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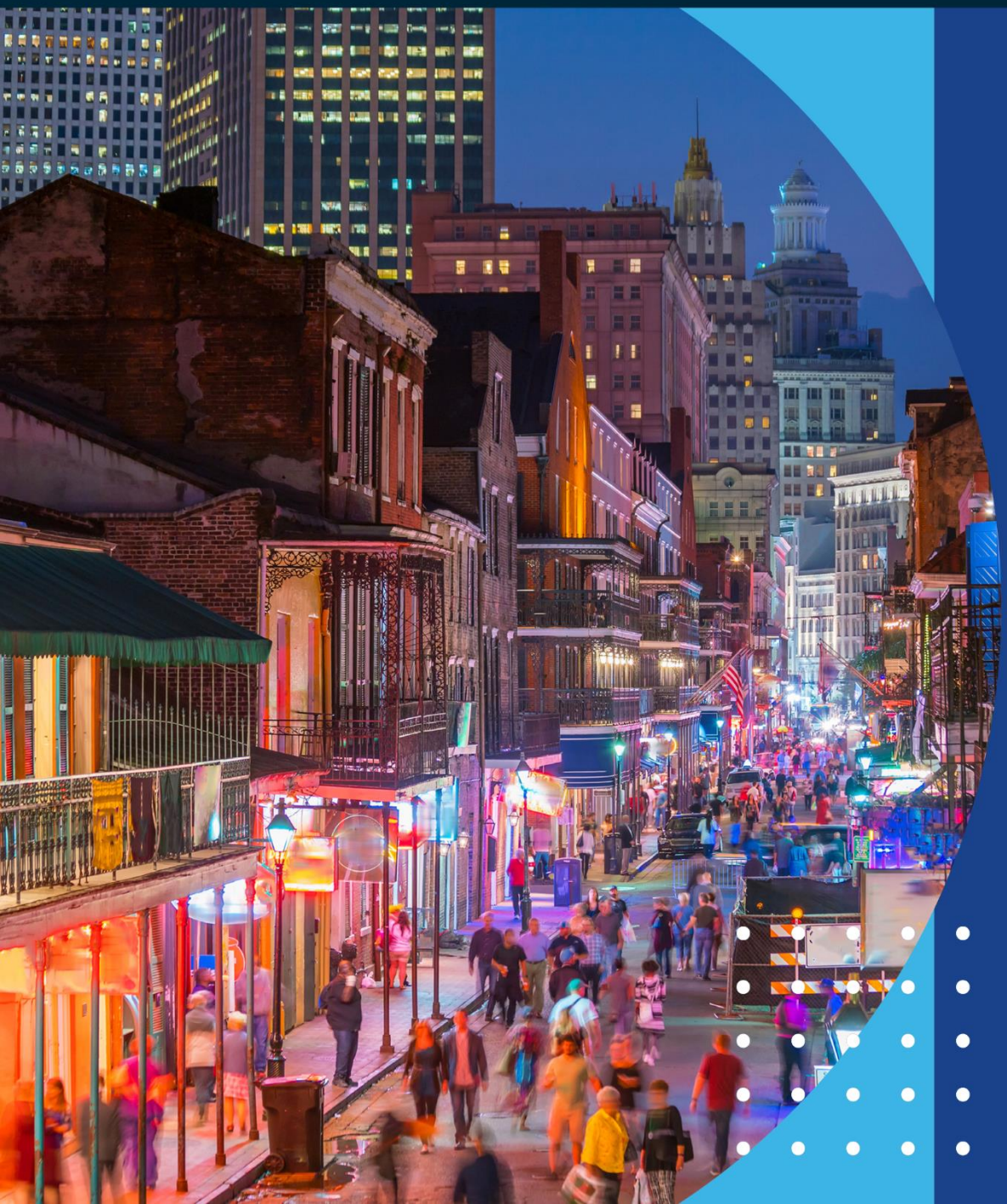
Littler on

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

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

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

DISCLAIMER

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

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1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

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

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

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

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

1.1(b) *State Guidelines on Classifying Workers*

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

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

Moreover, misclassification has been an active issue in Louisiana. Under Louisiana's Fair Play Act, every employer is required to post in a prominent and accessible location at each of its business premises a poster provided by the Louisiana Workforce Commission that describes the responsibilities of independent contractors to pay taxes as required by state and federal laws; the rights of employees to workers' compensation and unemployment benefits; the protections available against retaliation; and the penalties if the employer fails to properly classify an individual as an employee. The notice must contain contact information for individuals to file complaints or to obtain information regarding employment classification. The Louisiana Workforce Commission has created a sample poster for employers to use to satisfy this requirement.[6] The Fair Play Act increased the penalties employers may face for misclassifying workers, either intentionally or not.[7]

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

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

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding (MOU) with the Louisiana Workforce Commission is available at https://www.dol.gov/whd/workers/MOU/la.pdf; Amendment No. 1 to the MOU at https://www.dol.gov/whd/workers/MOU/la_1.pdf (renewing the partnership agreement); and Amendment No. 2 to the MOU at https://www.dol.gov/whd/workers/MOU/la_2.pdf (rescinding and replacing the original agreement).

[6] The poster entitled *Independent Contractor or Employee?* is available in English and Spanish from the Louisiana Workforce Commission at http://www.laworks.net/downloads/downloads_posters.asp.

[7] LA. STAT. ANN. § 23:1711.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practices Laws	Louisiana Office of the Governor, Commission on Human Rights	A "hybrid economic realities/common law control test" also used in federal cases under Title VII of the Civil Rights Act of 1964 ("Title VII").[8] Under this test, the most important factor is the extent of the employer's right to control the "means and manner" of the individual's performance. Factors evaluated in this inquiry include: "(1) ownership of the equipment necessary to perform the job; (2) responsibility for costs associated with operating that equipment and for license fees and taxes; (3) responsibility for obtaining insurance; (4) responsibility for maintenance and operating supplies; (5) ability to influence profits; (6) length of the job commitment; (7) form of payment; and (8) directions on schedules and on performing work."[9] Additionally, Louisiana courts have considered the following factors: • kind of occupation (work typically completed under a supervisor's direction or completed by a specialist without supervision); • occupational skill required; • whether the "employer" or individual provides the equipment used and the place of work; • length of time individual worked; • method of payment (by time or by job); • manner in which the work relationship is ended (by one or both parties, with or without notice or explanation); • whether annual leave is provided; • whether the work is an integral part of the "employer's" business;

[8] *Piazza v. Manuel*, 899 So. 2d 121, 123 (La. Ct. App. 2005) ("Louisiana courts look to federal jurisprudence to interpret Louisiana discrimination laws because of the similarity in scope to the federal prohibition against discrimination provided in Title VII of the Civil Rights Act.") (citation omitted). In *Piazza*, the Louisiana Court of Appeal applied the hybrid test as set forth in *Spirides v. Reinhardt*, 613 F.2d 826 (D.C. Cir. 1979).

[9] *Piazza*, 899 So. 2d at 123 (quoting *Spirides*, 613 F.2d at 831).

Table 1. State Tests for Classifying Workers		
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		• whether the individual accumulates retirement benefits; • whether the "employer" pays Social Security taxes; and • the parties' intentions.[10]
Income Taxes	Louisiana Department of Revenue	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.[11]
Unemployment Insurance	Louisiana Workforce Commission	There is a rebuttable presumption of an independent contractor relationship if an individual or entity controls the performance, methods, or processes used to perform work and meets at least six of the following: • individual operates an independent business that provides services for the contracting party; • individual represents their services as self-employment available to third parties, including through use of a platform application; • individual accepts all tax liability associated with payments received from the contracting party; • individual obtains and maintains any required licenses, registration, or authorization necessary for them to perform as a contractor; • individual is not covered by the contracting party's health or workers' compensation insurance, and is not covered for unemployment insurance benefits; • individual may accept or decline requests for services;

[10] *Piazza*, 899 So. 2d at 123-24 (quotation omitted).

[11] The term *employee* is defined only as "an individual, whether resident or nonresident of this State, who performs or performed any service in this state for wages or any resident of this state who performs or performed any service outside this state for wages." LA. STAT. ANN. § 47:111(C).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		• contracting party may impose quality standards or a deadline for the finished product, but the individual determines the days worked and time period for work; • individual furnishes major tools and equipment needed; • individual is paid a fixed or contract rate, not wages or a salary; • individual is responsible for a majority of expenses, unless the contract states differently or expenses are commonly reimbursed under industry practice; • individual can use assistants as needed and is responsible for their supervision and compensation. Exceptions apply.[12] There is a separate statutory provision that sets forth an ABC test. Specifically, services performed by an individual are "deemed to be employment" unless it is shown: "I. such individual has been and will continue to be free from any control or direction over the performance of such services both under his contract and in fact; and II. such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and III. such individual is customarily engaged in an independently established trade, occupation, profession or business."[13]

[12] LA. STAT. ANN. § 23:1711.1.

[13] LA. STAT. ANN. § 23:1472(12)(E). In applying this test and determining if a worker is properly classified as an independent contractor or employee, the Louisiana Workforce Commission looked to the totality of circumstances, and could apply the Internal Revenue Service (IRS) 20-factors and numerous other factors regarding control and direction. *See* LA. ADMIN. CODE tit. 40, § 375; *see also* Louisiana Workforce Comm'n, *Fair Playing Field*, *available at* http://www.laworks.net/downloads/pr/fairplayingfield.pdf (setting forth a "brief confidential assessment test" of

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		This provision remains on the books notwithstanding the new independent contractor presumption.
Wage & Hour Laws	Not applicable	Louisiana has no wage and hour laws. However, in a state appellate court case concerning wage payment laws, the court observed that while no definition of employee was provided in a relevant statute, it pointed to a five-factor test examining whether: • a valid contract exists; • the work done is of an independent nature such that the contractor can employ nonexclusive means in accomplishing it; • "the contract calls for specific piecework as a unit to be done according to the independent contractor's own methods, without being subject to the control and direction of the principal;" • there is an agreed-upon specific price; or • there is a specific duration for the work, not subject to termination or discontinuance without liability for breach. Although the test did not arise in the employment law context, the court observed that the decision from which it came "discussed how a distinction is made between an 'employee' and an 'independent contractor.'"[14]

worker classification). Some of these factors, discussed in more detail in the regulation, concern: behavioral control, including "[f]acts that show a right to control or direct how the worker does the task for which the worker is hired;" financial control, including "[fa]cts that show whether there is a right to control or direct the business aspects of the worker's job;" type of relationship, which is facts that show the nature of relationship between the parties; and "[a] prior determination by a taxing authority regarding the relationship." LA. ADMIN. CODE tit. 40, § 375.

[14] *Knight v. Tucker*, 2016 WL 6777377 (La. Ct. App. Nov. 16, 2016); *see also Ocampo v. Maronge*, 2017 WL 6603925 (La. Ct. App. Dec. 27, 2017) (appellate court affirmed bench trial finding that laborers were independent contractors using the same test).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workers' Compensation	Louisiana Workforce Commission	There is a statutory presumption of employment status. *Independent contractor* is defined as "any person who renders service, other than manual labor, for a specified recompense for a specified result either as a unit or as a whole, under the control of his principal as to results of his work only, and not as to the means by which such result is accomplished, . . . unless a substantial part of the work time of an independent contractor is spent in manual labor by him in carrying out the terms of the contract, in which case the independent contractor is expressly covered by the provisions of this Chapter."[15] Additionally, the Louisiana Supreme Court has used a four-part test to determine if an employment relationship exists. The right to control is the key factor, and factors evidencing this right include: 1. selection and engagement; 2. how wages are paid; 3. who has the power to dismiss; and 4. who has the power to control.[16] No one factor controls and the totality of the circumstances are considered in each case. The individual who is claiming an employment

[15] LA. STAT. ANN. § 23:1021. The Louisiana Supreme Court held that the Louisiana Workers' Compensation Act is "silent on what constitutes an employer-employee relationship; the sole provisions on this subject is the statutory presumption of employment status . . . . An alleged employer can rebut this presumption by either (i) establishing that the services were not pursuant to any trade, business, or occupation (*e.g.*, construction of one's private resident); or (ii) establishing that the individual was performing services but was doing so as an independent contractor." *Hillman v. Comm-Care, Inc.*, 805 So. 2d 1157, 1161 (La. 2002) (quotation omitted); *Gamez v. Pinke*, 98 So. 3d 897, 899 (La. Ct. App. 2012).

[16] *Hillman*, 805 So. 2d at 1162 (quotation omitted); *see also Chaisson v. Louisiana Rock Monsters, L.L.C.*, 140 So. 3d 55, 58 (La. Ct. App. 2014).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		relationship exists has the burden of proving such.[17] Louisiana courts also apply the following factors in determining if an employment versus an independent contractor relationship exists: 1. valid contract between the parties; 2. work is of an independent nature so that the contractor may use nonexclusive means in accomplishing it; 3. contract calls for specific piecework as a unit to be completed according to the independent contractor's own methods, "without being subject to the control and direction of the principal, except as to the result of the services to be rendered;: 4. a specific price agreed upon for the overall undertaking; and 5. duration of the work is for a specific time and is not subject to termination at the will of either side without liability for the breach.[18]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Louisiana does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

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

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The

[17] *Hillman*, 805 So. 2d at 1163; *see also O'Bannon v. Moriah Technologies, Inc.*, 196 So. 3d 127, 134 (La. Ct. App. 2016).

[18] *Theodore v. Krazy Korner*, 95 So. 3d 572, 574-75 (La. Ct. App. 2012) (citing *McLeod v. Moore*, 7 So. 3d 190, 192 (La. Ct. App. 2009)); *see also O'Bannon*, 196 So. 3d at 134; *Chaisson*, 140 So. 3d at 57-58.

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.[19]

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.[20] 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.[21]

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

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

1.2(b)(i) *Private Employers*

Generally, Louisiana law prohibits employers from employing, hiring, recruiting, or referring for employment, an alien who is not entitled to lawfully reside or work in the United States.[22] However, this prohibition does not apply to aliens employed in: (1) planting and harvesting on the premises where agricultural, forestry, or horticultural products are produced; (2) production and gathering on the premises where livestock, dairy, or poultry products are produced; (3) the field of animal husbandry; or (4) the care, feeding, and training of horses.[23]

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[19] 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**.

[20] *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).

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

[22] LA. STAT. ANN. § 23:992.

[23] LA. STAT. ANN. § 23:992.1.

Employers may avoid prosecution for employing aliens by showing that upon employment, each of its employees provided a picture identification and *one* of the following documents: (1) a U.S. birth certificate or certified birth card; (2) a naturalization certificate; (3) a certificate of citizenship; (4) an alien registration receipt card; or, (5) a U.S. immigration Form I-94 with an employment authorized stamp. Employers must retain copies of these documents.[24]

Private employers are not required to use E-Verify or another electronic verification method. However, any employer that uses E-Verify to determine the employment eligibility of an employee is presumed to have acted in good faith and will not be subject to any penalty as a result of a reliance on the accuracy of the E-Verify system.[25]

1.2(b)(ii) *State Contractors*

Private employers that bid on public entity projects or enter into contracts with a public entity for the physical performance of services within the state must submit a sworn affidavit confirming that they are registered with and use E-Verify. If the employer is awarded a contract, it must use E-Verify for all new employees in Louisiana hired through the duration of the contract, and must attest to this fact before bidding on or entering into the contract with a public entity. Moreover, the contracting employer must require all subcontractors to submit a sworn affidavit verifying compliance with the E-Verify provisions.[26]

Public works is defined as "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity."[27]

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

Private Employers. An employer that violates the prohibition on employing illegal aliens will be fined. For violations after the second, an employer will be fined *and* any permits or licenses required to do business will be suspended for between 30 days and six months.[28] An aggrieved individual can also file a civil action.[29] Moreover, the Louisiana Workforce Commission may institute an action against the employer. If injunctive relief is granted or civil penalties assessed are affirmed, the court will grant reasonable attorneys' fees and costs to the Commission.[30] Finally, an employer with 10 or more employees that knowingly violates the prohibition may be ordered to cease and desist, and may be required to discharge, for cause, undocumented workers. Failure to discharge the undocumented workers will result in a substantial fine, and the revocation or suspension of the employer's business license.[31]

State Contractors. An employer that violates the provisions regarding use of E-Verify may have its public contract cancelled and if so, will be barred from bidding on other projects for up to three years from the date the violation is discovered. Moreover, the employer will be liable for any additional costs incurred

[24] LA. STAT. ANN. § 23:992.2.

[25] LA. STAT. ANN. § 23:995(B)(1), (C).

[26] LA. STAT. ANN. § 38:2212.10.

[27] LA. STAT. ANN. § 38:2212.10(F).

[28] LA. STAT. ANN. §§ 23:993, 23:995.

[29] LA. STAT. ANN. § 23:994.

[30] LA. STAT. ANN. § 23:995.

[31] LA. STAT. ANN. § 23:996.

by the public entity due to the cancellation of a contract or loss of any license or permit to do business in Louisiana.[32]

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

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

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

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

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

Louisiana has enacted a law restricting an employer's ability to consider records related to arrest records and other records related to charges that did not result in a conviction.[34] Unless otherwise provided by law, when making a hiring decision, an employer cannot request or consider an arrest record or charge that did not result in a conviction, if the information is received in the course of a background check.[35]

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[32] LA. STAT. ANN. § 38:2212.10.

[33] 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.

[34] LA. STAT. ANN. § 23:291.2.

[35] LA. STAT. ANN. § 23:291.2.

Juvenile criminal records cannot be part of any state or local criminal background check. Further, a person whose juvenile records and reports have been expunged and sealed cannot be required to disclose to any person that they were arrested or adjudicated or that the records and reports of arrest or adjudication have been expunged and sealed.[36]

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

Louisiana employers are entitled to obtain an applicant's conviction record, if the applicant provides prior written consent.[37] When considering types of criminal history records other than records regarding arrests or charges that did not result in a conviction, an employer must make an individual assessment of whether an applicant's criminal history record has a direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position. When making this assessment, an employer must consider all of the following:

- the nature and gravity of the offense or conduct;
- the time that has elapsed since the offense, conduct, or conviction; and
- the nature of the job sought.[38]

In addition, upon an applicant's written request, an employer must make available to the applicant any background check information used during the hiring process.[39]

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

A Louisiana employer is prohibited from requiring an applicant to disclose any information contained in an expunged record in any application, interview, or in any other way. Expunged records of both arrests and convictions, including juvenile records, are not public records in Louisiana, and are confidential.[40] Documents in an expunged record deemed to be confidential include: any incident reports, photographs, fingerprints, disposition, or any other such information of any kind in relation to a single arrest event in the possession of the clerk of court or any other criminal justice agency, except for DNA records. This also includes certain arrest records based on a warrant or attachment for failure to appear in court for the offenses for which the person is seeking an expungement.[41]

A person whose record of arrest or conviction has been expunged is not required to disclose to any person that they were arrested or convicted of the subject offense, or that the record of the arrest or conviction has been expunged.[42]

Exceptions. Expunged records may be made available:

- to members of law enforcement or criminal justice agencies or prosecutors investigating, prosecuting, or enforcing criminal law or for other statutory purposes;

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[36] LA. STAT. ANN. §§ 15:576, 15:579; LA. CHILD. CODE ANN. arts. 412, 922.

[37] LA. STAT. ANN. § 15:587(F).

[38] LA. STAT. ANN. § 23:291.2.

[39] LA. STAT. ANN. § 23:291.2.

[40] LA. CODE CRIM. PROC. ANN. art. 973; LA. CHILD. CODE ANN. arts. 412, 922.

[41] LA. CODE CRIM. PROC. ANN. art. 972(4).

[42] LA. CODE CRIM. PROC. ANN. art. 973(C).

- upon entry of a court order;
- to the person whose record has been expunged, or the person's counsel;
- to members of law enforcement or criminal justice agencies, prosecutors, or judges for the purpose of defending against civil litigation resulting from wrongful arrest or other civil litigation, and the expunged record is necessary to the defense; and
- to certain state agencies to which the information is required to be disseminated by law (*e.g.*, the State Board of Medical Examiners and the Supreme Court Committee on Bar Admissions).[43]

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[44] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[45] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

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

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[43] LA. CODE CRIM. PROC. ANN. art. 973.

[44] 15 U.S.C. §§ 1681 *et seq*.

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

responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[46]

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

Louisiana does not have a mini-FCRA law. However, in Louisiana, if an individual is denied employment wholly or partly based on a credit report, the individual is entitled to a copy of the report without charge, provided that a request is made in writing to the credit reporting agency within 60 days of the adverse action. Upon request, an employer must provide the name of the credit reporting agency that provided the information used when taking adverse action.[47]

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*

Louisiana law prohibits an employer from requesting or requiring an applicant or employee to disclose any username, password, or other authentication information that allows access to employee's personal online account.[48] *Personal online account* means an online account used exclusively for personal communications unrelated to an employer's business purpose.[49] The law does not create a duty for employers to search or monitor employees' or applicants' personal online accounts.[50]

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

[47] LA. STAT. ANN. § 9:3571.1(D).

[48] LA. STAT. ANN. § 51:1953(A)(1).

[49] LA. STAT. ANN. § 51:1952(4).

[50] LA. STAT. ANN. § 51:1955.

Adverse Action. An employer cannot fire, discipline, fail to hire, or otherwise penalize or threaten to penalize an employee or applicant for failing to disclose any username, password, or other authentication information that allows access to the employee's personal online account.[51]

Exceptions. An employer can view, access, or use information about an applicant or employee that is available in the public domain.[52] Moreover, an employer can view, access, or use information about an applicant or employee that can be obtained without an individual's username, password, or other authentication information.[53]

The law does not preclude an employer from complying with requirements creating a duty to screen applicants prior to hiring, or to monitor or retain employee communications established by state or federal statutes, rules, or regulations, case law, or the rules of self-regulatory organizations.[54]

In addition, the law does not affect an employer's right to conduct an investigation, or require an applicant or employee to cooperate in an investigation to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct, if there is specific information about activity on the *employee's* personal online account. As well, an employer can conduct an investigation, or require an applicant or employee to cooperate in an investigation, if the employer has specific information about an unauthorized transfer of its proprietary information, confidential information, or financial data to the applicant or employee's personal online account.[55]

Conducting an investigation or requiring an employee to cooperate in an investigation includes requiring the applicant or employee to share content that has been reported to make a factual determination, without obtaining the individual's personal online account username and password.[56]

An employer can also require an employee to provide a personal email address to facilitate communication with the employee in the event the employer's email system fails. An employee or applicant can self-disclose a username, password, or other authentication information to the employer that allows access to their personal online account.[57]

Rules for Employer-Provided Devices & Online Accounts. The statutory definition of *personal online account* does not include an account or profile created, serviced, maintained, used, or accessed by an employee or applicant for either the employer's business purposes or to engage in business-related communications.[58] Thus, an employer can request or require an applicant or employee to disclose any username, password, or other authentication information to the employer to gain access to or operate any of the following: (1) an electronic communications device paid for or supplied in whole or in part by the employer; and (2) an account or service provided by the employer, obtained by virtue of the

[51] LA. STAT. ANN. § 51:1953(A(2).

[52] LA. STAT. ANN. § 51:1953(E).

[53] LA. STAT. ANN. § 51:1953.

[54] LA. STAT. ANN. § 51:1953(D).

[55] LA. STAT. ANN. § 51:1953(B)(3)-(4).

[56] LA. STAT. ANN. § 51:1953.

[57] LA. STAT. ANN. § 51:1953(F)-(G).

[58] LA. STAT. ANN. § 51:1952(4).

applicant's or employee's relationship with the employer, or used for the employer's business purposes.[59] *Electronic communications device* means any device that uses electronic signals to create, transmit, and receive information, including a computer, telephone, personal digital assistant, or other similar device.[60]

Additionally, an employer can restrict or prohibit an employee's or applicant's access to certain websites while using an employer-provided device or while using an employer's network or resources, in accordance with state and federal law.[61] If through the use of an electronic device or program that monitors an employer's network or the use of an employer-provided device, an employer inadvertently receives an applicant's or employee's username, password, or other authentication information, an employer is not liable for having the information, but cannot use the information to access the individual's personal online account.[62]

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.[63] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

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

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

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

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

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

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[59] LA. STAT. ANN. § 51:1952.

[60] LA. STAT. ANN. § 51:1952.

[61] LA. STAT. ANN. § 51:1953(B)(5).

[62] LA. STAT. ANN. § 51:1953(C).

[63] 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.

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

Louisiana 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.[64] 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.[65] 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*

Louisiana law allows employers to require that an applicant take a drug testing as a condition of employment.[66] An employer must use certified laboratories and specified procedures for testing if it will base its hiring decisions or other mandatory or discretionary negative employment consequences on the results of the test.[67]

The drug testing provisions do not apply to employers subject to mandatory federal drug testing programs or requirements.[68]

For more information about drug testing of current employees, see **3.11(d)(ii)**.

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[64] 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.

[65] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[66] LA. STAT. ANN. §§ 49:1001 *et. seq.* The provisions cover testing for the presence of marijuana, opioids, cocaine, amphetamines, and phencyclidine. LA. STAT. ANN. § 49:1002(A).

[67] LA. STAT. ANN. § 49:1005.

[68] LA. STAT. ANN. § 49:1001(4).

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

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot require any applicant to pay the cost of fingerprinting, a medical examination, or drug testing, or the cost of providing any records available to the employer or required by the employer as a condition of employment.[69]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

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

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[70] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[71] 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.[72] 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.[73]

[69] LA. STAT. ANN. § 23:897.

[70] 26 U.S.C. § 36B.

[71] 42 U.S.C. § 18071.

[72] 29 U.S.C. § 218b.

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

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
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.[74] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[75]
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.[76] 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.[77] 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.[78]
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.

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

[75] 29 C.F.R. § 2590.606-1.

[76] 29 C.F.R. § 825.300(a).

[77] 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.

[78] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	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.[79] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[80]
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.[81]
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.[82]

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.

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

[80] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[81] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[82] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents: Pregnancy Accommodation	An employer must provide written notice of the right to be free from discrimination based on medical needs arising from pregnancy, childbirth, or related medical conditions known to the employer, to new employees at the commencement of employment. The written notice must also be conspicuously posted at an employer's place of business in an area that is accessible to employees.[83]
Tax Documents: Earned Income Credit Notice	Employers with 20 or more employees (full- or part-time) must notify new employees, whose anticipated wages are less than an amount determined by the Department of Labor, that they may be eligible for an earned income tax credit. This notice is furnished by the Louisiana Workforce Commission and is updated annually.[84]
Tax Documents: Withholding Exemption Certificate	All new employees must complete and sign a withholding exemption certificate (Form L-4).[85]
Vehicle Registration	All employers must inform employees that they may be required to register their vehicles in Louisiana. Notice is required "at the time of employment" as well as by workplace posting.[86]
Wage & Hour Documents	At the time of hire, all employers must notify employees of: (1) what they will be paid; (2) the method of payment; and (3) the frequency of payment. Additional notice is required upon any changes to these terms and conditions. This requirement does not apply for employees deemed exempt under the federal Fair Labor Standards Act.[87]

[83] LA. STAT. ANN. §§ 23:341, 23:342.

[84] LA. STAT. ANN. §§ 23:1018.1, 23:1018.2. This notice is available in English and Spanish at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[85] LA. STAT. ANN. § 47:112. This form is available at https://revenue.louisiana.gov/TaxForms/1300(1_23)F.pdf.

[86] LA. STAT. ANN. § 47:501.1. This notice is available at http://www.laworks.net/Downloads/Posters/PRPosters/motor_vehicles_ltr_bw.pdf and is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[87] LA. STAT. ANN. § 23:633.

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

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[89]

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;

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

[89] 42 U.S.C. § 653a.

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

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

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

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[90] 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 Louisiana's new hire reporting law.[91]

Who Must Be Reported. Employers must report newly-hired, rehired, or those employees returning to work after layoff, furlough, separation, unpaid leave, or termination.[92]

Report Timeframe. Employers must make these reports no later than 20 days after the hiring date. If the reports are made magnetically or electronically, the reports must be made twice per month, not less than 12 days, not more than 16 days apart.[93]

Information Required. Employers must report the employee's name, address, occupation, Social Security number, and the date the begin working, as well as the employer's name, address, and federal employer identification number.[94]

Form & Submission of Report. Each report must be made on a federal Form W-4, or at the option of the employer, an equivalent form. The report may be transmitted by first-class mail, magnetically, or electronically.[95]

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

[91] LA. STAT. ANN. § 46:236.14.

[92] LA. STAT. ANN. § 46:236.14(D).

[93] LA. STAT. ANN. § 46:236.14(E).

[94] LA. STAT. ANN. § 46:236.14(E)(3).

[95] LA. STAT. ANN. § 46:236.14(E)(3).

Location to Send Information.

Louisiana Directory of New Hires
P.O. Box 788
Richmond, VA 23218
(888) 223-1461
(888) 223-1462 (fax)
https://newhire-reporting.com/la-newhire/default.aspx

Multistate Employers. If an employer has employees who are employed in two or more states and transmits a report magnetically or electronically, the employer may comply with the new hire reporting requirements by designating one of the states to which it will report. The employer must notify the Department of Children and Family Services in writing as to which state it will report.[96]

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.[97] 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.

[96] LA. STAT. ANN. § 46:236.14(E)(4).

[97] 18 U.S.C. §§ 1832 *et seq.*

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

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

Generally, Louisiana law prohibits any contract or agreement that restrains an individual from a lawful profession or trade. Louisiana, however, provides exceptions when a restrictive covenant may be allowed.[98] One exception allows employers to make an agreement with an employee to refrain from engaging in a business similar to that of the employer and from soliciting customers within a specified parish or parishes, so long as the employer carries on a like business. The exception specifies that the noncompete covenant cannot exceed two years.[99]

One unique facet of Louisiana's statute governing noncompetition agreements is its requirement regarding the specification of geographic location. The statute requires that the agreement identify the "specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein," where the employee agrees not to compete or solicit customers.[100] Thus, the geographic element of Louisiana's statute requires not only that the language of the agreement designate the parishes where the employee may not compete, the employer must also actually carry on a similar business in those parishes.

The statute contains a built-in maximum time restriction on noncompetition agreements of two years from the termination of the employee's employment.[101] Proceedings to enforce noncompetition agreements often include requests for injunctive relief and are usually brought soon after the employee has departed from the employer; in Louisiana, it is particularly important that employers seeking to enforce their rights do so expeditiously, since injunctive relief that applies after the expiration of two years from the termination of the employee will not be available.[102]

Enforceability Following Employee Discharge. Employee discharge does not affect the enforceability of a noncompete agreement.[103]

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.

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98 LA. STAT. ANN. § 23:921(A).

99 LA. STAT. ANN. § 23:921(C), (D).

100 LA. STAT. ANN. § 23:921(C).

101 LA. STAT. ANN. § 23:921(C).

102 *Herff Jones, Inc. v. Girouard*, 966 So. 2d 1127 (La. Ct. App. 2007).

103 *See Ticheli v. John H. Carter Co., Inc.*, 996 So.2d 437 (La. Ct. App. 2008) (termination for cause); *Neeb-Kearney & Co., Inc. v. Rellstab*, 593 So.2d 741 (La. Ct. App. 1992) (termination without cause).

Under Louisiana law, noncompete agreements signed at the beginning of employment have adequate consideration.[104] Although not stated in the Louisiana restrictive covenant statute, Louisiana courts have enforced noncompetition agreements signed by employees years after their employment commenced that were not expressly tied to bonuses or promotions.[105] Consequently, although the best practice is to implement such agreements at the inception of employment, the failure to do so is not an impediment to enforcement in Louisiana.

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.

Courts in Louisiana will permit unenforceable provisions of agreements to be excised from the agreement, provided that the agreement contains a severability clause (also known as a "savings clause").[106] However, while offending provisions may be stricken, they may not be rewritten.[107]

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

When an employee leaves a business, they will sometimes take valuable information of the business to use for competitive purposes. In addition to noncompetition agreements, Louisiana law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Trade secrets, which are partially defined by Louisiana statutes, can be protected in a variety of ways. As a starting point, the employer must determine whether the information that may be taken by the employee is a protected trade secret. Louisiana has adopted the Uniform Trade Secrets Act (LUTSA).

Definition of a Trade Secret. Under the LUTSA, a *trade secret* is defined as a compilation of information, including a formula, pattern, compilation, program, decide, method, technique, or process that:

1. derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

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[104] LA. STAT. ANN. § 23:921(B).

[105] *See Cellular One, Inc. v. Boyd*, 653 So. 2d 30 (La. Ct. App. 1995).

[106] *Vartech Systems, Inc. v. Hayden*, 951 So. 2d 247, 256-57 (La. Ct. App. 2006).

[107] *Lobrano v. C.H. Robinson Worldwide Inc.*, 2011 WL 52602, at *7 (W.D. La. Jan. 7, 2011) (refusing to reform restrictive covenant with geographic limitation defined as anywhere "within the continental United States" because any attempt to generate a new clause defining geographic area would be conjectural and dependent on parol evidence).

2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[108]

Information that may be acquired through one's own independent efforts will not necessarily be considered a trade secret.[109] In contrast, an object that "would have been extremely expensive and time consuming for anyone to duplicate . . . through independent designing, planning, and construction or by reverse engineering," satisfies the first prong of the LUTSA.[110]

In addition, the information claimed to be a trade secret must be the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[111] While absolute secrecy is not required, the commentary to the LUTSA specifies that:

> Reasonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on "need to know basis," and controlling plant access. On the other hand, public disclosure of information through display, trade journal publications, advertising, or other carelessness can preclude protection. The efforts required to maintain secrecy are those "reasonable under the circumstances." The courts do not require that extreme and unduly expensive procedures be taken to protect trade secrets against flagrant industrial espionage. It follows that reasonable use of a trade secret including controlled disclosure to employees and licenses is consistent with the requirement of relative secrecy.[112]

Misappropriation of a Trade Secret. Under the LUTSA, liability attaches if the trade secret is misappropriated. *Misappropriation* is defined as:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that 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

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[108] LA. STAT. ANN. § 51:1431(4).

[109] *See, e.g.*, *Pontchartrain Med. Labs, Inc. v. Roche Biomedical Labs, Inc.*, 677 So. 2d 1086, 1091 (La. Ct. App. 1996).

[110] *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 650 (5th Cir. 1997) (withstanding summary judgment where there was evidence that the object had cost $1 million and taken nine months to construct). *But see Checkpoint Fluidic Sys. Int'l, Ltd. v. Guccione*, 888 F. Supp. 2d 780, 797-98 (E.D. La. 2012) (declining to find that pump design drawings constituted trade secrets as a matter of law because there was an issue of material fact as to whether the information was "readily ascertainable," even though it took 1-1/2 to two years to construct pump through reverse engineering).

[111] LA. STAT. ANN. § 51:1431(4)(b).

[112] Commentary to LA. STAT. ANN. § 51:1431.

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.[113]

Claims of misappropriation of trade secrets under LUTSA must be asserted within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.[114]

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

Some litigants seeking to have agreements governing the use of confidential information or agreements by which an employee assigns their rights to inventions made during employment declared unenforceable have argued that such agreements are subject to the statutory requirements of Louisiana's restrictive covenant statute. This argument has been rejected, and courts have found that confidentiality agreements, as well as invention assignment agreements, are not "covenants not to compete" and are not, therefore, governed by Louisiana's statute, discussed in **2.3(b)(i)**.[115]

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.[116]

[113] LA. STAT. ANN. § 51:1431(2).

[114] *Camsoft Data Sys. v. Southern Elecs. Supply, Inc.*, 2011 WL 3204701, at *2 (M.D. La. July 26, 2011).

[115] *See Novelaire Techs., L.L.C. v. Harrison*, 50 So. 3d 913 (La. Ct. App. 2010) (Louisiana's restrictive covenant statute, section 23:921, was inapplicable to confidentiality agreements and invention assignment agreements); *Engineered Mech. Servs., Inc. v. Langlois*, 464 So. 2d 329, 334 n.15 (La. Ct. App. 1984) (section 23:921 was inapplicable to confidentiality agreements).

[116] 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.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
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.[117]
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.[118]
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.[119]
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.[120]
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.[121]
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.[122]

[117] 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.

[118] 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.

[119] 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.

[120] 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.

[121] 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.

[122] 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.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
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.[123]
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.[124] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[125]
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.[126]
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.[127]
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

[123] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[124] 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.

[125] 41 C.F.R. §§ 60-300.44, 60-741.44.

[126] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[127] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	visible to prospective employees and all employees who are verified through the system.[128]
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.[129]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[130]
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.[131]
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.[132] **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

[128] 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.

[129] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[130] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[131] 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.

[132] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	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).[133]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[134]
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.[135]

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: Genetic Testing and	**Effective August 1, 2023**, an employer with 20 or more employees must post a notice of an employee's right to take leave for genetic testing and

[133] 29 C.F.R. § 13.5.

[134] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[135] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Cancer Screening Leave of Absence	cancer screening. The notice covering these leave rights, as prepared by the Louisiana Workforce Commission, must be posted in a conspicuous location on its premises.[136]
Benefits & Leave: National Guard and Military Poster	All employers must post conspicuous notice informing employees that military service members (National Guard, reserves, and active duty) have certain rights and protections by law.[137]
Child Labor Law	Employers that employ minors must post and maintain conspicuous notice informing employees about the state child labor restrictions.[138]
Fair Employment Practices: Age Discrimination	All employers must post and maintain conspicuous notice informing employees of the state prohibitions against age discrimination in employment.[139]
Fair Employment Practices: Equal Opportunity	Employers that receive federal financial assistance must post and maintain conspicuous notice informing employees of the various prohibitions against discrimination.[140]
Fair Employment Practices: Prohibition Against Genetic Discrimination	All employers must post and maintain conspicuous notice informing employees that Louisiana law forbids genetic discrimination and relatedly limits genetic testing in the workplace.[141]
Fair Employment Practices: Prohibition	All employers must post and maintain conspicuous notice informing employees that Louisiana law forbids discrimination against an individual because the individual has sickle cell trait.[142]

[136] LA. STAT. ANN. §§ 23:302, 23:370.

[137] LA. STAT. ANN. § 29:422. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/National_Guard_ESGR_ltr_color.pdf and in Spanish at http://www.laworks.net/Downloads/Posters/PRPosters/SPN_National_Guard_ESGR_ltr_color.pdf.

[138] LA. STAT. ANN. § 23:217. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/Minor_Labor_Law_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[139] LA. STAT. ANN. § 23:314. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/Age_Discrimination_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[140] LA. STAT. ANN. § 23:314. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/Equal_Opportunity_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[141] LA. STAT. ANN. § 23:369. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/Genetic_Discrimination_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[142] LA. STAT. ANN. § 23:354. This notice is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/sickle_cell_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Against Sickle Cell Trait Discrimination	
Income Tax: Earned Income Credit	Employers with 20 or more employees (full- or part-time) must notify new employees, whose anticipated wages are $35,000 or less annually, that they may be eligible for an earned income tax credit. This notice is furnished by the Louisiana Workforce Commission and is updated annually.[143]
Human Trafficking Resource Center Hotline	Certain employers are required to post notice concerning the Human Trafficking Resource Center. Notice is mandatory for massage parlors, spas, and hotels that have been found to be a public nuisance for prostitution, strip clubs and sexually oriented businesses, full service fuel facilities adjacent to interstate highways or rest stops, outpatient abortion facilities, hotels, airports, bus terminals and stations, railroad passenger stations, and every highway rest stop. Each establishment listed above must place a flyer regarding human trafficking inside the door of each bathroom stall. The required posting must be in English, Louisiana French, Spanish, and any other languages that the commissioner of alcohol and tobacco control may require.[144]
Unemployment Compensation	All employers must post, in prominent locations where visible to the public and all workers, notice concerning unemployment compensation coverage, eligibility for benefits, and related information.[145]
Vehicle Registration	All employers must post conspicuous notice informing employees that they may be required to register their vehicles in Louisiana.[146]
Wages, Hours & Payroll: Timely Payment of Wages	All employers must post and maintain conspicuous notice, where other posters are displayed, informing employees that their employer is obligated to tell them their wage rate, how often they will be paid, how

[143] LA. STAT. ANN. §§ 23:1018.1, 23:1018.2. This notice is available in English and Spanish at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[144] LA. STAT. ANN. § 15:541.1. This poster is available in many languages at https://humantraffickinghotline.org/get-involved/downloadable-resources and other information is available at https://ldh.la.gov/page/human-trafficking.

[145] LA. STAT. ANN. § 23:1621; LA. ADMIN. CODE tit. 40, § 305. This notice is available in English at http://www.laworks.net/Downloads/Posters/Unemployment_Ins_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[146] LA. STAT. ANN. § 47:501.1. This notice is available at http://www.laworks.net/Downloads/Posters/PRPosters/motor_vehicles_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	they will be paid, and of any subsequent changes to these terms and conditions.[147]
Wages, Hours & Payroll: Independent Contractor or Employee?	All employers must post and maintain conspicuous notice at all worksites concerning the differences between independent contractors and employees, how to determine status, and certain consequences of classification.[148]
Workers' Compensation	All employers post and maintain conspicuous notice informing employees what to do if they are injured or contract an occupational disease at work, summarizing their rights and obligations, and identifying the worker's compensation insurance company.[149]
Workers' Compensation Fraud	The Department of Labor also requires all employers to post a notice providing employees with information on the state's Workers' Compensation Fraud laws.[150]
Workplace Safety: No Smoking Sign	Generally, smoking is prohibited in enclosed areas within places of employment and can be prohibited in any outdoor area of employment.[151] Owners, operators, and employers, where smoking is prohibited, must clearly and conspicuously post "No Smoking" signs or signs with the pictorial representation.[152]

3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

[147] LA. STAT. ANN. § 23:633. This poster is available in English at http://www.laworks.net/Downloads/Posters/PRPosters/Timely_Payment_of_Wages_ltr_color.pdf and in Spanish at http://www.laworks.net/Downloads/Posters/PRPosters/SPN_Timely_Payment_of_Wages_ltr_color.pdf.

[148] LA. STAT. ANN. § 23:1711. This poster is available in English at http://www.laworks.net/Downloads/Posters/Ind_Contractor_or_Emp_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[149] LA. STAT. ANN. §§ 23:1031.1, 23:1032; LA. ADMIN. CODE tit. 40, § 911. This poster is available in English at http://www.laworks.net/Downloads/Posters/Workers_Comp_ltr_bw.pdf. It is also available in color, and in Spanish, at http://www.laworks.net/Downloads/Downloads_Posters.asp#State.

[150] The poster is available at https://www.laworks.net/downloads/downloads_posters.asp.

[151] LA. STAT. ANN. §§ 40:1291.1 *et seq*.

[152] LA. STAT. ANN. §§ 40:1291.11, 40:1291.21.

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.[153]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[154]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[155]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants;	At least 1 year from the date the records were made, or

[153] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[154] 29 C.F.R. § 1627.3(b).

[155] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(ADA): Personnel Records	• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[156]	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.[157]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[158]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity	At least 3 years following the date on which the polygraph examination was conducted.

[156] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[157] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[158] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[159]	
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.[160]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[161]	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.[162]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code;	3 years from the last day of entry.

[159] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[160] 29 U.S.C. § 1027.

[161] 29 C.F.R. § 1620.32(a).

[162] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth, if under19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[163] 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);	

[163] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[164]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[165]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);	At least 3 years from the last effective date.

[164] 29 C.F.R. § 516.28.

[165] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[166]	
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.[167]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement.	At least 3 years.

[166] 29 C.F.R. § 516.5.

[167] 29 C.F.R. § 516.6.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[168]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[169]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[170]	3 years after the date of hire or 1 year following the termination

[168] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[169] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[170] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[171]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[172]	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.[173]	As long as it is in effect and at least 4 years thereafter.

[171] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[172] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[173] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[174]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results,	At least 30 years.

[174] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[175]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[176]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual	At least 30 years.

[175] 29 C.F.R. § 1910.1020(d).

[176] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
and Exposure Records	employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[177]	
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.[178]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[179]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not

[177] 29 C.F.R. § 1910.1020(d).

[178] 29 C.F.R. §§ 1904.33, 1904.44.

[179] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[180]	have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[181]	Until final disposition of the complaint, compliance review or action.

[180] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[181] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[182]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee	During the course of the covered contract as well as after the end of the contract.

[182] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[183]	
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.[184]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage;	At least 3 years from the completion of the work records

[183] 29 C.F.R. § 13.25.

[184] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[185]	containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[186]	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: Apprenticeships	*Employers that participate in apprenticeships must maintain records in such a manner as to permit identification of minority and female participants. Records must include:* • list of applicants who wish to participate in the program, including the chronological order in which the applications were received;	5 years.

[185] 29 C.F.R. § 4.6.

[186] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a summary of qualifications of each applicant; • basis for evaluation and for selection or rejection of each applicant; • a record pertaining to interviews of applicants; • an original application from each applicant; and • information relative to the operation of the program. *Additionally, each sponsor much retain:* • a statement of its affirmative action plan, including data and analysis; and • evidence that its qualification standards have been validated.[187]	
Fair Employment Practices: Discrimination	All employers must maintain records relevant to the determination of whether unlawful practices have been or are being committed.[188]	None specified. Recommended retention until any complaints or lawsuits are resolved.
Unemployment Compensation	*Each employing unit must maintain true and accurate records, including:* • the street address of each establishment, branch, outlet, or office of such employer; • the nature of the operation; • the number of persons employed; • each employee's wage; • wages paid at each establishment; • the beginning and ending dates of each pay period; and • the total amount of remuneration paid in any pay period. *Records must be kept for each worker, including:* • name and Social Security number; • place in which services are performed, or if no such place, base of operations; • date hired, rehired, or returned to work after temporary layoff; • date of separation from work;	Not less than 5 years after the calendar year the remuneration was paid.

[187] LA. STAT. ANN. § 51:2262; LA. ADMIN. CODE tit. 40, pt. IX, § 515.

[188] LA. STAT. ANN. § 51:2262.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**

	• remuneration paid and the period payable, showing separately cash remuneration, reasonable cash value of noncash payments and special payments;
	• amounts paid as allowance or reimbursement for expenses and pay period for which payable; and
	• method by which wages are computed—
	  ▪ if paid on a salary basis: wage rate and period covered by rate;
	  ▪ if paid on a fixed hourly basis: hourly rate and customary scheduled hours per week;
	  ▪ if paid on a fixed daily basis: daily rate and customary scheduled days per week; and
	  ▪ if paid on piece or other variable basis: method by which wages are computed.
	
	Records must be maintained in a manner that allows determination of:
	• earnings by weeks of partial unemployment;
	• whether any week of partial unemployment claimed is in fact a week of less than full time work; and
	• time lost due to unavailability for work by each worker who may be eligible for partial benefits.[189]	

Workplace Safety: Injuries and Illnesses	*Employers must keep and maintain certain records of illnesses, injuries, investigations, and related safety training. Such records must include:* • OSHA logs, as required under federal OSHA; • inspection reports; • accident investigation reports; • minutes of safety meetings; • training records; and • LDET-WC-1071A Form (quarterly report of occupational injuries and illnesses).[190]	5 years for OSHA logs, as required by federal law. For all other records, 1 year from the end of the year for which the records are maintained.

[189] LA. STAT. ANN. § 23:1660; LA. ADMIN. CODE tit. 40, pt. IV, § 313.

[190] LA. ADMIN. CODE tit. 40, pt. I, § 907(1). The Louisiana Workforce Commission provides a Frequently Asked Questions about Workplace Safety and Health feature, which is available at http://www.laworks.net/FAQs/FAQ_WorkComp_OSHA.asp. Further information can be found at http://www.laworks.net/WorkersComp/OWC_EmployerMenu.asp.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Hazardous Communication	Employers must maintain all records of employee exposure to toxic substances, as required by federal law (29 U.S.C. § 657 and 29 C.F.R. § 1910.1020).[191]	See federal requirements.
Workers' Compensation	*Employers must keep true and accurate records, including:* • name, address and occupation of each employee; • daily and weekly hours worked; and • wages paid each pay period.[192]	At least 1 year after the date of the record.

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*

Louisiana 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*

An employer may test employees for drugs, except in the industries of oil drilling, exploration, or production.[193] An employee with a confirmed positive drug test result may request all records relating to

[191] LA. STAT. ANN. § 23:1016.

[192] LA. STAT. ANN. § 23:14.

[193] LA. STAT. ANN. § 49:1002.

the test within seven working days.[194] An employer may (but is not required to) allow an employee who tests positive to undergo rehabilitation rather than termination of employment.[195]

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[196]

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

State law allows an authorized clinician to recommend marijuana or tetrahydrocannabinols (or a derivative of THC) to patients clinically diagnosed as suffering from a "debilitating medical condition." Although generally the does not contain private-employer-related provisions regarding marijuana use, one employment-law-related provision states that employers and their worker's compensation insurers are not obliged or ordered to pay for medical marijuana in workers' compensation claims.[197]

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.[198]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or

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[194] LA. STAT. ANN. § 49:1011.

[195] LA. STAT. ANN. § 49:1011.

[196] 21 U.S.C. §§ 811-12, 841 *et seq*.

[197] LA. STAT. ANN. § 40:1046(J).

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

- proceeds received under an identity theft insurance policy.[199]

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

Louisiana law requires that when a covered entity becomes aware of a computer security breach involving unencrypted personal information, the entity must notify any resident of the state whose personal information was, or is reasonably believed to have been acquired.[200]

Covered Entities & Information. Any person, legal entity, or agency that conducts business in the state or that owns or licenses computerized data that includes personal information is covered under the statute.[201] Under the Louisiana statute, *personal information* means an individual's first name or first initial and last name in combination with any of the following:

- Social Security number;
- driver's license number or state identification card number;
- account number, credit or debit card number, in combination with any required security code or password that would permit access to an individual's financial account;
- passport number; or
- biometric data.

Personal information does not include information that is publicly available.[202]

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 100,000; or
  - the information holder does not have sufficient contact information.[203]

Substitute notice must consist of all of the following:

- email notice when the information holder has an email address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the information holder maintains a website; and

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

[200] LA. STAT. ANN. § 51:3074(A).

[201] LA. STAT. ANN. § 51:3073(1), (3).

[202] LA. STAT. ANN. § 51:3073(4).

[203] LA. STAT. ANN. § 51:3074(E).

- notification by statewide media.[204]

Notice is not required if after a reasonable investigation, the person or business determines that there is not a reasonable likelihood of harm to residents.[205]

Timing of Notice. Notice must be given in the most expedient time possible and without unreasonable delay, but not later than 60 days from the discovery of the breach. Notification may be delayed if:

- A law enforcement agency indicates that notification will impede a criminal investigation until such law enforcement agency determines that the notification will no longer compromise such investigation.
- A covered entity needs time to determine the scope of the breach.
- To prevent further disclosures.
- A covered entity needs time to restore the reasonable integrity of the data system.[206]

Additional Provisions. When notification is delayed pursuant due to a determination by the person that measures are necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system, the person must provide the attorney general the reasons for the delay in writing within the 60-day notification period. Upon receipt of the written reasons, the attorney general will allow a reasonable extension of time to provide the notification required.

Any person that conducts business in the state or that owns or licenses computerized data that includes personal information must implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Any person that conducts business in the state or that owns or licenses computerized data that includes personal information must take all reasonable steps to destroy or arrange for the destruction of the records within its custody or control containing personal information that is no longer to be retained by the person or business by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

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.

[204] LA. STAT. ANN. § 51:3074(E)(3).

[205] LA. STAT. ANN. § 51:3074(G).

[206] LA. STAT. ANN. § 51:3074.

As a general rule, federal wage and hour laws do not preempt state laws.[207] 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.[208]

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.[209]

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.[210]

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.[211] 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*

Louisiana has no minimum wage statute. Employers covered by the FLSA should consult the federal provisions.

3.3(c) *State Guidelines on Overtime Obligations*

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

3.4 Meal & Rest Period Requirements

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

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

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[212] Employees must be

[207] 29 U.S.C. § 218(a).

[208] 29 U.S.C. § 206.

[209] 29 U.S.C. §§ 203, 206.

[210] 29 U.S.C. § 3(m)(2)(B).

[211] 29 U.S.C. § 207.

[212] 29 C.F.R. § 785.19.

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.[213]

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.[214] 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.[215] 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.[216] Exemptions apply for smaller employers and air carriers.[217]

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.[218] Lactation is considered a related medical condition.[219] 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.[220] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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213 29 C.F.R. § 785.18.

214 29 U.S.C. § 218d.

215 29 U.S.C. § 218d(b)(2).

216 29 U.S.C. § 218d(a).

217 29 U.S.C. § 218d(c), (d).

218 42 U.S.C. § 2000gg–1.

219 29 C.F.R. § 1636.3.

220 29 C.F.R. § 1636.3.

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 Louisiana.

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

Minors may not be allowed to work for more than a five-hour period without a meal period of at least 30 minutes. Note that if a minor works for up to 10 minutes more than five hours before taking a meal period, this will not be considered a violation of the meal period requirement. Meal periods of 30 minutes are not considered working hours. A meal period of at least 20 minutes will not be considered a violation of the 30-minute meal period requirement.[221]

The meal period must be documented using the employer's normal time keeping system. If a minor fails to clock in or out for a work period or meal period, and a time edit is necessary, the time edit must also be documented and acknowledged in writing by the minor and the manager who performs the time edit.[222] An employer must conspicuously post a printed abstract of the child labor laws, which includes the meal period provisions.[223]

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

Violations of the meal period requirement for minor employees are punishable by a criminal fine between $100 and $500, imprisonment between 30 days and six months, or both. In addition to criminal penalties, violations are punishable by a civil penalty up to $500.[224]

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

In Louisiana, an individual cannot be prohibited from breast feeding her baby in public, nor can the individual be asked to breast feed in a different place.[225] In the employment context, state law provides that an employer of 25 or more employees cannot fail or refuse to make reasonable accommodations for an applicant or employee with medical needs causing limitations arising from pregnancy, childbirth, or related medical conditions, where these limitations are known to the employer.[226] "Related medical condition" includes but is not limited to lactation or the need to express breast milk for up to one year after the child's birth. "Reasonable accommodation" includes but is not limited to:

- making existing facilities used by employees readily accessible to and usable by an applicant or employee with covered limitations, provided the employer is not required to construct a permanent, dedicated space for expressing breast milk;
- providing scheduled and more frequent or longer compensated break periods; and

[221] LA. STAT. ANN. § 23:213.

[222] LA. STAT. ANN. § 23:213.

[223] LA. STAT. ANN. § 23:217.

[224] LA. STAT. ANN. § 23:231.

[225] LA. STAT. ANN. § 51:2247.1.

[226] LA. STAT. ANN. §§ 23:341, 23:342.

- providing a private place, other than a bathroom stall, for the purpose of expressing breast milk.[227]

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.[228] 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."[229]

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*

Louisiana law does not provide a definition for *hours worked*.

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. Louisiana law addresses the compensability of on-call time. Specifically, an employee is not entitled to compensation for on-call time unless such time is deemed compensable under the terms of an employer's policy.[230]

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

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[227] LA. STAT. ANN. § 23:341.1.

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

[229] *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").

[230] *Robinson v. Apria Healthcare, Inc.*, 874 So. 2d 418 (La. Ct. App. 2004) (employee's claim for unpaid wages for time spent on-call to be determined by terms and conditions of employer's policy).

approved school-supervised and school-administered work experience and career exploration programs.[231] 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.[232] 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*

The general purpose of Louisiana's child labor law is to ensure that minors are not employed in an occupation or manner detrimental to their health, safety, or well-being.[233]

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

General Restrictions. Louisiana restricts the employment of persons under the age of 18 by age and by the type of job (see Table 9).

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under 18	*Minors under age 18 may not perform the following types of work:* • oiling, cleaning, or wiping machinery or shafting; • applying belts to pulleys; • mining or quarrying; • in or about any places where stone cutting or polishing is done; • in or about any plant manufacturing explosives or articles containing explosive components, or in the use or transportation thereof; • in or about iron or steel manufacturing plants, ore reduction works, smelters, foundries, forging shops, hot rolling mills, or in any other place in which the heat treatment of metals is done; • operating machinery used in cold rolling of heavy metals; • operating power-driven machinery; • in or about saw or cooperage stock mills; • logging; • as drivers of any motor vehicle (defined broadly to include anyone who drives a vehicle at any time in the course of employment) on a public road if age 16 or younger; • operating passenger or freight elevators or hoisting machines; • in spray painting or in occupations involving exposure to lead, its compounds, or dangerous or poisonous dyes and chemicals; or

[231] 29 C.F.R. §§ 570.36, 570.50.

[232] 29 C.F.R. § 570.6.

[233] LA. STAT. ANN. §§ 23:151 *et seq.*

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• in any other place or in any other occupation that the state labor department deems hazardous or injurious to minors' life, health, safety, or welfare.[234]
Ages 16 & 17	*Minors aged 16 and 17 also may not work:* • in any illegal, indecent, or immoral exhibition or practice, including but not limited to stripteases, exotic dancing, etc.; or • at any occupation which the state labor department has found and declared to be hazardous for 16 and 17 year old persons.[235]
Under Age 16	*Minors under age 16 also cannot work:* • in, or about, or in connection with a poolroom or billiard room; • in, or about, or in connection with power-driven machinery; • in any manufacturing or processing establishment, or in any manufacturing, mechanical, or processing occupation; • in close proximity to any lounge or other location where alcoholic beverages are sold; • in any occupation for which a higher minimum age is required; • delivering goods or messages for any person engaged in the business of transmitting or delivering of goods or messages;[236] • processing occupations or commercial laundering and dry-cleaning; • occupations requiring work in workrooms where goods are manufactured, mined, or otherwise processed; • operating or tending to lifting apparatus or the inflation of tires mounted on a rim equipped with a removable retaining ring; • occupations connected with the transportation of property by rail, highway, air, water, pipeline, or other means; • communications and public utilities; • construction; • work performed in or about boiler or engine rooms; • work in connection with repair of machines or mechanical equipment; • outside window washing and all other work that involves use of ladders and scaffolds or their substitutes; • cooking and baking; • occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, choppers and cutters, and bakery type mixers;

[234] LA. STAT. ANN. §§ 23:161; LA. ADMIN. CODE tit. 40, §§ 503 to 537, 539 to 541 (listing occupations deemed hazardous or injurious to a minor's life, health, safety, or welfare).

[235] LA. ADMIN. CODE tit. 40, § 303.

[236] LA. STAT. ANN. § 23:163.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• work in freezers and meat coolers, and all work preparing meat for sale (except wrapping, sealing, labeling, weighing, pricing, and stocking when such work is performed in processing areas); • loading and unloading goods on and off trucks, railroad cars, and conveyors; • work involving power-driven machinery; or • any other occupation found and declared to be hazardous by the state labor department.[237] *However, minors ages 14 and 15 can be employed in the following types of work:* • office and clerical work, including cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping; • price marking and tagging by hand or 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 use of vacuum cleaners and floor waxers; • grounds maintenance (not including the use of power-driven mowers or cutters); • kitchen work and other work involved in preparing and serving food and beverages, including operation of machines and devices used in performance of such work, including but not limited to dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders; • work in connection with cars and trucks if confined to dispensing gasoline and oil, courtesy service, and cleaning, washing, or polishing; • cleaning vegetables and fruits; • wrapping, sealing, weighing, labeling, pricing, and stocking goods when performed in areas physically separated from areas where meat is prepared for sale, and outside freezers and meat coolers; • selling, offering for sale, soliciting for, or displaying articles, goods, merchandise, commercial service, posters circulars, newspapers, or magazines; • delivery of and sales of newspapers and periodicals; and • golf caddying.[238]

[237] LA. ADMIN. CODE tit. 40, § 301.

[238] LA. STAT. ANN. § 23:166; LA. ADMIN. CODE tit. 40, § 201.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 14	Minors under age 14 may not be employed, except under limited circumstances.[239]

Restrictions on Selling or Serving Alcohol. In Louisiana, minors under 18 cannot work in any place or establishment in which the sale of alcohol is the main business, unless the minor is a musician performing in a band on the premises under certain conditions.[240] However, an establishment holding a duly-issued retail dealer's alcoholic beverage permit or license, for which the sale of alcoholic beverages does not constitute the main business of the establishment, may employ anyone under age 18 if the minor's employment does not involve selling, mixing, dispensing, or serving alcohol for on-premises consumption.[241]

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

Under Age 18. In Louisiana, minors of 17 that have not graduated from high school may not work between 12 A.M. and 5 A.M. prior to the start of any school day. Minors aged 16 that have not graduated from high school may not work between 11:00 P.M. and 5:00 A.M. prior to the start of a school day.[242] Moreover, employment may be subject to any local curfew or ordinance. Minors who have obtained a GED or have been awarded a high school Equivalency Diploma are considered to have graduated from high school.[243]

Under Age 16. Minors ages 14 and 15 can only be employed after school hours and on nonschool days.[244] When school is in session, minors under age 16 that have not graduated from high school cannot work:

- more than three hours per day;
- more than 18 hours in any week;
- more than six consecutive days in a week; and
- between 7:00 P.M. and 7:00 A.M.[245]

When school is not in session, minors under age 16 that have not graduated from high school cannot work:

- more than eight hours in a day;
- more than 40 hours in a week; and
- more than six consecutive days in a week.[246]

[239] LA. STAT. ANN. § 23:162.

[240] LA. STAT. ANN. § 23:161.

[241] LA. STAT. ANN. § 26:90.

[242] LA. STAT. ANN. § 23:215.

[243] LA. STAT. ANN. § 23:215.

[244] LA. STAT. ANN. § 23:166.

[245] LA. STAT. ANN. § 23:214.

[246] LA. STAT. ANN. § 23:215.

Between June 1 and Labor Day, minors may work until 9:00 P.M.[247]

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

Louisiana's child labor laws do not apply to minors employed in agriculture, domestic services in private homes, or employment or training related to the curriculum while attending a business or vocational-technical school.[248]

While an employer generally may not employ minors under 14 years of age,[249] 12 and 13 year olds may be employed, if all of the following requirements are met:

1. the minor's parent or legal guardian is an owner or partner in the business in which the minor is to be employed;
3. the minor works only under the direct supervision of the parent or legal guardian who owns or is a partner in the business;
4. all of the protections afforded to minors 14 and 15 years of age are afforded to minors 12 and 13 years of age; and
5. the minor obtains an employment certificate.[250]

Registered apprentices and registered student learners may be exempt from the hazardous occupations prohibitions.[251] Special rules also apply to minors employed in theatrical and musical performances.[252]

Minors aged 17 or older may work as drivers of a motor vehicle only under the following circumstances: (a) the driving constitutes no more than one-third of the minor's work time in any work day and no more than 20% of the minor's work time in any workweek; and (b) subject to any further restrictions imposed by federal law.[253]

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

Louisiana employers are required to maintain certificates and work permits for each minor from the Secretary of Labor, except for those minors employed in theatrical, modeling, motion picture or television production, musical occupations, or in other performing arts.[254] A valid employment certificate is only valid if signed by the minor in the presence of the labor department.[255] The law requires that that the signed certificate will be returned to the minor for delivery to the employer.[256] Employers are required to maintain the certificate for a period of 14 days after the termination of the minor's employment.[257]

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247 LA. STAT. ANN. § 23:215.

248 LA. STAT. ANN. § 23:151.

249 LA. STAT. ANN. § 23:162.

250 LA. STAT. ANN. § 23:162.

251 LA. STAT. ANN. § 23:161.

252 LA. STAT. ANN. §§ 23:251-258.

253 LA. STAT. ANN. § 23:161.

254 LA. STAT. ANN. § 23:182.

255 LA. STAT. ANN. § 23:187.

256 LA. STAT. ANN. § 23:187.

257 LA. STAT. ANN. § 23:187.

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

Under Louisiana law, the Secretary of the Louisiana Department of Labor, Office of Regulatory Services, has jurisdiction to enforce the child labor laws.[258] After a ruling of the Secretary pursuant to an adjudicatory hearing, civil penalties may be enforced. Violations could result in a fine of up to $500, plus attorneys' fees.[259]

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).[260]

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.[261]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[262]

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.[263] The "prepaid rule" regulation defines

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[258] LA. STAT. ANN. § 23:231.

[259] LA. STAT. ANN. § 23:231.

[260] 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").

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

[262] 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.

[263] 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/.

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.[264]

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.[265] 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.[266]

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.[267]

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

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if

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[264] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[265] 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.

[266] 12 C.F.R. § 1005.18.

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

an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[268]

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.[269] 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.[270] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[271] tools and equipment,[272] and business transportation and travel.[273] 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.[274]

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[268] 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.

[269] *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).

[270] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[271] 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.

[272] 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).

[273] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[274] 29 C.F.R. § 778.217.

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

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

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[275]
- 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);[276]
- 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);[277]
- 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;[278]
- 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;[279] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[280]

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

[275] 29 C.F.R. § 531.38.

[276] 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*.

[277] 29 C.F.R. § 531.40.

[278] 29 C.F.R. § 531.40.

[279] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[280] 29 C.F.R. § 825.213.

advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[281]

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.[282] 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.[283]

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.[284]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[285]

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.[286]

3.7(b) *State Guidelines on Wage Payment*

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

Louisiana does not have a provision governing the authorized methods of wage payment.

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

[282] 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.

[283] 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.

[284] 29 C.F.R. § 531.36.

[285] 29 C.F.R. § 531.37.

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

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

Every employer doing business in Louisiana must notify employees at the time of hire of the employer's payday schedule. Thus, a Louisiana employer may pay its employees on a monthly or semi-monthly basis so long as the employer designates the pay schedule in advance. An employer that fails to designate paydays must pay its employees on the first and 16th days of the month or as near as practicable to those dates.[287]

An employer engaged in manufacturing, boring for oil, or mining operations that employs 10 or more employees must pay its employees once every two weeks or twice during each calendar month. Public service corporations must pay their employees once every two weeks or twice during each calendar month.[288]

Louisiana's frequency of payment provisions do *not* apply to individuals employed in a *bona fide* executive, administrative, supervisory, or professional capacity, or any employee considered exempt under the FLSA.[289]

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

Employees who quit or are involuntarily discharged must be paid their wages in full at the next regular payday, not to exceed 15 days from the date of separation. An employee is entitled to wages actually earned up to the time of discharge. **Effective August 1, 2024**, commissions, incentive pay, or bonuses are considered an amount due only if at the time of separation, the compensation has been earned and not modified in accordance with a written policy addressing the commission, incentive pay, or bonus.[290] An employer may not require an employee to sign a contract providing that the employee will forfeit wages if discharged before the contract is completed.[291]

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

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

3.7(b)(v) *Wage Transparency*

Louisiana 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*

Louisiana employers are required to inform employees of a change to the employer's payday schedule or to employees' rate of pay. Note, however, that the term *employee* does not include an individual

[287] LA. STAT. ANN. § 23:633(A).

[288] LA. STAT. ANN. § 23:633(B).

[289] LA. STAT. ANN. § 23:633(C).

[290] LA. STAT. ANN. § 23:631.

[291] LA. STAT. ANN. § 23:634.

employed in a *bona fide* executive, administrative, supervisory, or professional capacity, or an employee considered exempt under the FLSA.[292]

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

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

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

Louisiana does not have a general wage deduction statute. However, state law prohibits an employer assessing any fines against employees or deducting any sum as fines from their wages. This provision does not apply in cases where an employee willfully or negligently damaged goods or property of the employer, or in cases where the employee has been convicted or has pleaded guilty to the crime of theft of employer funds. In such cases, the fines cannot exceed the actual damage done.[293]

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

Orders of Support. Garnishment of wages for child support is authorized pursuant to a court order for the payment of current or past-due child support.[294] An employer may withhold a maximum of 50% of the employee's disposable earnings, but the withholding may not exceed established federal limits.[295] In addition, employers may deduct a $5 processing fee for costs incurred in withholding the garnished amounts.[296] Employers may not discharge or deny employment solely because that employee's earnings are subject to single garnishment under state child support enforcement program.[297] However, an employer may discharge an employee who is subject to three or more garnishments for unrelated debts in a two-year period.[298]

Debt Collection. An employer that receives a creditor garnishment withholding order from a Louisiana court against an employee must begin withholding immediately according to the order. The order will specify the amount of the employee's wages, salary, commissions, tip income, or other compensation that is exempt from garnishment and the amount that must be withheld.[299] Creditor garnishment withholding is limited to: (1) 25% of the employee's disposable income; or (2) the amount that exceeds 30 times the current federal minimum wage.[300] The employer is also permitted to withhold a processing fee of $3 to cover the costs of compliance with the order for each pay period during which the garnishment is in effect.[301]

Employers may not discharge or deny employment solely because that employee's earnings are subject to single garnishment under state child support enforcement program.[302] However, an employer may

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[292] LA. STAT. ANN. § 23:633.

[293] LA. STAT. ANN. § 23:635.

[294] LA. STAT. ANN. § 46:236.3.

[295] LA. STAT. ANN. § 46:236.3.

[296] LA. STAT. ANN. § 46:236.3.

[297] LA. STAT. ANN. §§ 23:731, 46:236.3.

[298] LA. STAT. ANN. § 23:731.

[299] LA. STAT. ANN. § 13:3921.

[300] LA. STAT. ANN. § 13:3881.

[301] LA. STAT. ANN. § 13:3921.

[302] LA. STAT. ANN. §§ 23:731, 46:236.3.

discharge an employee who is subject to three or more garnishments for unrelated debts in a two-year period.[303]

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

Where there is a dispute over the amount of wages due, the employer must pay all undisputed wages within the time period prescribed by law. Acceptance of partial payment by the employee does not constitute a waiver of the claim, and the employee is entitled to file an action for the disputed amount.[304] An employee may sue their employer for any wages or salary due and owing in the district court of the parish where the work was performed.[305]

Failure to pay owed wages and violation of the pay frequency requirements, or failure to provide an employee, at the time of hire, notice of pay rate, method of payment, and pay date may result in a fine from $25 to $250 for each day's violation. Further, an employer that commits a second violation, in addition to fines, may be subject to imprisonment of up to 10 days.[306]

Any employer that fails or refuses to comply with the final wages statute is liable to the employee either for 90 days wages at the employee's daily rate of pay, or for full wages from the time the employee's demand for payment is made until the employer pays the amount due, whichever is the lesser amount of penalty wages. If a court finds an employer's dispute over the amount of final wages was in good faith, but the employer is found to owe the disputed amount, the employer will be liable only for the amount of disputed wages plus interest incurred from the date the suit was filed.[307]

3.8 Other Benefits

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

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

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[308] 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.[309] 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

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[303] LA. STAT. ANN. § 23:731.

[304] LA. STAT. ANN. § 23:631.

[305] LA. STAT. ANN. § 23:639.

[306] LA. STAT. ANN. § 23:633.

[307] LA. STAT. ANN. § 23:632.

[308] 29 U.S.C. § 1002.

[309] 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.

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.[310]

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

There is no requirement under Louisiana law that an employer must offer employees other benefit compensation (such as vacation pay). Vacation pay in Louisiana is a matter of an employer's internal policies or a contract between the employer and its employees. However, once 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.[311] Because vacation is a matter of policy or contract, an employer may implement caps on accrual.[312] Additionally, an employer may implement a during-employment "use-it-or-lose-it policy;"[313] however, depending on the circumstances, the policy can be invalidated.[314]

Vacation pay will be considered an amount due for purposes of final wages only if, in accordance with the employer's stated vacation policy, both of the following apply:

- the employee is deemed eligible for and has accrued the right to take vacation time with pay; and
- the employee has not taken or been compensated for the vacation time as of the date of discharge or resignation.[315]

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[310] 490 U.S. 107, 119 (1989).

[311] *Molina v. Oilfield Prod. Contractors, Inc.*, 241 So.3d 337 (La. Ct. App. 2017) (ambiguity construed against the drafter).

[312] *See*, *e.g.*, *Hannie v. Colonial Oaks AL Lafayette Emp'r, L.L.C.*, 2022 WL 389874 (La. Ct. App. Feb. 9, 2022) (in determining the amount of vacation a former employee had, court limited to the cap in handbook, which was hundreds of hours less than what the individual had been allowed to amass); *Bodenheimer v. Carrollton Pest Control & Termite Co.*, 317 So.3d 351 (La. Ct. App. 2018) (One reasonable interpretation of at-issue provisions was cap was placed on amount of unused leave (in this case "one time the maximum amount") so leave accrued above the cap would not be carried over); *Barrilleaux v. Franklin Found. Hosp*., 683 So. 2d 348 (La. Ct. App. 1996) (noting the existence of a cap on accrual but not opining as to the validity); *Kelly v. Caldwell Parish Police Jury*, 740 So. 2d 783 (La. Ct. App. 1999) (Annual leave / sick pay cap noted but not discussed).

[313] *See, e.g.*, *Wyatt v. Avoyelles Parish Sch. Bd*, 831 So. 2d 906 (La. 2002); *Hannie v. Colonial Oaks AL Lafayette Emp'r, L.L.C.*, 2022 WL 389874 (La. Ct. App. Feb. 9, 2022) (handbook's annual use-it-or-lose it policy meant at the end of each year unused vacation was forfeited, so former employee was not entitled to carryover (and retain) unused leave, even though company had allowed him to do so).

[314] *Fontenot v. Ryder Truck Rental, Inc*., 869 So. 2d 330 (La. Ct. App. 2004) (Provision invalid because employer prevented use); *Bodenheimer v. Carrollton Pest Control & Termite Co.*, 317 So.3d 351 (La. Ct. App. 2018) (Ambiguous policy interpreted in employee's favor); *Williams v. City of St. Gabriel*, 2013 WL 3958347 (La. Ct. App. July 30, 2013) (Conflicting policies interpreted in employee's favor).

[315] LA. STAT. ANN. § 23:631.

The above provision may *not* be interpreted to allow forfeiture of any vacation pay actually earned by an employee pursuant to the employer's policy.[316] However, courts have found instances in which payout of vacation was *not* required.[317]

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*

Louisiana 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.[318] 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).[319] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[320] Here again, states may choose to

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[316] LA. STAT. ANN. § 23:631. *See also, e.g.*, *Hannie v. Colonial Oaks AL Lafayette Emp'r, L.L.C.*, 2022 WL 389874 (La. Ct. App. Feb. 9, 2022) (payout of unused vacation was required and forfeiture provision was unlawful, but payout of unused, accrued sick leave was not required); *Boucher v. Gautreaux*, 2018 WL 1755329(La. Ct. App. Apr. 11, 2018) (PTO was a gratuity requiring limited payout).

[317] *See, e.g.*, *Alexander v. PNK (Baton Rouge) P'ship*, 2023 La. App. LEXIS 1490 (Sept. 15, 2023); *Hess v. Magnolia Behavioral Healthcare, L.L.C.*, 189 So. 3d 1183 (La. Ct. App. 2016); *Beard v. Summit Inst. of Pulmonary Med. & Rehabilitation*, 707 So. 2d 1233 (La. 1998).

[318] 29 U.S.C. § 1144.

[319] 29 U.S.C. § 1161.

[320] 29 U.S.C. § 1167(3).

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

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

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

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

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

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

- for the birth or placement of a child for adoption or foster care;[321]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[322]
- to take medical leave when the employee is unable to work because of a serious health condition;[323]
- 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.[324] 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.[325] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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[321] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[322] 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).

[323] 29 C.F.R. §§ 825.112, 825.113.

[324] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[325] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

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

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

3.9(b) *Paid Sick Leave*

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

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[326] 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*

Louisiana 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.[327] 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.[328] FMLA

[326] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[327] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[328] 29 C.F.R. § 825.202.

leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[329] 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*

An employer that employs more than 25 employees within the state must allow a female employee affected by pregnancy, childbirth, or related medical conditions to take a leave of absence for a reasonable length of time not to exceed four months. *Reasonable amount of time* means: (1) six weeks for a normal pregnancy and childbirth; or (2) the period of time during which the female employee is disabled on account of the pregnancy, childbirth, or related medical conditions, except that the period cannot exceed four months.[330]

An employee is entitled to use accrued annual leave during the pregnancy leave. The employer must provide the same benefits or privileges of employment to employees affected by pregnancy as it provides to other temporarily disabled employees. An employer may require an employee to provide reasonable notice of the date the leave will commence and its estimated duration.[331]

As discussed further in **3.11(c)(ii)**, individuals affected by pregnancy, childbirth, or related medical conditions must also be treated the same as any nonaffected individual who possesses a similar "ability or inability to work."[332] This prohibition against pregnancy discrimination applies to all employment-related purposes, including receipt of benefits under fringe-benefit programs.[333]

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[329] 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.

[330] LA. STAT. ANN. §§ 23:341, 23:342.

[331] LA. STAT. ANN. §§ 23:341, 23:342.

[332] LA. STAT. ANN. § 23:342(2)(a).

[333] *Carballo v. Log Cabin Smokehouse*, 399 F. Supp. 2d 715, 725 (M.D. La. 2005).

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*

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

3.9(e) *School Activities Leave*

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

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

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

A Louisiana employer may grant an employee up to 16 hours of leave from work in a 12-month period to attend, observe, or participate in conferences or classroom activities related to the employee's dependent children that are conducted at the school or day care center, if the conference or classroom activities cannot reasonably be scheduled during nonwork hours.[334] An employee must provide the employer with reasonable notice prior to the leave and make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations.

The leave need not be paid, although the employee must be permitted to use any accrued vacation time or other appropriate paid leave for time taken.[335]

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*

A Louisiana employer must grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow.[336] The combined length of the leaves is not to exceed 40 hours unless agreed to by the employer. Covered employers are those that employ 20 or more employees at one or more site, and an eligible employee is one who provides an average of 20 or more hours of service to the employer per week.

The employer may require medical verification of each leave requested. If there is a medical determination that the employee does not qualify as a donor, the paid leave granted to the employee before the determination is not forfeited. An employer may not retaliate against an employee for requesting or obtaining a leave of absence for this purpose.[337]

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[334] LA. STAT. ANN. §§ 23:1015 *et seq.*

[335] LA. STAT. ANN. § 23:1015.2.

[336] LA. STAT. ANN. § 40:1263.4.

[337] LA. STAT. ANN. § 40:1263.4.

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*

Employers in Louisiana are not required to give employees time off for voting, but an employer may not attempt to control the vote of any employee.[338]

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*

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

Although not a leave provision, as noted in part in **3.9(g)(ii)**, Louisiana employers may not control, coerce, or influence an employee through threats of discharge from employment because of the employee's political opinion, participation, or becoming a candidate for public office.[339]

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

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

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[340] Employers are under no federal statutory obligation to pay employees while serving on a jury.

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

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[341] For more information, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

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[338] LA. STAT. ANN. § 23:962.

[339] LA. STAT. ANN. §§ 23:961, 23:962.

[340] 28 U.S.C. § 1875.

[341] *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).

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

Leave to Serve on a Jury. Louisiana law requires an employer to allow employees time off from employment to serve jury duty, either on a grand jury, state petit jury, or central jury pool.[342] However, an employee must give the employer reasonable notice of the required jury service.[343]

An employee that is regularly employed is entitled to a leave of absence without the loss of wages, or sick, emergency, or personal leave for up to one day for jury service.[344] Further, an employer may not deprive an employee of employment, make a rule, regulation, or policy, with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends court for prospective jury service.[345]

Leave to Participate in Judicial Proceedings. Crime victims and witnesses may be absent from work to participate in judicial proceedings. See 3.9(j)(ii) for additional information.

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

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

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

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

A crime victim or witness in criminal proceedings may be assisted by judicial and law enforcement agencies in informing employers that the need for victim and witness cooperation in the prosecution of the case may require the absence of the victim or witness from work.[346] However, the statute does not specify any further details about the administration of the leave.

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

[342] LA. STAT. ANN. § 23:965.

[343] LA. STAT. ANN. § 23:965.

[344] LA. STAT. ANN. § 23:965(B)(1).

[345] LA. STAT. ANN. § 23:965.

[346] LA. STAT. ANN. § 46:1844.

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.[347]

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.348 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.349 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Military Service Leave. Louisiana's Military Service Relief Act[350] prohibits employers from discharging, penalizing, or otherwise discriminating against an employee because the employee is a member of or serves in the armed forces, state militia, or other military forces.[351] The law is intended to be supplemental to any rights that persons called to military service have under any applicable federal statutes, including the Servicemember's Civil Relief Act,[352] USERRA, and any applicable Louisiana law.[353] The cumulative

[347] 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)).

[348] 29 C.F.R. § 825.126(a).

[349] 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).

[350] LA. STAT. ANN. §§ 29:401 *et seq.*

[351] LA. STAT. ANN. §§ 29:401 *et seq.*

[352] 50 U.S.C. §§ 501 *et seq.*

[353] LA. STAT. ANN. § 29:402(C).

length of absence and all previous absences from employment with the same employer may not exceed five years.

During the leave, the person may not be subjected to loss of time, seniority, personal time, sick leave, or vacation time.[354] Further, upon return, a person restored to an employment position must be given the same status the person would have enjoyed had the person been employed continuously.[355]

Upon release from duty, the employee must be returned to the employee's former position or a comparable one within 10 days of application for reemployment.[356] An employee must give notice of their intent to return after release from duty.[357]

Medical Appointment Leave. Louisiana's Medical Appointment Leave for Veterans law prohibits employers from discriminating, discharging, or otherwise disciplining a veteran for taking time away from work to attend medical appointments that are necessary to receive veteran's benefits. An employer may request verification of attendance at the medical appointment. An employee may use a bill, receipt, or excuse from the medical provider for such verification.[358]

Other Military-Related Protections: Spousal Unemployment. An otherwise eligible individual cannot be disqualified for unemployment benefits if:

- the individual is the spouse of an active duty military service member;
- the individual's spouse receives an order of permanent change of station; and
- the individual resigns from employment to relocate pursuant to the spouse's permanent change of station orders.[359]

Benefits paid pursuant to this section will not be charged against the experience rating of an employer with a relocating employee; however, benefits paid will be recouped as a social charge to all employers.[360]

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*

First Responder Leave. In Louisiana, an employee is entitled to reinstatement without loss of benefits or seniority after a leave of absence due to service or recovery from disease or injury as a first responder in the Governor's Office of Homeland Security and Emergency Preparedness. Such a leave of absence may be unpaid; however, an employee may choose to use any available vacation or sick leave. First responders must provide notice to employers as soon as practical and include probable length of service. Employees

[354] LA. STAT. ANN. §§ 29:406; 29:411.

[355] LA. STAT. ANN. § 29:38.

[356] LA. STAT. ANN. § 29:410; *see also* LA. STAT. ANN. § 29:38.

[357] LA. STAT. ANN. § 29:410.

[358] LA. STAT. ANN. § 23:331.

[359] LA. STAT. ANN. § 23:1601(1)(d).

[360] LA. STAT. ANN. § 23:1601(1)(d).

must report to their place of employment within 72 hours after release from duty or recovery from disease or injury from service as a first responder.[361]

Leave for Genetic Testing and Cancer Screening. Louisiana law requires an employer to grant an employee a leave of absence from work to obtain genetic testing or preventative cancer screening when medically necessary. An employee may use one day of leave for this purpose. The employee must provide the employer at least 15 days' advance notice and make a reasonable effort to schedule the leave so as to not unduly disrupt the employer's operations. Furthermore, the employee must provide documentation confirming the performance of such genetic testing or cancer screening when requested by the employer, but the employee is not required to disclose the results of the genetic testing or cancer screening.[362]

Although an employer is not required to provide paid time off to an employee taking leave for genetic testing or cancer screening, an employee must be allowed to substitute any accrued vacation time or other appropriate paid leave for the leave for genetic testing or cancer screening.[363] Employers are required to post a notice prepared by the Louisiana Workforce Commission in a conspicuous location on its premises setting forth the requirements under this law.[364]

Preventative cancer screening means healthcare services necessary for the detection of cancer, including but not limited to magnetic resonance imaging, ultrasound, or some combination of tests.[365] *Medically necessary* means healthcare services that are in accordance with generally accepted evidence-based medical standards or that are considered to be the standard of care by most physicians or independent licensed practitioners within the community of their respective professional organizations. In order to be considered medically necessary, the services must be reasonably necessary to diagnose, correct, cure, alleviate, or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain, or have resulted or will result in a handicap, physical deformity, or malfunction. Services for which no equally effective and less costly course of treatment is available or suitable for the recipient are also considered medically necessary. Services that are experimental, not approved by the federal Food and Drug Administration, investigational, or cosmetic are not deemed medically necessary and are specifically excluded from coverage unless coverage for early screening and detection is provided for under Louisiana law.[366]

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

[361] LA. STAT. ANN. §§ 23:1017.1 *et seq.*

[362] LA. STAT. ANN. § 23:370(A).

[363] LA. STAT. ANN. § 23:370(B).

[364] LA. STAT. ANN. § 23:370(C).

[365] LA. STAT. ANN. § 23:302(10).

[366] LA. STAT. ANN. § 23:302(7).

employees.[367] Employers are also required to comply with all applicable occupational safety and health standards.[368] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[369] 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*

Louisiana 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. A Louisiana statute, however, allows employers subject to the state's workers' compensation laws to reduce their premiums by participating in a voluntary safety program.[370]

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*

A Louisiana statute makes it illegal, with some exceptions, to drive a vehicle while using a wireless telecommunications device to write, send, or read a text-based communication.[371] 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, the restriction.

An individual is not deemed to be writing, sending, or reading a text-based communication if the individual is entering a phone number or name into a device for purposes of making a telephone call.[372] Further, this statute does not apply to wireless devices that are permanently attached to a vehicle, such as commercial two-way radio communication devices or electronic communication devices with push-to-talk

[367] 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.

[368] 29 U.S.C. § 654(a)(2).

[369] 29 U.S.C. § 667(c)(2).

[370] LA. STAT. ANN. §§ 23:1175 *et seq.*

[371] LA. STAT. ANN. § 32.300.5(A)(1).

[372] LA. STAT. ANN. § 32.300.5(A)(1).

functions.[373] It is a "serious traffic violation" for commercial motor vehicle drivers who are found to be texting while driving in violation of this statute.[374]

Law enforcement officers, firefighters, or operators of emergency vehicles are exempt from this statute while engaged in the actual performance of the job, as are doctors and other health care providers who are communicating for purposes of providing health care to an individual or communicating during a medical emergency.[375] Also exempt from the statute are those individuals who send a text-based message to report illegal activity, to summon medical or emergency help, to prevent injury to a person or property, to relay information between a transit or for-hire operator and the operator's dispatcher on a permanently fixed device, or to navigate a global positioning system.[376]

3.10(c) *Firearms in the Workplace*

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

Federal law does not address firearms in the workplace.

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

Firearms in the Workplace. In Louisiana, a property owner or other lawful custodian may limit or restrict access to their property by any person otherwise lawfully carrying a concealed handgun.[377]

Firearms in Company Parking Lots. Any person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area. However, employers may adopt a policy requiring firearms to remain hidden from plain view or within a locked case or container within the vehicle.[378]

The law does not apply to vehicles owned or leased by employers unless the vehicles are used by employees who are required to transport or store firearms as part of their official duties. Moreover, an employer may prohibit employees from transporting or storing firearms in parking areas where access is limited or restricted through the use of a fence, gate, security station, or other means, if the employer either provides facilities for the temporary storage of unloaded firearms, or provides an alternate parking area reasonably close to the main parking area where employees and others may transport or store firearms in locked, privately-owned motor vehicles.[379]

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.

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[373] LA. STAT. ANN. § 32.300.5.

[374] LA. STAT. ANN. § 32.414.2.

[375] LA. STAT. ANN. § 32.300.5(B).

[376] LA. STAT. ANN. § 32.300.5(B).

[377] LA. STAT. ANN. § 40:1379.3(O).

[378] LA. STAT. ANN. § 32:292.1(A), (C).

[379] LA. STAT. ANN. § 32:292.1(D).

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

Smoking is prohibited in enclosed areas within places of employment including company-owned vehicles.[380] No smoking signs must be clearly and conspicuously posted by the owner, operator, or manager of a place of employment where smoking is prohibited. All ash trays must be removed in areas where smoking is prohibited.[381] An employer may also post signs prohibiting smoking in any outdoor area of employment.

Antiretaliation Provisions. An individual, person, entity, or business subject to the smoking prohibitions must not discriminate or retaliate in any manner against a person for making a complaint regarding a violation of state law with regards to prohibitions on smoking or for furnishing information concerning a violation to an enforcement authority.[382]

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*

Louisiana law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

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

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

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

Louisiana law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

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

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

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[383] (2) the Americans with Disabilities Act (ADA);[384] (3) the Age

[380] LA. STAT. ANN. §§ 40:1291.1 *et seq*.

[381] LA. STAT. ANN. § 40:1291.21.

[382] LA. STAT. ANN. § 40:1291.11(C).

[383] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[384] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

Discrimination in Employment Act (ADEA);[385] (4) the Equal Pay Act;[386] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[387] (6) the Civil Rights Acts of 1866 and 1871;[388] 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);[389]
- 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.[390] 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.[391]

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

In addition to the federal equal employment opportunity laws, Louisiana employers with 20 or more employees generally are subject to the Louisiana Employment Discrimination Law (LEDL).[392] The LEDL prohibits discrimination in virtually all aspects of employment. Specifically, discrimination is prohibited on the basis of:

- race;
- color;

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[385] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[386] 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.

[387] 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)).

[388] 42 U.S.C. §§ 1981, 1983.

[389] 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.

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

[391] 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.

[392] LA. STAT. ANN. §§ 23:301 *et seq*.

- disability;
- religion;
- sex;
- national origin;
- pregnancy/childbirth and related medical conditions;
- age;
- the sickle cell trait; and
- natural, protective, or cultural hairstyles (including but not limited to afros, dreadlocks, twists, locs, braids, cornrow braids, Bantu knots, curls, and hair styled to protect hair texture or for cultural significance).[393]

Covered Employers. The size of employers covered by the LEDL varies depending on the type of discrimination. Prohibitions on discrimination based on age, disability, race, color, religion, sex, national origin, and the sickle cell trait apply to employers of 20 or more employees.[394] Prohibitions on discrimination based on pregnancy, childbirth, and related medical conditions apply to employers of 25 or more employees.[395] The definition of an *employer* also includes the state, or any state agency, board, commission, or political subdivision of the state receiving services from an employee and in return, giving compensation of any kind to an employee.[396]

There are statutory exclusions from the definition of employer, such as private educational or religious institutions, and any nonprofit corporation.[397] The LEDL specifically excludes from its prohibition against religious discrimination the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the religious activities of that corporation, association, or society.[398]

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

The Louisiana Commission on Human Rights (LCHR or "Commission") is the state agency with authority to investigate claims of employment discrimination.[399] If a claim is filed with the LCHR, it may either file a lawsuit against the offending employer, or issue a "notice of the right to file a civil action" (commonly called a "right to sue" letter) to the employee-claimant.[400] The employee is required to give the employer

[393] LA. STAT. ANN. §§ 23:301 *et seq*.

[394] LA. STAT. ANN. § 23:302(2).

[395] LA. STAT. ANN. § 23:341(A).

[396] LA. STAT. ANN. § 23:302(2). Note also that while the LEDL generally follows the interpretation of analogous federal statutes, the test for determining the employer-employee relationship is distinct under the LEDL. To be an employer under the LEDL, one must: "1) receive services from an employee and 2) in return give compensation to that employee." *Dupre v. Westlawn Cemetaries*, 2013 WL 3730125, at *4 (E.D. La. July 12, 2013).

[397] LA. STAT. ANN. § 23:302(2)(b); *see also Hulbert v. National Democratic Committee*, 2013 WL 1896945, at *7 (La. Ct. App. May 6, 2013) (concluding that the LEDL does not apply to nonprofit corporations).

[398] LA. STAT. ANN. § 23:332(H).

[399] LA. STAT. ANN. § 51:2231.

[400] LA. STAT. ANN. § 51:2257(H).

at least 30 days written notice before filing a lawsuit.[401] The goal in requiring notice to the employer is to provide an "opportunity for the parties to resolve these claims prior to judicial intervention, which is the stated purpose of Section 23:303(C)."[402] Specifically:

> A plaintiff who believes he or she has been discriminated against, and who intends to pursue court action shall give the person who has allegedly discriminated written notice of this fact at least thirty days before initiating court action, shall detail the alleged discrimination, and both parties shall make a good faith effort to resolve the dispute prior to initiating court action.[403]

If a complaint is filed with the LCHR, or is subject to the terms of a Worksharing Agreement with the EEOC, the LCHR must promptly investigate timely-filed complaints over which it maintains jurisdiction.[404] If the Commission concludes on the basis of a preliminary investigation of the complaint that prompt judicial action is necessary to carry out the purposes of the LHRA, the Commission may seek temporary injunctive relief against the employer pending a final determination of the proceedings under the LHRA.[405] Other relief may include: hiring; reinstatement; upgrading of employees with or without back pay; admission or restoration of individuals to union membership, apprenticeship training program, on-the-job training program, or other occupational training or retraining program; and damages.[406]

If, however, the LCHR determines after investigation that no reasonable cause exists to believe the employer violated the law, it must issue a written determination that incorporates that finding, and serve a copy on the employee, employer, and any other agency as required by law.[407] If the LCHR dismisses a complaint or fails to resolve it before the 181st day after the employee filed the complaint, the complainant may request termination of Commission proceedings and the issuance of a notice of the right to file a civil action in district court against the respondent named in the charge.[408]

Exhaustion Requirement. Unlike under Title VII, the ADA, or the ADEA, Louisiana law does not require administrative exhaustion before filing suit in a court of law.[409]

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

Genetic Trait Discrimination. Louisiana law provides that a person who is otherwise qualified cannot, on the basis of protected genetic information, be subjected to discrimination in employment.[410] The statute also establishes certain privacy protections related to genetic information.

Political Activities. Employers may not control, coerce, or influence an employee through threats of discharge from employment because of the employee's political opinion, participation, or becoming a

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401 LA. STAT. ANN. § 23:303(C).

402 *Johnson v. Hospital Corp. of Am.*, 767 F. Supp. 2d 678, 704 (W.D. La. 2011).

403 LA. STAT. ANN. § 23:303(C).

404 LA. STAT. ANN. § 51:2257.

405 LA. STAT. ANN. § 51:2261(F).

406 LA. STAT. ANN. § 51:2261(C).

407 LA. STAT. ANN. § 51:2261(A).

408 LA. STAT. ANN. § 51:2257.

409 *Salard v. Lowe's Home Ctrs., Inc.*, 904 F. Supp. 569 (W.D. La. 1995).

410 LA. STAT. ANN. § 23:368.

candidate for public office.[411] In addition, Louisiana limits the political activities of public employees, including a regulation which prohibits the use of public funds to "urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization."[412]

Sickle Cell Trait Discrimination. Louisiana law prohibits an employer from making employment decisions based on the sickle cell trait. This includes decisions relating to hiring, discharge, or discrimination with respect to his compensation, terms, conditions, or privileges of employment, because such individual has sickle cell trait.[413] The sickle cell law also prohibits employment agencies from failing or refusing to refer for employment, or otherwise discriminating against individuals because they have the sickle cell trait.[414]

Smoking. Louisiana prohibits an employer from discriminating against an individual with respect to discharge, compensation, promotion, any personnel action, or other condition or privilege of employment because the individual is a smoker or nonsmoker as long as the individual complies with applicable law and any workplace policy regulating smoking.[415] This statute also makes it unlawful for an employer to require that an individual abstain from smoking or otherwise using tobacco products outside the course of employment. Employers may be fined up to $250 for the first offense and up to $500 for any subsequent offense.

Veterans & Uniformed Service Status Discrimination. As noted in **3.9(k)(ii)**, Louisiana law makes it illegal to discharge, discipline, or threaten any veteran for taking time away from work to attend medical appointments necessary to meet the requirements necessary to receive their veterans' benefits.[416] Additionally, an employer may not deny members of the uniformed services initial employment, reemployment, retention in employment, promotion, or a benefit of employment if such person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action.[417]

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

In addition to the federal and state laws, employers with operations in New Orleans and Shreveport are subject to local fair employment practices ordinances.

- **New Orleans.** Employers (and any person acting as their agent, directly or indirectly) employing eight or more persons within the city of New Orleans must extend antidiscrimination protections on the basis of: race; creed; national origin or ancestry; color; religion; gender or sex; sexual orientation; gender identification; marital status; age; physical condition or disability; and protected cultural hairstyle.[418] A person alleging a violation of the

[411] LA. STAT. ANN. §§ 23:961, 23:962.

[412] LA. STAT. ANN. § 18:1465.

[413] LA. STAT. ANN. § 23:352.

[414] LA. STAT. ANN. § 23:352(B).

[415] LA. STAT. ANN. § 23:966.

[416] LA. STAT. ANN. § 23:331.

[417] LA. STAT. ANN. § 29:404.

[418] NEW ORLEANS, LA., CODE OF ORDINANCES §§ 86-1.5 (definitions), 86-19 (exclusions, including *bona fide* job-related qualifications and religion), and 86-22.

ordinance may file a complaint with the New Orleans Human Relations Commission within one year after the alleged act of discrimination has occurred or terminated.[419]

- **Shreveport.** Employers employing eight or more employees are subject to the following antidiscrimination protections: race (including protected cultural hairstyles); color; sex; disability; age; ancestry; national origin; sexual orientation; gender identity; political; and religious affiliations.[420] A person alleging a violation of the ordinance may file a complaint with the Greater Shreveport Human Relations Commission within six months of the alleged violation.[421]

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."[422] 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.[423]

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

In Louisiana, it is unlawful discrimination for an employer to intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex for equal work on jobs in which their performance requires equal skill, effort, and responsibility and which are performed under similar working conditions.[424] It is not unlawful for an employer to apply different standards of compensation pursuant to a *bona fide* seniority or merit system, or a system which measures earnings by quantity or quality of production, or any other differential based on any factor other than sex, or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate

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[419] NEW ORLEANS, LA., CODE OF ORDINANCES §§ 86-10, 86-12.

[420] SHREVEPORT, LA., CODE OF ORDINANCES §§ 39-1 (definitions), 39-2, and 39-3 (exclusions, including *bona fide* occupational qualifications, religion, and dress codes).

[421] SHREVEPORT, LA., CODE OF ORDINANCES § 39-4.

[422] 29 U.S.C. § 206(d)(1).

[423] 42 U.S.C. § 2000e-5.

[424] LA. STAT. ANN. § 23:332.

because of race, color, religion, sex, or national origin. An employer paying wages in violation of the statute 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 one year of the alleged violation.[425]

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.[426]

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

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

[425] LA. STAT. ANN. § 23:303.

[426] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

- temporary suspension of an employee's essential job function(s).[427]

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.[428] 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.[429] 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."[430]

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.[431]

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;

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[427] 29 C.F.R. § 1636.3.

[428] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[429] 29 C.F.R. § 1636.3.

[430] 29 C.F.R. § 1636.4.

[431] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

- 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.[432]

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*

Pregnancy Discrimination. The LEDL prohibits discrimination in an employment setting "because of pregnancy, childbirth, or related medical condition of any female."[433] Individuals affected by pregnancy, childbirth, or related medical conditions must be treated the same as any nonaffected individual who possesses a similar "ability or inability to work."[434] This prohibition against pregnancy discrimination applies to all employment-related purposes, including receipt of benefits under fringe-benefit programs.[435]

Reasonable Accommodations for Pregnancy. It is an unlawful employment practice for an employer of 25 or more employees to fail or refuse to make reasonable accommodations for an applicant or employee with covered limitations, unless the employer can demonstrate that the accommodation would impose an undue hardship on the employer's business operations.[436] *Covered limitations* means medical needs causing limitations arising from pregnancy, childbirth, or related medical conditions, where these limitations are known to the employer.[437] *Reasonable accommodation* may include but is not limited to the following:

- making existing facilities used by employees readily accessible to and usable by an applicant or employee with covered limitations, provided the employer is not required to construct a permanent, dedicated space for expressing breast milk;
- providing scheduled and more frequent or longer compensated break periods;
- providing more frequent bathroom breaks;
- providing a private place, other than a bathroom stall, for the purpose of expressing breast milk;
- modifying food or drink policy;

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[432] 29 C.F.R. § 1636.3.

[433] LA. STAT. ANN. § 23:342(1).

[434] LA. STAT. ANN. § 23:342(2)(a).

[435] *Carballo v. Log Cabin Smokehouse*, 399 F. Supp. 2d 715, 725 (M.D. La. 2005).

[436] LA. STAT. ANN. § 23:342.

[437] LA. STAT. ANN. § 23:341.1.

- providing seating or allowing the employee to sit more frequently if the job requires the employee to stand;
- providing assistance with manual labor and limits on lifting;
- temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified;
- providing job restructuring or light duty, if available;
- acquiring or modifying equipment or devices necessary for performing essential job functions; or
- modifying work schedules.[438]

In addition, the employer must allow a pregnant employee to transfer to a less strenuous or hazardous position for the duration of her pregnancy if she so requests with the advice of her physician.[439] However, an employer is not required to make any of the following provisions, unless the employer does so for other employees or classes of employees who need a reasonable accommodation:

- create any additional employment opportunity or any new position, including a light duty position for the employee; or
- discharge an employee, transfer any employee with more seniority, or promote another employee who is not qualified to perform the job.[440]

The statute affords additional protections to applicants and employees with respect to reasonable accommodation. It is an unlawful employment practice for an employer to:

- deny employment opportunities to a job applicant or existing employee, if the denial is based on the employer's need to make reasonable accommodations to the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions of the applicant or existing employee;
- require an applicant or an existing employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that the applicant or employee chooses not to accept, if the applicant or employee does not have a known limitation related to pregnancy, childbirth, or related medical conditions, or if the accommodation is unnecessary for the applicant or employee to perform the essential duties of her job;
- require an employee with covered limitations to take leave under any leave law or employer policy if another reasonable accommodation can be provided to address the known limitations for medical needs arising from pregnancy, childbirth, or related medical conditions; or
- take adverse action against an employee with covered limitations in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known

[438] LA. STAT. ANN. § 23:341.1.

[439] LA. STAT. ANN. § 23:342.

[440] LA. STAT. ANN. § 23:342.

limitations for medical needs arising from pregnancy, childbirth, or related medical conditions.[441]

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.[442] Multiple decisions of the U.S. Supreme Court[443] 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.[444] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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

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

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*

Under Louisiana's broad protections for whistleblowers, an employer may not fire, lay off, take away benefits, or take discriminatory action against an employee who discloses a violation or a suspected

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[441] LA. STAT. ANN. § 23:342.

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

[443] *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).

[444] 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.

violation of any federal, state, or local law.[445] In 2012, Louisiana adopted legislation to protect employees who report sexual abuse of a minor by any coworker, supervisor, or subordinate.[446]

Employers may not retaliate against an employee who provides testimony regarding a violation of the law or because the employee refuses to participate in an employment act that is a violation of law.[447] An employee discharged or discriminated against in violation of Louisiana whistleblower law may bring a private civil suit for reinstatement to the employee's previous job, back wages, reestablishment of their employee benefits, court costs, and attorneys' fees.[448]

In addition, an employer may not discharge, discipline, or discriminate against an employee for the reason that the employee has testified or provided information in an investigation or proceeding against an employer for a violation of any state labor laws.[449] Violation of this law may result in both civil and criminal penalties and fines.[450]

A Louisiana employer may not fire, lay off, lockout, fail to promote, or otherwise penalize an employee when in good faith they disclose to a supervisor or public body an activity, policy, or practice of an employer that they reasonably believe is a violation of an environmental law, rule, or regulation.[451] Likewise, an employer may not take action against an employee who provides information or testifies in an investigation, hearing, or inquiry into an infraction of an environmental law, rule, or regulation.[452] An employee against whom action is taken may bring a private civil suit for up to treble damages against their employer.[453]

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)[454] and the Railway Labor Act (RLA)[455] 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

[445] LA. STAT. ANN. § 23:967.

[446] LA. STAT. ANN. § 23:968.

[447] LA. STAT. ANN. § 23:967.

[448] LA. STAT. ANN. § 23:967.

[449] LA. STAT. ANN. § 23:964.

[450] LA. STAT. ANN. § 23:964.

[451] LA. STAT. ANN. § 30:2027.

[452] LA. STAT. ANN. § 30:2027.

[453] LA. STAT. ANN. § 30:2027.

[454] 29 U.S.C. §§ 151 to 169.

[455] 45 U.S.C. §§ 151 *et seq*.

employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

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

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

Louisiana is a right-to-work state. Thus, no person may be denied employment because of the person's membership or nonmembership in a labor union. Any contract that requires that employees or applicants must, or may not be, or remain members of a labor union to work for an employer is void.[456] Any individual who causes the discharge or denial of employment to any persons because of nonmembership in a labor organization faces fines and/or imprisonment.[457]

Additionally, Louisiana statutorily prohibits employers and employees from entering into contracts in which an employee agrees either: (1) to not become, or to remain, a member of any labor organization; or (2) to withdraw from employment should the employee become or remain a member of any labor organization.[458]

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).[459] 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.[460] 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*

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

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[456] LA. STAT. ANN. §§ 23:981 to 23:987.

[457] LA. STAT. ANN. §§ 23:984 to 23:985.

[458] LA. STAT. ANN. § 23:823.

[459] 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.

[460] 20 C.F.R. §§ 639.4, 639.6.

4.1(c) *State Mass Layoff Notification Requirements*

When a Louisiana employer engages in a mass separation of 50 or more employees for the same reason and about the same time, the employer must notify the Administrator of the Louisiana Workforce Commission.[461] There are no express provisions regarding the timing by which such notification must be made. However, the regulation provides that in regards to individual separation notices, whenever a worker is separated under conditions which may disqualify him/her for benefits, a separation notice must be made to the administrator by the employer within three days. In regards to labor dispute notices, the separation notice must also be filed within three days.[462] In the absence of more express provisions, and similar notice provisions in the same regulation, it is likely that mass separation notices should also be made within three days.

4.2 Documentation to Provide When Employment Ends

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

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

Table 10. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[463] 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.[464]

[461] LA. ADMIN. CODE tit. 40, § 323.

[462] LA. ADMIN. CODE tit. 40, § 323.

[463] 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.

[464] 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.

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.	Separating employees must receive written notification of the loss of coverage associated with the qualifying event (*i.e.*, termination, death, etc.), to allow election of continuation of coverage for themselves or eligible dependents under the employer's group hospital, surgical, and medical insurance policy.[465]
Unemployment Notice	**Generally.** Employers are required to provide notification of the availability of Unemployment Insurance Benefits (UI). This notice must include the following information: • Employees that meet the requirements for unemployment insurance eligibility may file a UI claim in the first week that employment stops or work hours are reduced. • Employees must be informed that a UI claim may be filed by phone or online in the following ways: (a) to file a UI claim by phone call: 1-866-783- 5567; or (b) to file a UI claim online, visit: www.louisianaworks.net/hire. And as well, that if an employee has questions about the status of their UI claim, they can call the LWC at 866-783-5567 or visit www.louisianaworks.net/hire. • Employees must be given the Louisiana Workforce Commission's toll free phone number and web address for filing and assistance with unemployment insurance claims. • Employees must be informed of the need to provide the Louisiana Workforce Commission with the following information in order for the claim to be processed: (a) full legal name; (b) social security number; and (c) authorization to work (if not a U.S. Citizen or resident). Employers must convey this information at the time of separation. This information shall be provided to employees in writing either via flyer, letter, email, or text message.[466]
Unemployment: Separation Notice	Whenever a worker is separated from employment—either permanently, for an indefinite period, or for an expected duration of at least 7 days—an employer must, within three days of such separation, provide the employee a completed separation notice (Form LWC 77).[467]

[465] LA. STAT. ANN. § 22:1046(B), (H); LA. ADMIN. CODE tit. 37, § 9107(I)(2).

[466] LA. ADMIN. CODE tit. 40, Pt IV, § 381. Employers can find the form "Required Notification to Separating Employees of Availability of Unemployment Compensation," containing this required information, at the Louisiana Workforce Commission website, at http://www.laworks.net/Downloads/Downloads_MainMenu.asp.

[467] This form (Form LWC 77) is available at https://www.laworks.net/unemploymentinsurance/ui_employers.asp.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	This form provides the Louisiana Workforce Commission with the detail necessary to determine whether a worker is disqualified from unemployment benefits. The notice must provide the date of separation, a full explanation of the cause or causes therefor, and all requested information about payments made to the separated employee. If delivery is impossible or impracticable, an employer must mail the separation to the employee's last known address. Notice also goes to the Louisiana Workforce Commission.[468]
Unemployment; Multistate Workers	Whenever an individual covered by a multistate designation is separated from employment, an employer must again notify the employee, forthwith, as to the jurisdiction under whose unemployment compensation law services have been covered. If at the time of termination, the individual is not located in the election jurisdiction, an employer must notify the employee as to the procedure for filing interstate benefit claims.[469] In addition to the above notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.

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*

Louisiana employers are immune from civil liability for providing accurate information about a current or former employee's job performance or reasons for separation to a prospective employer of a current or former employee.[470] Additionally, a prospective employer that relies on the information is immune from civil liability for the hiring of the employee, unless further investigation is required by law.[471]

[468] LA. ADMIN. CODE tit. 40, § 323; *see* LA. STAT. ANN. § 23:1576 (requiring filing of the notice with the state).

[469] LA. ADMIN. CODE tit. 40, § 343.

[470] LA. STAT. ANN. § 23:291.

[471] LA. STAT. ANN. § 23:291.