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STATE

Littler on

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

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

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

DISCLAIMER

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

ACKNOWLEDGEMENTS

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

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

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

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

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Ohio Civil Rights Commission	Common-law agency test.[5]

[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] Courts apply the same analysis to cases brought under Ohio's fair employment practices laws as to those brought under Title VII. Thus, the common-law agency test set forth in *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318 (1992), for determining independent contractor status in federal antidiscrimination cases also applies in Ohio fair employment cases. *See, e.g.*, *Eyerman v. Mary Kay Cosmetics, Inc.*, 967 F.2d 213, 218-19 (6th Cir. 1992); *Ohio Civil Rights Comm'n v. Ingram*, 630 N.E.2d 669, 674 (Ohio 1994); *Jordan v. Ohio Civil Rights Comm'n*, 877 N.E.2d 693, 697 (Ohio Ct. App. 2007); *Nehls v. Quad-K. Advert., Inc.*, 666 N.E.2d 579, 583 (Ohio Ct. App. 1995). Under *Darden,* in determining whether a hired party is an employee under the general common law of agency, courts consider "the hiring party's right to control the manner and means by which the product is accomplished." 503 U.S. at 323. Relevant factors include:

> the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

503 U.S. at 323-24. Moreover, at least one federal court in Ohio has concluded that independent contractors are not protected under federal or state antidiscrimination laws. *Zents v. Baylor Trucking Co.*, 2013 WL 1500678, at **6, 11-12 (N.D. Ohio Apr. 11, 2013).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Income Taxes	Ohio Department of Taxation	Common-law "right to control" test and federal Internal Revenue Service (IRS) determinations.[6]
Unemployment Insurance	Ohio Department of Job and Family Services, Office of Unemployment Insurance Operations	Statutory test, adopting the IRS twenty-factor test.[7]
Wage & Hour Laws	Ohio Department of Commerce, Wage & Hour Administration	Statutory test, adopting the economic realities test under the federal Fair Labor Standards Act (FLSA).[8]
Workers' Compensation	Ohio Bureau of Workers' Compensation	Common-law "right to control" test considering, but not limited to, the following factors: 1. who controls the details and quality of the work; 2. who controls the hours worked; 3. who selects the materials, tools, and personnel used; 4. who selects the routes; 5. length of employment; 6. type of business; 7. method of payment; and 8. any pertinent agreements or contracts.[9]

[6] As the Ohio Supreme Court has explained, the main test to evaluate the relationship is whether the employer retains the "*right to control* the manner or means of doing the work," in which case the relationship is that of "master and servant," while "if the manner or means of doing the work or job is left to one who is responsible to the employer only for the result, an independent contractor relationship is thereby created." *Gillum v. Industrial Comm'n*, 48 N.E.2d 234 (Ohio 1943) (emphasis added); *see also* Ohio Dep't of Taxation, *Employer Withholding – Filing Requirements*, *available at* https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/employer-withholding-filing-requirements/employer-withholding-filing-requirements (explaining that companies do not need to withhold for independent contractors and instructing worker to contact the IRS so they can "determine whether an employer-employee relationship exists").

[7] OHIO ADMIN. CODE 4141-3-05. The twenty factors are used "[a]s an aid to determining whether there is sufficient direction or control present. . . . When present, each of these factors serves to indicate some degree of direction or control." OHIO ADMIN. CODE 4141-3-05(B).

[8] OHIO REV. CODE ANN. § 4111.14(B) (noting that "[i]n construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor's and federal courts' interpretations of those terms under the Fair Labor Standards Act and its regulations").

[9] *Ugicom Enters., Inc. v. Bureau of Workers' Comp.*, 203 N.E.3d 683 (Ohio 2022); *Below v. Dollar Gen. Corp.*, 840 N.E.2d 215, 220 (Ohio Ct. App. 2005); *see also Smith v. Turbo Parts, L.L.C.*, 2011 WL 7967937 (S.D. Ohio Mar. 1,

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workplace Safety	Not applicable	There are no relevant statutes or court decisions concerning independent contractor status in this context. Ohio does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

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

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

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.[10]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly,

2011); *Whitt v. Wolfinger*, 39 N.E.3d 809, 822-23 (Ohio Ct. App. 2015). Note, within the workers' compensation statute, there is a subsection specifically concerning *construction workers*, which sets forth twenty factors similar to those considered in the IRS twenty-factor test; in order to be considered an independent contractor, 10 of the 20 factors must be met. OHIO REV. CODE ANN. § 4123.01(A)(1)(c).

[10] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

state and local immigration laws have faced legal challenges.[11] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[12]

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

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

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

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

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

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

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[13] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's 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.

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[11] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

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

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

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*

Ohio places no statutory restrictions on a private employer's use of arrest records in making employment decisions. However, employers should note that an arrest or conviction for a minor misdemeanor drug violation (relating to 100 grams or less of marijuana or five grams or less of hashish) does not constitute a criminal record and need not be reported by the person so arrested in response to an inquiry about a criminal record, including any inquiry in an employment application.[14]

In addition, Ohio has not implemented a state "ban-the-box" law covering private employers.

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

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

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

Ohio law places restrictions on an employer's use of sealed and expunged criminal records.

Sealed Arrest Records. In any application for employment or other preemployment inquiry, an employer may not inquire about or consider a sealed arrest record. If an inquiry is made in violation of this provision, the individual "whose official record was sealed may respond as if the arrest underlying the case to which the sealed official records pertain and all other proceedings in that case did not occur."[15] Moreover, the individual with the sealed record may "not be subject to any adverse action because of the arrest, the proceedings, or the person's response."[16]

Sealed Convictions. An employer may not inquire, in a job application or other preemployment inquiry, about a sealed conviction, or about certain sealed or expunged bail forfeiture records, "unless the question bears a *direct and substantial relationship* to the job for which the person is being considered."[17]

Additionally, an employer may not question an individual in any application or other inquiry concerning any expunged conviction regarding the improper handling of firearms in a motor vehicle, regardless of whether the question would elicit information that bears a direct and substantial relationship to the job.[18]

Juvenile Records. An individual whose juvenile arrest records have been expunged may reply to inquiries by stating that no records exist.[19] Moreover, in any application for employment or other preemployment inquiry, an employer may not inquire about any arrest or any detention into custody involving a juvenile

[14] OHIO REV. CODE ANN. § 2925.11(D).

[15] OHIO REV. CODE ANN. § 2953.34(L)(1).

[16] OHIO REV. CODE ANN. § 2953.34(L)(1).

[17] OHIO REV. CODE ANN. § 2953.34(N)(2)(a) (emphasis added).

[18] OHIO REV. CODE ANN. §§ 2953.34(N)(2)(b), 2953.37.

[19] OHIO REV. CODE ANN. § 2151.358(F).

record that has been sealed. If such an inquiry is nevertheless made, the individual may respond as if the sealed arrest or taking into custody did not occur, and the individual will not be subject to adverse action because of the arrest or the response.[20]

1.3(b) *Restrictions on Credit Checks*

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

The Fair Credit Reporting Act (FCRA). The FCRA[21] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[22] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[23]

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[20] OHIO REV. CODE ANN. § 2151.357(G).

[21] 15 U.S.C. §§ 1681 *et seq*.

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

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

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

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

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

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

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

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

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

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

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

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[24] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

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

- for refusing to take a lie detector test;
- based on the results of such a test; and

[24] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

- for taking any actions to preserve employee rights under the law.

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

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

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

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

Ohio 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.[25] 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.[26] 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*

Ohio law contains no express provisions regulating preemployment drug or alcohol screening by private employers. For information on drug and alcohol testing of employees, see **3.2(b)(ii)**.

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[25] 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.

[26] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

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 prospective employees or applicants to pay the cost of medical examinations required as a condition of employment.[27]

1.3(f)(ii) *State and Local Restrictions on Salary History Inquiries*

Ohio has no statewide law restricting an employer's ability to make pre-hire inquiries into a job applicant's salary history. However, Cincinnati,[28] Toledo,[29] and Columbus[30] have enacted ordinances to put such restrictions in place. All three ordinances prohibit employers of 15 or more employees from:

- inquiring about the salary history of an applicant for employment;
- screening job applicants based on their current or prior wages, benefits, other compensation, or salary histories, including requiring that an applicant's prior wages, benefits, other compensation or salary history satisfy minimum or maximum criteria;
- relying on an applicant's salary history in deciding whether to offer employment to the applicant, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; and
- refusing to hire or otherwise disfavoring, injuring, or retaliating against an applicant for not disclosing their salary history to the employer.

The ordinances, which create several exceptions to the general prohibitions outlined above, also require a covered employer to provide the pay scale for a position to an applicant who has received a conditional offer of employment for the position by the employer, upon the applicant's reasonable request.

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;

[27] OHIO REV. CODE ANN. § 4113.21(A).

[28] CINCINNATI, OH CODE OF ORDINANCES §§ 804-01 *et seq*.

[29] TOLEDO, OH CODE OF ORDINANCES §§ 768.01 *et seq*.

[30] COLUMBUS, OH CITY CODE §§ 2335.01, 2335.03 (effective March 1, 2024).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	• 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[31] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[32] 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.[33] 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.[34]
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.[35] 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.[36]
Benefits & Leave Documents: Family and	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each

[31] 26 U.S.C. § 36B.

[32] 42 U.S.C. § 18071.

[33] 29 U.S.C. § 218b.

[34] 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.

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

[36] 29 C.F.R. § 2590.606-1.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Medical Leave Act (FMLA)	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.[37] 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.[38] 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.[39]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[40] 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.[41]

[37] 29 C.F.R. § 825.300(a).

[38] 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.

[39] 29 C.F.R. § 825.300(a).

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

[41] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
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.[42]
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.[43]

2.1(b) *State Guidelines on Hire Documentation*

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

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Continuation Coverage (Reservists)	An employer must notify each employee, who is a reservist, of the right to continuation of coverage at the time of employment. If the reservist is called or ordered to active duty, the employer must notify each eligible person at that time of the requirements for the continuation of coverage.[44]
Tax Documents: Employee's Withholding Certificate	All employers are required to have each employee who works in Ohio complete Form IT-4, unless the employee lives in a state with which Ohio has signed a reciprocity agreement (Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia).[45]
Wage and Hour	All employers must provide an employee with the employer's name, address, telephone number, and other contact information, which may include the address of the employer's internet site, email address, fax number, or the name, address, and telephone number of the employer's

[42] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[43] 29 C.F.R. § 531.59.

[44] OHIO REV. CODE ANN. § 3923.382(D)(2).

[45] OHIO ADMIN. CODE 5703-7-06. Form IT-4 is available at https://tax.ohio.gov/static/forms/employer_withholding/generic/wth-it4-combined.pdf. Additional forms may be required for nonresident employees.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	statutory agent. It does not include the name, address, telephone number, fax number, internet address, or email of any employee, shareholder, officer, director, supervisor, manager, or other individual employed by or associated with an employer. Employers must update this information when it changes, within 60 business days after a change occurs. It must provide the information using any of its usual methods of communicating with its employees, including listing the change on the employer's internet site, internal computer network, or a bulletin board where it commonly posts employee communications, or by insertion or inclusion with employees' paychecks or pay stubs.[46]

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.[47] 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).[48]

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

[46] OHIO REV. CODE ANN. § 4111.14(E).

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

[48] 42 U.S.C. § 653a.

a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

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

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

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

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

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services 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.[49] 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 Ohio's new hire reporting law.[50]

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

[50] OHIO REV. CODE ANN. §§ 3121.89 *et seq*.

Who Must Be Reported. Employers must report newly-hired employees or contractors, as well as employees who are rehired or returning to work after being separated from prior employment for at least 60 consecutive days.[51]

Report Timeframe. Ohio employers must submit new hire information within 20 days after the hiring date. If submitted electronically or magnetically, the information may be submitted twice per month, not less than 12 or more than 16 days apart.[52]

Information Required. The report must contain the employee's name, address, date of birth, Social Security number, and date of hire. If reporting a contractor, employers must include the contractor's name, address, Social Security, or tax identification number, the date payments begin, and the length of time the contractor will be performing services. Any report must also contain the employer's name, address, and federal employer identification number.[53]

Form & Submission of Report. Reporting can be submitted using a Form W-4, new hire reporting form, printed list, or other method authorized by the Ohio Department of Job and Family Services. Reports may be submitted by first-class mail, fax, online, magnetic or electronic means, or using new hire data entry software.[54]

Location to Send Information.

Ohio New Hire Reporting Center
P.O. Box 15309
Columbus, OH 43215-0309
(614) 221-5330
(888) 872-1490
(614) 221-7088 (fax)
(888) 872-1611 (fax)
https://oh-newhire.com/#/public/public-landing/login

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

[51] OHIO REV. CODE ANN. § 3121.893.

[52] OHIO REV. CODE ANN. § 3121.893.

[53] OHIO REV. CODE ANN. § 3121.892.

[54] OHIO REV. CODE ANN. § 3121.893.

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

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

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

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

Ohio has no blanket legislative or judicial prohibition against noncompetition agreements. Although appearing to disfavor noncompetition agreements as restraints upon trade, Ohio courts will enforce reasonable noncompetition agreements to the extent necessary to protect the employer's legitimate business interests. In general, a restrictive covenant is reasonable if the restraint "is no greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public."[56] In determining what constitutes a reasonable contract between the parties, courts look at the following factors:

> [t]he absence or presence of limitations as to time and space[;] …whether the employee represents the sole contact with the customer; whether the employee is possessed of confidential information or trade secrets; whether the covenant seeks to eliminate [unfair] competition …or merely seeks to eliminate ordinary competition; whether the covenant seeks to stifle the inherent skill and experience of the employee; whether the benefit to the employer is disproportional to the detriment of the employee; whether the covenant operates as a bar to the employee's sole means of support; whether the employee's talent which the employer seeks to suppress was actually developed during the period of employment; and whether the forbidden employment is merely incidental to the main employment.[57]

[55] 18 U.S.C. §§ 1832 *et seq.*

[56] *Raimonde v. Van Vlerah*, 325 N.E.2d 544, 547 (Ohio 1975).

[57] *AK Steel Corp. v. ArcelorMittal USA, L.L.C.*, 55 N.E.3d 1152 (Ohio Ct. App. 2016) (citing *Raimonde*, 325 N.E.2d at 547).

Ohio courts look to a body of common law that has developed over the years to define the scope of protectable rights, and carefully scrutinize restrictive covenants on a case-by-case basis.[58]

Enforceability Following Employee Discharge. In Ohio, covenants remain enforceable following employee discharge.[59]

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.

Without explicitly discussing the issue of consideration, Ohio courts have regularly enforced noncompetes that were entered into at the beginning of employment.[60] A change in terms of employment, such as a promise to receive better job assignments, may also constitute sufficient consideration.[61] The Ohio Supreme Court resolved conflicting precedents in 2004 when it held that continued at-will employment alone is sufficient consideration to support a noncompete.[62]

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.

Ohio courts may make reasonable modifications to unenforceable covenants.[63]

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[58] *Robert W. Clark, M.D., Inc. v. Mt. Carmel Health*, 706 N.E.2d 336, 340 (Ohio Ct. App. 1997).

[59] *See Patterson Int'l Corp. v. Herrin*, 264 N.E.2d 361 (Ohio Ct. C.P. Hamilton Cty. 1970).

[60] *See Cohen & Co. v. Messina*, 492 N.E.2d 867, 871 (Ohio Ct. App. 1985) ("Ohio has previously determined that a restrictive covenant in a contract for services is void for want of consideration where it was not included in the original contract of employment…"); *see also Swagelok Co. v. Young*, 2002 WL 1454058, at *6 (Ohio Ct. App. 2002) (dissent) ("The law is firmly established that the initial 'consideration' between the parties in the at-will setting is the fact that the employee accepts an offer to perform services in exchange for the payment of wages.").

[61] *Chrysalis Health Care, Inc. v. Brooks*, 640 N.E.2d 915, 920 (Ohio Mun. 1994).

[62] *Lake Land Emp't Grp. of Akron, L.L.C. v. Columber*, 804 N.E.2d 27 (Ohio 2004).

[63] *Rogers v. Runfola & Assocs., Inc.*, 565 N.E.2d 540, 543 (Ohio 1991).

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

In 1994, Ohio adopted the Uniform Trade Secrets Act. This statute, which embodies and supplements Ohio's former statutory and common-law claims, defines the meaning of trade secret and prohibits the misappropriation of such material. Trade secret law in Ohio seeks to promote invention and maintain commercial ethics, as well as to protect an employer's investments and proprietary information.[64]

Definition of a Trade Secret. The state law defines the term *trade secret* as:

> [I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[65]

The following factors are considered in analyzing a trade secret claim:

1. the extent to which the information is known outside the business;
2. the extent to which the information is known to those inside the business (i.e., by the employees);
3. the precautions taken by the holder of the trade secret to guard the secrecy of the information;
4. the savings affected and the value to the holder in having the information as against competitors;
5. the amount of effort or money expended in obtaining and developing the information; and
6. the amount of time and expense it would take for others to acquire and duplicate the information.[66]

The courts have granted trade secret protection to the following categories of data and information under Ohio law:

- manufacturing processes;[67]

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[64] *Valco Cincinnati, Inc. v. N&D Machining Serv., Inc.*, 492 N.E.2d 814, 820 (Ohio 1986).

[65] OHIO REV. CODE ANN. § 1333.61(D).

[66] *State ex rel. Plain Dealer v. Ohio Dep't of Ins.*, 687 N.E.2d 661, 672 (Ohio 1997) (citing *Pyromatics, Inc. v. Petruziello*, 454 N.E.2d 588, 592 (Ohio Ct. App. 1983)).

[67] *See, e.g., Valco Cincinnati, Inc.*, 492 N.E.2d at 819 (finding the manufacturing of glue application equipment, special care in assembly of certain pieces, techniques, and materials used in manufacturing may be trade secrets).

- formulas;[68]
- customer/client lists or contacts;[69]
- computer programs;[70] and
- marketing data.[71]

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

Ohio does not have general statutory guidelines addressing ownership of employee inventions and ideas. However, Ohio statutes do govern discoveries, invention, and patents which result from research or investigation by Ohio state colleges and university employees.[72]

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.[73]

[68] *See*, *e.g.*, *Mead Corp. v. Lane*, 560 N.E.2d 1319 (Ohio Ct. App. 1988) (finding formula for jet printing ink and purge fluids and processes for modification of commercially-available ink is a protectable trade secret).

[69] *See*, *e.g.*, *Consumer Direct*, *Inc. v. Limbach*, 580 N.E.2d 1073 (Ohio 1991) (finding customer lists for direct-mail solicitations were protectable trade secrets); *Vanguard Transp. Sys. v. Edwards Transfer & Storage Co.*, 673 N.E.2d 182, 185 (Ohio Ct. App. 1996) (holding customer lists belonging to freight transportation company, drivers' contracts, rate quotes, and schedules developed over 10 years of business were trade secrets where a former employee took that information and went to work for a competitor).

[70] *See*, *e.g.*, *ALTA Analytics*, *Inc. v. Muuss*, 75 F. Supp. 2d 773, 785 (S.D. Ohio 1999) (holding computer software system was protectable trade secret where system possessed independent value, gave owner a competitive advantage, and was subject to substantial security measures).

[71] *See*, *e.g.*, *Procter & Gamble v. Stoneham*, 747 N.E.2d 268, 275 (Ohio Ct. App. 2000) (finding raw analysis and interpretation of marketing data that is uniquely compiled and duplicable only by the expenditure of a large amount of time, money, and resources is a protectable trade secret).

[72] OHIO REV. CODE ANN. § 3345.14.

[73] 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.[74]
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.[75]
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.[76]
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.[77]
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.[78]
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.[79]

[74] 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.

[75] 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.

[76] 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.

[77] 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.

[78] 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.

[79] 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.[80]
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.[81] 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.[82]
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.[83]
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.[84]
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

[80] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[81] 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.

[82] 41 C.F.R. §§ 60-300.44, 60-741.44.

[83] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[84] 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.[85]
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.[86]
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.[87]
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.[88]
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.[89] **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

[85] 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.

[86] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[87] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[88] 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.

[89] 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).[90]
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.[91]
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.[92]

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.

[90] 29 C.F.R. § 13.5.

[91] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[92] 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**
Child Labor: List of Minor Employees & Abstract	Employers with minor employees must post an abstract of the child labor law, along with a complete list of all minors employed. These materials must be posted in plain view in a conspicuous place that is frequented by the largest number of minor employees, and to which all minor employees have access.[93]
Fair Employment Practices: Nondiscrimination Notice	Employers with four or more employees must post notice in a conspicuous place concerning the protections of the Ohio Civil Rights Act.[94]
Human Trafficking Resource Center Hotline (Optional)	While not required, the "Human Trafficking: Ohio's Tragic Reality" posters are encouraged for certain industries, including highway truck stops, hotels, adult entertainment establishments, beauty salons, agricultural labor camps, hospitals, urgent care centers, massage parlors, massage spas, alternative health clinics or similar entities, fairs, and any place where there is an athletic competition for the championship of a division, conference, or league (professional or NCAA Division I) or where an athletic competition occurs at which cash prizes are awarded. Posters are created in English, Spanish, and any other language required for voting materials in any given county under the federal Voting Rights Act of 1965.[95]
Unemployment Compensation (Optional)	While not required, employers are recommended to post notice (Form JFS 55341) informing employees that the employer provides unemployment insurance coverage and how to apply for benefits.[96]
Wages, Hours & Payroll: Minimum Wage	All employers must post notice, in a conspicuous and accessible place in or about the premises, of the current minimum wage and related laws (*i.e.*, overtime and record-keeping requirements).[97]
Workers' Compensation	Each employer paying premiums into the state insurance fund or electing directly to pay compensation to the employer's injured employees or the dependents of the deceased must post notice conspicuously at all worksites. The notice must indicate proof of

[93] OHIO REV. CODE ANN. § 4109.08. This poster is available at http://com.ohio.gov/documents/laws_MLLPoster.pdf.

[94] OHIO REV. CODE ANN. §§ 4112.01(2), 4112.07. This poster is available at https://civ.ohio.gov/decisions-and-publications/informational-brochures/1-know-your-rights, and is part of a packet of notices available at http://www.odjfs.state.oh.us/forms/file.asp?id=887&type=application/pdf.

[95] OHIO REV. CODE ANN. § 5502.63(B)(2). Posters are available at http://humantrafficking.ohio.gov/campaign.html.

[96] This poster is available at http://www.odjfs.state.oh.us/forms/file.asp?id=2201&type=application/pdf.

[97] OHIO REV. CODE ANN. § 4111.09. This poster is available at https://com.ohio.gov/static/documents/2024_MW_Poster.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	coverage or that the employer has been approved to compensate workers directly. Notice must be updated annually.[98]
Workplace Safety: No Smoking Signs	Generally speaking, smoking is prohibited in Ohio workplaces.[99] Employers subject to the smoking ban must post "No Smoking" signs conspicuously, including at each entrance. All signs must include a phone number for reporting violations.[100]

3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[101]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;	At least 1 year from the date of the personnel action to which any records relate.

[98] OHIO REV. CODE ANN. § 4123.83. Notice will be furnished at least annually by the state bureau of workers' compensation. Employers may need to create their own form to satisfy this posting requirement or may be able to use notice provided by an insurer.

[99] OHIO REV. CODE ANN. §§ 3794.02, 3794.03.

[100] OHIO REV. CODE ANN. § 3794.06. This poster is available at http://www.odjfs.state.oh.us/forms/file.asp?id=887&type=application/pdf.

[101] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[102]	
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.[103]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[104]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[105]	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

[102] 29 C.F.R. § 1627.3(b).

[103] 29 C.F.R. § 1627.3(b).

[104] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[106]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[107]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[108]	At least 6 years after documents are filed or would have been filed but for an exemption.

[106] 29 C.F.R. § 1602.7.

[107] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[108] 29 U.S.C. § 1027.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[109]	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.[110]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period;	3 years from the last day of entry.

[109] 29 C.F.R. § 1620.32(a).

[110] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[111] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[112]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code;	3 years from the last day of entry.

[111] 29 C.F.R. §§ 516.2, 516.5.

[112] 29 C.F.R. § 516.28.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[113]	
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[114]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[115]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period;	At least 3 years.

[113] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[114] 29 C.F.R. § 516.5.

[115] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from*	

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	FLSA) an employer does not need to keep a record of actual hours worked, provided that: • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[116]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment;	At least 4 years after the date the tax is due or paid, whichever is later.

[116] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[117]	
Immigration	Employers must retain all completed Form I-9s.[118]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[119]	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.

[117] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[118] 8 C.F.R. § 274a.2.

[119] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[120]	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.[121]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

[120] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer's trade or business, and the amount of the cash remuneration paid for those services.[122]	
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[123]	At least 30 years.
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests;	Duration of employment plus 30 years.

[122] 26 C.F.R. § 31.6001-4.

[123] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[124]	
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[125]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[126]	5 years following the end of the calendar year that the record covers.

[124] 29 C.F.R. § 1910.1020(d).

[125] 29 C.F.R. § 1910.1020(d).

[126] 29 C.F.R. §§ 1904.33, 1904.44.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[127]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search;	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.

[127] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[128]	
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.[129]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor.	3 years.

[128] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[130]	
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to	During the course of the covered contract as well as after the end of the contract.

[130] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	relieve a contractor from its reinstatement obligation.[131]	
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.[132]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and	At least 3 years from the completion of the work records containing the information.

[131] 29 C.F.R. § 13.25.

[132] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a copy of the contract.[133]	
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.[134]	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**
Child Labor: Hours of Work	*Every employer that employs minors must maintain written records for each minor showing:* • name, address, and occupation; • number of hours worked each day of the week; • hours of beginning and ending work; • hours of beginning and ending meal periods; and • amount of wages paid each pay period.[135]	2 years.
Fair Employment Practices: Affirmative Action—Apprenticeship Programs	*Each sponsor of an apprenticeship program must keep records, including:* • details of recruitment and selection activities; • all applications; • summary of each applicant's qualifications and assessment results, including a summary of interview responses;	5 years.

[133] 29 C.F.R. § 4.6.

[134] 41 C.F.R. § 50-201.501.

[135] OHIO REV. CODE ANN. § 4109.11.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a copy of each notice of elimination from an eligibility pool or from the program; • a copy of every registered apprentice agreement; • a history of actions affecting the status of every apprentice in the program, including job assignment, promotion, demotion, lay-off, termination, rates of pay and other forms of compensation, conditions of work, hours of work, and, separately, hours of training provided; • a statement of its affirmative action plan; • if selecting apprentices through an eligibility pool or "alternative" method, evidence that its qualification criteria bear a statistically significant relationship to good performance in an apprenticeship program; and • any other records that may be pertinent to determining compliance, as may be required by the council office. *The above records must be maintained in a manner that permits identification of minority and female participants.*[136]	
Public Works Contracts	*Each contractor and subcontractor must maintain accurate payroll records containing the following information with respect to each employee:* • name, current address, and Social Security number; • number of hours worked during each day of the pay period and each weekly total; • hourly rate of pay; • employee's job classification; • fringe payments; • deductions from wages; and • chronological listing of all hours worked on all projects by each employee employed on the public improvement throughout the project. The payroll records must cover all disbursements of wages to the contractor's or subcontractor's employees to whom they are required to pay not less that the prevailing rate of wages. If an employer performs both prevailing wage work and nonprevailing wage work, the records must be capable of being segregated.[137]	At least 1 year following the completion of the project.

[136] OHIO ADMIN. CODE 5101:11-3-02(D).

[137] OHIO REV. CODE ANN. §§ 4115.071, 4115.07; OHIO ADMIN. CODE 4101:9-4-21.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Unemployment Compensation	*The employer must maintain the following records with respect to each employee:* • name, address, and Social Security number; • number of hours worked; • wages paid; • amount of gross earnings for each pay period before deductions; • date of payment and the amount of wages paid with respect to each separate pay period; • date(s) on which services were performed; • dates hired, rehired, or returned to work after temporary layoff; • date of and reason for termination; • time lost due to being unavailable for work; • character of the services performed; • division between covered and excluded employment, when both appear in the same pay period; and • cash value of any remuneration in lieu of or in addition to cash wages. *In addition, the following documents must be available for the director to perform audits:* • general ledgers and charts of accounts; • federal income tax returns; • Social security reports (Form 941); • federal unemployment tax act reports (Form 940); • other reports to the Internal Revenue Service (Forms W-2, W-3, 1096, 1099); • individual earning records; • payroll summaries; • contribution and wages reports made to the department; • workers' compensation reports; • city and state payroll reports; • check registers, trial balances, balances sheets, income statements; • master vendor lists; and • cancelled checks, bank statements, and combined cash journals.	Not less than 5 years after the calendar year in which the remuneration was paid.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	The employer should keep a record of all employees, whether qualified for benefits or not, and the hours worked and wages paid.[138]	
Wages, Hours & Payroll	*All employers must make and keep records of the following for each employee:* • name, address, and occupation; • pay rate and amount of pay each pay period; and • hours worked for each day and work week.[139]	Not less than 3 years.
Workers' Compensation	*All employers that must comply with the workers' compensation law must keep, maintain, and make available for inspection, records showing:* • all injuries and occupational diseases resulting in 7 days or more of total disability or death;[140] • in complete detail, all wage expenditures, expenditures for payroll, and the division of such expenditures into the various divisions and classifications of the employer's business; • and all books, records, papers, and documents reflecting upon the amount and classification of the payroll expenditures of an employer must be kept available for inspection.[141]	At least 5 years after the respective times of the transactions upon which the records are based.

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*

Upon request from an employee or a person acting on behalf of the employee, an employer must provide the following information:

- name;

[138] OHIO REV. CODE ANN. § 4141.18; OHIO ADMIN. CODE 4141-23-01, 4141-23-02.

[139] OHIO REV. CODE ANN. §§ 4111.08, 4111.14(F). An employer is not required to keep a record of the time of day an employee begins and ends work on any given day. Note that an employer is not required to keep records of "hours worked for each day worked" for individuals for whom the employer is not required to keep those records under the FLSA or individuals who are not subject to state overtime requirements. OHIO REV. CODE ANN. § 4111.03.

[140] OHIO REV. CODE ANN. §§ 4123.23, 4123.24, 4123.28.

[141] OHIO ADMIN. CODE 4123-3-03, 4123-17-17.

- address;
- occupation;
- pay rate;
- hours worked for each day worked (except for individuals for whom the employer is not required to keep that information under federal law or individuals who are not subject to overtime pay requirements under section 4111.03 of the Ohio Revised Code; and
- each amount paid.

A person acting on behalf of an employee includes a certified or legally recognized collective bargaining representative, or the employee's attorney, parent, guardian, or legal custodian. The person must be specifically authorized by the employee in order to make such a request from the employer.

The information must be provided within 30 business days after the employer receives the request, unless the employer and employee or person acting on behalf of the employee agree to an alternative time period, or the 30-day period would cause a hardship on the employer under the circumstances. In that case, the employer must provide the information as soon as practicable.[142]

The employer may require that the employee or person acting on behalf of the employee provide a written request that is signed by the employee, notarized, and reasonably specifies the particular information sought. If a representative is seeking the information on behalf of an employee, the employer also may require such a particularized written request, signed by the employee and notarized.[143]

As mentioned in Table 8 in **3.1(b)(ii)**, Ohio employers must also maintain, for each employee, a record of the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid.[144]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

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

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

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

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

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)**.

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[142] OHIO REV. CODE § 4111.14(G).

[143] OHIO REV. CODE § 4111.14(G)(4).

[144] OHIO REV. CODE ANN. § 4111.14(G); *see also* OHIO REV. CODE ANN. § 4111.14(F).

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Ohio employers can establish and enforce a drug-testing policy, drug-free workplace policy, or zero-tolerance drug policy. The law does not affect the workers' compensation administrator's authority to grant rebates or discounts on premium rates to employers that participate in a drug-free workplace program established per state rules.[145]

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[146]

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

Ohio has legalized both recreational and medical marijuana use.

Under the Ohio's marijuana laws, employers can refuse to hire, discharge, discipline, or otherwise take an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of marijuana. Moreover, an aggrieved individual cannot file a lawsuit against an employer for doing so.[147] The laws do not prevent employers from establishing and enforcing a drug-testing policy, drug-free workplace policy, or zero-tolerance drug policy.[148] Additionally, the medical marijuana law says employers do not violate Ohio's fair employment practices law if they discharge, refuse to hire, or otherwise discriminate against a person based on medical marijuana use if such use violates the employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating medical marijuana use.[149]

Employers are not required to permit or accommodate an employee's use, possession, or distribution of marijuana.[150] A person who is discharged because of marijuana use is considered discharged for just cause if use violates an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating marijuana use.[151]

An employee or dependent is not entitled to receive workers' compensation benefits if the employee's injury or occupational disease is caused by the employee being intoxicated, or under the influence of marijuana if being intoxicated or under the influence was the proximate cause of the injury.[152]

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[145] OHIO REV. CODE ANN. § 3796.28. For workers' compensation drug-testing requirements and procedures, see OHIO REV. CODE ANN. § 4123.54.

[146] 21 U.S.C. §§ 811-12, 841 *et seq*.

[147] OHIO REV. CODE ANN. §§ 3780.35(A)(2), (5) (recreational marijuana); 3796.28(A)(2), (5) (medical marijuana).

[148] OHIO REV. CODE ANN. §§ 3780.35(A)(3); 3796.28(A)(3).

[149] OHIO REV. CODE ANN. § 3796.28(C) (referencing OHIO REV. CODE ANN. § 4112.02 (A), (D), (E)).

[150] OHIO REV. CODE ANN. §§ 3780.35(A)(1) (recreational marijuana); 3796.28(A)(1) (medical marijuana)..

[151] OHIO REV. CODE ANN. §§ 3780.35(B) (recreational marijuana); 3796.28(B) (medical marijuana).

[152] OHIO REV. CODE ANN. § 4123.54.

3.2(d) *Data Security Breach*

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

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

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[153]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[154]

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

Under Ohio law, when a covered entity discovers or is notified of a data security breach, the entity must provide notice to any resident of the state whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person.[155]

Covered Entities & Information. Ohio's data security breach law covers any person who owns or licenses computerized data that includes personal information. The protections of the law may not be waived.

A data security breach occurs when there is "unauthorized access to and acquisition of computerized data that compromises the security or confidentiality of personal information owned or licensed" by a covered entity, which "causes, reasonably is believed to have caused, or reasonably is believed will cause a material risk of identity theft or other fraud to the person or property" of an Ohio resident.[156] However,

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

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

[155] OHIO REV. CODE ANN. § 1349.19.

[156] OHIO REV. CODE ANN. § 1349.19(A)(1)(a).

acquisitions of personal information pursuant to a search warrant, subpoena, or duty from a court or regulatory state agency are not a breach.[157]

Personal information is defined as an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license or state identification card number; or
- account number or credit or debit card number, along with any required security code, access code, or password that would permit access to the account.[158]

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

- written notice;
- electronic notice, if it is the covered entity's primary method of communication with the affected individual;
- telephone notice; or
- substitute notice if,
  - the covered entity demonstrates that—
    - the cost of providing notice would exceed $250,000;
    - the affected class of persons to be notified exceeds 500,000; or
    - the covered entity does not have sufficient contact information.[159]

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for the affected resident;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media to the extent that the cumulative total of the readership, viewing audience, or listening audience of all of the outlets so notified equals or exceeds 75% of the population of Ohio.[160]

If the covered entity that is required to provide notice has 10 employees or fewer and demonstrates that the cost of providing notice will exceed $10,000, substitute notice for smaller entities may be used. Substitute notice for smaller entities requires all of the following:

[157] OHIO REV. CODE ANN. § 1349.19(A)(1)(b)(ii).

[158] OHIO REV. CODE ANN. § 1349.19(A)(7).

[159] OHIO REV. CODE ANN. § 1349.19(E).

[160] OHIO REV. CODE ANN. § 1349.19(E)(4).

- notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the business entity is located; the advertisement must be large enough to cover at least 1/4 of a page and must be published at least once a week for three consecutive weeks;
- conspicuous posting of the notice on the website of the individual or commercial entity, if the individual or commercial entity maintains a website; and
- notification to major media outlets in the geographic area in which the individual or commercial entity is located.[161]

Timing of Notice. Notice must be given in the most expedient time possible, but not later than 45 days following the discovery or notification of the breach. However, notification may be delayed if:

- a law enforcement agency determines that the notification will impede a criminal investigation or jeopardize homeland or national security;
- a covered entity needs time to determine the scope of the breach;
- a covered entity needs time to restore the reasonable integrity of the data system; or
- a covered entity needs time to determine which residents' personal information was accessed and acquired.[162]

Additional Provisions. If more than 1,000 individuals at a single time will be notified of a security breach, the covered entity must also notify without unreasonable delay all nationwide consumer reporting agencies of the timing, distribution, and content of the disclosures.[163]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[164] 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.

[161] OHIO REV. CODE ANN. § 1349.19(E)(5).

[162] OHIO REV. CODE ANN. § 1349.19(B)(2).

[163] OHIO REV. CODE ANN. § 1349.19(G).

[164] 29 U.S.C. § 218(a).

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

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[165]

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.[166]

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.[167]

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.[168] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

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

The minimum wage in Ohio is $10.45 per hour. The minimum wage applies to employees of businesses with annual gross receipts of $385,000 per year. The minimum wage and annual gross receipts requirements are increased every January 1st based on the increase in the cost of living, *e.g.*, on January 1, 2025, they will increase to $10.70 and $394,000, respectively.[169]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips, the minimum cash wage that a tipped employee must be paid is 50% of the minimum wage. An employer may take a maximum tip credit of up to 50% of the minimum wage. Note that if an employee does not make 50% of the minimum wage in tips per hour, the employer must make up the difference between the wage actually made and the minimum wage. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[170] For 2024, the Department of Commerce announced that the minimum cash wage and maximum tip credit will not align evenly. Instead, the former will be $5.25 and the latter will be $5.20. A similar occurrence happened in 2019 when rather than the figures being identical or being one cent different the department rounded the minimum cash wage, like the minimum wage, to the nearest nickel, resulting in the rate difference. However, in 2025, both rates will be $5.35.

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[165] 29 U.S.C. § 206.

[166] 29 U.S.C. §§ 203, 206.

[167] 29 U.S.C. § 3(m)(2)(B).

[168] 29 U.S.C. § 207.

[169] OHIO CONST. art. II, § 34a.

[170] OHIO CONST. art. II, § 34a; OHIO REV. CODE ANN. §§ 4111.02, 4111.14.

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

Ohio's minimum wage law expressly adopts the federal FLSA's definition of *employee*, and thus, any incorporated exemptions and exclusions. Further, Ohio's definition of *employee* for minimum wage purposes does not include an individual employed in or about the property of the employer or individual's residence on a casual basis.[171]

3.3(c) *State Guidelines on Overtime Obligations*

As under federal law, nonexempt employees must be paid one-and-a-half times their regular rate for all hours worked over 40 in a week.[172] Employers must accurately capture, record, and retain copies of employee records to ensure they are properly compensating employees for any time worked over 40 hours in a week. Otherwise, an employer will be liable to employees for "the full amount of the overtime wage rate, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees as may be allowed by the court."[173]

Employers are not required to pay the overtime wage rate for time employees spend:

- walking, riding, or traveling to and from where employees perform their principal employment activities;
- in activities that are preliminary to or postliminary to employees' principal employment activities; and
- in activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours.

However, the activities listed above do not apply if employees engage in them during the regular workday, during prescribed hours, or at the specific direction of their employer. The above list also does not apply if employees perform the activities pursuant to an express provision of a written or unwritten contract between employees or their agent or collective bargaining representative and the employer. Further, the list does not apply if employees perform the activities pursuant to a custom or practice applicable to where the employee works and the custom or practice is not inconsistent with a contract described in the prior sentence.[174]

3.3(d) *State Guidelines on Overtime Exemptions*

Ohio's overtime statute excludes from the definition of *employee*, among others, any individual employed:

- by the United States;
- as a babysitter in an employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;
- to deliver newspapers to consumers;

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171 OHIO CONST. art. II, § 34a.

172 OHIO REV. CODE ANN. § 4111.03.

173 OHIO REV. CODE ANN. § 4111.10(A).

174 OHIO REV. CODE ANN. § 4111.031.

- as an outside salesperson compensated by commissions or employed in a *bona fide* executive, administrative, or professional capacity as defined by the FLSA;
- to work or provide personal services of a charitable nature in a hospital or health institution where compensation is not sought or contemplated;
- as a member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of the state;
- by a 501(c)(3) camp or recreational area for children under 18 years old; and
- by the house of representatives or senate.[175]

Ohio defines "executive," "administrative," and "professional" employees according to the FLSA. Additionally, overtime provisions do not apply to an outside salesperson compensated by commissions, as defined in the FLSA. Generally, employers must pay employees overtime in the manner and methods provided in, and subject to the exemptions of, FLSA section 13.[176]

Ohio law contains no express exemption for commissioned sales employees. But, again, because employers must pay overtime in accordance with the FLSA—including the exemptions found in FLSA section 7—Ohio law therefore recognizes the retail/service establishment commissioned sales employee exemption via federal law.[177]

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.[178] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[179]

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[175] OHIO REV. CODE ANN. § 4111.03(D)(3)(a)-(h).

[176] OHIO REV. CODE ANN. §§ 4111.03, 4111.14; *see also Handford v. Buy Rite Office Prods., Inc.*, 3 N.E.3d 1245 (Ohio Ct. App. 2013) ("R.C. 4111.03(A) provides that an employer must pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate, for hours worked in excess of 40 hours in one workweek, unless the employee is exempt under section 7 and section 13 of the Fair Labor Standards Act of 1938 ('FLSA'). If an FLSA exemption applies, then the employee is not entitled to overtime pay under R.C. 4111.03(A).").

[177] OHIO REV. CODE ANN. §§ 4111.03, 4111.14; *see also Handford*, 3 N.E.3d 1245.

[178] 29 C.F.R. § 785.19.

[179] 29 C.F.R. § 785.18.

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.[180] 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.[181] 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.[182] Exemptions apply for smaller employers and air carriers.[183]

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.[184] Lactation is considered a related medical condition.[185] 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.[186] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

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

There are no generally applicable meal or rest period requirements for adults in Ohio. Employers covered by the FLSA should consult the federal provisions.

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

In Ohio, minors employed for five or more hours must receive a rest period of at least 30 minutes. The rest period need not be paid and does not need to be included in the computation of hours worked by

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180 29 U.S.C. § 218d.

181 29 U.S.C. § 218d(b)(2).

182 29 U.S.C. § 218d(a).

183 29 U.S.C. § 218d(c), (d).

184 42 U.S.C. § 2000gg–1.

185 29 C.F.R. § 1636.3.

186 29 C.F.R. § 1636.3.

the minor. The rest period requirement does not apply to a minor who has received a high school diploma or equivalent, who is a head of household, or who is a parent contributing to the support of a child.[187]

Additionally, employers must keep a complete list of all minors employed at that establishment, as well as a printed abstract of the child labor laws that includes the rest period provisions. These provisions must be posted in plain view in a conspicuous place which is frequented by the largest number of minor employees and to which all minor employees have access.[188]

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

Violations of the meal period requirements for minor employees constitute a misdemeanor.[189] Moreover, although the state labor department can enforce these provisions administratively or via the courts, the law specifically states it does not limit the right of other persons to make complaints for child labor law violations.[190]

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

An individual is entitled to breast feed their baby in any location of a place of public accommodation where the individual otherwise is permitted.[191] Although the law does not specifically mention employers, it can be interpreted to include places of employment.[192]

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.[193] 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."[194]

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

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[187] OHIO REV. CODE ANN. §§ 4109.06, 4109.07(C).

[188] OHIO REV. CODE ANN. § 4109.08. This poster is available at http://com.ohio.gov/documents/laws_MLLPoster.pdf.

[189] OHIO REV. CODE ANN. § 4109.99.

[190] OHIO REV. CODE ANN. § 4109.13.

[191] OHIO REV. CODE ANN. § 3781.55.

[192] *See* OHIO REV. CODE ANN. § 3781.55.

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

[194] *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").

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*

Ohio law does not include provisions addressing the general hours of work or what is considered compensable time. Generally, 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. Although Ohio law is generally silent on these issues, at least one state appellate court held that time spent merely being on call, with nothing more, is not compensable.[195]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[196] 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.[197] 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*

Ohio law, like the FLSA, places restrictions on the type of occupations and jobs minors may perform. In Ohio, any person younger than 18 years of age is regarded as a minor.[198]

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

General Restrictions. The Ohio restrictions on the types of jobs prohibited to minors, as set forth by age limitation, are described below in Table 9.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 18	*In Ohio, minors under age 18 cannot be employed in any occupation found hazardous or detrimental to their health and well-being. Such hazardous or detrimental occupations include:*

[195] *Doneworth v. Blue Chip 2000 Commercial Cleaning, Inc.*, 1998 WL 387531 (Ohio Ct. App. July 10, 1998) (concluding that time spent on-call, wearing a beeper—sometimes 24 hours a day—is not compensable).

[196] 29 C.F.R. §§ 570.36, 570.50.

[197] 29 C.F.R. § 570.6.

[198] OHIO REV. CODE ANN. § 4109.01.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• meat slaughtering, packing, processing, or rendering; • operation of power-driven machinery and hoisting apparatus; • manufacturing of brick, tile, or kindred products; • manufacturing chemicals; • manufacturing or storing explosives; • exposure to radioactive substances or ionizing radiations; • coal mining, or any other kind of mining; • logging and sawmill operations; • certain motor vehicle occupations; • maritime and longshoreman occupations; • railroad occupations; • excavation; and • roofing, wrecking, demolition, and ship-breaking. Specific exceptions and exemptions apply for all of the above restrictions.[199]
Under Age 16	*In addition to the above, minors age 14 and 15 in Ohio cannot be employed in:* • manufacturing, mining, or processing occupations (subject to limited exceptions); • work in workrooms where goods are manufactured, mined, or otherwise processed; • public messenger service; • operating power-driven machinery or hoisting apparatus; • transportation of persons or property by rail, highway, air, on water, pipeline, or other means; • communications and public utilities; • construction (including repair); • warehousing or storage; • any of the following occupations in a retail food service, or in a gasoline service establishment: ▪ work performed in or about boiler or engine rooms; ▪ work in connection with maintenance or repair of the establishment, machines, or equipment; ▪ outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes; ▪ cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;

[199] OHIO. REV. CODE ANN. § 4109.05; OHIO ADMIN. CODE 4101:9-2-04 to 4101:9-2-22.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	▪ occupations that involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, cutters, and bakery-type mixers; ▪ work in freezers and meat coolers and all work in preparation of meats for sale (except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas); ▪ loading and unloading goods to and from trucks, railroad cars, or conveyors; ▪ all occupations in warehouses except office/clerical work; and ▪ work in connection with cars and trucks involving the use of pits, racks, or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring; • any other occupation found and declared to be hazardous; and • various hazardous agricultural occupations.[200] **Exceptions.** Ohio's child labor law restrictions do not apply to various minors, *e.g.*, minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence, or minors who are participating in an approved vocational program.[201]

Restrictions on Selling or Serving Alcohol. The following restrictions apply to minors working in establishments that sell or serve alcohol:

- a person under age 21 may not handle intoxicating liquor, except that a person age 18 or older who is employed by a holder of a permit under the Liquor Control law may handle or sell beer or intoxicating liquor in sealed containers in connection with wholesale or retail sales;
- persons age 19 or older employed by a permit holder may handle intoxicating liquor in open containers when acting in the capacity of a server in a hotel, restaurant, club, or night club;
- persons under age 21 may not sell intoxicating liquor across a bar; and
- any person employed by a permit holder may handle beer or intoxicating liquor in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking,

[200] OHIO ADMIN. CODE 4101:9-2-02, 4101:9-2-03.

[201] OHIO REV. CODE ANN. § 4109.06.

bagging, loading, or unloading, and may handle beer or intoxicating liquor in open containers in connection with cleaning tables or handling empty bottles or glasses.[202]

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

Ages 16 & 17. In Ohio, minors ages 16 and 17 who are required to attend school cannot work:

- after 11:00 P.M. on any night preceding a school day; or
- before 7:00 A.M. on any school day.
  - *Exception*: Minors can be employed after 6:00 A.M. if they were not employed after 8:00 P.M. the previous night.[203]

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

- more than three hours on a school day;
- more than eight hours on a nonschool day or a school day preceding a nonschool day;
- more than 18 hours a week while school is in session;
- during school hours;
  - *Exception*: Minors can work if employment is incidental to a program of vocational cooperative training, work study, or other work-oriented programs with the purpose of educating students.
- more than 40 hours a week in a week that school is not in session; or
  - *Exception*: Minors can work if employment is incidental to a program of vocational cooperative training, work study, or other work-oriented program with the purpose of educating students (or, if the employer is not subject to the FLSA, 40 hours in a school week if their attendance at school is not compulsory).
- between 7:00 P.M. and 7:00 A.M.
  - *Exception*: Minors can work until 9:00 P.M. from June 1 to September 1 and during any school holiday of five or more days.[204]

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

Ohio's child labor time and hour restrictions do not apply to minors who:

- operate properly guarded machines as students in a school manual training department under personal supervision by an instructor;
- are involved in approved vocational programs;
- participate in nonprohibited occupations in plays, pageants, or concerts produced by outdoor historical drama corporations, professional traveling theatrical productions, concert tours,

[202] OHIO REV. CODE ANN. § 4301.22.

[203] OHIO REV. CODE ANN. § 4109.07.

[204] OHIO REV. CODE ANN. § 4109.07.

appearance tours as professional motion picture stars, or as actors or performers in motion pictures, radio, or television;

- are true volunteers with parental consent in performances by churches, schools, or academies, charitable concerts or entertainments, or charitable or religious institutions;
- are employed by the family in nonprohibited occupations;
- deliver newspapers;
- mow lawns or shovel snow;
- are head of a household, parents, or those who have received a high school diploma, approved certificate of attendance, or approved certificate of high school equivalence; and
- work on family farms, except if the minor resides in an agricultural labor camp.[205]

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

Ohio state statutes carry a web of enforcement measures to which employers must adhere. Minors of compulsory school age must present to the employer a proper age and schooling certificate as a condition of employment.[206] Before employing a minor, an employer must thoroughly review the minor's age and schooling certificate.[207] An employer may not continue to employ a minor after the minor's age and schooling certificate is void.[208] Within five days of the minor's termination of employment, the employer must notify the superintendent of schools or chief administrative officer who issued the certificate of the nonuse of the certificate.[209]

Persons aged 16 or 17 are not required to provide an age and schooling certificate as a condition of employment during summer vacation, but they must provide proof of age and a statement signed by the minor's parent or guardian consenting to the proposed employment.[210]

As noted earlier, employers also have special notice requirements (see **3.1(a)(ii)**) and record-keeping requirements (see **3.1(b)(ii)**) when they employ minors.

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

Ohio's child labor laws are enforced by the director of the state Department of Commerce or designated enforcement officials, the superintendent of public instruction or representative, any school attendance officer, any probation officer, the director of health or representative, and representative of a local department of health.[211] Employers must allow enforcement officials to observe the conditions under which minors are employed and to make reasonable inquiry of minors or persons supposed by such official to be younger than 18 with respect to their age, employment, or schooling.[212] The director of the

[205] OHIO REV. CODE ANN. § 4109.06; OHIO ADMIN. CODE 4101:9-2-03.

[206] OHIO REV. CODE ANN. § 4109.02.

[207] OHIO REV. CODE ANN. § 4109.03.

[208] OHIO REV. CODE ANN. § 4109.03.

[209] OHIO REV. CODE ANN. § 4109.03.

[210] OHIO REV. CODE ANN. § 4109.02.

[211] OHIO REV. CODE ANN. §§ 121.08, 4109.01, 4109.05, and 4109.13.

[212] OHIO REV. CODE ANN. § 4109.03.

Department of Commerce or representative must have access to and may copy information from an employer's time book or records.[213]

The superintendent of a public school or the chief administrative officer issuing age and schooling certificates may revoke such certificates on account of noncompliance with stipulations, physical condition of the child, or other sufficient cause, or for failure to attend part-time schools or classes as required. Any enforcement official may require an employer to prove an employee is age 18 or older who does not have an age and schooling certificate on file and to terminate any minor's employment if the minor is believed to be younger than age 14, until proof of lawful age is furnished.[214]

An employer's violation of most aspects of the state's child labor laws is a minor misdemeanor. Employers continuing to employ any minor in violation of child labor provisions after written notification by any enforcement official are guilty of a minor misdemeanor for each day the violation continues.[215] Further, a reoccurring violation of the following provisions is a third degree misdemeanor:

- work-hours requirements;
- wage-agreement requirements;
- enforcement;
- employment certificate requirements; and
- employing a minor after age and schooling certificate is void.[216]

An employer's violation of hazardous occupations prohibitions is a third-degree misdemeanor.[217]

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).[218]

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:

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[213] OHIO REV. CODE ANN. § 4109.11.

[214] OHIO REV. CODE ANN. §§ 3331.09, 3331.12, 4109.03, and 4109.08.

[215] OHIO REV. CODE ANN. §§ 4109.99, 4109.12.

[216] OHIO REV. CODE ANN. § 4109.99.

[217] OHIO REV. CODE ANN. § 4109.99.

[218] 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").

> 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.[219]

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.[220]

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.[221] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[222]

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.[223] As part of the

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

[220] 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.

[221] 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/.

[222] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[223] 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;

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.[224]

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.[225]

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

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[226]

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

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

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

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

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

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

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

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages

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Prepaid Disclosures (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[224] 12 C.F.R. § 1005.18.

[225] *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.

[226] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

below the highest applicable minimum wage rate or cuts into overtime premium pay.[227] 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.[228] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[229] tools and equipment,[230] and business transportation and travel.[231] 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.[232]

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;[233]
- 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);[234]
- 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);[235]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or

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[227] *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).

[228] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[229] 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.

[230] 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).

[231] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[232] 29 C.F.R. § 778.217.

[233] 29 C.F.R. § 531.38.

[234] 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*.

[235] 29 C.F.R. § 531.40.

  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[236]

- 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;[237] 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.[238]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[239]

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.[240] 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.[241]

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

[236] 29 C.F.R. § 531.40.

[237] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[238] 29 C.F.R. § 825.213.

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

[240] 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.

[241] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[242]

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.[243]

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.[244]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid by cash or check. Additionally, paychecks must be convertible into cash on demand at full face value. No Ohio laws or regulations prevent payment by direct deposit or payroll debit cards to private-sector employees.

An employee's *wage* means "the net amount of money payable to the employee, including any guaranteed pay or reimbursement for expenses."[245] Although the Ohio Supreme Court has not explicitly determined what payments could be encompassed under this definition, the Ohio Fifth District Court of Appeals has addressed commissions under Ohio Revised Code section 4113.15. In *Haines & Co., Inc. v. Stewart*, the court stated that "the definition of the word wage as used in Section 4113.15 does not include commissions, which are not guaranteed pay or reimbursement for expenses."[246]

While not regarded as "wages" under the decision in *Haines & Co.*, there is, nevertheless, conflicting case law in Ohio on whether an employee forfeits their right to commissions upon separation of employment; these decisions generally pivot on the degree to which the contract language is clear and unambiguous.[247]

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[242] 29 C.F.R. § 531.36.

[243] 29 C.F.R. § 531.37.

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

[245] OHIO REV. CODE ANN. § 4113.15(D).

[246] 2001 WL 166465, at *1 (Ohio Ct. App. Feb. 5, 2001) (commissions earned and vested prior to an employee's separation from employment cannot be forfeited despite contract language). While the Fifth District in *Haines & Co.* affirmed that an employer has no right to withhold commissions that were earned under the contract and had vested prior to termination, it also found that Ohio Revised Code section 4113.15 was applicable only to employment situations where the wage amount is undisputed. 2001 WL 166465, at **1-2. The court stated that section 4113.15 was not applicable "because a legitimate dispute exists between the parties as to the payment of the accrued commissions at termination." 2001 WL 166465, at *1; *see also Baum v. Intertek Testing Servs*., 2013 WL 6492372, at **4-5 (N.D. Ohio Dec. 10, 2013) (confirming that commissions are not encompassed by the term "wages," as defined by the statute, because they are not guaranteed pay or reimbursement for expenses).

[247] *Ullman v. May*, 72 N.E.2d 63 (Ohio 1947) (holding that written contracts providing that employees not entitled to commissions after employment ended were fully enforceable when entered into by competent parties absent

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

Generally speaking, Ohio requires wage payments on a semi-monthly basis, at a minimum. On or before the first day of each month, an employer must pay all wages earned by employees during the first half of the preceding month, ending with the 15th day of the month. On or before the 15th day of each month, an employer must pay all wages earned by employees during the last half of the preceding calendar month. An employee absent on payday must be paid on demand.[248]

That being said, an employer may pay wages more frequently, either daily or weekly. In addition, employers may pay wages at longer time intervals: (1) when it is customary to a given trade, profession, or occupation; (2) if the employer and employee have agreed to a longer wage payment schedule by written contract; or (3) a particular time lapse is set by operation of law.[249]

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

Ohio law does not specify when final wages must be paid to employees who have left employment, either voluntarily or involuntarily. The only available law on the subject of wage payment addresses payment of wages in general, and requires that wages for the first half of the month be paid by the first day of the next month, and wages for the last half of the month be paid by the 15th of the next month. It is recommended that employers follow these requirements when paying final wages.[250]

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

Ohio has no express requirements related to wage statements, notice of wage payments, or to record keeping with respect to wage payments. 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*

Ohio state 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.

At the local level, both Cincinnati and Toledo have wage transparency ordinances. In both Cincinnati and Toledo, an employer must, upon reasonable request, provide the pay scale for a position to an applicant who has received a conditional offer of employment for the position by the employer.[251]

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fraud or bad faith); *Lawrie v. CBS Pers. Servs., L.L.C.*, 2005 WL 2001503 (Ohio Ct. App. Aug. 22, 2005) (finding forfeiture upon termination where the compensation agreement was a contractual agreement which unambiguously gave the employer the right to change its policy of paying terminated employees their commissions earned on sales made pre-termination, a right which the employer exercised when it orally informed the employee of the policy change a year before his termination); *see also Nichols v. Waterfield Fin. Corp.*, 577 N.E.2d 422 (Ohio Ct. App. 1989).

[248] OHIO REV. CODE ANN. § 4113.15.

[249] OHIO REV. CODE ANN. § 4113.15.

[250] *See* OHIO REV. CODE ANN. § 4113.15.

[251] CINCINNATI, OHIO CODE OF ORDS. § 804-03; TOLEDO, OHIO MUN. CODE § 768.02.

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

There are no general notice requirements under Ohio law regarding making a change to regular paydays or an employee's rate of pay. However, it is recommended that employees receive advance written notice before a change occurs.

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

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

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

Requirements for Deductions. State law does not include generally applicable requirements, but with respect to employee benefits, an employer that agrees to withhold authorized deductions for benefits must pay the deducted amounts to the appropriate person, organization, or agency within 30 days of the close of the pay period.[252]

Permissible Deductions. An employer may deduct from wages if:

- required or permitted by state or federal law;
- made pursuant to a written agreement to provide an employee fringe benefits;[253] or
- the employee authorizes the deduction(s).

The term *fringe benefits* "includes but is not limited to health, welfare, or retirement benefits."[254] Employees also may authorize deductions for purchasing savings bonds or stock, making charitable contributions, making deposits to a credit union or other savings plan, or repaying a loan or other obligation.[255]

The term *wage* refers to the "net amount of money payable to an employee, including any guaranteed pay or reimbursement for expenses" less any tax withholdings, deductions for fringe benefits, or other authorized deductions.[256]

Prohibited Deductions. An employer cannot deduct from wages for wares, tools, or machinery destroyed or damaged, unless there is an express contract with the employee.[257] Nor may an employer require an applicant to pay the cost of a medical examination that is required as a condition of employment.[258]

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[252] OHIO REV. CODE ANN. § 4113.15.

[253] OHIO REV. CODE ANN. § 4113.15; *see also Oil, Chem. & Atomic Workers Int'l Union, Local Union No. 3-689 v. Martin Marietta Energy Sys., Inc*., 646 N.E.2d 883 (Ohio Ct. App. 1994).

[254] OHIO REV. CODE ANN. § 4113.15(D)(2).

[255] OHIO REV. CODE ANN. § 4113.15(D)(3).

[256] OHIO REV. CODE ANN. § 4113.15(D)(1). In the minimum wage law, *wage* is defined to include "the reasonable cost to the employer of furnishing to an employee board, lodging, or other facilities," where customarily furnished by the employer to employees. These costs cannot be considered as part of wages, however, if excluded under a valid collective bargaining agreement. OHIO REV. CODE ANN. § 4111.01.

[257] OHIO REV. CODE ANN. § 4113.19.

[258] OHIO REV. CODE ANN. § 4113.21.

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

Debt Collection. Under Ohio statute, an employee's personal earnings, owed for services, are exempt from execution, garnishment, or attachment in an amount equal to the greater of the following:

- 75% of disposable earnings; or
- 30 times the federal minimum wage if paid weekly, 60 times the minimum wage if paid biweekly, 65 times if paid semi-monthly, or 130 times if paid monthly.[259]

Except to satisfy child-support orders, certain income is exempt from execution, garnishment, or attachment. These exemptions apply to: (1) pension, annuity, or retirement benefits; (2) workers' and unemployment compensation; and (3) payments for aid to dependent children, general assistance, and disability assistance.[260]

Orders of Support. All child-support orders issued or modified by a court or a child-support enforcement agency (CSEA) must include an order for income withholding or other means of generating immediate support from the employee/obligor. Amounts withheld may not exceed the limits established by the federal Consumer Credit Protection Act.[261]

Income subject to withholding for child support includes "any form of monetary payment," such as:

- personal earnings;
- workers' compensation payments;
- certain unemployment benefits;
- pensions, annuities, and retirement benefits;
- allowances;
- disability or sick pay;
- insurance proceeds;
- lottery prize awards;
- federal, state, or local government benefits to the extent that the benefits can be withheld or deducted under the law;
- any form of trust fund or endowment;
- lump-sum payments; and
- any other payment in money.[262]

[259] OHIO REV. CODE ANN. § 2329.66(A)(13).

[260] OHIO REV. CODE ANN. § 2329.66(A)(10).

[261] OHIO REV. CODE ANN. §§ 3121.02, 3121.032.

[262] OHIO REV. CODE ANN. § 3121.01(D).

Withholding from unemployment benefits to satisfy child-support obligations is limited to 50% of the benefits.[263]

Under Ohio law, withholding for child support must begin with the first pay period occurring 14 working days after the date the withholding notice was mailed to the employer. Withheld amounts include the amount specified in the order plus any arrearages owed under prior support orders, but may not exceed federal limits. Employers must send the withheld amount to the CSEA no later than seven days after the employee/obligor is paid.[264]

An employer must notify the CSEA in writing within 10 business days of any situation that occurs in which the employer ceases to pay sufficient income to comply with the administrative order (such as termination or a leave of absence without pay) and must provide the CSEA with the employee's last known address, telephone number and, if known, the name and business address of any new employer or source of income.[265]

Under Ohio law, an assignment of wages or salary is invalid except for an assignment for spousal or child support. This provision does not apply to any contract or agreement for check-off of union dues, or to any deduction from wages or salary made pursuant to a payroll deduction plan agreed upon between the employer and employee provided that the agreement is revocable by employee.[266] An employee may assign whatever portion of earnings that is needed to comply with a court order for spousal or child support.[267]

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

The Bureau of Wage and Hour Administration of the Ohio Department of Commerce is vested with the authority to enforce the state's wage and hour laws.[268] An employer is prohibited from paying or agreeing to pay wages at a rate less than that provided under the state's minimum wage and overtime provisions. Each week or portion thereof for which the employer pays any employee less than the applicable rate constitutes a separate offense as to each employer.[269]

With respect to claims for unpaid overtime, an employer that underpays an employee is liable to the employee affected for the full amount of the overtime wage rate, less any amount actually paid to the employee. The court may also award a successful plaintiff costs and reasonable attorneys' fees.[270] Any agreement between the employee and the employer to work for less than the overtime wage rate is no defense to an action. At the written request of an aggrieved employee, the Department of Commerce may take an assignment of a wage claim in trust for the assigning employee and may bring any legal action

[263] OHIO REV. CODE ANN. § 3121.07(B)(1)(b).

[264] OHIO REV. CODE ANN. § 3121.03.

[265] OHIO REV. CODE ANN. § 3121.037.

[266] OHIO REV. CODE ANN. § 1321.32.

[267] OHIO REV. CODE ANN. § 1321.33.

[268] OHIO REV. CODE ANN. § 4111.04.

[269] OHIO REV. CODE ANN. § 4111.13.

[270] OHIO REV. CODE ANN. § 4111.10.

necessary to collect the claim. If the claim prevails, the employer will be liable for any costs and reasonable attorneys' fees allowed by the court.[271]

With respect to payment of wages in general, an employee is entitled to recovery of wages that have not been paid within an appropriate amount of time.[272] Pursuant to Ohio law, an employee is entitled to liquidated damages when wages remain unpaid for 30 days beyond the regularly scheduled payday in an amount equal to 6% of the amount of wages unpaid and not disputed or $200, whichever is greater.[273] A violation of the statute is a misdemeanor in the first degree, which is punishable by a jail term of not more than 180 days.[274]

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).[275] 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.[276] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[277]

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

Ohio law does not require employers to provide fringe benefits, such as vacation pay, sick pay, severance pay, holiday pay, or any other type of benefits. 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. Such benefits must be administered uniformly in accordance with the established policy or employment agreement.

Because vacation and similar paid time off is a matter of contract or employer policy in Ohio, an employer may impose a "use-it-or-lose-it" provision or require employees to forfeit unused accrued vacation time

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[271] OHIO REV. CODE ANN. § 4111.10.

[272] OHIO REV. CODE ANN. § 4113.15(D).

[273] OHIO REV. CODE ANN. § 4113.15(B).

[274] OHIO REV. CODE ANN. §§ 2929.24(A)(1), 4113.99(A).

[275] 29 U.S.C. § 1002.

[276] 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.

[277] 490 U.S. 107, 119 (1989).

upon termination of employment. Under Ohio law, accrued but unused vacation need not be paid at termination if the contract or policy clearly and unambiguously states that vacation will not be paid on termination. Several courts have upheld provisions stating that vacation will not be paid at termination.[278]

However, Ohio courts disfavor forfeitures, and several have interpreted contract or policy ambiguities in favor of the employee. In *Straughn v. Dillard Department Store*, for instance, the court held the plaintiff was entitled to vacation pay as a deferred payment of an earned benefit, even though the employer's policy provided that sales associates who were involuntarily terminated for cause were not eligible for such payments.[279] Similarly, in *Shuler v. USA Tire, Inc*., the court held the plaintiff was due payment for "accrued" vacation on termination where the policy was silent on the issue.[280]

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*

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

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

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

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence.

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[278] *See, e.g.*, *Majecic v. Universal Dev. Mgmt. Corp.*, 2011 WL 3273964 (Ohio Ct. App. July 29, 2011) (finding the employee was not entitled to payment for vacation time where the unambiguous provision in the employer's personnel manual provided that vacation time was forfeited if not used prior to resignation or termination); *Ervin v. Oak Ridge Treatment Ctr. Acquisition Corp.*, 2006 WL 2105388 (Ohio Ct. App. June 29, 2006) (handbook policy clearly stating that paid time off (PTO) would not be paid on termination was enforceable and not void as against public policy); *Sexton v. Oak Ridge Treatment Ctr. Acquisition Corp.*, 856 N.E.2d 280 (Ohio Ct. App. 2006) (employer's PTO policy clearly precluded the employee from collecting PTO payment upon termination without regard to just cause); *Bologa v. I.H.S. Inc.*, 1999 WL 293945 (Ohio Ct. App. Mar. 17, 1999) (employment contract specifically stated that the employee had no right to payment of unused vacation time after his termination); *Winters-Jones v. Fifth Third Bank*, 1999 WL 342215 (Ohio Ct. App. May 27, 1999) (employer's policy unambiguously provided that vacation time was to be used during the employee's employment or it was lost).

[279] 1996 WL 132228 (Ohio Ct. App. Mar. 4, 1996).

[280] 1991 WL 106030 (Ohio Ct. App. June 17, 1991); *see also Fridrich v. Seuffert Constr. Co., Inc.*, 2006 WL 562156 (Ohio Ct. App. Mar. 9, 2006) (awarding vacation pay at termination where the employer's vacation policy indicated that after 10 years, an employee received four weeks of paid vacation, finding the employer's policy was based on time worked and concluding that vacation was a form of compensation for services); *Korsnak v. CRL, Inc.*, 2004 WL 2635582 (Ohio Ct. App. Nov. 18, 2004) (construing vacation as a deferred payment of an earned benefit); *Justinger v. Bishop*, 1984 WL 7279 (Ohio Ct. App. Sept. 28, 1984) (awarding vacation pay at termination in the absence of a forfeiture provision and when another employee was paid accumulated vacation at termination).

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.[281] 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).[282] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[283] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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

Couples may register as domestic partners in several localities in Ohio, including Columbus, Cleveland, Toledo, Dayton, Cincinnati, Lakewood, Franklin County, Cuyahoga County, and a few other municipalities. However, state law does not require an employee's domestic partner 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;[284]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[285]

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[281] 29 U.S.C. § 1144.

[282] 29 U.S.C. § 1161.

[283] 29 U.S.C. § 1167(3).

[284] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[285] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

- to take medical leave when the employee is unable to work because of a serious health condition;[286]
- 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.[287] 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.[288] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

Ohio 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.[289] 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*

Ohio 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

[286] 29 C.F.R. §§ 825.112, 825.113.

[287] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[288] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[289] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[290] 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 their own serious health condition, such as severe morning sickness.[291] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[292] 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 women, 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*

In Ohio, female employees affected by pregnancy, childbirth, or related medical conditions must be treated the same for all employment-related purposes—including receipt of benefits under fringe benefit programs—as other persons similar in their ability or inability to work. These guidelines apply to employers with four or more employees.[293]

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[290] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[291] 29 C.F.R. § 825.202.

[292] 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.

[293] OHIO REV. CODE ANN. § 4112.01; *Priest v. TFH-EB, Inc.*, 711 N.E.2d 1070 (Ohio Ct. App. 1998) (an employer need not provide pregnant women preferential treatment).

When an employee qualifies for leave under the employer's policy, childbearing must be considered justification for a reasonable leave of absence. The conditions applicable to their leave (other than its length) are governed by the employer's leave policy. Policies involving the start and duration of maternity leave must be construed to provide for individual capacities and the medical status of the employee.[294]

It is unlawful sex discrimination to terminate an employee who is temporarily disabled due to pregnancy or a related medical condition because there is too little (or no) maternity leave available under company policy. If the employer has no leave policy, childbearing must be considered justification for a leave of absence for a reasonable period of time. The employee must be reinstated to the employee's original position or a similar position upon expressing their intent to return in a reasonable amount of time.[295]

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*

Ohio law does not address adoptive parents leave for private-sector employers.

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*

Ohio law does not address school activities leave for private-sector employers.

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*

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

3.9(g) *Voting Time*

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

There is no federal law concerning time off to vote.

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[294] OHIO ADMIN. CODE 4112-5-05.

[295] OHIO ADMIN. CODE 4112-5-05.

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

Voters. All employees eligible to vote are entitled to time off to vote in statewide primary and general elections, although an employer has no affirmative obligation to provide leave. Moreover, there is no notice requirement for taking time off to vote in Ohio.

However, employers cannot threaten to or actually discharge an employee for taking a "reasonable" amount of time off to vote on election day, although the law does not specify what is a reasonable amount of time. An employer's failure to provide time off will not violate Ohio law unless it is intended to compel an employee to vote or refrain from voting for or against any person or question or issue submitted to the voters.

Although the law does not specifically address whether employees must be paid when taking leave, the state attorney general has stated that leave is unpaid for employees paid on a piecework, commission, or hourly basis. The opinion letter states however, that the leave needs to be paid for salaried workers as taking a few hours off on a given day does not reduce their contracted salaries.[296]

Election Officials. An employer cannot refuse to permit an employee to serve as an election official on any registration or election day. The law is not specific about whether an election official must be given paid time off. Moreover, the state attorney general opinion does not address whether payment is required if a private employee is absent from work because the employee is serving as an election official. There is no notice requirement for taking time off as an election official.[297]

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*

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

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

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

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[298] 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

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[296] OHIO REV. CODE ANN. § 3599.06; Ohio Att'y Gen., *Opinion No. 1950-2961* (Jan. 4, 1951), *available at* http://www.ohioattorneygeneral.gov/getattachment/fb287372-cc93-4cd2-9602-c755dbd15ca8/1950-2691.aspx (interpreting older version of the law).

[297] OHIO REV. CODE ANN. § 3599.06; Ohio Att'y Gen., *Opinion No. 1950-2961* (Jan. 4, 1951), *available at* http://www.ohioattorneygeneral.gov/getattachment/fb287372-cc93-4cd2-9602-c755dbd15ca8/1950-2691.aspx (interpreting older version of the law).

[298] 28 U.S.C. § 1875.

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

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

Leave to Serve on a Jury. An employer must not discharge, threaten to discharge, or take any disciplinary action against an employee who is summoned to serve as a juror if: (1) the employee gives reasonable notice to the employer of the summons prior to commencement of jury service; and (2) the employee is absent because of actual service on a jury.[300]

An employer may not require or request that employees use annual leave, vacation leave, or sick leave for time spent responding to a jury duty summons, participating in the jury selection process, or serving on a jury. An employer is not required to provide annual leave, vacation, or sick leave to an employee who is not otherwise entitled to such benefits, however. An employer is not required to compensate an employee for time spent on jury service.[301]

For employers with 25 or fewer full-time employees, if two employees receive jury summonses within 30 days of each other, a county court of common pleas will automatically postpone and reschedule the summons of the second employee juror. The employer or employee must show that the first employee was summoned and did serve and that the employer is below the numerical threshold of 25 or fewer full-time employees or their equivalent.[302]

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

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

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

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

Victims of Crime in General. Under Ohio's victims' rights statutes, an eligible employee may take time off from work to participate, at the prosecutor's request, in preparation for a criminal or delinquency proceeding, or for attendance, pursuant to a subpoena, at a criminal or delinquency proceeding if the attendance is reasonably necessary to protect the interests of the victim.[303]

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[299] *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).

[300] OHIO REV. CODE ANN. § 2313.19(A).

[301] OHIO REV. CODE ANN. § 2313.19(B).

[302] OHIO REV. CODE ANN. § 2313.15(E).

[303] OHIO REV. CODE ANN. § 2930.18.

An employee may take time off if the employee is:

- a victim of the crime or delinquent act at issue in the proceedings;
- the spouse, child, stepchild, sibling, parent, stepparent, grandparent, or other relative of a victim; or
- a victim's representative.

an employee may also use leave to attend a criminal proceeding if the employee is a crime victim and a victim's attendance is permitted under the person's constitutional and statutory rights.[304]

However, an employee is not eligible for time off if the employee "is charged with, convicted of, or adjudicated to be a delinquent child for the crime or specified delinquent act against the victim or another crime or specified delinquent act arising from the same conduct, criminal episode, or plan."[305]

The statute is silent regarding an employer's obligation to pay its employees for time lost as a result of attendance at a criminal proceeding as a victim, a member of a victim's family, or a victim's representative.[306]

3.9(k) *Military-Related Leave*

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

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

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

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[307]

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[304] OHIO REV. CODE ANN. § 2930.18, as amended by H.B. 343 (Ohio 2023).

[305] OHIO REV. CODE ANN. §§ 2930.01, 2930.18.

[306] OHIO REV. CODE ANN. § 2930.18, as amended by H.B. 343 (Ohio 2023).

[307] 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)).

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.[308] 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.[309] 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. Ohio has adopted the provisions of USERRA and protects employees who are in the armed forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned Corps of the Public Health Service, and any other category of individuals designated by the President of the United States in time of war or emergency.[310]

Employees have the same rights to reinstatement and reemployment under Ohio law as under USERRA.[311]

Family Military Leave. Ohio's Military Family Leave Act provides time off for the family of uniformed services members. Once per calendar year, employers of 50 or more employees must allow an employee to take leave of up to 10 days or 80 hours, whichever is less, in connection with the deployment of a family member who is a member of the uniformed services. The relevant uniformed services include the U.S. armed forces; the Ohio organized militia when engaged in full-time national guard duty; the commissioned corps of the public health service; and any other category of persons designated by the president in time of war or emergency.

Qualifying employees are those: (1) who have been employed at least 12 consecutive months and for at least 1,250 hours in the 12 months preceding the leave; and (2) who are a parent, spouse, or legal custodian of a member of the uniformed services who is called into active duty for a period longer than 30 days, or is injured, wounded, or hospitalized while serving on active duty.

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[308] 29 C.F.R. § 825.126(a).

[309] 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).

[310] OHIO REV. CODE ANN. § 5903.02.

[311] OHIO REV. CODE ANN. § 5903.02.

Leave cannot occur more than two weeks prior, or one week after, the uniformed service member's deployment. The employee must have no other leave available except sick or disability leave.[312]

The employee must give fourteen days' notice of the employee's intention to take leave if the leave is taken because of a call to active duty. If leave is necessitated due to an injury, wound, or hospitalization, the employee must provide at least two days' notice prior to taking leave. However, if the employee receives notice from a uniformed services representative that the injury, wound, or hospitalization is critical or life-threatening, leave may be taken without providing notice. An employer may require an employee requesting leave to provide certification from the appropriate military authorities to verify that the employee satisfies the leave criteria.[313]

Employers must continue to provide benefits to the employee during the period of time the employee is on leave. The employee will be responsible for the same proportion of the cost of the benefits as the employee regularly pays during periods of time when the employee is not on leave. Leave may be unpaid.[314] Employers cannot deprive an employee who takes military family leave of any benefit that accrued before the date that leave commences.[315]

Upon the completion of the leave, the employer must restore the employee to the position the employee held prior leave or to a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.[316]

An employer cannot require an employee to waive their right to family military leave or enter into a collective bargaining agreement or employee benefit plan that limits or requires an employee to waive such right.[317]

Antiretaliation Provisions. An employer cannot interfere with, restrain, or deny the exercise or attempted exercise of a family military leave right. Employers cannot discharge, fine, suspend, expel, discipline, or discriminate against an employee with respect to any term or condition of employment because of the employee's actual or potential exercise, or support for another employee's exercise, of any family military leave right.

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

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

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

Volunteer Emergency Responder Leave. Ohio provides protections for volunteer emergency responders. An employee who volunteers as a firefighter or provider of medical services must notify their employer

[312] OHIO REV. CODE ANN. §§ 5906.01 to 5906.02.

[313] OHIO REV. CODE ANN. § 5906.02.

[314] OHIO REV. CODE ANN. § 5906.02.

[315] OHIO REV. CODE ANN. § 5906.03.

[316] OHIO REV. CODE ANN. § 5906.02.

[317] OHIO REV. CODE ANN. § 5906.03.

within 30 days after receiving certification from the volunteer department. Employees must also provide notice of any change in their status as a volunteer.[318]

An employer may not terminate an employee who is a volunteer firefighter or a volunteer provider of emergency medical services and who is late or absent from work while responding to an emergency. The leave may be unpaid.[319]

The employee must make every effort to notify their employer of the emergency. If the employee is unable to provide advanced notice, the employee must provide a written explanation from a supervisor explaining why prior notice was not given. Additionally, upon request, the employee must provide written documentation from a supervisor of the time, date, and the employee's response to the emergency.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

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

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[320] Employers are also required to comply with all applicable occupational safety and health standards.[321] 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.[322] 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*

Ohio does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Although Ohio has no comprehensive statutory scheme governing occupational safety and health, an Ohio statute generally requires employers to furnish a safe workplace and to adopt all methods and processes necessary to ensure a safe workplace.[323] Additionally, the Ohio Constitution authorizes the Ohio Industrial Commission to grant a workers' compensation claimant an additional award when the

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[318] OHIO REV. CODE ANN. § 4113.41(B), (C), (D).

[319] OHIO REV. CODE ANN. § 4113.41(A).

[320] 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.

[321] 29 U.S.C. § 654(a)(2).

[322] 29 U.S.C. § 667(c)(2).

[323] OHIO REV. CODE. ANN. § 4101.12.

worker's injury, disease, or death results from the failure of the employer to comply with any safety requirement enacted by the General Assembly or by the Industrial Commission.[324] The Violation of Specific Safety Regulations (VSSR) is designed to both penalize the noncomplying employer and compensate the injured worker.

As discussed below, the VSSR penalty presents a second and third level of financial risk to employers. The first level consists of compensation and benefits granted to an injured employee for lost time, extent of disability, and related medical expenses. The second level involves an application for an additional award, based upon an employer's violation of a specific safety requirement. This award entitles a claimant to an additional award in the amount of 15% to 50% of the maximum rate, for the year of injury, or the disability compensation that has been awarded to the claimant and that for which the employee is eligible in the future. Third, the Industrial Commission can impose civil penalties of up to $50,000 on employers that violate more than one specific safety requirement within a 24-month period.[325]

A safety requirement must inform and plainly apprise an employer of what is required for the protection of its employees.[326] The Ohio Industrial Commission has enacted specific requirements in the Ohio Administrative Code for the following industries:

- elevators;
- construction;
- workshops and factories;
- metal casting;
- steel making, manufacturing, and fabricating;
- laundering and dry cleaning;
- rubber and plastics industries;
- window cleaning; and
- firefighting.[327]

Even if a cited safety requirement is specific, the claimant must prove that the requirement is applicable to the employer, the worksite or operations, and any machinery involved. The interpretation of a specific safety requirement lies solely with the Ohio Industrial Commission.[328] Since the violation of a specific safety requirement is a penalty, it is strictly construed, and all reasonable doubts concerning the interpretation must be resolved in the employer's favor.[329]

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[324] OHIO CONST. art. II, § 35; *see also* OHIO ADMIN. CODE 4123-3-20.

[325] *See, e.g.*, Ohio Bureau of Workers' Comp., *An Informational Guide for Investigating Violations of Specific Safety Requirements*, *available at* https://www.bwc.ohio.gov/downloads/blankpdf/sviu.pdf.

[326] *State ex rel. Roberts v. Industrial Comm'n*, 460 N.E.2d 251 (Ohio 1984).

[327] OHIO ADMIN. CODE 4123:1-1 to 4123:1-21.

[328] *State ex rel. Allied Wheel Prod*., *Inc. v. Industrial Comm*'*n*, 139 N.E.2d 41, 44 (Ohio 1956).

[329] *State ex rel. Burton v. Industrial Comm*'*n*, 545 N.E.2d 1216, 1219 (Ohio 1989); *State ex rel. Eck v. Industrial Comm'n*, 2006 WL 3113136, at *1 (Ohio Ct. App. Sept. 19, 2006). *But see State ex rel. Int'l Truck & Engine Corp. v. Industrial Comm'n*, 912 N.E.2d 85 (Ohio 2009) (the rule of strict construction permits only that all reasonable

Administrative Procedure. An application for violation of specific safety requirement must be filed within two years of the injury, death, or inception of disability due to occupational disease.[330] Upon the filing of a VSSR application, the Industrial Commission sends a copy to the employer and its representative by mail.[331] The employer has 30 days to file an answer unless the company moves for an extension of time.[332] The Commission may assign the VSSR application for an investigation or for a hearing without an investigation. If the application is assigned for an investigation and an investigative report is prepared, each party has up to 30 days from receipt of the report to submit additional evidence or request a record hearing.[333] If no request for record hearing is made, no new evidence on the application will be accepted at the hearing.[334] A staff hearing officer may refer the claim for additional investigation at any time.[335]

After the investigation report is mailed to the parties, a prehearing conference is scheduled; at that conference, a prehearing checklist is reviewed and the parties agree to a date and time for the hearing.[336] Upon hearing the VSSR application, the staff hearing officer will issue an order.[337] The order must specifically address each violation alleged in the VSSR application and explain the evidence and rationale underlying the decision.[338] Within 30 days of receipt of the order, each party has a right to file a motion requesting a rehearing. Upon receipt of the motion requesting a rehearing, the opposing party has 30 days in which to file a response.[339] A motion for rehearing will only be granted if: (1) there is new and additional proof not previously considered and that by the diligence could not be obtained prior to the hearing; or (2) the order was based on an obvious mistake of fact or clear mistake of law.[340]

Amount of Award. If the Industrial Commission determines that the employer violated a specific safety requirement, the claimant is awarded a percentage award from 15% and 50%, which is multiplied by the maximum compensation rate permitted in the year claimant was injured, or the actual disability rate awarded to the claimant, or the amount of disability that the claimant is eligible to receive. The claimant's average weekly wage is not used.[341] The calculation of the award is within the Commission's discretion and is based on several factors, including the severity of the injury, the egregiousness of the violation, the employer's knowledge of the violation, and other mitigating or aggravating factors.[342]

When an employer is found to have violated a specific safety requirement more than once in the same 24-month period, the employer is subject to a civil penalty in an amount up to $50,000 for each

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doubts about the interpretation of a safety standard are construed against its applicability to the employer; otherwise, the rule of strict construction is not evidentiary and does not apply in resolving factual disputes).

330 OHIO ADMIN. CODE 4121-3-20(A).

331 OHIO ADMIN. CODE 4121-3-20(D)(1).

332 OHIO ADMIN. CODE 4121-3-20(D)(2).

333 OHIO ADMIN. CODE 4121-3-20(D)(3).

334 OHIO ADMIN. CODE 4121-3-20(D)(5).

335 OHIO ADMIN. CODE 4121-3-20(D)(9).

336 OHIO ADMIN. CODE 4121-3-20(D)(4).

337 OHIO ADMIN. CODE 4121-3-20(D)(10).

338 *State ex rel. U.S. Airways Inc. v. Industrial Comm'n*, 737 N.E.2d 30 (Ohio 2000).

339 OHIO ADMIN. CODE 4121-3-20(E).

340 OHIO ADMIN. CODE 4121-3-20(E).

341 OHIO CONST. art. II, § 35.

342 *State ex rel. Blystone v. Industrial Comm'n*, 470 N.E.2d 495 (Ohio Ct. App. 1984).

violation.[343] Factors considered by the Industrial Commission in determining the amount of the civil penalty, include the number of employees, and the assets and earnings of the employer.[344] If it does not agree with the Industrial Commission's assessment, the employer may appeal the civil penalty to the court of common pleas.[345]

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 driver may not operate a motor vehicle while using a handheld electronic wireless communications device to write, send, or read a text-based communication.[346] 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.

Several exemptions exist, such as those for a person:

- reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;
- receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;
- using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle;
- using the device for emergency purposes, including contact with law enforcement; or
- conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device.[347]

3.10(c) *Firearms in the Workplace*

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

Federal law does not address firearms in the workplace.

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

Firearms in the Workplace. Employers may prohibit the presence of firearms on company property, including in employer-owned motor vehicles.

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[343] OHIO REV. CODE ANN. § 4121.47(B); OHIO ADMIN. CODE 4121-3-20(H).

[344] OHIO REV. CODE ANN. § 4121.47(B); OHIO ADMIN. CODE 4121-3-20(H).

[345] OHIO REV. CODE ANN. § 4121.47(C).

[346] OHIO REV. CODE ANN. § 4511.204.

[347] OHIO REV. CODE ANN. § 4511.204.

Employers are:

> [I]mmune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose.[348]

Indeed, a private employer is immune for any such losses allegedly due to its "decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer."[349]

Firearms in Company Parking Lots. Employers may prohibit the presence of firearms on company property, including motor vehicles.[350] However, an employer may not adopt or "enforce a policy or rule that prohibits or has the effect of prohibiting a person who has been issued a valid concealed handgun license from transporting or storing a firearm or ammunition," so long as two conditions are met. This type of ban is not permitted if:

- all firearms and ammunition remain inside the employee's personal vehicle, while the employee is present in the vehicle, or all firearms and ammunition are "locked within the trunk, glove box, or other enclosed compartment or container within or on" the vehicle; and
- "the vehicle is in a location where it is otherwise permitted to be."[351]

Signage Requirements. Employers may post a sign in a conspicuous location on their premises prohibiting persons from carrying firearms on company property.[352] The statute does not provide specific requirements for the signs.

3.10(d) *Smoking in the Workplace*

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

Federal law does not address smoking in the workplace.

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

Smoking is prohibited in enclosed places of employment, including company-owned vehicles. An outdoor smoking area may be provided, but may not be immediately adjacent to the entryway to the workplace. Additionally, the area must be a sufficient distance to prohibit smoke from entering the workplace.[353]

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[348] OHIO REV. CODE ANN. § 2923.126(C).

[349] OHIO REV. CODE ANN. § 2923.126(C).

[350] OHIO REV. CODE ANN. § 2923.126(C)(1).

[351] OHIO REV. CODE ANN. § 2923.1210.

[352] OHIO REV. CODE ANN. § 2923.126(C)(3).

[353] OHIO REV. CODE ANN. §§ 3794.01 *et seq*.

Posting Requirements. Employers must post "No Smoking" signs. The signs must include the toll-free number for reporting violations, which is 866-559-OHIO. Ashtrays also must be removed from places of employment.[354]

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under this law.[355]

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*

Ohio 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*

Ohio 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");[356] (2) the Americans with Disabilities Act (ADA);[357] (3) the Age Discrimination in Employment Act (ADEA);[358] (4) the Equal Pay Act;[359] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[360] (6) the Civil Rights Acts of 1866 and 1871;[361] and (7) the Civil

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[354] OHIO REV. CODE ANN. § 3794.06. This poster is available at http://www.odjfs.state.oh.us/forms/file.asp?id=887&type=application/pdf.

[355] OHIO REV. CODE ANN. § 3794.02.

[356] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[357] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[358] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[359] 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.

[360] 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)).

[361] 42 U.S.C. §§ 1981, 1983.

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);[362]
- 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.[363] 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.[364]

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

Ohio's FEP law protects the following classifications:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions);
- military status;
- national origin;
- ancestry;
- disability (physical or mental impairment, including HIV); and
- age (40+).[365]

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[362] 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.

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

[364] 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.

[365] OHIO REV. CODE ANN. §§ 4112.01, 4112.02, and 4112.14.

Ohio law prohibits an employer from discriminating or retaliating against an employee who is a crime victim for participating in or attending criminal or delinquency proceedings. In addition, a member of a crime victim's family, or a victim's representative are similarly protected for such participation.[366]

Ohio's FEP law applies to state and local government agencies, to private employers that employ four or more employees within Ohio, to employment agencies, personnel placement services, and labor organizations, and to any person acting directly or indirectly in the interest of an employer. The law does not cover domestic servants.[367]

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

Agency Enforcement. The Ohio Civil Rights Commission (OCRC) is the state agency responsible for administering and enforcing Ohio's FEP law and federal antidiscrimination law. An employee must first file a charge with the OCRC within two years of the discriminatory practice.[368] Further, the statute of limitations for filing a lawsuit in court is two years, but this two-year statute of limitations is tolled while the employee's claim is pending with the OCRC.[369]

Once a charge is filed with the OCRC, Ohio's new administrative process mirrors the process with the EEOC.[370] The OCRC may initiate a confidential investigation into the charge allegations; following its investigation, it will make a determination. If the OCRC finds there is probable cause of a discriminatory act or practice, the charging party has two options: (1) withdraw their charge, obtain a right-to-sue notice from the OCRC, and pursue their claims in court; or (2) not withdraw the charge, and the OCRC is responsible for eliminating the alleged discriminatory practice through conciliation and/or an administrative hearing. If the OCRC determines there is no probable cause of an unlawful discriminatory act or practice, the OCRC will issue the charging party a right-to-sue notice, allowing the aggrieved individual to further pursue their claims in court. Any complainant or respondent claiming to be aggrieved by a final order of the OCRC may also obtain judicial review of the order in the appropriate court of common pleas.[371]

Although an aggrieved individual may not bypass the requirement they exhaust their administrative remedies, there is an opportunity for them to shorten or even eliminate the investigative process to pursue more quickly their claims in court. A charging party may request that the OCRC not investigate or stop investigating the charge allegations and, instead, issue a right-to-sue notice without a determination.

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366 OHIO REV. CODE ANN § 2930.18.

367 OHIO REV. CODE ANN. § 4112.01(A)(1)-(3).

368 OHIO REV. CODE ANN. § 4112.051(C)(2) ; *see also* Ohio Civil Rights Comm'n, *Charge Filing Procedure*, *available at* http://crc.ohio.gov/FilingaCharge/ChargeFilingProcedure.aspx.

369 OHIO REV. CODE ANN. § 4112.052. Note that the tolling is based on when the aggrieved individual files their charge with the OCRC. If the individual files a charge of discrimination less than 60 days before the two-year deadline to file the charge is set to expire, then the period to file the civil action is tolled for the period beginning on the date the charge was filed and ending 60 days after the charge is no longer pending with the OCRC. Alternatively, if the individual files a charge of discrimination 60 or more days before the two-year deadline to file the charge is set to expire, then the period to file the civil action is tolled for the period beginning on the date the charge was filed and ending on the date the charge is longer pending with the OCRC. OHIO REV. CODE ANN. § 4112.052(C)(2).

370 OHIO REV. CODE ANN. § 4112.051(D)-(F).

371 OHIO REV. CODE ANN. § 4112.06.

Upon this request, the OCRC must issue the charging party a right-to-sue notice, but may do so no sooner than 60 days after the charging party filed the charge.[372]

After filing a charge, one of the following must occur before the individual may assert a Chapter 4112 claim in court: (1) the charging party has received a right-to-sue notice from the OCRC; (2) the charging party has requested a right-to-sue notice, and the OCRC failed to issue one within 45 days (after the period in which the OCRC may issue the notice); or (3) the OCRC made a probable cause determination and the charging party notified the OCRC that they elect to pursue the claim in court instead of with the OCRC.[373]

"Tort action" damages caps for compensatory and punitive damages apply to discrimination claims under section 4112.052 and 4112.14 (specific to age discrimination claims).[374] While there is no cap on economic compensatory damages (*e.g.*, lost wages), there is a cap of $250,000 or three times the economic compensatory damages up to $350,000, whichever is greater, for non-economic compensatory damages, such as emotional distress damages. Punitive damages are capped at two times the amount of compensatory damages awarded to the plaintiff, excluding any award of attorneys' fees.[375]

Exclusivity of Remedy. Section 4112.99 does not create an independent cause of action for employment discrimination. Aggrieved employees must pursue their employment claims only under sections 4112.051, 4112.052, and 4112.14 (specific to age discrimination claims).

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

In addition to the federal and state laws, employers with operations in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo are subject to local fair employment practices ordinances.

- **Akron.** Protected classifications include: gender identity; sexual orientation; age; sex; race (including hair texture and hairstyles); color; creed or religion; national origin; military status; disability; and marital status. The antidiscrimination protections apply to employers that employ four or more employees for each working day in any 20 or more calendar weeks in the current or previous calendar year.[376] An individual alleging a violation of the ordinance may file a complaint with the Akron Civil Rights Commission within one year after the occurrence of the alleged discriminatory practice.[377]
- **Cincinnati.** Employers that employ four or more employees in the City of Cincinnati must extend antidiscrimination protections on the basis of: race; natural hair types and natural hair styles commonly associated with race; gender; age (at least 40 years old); color; religion; disability status; marital status; sex, including sexual orientation and gender identity or expression and sexual or reproductive health decisions; military status; familial status; and

[372] OHIO REV. CODE ANN. § 4112.051(D)(2), (N).

[373] OHIO REV. CODE ANN. § 4112.052(C).

[374] OHIO REV. CODE ANN. §§ 2315.18(A)(7), 2315.21(A)(1)(a)(ii).

[375] OHIO REV. CODE ANN. § 2315.18(B)(1)-(2), (D)(2); Note that the Ohio Supreme Court found the statutory cap on damages unconstitutional as applied to certain plaintiffs "to the extent that it fails to include an exception to its compensatory-damages caps for noneconomic loss for plaintiffs who have suffered permanent and severe psychological injuries." *Brandt v. Pompa*, 2022 WL 17729469 (Ohio, Dec. 16, 2022).

[376] AKRON, OHIO, MUN. CODE §§ 38.01, 38.02 (exceptions, including religious institutions and *bona fide* occupational qualifications), and 38.05 (other exceptions).

[377] AKRON, OHIO, MUN. CODE § 38.08.

ethnic, national, or Appalachian regional origin.[378] An individual alleging an unlawful discriminatory practice may file a written complaint with the City of Cincinnati Manager's Office within six months of the alleged unlawful discriminatory practice.[379]

- **Cleveland.** Employers with four or more employees are subject to the following antidiscrimination protections: race; religion; color; sex; sexual orientation; gender identity or expression; national origin; age; disability; ethnic group; and Vietnam-era or disabled veteran status.[380] An individual alleging a violation of the ordinance may file a complaint with the Community Relations Board.[381] No statute of limitations is given in the ordinance.
- **Columbus.** Employers with four or more employees in the City of Columbus must extend antidiscrimination protections on the basis of: race (including hair texture or protective or cultural hairstyles); sex (includes pregnancy, childbirth, and related medical conditions); sexual orientation; gender identity or expression; color; religion; national origin; ancestry; age (at least 40 years old); disability; familial status; and military status.[382] An aggrieved individual may file a written charge with the Columbus Community Relations Commission within six months after the alleged unlawful discriminatory practices are committed.[383] It is not an unlawful employment practice to make employment decisions based on religion, sex, or national origin in those instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Such bona fide occupational qualification exception will only apply when certified by the Ohio Civil Rights Commission in advance of an employment related decision based on religion, sex, or national origin.[384] Whoever recklessly violates these protections are guilty of unlawful employment practices and may be convicted of a misdemeanor of the first degree.[385]
- **Cuyahoga County.** Employers with four or more employees in Cuyahoga County cannot discriminate on the basis of: race; religion; color; national origin; disability; ancestry; sex (includes pregnancy, childbirth, and related medical conditions); military status; age (40 or older); sexual orientation; or, gender identity or expression. *Employees* is defined as any persons employed by an employer, including independent contractors. An individual alleging a violation of the ordinance may file a complaint with the Cuyahoga County Commission on Human Rights within 150 days after the alleged unlawful discriminatory act or practice. The

[378] CINCINNATI, OHIO, CODE OF ORDINANCES §§ 914-1-A (defining age), 914-1-D1, 914-5 (exceptions, including for practices based on national security regulations of the United States), and 914-15 (religious and fraternal organizations exclusions).

[379] CINCINNATI, OHIO, CODE OF ORDINANCES § 914-9.

[380] CLEVELAND, OHIO, CODE OF ORDINANCES §§ 663.01, 663.02, 663.04 (exemptions, including religious organizations or institutions whose membership or service is limited to persons of a single religious faith; educational institutions operated, supervised, or controlled by a religious organization; private organizations having purely social or fraternal purposes; and any type of employment where religion, religious creed, or nationality would normally be considered an essential qualification of employment), and 667.05.

[381] CLEVELAND, OHIO, CODE OF ORDINANCES § 663.06.

[382] COLUMBUS, OHIO, CODE OF ORDINANCES §§ 2331.01, 2331.03 (exceptions, including practices based on applicable national security regulations established by the United States).

[383] COLUMBUS, OHIO, CODE OF ORDINANCES § 2331.05.

[384] COLUMBUS, OHIO, CODE OF ORDINANCES §§ 2331.01, 2331.03(B).

[385] COLUMBUS, OHIO, CODE OF ORDINANCES §§ 2331.01, 2331.03(C).

complaint must include the date, time, place and circumstances of the alleged discriminatory practice or act. Any party to the proceeding who claims to be aggrieved by a final Commission decision may obtain judicial review if the decision is appealed within 30 days to the Cuyahoga Court of Common Pleas.[386]

- **Dayton.** Protected classifications include: race; color; religion; sex (includes pregnancy, childbirth, or related medical conditions); sexual orientation; gender identity; national origin; ancestry; place of birth; age; marital status; and handicap. The antidiscrimination protections apply to employers that employ four or more employees.[387] An aggrieved individual may file a written charge with the Dayton Human Relations Council within six months after the alleged unlawful discriminatory practices are committed.[388]
- **Toledo.** Employers with one or more persons, not including the employer's immediate family members, are subject to the following antidiscrimination protections: race; religious creed; color; national origin; ancestry; sex; handicap; age; sexual orientation; gender identity; and, natural hair types and hair styles, or head wraps commonly associated with race, culture or religion, which includes, but is not limited to, hair style, type and texture, treated or untreated, as well as protective hairstyles such as natural hair, afros, braids, twists, cornrows and locks, which hair types and hair styles are commonly associated with racial, ethnic, and cultural identities.[389] An individual alleging a violation of the ordinance may file a complaint with the Toledo Office of Diversity & Inclusion within 120 days of the alleged offense.[390]

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."[391] 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.

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386 CUYAHOGA CTY., OHIO, CODE OF ORDINANCES, TITLE 15 (exemptions include a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform connected work and any practice based on applicable national security regulations established by the United States).

387 DAYTON, OHIO, CODE OF ORDINANCES §§ 32.02, 32.03 (exceptions, including *bona fide* occupational qualifications).

388 DAYTON, OHIO, CODE OF ORDINANCES § 32.20.

389 TOLEDO, OHIO, MUN. CODE §§ 554.01 (religious organizations or institutions whose membership or service is limited to persons of a particular religious faith; private organizations having purely social or fraternal purposes; and any type of employment where religion, religious creed, or nationality would usually and normally be considered an essential qualification of employment are excluded from coverage by the ordinance), 554.02 (exceptions, including religious).

390 TOLEDO, OHIO, MUN. CODE § 159.07.

391 29 U.S.C. § 206(d)(1).

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.[392]

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

An employer of two or more employees is prohibited from discriminating in the payment of wages on the basis of race, color, religion, sex, age, national origin, or ancestry by paying wages to any employee at a rate less than the rate at which the employer pays wages to another employee for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar conditions.[393] The statute does not prohibit wage differentials when the payment is made pursuant to any of the following: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by the quantity or quality of production; or (4) a wage differential determined by any factor other than race, color, religion, sex, age, national origin, or ancestry. An employer 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.[394]

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;

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[392] 42 U.S.C. § 2000e-5.

[393] OHIO REV. CODE ANN. §§ 4111.14, 4111.17.

[394] OHIO REV. CODE ANN. § 4111.17.

- 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.[395]

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

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[396]

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.[397] 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.[398] 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."[399]

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

[395] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[396] 29 C.F.R. § 1636.3.

[397] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[398] 29 C.F.R. § 1636.3.

[399] 29 C.F.R. § 1636.4.

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.[400]

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

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[401]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Protections for pregnancy, childbirth, or related medical conditions in Ohio primarily focus on leave; therefore, the law is discussed in **3.9(c)(ii)**.

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

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

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for

[400] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[401] 29 C.F.R. § 1636.3.

employers.[402] Multiple decisions of the U.S. Supreme Court[403] 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.[404] 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 Ohio. Nonetheless, the Ohio Administrative Code encourages training and explains:

> Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Chapter 4112 of the Revised Code [the FEP law] and developing methods to sensitize all concerned.[405]

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.

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

[403] *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).

[404] 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.

[405] OHIO ADMIN. CODE 4112-5-05(J)(6).

3.12(a)(ii) *State Guidelines on Whistleblowing*

Ohio's Whistleblower Protection Act covers all public and private employers and employees.[406] It places obligations on both parties.

The law provides that if:

- an employee becomes aware during their employment "of a violation of any state or federal statute or any ordinance or regulation of a political subdivision" that the employer has authority to correct; *and*
- "the employee reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution;"

Then, the employee must:

- orally notify their supervisor or other responsible officer of the employer of the violation; and
- subsequently "file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation."[407]

Such notification triggers employer duties. Within 24 hours after receiving an employee's oral or written notification, or by close of business on the next regular business day following the notification, whichever is later, the employer must notify the employee, in writing, of any effort it has made to correct the alleged violation or hazard or, alternatively, of the absence of the alleged violation or hazard.[408]

If the employer does not correct the violation or make a reasonable and good-faith effort to correct the violation within 24 hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report with the prosecuting authority of the county where the violation occurred, a peace officer, the inspector general if within their jurisdiction, or any other official that has regulatory authority over the employer.[409]

Employees have an obligation to make a reasonable and good-faith effort to determine the accuracy of any reported information. Employees who fail to do so may be disciplined under certain circumstances.[410] Notwithstanding, employers are prohibited from taking any disciplinary or retaliatory action against employees who report or make any inquiries under the statute. *Disciplinary or retaliatory action* includes, but is not limited to: "(1) removing or suspending the employee . . . (2) withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled; (3) transferring or

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[406] OHIO REV. CODE ANN. § 4113.51.

[407] OHIO REV. CODE ANN. § 4113.52(A)(1)(a). The same process is followed if an employee becomes aware in the course of their employment of specific violations by a fellow employee. OHIO REV. CODE ANN. § 4113.52(A)(3).

[408] OHIO REV. CODE ANN. § 4113.52(A)(1)(b).

[409] OHIO REV. CODE ANN. § 4113.52(A)(1)(a). Notably, if an employee becomes aware of violations of certain state environmental laws, including chapter 3704 of the Ohio Revised Code (air pollution), chapter 3734 (solid and hazardous waste), chapter 6109 (safe drinking water), or chapter 6111 (water pollution) that is a criminal offense, the employee may directly notify, either orally or in writing, any appropriate public official or agency with regulatory authority over the employer. OHIO REV. CODE ANN. § 4113.52(A)(1)(a).

[410] OHIO REV. CODE ANN. § 4113.52(B)-(C).

reassigning the employee; (4) denying the employee a promotion that otherwise would have been received; or (5) reducing the employee in pay or position."[411]

If an employer takes any such adverse action for actions covered by the statute, the employee may bring a civil action for injunctive relief, reinstatement, back wages, reinstatement of fringe benefits and seniority rights, in the appropriate court of common pleas.[412] An action must be brought within 180 days after the disciplinary or retaliatory action was taken.[413] Prevailing parties may also be entitled to recover court costs, and a prevailing employee may be awarded reasonable attorneys' fees, witness fees, and fees for experts who testify at trial.[414]

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)[415] and the Railway Labor Act (RLA)[416] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

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

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

Although Ohio does not have a right-to-work law, there are two notable state labor laws. First, employers are not permitted to enter into any contract or agreement with employees: (1) in which either party promises not to join or remain a member of any labor organization or employer organization; or (2) that make employment status contingent on such membership. Such agreements are considered contrary to public policy and are considered void.[417]

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411 OHIO REV. CODE ANN. § 4113.52(B).

412 OHIO REV. CODE ANN. § 4113.52(D)-(E).

413 OHIO REV. CODE ANN. § 4113.52(D).

414 OHIO REV. CODE ANN. § 4113.52(E).

415 29 U.S.C. §§ 151 to 169.

416 45 U.S.C. §§ 151 *et seq*.

417 OHIO REV. CODE ANN. § 4113.02.

Second, Ohio Revised Code section 4113.30, which does not apply to public employers or those employers covered by the NLRA, provides that a successor clause in an agreement between an employer and a labor organization is binding and enforceable against a successor employer that succeeds to the contracting employer's business until the expiration date stated in the agreement.[418] However, a successor clause is not binding and enforceable against a successor employer for more than three years from the effective date of the agreement.[419]

The contracting employer must disclose the existence of a successor clause and agreement to any successor employer.[420] Contracting employers can satisfy this disclosure requirement by including a statement that the successor employer is bound by such a successor clause as provided for in the collective bargaining agreement in any contract of sale, agreement to purchase or any similar instrument of conveyance.[421]

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).[422] 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.[423] 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*

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

4.1(c) *State Mass Layoff Notification Requirements*

Employers subject to Ohio's unemployment compensation law must notify the Department of Jobs and Family Services prior to a layoff of 50 or more individuals due to lack of work within any seven-day period. Notice must be provided to the director at least three working days prior to the first day of the layoff. The

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[418] A *successor employer* under the statute means any purchaser, assignee, or transferee of a business that is party to a collective bargaining agreement who: (1) conducts or will conduct substantially the same business operation or offer the same service; and (2) uses the same physical facilities as the contracting employer. OHIO REV. CODE ANN. § 4113.30(A)(1).

[419] OHIO REV. CODE ANN. § 4113.30(B).

[420] OHIO REV. CODE ANN. § 4113.30(C).

[421] OHIO REV. CODE ANN. § 4113.30(C).

[422] 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.

[423] 20 C.F.R. §§ 639.4, 639.6.

notice must include: (1) the dates of layoff or separation; (2) the approximate number of affected employees; and (3) all information needed by the director to determine workers' eligibility for unemployment compensation.[424]

Once an employer reports the mass layoff to the Department of Jobs and Family Services, the agency will furnish an information sheet to the employer for distribution to affected workers. The instruction sheet explains information about registering online and filing claims, and it also provides employees with a mass layoff number for more accurate reference and processing.[425]

Penalties apply to employers—including individual liability for corporate officers and agents—that fail to report a mass layoff. Each day of failure constitutes a separate violation. The penalty will not exceed $500 for a first violation; second and subsequent violations will incur penalties ranging from $25 to $1000.[426]

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.[427] 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

[424] OHIO REV. CODE ANN. §§ 4141.01, 4141.28(C).

[425] Additional resources on the notification process, including contact information, are available from the Department of Job and Family Services at http://jfs.ohio.gov/ouc/ucben/MassLayoffProcedures.stm.

[426] OHIO REV. CODE ANN. §§ 4141.28(C), 4141.37, 4141.38, 4141.40, and 4141.99.

[427] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
	frames that describe their retirement benefits and the procedures necessary to obtain them.[428]

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.	Employers must notify an employee of the right of continuation health benefits at the time the employer notifies the employee of the termination of employment. The notice must inform the employee of the amount of contribution required by the employer.[429]
Unemployment Notice	Ohio does not require that employers provide employees with specific notice about unemployment benefits when employment ends. Nonetheless, it is recommended that an employer provide a copy of the optional unemployment notice.[430]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

In Ohio, an employer may disclose information about the job performance of an employee or former employee to a prospective employer upon request. The employer will not be liable to the (former) employee, prospective employer, or any other person for harm sustained as a proximate result of the disclosure, unless the information was known to be false when the disclosure was made or the disclosure would be an unlawful discriminatory practice.[431]

[428] 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.

[429] OHIO REV. CODE ANN. § 3923.38(C)(2).

[430] An optional notice is available at http://www.odjfs.state.oh.us/forms/file.asp?id=2201&type=application/pdf.

[431] OHIO REV. CODE ANN. § 4113.71.