 516.28.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • 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.[127]	
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 • sales and purchase records.[128]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[129]	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;	At least 3 years.

[127] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[128] 29 C.F.R. § 516.5.

[129] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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:* • 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*	

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[130]	

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;
		At least 4 years after the date the tax is due or paid, whichever is later.

[130] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ 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).[131]	
Immigration	Employers must retain all completed Form I-9s.[132]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • 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.[133]	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.

[131] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[132] 8 C.F.R. § 274a.2.

[133] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[134]	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.[135]	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:* • 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	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

[134] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[135] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer's trade or business, and the amount of the cash remuneration paid for those services.[136]	
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 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.[137]	At least 30 years.
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;	Duration of employment plus 30 years.

[136] 26 C.F.R. § 31.6001-4.

[137] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[138]	
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[139]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[140]	5 years following the end of the calendar year that the record covers.

[138] 29 C.F.R. § 1910.1020(d).

[139] 29 C.F.R. § 1910.1020(d).

[140] 29 C.F.R. §§ 1904.33, 1904.44.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[141]	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 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;	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 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.

[141] 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ 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.[142]	
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.[143]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • 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.	3 years.

[142] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[143] 41 C.F.R. §§ 60-1.12, 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[144]	
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 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	During the course of the covered contract as well as after the end of the contract.

[144] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	relieve a contractor from its reinstatement obligation.[145]	
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.[146]	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; • 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	At least 3 years from the completion of the work records containing the information.

[145] 29 C.F.R. § 13.25.

[146] 29 C.F.R. § 5.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a copy of the contract.[147]	
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.[148]	At least 3 years from the last date of entry.

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

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Complaint of Discrimination	*When a complaint or notice of investigation has been served, an employer must retain:* • all records relevant to the investigation, including personnel, employment, or membership records relating to the complainant, as well as to all other employees or applicants holding or seeking positions similar to that held or sought by the complainant; • application forms or test papers completed by unsuccessful applicants and by other applicants or candidates for the same position as the complainant applied for and was not accepted; and • any books, papers, documents, or records relevant to the scope of the investigation as defined in the notice of complaint.[149]	Until the complaint or investigation is finally adjudicated.

147 29 C.F.R. § 4.6.

148 41 C.F.R. § 50-201.501.

149 KAN. ADMIN. REGS. § 21-42-5.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Personnel Records	*All employers must make and keep employee records, including:* • personal identifying information including name, age, address, and gender; • regular rate of pay and hourly rate when overtime is worked; • total overtime excess compensation; • total wages paid; • date of payment and pay period covered; • other records containing payroll information, wage rates, payments in kind, and data concerning wages and other benefits; and • copies of collective bargaining agreements, plans, trusts, or other employment contracts that provide pay benefits in addition to the regular rate of pay.[150]	2 years, from the last date of entry.
Income Tax	*Employers must keep current, complete, and accurate withholding records, including for each employee:* • name, current address, and Social Security number; • period(s) of employment; • all compensation amounts paid by pay period; • date(s) and amount(s) of all tax withheld; • copies of returns filed with the Kansas Department of Revenue; and • federal Form W-4 (W-4P, W-4S, W-4V, etc.) for each employee and any written requests for additional withholding.[151]	At least 3 years after the date the tax was due, or the date paid, whichever is later.
Unemployment Compensation	*Each employing unit must maintain records for each worker, including:* • name and Social Security number; • state or states in which services are performed; • date hired, rehired, or returned to work after temporary layoff; • date of separation and reason therefore; • remuneration paid for services and dates of payment, showing separately cash remuneration and reasonable cash value of noncash remuneration;	Not less than 5 years after the date contributions were paid and, if not paid, when due.

[150] KAN. ADMIN. REGS. §§ 49-16-1, 49-16-3.

[151] Kansas Dep't of Revenue, *Kansas Withholding Tax Booklet*, at 11 (rev. November 2018), *available at* https://www.ksrevenue.org/pdf/kw100.pdf.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amounts paid as allowances or reimbursements for business expenses, date of payment, and amounts of each expenditure actually incurred and accounted for; and • hours spent in both employment and nonsubject work. *General records must also be kept, including:* • beginning and ending date for each pay period; and • total amount of wages paid in any quarter. *Records should be maintained in such a way that the following can be determined, with respect to each worker:* • earnings by pay period weeks; • weeks of less than full-time work; • time lost due to reasons other than lack of work; and • calendar days worked by each employee.[152]	
Wages, Hours & Payroll	*All employers must maintain payroll records reflecting, for each employee:* • name and occupation; • rate of pay and amount paid each pay period; • hours worked each day and each work week; • beginning dates and hours of the workweek or work period; • date of paydays; • all wage payments made during each pay period including all deductions or credits made; • tips which are claimed as a credit; and • policy setting out any seniority system, merit system, system to measure earnings by quantity or quality of production, or other differential basis on which differing wage payments are computed for employees performing similar work. *The Kansas statute provides that employers subject to the FLSA may keep and retain the records required under the FLSA in lieu of the records required by Kansas.*[153]	Not less than 3 years.

[152] KAN. STAT. ANN. § 44-714; KAN. ADMIN. REGS. § 50-2-2.

[153] KAN. STAT. ANN. § 44-1209; KAN. ADMIN. REGS. § 49-31-7.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Permits allowing employers to employ learners and apprentices at wages lower than minimum wage must be maintained with the employee's pay records.[154]	

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*

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

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

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

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

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

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

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*

Kansas law contains no express provisions regulating drug or alcohol testing of current employees by private employers.

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[155]

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

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

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154 KAN. ADMIN. REGS. § 49-31-5.

155 21 U.S.C. §§ 811-12, 841 *et seq*.

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3.2(d) *Data Security Breach*

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

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

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[156]

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.[157]

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

Under Kansas's data security breach statute, notice must be given when a covered entity becomes aware of a breach of its security system and conducts a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused, and that investigation determines that the misuse of information has occurred or is reasonably likely to occur.[158] Under Kansas law, a *security breach* is the unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a covered entity and that causes the covered entity to reasonably believe the breach caused or will cause, identity theft to any consumer.[159]

Covered Entities & Information. A covered entity is any person that conducts business in this state that owns or licenses computerized data with "personal information."[160] *Personal information* includes an individual's first name or first initial and last name in combination with any one or more of the following:

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[156] 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.

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

[158] KAN. STAT. ANN. §§ 50-7a01 *et seq*.

[159] KAN. STAT. ANN. § 50-7a01(h).

[160] KAN. STAT. ANN. § 50-7a02.

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- Social Security number;
- driver's license number or state 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.

Encrypted or redacted data (*i.e.*, data is altered so that no more than four digits are accessible, or five digits with respect to a Social Security number) and information lawfully available publicly through federal, local, or state government records are considered exceptions to the definition of personal information.[161]

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

- written 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 $100,000;
  - the affected class of persons to be notified exceeds 5,000; or
  - the covered entity does not have sufficient contact information.[162]

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 major statewide media.[163]

A covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is compliant with the statute, provided the policy affords the same or greater protection to the affected individuals as the data security breach statute. Further, any entity that complies with the notification requirements or security breach procedures of its primary or functional federal regulator is exempt from the notice requirements.

Timing of Notice. Notice must be given in the most expedient time possible and without unreasonable delay. However, notification may be delayed if:

- A law enforcement agency indicates that notification will impede a criminal investigation.
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity of the data system.[164]

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[161] KAN. STAT. ANN. § 50-7a01(g).

[162] KAN. STAT. ANN. § 50-7a01(c).

[163] KAN. STAT. ANN. § 50-7a01(c).

[164] KAN. STAT. ANN. § 50-7a02.

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Additional Provisions. If more than 1,000 individuals will be notified of a security breach, then the covered entity must also notify all nationwide consumer reporting agencies of the timing, distribution, and content of the notices.[165]

The state attorney general's office may bring a suit in law or equity to enforce the Kansas data security breach statute. A violation by an insurance company will be enforced by the insurance commissioner.[166]

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

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

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[168]

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.[169]

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.[170]

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165 KAN. STAT. ANN. § 50-7a02.

166 KAN. STAT. ANN. § 50-7a02.

167 29 U.S.C. § 218(a).

168 29 U.S.C. § 206.

169 29 U.S.C. §§ 203, 206.

170 29 U.S.C. § 3(m)(2)(B).

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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.[171] 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 Kansas is currently $7.25 per hour for most nonexempt employees. The state minimum wage provisions do not apply to employers and employees covered by the federal FLSA.[172]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently in Kansas. If an employee earns 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 receive is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, the employer should make up the difference between the tips actually made per hour, 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.[173]

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

Kansas's minimum wage provisions do not apply to the following workers:

- individuals employed in agriculture;
- individuals employed in domestic service in a private home;
- individuals employed in a *bona fide* executive, administrative, or professional capacity or in the capacity of an outside salesperson paid on commission;
- federal employees;
- individuals working as volunteers for a nonprofit organization;
- minors aged 18 and under who are employed on an occasional or part-time basis; or
- individuals employed by a unified school district in an executive, administrative, or professional capacity, if the individual is engaged in such capacity 50% or more of the hours during which the individual is employed.[174]

3.3(c) *State Guidelines on Overtime Obligations*

In Kansas, employees must be paid one-and-one-half times their regular rate for all hours worked over 46 in a week. The state overtime provisions do not apply to employers and employees covered by the federal FLSA.[175] Employers covered by the FLSA should consult the federal provisions.

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171 29 U.S.C. § 207.

172 KAN. STAT. ANN. §§ 44-1202, 44-1203.

173 KAN. STAT. ANN. § 44-1203.

174 KAN. STAT. ANN. § 44-1202(e).

175 KAN. STAT. ANN. §§ 44-1202, 44-1204.

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3.3(d) *State Guidelines on Overtime Exemptions*

State overtime provisions do not apply to employers and employees covered by the FLSA.[176] FLSA-covered employers should consult the federal provisions. Like the FLSA, Kansas law sets forth several exemptions to the overtime pay requirements.

3.3(d)(i) *Executive Exemption*

Under Kansas law, an employee is covered by the executive exemption if the employee:

- owns at least a 20% interest in the enterprise and is solely in charge of an independent establishment or a physically separated branch establishment; or
- is employed in the capacity of an executive; is paid more than $155 per week; and does not devote more than 20% (40% for retail and service establishments) of hours of work in a workweek to nonexempt duties.[177]

3.3(d)(ii) *Administrative Exemption*

Under Kansas law, an employee is covered by the administrative exemption if the employee:

- is employed in an administrative position;
- performs office or nonmanual work directly related to office management policies, or general business operation;
- supervises at least two other employees;
- does not devote more than 20% (40% in retail and service establishments) to nonexempt duties;
- performs functions in the administration of a school system, educational establishment, or institution, where the work is directly related to academic instruction or training; or
- an individual who exercises discretion and independent judgment regularly and directly to assist a *bona fide* executive or administrative person, and is subject to the same qualifying requirements.[178]

3.3(d)(iii) *Professional Exemption*

Under Kansas law, an employee is covered by the professional exemption if the employee:

- has a job requiring advanced scientific knowledge and learning, customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education;
- performs work of an original, creative nature, using invention, imagination, and talent of the employee;
- is required to teach, tutor, instruct, or lecture;

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[176] KAN. STAT. ANN. §§ 44-1202, 44-1204.

[177] KAN. STAT. ANN. § 44-1202; KAN. ADMIN. REGS. § 49-30-1.

[178] KAN. STAT. ANN. § 44-1202; KAN. ADMIN. REGS. § 49-30-1.

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- consistently exercises discretion and judgment, and the work is of such character that the work product cannot be standardized in relation to a given period of time;
- does not devote more than 20% of hours worked in a workweek to activities that are not an essential and necessary incident to the work; or
- is paid at least $170 per week.[179]

3.3(d)(iv) *Commissioned Sales Exemption*

Kansas law contains no express exemption for commissioned sales employees except for outside sales employees paid on commission, as discussed below. However, state overtime provisions do not apply to an employee covered by FLSA section 7(i).[180]

3.3(d)(v) *Outside Sales Exemption*

Overtime provisions do not apply to an individual employed in "the capacity of an outside commission paid salesman," which is defined as:

- a salesperson who is customarily and regularly engaged away from the employer's place(s) of business while making sales, obtaining orders, or contracts for services, merchandise, or facilities for which a consideration is paid by the customer; and
- who does not devote more than 20% of work hours in a workweek to employment activities to noncovered activities.[181]

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.[182] 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.[183]

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[179] KAN. STAT. ANN. § 44-1202; KAN. ADMIN. REGS. § 49-30-1.

[180] KAN. STAT. ANN. § 44-1204.

[181] KAN. STAT. ANN. § 44-1202; KAN. ADMIN. REGS. § 49-30-1.

[182] 29 C.F.R. § 785.19.

[183] 29 C.F.R. § 785.18.

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

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

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

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[184] 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.[185] 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.[186] Exemptions apply for smaller employers and air carriers.[187]

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.[188] Lactation is considered a related medical condition.[189] 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.[190] 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 Kansas.

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

An employer that employs minors under the age of 18 must post a notice in a conspicuous place stating the maximum number of hours a minor is required or permitted to work on each day of the week, the

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[184] 29 U.S.C. § 218d.

[185] 29 U.S.C. § 218d(b)(2).

[186] 29 U.S.C. § 218d(a).

[187] 29 U.S.C. § 218d(c), (d).

[188] 42 U.S.C. § 2000gg–1.

[189] 29 C.F.R. § 1636.3.

[190] 29 C.F.R. § 1636.3.

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hours when work starts and stops, and the hours allowed for dinner or other meals.[191] Other than this posting requirement, there are no independent meal or rest period requirements for minors in Kansas.

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

In Kansas, a mother may breast feed her baby or express breast milk in any public or private location where she is otherwise authorized to be.[192] Although the law does not mention employers, it can be construed to include places of employment.[193]

3.5 Working Hours & Compensable Activities

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

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[194] 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."[195]

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

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

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Kansas law does not provide an express definition of hours worked, but state law addresses the compensability of on-call time, split shifts, and travel time.

On-Call Time. Under Kansas law, on-call time is considered compensable if employees are required to remain at a specified place to await a possible call to perform a work assignment for the employer and is prevented from using the time for their own personal benefit. However, time when employees are only

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[191] KAN. STAT. ANN. § 38-605. Although the statute requires display of the poster by employers that employ minors aged 16 or younger, the Kansas Department of Labor recommends the poster for employers with any minor employees. The poster is available via the Kansas Department of Labor's website available at https://www.dol.ks.gov/home/showpublisheddocument/86/638363383544000000.

[192] KAN. STAT. ANN. § 65-1,248.

[193] *See* KAN. STAT. ANN. § 65-1,248.

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

[195] *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").

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required to leave word at their home or with company officials where they may be reached is not compensable.[196]

Split-Shift Premium. Although Kansas does not have a split-shift premium provision, a regulation provides that a period of 30 minutes or more between split shifts is considered a nonpaid period if the employee:

- was previously advised that the period would not be paid;
- is free to use the period of time for their own benefit; and
- is not required to perform any services.[197]

Travel Time. Time spent traveling to and from the place where the employee is required to report is compensable if there is an express contract providing for the pay, or if the employer usually has a custom, or practice of paying for the time.[198]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[199] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[200] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

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

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

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

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[196] KAN. ADMIN. REGS. § 49-30-3; *Stone v. City of Kiowa*, 950 P.2d 1305 (Kansas 1997) (compensability depends on whether the restrictions on the employees' on-call time are so severely burdensome as to render the on-call time predominately for the benefit of the employer).

[197] KAN. ADMIN. REGS. § 49-30-3.

[198] KAN. ADMIN. REGS. § 49-30-3.

[199] 29 C.F.R. §§ 570.36, 570.50.

[200] 29 C.F.R. § 570.6.

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Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 18	In Kansas, minors under age 18 cannot work in any occupation, trade, or business that is dangerous or injurious to their life, health, safety, morals, or welfare. Additionally, minors under age 18 cannot work in any occupation the U.S. Labor Secretary deems hazardous.[201] *The following are considered hazardous occupations:* • occupations in or about plants or establishments manufacturing or storing explosives or explosive components; • motor vehicle drivers and outside helpers; • coal mining; • logging; • work in saw, lath, shingle, and cooperage-stock mills; • operation of power-driven machinery; • occupations involving exposure to radiation or ionizing radiations; • operation of elevators or power-driven hoisting apparatus; • mining (other than coal mining); • meat slaughtering, packing, processing, or rendering; • brick, tile, and kindred product manufacturing; • operation of circular and band saws, guillotine shears; • wrecking, demolition, and ship-breaking; • roofing; or • excavation.[202]
Ages 14 & 15	*In Kansas, minors ages 14 and 15 can perform the following work in retail, food service, and gasoline service establishments:* • office and clerical work (including operation of office machines); • cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping; • price marking and tagging by hand or by machine, assembling orders, packing, and shelving; • bagging and carrying out customers' orders; • errand and delivery work by foot, bicycle, and public transportation; • clean-up work, including the use of vacuum cleaners and floor waxers, and grounds maintenance (does not include the use of power-driven mowers or cutters); • kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used to perform such work, including but not limited to dishwashers, toasters, dumb-waiters, popcorn poppers, milk shake blenders, and coffee grinders;

[201] KAN. STAT. ANN. § 38-602; KAN. ADMIN. REGS. §§ 49-1-51 to 49-1-68.

[202] KAN. STAT. ANN. § 38-602; KAN. ADMIN. REGS. §§ 49-1-51 to 49-1-68.

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Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• work in connection with cars and trucks that is limited to: dispensing gasoline and oil; courtesy service; cleaning, washing and polishing (cannot include the use of pits, racks, or lifting apparatus or involve inflating tires mounted on a rim equipped with a removable retaining ring); or • cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.[203] *In Kansas, minors ages 14 and 15 cannot perform work in the following occupations:* • manufacturing, mining, and certain processing occupations, and performance of duties in workrooms where goods are manufactured, mined, or processed; • operation of hoisting apparatus or power-driven machinery; • transportation of persons or property by rail, highway, air, water, pipeline, or other means; • warehousing and storage; • communications and public utilities; • construction; • work in connection with maintenance or repair of a retail, food, or gasoline service establishment or its machines; • outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes, at a retail, food, or gasoline service establishment; • cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking; • occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, and bakery-type mixers; • work in freezers and meat coolers and all work preparing meats for sale (except wrapping, sealing, labeling, weighing, pricing and stocking when performed in other areas); or • loading and unloading goods to and from trucks, railroad cars or conveyors.[204]
Under Age 14	In Kansas, minors under age 14 cannot be employed.[205]

[203] KAN. ADMIN. REGS. § 49-1-69.

[204] KAN. ADMIN. REGS. § 49-1-70.

[205] KAN. STAT. ANN. § 38-601.

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Restrictions on Selling or Serving Alcohol. In Kansas, individuals under age 21 cannot work at a retailer of alcoholic beverages. Individuals under age 21 cannot mix or dispense drinks containing alcohol. Moreover, individuals under age 21 cannot work where alcohol is sold when not supervised by a person 21 years of age or older.[206] In Kansas, individuals under age 18 cannot serve alcohol. Individuals aged 18 and over may serve alcohol only if supervised by a person 21 years of age or older.[207]

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

Under Age 16. In Kansas, minors under age 16 cannot work:

- during school hours;
- more than eight hours per day;
- more than 40 hours per week;
- between 10:00 P.M. and 7:00 A.M.
  - *Exception*: Minors may work later than 10:00 P.M. on evenings that do not precede a school day.

These restrictions do not apply to a student-learner who is enrolled in a recognized cooperative vocational teaching program or similar program through a private school, if certain conditions are met.[208]

As noted in Table 9, minors under age 14 cannot be employed.

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

In Kansas, the following work is not considered "employment" under state child labor laws, including for minors under the age of 14:

- when minors are employed by their parents in nonhazardous occupations;
- newspaper delivery;
- casual labor about a private home;
- domestic service;
- delivery or messenger work;
- certain modeling and performing; or
- certain farming pursuits.[209]

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

Kansas requires work permits for minors younger than 16. To obtain a work permit, the following must occur:

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206 KAN. STAT. ANN. §§ 41-713, 41-2610.

207 KAN. STAT. §§ 41-2610, 41-2615.

208 KAN. STAT. ANN. § 38-603.

209 KAN. STAT. ANN. § 38-614.

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- the employer must provide a signed written statement concerning the proposed employment;
- the minor's principal must sign-off that the minor meets the educational requirements; and
- evidence of the minor's age must be verified.

Work permits must be obtained, kept on file, and accessible to any inspector or officer charged with enforcing child labor laws. This does not apply to minors enrolled in or attending any secondary school within Kansas.

Employers must return permits to the issuing official within two days of the minor's employment terminating.[210]

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

Violations of Kansas's child labor laws carry criminal penalties. An employer that employs any person or child in violation of any provision of the child labor statute, or permits or "connives" at such a violation, is guilty of a misdemeanor. A violation is punishable by a sum of not less than $25 nor more than $100, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days.[211]

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).[212]

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.[213]

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

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[210] KAN. STAT. ANN. §§ 38-604, 38-606, and 38-609.

[211] KAN. STAT. ANN. § 38-612.

[212] 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").

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

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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.[214]

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.[215] 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.[216]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[217] 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.[218]

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[214] 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.

[215] 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/.

[216] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[217] 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.

[218] 12 C.F.R. § 1005.18.

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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.[219]

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.[220]

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

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

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

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

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

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

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

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[221] 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.[222] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work

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[219] *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.

[220] 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.

[221] *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).

[222] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

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uniforms,[223] tools and equipment,[224] and business transportation and travel.[225] 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.[226]

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;[227]
- 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);[228]
- 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);[229]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[230]
- 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;[231] or

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[223] 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.

[224] 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).

[225] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[226] 29 C.F.R. § 778.217.

[227] 29 C.F.R. § 531.38.

[228] 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*.

[229] 29 C.F.R. § 531.40.

[230] 29 C.F.R. § 531.40.

[231] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

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- 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.[232]

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.[233]

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.[234] 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.[235]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[236]

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

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[232] 29 C.F.R. § 825.213.

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

[234] 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.

[235] 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.

[236] 29 C.F.R. § 531.36.

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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.[237]

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.[238]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid by cash, negotiable checks or drafts, direct deposit in a financial institution account designated by the employee, or by payroll card. Paychecks must be negotiable in the community where the place of employment is located.[239]

Direct Deposit. Mandatory direct deposit is not permitted in Kansas. An employer that elects to pay wages only by direct deposit must offer an alternative payment method as a default option for employees who fail to designate an account for electronic fund transfer or deposit. Default options may include cash, check, or payroll card.[240] The employee must select the financial institution where the deposit is to be made. The employer must conduct training or distribute educational information to employees at least 30 days before implementing a payroll program using electronic pay methods only.[241]

Payroll Debit Card. An employer may designate payroll cards as the method of wage payment if the following requirements are met:

1. employees must be given at least one means of accessing all of their wages each pay period at no cost;
2. not less than 30 days before implementing a program using payroll cards, the employer either conducts training regarding the use of payroll cards or distributes educational information to employees on the program offered by the employer;
3. employers may not retain any interest in the funds transferred to a payroll card account, other than the right to correct inadvertent overpayments in accordance with the rules governing direct deposit; and
4. employers may not charge employees initiation, loading, or other participation fees to receive wages to a payroll card account, although employees can be required to cover the cost of replacing a lost, stolen, or damaged payroll card.[242]

Employees must be provided with at least one means of accessing their entire net pay each pay period without cost, and employees may not be charged participation fees.[243]

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[237] 29 C.F.R. § 531.37.

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

[239] KAN. STAT. ANN. § 44-314(b).

[240] KAN. STAT. ANN. § 44-314(c).

[241] KAN. STAT. ANN. § 44-314(e).

[242] KAN. STAT. ANN. § 44-314(e), (f).

[243] KAN. STAT. ANN. § 44-314(f).

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

An employer must pay its employees at least once each calendar month on regular paydays designated in advance by the employer. The payday may not be more than 15 days after the end of the pay period, unless a variance is authorized by state or federal law.[244] An employer may pay its employees on a semi-monthly basis, but no later than 15 days following the close of a pay period.[245]

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

Upon an employee's discharge or resignation, an employer must pay the employee's earned wages no later than the next regular payday upon which the employee would have been paid if still employed.[246]

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

Upon request, an employer must furnish an employee an itemized statement of deductions made from wages for each pay period the deductions are made.[247] Wage statements are only required if an employee requests, and the law does not specify what form the statement must take.

3.7(b)(v) *Wage Transparency*

Kansas 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*

Changing Regular Paydays. If an employee requests, employers must notify the employee in writing or through a posted notice maintained in a place accessible to employees or as required by a collective bargaining agreement of any changes to the day and place of payment before a change occurs.[248]

Changing Pay Rate. If an employee requests, employers must notify the employee in writing or through a posted notice maintained in a place accessible to employees or as required by a collective bargaining agreement of any pay rate changes before a change occurs.[249] In addition, according to the state labor department, pay rates can be changed, but employers must provide employees notice before a change occurs; changes cannot occur retroactively.[250]

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

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

Uniforms. Whether uniform costs are reimbursable in Kansas depends on the characteristics of the uniform itself. If a signed written agreement between an employer and an employee exists, an employer may deduct from employee wages for the replacement cost or unpaid balance of employer's uniforms an

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[244] KAN. STAT. ANN. § 44-314(a), (h).

[245] KAN. STAT. ANN. § 44-314(a), (h).

[246] KAN. STAT. ANN. § 44-315.

[247] KAN. STAT. ANN. § 44-320(d).

[248] KAN. STAT. ANN. § 44-320(b).

[249] KAN. STAT. ANN. § 44-320(b).

[250] Kansas Dep't of Labor, *Workplace Laws FAQs,* available at https://www.dol.ks.gov/employers/workplace-laws/workplace-laws-faqs.

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employee purchased. Additionally, if written notice and an explanation are provided, an employer may deduct from an employee's final wages to compensate the employer for the replacement cost or unpaid balance of cost of the employer's uniforms an employee intentionally purchased. However, deductions cannot bring the employee's wage below the applicable minimum wage rate.

Additionally, an employer can deduct from wages if an employee provides signed authorization for deductions for a lawful purpose accruing to the employee's benefit. However, deductions for uniforms which are not necessary to the performance of the assigned duties and are customarily supplied by the employer are not authorized deductions "accruing to the benefit of the employee."[251]

Tools & Equipment. Deductions for special tools or special equipment which are not necessary to performing assigned duties and are customarily supplied by the employer are not authorized deductions "accruing to the benefit of the employee."[252] Deductions cannot bring the employee's wage below the applicable minimum wage rate.[253] Also, when the property is returned, withheld wages must be paid.[254]

If written notice and an explanation are provided, an employer may deduct from an employee's final wages:

- to recover employer property provided to an employee in the course of the employer's business, including, but not limited to, tools of the trade or profession; personal safety equipment; computers; electronic devices; mobile phones; proprietary information (*e.g.*, customer lists, intellectual property, security keys, access cards); or
- to compensate the employer for the replacement cost or unpaid balance of cost of company property, equipment, tools of the trade, or other materials an employee intentionally purchased.

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

Permissible Deductions. An employer can deduct from wages only if:

- the deduction is required or empowered by state or federal law;
- the deduction is for medical, surgical or hospital care or service, provided:
  - the employer does not financially benefit from the deduction;
  - the deductions are openly, clearly, and in course recorded in the employer's books;
- the employee provided written, signed authorization for deductions for a lawful purpose accruing to the employee's benefit; or
- the deductions are for contributions attributable to automatic enrollment in a qualifying employer-established retirement plan.[255]

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[251] KAN. STAT. ANN. § 44-319; KAN. ADMIN. REGS. § 49-20-1.

[252] KAN. STAT. ANN. § 44-319.

[253] KAN. STAT. ANN. § 44-319; KAN. ADMIN. REGS. § 49-20-1.

[254] KAN. STAT. ANN. § 44-319.

[255] KAN. STAT. ANN. § 44-319(a).

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Further, any deductions taken cannot reduce an employee's pay below the applicable minimum wage.[256]

State labor department regulations define authorized deductions *accruing to the benefit of the employee* as deductions for which the employer has received the employee's signed authorization for lawful deductions that do not in any way waive, set aside, or contravene any rights created in the general deductions statute.[257] If a signed written agreement between an employer and an employee exists, an employer can deduct from employee wages for the following purposes:

- to effect employee repayment of loan or advance made during course and within scope of employment;
- payroll overpayment;
- to compensate the employer for the replacement cost or unpaid balance of employer's merchandise or uniforms an employee purchased;
- to recover employer property provided to an employee in the course of the employer's business, including but not limited to tools of the trade or profession, personal safety equipment, computers, electronic devices, mobile phones, or proprietary information (*e.g.*, customer lists, intellectual property, security keys, access cards). When property is returned, withheld wages must be paid;
- contributions to and recovery of overpayments under employee welfare and pension plans;
- contributions made under a collective bargaining agreement to employee welfare and pension plans that are not subject to the federal welfare and pension plans disclosure act;
- deductions authorized by the employee in writing or via a collective bargaining agreement concerning:
  - payment into company-operated thrift plans;
  - stock option or stock purchase plans to buy securities of the employing or an affiliated corporation at market price or less, if securities are listed on a stock exchange or are marketable over the counter;
  - payment into personal savings accounts. Such payments include, but are not limited to, payments into credit unions, savings fund societies, savings and loan associations, building and loan associations, savings departments of banks for Christmas, vacations or other purposes, and payments for United States government bonds;
  - contributions by the employee for charitable purposes; or
- the actual cost to the employer of meals and lodging obtained from the employer, if the cost is not wages earned.[258]

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[256] KAN. STAT. ANN. § 44-319€.

[257] KAN. ADMIN. REGS. § 49-20-1. The state labor department issued this administrative regulation before the state's general wage deduction statute was amended in 2013. Accordingly, the permissible deductions set forth in the regulation as detailed here are those that do not appear to expressly contradict the new wage general deduction statute.

[258] KAN. STAT. ANN. § 44-319; KAN. ADMIN. REGS. § 49-20-1.

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The law also does not prevent deductions for employee contributions to charitable organizations or check-off dues to labor organizations or service fees, if otherwise not prohibited by law.[259]

Prohibited Deductions. The following deductions are not considered "accruing to the benefit of an employee:"

- cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or alleged negligent acts;
- uniforms, special tools, or special equipment which are not necessary to the performance of the assigned duties and are customarily supplied by the employer; or
- any other deduction not set out by Kan. Stat. Ann. §§ 44-313 *et seq*. or permitted by administrative rules and regulations.[260]

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

Orders of Support. An employer must comply with a court-issued income withholding order pursuant to which an employee's wages are garnished for child and/or spousal support.[261] Upon service of the income withholding order on the employer, the order is binding on the employer and requires the continued withholding from each periodic payment of income until further order of the court.[262]

The employer must begin making the required deductions no later than the next pay period that occurs after 14 days following the date the employer was served with the order.[263] The employer must forward each payment to the Kansas state child enforcement agency within seven days of each payday for which the deduction is taken pursuant to the income withholding order.[264] The maximum amount that may be withheld from an employee's wages pursuant to an income withholding order is 50% of the employee's disposable income.[265] *Disposable income* means the portion of the employee's earnings that remain after the deduction of any amounts required by law to be withheld.[266] The employer may also deduct from the employee's disposable income an administrative fee of no more than $5 per pay period or $10 per month, whichever is less, for each deduction paid over to the state agency.[267]

The state agency may also request, in writing or electronically, that the employer provide certain information within 10 days of the request:

- the employee's full name, current address, and Social Security number;
- the employee's work location;
- the number of the employee's claimed dependents;

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[259] KAN. STAT. ANN. § 44-319.

[260] KAN. ADMIN. REGS. § 49-20-1.

[261] KAN. STAT. ANN. § 23-3103.

[262] KAN. STAT. ANN. § 23-3103.

[263] KAN. STAT. ANN. § 23-3104.

[264] KAN. STAT. ANN. § 23-3104.

[265] KAN. STAT. ANN. § 23-3104.

[266] KAN. STAT. ANN. § 23-3104.

[267] KAN. STAT. ANN. § 23-3104.

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- the employee's gross and net income;
- an itemized statement of deductions from the employee's income;
- the employee's pay schedule;
- the employee's health insurance coverage; and
- whether income owed to the employee is being withheld pursuant to an order of support.[268]

An employer that takes either of the following unlawful actions is subject to a civil penalty of up to $500:

- discharging, refusing to employ, or taking disciplinary action against an employee because the employee is subject to an income withholding order; or
- failing to withhold support from income or to pay the withheld funds over to the agency in the manner required in the order.[269]

Debt Collection. An employer must comply with a court-issued order of garnishment to attach an employee's earnings. Within 14 days following service upon the employer of an initial order of garnishment, the employer must complete the answer form that was served with the order send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form.[270]

As with an income withholding order for child or spousal support, only the employee's exempt earnings—the portion remaining after any legal deductions have been withheld—are available for garnishment.[271] The maximum part of such earnings which may be subject to garnishment for any workweek cannot exceed the lesser of:

- 25% of the employee's aggregate disposable earnings for that workweek;
- the amount by which the employee's aggregate disposable earnings for that workweek exceed an amount equal to 30 times the federal minimum hourly wage; or
- the amount of the judgment creditor's claim as found in the order for garnishment.[272]

If a party or the court requests a written explanation of the employer's computations of earnings withheld during any pay period, the employer must submit a responsive affidavit to all parties and the court within 14 days after such request.[273]

An employer is prohibited from discharging an employee due to the fact that the employee's earnings are subject to wage garnishment.[274]

[268] KAN. STAT. ANN. § 23-3104.

[269] KAN. STAT. ANN. § 23-3104.

[270] KAN. STAT. ANN. §§ 60-736, 60-737.

[271] KAN. STAT. ANN. §§ 60-734, 60-2310.

[272] KAN. STAT. ANN. § 60-2310.

[273] KAN. STAT. ANN. § 60-734.

[274] KAN. STAT. ANN. § 60-2311.

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

Minimum Wage & Overtime. The Kansas Secretary of Labor has the authority to enforce and investigate violations of the state's wage and hour laws.[275] An employer that pays an employee less than the wages and overtime compensation to which the employee is entitled under the Kansas minimum wage and overtime law is liable for the full amount of unpaid wages and overtime compensation, less any amount actually paid to the employee, and for costs and attorneys' fees.[276]

An employee may bring an action for unpaid wages in any court of competent jurisdiction, and may pursue an individual action or a class action. The employee may also elect to assign their claim to the Secretary to prosecute the claim, or file a wage claim with the Secretary.[277] An employee is not required, however, to exhaust administrative remedies prior to filing a lawsuit.

Violations of the minimum wage and overtime provisions also carry civil and criminal penalties. An employer that is convicted of violating any minimum wage and/or overtime provision or falsifying any associated records will be fined between $250 and $1,000. An employer that fires or discriminates against an employee for exercising rights under these provisions will be fined between $250 and $1,000, if convicted.[278]

Wage Payment. The Kansas Secretary of Labor has the authority to enforce and investigate violations of the state's wage payment laws.[279]In case of a dispute over the amount of wages due, an employer is required pay, without conditions and no later than the following regular payday, all wages the employer concedes are due. Unless this payment is made by binding settlement agreement, an employee's acceptance of a payment does not constitute a release, and the employee retains all available remedies under the wage payment statute.[280]

Like with the minimum wage and overtime law, an employee may file a wage claim with the administrative agency or proceed to file a lawsuit in court.[281] The employee may also elect to assign their claim to the secretary to prosecute the claim, or file a wage claim with the secretary.[282]

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

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[275] KAN. STAT. ANN. §§ 44-1202, 44-1207; *see also* Kansas Dep't of Labor, *Wage Claims and Hearing Procedures*, *available at* https://www.dol.ks.gov/employers/workplace-laws/wage-claims.

[276] KAN. STAT. ANN. § 44-1211.

[277] KAN. STAT. ANN. § 44-1211.

[278] KAN. STAT. ANN. § 44-1210.

[279] KAN. STAT. ANN. §§ 44-319, 44-322.

[280] KAN. STAT. ANN. § 44-316.

[281] KAN. STAT. ANN. §§ 44-322a, 44-324.

[282] KAN. STAT. ANN. § 44-324.

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Employee Retirement Income Security Act (ERISA).[283] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[284] 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.[285]

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

Generally. In Kansas, an employee's rate of pay includes all agreed compensation for services for which the employee has met the conditions required for entitlement, eligibility, accrual, or earning, including fringe benefits. Conditions subsequent to entitlement, eligibility, accrual, or earning resulting in a forfeiture or loss of such earned wage are ineffective and unenforceable.[286] Nonetheless, there is no requirement under Kansas law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, or personal time off. If an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

Because vacation and other paid time off (PTO) is a matter of employer policy in Kansas, an employer's vacation policy can require forfeiture of accrued vacation and PTO. Even if a policy does not contain a forfeiture provision, payout is generally not required when employment ends.[287] According to the state labor department, payout of accrued, unused vacation or PTO is typically available only if the employer has a policy or practice that employees will be paid for unused vacation time."[288]

Notice Requirements. If an employee requests, an employer must make available, in writing or through a posted notice or as required by a collective bargaining agreement, employment practices and policies

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283 29 U.S.C. § 1002.

284 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.

285 490 U.S. 107, 119 (1989).

286 KAN. ADMIN. REGS. § 49-20-1.

287 *See, e.g.*, *Sander v. Liberal Animal Hosp., P.A.*, 222 P.3d 564 (Kan. Ct. App. 2010); *Smith v. Dollar Gen. Stores*, 2005 WL 3098726 (Kan. Ct. App. Nov. 18, 2005); *Mid Am. Aerospace, Inc. v. Department of Human Res.*, 694 P.2d 1321 (Kan. Ct. App. 1985); *Sweet v. Stormont Vail Reg'l Med. Ctr*., 647 P.2d 1274 (Kan. 1982); *Nordwald v. Brightlink Commc'ns, L.L.C.*, 2022 WL 1444521 (D. Kan. May 6, 2022). *But see Benjamin v. Manpower, Inc. of Wichita*, 600 P.2d 148 (Kan. Ct. App. 1979) ("In the absence of a valid contract provision authorizing forfeiture, vacation pay cannot be forfeited once the worker has earned the same.").

288 Kansas Dep't of Labor, *Pay and Wage Requirements*, *available at* https://www.dol.ks.gov/en/laws-faqs#pay-and-wage-requirements; *see also St. Francis Reg'l Med. Ctr., Inc. v. Weiss*, 869 P.2d 606 (Kan. 1994); *Luebbert v. Morris & King, P.C.*, 831 P.2d 1343 (Kan. Ct. App. 1992).

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concerning vacation pay, sick leave, and any other benefits to which the employee is entitled and which have a direct bearing upon wages payable.[289]

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*

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

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

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

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[290] 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).[291] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[292] 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*

Couples may register as domestic partners in the cities of Lawrence and Topeka. However, state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee benefit plans.

[289] KAN. STAT. ANN. § 44-320.

[290] 29 U.S.C. § 1144.

[291] 29 U.S.C. § 1161.

[292] 29 U.S.C. § 1167(3).

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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;[293]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[294]
- to take medical leave when the employee is unable to work because of a serious health condition;[295]
- 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.[296] 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.[297] 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*

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

3.9(b) *Paid Sick Leave*

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

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be

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[293] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[294] 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).

[295] 29 C.F.R. §§ 825.112, 825.113.

[296] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[297] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

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accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[298] 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*

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

3.9(c) *Pregnancy Leave*

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

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

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[299] 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.[300] 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

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[298] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[299] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[300] 29 C.F.R. § 825.202.

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impairment.[301] 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*

Under the Kansas Acts Against Discrimination, which applies to employers of four or more employees, disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery from these conditions are temporary disabilities and must be treated as such under an employer's sick leave plan. Written and unwritten policies and practices involving matters such as the length and duration of leave, the availability of extensions, reinstatement, seniority, and other benefits, must be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

Employers must consider childbearing to be a justification for a leave of absence for female employees for a reasonable period of time. Upon signifying her intent to return within a reasonable time, the employee must be reinstated to her original job or to a position of like status and pay without loss of service, credits, seniority, or other benefits.[302]

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*

Kansas 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.

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[301] 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.

[302] KAN. ADMIN. REGS. 21-32-6; *Kansas Gas & Elec. Co. v. Kansas Comm'n on Civil Rights*, 750 P.2d 1055 (Kansas 1988) (policy affording leaves of absence as a matter of right to employees suffering from pregnancy-related disabilities did not constitute sex discrimination even though company policy did not allow leaves of absence to other types of disabilities).

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

Kansas 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*

Kansas 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*

An employee that is entitled to vote at a county-conducted election who does not have at least two consecutive hours before or after work to vote must be provided up to two hours off work to vote. If an employee has time to vote before or after a shift, but the available time is less than two consecutive hours, the employee is entitled to no more than two hours total time off. For example, if the polls open or close one hour before the employee's shift begins or ends, an employer satisfies its obligation by providing the employee one hour of leave when the shift begins or before it ends.

An employer may specify when leave may be taken, but this time off cannot include the employee's regular meal period. The law does not state whether employees must provide notice to take time off to vote.[303]

An employer cannot deduct an employee's usual salary or wages, or penalize an employee, for taking time off to vote. Accordingly, an employee must be paid for voting time.

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*

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

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[303] KAN. STAT. ANN. § 25-418.

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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.[304] 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.[305] For more information, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

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

Leave to Serve on a Jury. An employer may not discharge or threaten to discharge a permanent employee due to the employee's service on a jury or attendance in court in connection with such service.

Employees reinstated after serving on a jury shall be treated as having been on furlough or a leave of absence, and shall be entitled to participate in insurance and other benefits in accordance with established rules and practices relating to employees on furlough or leave of absence. A person returning from leave must be reinstated to the person's prior position without loss of seniority.[306]

An employer is not required to pay employees while they are serving on a jury.

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.

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[304] 28 U.S.C. § 1875.

[305] *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).

[306] KAN. STAT. ANN. § 43-173; Kansas Dep't of Labor, *Workplace LawsFAQs, available at* https://www.dol.ks.gov/employers/workplace-laws/workplace-laws-faqs.

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

All employers that employ four or more persons must provide leave for employees who are victims of domestic violence or sexual assault.[307] An employee is eligible for time off if the employee is a victim of domestic violence or sexual assault.[308]

An eligible employee may take up to eight days off of work per year to:

- obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the victim or the victim's child or children;
- seek medical attention for injuries caused by domestic violence or sexual assault;
- obtain services from a domestic violence shelter, domestic violence program, or rape crisis center as a result of domestic violence or sexual assault; or
- make court appearances in the aftermath of domestic violence or sexual assault.[309]

As a condition of taking time off, the employee must give the employer reasonable advance notice of the employee's intention to take time off, unless advance notice is not feasible. Within 48 hours after returning from the requested time off, the employee must provide documentation to support taking time off. Appropriate forms of documentation include:

- a police report indicating that the employee was a victim of domestic violence or sexual assault;
- a court order protecting or separating the employee from the perpetrator, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or
- documentation from a medical professional, domestic violence advocate, or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

When an unscheduled absence occurs, the employer may not take action against the employee if the employee, within 48 hours after the beginning of the unscheduled absence, provides a certification to the employer in the form of the above.[310]

To the extent allowed by law, the employer must maintain the confidentiality of an employee requesting leave and of any supporting documentation received from the employee.[311]

There is no requirement that the employee be compensated for absences taken pursuant to the statute. The employee may elect to use accrued paid leave, or, if there is no paid leave available, unpaid leave not

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[307] KAN. STAT. ANN. § 44-1112.

[308] KAN. STAT. ANN. § 44-1132.

[309] KAN. STAT. ANN. § 44-1132.

[310] KAN. STAT. ANN. § 44-1132.

[311] KAN. STAT. ANN. § 44-1132.

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to exceed eight days per year, unless a longer time period is available under an employment agreement, policy, or collective bargaining agreement.[312]

3.9(k) *Military-Related Leave*

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

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

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

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[313]

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.[314] 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.[315] Notably, leave is only available for covered relatives of military members called to

[312] KAN. STAT. ANN. § 44-1132.

[313] 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)).

[314] 29 C.F.R. § 825.126(a).

[315] 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).

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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. Employers may not refuse to hire, discharge, or otherwise discriminate against an employee because of the employee's membership or time off for military duty in the U.S. armed forces, reserves, or the National Guard.[316] Further, employers may not discharge or punish an employee for absences due to the performance of military duty.[317]

Private employers must grant unpaid leave to any employee who is a member of the Kansas National Guard to attend drills or annual muster or perform active service.[318] Eligible employees are those who are employed within Kansas who are called to state active duty by the state of Kansas or any other state and who are members of the Kansas army national guard, Kansas air national guard, the Kansas state guard, or other Kansas military force, or the military forces of any other state.

The statute requires an employee called to active duty to give notice thereof to their employer, but does not specify a time requirement for giving notice.[319]

Employees on a leave of absence for state active duty are entitled to participate in any benefits offered by the employer pursuant to established rules and practices relating to employees on leave of absence in effect with the employer at the time the person was called to duty.[320]

Employers are required to reinstate employees returning from active duty in the Kansas National Guard, Kansas Air National Guard, the Kansas state guard, or other state military force, as long as the employee:

- gave notice of their intent to return to the employer within 72 hours after release from military duty or recovery from disease or injury resulting from duty;
- received an honorable discharge; and
- did not previously hold a temporary position.

The employer must reinstate the employee to the same position that the person left at the same level seniority, status, and pay the person would have enjoyed had employment continued. However, if the person is not qualified to perform the duties of the same position because of a service-related disability, the employer must reinstate the employee to another position that the employee is qualified to perform, that will provide like seniority, status, and pay, or the nearest approximation consistent with the circumstances of the case.

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[316] KAN. STAT. §§ 44-1125 *et seq.*

[317] KAN. STAT. ANN. § 44-1126.

[318] KAN. STAT. ANN. § 48-517.

[319] KAN. STAT. ANN. § 48-517(a).

[320] KAN. STAT. ANN. § 48-517(b).

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The employer may not discharge the reinstated employee without cause for one year after restoration to the position.

An employer is not required to reemploy a person if:

- the employer's circumstances have so changed as to make reemployment of the person impossible or unreasonable;
- reemployment would impose an *undue hardship* on the employer (meaning significant difficulty or expense when considered in light of the employer's resources and the nature of the employer's operation); or
- the employment from which the person left to serve in military duty was for a brief, nonrecurrent period, and there is no reasonable expectation that the person's employment would continue indefinitely or for a significant period.[321]

Other Military-Related Protections: Unemployment Benefits. An individual is not disqualified from unemployment benefits for voluntary leaving work if the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry.[322]

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*

Volunteer Emergency Responder Leave. An employer may not terminate an employee who performs duties as a volunteer firefighter, volunteer certified emergency medical service attendant, volunteer reserve law enforcement officer, or volunteer part-time law enforcement officer.[323] The statute does not include any provisions related to notice or obtaining certification of the need for leave to attend an emergency after-the-fact.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

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

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[324] Employers are also required to comply with all applicable occupational safety and health standards.[325] To enforce these standards, the federal Occupational Safety and Health Administration

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[321] KAN. STAT. ANN. § 48-517.

[322] KAN. STAT. ANN. § 44-706(a)(3).

[323] KAN. STAT. ANN. § 44-131.

[324] 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.

[325] 29 U.S.C. § 654(a)(2).

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("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.[326] 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*

Kansas 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*

In Kansas, drivers may not text while driving. Specifically, a driver may not operate a motor vehicle while writing/manually typing, sending, or reading a written communication including, but not limited to: (1) a text message; (2) instant message; or (3) email. Cell phone use is not addressed by the statute.

This prohibition applies to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, state law.

An exception exists for a person who reads, selects, or enters a telephone number or name in a wireless communications device for the purpose of making or receiving a phone call, or receiving a message related to the operation or navigation of the motor vehicle. *Wireless communication device* means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages or a laptop computer. Wireless communication device does not include a device which is voice-operated and which allows the user to send or receive a text-based communication without the use of either hand, except to activate or deactivate a feature or function.[327]

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.

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[326] 29 U.S.C. § 667(c)(2).

[327] KAN. STAT. ANN. § 8-15,111.

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

Firearms in the Workplace. An employer may restrict or prohibit employees from carrying a concealed handgun while on the premises of the employer's business or while engaged in the duties of the person's employment. A private business may restrict or prohibit an individual from carrying a concealed handgun within a building or buildings. An employer may also restrict the open carry of firearms. The prohibition against carrying a weapon must be conspicuously posted.

A private entity that provides adequate security measures in a private building and conspicuously posts signage prohibiting the carrying of a concealed handgun in the building shall not be liable for any wrongful act or omission relating to actions of persons licensed to carry a concealed handgun. Further, even if a private entity does not provide adequate security measures in a private building, if it allows the carrying of a concealed handgun it is also not liable for a wrongful act or omission relating to the actions of a persons licensed to carry a concealed handgun.[328]

Signage Requirements. Signs prohibiting concealed carry must be conspicuously posted at each exterior entrance. Each sign must be displayed according to the following requirements:

- has a white background;
- includes the graphic design that depicts the handgun in black ink, depicts the circle with a diagonal slash across the handgun in red ink, and is at least six inches in diameter;
- contains no text or other markings within the one-inch area surrounding the graphic design;
- contains no other text;[329]
- is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;
- is posted at the eye level of an adult, which means that the entire sign is between four feet and six feet from the ground;
- is posted not more than 12 inches to the right or left of each exterior public and nonpublic entrance to the building; and
- is legible (if a sign becomes illegible, it must be replaced immediately).[330]

Signs prohibiting the open carry of firearms must be posted at each exterior entrance and must meet the following requirements:

- must contain the sentence "The open carrying of firearms in this building is prohibited" with the word "prohibited" printed in underlined boldface. The text must be in black ink and no smaller than the text in the document titled "Open carry prohibited: signage adopted by the Kansas attorney general;"
- white background;
- red border in the shape of an octagon that encloses the text;

[328] KAN. STAT. §§ 75-7c10, 75-7c24(a).

[329] KAN. ADMIN. REGS. § 16-13-1(d).

[330] KAN. STAT. ANN. § 75-7c10(j); KAN. ADMIN. REGS. § 16-11-7(d).

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- cannot contain text or markings other than the text and markings specified;
- visible from the exterior of the building and not obstructed by doors, sliding doorways, displays, or other postings;
- posted at the eye level of an adult, meaning each sign is entirely between four feet and six feet from the ground;
- posted not more than 12 inches to the right or left of all entrances to the building; and
- is legible (if a sign becomes illegible, it must be replaced immediately).[331]

The same signage used to prohibit the carrying of concealed handguns may be used to also prohibit the carrying of unconcealed firearms.[332]

For buildings permitting open carry but prohibiting concealed carry, signs must meet the requirements set forth above, plus the following requirements. The text “OPEN CARRY ALLOWED, CONCEALED CARRY PROHIBITED” must be in capital letters, and the top of the text shall be at least one inch but no more than two inches above the graphic. The word “allowed” in the phrase “open carry allowed” and the word “prohibited” in the phrase “concealed carry prohibited” shall be printed in underlined boldface. The text “State or Municipal Building, 2013 HB 2052 EXEMPT” or “State or Municipal Building, EXEMPT” shall be printed in boldface and shall be at least one inch but no more than two inches below the graphic.[333]

Firearms in Company Parking Lots. An employer may *not* prohibit employees from possessing firearms in their private vehicles in company parking lots.[334] For purposes of the statutory provision allowing private business to restrict or prohibit concealed carry on its premises, “building” does *not* include any structure, or any area of any structure, designated for the parking of motor vehicles.[335]

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*

Pursuant to the Kansas Indoor Clean Air Act, smoking is generally prohibited in all enclosed areas, including places of employment, restaurants, bars, retail stores, and medical facilities.[336] Employers must ensure a smoke-free workplace in all enclosed areas used by employees in the course of their employment, including, but not limited to, work areas, elevators, offices, lounges and restrooms, and meeting rooms.[337] Certain exclusions apply to the ban; for example, tobacco shops, private clubs, and certain casino and racetrack areas are not subject to the smoke-free requirements.[338]

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331 KAN. ADMIN. REGS. § 16-13-1.

332 KAN. STAT. ANN. § 75-7c24(d)(2).

333 KAN. STAT. ANN. § 75-7c24(d); KAN. ADMIN. REGS. § 16-13-1(d)(1).

334 KAN. STAT. ANN. § 75-7c10(b).

335 KAN. STAT. ANN. § 75-7c10(h).

336 KAN. STAT. ANN. §§ 21-6109, 21-6110.

337 KAN. STAT. ANN. §§ 21-6109(j), 21-6110(a)(6).

338 KAN. STAT. ANN. § 21-6110(d).

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As noted in 0 and 0, employers are obligated to notify new and existing employees of the smoke-free environment. Employers must adopt and maintain a written smoking policy, banning smoking in all areas of the workplace. This written policy must be provided to all new hires as a matter of course, and, upon request, to current or prospective employees.[339] Covered employers also must post conspicuous "No Smoking" signs where smoking is prohibited.[340]

Employers will be fined for failure to comply: $100 for a first violation, $200 for a second violation within a one-year period, and $300 for any subsequent violations within a year from the first instance.[341] Moreover, each person allowed to smoke by an employer is considered a separate offense for purposes of determining the number of violations per year.[342]

The Kansas Indoor Clean Air Act also protects employees, applicants, and customers from discrimination or retaliation for reporting, or attempting to prosecute, violations of the smoke-free laws. Adverse action against such individuals is prohibited.[343]

3.10(e) *Suitable Seating for Employees*

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

Federal law does not address suitable seating requirements for employees.

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

Kansas previously required employers to provide seats to female employees, but this provision was repealed.[344]

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*

Kansas law does not address employer workplace violence protection orders.

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[339] KAN. STAT. ANN. § 21-6110(b).

[340] KAN. STAT. ANN. § 21-6111. Approved signs in English and Spanish area available from the Kansas Department of Health and Environment at http://www.kssmokefree.org/no_smoking_sign.html.

[341] KAN. STAT. ANN. § 21-6112(d).

[342] KAN. STAT. ANN. § 21-6112(e).

[343] KAN. STAT. ANN. § 21-6112(f).

[344] KAN. STAT. ANN. § 44-111 (repealed).

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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");[345] (2) the Americans with Disabilities Act (ADA);[346] (3) the Age Discrimination in Employment Act (ADEA);[347] (4) the Equal Pay Act;[348] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[349] (6) the Civil Rights Acts of 1866 and 1871;[350] 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);[351]
- 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.[352] 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.[353]

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[345] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[346] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[347] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[348] 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.

[349] 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)).

[350] 42 U.S.C. §§ 1981, 1983.

[351] 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.

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

[353] 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.

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

Kansas's fair employment laws, the Kansas Acts Against Discrimination, prohibit discrimination based on an individual's membership in a wide range of protected classes:

- race;
- religion;
- color;
- sex (includes pregnancy and childbirth; also may include married individuals and unmarried individuals);
- disability (includes being regarded as);
- national origin;
- ancestry;
- age (40+);[354]
- genetic screening/testing; [355] and
- military status.[356]

Although many aspects of Kansas employment discrimination law mirror federal law on the subject, there are several important substantive and procedural differences. For example, Title VII applies only to employers with 15 or more employees, while most provisions in Kansas's law applies to employers with four or more employees in Kansas. However, there are exceptions for nonprofit fraternal or social associations or corporations.[357]

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

An individual who wishes to assert a violation of Kansas's fair employment practices laws has six months (unless an act constitutes a continuing violation) to file a claim with the Kansas Human Rights Commission.[358] If the investigating commissioner finds probable cause exists for crediting the allegations of the complaint, the commission will engage in conciliation efforts with the respondent.[359] If conciliation efforts fail after 45 days, the commission may order a hearing.[360]

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[354] KAN. STAT. ANN. §§ 44-1002, 44-1001, 44-1009, and 44-1111 *et seq.* (age); *see also* KAN. ADMIN. REGS. §§ 21-30-2 *et seq.*, 21-31-1 *et seq.* (national origin and ancestry), 21-32-1 *et seq.* (sex), 21-33-1 (religion), and 21-34-1 *et seq.* (disability).

[355] KAN. STAT. ANN. § 44-1009.

[356] KAN. STAT. §§ 44-1125 *et seq*. Kansas law defines an individual's *sex* as an individual's biological sex at birth, which is either male or female according to the law; S.B. 180 (Kan. 2023).

[357] KAN. STAT. ANN. §§ 44-1002, 44-1112.

[358] *See* http://www.khrc.net/.

[359] KAN. ADMIN. REGS. § 21-42-7.

[360] KAN. ADMIN. REGS. § 21-43-2.

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

In addition to the federal and state laws, employers with operations in Kansas City, Kansas & Wyandotte County Unified Government, Olathe, and Topeka are subject to local fair employment practices ordinances.

- **Kansas City, Kansas & Wyandotte County Unified Government.** Protected classifications include: race; religion; color; sex; disability; national origin; ancestry; sexual orientation; gender identity; and age. While the general ordinance covering all protected classifications except age does not provide a definition of a covered employer, the age provisions apply to employers employing four or more persons and any person acting directly or indirectly for that person.[361] Any aggrieved person may made, sign, and file a written complaint with the Unified Government of Wyandotte County and Kansas City, Kansas Department of Human Services within 180 days after the alleged discriminatory practice occurred.[362]
- **Lawrence.** Protected classifications include: race (including but not limited to skin color, facial features, hair texture, and protective hairstyles), sex, religion, color, national origin, age, ancestry, familial status, sexual orientation, disability, gender identity, source of income, and immigration status.[363]
- **Olathe.** Employers doing business in the city of Olathe employing 10 or more individuals (and any person acting directly or indirectly for the employer) are subject to the following antidiscrimination protections: race, religion, color, sex, disability, national origin, ancestry, marital status, familial history, military status, sexual orientation and gender identity.[364] Any aggrieved person may file a verified complaint with the Olathe Human Relations Commission within 60 days of the alleged unlawful discriminatory practice.[365]
- **Overland Park**. Employers with one or more employees for each working day in each of 20 or more calendar weeks in the current of preceding calendar year in Overland Park are subject to antidiscrimination protections on the bases of: race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, genetic information, marital status, familial status, and military status. An aggrieved individual may file a written complaint with the City of Overland Park Clerk within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which case the complaint must be filed within 60 days of the last act of discrimination. The filing of a complaint does not preclude any party from seeking other relief under state or federal law, including a private right of action.[366]

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[361] WYANDOTTE CTY., KAN., UNIFIED GOV'T CODE OF ORDINANCES §§ 18-138, 18-139 (age ordinance, includes exception for *bona fide* occupational qualifications, and a *bona fide* seniority system or benefit plan).

[362] WYANDOTTE CTY., KAN., UNIFIED GOV'T CODE OF ORDINANCES § 18-59.

[363] LAWRENCE, KAN., MUN. CODE §§ 10-102.26, 102-28.

[364] OLATHE, KAN., MUN. CODE §§ 2.43.020 (definitions), 2.43.030.

[365] OLATHE, KAN., MUN. CODE § 2.43.040.

[366] OVERLAND PARK, KAN. MUN. Code §§ 8.10.020 (definitions, excluded from the definition of employer are nonprofit fraternal and social associations/corporations, which includes any bona fide membership club exempt from taxation under federal law), 8.10.030 (includes exemption for religious organizations with respect to the employment of individuals performing work connected with carrying on of the organization's religious teaching,

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- **Topeka.** Protected classifications include: race; religion; creed; color; sex; disability; national origin; ancestry; age; sexual orientation; gender identity; genetic information; and veteran status.[367] The ordinance does not provide a definition of employer, nor is enforcement information provided.
- **Wichita.** Employers or any individual or entity which has four or more employees for each working day in each of 20 or more calendar weeks in the current or proceeding calendar year are subject to the following antidiscrimination protections: age; color; disability; familial status; gender identity; genetic information; national origin or ancestry; race; religion; sex; sexual orientation; military or veteran status; and protective hairstyles.[368] An aggrieved individual may file a written complaint with the city clerk within 180 days of the discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event, it must be filed within 180 days of the last act of discrimination.

3.11(b) *Equal Pay Protections*

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

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[369] 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.[370]

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

The Kansas Minimum Wage and Maximum Hours Law prohibits non-FLSA-covered employers from discriminating between employees within any establishment on the basis of sex by paying wages at a rate less than the rate of wages paid to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working

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ministry, religious duties or practices, advancement of religion, or other religious activities), 8.10.050 (enforcement).

[367] TOPEKA, KAN., CITY CODE § 9.20.020.

[368] WICHITA, KAN., CITY CODE § 2.06.020.

[369] 29 U.S.C. § 206(d)(1).

[370] 42 U.S.C. § 2000e-5.

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conditions.[371] The prohibition does not apply where payment is made pursuant to a: (1) seniority system; (2) merit system; (3) system which measures earnings by quantity or quality of production; or (4) differential based on any other factor other than sex. An employer paying a wage differential in violation of the equal pay provisions cannot reduce the wage rate of any employee in order to comply with the statute.

An employee alleging a violation may bring a civil action within two years of the alleged violation.[372]

3.11(c) *Pregnancy Accommodation*

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

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

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

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[373]

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

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;

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371 KAN. STAT. ANN. § 44-1205.

372 KAN. STAT. ANN. §§ 44-1211, 60-512.

373 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

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- 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).[374]

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.[375] 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.[376] 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."[377]

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

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

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[378]

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[374] 29 C.F.R. § 1636.3.

[375] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[376] 29 C.F.R. § 1636.3.

[377] 29 C.F.R. § 1636.4.

[378] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

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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.[379]

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*

Protections for pregnancy, miscarriage, abortion, childbirth, and recovery therefrom in Kansas primarily focus on leave accommodations; therefore, the law is discussed in **3.9(c)(ii)**.

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.[380] Multiple decisions of the U.S. Supreme Court[381] 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.[382] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see **LITTLER ON HARASSMENT IN THE WORKPLACE** and **LITTLER ON EMPLOYEE TRAINING**.

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[379] 29 C.F.R. § 1636.3.

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

[381] *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).

[382] 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.

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

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

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*

The Kansas False Claims Act prohibits employers from discharging, demoting, suspending, threatening, harassing, or retaliating in the terms and conditions of an employee's employment because of lawful acts undertaken in good faith by the employee in further of deterring the state from paying false or fraudulent claims.[383] An employee who has been discriminated against may bring an action in the appropriate district court for relief.[384]

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)[385] and the Railway Labor Act (RLA)[386] 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.

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383 KAN. STAT. ANN. §§ 75-7501 *et seq.*

384 KAN. STAT. ANN. § 75-7506.

385 29 U.S.C. §§ 151 to 169.

386 45 U.S.C. §§ 151 *et seq*.

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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*

Kansas is a right-to-work state.[387] Individuals cannot be denied employment due to their membership or nonmembership in any labor organization, and employers cannot enter into any agreement to exclude a person from employment because of membership or nonmembership in any labor organization.[388] Any person who believes they have been aggrieved by a violation of Kansas's right-to-work statute has a cause of action to pursue actual damages. In addition to damages, reasonable attorneys' fees are awarded to the prevailing party.[389]

Under Kansas's statute, employers are prohibited from deducting labor organization dues from an employee's earnings, unless the employer has an individual order signed by the employee.[390]

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).[391] 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.[392] 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*

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

Kansas law, however, prohibits certain employers from willfully limiting or ceasing "operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding" any of the state labor and employment laws.[393] This statute applies to specific industries only, including food

[387] KAN. STAT. ANN. § 44-831.

[388] KAN. CONST. art. XV, § 12.

[389] KAN. STAT. ANN. § 44-831.

[390] KAN. STAT. ANN. § 44-808.

[391] 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.

[392] 20 C.F.R. §§ 639.4, 639.6.

[393] KAN. STAT. ANN. § 44-616.

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manufacturing, clothing manufacturing, mining, food and clothing transportation, public utilities, and common carriers.[394] Employers operating in these industries may apply to the Kansas Secretary of Labor for authority to limit or cease operations, if they "wish to willfully limit or cease operations for the purpose of limiting production or transportation or to affect prices" and if they are acting "in good faith with meritorious purpose."[395] Employers that willfully violate this law are guilty of a misdemeanor and may be fined up to $1000 or imprisoned for up to one year, or both.[396]

4.1(c) *Mass Layoff Notification Requirements*

Under the Kansas unemployment insurance regulations, employers and employing units[397] are required to respond to inquiries from the Kansas Secretary of Labor related to mass layoffs.[398] *Mass layoff* is defined by the regulations to mean a layoff of 25 or more workers because of lack of work, by an employer, at or about the same time.[399] Upon receiving a request for information from the Secretary of Labor about a mass layoff, an employer must provide the department with "a list of employees scheduled to be involved in a mass layoff, showing the name, Social Security number, and scheduled date of layoff for each employee."[400]

It is unclear what event triggers a request for information from the Kansas Secretary of Labor (*i.e.*, perhaps a WARN notice or a general notice from an employer that it is ceasing operations).[401] In any event, no affirmative mass layoff notice is otherwise required by the unemployment law and regulations.

State Enforcement, Remedies & Penalties. Any person who willfully violates any provision of the notification law or any rule and regulation, and for which a penalty is neither set forth in the statute or provided by any other applicable statute, must be punished by a fine of not less than $20 nor more than $200, or by imprisonment for not longer than 60 days, or both. Each day such violation continues is deemed a separate offense.[402]

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.

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[394] KAN. STAT. ANN. § 44-603.

[395] KAN. STAT. ANN. § 44-616. Despite the statute's instruction for employers to petition the Secretary of Labor for permission to cease operations, no particular procedure appears to exist.

[396] KAN. STAT. ANN. § 44-618.

[397] KAN. STAT. ANN. § 44-703.

[398] KAN. ADMIN. REGS. § 50-3-1(c).

[399] KAN. ADMIN. REGS. § 50-1-4.

[400] KAN. ADMIN. REGS. § 50-3-1(c).

[401] *See, e.g.*, KAN. ADMIN. REGS. § 50-2-5(d) (requiring notice to the Secretary of Labor from an employer upon termination of a business for any reason).

[402] KAN. STAT. ANN. § 44-719(c).

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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.[403] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[404]

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.	An employer must give the employee and such employee's covered dependents reasonable notice of the right to continuation of coverage after termination of employment.[405]
Unemployment Notice	**Generally.** Kansas 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

[403] 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.

[404] 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.

[405] KAN. STAT. ANN. § 40-2209(j).

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Category	Notes
	claim for benefits. Accordingly, it is recommended that an employer provide a copy of that unemployment notice when employment ends.[406] **Multistate Workers.** Kansas 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.[407]

Table 11. State Documents to Provide at End of Employment

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*

In Kansas, it is unlawful to refuse to furnish, upon a fired employee's written request, a service letter setting forth the tenure of employment, occupational classification, and wage rate paid to the employee.[408]

While a service letter is required, an employer is also prohibited from *blacklisting* a former employee. 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. Kansas's prohibition against blacklisting states that any employer, after firing an employee, cannot prevent or attempt to prevent an employee from obtaining employment from any other entity by word, sign, or writing, except by furnishing in writing, on the employee's request, the cause of termination.[409]

Finally, employers may be entitled to some level of immunity for sharing information about a current or former employee. Generally, an employer, or its designee, that discloses information about a current or former employee to a prospective employer is entitled to qualified immune from civil liability.[410] Moreover, an employer that discloses information about a current or former employee to a prospective

[406] KAN. STAT. ANN. § 44-709; KAN. ADMIN. REGS. § 50-3-1. This notice is available at https://www.dol.ks.gov/unemployment/guides. The information is available in English and in Spanish.

[407] *See* KAN. STAT. ANN. § 44-714 (Powers and Duties of Secretary Include Reciprocal Arrangements); *see also* KAN. ADMIN. REGS. § 50-2-6 (Cooperation with Other States).

[408] KAN. STAT. ANN. § 44-808.

[409] KAN. STAT. ANN. § 44-117.

[410] KAN. STAT. ANN. § 44-119a(a).

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employer is absolutely immune from civil liability if the disclosure concerns only: (1) the employee's date of employment; (2) pay level; (3) job descriptions and duties; and (4) wage history.[411]

An employer that responds in writing to a written request concerning a current or former employee from a prospective employer is also absolutely immune from civil liability for disclosing:

- written employee evaluations that were conducted prior to the employee's separation and to which an employee must be given a copy upon request; and
- whether the employee was voluntarily or involuntarily released from service and the reasons for the separation.[412]

[411] KAN. STAT. ANN. § 44-119a(b).

[412] KAN. STAT. ANN. § 44-119a(c).

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