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STATE

Littler on

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

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

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

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

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

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

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

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

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

1.1(b) *State Guidelines on Classifying Workers*

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

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

Table 1. State Tests for Classifying Workers

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

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

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

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding with the OESC is available at https://www.dol.gov/whd/workers/MOU/ok.pdf.

[6] The Oklahoma Income Tax Code defers to the Internal Revenue Code for the definition of terms, "unless a different meaning is clearly required." OKLA. ADMIN. CODE § 710:90-1-2. Moreover, the Oklahoma administrative regulations provide the following guidance:

The term *employee* includes every individual performing services if the relationship between them and the person for whom services are performed is the legal relationship of employer and employee, as follows:

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Unemployment Insurance	OESC	Statutory IRS 20-factor test[7] *Employment* is defined as: "Any service, including service in interstate commerce, performed by . . . any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, as provided in paragraph (14) of this section, [referencing the IRS twenty-factor test] has the status of employee.[8] Services performed by an individual for wages will be presumed "employment," and thus subject to the

- Generally, the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.
- An employee is subject to the will and control of the employer, not only as to what shall be done, but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. In general, if the individual is subject to the control or direction of another merely as to the result to be accomplished by the work, and not as to the means and methods for accomplishing the result, he is not an employee.
- The existence of an employer-employee relationship shall be determined, when in doubt, by an examination of the particular facts of each case.
- If an employer-employee relationship exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial.
- It is of no consequence that an employee is designated as a partner, coadventurer, agent, independent contractor, contract labor, or the like. It also does not matter how payments are made, what they are called or whether the service is performed full or part-time.

OKLA. ADMIN. CODE § 710:90-1-2(A); *see also* OKLA. ADMIN. CODE § 710:90-1-2(B) ("[g]enerally, persons who follow an independent trade, business, or profession, in which they offer their services to the public, such as physicians, attorneys, dentists, veterinarians, contractors and others, are not 'employees.'"). In a nonprecedential decision, the Oklahoma Tax Commission looked at three categories of facts, based on the IRS Publication 15-A, *Employer's Supplemental Tax Guide*, to determine whether the worker was an independent contractor under common law: (1) behavioral control, including instructions that the business provides to the worker and the training provided to the worker; (2) financial control, including factors showing the business has a right to control aspects of the worker's job; and (3) the type of relationship, including if there are any written contracts describing the relationship the parties intended to create, whether any employment benefits are provided, the extent to which the services performed by the individual are a key aspect of the company's regular business, and the permanency of the relationship. Oklahoma Tax Comm'n, *Decision 2008-01-08-02*, 2008 WL 1946673 (Okla. Tax Comm'n Jan. 8, 2008).

[7] OKLA. STAT. tit. 40, § 1-210(14).

[8] OKLA. STAT. tit. 40, § 1-210(1)(b).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		Employment Security Act "if the services are performed by the individual in an employer-employee relationship with the employer using the 20-factor test used by the Internal Revenue Service of the United States Department of Treasury in Revenue Ruling 87-41, 1987-1 C.B. 296."[9]
Wage & Hour Laws	Oklahoma Department of Labor, Employment Standards Division, Wage & Hour	Multi-factor balancing test.[10] The following factors are considered "significant" when determining whether an individual is an employee or independent contractor: 1. nature of the contract between the parties, whether it is written or oral; 2. degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent; 3. whether or not the one employed is engaged in a distinct occupation or business for others; 4. kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; 5. skill required; 6. whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; 7. length of time for which the person is employed; 8. method of payment, whether by the time or by the job; 9. whether or not the work is a part of the regular business of the employer;

[9] OKLA. STAT. tit. 40, § 1-210(14). The law also vests the Oklahoma Employment Security Commission with exclusive authority to make a determination as to whether an individual is an independent contractor or employee. OKLA. STAT. tit. 40, § 1-210(14).

[10] The wage and hour regulations, which cover the wage payment and minimum wage provisions, provide that the meaning of the term employee *does not* include independent contractors. OKLA. ADMIN. CODE § 380:30-1-2. *Independent contractor* is defined as: "one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer's control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished." OKLA. ADMIN. CODE § 380:30-1-2.

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		10. whether or not the parties believe they are creating the relationship of master and servant; and 11. right of either party to terminate the relationship without liability. The statute states that "[n]o one factor is controlling, and the relationship must be based on the set of facts peculiar to the case."[11]
Workers' Compensation	Oklahoma Workers' Compensation Commission	Multi-factor balancing test, which considers the same 11 factors as set forth above.[12]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. Oklahoma does not have an approved state plan under the federal Occupational Safety and Health Act.

Effective November 1, 2023, Oklahoma will consider drivers for transportation network companies (TNCs) to be independent contractors and not employees if:

- the TNC does not require the driver to be logged in to their digital network during specific hours;
- there are no restrictions on the driver's ability to use the digital network from other TNCs, nor restrict the driver's ability to work in any other occupation or business; and
- the TNC and driver agree in writing that the driver is an independent contractor.[13]

[11] OKLA. ADMIN. CODE § 380:30-1-2.

[12] *Duncan v. Power Imports*, 884 P.2d 854, 855-56 n.1 (Okla. 1994); *see also Carbajal v. Precision Builders, Inc.*, 333 P.3d 258, 260 (Okla. 2014) (using the 11-factor test and concluding that a construction worker was misclassified as an independent contractor); *Clayco Constr. v. Beserra*, 962 P.2d 671, 673 (Okla. Civ. App. 1998); *Lang v. Landeros*, 918 P.2d 404, 406 n.3 (Okla. Civ. App. 1996). The Oklahoma Workers' Compensation Commission addresses independent contractors in its Employer Guide, which is available at https://www.wcc.ok.gov/home/showpublisheddocument/2028/638492181076470000. The Employer Guide, which covers work-related injuries, illnesses, and deaths occurring on or after February 1, 2014 when the commission assumed jurisdiction over such, advises that independent contractors are not covered under the Oklahoma workers' compensation law, and lists the 11 factors used to determine employment status. Oklahoma Workers' Comp. Comm'n, *Employer Guide*.

[13] H.B. 2464 (Okla. 2023).

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1.2 Employment Eligibility & Verification Requirements

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

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

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[14]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[15] 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.[16]

For more information on these topics, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

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

1.2(b)(i) *Private Employers*

In Oklahoma, all persons are prohibited from:

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[14] 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.

[15] *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).

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

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- concealing, harboring, or sheltering from detection any alien in any place within the state, including any building or means of transportation, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law; and
- intentionally destroying, hiding, altering, absconding with, or keeping documentation, including birth certificates, visas, passports, green cards, or other documents utilized in the regular course of business to either verify or legally extend an individual's legal status within the United States for the purpose of trafficking a person.[17]

Oklahoma does not require private-sector employers to use E-Verify or another electronic verification method.

1.2(b)(ii) *State Contractors*

Contractors and subcontractors that enter into a contract or subcontract in connection with the physical performance of services within Oklahoma are required to register with and use E-Verify. This provision does not apply to contracts entered into before July 1, 2008, even though the contracts may involve the performance of services in the state after July 1, 2008.[18]

In addition, every public employer is required to register with and use E-Verify to verify the federal employment authorization status of all new employees.[19]

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

Concealing illegal aliens and tampering with documentation is a felony, punishable by imprisonment for at least one year, by a fine of at least $1,000, or by both.[20]

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").[21] 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

[17] OKLA. STAT. tit. 21, § 446(B), (C).

[18] OKLA. STAT. tit. 25, § 1313(B)(2)-(3).

[19] OKLA. STAT. tit. 25, § 1313(A).

[20] OKLA. STAT. tit. 21, § 446(E).

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

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employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.

2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

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

For additional information on these topics, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

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

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

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

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

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

Employers in Oklahoma may not require an applicant to disclose any information contained in sealed records in any application, interview, or in any other way. Moreover, an applicant need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, and may state that no such action has ever occurred. A job application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.[22]

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[23] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[24] 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.

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[22] OKLA. STAT. tit. 22, § 19.

[23] 15 U.S.C. §§ 1681 *et seq*.

[24] 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).

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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 GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

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]."[25]

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

Oklahoma has a mini-FCRA law. Prior to requesting a consumer report for employment purposes, an employer must provide written notice to the person who is the subject of the report. The notice must inform the individual that a consumer report will be used, and must contain a box that can be checked to indicate that the individual wants a copy of the report. If a copy is requested, the employer must request that the credit reporting agency provide a copy to the individual and the report must be provided to the individual free of charge.[26]

Consumer report has the same meaning as in the federal FCRA (see **1.3(b)(i)**).[27]

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).

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

[26] OKLA. STAT. tit. 24, § 148.

[27] OKLA. STAT. tit. 24, § 148(A).

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- 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 GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

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

An Oklahoma employer cannot: (1) require an employee or applicant to disclose a username and password or other means of authentication for accessing a personal online social media account through an electronic communications device; or (2) require an employee or applicant to access their personal online social media account in the employer's presence in a manner that enables the employer to observe the account's contents if they are not available to the general public.[28]

Personal online social media account is an online account used by an employee or applicant exclusively for personal communications that an individual establishes and uses through an electronic application, service or platform used to generate or store content, including, but not limited to, videos, still photographs, blogs, video blogs, instant messages, audio recordings, or email that is not available to the general public.[29] *Electronic communications device* is a device that uses electronic signals to create, transmit or receive information, including computers, telephones, personal digital assistants, and other similar devices.[30]

An employer is also prohibited from refusing to hire *an applicant* solely because the applicant refuses to give the employer the username and password to their personal online social media account.[31] Moreover, an employer cannot take retaliatory personnel action that materially and negatively affects an *employee's* employment terms and conditions solely because the employee refuses to give the employer the username or password to their personal online social media account.[32]

Exceptions. The statutory definition of *personal online social media account* explicitly covers only information that is "not available to the general public." Accordingly, there are no restrictions against an employer accessing information that is in the public domain.[33] In addition, the law does not prevent an employer from complying with state or federal law or the rules of self-regulatory organizations.[34]

With respect to workplace investigations, an employer can conduct an investigation to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct

[28] OKLA. STAT. tit. 40, § 173.2.

[29] OKLA. STAT. tit. 40, § 173.2(H).

[30] OKLA. STAT. tit. 40, § 173.2(H).

[31] OKLA. STAT. tit. 40, § 173.2.

[32] OKLA. STAT. tit. 40, § 173.2.

[33] *See* OKLA. STAT. tit. 40, § 173.2.

[34] OKLA. STAT. tit. 40, § 173.2(E).

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based on the receipt of specific information about activity on a personal online social media account or service by an employee or other source. Moreover, an employer can conduct an investigation into an employee's actions, based on receiving specific information about the unauthorized transfer of an employer's proprietary information, confidential information, or financial data to a personal online social media account or service by an employee or other source.[35] Conducting an interview includes requiring the employee's cooperation to share content that has been reported to make a factual determination.[36]

Notably, an employer will not be held liable for not reviewing an employee's personal online social media accounts, or for not requesting, accessing, or reviewing an employee's personal online social media accounts. An employer's failure to access such information is inadmissible in any legal proceeding.[37]

Rules for Employer-Provided Devices & Online Accounts. An employer can request or require an employee to disclose any username and password for accessing: (1) any computer system, information technology network, or electronic communications device provided or subsidized by the employer; or (2) any accounts or services provided by the employer or by virtue of the employee's employment relationship with the employer or that the employee uses for business purposes.[38]

Moreover, the law does not prohibit an employer from accessing its computer system or information technology network, including electronic communications devices it owns. The law also does not prohibit an employer from reviewing or accessing personal online social media accounts that an employee may choose to use while using an employer's computer system, information technology network, or electronic communication device.[39]

If, through the use of an electronic device or program that monitors an employer's network or the use of employer-provided devices, an employer inadvertently receives an employee's username and password or other authentication information, the employer is not liable for having such information, but cannot use the information to access an employee's personal online social media account.[40]

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

In Oklahoma, an employee or applicant can file a civil action against an employer that violates the social media law. The suit must be filed within six months of the alleged violation. If successful, the individual can obtain injunctive relief to restrain the employer from continuing to violate the law, but must show by clear and convincing evidence that the employer violated the law. Only $500 in damages can be recovered for a violation. Punitive or emotional damages are not recoverable. Moreover, a violation of the law cannot be used as the basis of a public policy tort.[41]

[35] OKLA. STAT. tit. 40, § 173.2(D).

[36] OKLA. STAT. tit. 40, § 173.2(D)(2).

[37] OKLA. STAT. tit. 40, § 173.3.

[38] OKLA. STAT. tit. 40, § 173.2(B).

[39] OKLA. STAT. tit. 40, § 173.2(F).

[40] OKLA. STAT. tit. 40, § 173.2(C).

[41] OKLA. STAT. tit. 40, § 173.2(G).

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

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

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

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

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

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

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

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

1.3(e) *Drug & Alcohol Testing on 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.[43] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not

[42] 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.

[43] 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.

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subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[44] 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*

Oklahoma has a drug-testing law, the Standards for Workplace Drug and Alcohol Testing Act ("Workplace Testing Act"), which covers public and private employers.[45] The Workplace Testing Act does not require or encourage employers to conduct drug or applicant testing; however, employers that test must do so in accordance with the statutory requirements.[46] Any drug or alcohol testing required by and conducted pursuant to federal law or regulation is exempt from the requirements of the Workplace Testing Act.[47] A collective bargaining agreement may also provide greater protections to employees or applicants than is provided by the Workplace Testing Act.[48]

Written Policy Requirements. An employer that requests or requires applicants or employees to undergo drug or alcohol testing must adopt a written policy prior to testing.[49] The policy must set forth the specifics of the drug or alcohol testing program, which may include the following information:

1. a statement of the employer's policy with respect to employee drug or alcohol use;
2. which applicants and employees are subject to testing;
3. the circumstances under which testing may be requested or required;
4. the substances for which testing may be conducted (this may be a general statement that the employer tests for drugs and alcohol);
5. the testing methods and collection procedures to be used;
6. consequences of refusing to undergo testing;
7. potential adverse personnel action that may be taken as a result of a positive test result;
8. the ability of applicants and employee to explain, confidentially, test results;
9. the ability of applicants and employees to obtain copies of all information related to their testing;
10. confidentiality requirements; and

[44] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[45] OKLA. STAT. tit. 40, §§ 551 *et seq.*

[46] OKLA. STAT. tit. 40, § 553.

[47] OKLA. STAT. tit. 40, § 553(C).

[48] OKLA. STAT. tit. 40, § 553(D).

[49] OKLA. STAT. tit. 40, § 555.

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11. the available appeal procedures.[50]

An employer that is implementing a policy or changing a policy must provide at least 10 days of notice to employees. Moreover, employers must provide to applicants a copy of the testing policy upon acceptance of employment. Notice may be given by any of the following methods: (1) hand delivering a paper copy of the policy or changes; (2) mailing a paper copy of the policy or changes to the last address given by the employee or applicant; (3) electronically transmitting a copy of the policy through an email or by posting on the employer's website or intranet site; or (4) posting a copy in a prominent employee access area.[51]

Applicant Testing. An employer may request or require an applicant to undergo drug or alcohol testing, and may use a refusal to undergo testing or a positive test result as a basis for refusal to hire.[52] An employer must pay all costs of testing for drugs or alcohol required by the employer. However, if an applicant requests a confirmation test of the sample within 24 hours of a positive result, the applicant will bear the costs, unless the confirmation test reverses the findings of the challenged test, in which case the employer must reimburse the individual.[53]

Employee Testing. Oklahoma law allows employers to request or require an employee to undergo drug or alcohol testing at any time it reasonably believes the employee may be under the influence of drugs or alcohol, including, but not limited to the following circumstances:

- drugs or alcohol on or about the employee's person or in the employee's vicinity;
- conduct on the employee's part that suggests impairment or influent of drugs or alcohol;
- a report of drug or alcohol use while at work or on duty;
- information that an employee has tampered with drug or alcohol testing at any time;
- negative performance reviews; or
- excessive or unexplained absenteeism or tardiness.[54]

Employers may also require an employee to undergo drug or alcohol testing if the employee or another person has been injured while at work or property was damages will at work.[55]

Employers may request or requires employees undergo random or scheduled drug testing for employees who:

- are police or peace officers;
- have drug interdiction responsibilities;
- are authorized to carry firearms;
- are engaged in activities which directly affect the safety of others;

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[50] OKLA. STAT. tit. 40, § 555.

[51] OKLA. STAT. tit. 40, § 555(B).

[52] OKLA. STAT. tit. 40, § 554.

[53] OKLA. STAT. tit. 40, § 556.

[54] OKLA. STAT. tit. 40, § 554(2).

[55] OKLA. STAT. tit. 40, § 554(3).

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- are working for a public hospital owned or operated by a municipality, county, or public trust; or
- work in direct contact with inmates, juvenile delinquents, or child in need of supervision in custody.[56]

Lastly, employers may request or require an employee undergo drug or alcohol testing for a period of two years commencing with the employee's return to work following a positive test and participation in a drug or alcohol dependency treatment program.[57]

Other Provisions. The Workplace Testing Act includes detailed information on how samples must be collected and tested.[58]

Any drug or alcohol testing is considered work time for the purposes of compensation and benefits. Employers must pay all costs for testing, except for when an employee is challenging a positive result.[59] Generally, records of drug or alcohol test results are confidential and may only be released to the employee, applicant, or a medical review officer. However, employers may release information as admissible evidence in a case, to employees, agents, and representatives who need access to the information in the administration of the workplace policy, or if disclosure is required to comply with judicial or administrative orders.[60]

Drug and alcohol testing records and related information maintained by the employer become property of the employer. These records must be made available to applicants and employees for inspection and copying upon request.[61]

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 employees or job applicants to pay, either directly or indirectly, any part of the cost of medical examinations, reports, or copying of reports as a condition of employment or continued employment. Employers also cannot require employees or job applicants to submit to physical or medical examinations, unless the examinations are free and employees receive a copy of the medical reports free of charge within 30 days after such examination.[62]

1.3(f)(ii) *State Restrictions on Inquiries Regarding Firearms or Ammunition*

In Oklahoma, it is unlawful for any private employer to ask an applicant whether the applicant owns or possesses a firearm.[63]

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[56] OKLA. STAT. tit. 40, § 554(4), (5).

[57] OKLA. STAT. tit. 40, § 554(6).

[58] OKLA. STAT. tit. 40, § 559.

[59] OKLA. STAT. tit. 40, § 556.

[60] OKLA. STAT. tit. 40, § 560.

[61] OKLA. STAT. tit. 40, § 560.

[62] OKLA. STAT. tit. 40, § 191.

[63] OKLA. STAT. tit. 21, § 1289.27.

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2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

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

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[64] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[65] 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.[66] 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.[67]
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.[68]

[64] 26 U.S.C. § 36B.

[65] 42 U.S.C. § 18071.

[66] 29 U.S.C. § 218b.

[67] 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.

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

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	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.[69]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[70] 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.[71] 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.[72]
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

[69] 29 C.F.R. § 2590.606-1.

[70] 29 C.F.R. § 825.300(a).

[71] 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.

[72] 29 C.F.R. § 825.300(a).

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	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.[73] 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.[74]
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.[75]
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.[76]

2.1(b) *State Guidelines on Hire Documentation*

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

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents	No notice requirement located.

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

[74] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[75] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[76] 29 C.F.R. § 531.59.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
Drug & Alcohol Testing Documents	An employer that implements a drug or alcohol testing policy must provide a copy of its policy to each applicant when the employee accepts employment. Notice must be provided by: (1) hand delivery; (2) mailing a copy to the applicant's address; (3) electronically transmitting a copy by email or posting on the employer's website or intranet site; or (4) prominent posting at the worksite. The policy must include specific information (such as testing methods, consequences for refusal to test, etc.) as set forth by the statute.[77]
Tax Documents	Oklahoma has its own withholding exemption certificate requirement. Employers must provide new employees with the OK-W-4 form. As well, current employees who wish to make changes to their state withholding must use the Oklahoma state form. Employees that submitted the federal Form W-4 to their employers prior to March 1, 2018 are not required to submit the OK-W-4, unless they wish to make changes.[78]
Wage & Hour Documents	No notice requirement located.

2.2 New Hire Reporting Requirements

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

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[79] 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;

[77] OKLA. STAT. tit. 40, § 555.

[78] OKLA. ADMIN. CODE § 710:90-1-5. The OK-W-4, Employee's Withholding Allowance Certificate, revised March 2018 is available online at https://oklahoma.gov/content/dam/ok/en/tax/documents/forms/businesses/general/OK-W-4.pdf.

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

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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).[80]

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

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

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

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

[80] 42 U.S.C. § 653a.

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

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[81] 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 Oklahoma's new hire reporting law.

Who Must Be Reported. An employer must report employees newly hired, rehired, or recalled to work or live in the state and to whom the employer anticipates paying earnings.[82]

Report Timeframe. The report must be made within 20 days of hiring. If the report is submitted electronically or magnetically it can be submitted twice per month, not less than 12 nor more than 16 days apart.[83]

Information Required. The report must include the employee's name, address, Social Security number, date of employment, and state of employment along with the employer's name, address, and federal tax identification number must be included in the report.[84]

Form & Submission of Report. Acceptable forms of submission include the new hire reporting form, Form W-4 with required information, or other means authorized by the Oklahoma Employment Security Commission. The report may be submitted through the online reporting system, online, electronically, magnetically, by mail, or by fax.[85]

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

[82] OKLA. STAT. tit. 40, § 2-802(A).

[83] OKLA. STAT. tit. 40, § 2-802(C).

[84] OKLA. STAT. tit. 40, § 2-802(B).

[85] OKLA. STAT. tit. 40, § 2-802(B); Oklahoma Emp't Sec. Comm'n, *New Hire Reporting FAQs*, *available at* https://apps.ok.gov/oesc/newhire/app/helpful_hints.php#:~:text=How%20soon%20must%20I%20submit,20%20days%20of%20being%20hired..

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Location to Send Information.

Oklahoma New Hire Reporting Center
P.O. Box 52004
Oklahoma City, OK
73152-2004
(405) 557-7133
(800) 317-3785
(405) 557-5350 (fax)
(800) 317-3786 (fax)
https://www.ok.gov/oesc/newhire/app/index.php

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

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

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[86] 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.

[86] 18 U.S.C. §§ 1832 *et seq.*

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

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

In Oklahoma, every contract that restrains another from exercising a lawful profession, trade, or business of any kind, is void.[87] The Oklahoma statute initially provides two exceptions to the general rule: (1) one who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified geographic area;[88] and (2) partners, upon dissolution of a partnership, may agree that none of them will carry on a similar business in a specified geographic area.[89]

Two additional exceptions are included in the Oklahoma noncompete statute. First, restraints on doing business with established customers of a former employer are permissible.[90] Specifically, the statute provides that a person who makes an agreement with an employer not to compete after the employment relationship ends, must be permitted to engage in the same business as that conducted by the former employer or a similar business provided the former employee does not directly solicit the sale of goods or services from the employer's established customers. Second, employee anti-raiding provisions—*i.e.*, provisions that prohibit an employee or independent contractor from "soliciting, directly or indirectly, actively or inactively, the employees or independent contractors" of another business—are also allowed.[91]

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

Because Oklahoma does not generally allow noncompete agreements, the consideration issue has not been fully addressed by the courts.[92] 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 in exchange for a restrictive covenant.

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.

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[87] OKLA. STAT. tit. 15, § 217.

[88] OKLA. STAT. tit. 15, § 218.

[89] OKLA. STAT. tit. 15, § 219.

[90] OKLA. STAT. tit. 15, § 219A; *see also Inergy Propane, L.L.C. v. Lundy*, 219 P.3d 547 (Okla. Ct. App. 2008).

[91] OKLA. STAT. tit. 15, § 219B.

[92] *Inergy Propane, L.L.C.*, 219 P.3d at 551 (defendant, who initially sold his business and was then employed for two separate periods by the plaintiff, signed a nonsolicitation as "partial consideration" for his rehiring).

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Modification of geographic terms involving a sale of goodwill of a business or dissolution of a partnership is required under the Oklahoma noncompete statute.[93] Other judicial modifications, however, appear to be more restricted. In a 2011 Oklahoma Supreme Court decision, *Howard v. Nitro-Lift Technologies*, the court considered whether it should modify a broad restriction to, essentially, convert it into a permissible customer nonsolicitation agreement. The court declined to do so "because judicial modification cannot be accomplished without rewriting the agreement to cure multiple defects, leaving only a shell of the original agreement, and would require the addition of at least one material term . . . ."[94] Notably, the U.S. Supreme Court overruled the Oklahoma Supreme Court's decision in *Nitro-Lift* because the noncompete agreement contained an arbitration clause, the validity of which should have been left for the arbitrator to decide.[95] The Oklahoma Court of Appeals has also indicated its reluctance to modify an otherwise unenforceable provision.[96]

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

When an employee leaves a business, the employee will sometimes take valuable information of the business to use for competitive purposes. In the absence of an Oklahoma being able to enter into a noncompete restriction, Oklahoma law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer—namely, through its adoption of the Uniform Trade Secrets Act.[97]

Definition of a Trade Secret. Under the Oklahoma Uniform Trade Secrets Act, a *trade secret* means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

1. derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[98]

Proving the existence of a trade secret requires proof of information not generally known in the industry which gives rise to competitive advantage to the owner of such information and is maintained as a secret.[99] To be protected, trade secrets must be particular secrets not just general secrets of trade.[100]

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

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[93] OKLA. STAT. tit. 15, §§ 218, 219.

[94] *Howard v. Nitro-Life Technologies, L.L.C.*, 273 P.3d 20, 29 (2011), *overruled*, 568 U.S. 17 (2012).

[95] *Nitro-Life Technologies, L.L.C. v. Howard*, 568 U.S. 17 (2012).

[96] *Loewen Grp. Acquisition Corp. v. Matthews*, 12 P.3d 977, 982 (Okla. Ct. App. 2000) (citation omitted) ("We will not engage in judicial modification of the unenforceable provision because the fundamentally flawed nature of the agreement would require 'material judicial alteration and the provision of essential terms in order to come within the rule of reason.'").

[97] OKLA. STAT. tit. 78, §§ 86 *et seq*.

[98] OKLA. STAT. tit. 78, § 86(4).

[99] *Micro Consulting Inc. v. Zubeldia*, 813 F. Supp. 1514, 1534 (W.D. Okla. 1990).

[100] *Central Plastics Co. v. Goodson*, 537 P.2d 330 (Okla. 1975).

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- acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- disclosure or use of a trade secret of another without express or implied consent by a person who:
  - used improper means to acquire knowledge of the trade secret; or
  - at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
    - derived from or through a person who had utilized improper means to acquire it;
    - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
    - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
  - before a material change of his position, knew, or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[101]

The Act displaces conflicting tort claims only for misappropriation of a trade secret and does not displace the common-law tort of misappropriation of business information.[102]

Actual or threatened misappropriation may be enjoined.[103] Complainants may also be entitled to recover damages. These damages can include the actual loss caused by the misappropriation and unjust enrichment.[104]

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

Oklahoma has no statutory authority addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

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

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

[101] OKLA. STAT. tit. 78, § 86(2).

[102] *American Biomedical Grp., Inc. v. Techtrol, Inc.*, 374 P.3d 820 (Okla. 2016).

[103] OKLA. STAT. tit. 78, § 87.

[104] OKLA. STAT. tit. 78, § 88.

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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.[105]
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.[106]
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.[107]
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.[108]
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.[109]
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.[110]

[105] 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.

[106] 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.

[107] 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.

[108] 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.

[109] 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.

[110] 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.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
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.[111]
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.[112]
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.[113] 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.[114]
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.[115]
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

[111] 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.

[112] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[113] 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.

[114] 41 C.F.R. §§ 60-300.44, 60-741.44.

[115] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	attaching a notice to the contract, or may post the notice at the worksite.[116]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[117]
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.[118]
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.[119]
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.[120]
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

[116] 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.

[117] 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.

[118] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[119] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[120] 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.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[121] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[122]
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.[123]
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.[124]

[121] 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.

[122] 29 C.F.R. § 13.5.

[123] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[124] 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.

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

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

Table 6. State Posting & Notice Requirements

Poster or Notice	Notes
Drug & Alcohol Testing	An employer that implements a drug or alcohol testing policy (or changes an existing policy) must provide notice of the policy to all employees. Notice must be provided by: (1) hand delivery; (2) mailing a copy to the employee's address; (3) electronically transmitting a copy by email or posting on the employer's website or intranet site; or (4) prominent posting at the worksite. The policy must include specific information (such as testing methods, consequences for refusal to test, etc.) as set forth by the statute.[125]
Unemployment Compensation	All employers must post and maintain notice, where readily accessible to employees, informing employees of their rights under the unemployment insurance law and how to file for benefits. The notice may be posted electronically on the employer's website, or periodically distributed through email, if it can be shown that is the most likely method of reaching employees.[126]
Uniformed Services Employment and Reemployment Rights Act	Employers must identify employees that are members of the state military forces and provide them with a notice of rights, benefits, and obligations of employees and employers under the law. The notice requirement may be met by posting the notice where employers customarily place notices.[127]
Wages, Hours & Payroll	All employers must post notice, where readily accessible to employees, informing employees about the minimum wage law and related topics, such as overtime, who is an employee, and uniform expenses. Notice must be at least 8 ½ inches x 11 inches in size.[128]
Workers' Compensation: Covered Employers	All employers that have secured coverage under the Administrative Workers' Compensation Act must post conspicuous notice informing

[125] OKLA. STAT. tit. 40, § 555.

[126] OKLA. STAT. tit. 40, § 2-502; OKLA. ADMIN. CODE § 240:10-3-51. This poster is available at https://www.labor.nc.gov/combined-posters-english-2023pdf/open.

[127] OKLA. STAT. tit. 44, § 4334.

[128] OKLA. STAT. tit. 40, § 197.6; OKLA. ADMIN. CODE § 380:30-1-8. This poster is available in English at https://oklahoma.gov/content/dam/ok/en/omes/documents/WHMWPosterPlainLanguage--A.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	employees of their rights and responsibilities and identifying the insurance carrier.[129]
Workplace Safety: Smoke Free or Tobacco Free	Generally speaking, in Oklahoma smoking is prohibited in indoor workplaces. Where smoking is prohibited, employers must post "No Smoking" signs at each entrance to the building. Signs indicating that the facility is smoke or tobacco free must be at least 4 inches by 2 inches in size. Where tobacco or marijuana smoking or vaping is prohibited, signs must be posted at entrances to and at prominent places within such places.[130]

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.[131]	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.

[129] OKLA. STAT. tit. 85a, § 41. This poster is available at https://oklahoma.gov/content/dam/ok/en/oesc/documents/forms/oes-forms/OES-044.pdf.

[130] OKLA. STAT. tit. 21, § 21-1247; OKLA. STAT. tit. 63, § 1-1525.

[131] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[132]	
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.[133]	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.[134]	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.[135]	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

[132] 29 C.F.R. § 1627.3(b).

[133] 29 C.F.R. § 1627.3(b).

[134] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[135] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[136]	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.[137]	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.[138]	At least 6 years after documents are filed or would have been filed but for an exemption.

[136] 29 C.F.R. § 1602.7.

[137] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[138] 29 U.S.C. § 1027.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[139]	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.[140]	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.

[139] 29 C.F.R. § 1620.32(a).

[140] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[141] 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.[142]	
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.

[141] 29 C.F.R. §§ 516.2, 516.5.

[142] 29 C.F.R. § 516.28.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[143]	
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.[144]	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.[145]	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.

[143] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[144] 29 C.F.R. § 516.5.

[145] 29 C.F.R. § 516.6.

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

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	FLSA) an employer does not need to keep a record of actual hours worked, provided that: • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[146]	
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.

[146] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[147]	
Immigration	Employers must retain all completed Form I-9s.[148]	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.[149]	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.

[147] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[148] 8 C.F.R. § 274a.2.

[149] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[150]	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.[151]	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.

[150] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[151] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer's trade or business, and the amount of the cash remuneration paid for those services.[152]	
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.[153]	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.

[152] 26 C.F.R. § 31.6001-4.

[153] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[154]	
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.[155]	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.[156]	5 years following the end of the calendar year that the record covers.

[154] 29 C.F.R. § 1910.1020(d).

[155] 29 C.F.R. § 1910.1020(d).

[156] 29 C.F.R. §§ 1904.33, 1904.44.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[157]	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.

[157] 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[158]	
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.[159]	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.

[158] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[159] 41 C.F.R. §§ 60-1.12, 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[160]	
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.

[160] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	relieve a contractor from its reinstatement obligation.[161]	
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.[162]	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.

[161] 29 C.F.R. § 13.25.

[162] 29 C.F.R. § 5.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a copy of the contract.[163]	
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.[164]	At least 3 years from the last date of entry.

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

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Apprenticeship Programs	*Each person that controls an apprenticeship program must keep records reasonably necessary to carry out the purposes of the law, including:* • a list of applicants who wish to participate in the program, including the chronological order in which applications were received; and • a detailed description of the manner in which persons are selected to participate must be furnished to the commission upon request.[165]	None specified.
Income Tax	*An employer must maintain accurate withholding records, including:* • employer's identification number; • copies of all returns, reports, and other documents concerning state withholding tax, including business registration, employer's return of tax withheld, annual	4 years after due date of tax or the date the tax is paid, whichever is later.

[163] 29 C.F.R. § 4.6.

[164] 41 C.F.R. § 50-201.501.

[165] OKLA. STAT. tit. 25, § 1507.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	reconciliation and appropriate wage and tax statements; • copies of IRS Forms 940 and 941, Oklahoma Employment Security Commission Form OES-3, and Oklahoma Employer's Return of Income Tax Withheld, Form 30003; • dates and amounts of state withholding tax payments made and copies of cancelled checks; • each employee's name, address, occupation, Social Security number, and periods of employment; • total amount of and date of each wage payment and the period of time the payment covers; • for each payment, the amount subject to withholding; • the amount of withholding tax collected on each payment and the date it was collected; • the withholding exemption certificate (Form W-4) filed by each employee; • any agreement between the employer and employee for the voluntary withholding of additional amounts of tax or of amounts which are not required to be withheld; • a chart of accounts; • copies of filed federal and state Income; • tax returns and supporting schedules; and • books of original entry, ledgers, and any other information necessary to substantiate the amount of tax withheld and paid.[166]	
Unemployment Compensation	*Employing units must maintain various records for unemployment compensation purposes.* *General records must be kept, including:* • records showing the proprietary interest, type of organization, and identity of the employing unit; • all accounting records, business and personal; • all bank statements and banking records for checking and savings accounts, business and personal; • all federal and state income tax returns, business and personal, including all schedules; • all payroll records including federal IRS Forms W-2, W-3, 940, 941, and 1099;	4 years.

[166] OKLA. ADMIN. CODE § 710:90-1-11.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• all general ledgers, cash disbursement ledgers or journals, cash receipts journals, check registers, and check stubs for the employer's business; • state where services were performed and, if out of state, base of operations and residence; and • any other books, papers, correspondence, or records deemed necessary for review by a commission representative. *Records must be kept, for each pay period, including*: • the beginning and ending dates of such period; and • the total amount of wages paid with respect to all employment. *For each worker, records must be kept that show:* • name and Social Security number; • wages for each pay period showing separately: cash wages, reasonable cash value of noncash remuneration, actual or estimated amount of gratuities received from persons other than the employer, special payments for services rendered and the periods in which the service was performed, and total amount of wages paid for each pay period; • date of hire; and • date of separation; the records must show the circumstances leading to the separation of the employee with respect to the following: ▪ if applicable, record that separation of employee was because there was a lack of work together with reasons given by the employer to the worker for their discharge; ▪ if applicable, record that employee voluntarily separated from employment with record of employee's reasons for separating; ▪ if separation from employment was a discharge of the worker for any reason other than "lack of work," the record must reflect such circumstances, along with the reason given by the employer to the worker for the discharge (sufficient detail must reflect whether there was any misconduct connected with the employee's work);	

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ any other reason for separation must be documented recording all details of the reasons for separation; and ▪ if the individual was not regularly employed, records showing each day the individual was in employment.[167]	
Wages, Hours & Payroll	*Every employer subject to the labor code must keep and preserve employee records, including:* • wages; • hours; and • other conditions and practices of employment.[168]	Duration of employment and no less than 5 years after separation.
Workplace Safety	Oklahoma has adopted the federal record-keeping standard (29 C.F.R. § 1904) with minor, nonsubstantive revisions.[169]	See federal requirements.

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*

There is no statutory provision located on personal files and records access in Oklahoma.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

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

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

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

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

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see 1.3(e)(i).

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[167] OKLA. STAT. tit. 40, § 4-502; OKLA. ADMIN. CODE § 240:10-5-90.

[168] OKLA. ADMIN. CODE § 380:30-3-3(d).

[169] OKLA. ADMIN. CODE § 380:40-1-5.

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

For information on the Oklahoma Standards for Workplace Drug and Alcohol Testing Act ("Workplace Testing Act"),[170] which covers public and private employers, see **1.3(e)(ii)**.

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[171]

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

Two laws govern the use of medical marijuana in Oklahoma: voter-approved State Question No. 788 (SQ788) and the Oklahoma Medical Marijuana & Patient Protection Act (MMPPA).

Under SQ 788, unless a failure to do so would cause an employer the potential to lose a monetary or licensing related benefit under federal law or regulations, it cannot discriminate against a person in hiring, termination, or imposing any term or condition of employment or otherwise penalize a person based on the person's status as a medical marijuana patient.[172] Relatedly, under the MMPPA, unless otherwise required by federal law or required to obtain federal funding, an employer cannot refuse to hire, discipline, discharge, or otherwise penalize an applicant or employee solely on the basis of the individual's status as a medical marijuana licensee.[173]

Repeating some of the same language as above, under SQ 788, unless a failure to do so would cause an employer to imminently lose a monetary or licensing related benefit under federal law or regulations, it cannot take action against a medical marijuana patient solely based on the results of a drug test showing positive for marijuana or its components.[174] Under a similar MMPPA provision, unless otherwise required by federal law or required to obtain federal funding, an employer cannot refuse to hire, discipline, discharge, or otherwise penalize an applicant or employee solely on the basis of the individual's positive test for marijuana components or metabolites (*i.e.*, a result that is at or above the cutoff concentration level established by the U.S. Department of Transportation or Oklahoma law regarding being under the influence, whichever is lower) unless:

- the individual does not possess a valid medical marijuana license;
- the individual possesses, consumes or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations; or
- the position is one involving safety-sensitive job duties, *i.e.*, any job that includes tasks or duties the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:

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[170] OKLA. STAT. tit. 40, §§ 551 *et seq.*

[171] 21 U.S.C. §§ 811-12, 841 *et seq*.

[172] OKLA. STAT. tit. 63, § 425(B).

[173] OKLA. STAT. tit. 63, § 427.8(H)(1).

[174] OKLA. STAT. tit. 63, § 425(B). Note, however, that the ballot measure, as written, was not a model of clarity, so a court might interpret the statute as prohibiting action based on a positive drug test for marijuana or its components, regardless of whether an employer would lose a federal monetary or licensing benefit.

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- handling, packaging, processing, storage, disposal, or transport of hazardous materials;
- operating a motor vehicle, other vehicle, equipment, machinery, or power tools;
- repairing, maintaining, or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;
- performing firefighting duties,
- operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution;
- extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment, or transport of potentially volatile, flammable, combustible materials, elements, chemicals, or any other highly regulated component;
- dispensing pharmaceuticals;
- carrying a firearm; or
- direct patient or child care.[175]

Additionally, under the MMPPA an employer can have written policies regarding drug testing and impairment in accordance with the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.[176]

Under SQ 788, an employer can take action against a medical marijuana patient if the patient uses or possesses marijuana in the individual's place of employment or during the hours of employment.[177] Under the MMPPA, employers are not required to permit or accommodate medical marijuana use on the property or premises of any place of employment or during hours of employment.[178]

Under both SQ 788 and the MMPPA, all smokable, vaporized, vapable and e-cigarette medical marijuana and medical marijuana products smoked or inhaled through vaporization is subject to the same restrictions for tobacco under the "Smoking in Public Places and Indoor Workplaces Act" (see **3.10(d)(ii)**).[179]

Additionally, under the MMPPA:

- Commercial property or business owners can prohibit medical marijuana or medical marijuana product consumption by smoke or vaporization on the premises, within the structures of the premises or within 10 feet of the entryway to the premises.[180]

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[175] OKLA. STAT. tit. 63, § 427.8(H)(2), (K).

[176] OKLA. STAT. tit. 63, § 427.8(I)(3).

[177] OKLA. STAT. tit. 63, § 425(B).

[178] OKLA. STAT. tit. 63, § 427.8(I)(1).

[179] OKLA. ADMIN. CODE § 442:10-2-11 (referencing OKLA. STAT. tit. 63, §§ 1-1521 *et. seq.*) & OKLA. STAT. tit. 63, § 1-1523 (prohibiting smoking or vaping marijuana in an indoor workplace and other locations); OKLA. STAT. tit. 63, § 427.8(L)

[180] OKLA. STAT. tit. 63, § 427.8(C). However, a medical marijuana patient cannot be denied the right to consume or use other medical marijuana products which are otherwise legal and do not involve the smoking or vaporization of cannabis when lawfully recommended.

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- Employers, private health insurers, worker's compensation carriers or self-insured employers providing worker's compensation benefits are not required to reimburse a person for costs associated with the use of medical marijuana.[181]

Finally, under the MMPPA, the exclusive remedies for applicants or employees aggrieved by a willful violation are those provided for in the Oklahoma Standards for Workplace Drug and Alcohol Testing Act.[182]

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.[183]

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.[184]

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

Notification is required when a covered entity discovers or is notified of a breach, and the covered entity determines that the breach is reasonably likely to cause or have caused identity theft or other fraud to a resident of Oklahoma.[185] A *security breach* is considered unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security and confidentiality of personal information maintained by a covered entity, if the covered entity reasonable believes the breach has caused or will cause identity theft or other harm to a resident of Oklahoma. A breach has occurred

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[181] OKLA. STAT. tit. 63, § 427.8(I)(2).

[182] OKLA. STAT. tit. 63, § 427.8(J).

[183] 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.

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

[185] OKLA. STAT. tit. 24, §§ 161 *et seq*.

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when encrypted information is accessed and acquired in an unencrypted for or by a person with access to the encryption key.[186]

Covered Entities & Information. Any person or business that owns or licenses computerized data that includes personal information is covered under the Oklahoma data breach notification statute.[187] *Personal information* includes 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 number or state identification card number; or
- account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to the account.

Personal information does not include data that is encrypted or redacted. Redacted means to alter or truncate data so that no more than five digits of the Social Security Number are accessible, or no more than the last four digits of a driver license number, state identification card number, or account number are accessible. Personal information also does not include data that is publicly available or information from federal, state, or local government records made available to the public.[188]

A covered entity may be considered to be in compliance with the data security breach statute and thus exempt from the notification requirements if it:

- maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information (the policy must afford the same or greater protection to the affected individuals as this statute);
- complies with the notification requirements or security breach procedures of its primary or functional federal regulator; or
- is a financial institution subject to and compliant with the Federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice.[189]

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

- written notice to the last known home address of the individual;
- telephonic notice
- electronic notice; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $50,000;
  - the affected class of persons to be notified exceeds 100,000; or

[186] OKLA. STAT. tit. 24, § 162(1).

[187] OKLA. STAT. tit. 24, § 163(A).

[188] OKLA. STAT. tit. 24, § 162(6).

[189] OKLA. STAT. tit. 24, § 164.

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- the covered entity does not have sufficient contact information.[190]

Substitute notice must consist of any two of the following:

- email notice if the covered entity has an email address for the affected resident;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; or
- notification by statewide media.[191]

Timing of Notice. Notice must be made without unreasonable delay. However, notification may be delayed if:

- a law enforcement agency determines and advises the covered entity in writing specifically referencing the statute that the notification will impede a civil or criminal investigation or national or homeland security;
- a covered entity needs time to determine the scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.[192]

3.3 Minimum Wage & Overtime

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

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

As a general rule, federal wage and hour laws do not preempt state laws.[193] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

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

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[194]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage

[190] OKLA. STAT. tit. 24, § 162(7).

[191] OKLA. STAT. tit. 24, § 162(7)(d).

[192] OKLA. STAT. tit. 24, § 163.

[193] 29 U.S.C. § 218(a).

[194] 29 U.S.C. § 206.

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of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[195]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[196]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[197] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

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

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

Under the Oklahoma Minimum Wage Act, the minimum wage in Oklahoma is currently $7.25 per hour for most nonexempt employees. State law requires payment of at least the federal minimum wage.[198] The minimum wage law applies to employers:

- with more than 10 full-time employees or equivalent at any one location or place of business; or
- with less than 10 full-time employees or equivalent at any one location or place of business and gross business of more than $100,000 annually.[199]

However, the state minimum wage provisions do not apply to employers covered by the federal FLSA.[200]

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips, an employer may take a maximum tip credit of up to $3.62 per hour (no more than 50% of the minimum wage).[201] Therefore, the minimum cash wage that a tipped employee needs to be paid is $3.63 per hour. Note that if an employee does not make $3.62 in tips per hour, an employer must make up the difference between the wage actually made, and the minimum wage, which is currently $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee. The tipped employee provisions do not apply to employers covered by the FLSA.[202]

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

The definition of *employee* under the Oklahoma Minimum Wage Act does not include:

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[195] 29 U.S.C. §§ 203, 206.

[196] 29 U.S.C. § 3(m)(2)(B).

[197] 29 U.S.C. § 207.

[198] OKLA. STAT. tit. 40, § 197.2.

[199] OKLA. STAT. tit. 40, § 197.4.

[200] OKLA. STAT. tit. 40, §§ 197.2, 197.4.

[201] OKLA. STAT. tit. 40, §§ 197.2, 197.16.

[202] OKLA. STAT. tit. 40, § 197.4.

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- an individual employed on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment;
- any individual employed in domestic service in or about a private home;
- any individual employed by the U.S. government;
- any individual working as a volunteer in a charitable, religious, or other nonprofit organization;
- any newspaper vendor or carrier;
- any employee of any carrier subject to regulation by Part I of the federal Interstate Commerce Act;
- any employee of any employer subject to the provisions the FLSA or to any federal wage and hour law now in effect or enacted hereafter; and is paying the minimum wage under the provisions of that law;
- any employee employed in a *bona fide* executive, administrative, or professional capacity, or in the capacity of outside salesperson;
- any person employed as part-time employee (an employee who is employed less than 25 hours per week) not on permanent status;
- any person who is under 18 years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is under 22 years of age and who is a student regularly enrolled in a high school, college, university, or vocational training program;
- any individual employed in a feed store operated primarily for the benefit and use of farmers and ranchers; or
- any individual working as a reserve force deputy sheriff.[203]

The Commissioner of the Oklahoma Department of Labor is authorized to set subminimum wage rates for certain categories of employees, including learners, apprentices, messengers, and individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury.[204]

3.3(c) *State Guidelines on Overtime Obligations*

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

[203] OKLA. STAT. tit. 40, § 197.4.

[204] OKLA. STAT. tit. 40, § 197.11.

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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.[205] 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.[206]

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.[207] 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.[208] 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.[209] Exemptions apply for smaller employers and air carriers.[210]

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

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[205] 29 C.F.R. § 785.19.

[206] 29 C.F.R. § 785.18.

[207] 29 U.S.C. § 218d.

[208] 29 U.S.C. § 218d(b)(2).

[209] 29 U.S.C. § 218d(a).

[210] 29 U.S.C. § 218d(c), (d).

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medical conditions.[211] Lactation is considered a related medical condition.[212] 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.[213] 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 period requirements for adults in Oklahoma.

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

Minors under age 16 must be given a one-hour cumulative rest period for each eight hours worked. Minors under age 16 are not permitted to work more than five consecutive hours without being given a cumulative 30-minute rest period.[214]

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

Violations of the break requirements for minors constitute a misdemeanor punishable by a fine up to $500, imprisonment between 10 and 30 days, or both.[215] In addition to any other penalty prescribed by law, violations can be punished by an administrative fine up to $100 per offense, up to a maximum of $1,000 for all related violations. In lieu of a penalty, the state labor department may issue a warning for the first offense. However, if an employer is cited or fined for two or more unrelated offenses, the state labor department can issue cease and desist orders.[216]

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

In Oklahoma, an individual may breast feed their baby in any location where the individual is otherwise authorized to be.[217] Specific to the employment context, employers *may* make a reasonable effort to provide a private, secure and sanitary room or other location in close proximity to the work area (other than a toilet stall) where an employee can express their milk or breast feed their child. Employers may also provide reasonable unpaid break time each day to an employee who needs to breast feed or express breast milk for their child. The break time, if possible, should run concurrently with any break time, paid or unpaid, already provided.[218]

3.5 Working Hours & Compensable Activities

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

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked

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211 42 U.S.C. § 2000gg–1.

212 29 C.F.R. § 1636.3.

213 29 C.F.R. § 1636.3.

214 OKLA. STAT. tit. 40, § 75.

215 OKLA. STAT. tit. 40, § 88.

216 OKLA. STAT. tit. 40, § 89.

217 OKLA. STAT. tit. 63, § 1-234.1.

218 OKLA. STAT. tit. 40, § 435.

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in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[219] 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."[220]

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

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

Oklahoma does not have a general statute addressing the general hours of work or compensable activities. That being said, there are a number of issues considered when determining whether particular activities constitute work. This publication looks more closely at pay requirements for reporting time, waiting or on-call time, and travel time. Oklahoma law only addresses the compensability of reporting time.

While Oklahoma does not have a statutory provision addressing reporting time, the state labor department takes the position that if a nonexempt employee is sent home early, an employer is not required to pay that employee for the scheduled, but nonworked hours because employers are only required to pay nonexempt employees for actual time worked. Exempt employees, however, must typically be paid their full salary regardless of the time actually worked.[221]

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.[222] 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

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

[220] *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").

[221] Oklahoma Dep't of Labor, *Frequently Asked Questions*, *available at* https://www.ok.gov/Labor/faqs.html.

[222] 29 C.F.R. §§ 570.36, 570.50.

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employment or age certificate indicating an acceptable age for the occupation and hours worked.[223] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

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

General Restrictions. Oklahoma restricts the employment of minors under age 16 by age and by the type of job (see Table 9). Note that Oklahoma law contains prohibitions for children 15 years and younger, but does not prohibit any occupation for those 16 and 17 years of age. Employers should adhere to the more stringent federal standard in order to ensure full compliance.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 16	In Oklahoma, minors under age 16 may work only in the occupations permitted by the FLSA and accompanying regulations.[224] Minors under age 16 may work in permissible occupations only if they are able to read and write or have attended some school during the preceding year for the time that attendance is required under the law.[225] *Additionally, minors under age 16 cannot work in any of the following occupations:* • manufacturing, mining, or processing; • operation of power-driven machinery or hoisting apparatus; • operation of motor vehicles or service as helpers on such vehicles; • in a public messenger service; • occupations, except office work or sales work, in connection with transportation of persons or property by rail, highway, air, water, pipeline or other means; warehousing or storage, communications and public utilities, and construction (including demolition and repair); and • occupations declared to be particularly hazardous to the health and well-being of minors under age 16 by federal laws and regulations or as declared by the state labor department.[226]
Under Age 15	*The following occupations are prohibited as injurious to health or morals or especially hazardous to the life or limb of minors under age 15:* • working in or around grease vats or deep-frying facilities; or • working around any powered machine used in the slicing or preparing of foods.[227]

[223] 29 C.F.R. § 570.6.

[224] OKLA. STAT. tit. 40, § 71.

[225] OKLA. STAT. tit. 40, § 74.

[226] OKLA. STAT. tit. 40, § 72.1.

[227] OKLA. ADMIN. CODE § 380:15-1-4.

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Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 14	In Oklahoma, minors under age 14 cannot be employed.[228]

Restrictions on Selling or Serving Alcohol. An employer that is licensed by the Alcoholic Beverage Law Enforcement Commission cannot employ anyone under age 21 to sell or handle alcoholic beverages. However, a mixed beverage, beer and wine, caterer, special event, or bottle club licensee may employ servers that are at least age 18. Individuals under age 21 cannot serve in designated bar or lounge areas. However, individuals under age 18 may be employed as musicians if accompanied by their parent or guardian, or possess a notarized authorization.[229]

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

In Oklahoma, minors under 16 cannot work:

- more than three hours on a school day, except that if an employer is not covered by the FLSA, a minor may work eight hours or less on a school day which precedes a nonschool day.
- more than eight hours a day on a nonschool day;
- more than 18 hours during a school week, except that if an employer is not covered by the FLSA, a minor may work 40 hours in one week when school is in session if school attendance is not compulsory;
- more than 40 hours a week in nonschool weeks; or
- between 7:00 P.M. and 7:00 A.M., except that minors can work until 9:00 P.M. from June 1 through Labor Day, and on any day followed by a nonschool day if the employer is not subject to the FLSA.[230]

Special rules apply to employment in agriculture or domestic service.[231]

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

The restrictions on types of occupations for minors under 16 do not apply to minors:

- working on farms;
- working for their parents or for any entity in which a parent owns an equity interest;
- engaged in newspaper sales and delivery; or
- engaged in voluntary service for a tax-exempt charitable organization with a parent's permission.[232]

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[228] OKLA. STAT. tit. 40, § 79.

[229] OKLA. STAT. tit. 37A, § 6-102.

[230] OKLA. STAT. tit. 40, §§ 75, 76.

[231] OKLA. STAT. tit. 40, § 76.

[232] OKLA. STAT. tit. 40, § 72.1.

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

In Oklahoma, minors under age 16 are not eligible to work unless their parent or guardian obtains and provides the employer an age and schooling certificate. Employers must keep a copy of the certificate on file, as well as a complete list of minors under age 16 year who work for the employer. An employer must return the certificate to the minor or parent upon employment terminating.[233]

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

The Oklahoma Department of Labor enforces the state child labor laws. Violations of these laws constitute a misdemeanor punishable by a fine up to $500, imprisonment between 10 and 30 days, or both.[234] In addition to any other penalty prescribed by law, violations can be punished by an administrative fine up to $100 per offense, up to a maximum of $1,000 for all related violations. In lieu of a penalty, the state labor department may issue a warning for the first offense. However, if an employer is cited or fined for two or more unrelated offenses, the state labor department can issue cease and desist orders.[235]

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).[236]

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

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[237]

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

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[233] OKLA. STAT. tit. 40, § 77.

[234] OKLA. STAT. tit. 40, § 88.

[235] OKLA. STAT. tit. 40, § 89.

[236] 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").

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

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at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[238]

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.[239] 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.[240]

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.[241] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[242]

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[238] 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.

[239] 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/.

[240] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[241] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[242] 12 C.F.R. § 1005.18.

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The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[243]

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.[244]

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

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

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

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

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

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

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

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[245] 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.[246] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work

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[243] *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.

[244] 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.

[245] *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).

[246] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

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uniforms,[247] tools and equipment,[248] and business transportation and travel.[249] 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.[250]

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;[251]
- 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);[252]
- 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);[253]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[254]
- 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;[255] or

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[247] 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.

[248] 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).

[249] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[250] 29 C.F.R. § 778.217.

[251] 29 C.F.R. § 531.38.

[252] 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*.

[253] 29 C.F.R. § 531.40.

[254] 29 C.F.R. § 531.40.

[255] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

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- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[256]

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.[257]

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.[258] 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.[259]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[260]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or

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[256] 29 C.F.R. § 825.213.

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

[258] 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.

[259] 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.

[260] 29 C.F.R. § 531.36.

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increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[261]

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.[262]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid in U.S. currency, by cash, check, cashier's check, draft, time check, store order, scrip, or "other acknowledgement of indebtedness." Employees also may be paid by electronic means, which includes direct deposit and electronic debit cards. Paychecks must be payable upon demand without discount and at face value in lawful U.S. money, including payment by electronic means.[263]

Direct Deposit. Under Oklahoma law, employers are permitted to pay employees by electronic means, including by direct deposit. Each employer in the state, in its discretion, may pay all wages due to an employee by deposit on the payday at a financial institution of the employee's choice or, if the employee does not consent or designate a financial institution, to a payroll card account.[264] Employees cannot be assessed a fee for redemption or receipt of funds, which must be redeemable on demand, without discount, in lawful U.S. currency.[265]

Payroll Debit Card. Under Oklahoma law, employers are permitted to pay employees by electronic means, which include electronic debit cards. Each employer in the state, in its discretion, may pay all wages due to an employee by deposit on the payday at a financial institution of the employee's choice or, if the employee does not consent or designate a financial institution, to a payroll card account.[266]

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

Employers must pay all wages due employees, other than employees exempt under the FLSA, at least twice each calendar month on regular paydays designated in advance by the employer. No more than 11 days may elapse between the end of the pay period and the regular payday designated by the employer, but the employer will have three days after such payday to make payment.[267]

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[261] 29 C.F.R. § 531.37.

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

[263] OKLA. STAT. tit. 40, § 165.2; OKLA. ADMIN. CODE § 380:30-1-2; Okla. Op. Att'y Gen. 09-31 (Nov. 17, 2009).

[264] OKLA. STAT. tit. 40, § 165.2.

[265] OKLA. STAT. tit. 40, §165.2; OKLA. ADMIN. CODE § 380:30-1-2; *see also* Oklahoma Dep't of Labor, *Wage & Hour Frequently Asked Questions*, *available at* https://oklahoma.gov/labor/workplace-rights/wage-hour/faqs---wage-and-hour.html.

[266] OKLA. STAT. tit. 40, § 165.2.

[267] OKLA. STAT. tit. 40, § 165.2.

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Exempt employees, public employees, and certain employees of nonprivate foundations may be paid a minimum of once each calendar month.[268]

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

An employer must pay employees who voluntarily quit or are discharged their wages in full, minus offsets and any amounts over which a *bona fide* dispute exists, on the next regular designated pay date established for the pay period in which the work was performed.[269] The employer may transmit the employee's wages either through the regular pay channels or by certified mail postmarked within the required time frame if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee.[270]

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

Employers must provide employees with a brief itemized statement of any and all deductions from the employees' wages for each pay period.[271] As an alternative to providing a paper wage statement, electronic delivery of pay statements is permissible in some circumstances; for example, if the employee provides an email address at which to deliver the statement. However, merely posting statements on a website would not comply with the statute.[272]

3.7(b)(v) *Wage Transparency*

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

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

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

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

In Oklahoma, there is no general obligation to indemnify an employee for business expenses. However, the law contains provisions specific to travel expenses and work uniforms.

Mileage & Travel. Entitlement to mileage reimbursement and travel expenses depends on an employer's established policy. Mileage and travel expense reimbursements are not considered wages. However, any amount agreed upon for mileage, travel, and vehicle allowance reimbursements that exceeds the actual amount spent by the employee, and which results in taxable income, is considered part of an employee's regular wages.[273]

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[268] OKLA. STAT. tit. 40, § 165.2.

[269] OKLA. STAT. tit. 40, §165.3.

[270] OKLA. STAT. tit. 40, §165.3.

[271] OKLA. STAT. tit. 40, § 165.2.

[272] OKLA. STAT. tit. 40, § 165.2; Okla. Op. Att'y Gen. No. 09-31 (Nov. 17, 2009); *see also* Oklahoma Dep't of Labor, *Wage & Hour Frequently Asked Questions*, *available at* https://www.ok.gov/Labor/faqs.html.

[273] OKLA. ADMIN. CODE §§ 380:30-1-8, 380:30-1-10.

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Uniforms. Employers are not required to reimburse employees for uniform costs. Employers that furnish uniforms to employees can take credit against the minimum wage in an amount equal to the uniforms' reasonable cost. An employer and employee can voluntarily enter into a payroll deduction agreement for uniforms purchased by an employee. The agreement must be written, and signed by the employee before the deduction occurs.[274]

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

Permissible Deductions. An employer cannot deduct from wages unless:

- required by law or court order;
- an employer and employee voluntarily enter into a payroll deduction agreement, including deductions for the following purposes:
  - repayment of loan or advance from the employer to the employee during the course of and within the scope of employment;
  - recovery of a payroll overpayment;
  - payment to the employer for merchandise or uniforms purchased by the employee;
  - payment for medical, accident, disability, or retirement benefits, or insurance premiums, not including workers' compensation or unemployment;
  - contributions to a deferred compensation plan or other investment plan provided by the employer as a benefit to the employee; or
  - breakage or loss of merchandise, inventory shortage, or cash shortage caused by the employee, if the employee was solely responsible for the cash or items damaged or lost. This deduction must occur at the time the damage or loss occurs.[275]

Deductions include, but are not limited to, amounts withheld for FICA, federal and state income tax, Medicare, and garnishments.[276]

A payroll deduction agreement must be in writing and signed by the employee before the employer takes the authorized deduction.[277]

With respect to the deduction to recover a payroll overpayment, the employer may recover the overpaid sum from the employee in one of two ways:

- lump sum cash repayment; or
- an agreement for a payroll deduction in a lump sum or in installments over a term not to exceed the length of the term in which the erroneous payments were made, provided that such agreement complies with the general payroll deduction agreement requirements.[278]

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[274] OKLA. STAT. tit. 40, § 197.17; OKLA. ADMIN. CODE § 380:30-1-7.

[275] OKLA. ADMIN. CODE § 380:30-1-7.

[276] OKLA. ADMIN. CODE § 380:30-1-7.

[277] OKLA. ADMIN. CODE § 380:30-1-7.

[278] OKLA. ADMIN. CODE § 380:30-1-11.

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The employee must choose which method will be used and designate it in writing. The employee may elect to use a combination of the above two methods, if the employer agrees. When employment ends, any remaining balance is considered an offset to any final wages otherwise due the employee.[279] *Offsets* include the amount of any prior overpayment of wages to the employee.[280]

In addition to the permissible deductions listed above, an employer may also take a credit toward the minimum wage for meals or lodging furnished to an employee. The credit cannot exceed 50% of the minimum wage.[281]

Prohibited Deductions. Oklahoma law does not specify any deductions that are prohibited under any circumstances. However, if an employer does not comply with the requirement to obtain authorization from an employee or the deduction exceeds amounts permitted under the law, as required for certain deductions, such deductions would be noncompliant and prohibited.

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

Orders of Support. Upon being served with an income withholding order against an employee's wages for child support, the employer must begin the required withholding from wages no later than the first pay period that occurs after service of the order.[282] The amount withheld cannot exceed:

- 50% of the employee's disposable earnings for that week, if the employee is supporting a spouse or a dependent child other than the child whose support is the subject of the income withholding order; or
- 60% of the employee's disposable earnings for that week if the employee is not supporting a spouse or dependent child.[283]

The employer may also deduct an administrative fee of $5 per pay period, not to exceed $10 in any month. The employer must remit each withholding to the state child support enforcement agency within seven days of each payday.[284]

The employer must notify the state child support enforcement agency within 10 days if the employee's employment terminates, and must provide the employee's last known address and the identity of the employee's new employer, if known. An employer may not discipline, suspend, discharge, or refuse to promote an employee because their wages are subject to an income withholding order for support.[285]

Debt Collection. Upon being served with a garnishment summons for a continuing lien against an employee's wages, the employer must begin withholding the employee's income and remitting the required amounts within seven days of the end of each pay period. Along with each withholding, the employer must submit an answer on the form provided with the summons that verifies that the employee

[279] OKLA. ADMIN. CODE § 380:30-1-11.

[280] OKLA. ADMIN. CODE §§ 380:30-1-2, 380:30-1-11.

[281] OKLA. STAT. tit. 40, § 197.16.

[282] OKLA. STAT. tit. 56, § 240.2.

[283] OKLA. STAT. tit. 12, § 1171.2; OKLA. STAT. tit. 56, § 237.7.

[284] OKLA. STAT. tit. 56, § 240.2.

[285] OKLA. STAT. tit. 56, § 240.2.

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works for the employer and provides the dates of and the amounts earned during the applicable pay period.[286]

The amounts withheld in satisfaction of the garnishment cannot exceed 25% of the employee's disposable income for that week or 30 times the federal minimum wage, whichever is less.[287] The employer may also deduct up to $10 from the employee's wages for administrative costs related to complying with a garnishment summons.[288] The garnishment remains in effect until the judgment is satisfied, the court dismisses the garnishment summons, or 180 days has passed since the effective date of the summons.[289]

Unpaid Taxes. Employers may be required to garnish a delinquent taxpayer's earnings to recover unpaid taxes. Employers must comply with a garnishment notice from the Oklahoma Tax Commission by making withholdings from the employee's earnings and remitting the deducted amounts to the Commission. An administrative wage garnishment may be issued after 90 days in which the tax has become delinquent, notice has been sent to the taxpayer of the delinquency, possible remedies to resolve the delinquency have been provided to the taxpayer, and a tax warrant has been issued and filed.[290]

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

The Oklahoma Department of Labor enforces the state's wage payment and minimum wage provisions.[291] An employee alleging a violation of the Oklahoma minimum wage and wage payment laws may file an administrative wage claim with the department.[292] Remedies available in connection with an administrative wage payment claim include an award of unpaid wages and liquidated damages.[293] Remedies available in connection with an administrative minimum wage claim include an award of unpaid wages and a penalty in the amount of 10% of the unpaid wages.[294] The statutes also afford an employee a private right of action. The employee must file suit within two years of the alleged violations.[295] A prevailing employee may recover unpaid wages, reasonable attorneys' fees and costs, and for failure to pay the minimum wage, double damages.[296]

An Oklahoma employer may also face civil and criminal penalties for wage and hour violations. An employer that pays or agrees to pay any employee less than the minimum wage commits a misdemeanor. If convicted, violators will be punished by a fine up to $500, imprisonment up to six months, or both.[297] Likewise, violation of the wage payment provisions is a misdemeanor punishable by a fine up to $500,

[286] OKLA. STAT. tit. 12, §§ 1173.4, 1178.

[287] OKLA. STAT. tit. 14A, § 5-105.

[288] OKLA. STAT. tit. 12, § 1190.

[289] OKLA. STAT. tit. 12, § 1173.4.

[290] OKLA. STAT. tit. 68, § 254.

[291] OKLA. STAT. tit. 40, §§ 165.7, 197.7; OKLA. ADMIN. CODE § 380:30-3-1.

[292] OKLA. ADMIN. CODE § 380:30-3-1.

[293] OKLA. ADMIN. CODE § 380:30-3-3.1.

[294] OKLA. STAT. tit. 40, § 197.8.

[295] OKLA. STAT. tit. 12, § 95; OKLA. STAT. tit. 40, §§ 165.9, 197.9. The Oklahoma wage and hour laws do not include an applicable statute of limitations for a private right of action. A general statute of limitations provides a three-year limitation for an "action upon a liability created by statute other than a forfeiture or penalty." OKLA. STAT. tit. 12, § 95.

[296] OKLA. STAT. tit. 40, §§ 165.9, 197.9.

[297] OKLA. STAT. tit. 40, § 197.13.

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imprisonment, or both.[298] The department can also assess a $500 administrative fine against an employer that is found to have violated the wage payment provisions if such violations occur on two or more occasions within any six-month period.[299]

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).[300] 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.[301] 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.[302]

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

Oklahoma law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer establishes 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.

The Oklahoma Department of Labor expressly considers vacation pay to be a matter of an employer's policy, and instructs employees to consult their employee handbooks or the employer's "past practice[s]" to determine when vacation pay is earned and payable as wages.[303] Under Oklahoma law, *wages* include:

- holiday and vacation pay; and
- other similar advantages agreed upon between the employer and the employee, which are "earned and due," or provided by the employer to its employees in an "established policy."[304]

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[298] OKLA. STAT. tit. 40, § 165.8.

[299] OKLA. STAT. tit. 40, § 165.2a.

[300] 29 U.S.C. § 1002.

[301] 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.

[302] 490 U.S. 107, 119 (1989).

[303] Oklahoma Dep't of Labor, *Wage & Hour Frequently Asked Questions*, *available at* https://www.ok.gov/Labor/faqs.html.

[304] OKLA. STAT. tit. 40, § 165.1.

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Earned and due means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived.

An established policy includes:

- a written employment contract;
- a written employee manual or employment policy;
- a written promise by the employer; and
- a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.[305]

Benefits are special wages that are paid at certain times under certain conditions, according to the terms of the employment agreement. These include vacation, sick pay, paid holidays, and other similar advantages.[306] Entitlement to benefits and/or the receipt thereof may be found upon proof of an established policy, or pursuant to the terms of a written agreement, and may be conditioned upon a certain level of job performance or any other criteria not otherwise unlawful.[307] Any restrictions, criteria, or conditions on benefits, including employer discretion and any limits thereon, must be contained in a written policy signed by the employee or they will not be held valid. The employer will be held to the terms of the benefit arrangement, and once the employee meets the criteria set forth therein, the benefit becomes part of wages earned and due and is thereupon payable.[308]

The department will accept and process accrued vacation claims only if:

- the claims arise by virtue of express language in a written employment contract or policy manual which provides for the payment of cash in lieu of time-off; or
- the claims arise by virtue of an "established policy" based upon a promise by the employer, either express or implied, and supported by a prior course of conduct by the employer where payment of cash in lieu of time-off was actually made to previous employees.[309]

If payment of cash in lieu of time-off is provided in a written employment contract or policy manual, the employee must meet all conditions precedent set out in the contract or the manual before entitlement to payment to accrued leave vests in that employee. The labor department will reject any claim if the written contract or policy manual or an established policy does not provide for the payment of cash in lieu of time-off or if the claimant has failed to meet all conditions precedent required for such payment.[310]

Because Oklahoma treats vacation pay as a matter of employer policy, an employer may cap accrual of vacation time and impose a "use-it-or-lose-it" provision to avoid carryover of unused vacation. An

[305] OKLA. ADMIN. CODE § 380:30-1-2.

[306] OKLA. ADMIN. CODE § 380:30-1-8.

[307] OKLA. ADMIN. CODE § 380:30-1-8.

[308] OKLA. ADMIN. CODE § 380:30-1-8.

[309] OKLA. ADMIN. CODE § 380:30-1-5.

[310] OKLA. ADMIN. CODE § 380:30-1-5.

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employer may also require forfeiture of accrued vacation time upon termination if written notice of this policy is provided to employees.[311]

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*

In Oklahoma, Sunday work is prohibited for employees engaged in manufacturing, mechanical, or trades work, as well as employees engaged in servile labor (except works of necessity or charity) and those engaged in the sale of goods not considered to be necessities.[312] Observance of another day as a holy day, where the employee does not work, is a defense.[313]

Some local Sunday closing ordinances in Oklahoma have been found unconstitutional.[314]

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

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

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

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[315] 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).[316] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[317] Here again, states may choose to

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311 *See, e.g.*, *Enderwood v. Sinclair Broad. Grp., Inc.*, 233 F. App'x 793, 802 (10th Cir. 2007); *Red Rock Distrib. Co. v. State ex rel. Reneau*, 993 P.2d 142 (Okla. Civ. App. 1999).

312 OKLA. STAT. tit. 21, §§ 907-908.

313 OKLA. STAT. tit. 21, § 909.

314 *See Spartan's Indus., Inc. v. Oklahoma City, Okla.*, 498 P.2d 399 (Okla. 1972).

315 29 U.S.C. § 1144.

316 29 U.S.C. § 1161.

317 29 U.S.C. § 1167(3).

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

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

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

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

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

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

- for the birth or placement of a child for adoption or foster care;[318]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[319]
- to take medical leave when the employee is unable to work because of a serious health condition;[320]
- 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.[321] 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.[322] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

[318] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[319] 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).

[320] 29 C.F.R. §§ 825.112, 825.113.

[321] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[322] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

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

Oklahoma 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.[323] 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*

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

3.9(c) *Pregnancy Leave*

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

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

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[324] 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.[325] FMLA

[323] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[324] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[325] 29 C.F.R. § 825.202.

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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.[326] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Oklahoma employers with one or more employees must treat disabilities caused by pregnancy, miscarriage, abortion, childbirth, or related medical conditions the same as they treat disabilities caused by other medical conditions for job-related purposes. Therefore, employment policies and practices involving such matters as the start and duration of leave, the availability of extensions, benefits, and reinstatement, must be applied to a disability due to pregnancy or childbirth on the same terms and conditions as they are applied to temporary disabilities.[327]

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*

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

3.9(e) *School Activities Leave*

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

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

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[326] 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.

[327] OKLA. STAT. tit. 25, § 1301(1); OKLA. ADMIN. CODE § 335:15-3-9.

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

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

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

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

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

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

3.9(g) *Voting Time*

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

There is no federal law concerning time off to vote.

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

Oklahoma employees who are registered voters and who do not have three hours before or after work to vote on election day or on day of in person absentee voting are eligible for time off to vote. Employers must allow at least two hours of leave to vote. If more than two hours are required to vote due to the voting place's distance, an employee must be allowed sufficient time to cast a ballot. Alternatively, an employer may change an employee's work hours to provide an employee three hours of time in which to vote before their shift begins or ends. An employee's voting time is paid if the employee provides proof of voting. If employees cannot provide proof of voting, they can lose compensation or be penalized.

An employee is required to provide written or verbal notice of voting leave to the employer three days prior to election day or day of in person absentee voting. An employer may designate when time off can be taken and must notify the employee of the time.[328]

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*

Oklahoma 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.[329] Employers are under no federal statutory obligation to pay employees while serving on a jury.

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[328] OKLA. STAT. tit. 26, § 7-101.

[329] 28 U.S.C. § 1875.

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

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[330] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

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

Leave to Serve on a Jury. An employer may not discharge or subject to any adverse employment action an employee who is summoned to serve as a juror, provided the employee notified the employer of the summons within a reasonable amount of time after its receipt and before their appearance. The employer is not required to compensate an employee for time spent on jury service.

An employer may not require or request that an employee use annual, vacation, or sick leave for time spent responding to a jury duty summons, participating in the jury selection process, or serving on a jury. The employee may decide whether to use paid leave or to take leave without pay when absent due to jury service. An employer is not required to provide annual, vacation, or sick leave to an employee who is not otherwise entitled to such benefits.

The court must postpone the service of a summoned juror who is one of five or fewer full-time employees (or their equivalent), if another employee is summoned to appear during the same period.[331]

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*

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

3.9(k) *Military-Related Leave*

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

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed

[330] *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).

[331] OKLA. STAT. tit. 38, §§ 34, 35.

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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.[332]

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.[333] 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.[334] Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Military Leave. Oklahoma employees who are members, either officers or enlisted, of the U.S. reserves (including the Army and Air National Guard) or any other component of the U.S. armed forces, are entitled to a leave of absence when ordered to active or inactive duty or service. The leave is for the period of

[332] 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)).

[333] 29 C.F.R. § 825.126(a).

[334] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

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service and must be granted without loss of status or seniority. The amount of leave the employee is entitled to can be no less than that provided by federal law.[335]

USERRA has also been adopted as state law and applied to members of the Oklahoma National Guard when such members are ordered to state active duty or full-time National Guard duty.[336]

During leave, the employer may elect to pay the employee an amount equal to the difference between their full regular pay and their military pay.[337]

Employees who are members of the Oklahoma National Guard and who are ordered to state active duty or full-time federal National Guard duty are entitled to the reinstatement rights provided by the federal USERRA.[338]

Oklahoma Uniformed Services Employment and Reemployment Rights Act. The law provides protections to workers serving in the state's military forces. A worker who must leave employment due to service in the state military forces is entitled to reemployment rights and benefits when:

- the employer had advance written or verbal notice of the absence, unless precluded by military necessity or the notice would be impossible or unreasonable;
- the absence does not exceed five years, with exceptions; and
- the worker reports back to the employer upon return.

Returning employees must notify the employer within a certain time frame, depending on the length and nature of the employee's absence. [339]

Employers must reinstate workers to their previous positions or an equivalent position, as though their employment had not been interrupted by leave, depending on the nature and length of the employee's service, as well as the employer's circumstances. However, an employer does not have to reinstate a worker if it would cause an undue hardship, or employer's circumstances have changed and it would make the reinstatement impossible or unreasonable. Likewise, an employer need not reinstate a worker if their employment was brief and not expected to recur or continue. The employer must prove these circumstances if necessary.[340]

Benefits and Seniority. A returning service member is entitled to the seniority and other related rights and benefits that they would have received if their employment had not been interrupted by service. Employers should treat the workers as though they were on furlough or a leave of absence under the employer's own policies regarding the rights and benefits that are not determined by seniority. Relatedly, the worker must pay the employee's cost of any continued benefits, if other employees on furlough or

[335] OKLA. STAT. tit. 72, § 48.1.

[336] OKLA. STAT. tit. 44, § 208.1.

[337] OKLA. STAT. tit. 72, § 48.1.

[338] OKLA. STAT. tit. 44, § 208.1.

[339] OKLA. STAT. tit. 44, § 4312.

[340] OKLA. STAT. tit. 44, § 4312.

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leave of absence are required to do so. Employees on leave may elect to continue health plan coverage for themselves or their dependents while on leave.[341]

Other Employment Protections. Employees on leave may, but are not required to, use paid leave such as vacation or annual leave during their period of service. An employer must give an employee an authorized leave of absence to perform funeral honors duty.[342]

Prohibitions. Individuals serving in the state military forces may not be denied employment, retention, reinstatement, promotion, or any other benefit of employment on the basis of their membership. Additionally, employers may not discriminate or take any adverse action against an employee for exercising a right or enforcing, or assisting to enforce, a protection provided by the law.[343]

Employers may not discharge a returning worker within one year after the date of reemployment, if they had worked for the employer for over 180 days before taking leave, or within 180 days if they had worked for the employer for between 31 and 179 days. An employer may discharge such a worker for cause, however.[344]

Other Military-Related Protections: Spousal Unemployment. An employee who leaves an employer to accompany a spouse who is a member of the U.S. Military, the U.S. Military Reserve, or the National Guard who is on active duty within 90 days of the date of discharge, has a service-connected disability, was discharged under honorable conditions from the military service, and takes up residence at a location more than fifty miles away from the employee's former employer for the purpose of reentering civilian life, has good cause for leaving employment and will be eligible for unemployment benefits.[345]

3.9(l) *Other Leaves*

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

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

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

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

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

[341] OKLA. STAT. tit. 44, § 4316.

[342] OKLA. STAT. tit. 44, § 4316.

[343] OKLA. STAT. tit. 44, § 4311.

[344] OKLA. STAT. tit. 44, § 4316.

[345] OKLA. STAT. tit. 40, § 2-210.

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employees.[346] Employers are also required to comply with all applicable occupational safety and health standards.[347] 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.[348] 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*

Oklahoma does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act. Notably, the Oklahoma Department of Labor's Workplace Safety and Health Division administers a safety consultation program that conducts workplace inspections at an employer's request.[349]

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*

It is unlawful for any person to operate a motor vehicle on any street or highway within the state of Oklahoma while using a hand-held electronic communication device to manually compose, send, or read an electronic text message while the motor vehicle is in motion. In addition, it is a serious traffic offense for a driver of a commercial motor vehicle to:

- operate a commercial motor vehicle while using a cellular telephone or electronic communication device to write, send, or read a text-based communication; or
- operate a commercial motor vehicle while using a hand-held mobile telephone.

The definition of electronic communication device does not include a hands-free device that allows the user to write, send, or read a text message without the use of either hand except to activate, deactivate, or initiate a feature or function.[350]

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[346] 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.

[347] 29 U.S.C. § 654(a)(2).

[348] 29 U.S.C. § 667(c)(2).

[349] OKLA. STAT. tit. 40, § 414.

[350] OKLA. STAT. tit. 47, §§ 6-205.2(F), 11-901c, and 11-901d.

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

3.10(c) *Firearms in the Workplace*

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

Federal law does not address firearms in the workplace.

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

Firearms in the Workplace. In Oklahoma, an employer may prohibit any person from carrying a firearm on company property.[351] If company property is open to the public and the employer prohibits concealed weapons, the employer must post signs on or about the property stating such prohibition.[352] The statute does not provide specific requirements for the signs.

A person or business entity that does or does not prohibit any individual except a convicted felon from carrying a loaded or unloaded, concealed or unconcealed weapon on property that the person or business entity owns, or has legal control of, is immune from any liability arising from that decision. Except for acts of gross negligence or willful or wanton misconduct, an employer who does or does not prohibit their employees from carrying a concealed or unconcealed weapon is immune from any liability arising from that decision. An employer that does not prohibit persons from carrying a concealed or unconcealed weapon will be immune from any liability arising from the carrying of a concealed or unconcealed weapon on the property.[353] This immunity extends to liability arising from an employee carrying a concealed or unconcealed weapon while in the course of employment on the employer's property or in an employer-owned vehicle.[354]

As noted in 1.3(f)(ii), it is unlawful for an employer to inquire as to whether an applicant owns or possesses a firearm.[355]

Firearms in Company Parking Lots. An employer may not establish a policy or rule that has the effect of prohibiting any person (except a convicted felon) from transporting and storing firearms or ammunition in a locked vehicle on any property set aside for any vehicle.[356]

3.10(d) *Smoking in the Workplace*

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

Federal law does not address smoking in the workplace.

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[351] OKLA. STAT. tit. 21, § 1290.22(C).

[352] OKLA. STAT. tit. 21, § 1290.22(C).

[353] OKLA. STAT. tit. 21, § 1290.22(F).

[354] OKLA. STAT. tit. 21, § 1290.22(F).

[355] OKLA. STAT. tit. 21, § 1289.27.

[356] OKLA. STAT. tit. 21, §§ 1290.22, 1289.7a.

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

Smoking tobacco or smoking or vaping marijuana is prohibited in indoor workplaces in Oklahoma. "No smoking" signs must be at least four inches by two inches and be posted at entrances to workplaces.[357]

In some circumstances, indoor smoking areas may be established. Fully enclosed indoor smoking areas may be established where no work is performed and the air is exhausted directly to the outside. The exhaust may not be located within 15 feet of an entrance or air intake.

Workplaces that have only incidental public access and are occupied exclusively by one or more smokers may also be exempt. Additionally, private offices occupied exclusively by one or more smokers are exempt. Air from these areas may not be exhausted 15 feet from any entrance or air intake, and the areas must be completely enclosed.

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*

Oklahoma 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*

An employer or an authorized agent of an employer may file a written verified petition with the district court of the county in which the employer is located for an injunction prohibiting workplace harassment. The court may restrain the defendant from coming near the property of the employer or place of business and restrain the defendant from contacting the employer, an employee or other person while that employee or person is on or at the property of the employer or place of business or is performing official work duties. It may also grant any other relief necessary for the protection of the employer, the workplace, employees of the employer or any other person who is on or at the property of the employer or place of business or who is performing official work duties on behalf of or for the benefit of the employer.

Workplace harassment is a pattern or course of conduct, meaning two or more separate acts directed toward another individual in a workplace, which includes repeated or continuing contact that would cause a reasonable person to suffer emotional distress, and that actually causes emotional distress to the victim. Workplace harassment includes credible threats of violence. *Credible threat of violence* means a knowing and willful statement or act that would place a reasonable person in fear for their safety, or the safety of their immediate family, and that serves no legitimate purpose.

[357] OKLA. STAT. tit. 21, §§ 1247 *et seq*.

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The employer's verified petition must include:

- the employer's name;
- the name and address, if known, of the defendant; and
- a specific statement showing the events and dates of the acts considered workplace harassment toward the employer, an employee, or any person who enters the property of the employer or who is performing official duties on behalf of, or, the employer.

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");[358] (2) the Americans with Disabilities Act (ADA);[359] (3) the Age Discrimination in Employment Act (ADEA);[360] (4) the Equal Pay Act;[361] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[362] (6) the Civil Rights Acts of 1866 and 1871;[363] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[364]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

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[358] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[359] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[360] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[361] 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.

[362] 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)).

[363] 42 U.S.C. §§ 1981, 1983.

[364] 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.

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The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[365] 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.[366]

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

Oklahoma law prohibits discrimination in employment based on the following characteristics:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions);*
- national origin;
- age (40+);
- genetic information;
- disability; [367] and
- military status.[368]

***Effective November 1, 2024:** The Oklahoma Anti-Discrimination Act has been amended to clarify the definition of "sex". Under the amendment, "sex" means a natural person's biological sex at birth. Any policy, program, or statute that prohibits sex discrimination will be construed as forbidding unfair treatment of females or males in relation to similarly situated members of the opposite sex. The amendment also defines "woman" or "girl" as a natural person who is female. "Female" is defined as an individual who naturally has, had, will have, or would have but for a developmental or genetic anomaly or historical accident, the reproductive system that at some point produces, transports, and utilizes eggs for fertilization. Further, the definition of "man" or "boy" is a natural person who is male. "Male" means an individual who naturally has, had, will have, or would have, but for a developmental or genetic anomaly or historical accident, the reproductive system that at some point produces, transports, and utilizes sperm for fertilization.[369]

Employers with at least one employee are covered under Oklahoma's law. However, there are certain exceptions for Indian tribes or *bona fide* nonprofit membership clubs. Additionally, the law does not apply to a religious corporation, association, or society, with respect to the employment of individuals of a particular religion to perform work connected with its religious activities. Moreover, a religious school,

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

[366] 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.

[367] OKLA. STAT. tit. 25, §§ 1301-1302; OKLA. ADMIN. CODE § 335:15-3-9.

[368] OKLA. STAT. tit. 44, § 208.

[369] OKLA. STAT. tit. 25, §§ 25-16; 25-1101 and 25-1201.

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college, university, or other educational institution may hire and employ an employee of a particular religion if the educational institution is directed toward the propagation of a particular religion.[370]

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

Agency Enforcement. The Oklahoma Attorney General's Office of Civil Rights Enforcement enforces the state's employment discrimination laws. Employees have 180 days from the date of the discriminatory act to file a complaint with the Office.[371] The Office will then investigate the complaint and issue findings. The Office may require a hearing and subsequently issue a final order.[372]

Exclusivity of Remedy. Complainants must obtain a Notice of a Right to Sue from the Office of Civil Rights Enforcement before filing suit in state court. If a charge of discrimination is not resolved by the Office of Civil Rights Enforcement within 180 days, a complainant may request a right to sue letter.[373]

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

Tobacco Products. It is unlawful for an employer to:

- discharge or otherwise disadvantage any employee with respect to compensation, terms, conditions, or privileges of employment because the individual is a nonsmoker, or smokes, or uses tobacco products during nonworking hours; or
- require as a condition of employment that an employee or applicant abstain from smoking or using tobacco products during nonworking hours.

This provision does not prohibit an employer from regulating smoking while on the job or on the employer's premises. This provision further does not prohibit an employer from regulating smoking where the restriction relates to a *bona fide* occupational requirement or an applicable collective bargaining agreement which prohibits or allows off-duty use of tobacco products.[374]

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

In addition to the federal and state laws, employers with operations in Norman are subject to a local fair employment practice ordinance. Protected classifications include: race; color; religion; ancestry; sex (including sexual harassment); national origin; age (40 to 64 years old); place of birth; handicap; and familial status. The antidiscrimination protections apply to employers that employ five or more employees.[375] An aggrieved person may file a complaint with the Norman Human Rights Commission within 90 days after the alleged discriminatory practice occurs.[376]

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[370] OKLA. STAT. tit. 25, §§ 1301, 1307, and 1308.

[371] OKLA. STAT. tit. 25, § 25-1350.

[372] OKLA. ADMIN. CODE §§ 335:10-1-1 *et seq*.

[373] OKLA. STAT. tit. 25, § 1350.

[374] OKLA. STAT. tit. 40, §§ 500, 501, and 502.

[375] NORMAN, OKLA., CODE OF ORDINANCES §§ 7-103 (religious, fraternal, or sectarian organization which are not supported in whole or part by any governmental appropriations are excluded from coverage), 7-104 (exceptions, including *bona fide* occupational qualifications), 7-109 (sexual harassment), 7-111 (religious educational institutions exception), 7-112 (*bona fide* seniority or merit systems exception), and 7-113 (male and female employees).

[376] NORMAN, OKLA., CODE OF ORDINANCES § 7-119.

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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."[377] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[378]

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

Oklahoma law prohibits employers from paying female employees at a lesser rate than employees of the opposite sex for comparable work on jobs with comparable requirements relating to skill, effort, and responsibility.[379] However, differences in pay are permitted where the difference is based on: (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 any factor other than sex.

The statute does not provide a private right of action to redress violations. Only criminal penalties are available.[380]

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:

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377 29 U.S.C. § 206(d)(1).

378 42 U.S.C. § 2000e-5.

379 OKLA. STAT. tit. 40, § 198.1.

380 OKLA. STAT. tit. 40, § 198.2.

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- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[381]

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).[382]

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.[383] 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.[384] 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

[381] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[382] 29 C.F.R. § 1636.3.

[383] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[384] 29 C.F.R. § 1636.3.

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perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[385]

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

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

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[386]

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.[387]

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**.

[385] 29 C.F.R. § 1636.4.

[386] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[387] 29 C.F.R. § 1636.3.

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

Protections for pregnancy, miscarriage, abortion, childbirth, or related medical conditions in Oklahoma 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 employers.[388] Multiple decisions of the U.S. Supreme Court[389] 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.[390] 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*

For private Oklahoma employers, the regulations of the Oklahoma Office of Civil Rights Enforcement provide that:

> 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 Title 25 of the Oklahoma Statutes and developing methods to sensitize all concerned.[391]

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

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

[389] *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).

[390] 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.

[391] OKLA. ADMIN. CODE § 335:15-3-10(f).

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Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

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

Oklahoma does not have a general whistleblower law providing protections for private-sector whistleblowers, although there are whistleblower protections for public employees.[392] Like many states, Oklahoma law makes it unlawful for an employer to retaliate against a person because the person has opposed a discriminatory practice, filed a charge or complaint, or participated in an investigation, proceeding, or hearing under the state's fair employment practices law.[393]

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)[394] and the Railway Labor Act (RLA)[395] 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*

Oklahoma is a right-to-work state. Under Oklahoma law, an employer may not require an employee, as a condition of employment or continuation of employment, to join, resign, or refrain from membership in a union, or to pay fees or dues to any union or third party in lieu of such payments. Similarly, employers may not require that potential employees be approved or cleared by a union.[396]

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[392] OKLA. STAT. tit. 62, § 34.301.

[393] OKLA. STAT. tit. 25, § 1601.

[394] 29 U.S.C. §§ 151 to 169.

[395] 45 U.S.C. §§ 151 *et seq*.

[396] OKLA. CONST. art. XXIII, § 1A.

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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).[397] 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.[398] 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*

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

4.1(c) *State Mass Layoff Notification Requirements*

Oklahoma does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff. However, the Oklahoma Office of Workforce Development offers assistance to employers and employees when layoffs and plant closures occur. On the Oklahoma Works Rapid Response webpage, the Office of Workforce Development details the services provided to employers and employees.[399]

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.[400] The notice must be provided not later than the earlier of:

[397] 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.

[398] 20 C.F.R. §§ 639.4, 639.6.

[399] Information is available at https://oklahoma.gov/workforce/employers/layoffs.html.

[400] 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.

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Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
	• the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[401]

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.	Oklahoma state law requires employers of fewer than 20 employees to provide post-termination continued coverage for up to 63 days. However, the law does not require such employers to provide notification of continued coverage to an employee upon termination.[402]
Unemployment Notice	**Generally.** Oklahoma does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, the employer generally must post and maintain notice, where readily accessible to employees, informing employees of their rights under the unemployment insurance law and how to file for benefits.[403] Accordingly, it is recommended that an employer provide a copy of the unemployment notice when employment ends.[404] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify the employee, as to the jurisdiction under whose unemployment

[401] 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.

[402] OKLA. STAT. tit. 36, § 4509.

[403] OKLA. STAT. tit. 40, § 2-502; OKLA. ADMIN. CODE § 240:10-3-51. This poster is available at https://www.opers.ok.gov/wp-content/uploads/2020/04/OK-Law-Prohibits-discrimination-Poster-2015.02.pdf.

[404] OKLA. STAT. tit. 40, § 2-502; OKLA. ADMIN. CODE § 240:10-3-51.

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Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	compensation law services are covered. If at the time of termination the individual is not located in the elected jurisdiction, an employer must notify the employee as to the procedure for filing interstate benefit claims. In addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[405]

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*

References. An Oklahoma employer may disclose information about a current or former employee's job performance to a prospective employer upon request of the employee, or upon request of the prospective employer if the employee consents. The employer making the disclosure is presumed to be acting in good faith and will be immune from liability for the disclosure of its consequences.[406]

Blacklisting. Blacklisting is the intentional prevention of the future employment of an employee by the former employer. Blacklisting usually occurs when the former employer makes representations to prospective employers that an individual should not be hired. It should be distinguished from a reference, which is essentially a request for information about job performance. In Oklahoma, an employer may not blacklist or attempt to blacklist any former employee with the intent of preventing the employee from securing other, similar employment.[407]

[405] OKLA. ADMIN. CODE § 240:10-5-100.

[406] OKLA. STAT. tit. 40, § 61.

[407] OKLA. STAT. tit. 40, § 172.

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