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STATE

Littler on

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

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

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

DISCLAIMER

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

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1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

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

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

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

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

1.1(b) *State Guidelines on Classifying Workers*

In Pennsylvania, 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 distinction also turns on whether the worker is employed in the construction industry. While there is no statewide statute on independent contractor status applicable to all industries, Pennsylvania has a statute concerning employee classification in the construction industry. The Construction Workplace Misclassification Act prohibits misclassification of individuals in the construction industry for workers' compensation and unemployment insurance purposes and sets forth specific tests for determining status.[5] For the purposes of workers' compensation, unemployment compensation, and improper classification, an individual who performs services in the construction industry for remuneration is an independent contractor only if the individual: (1) has a written contract to perform such services; (2) is free from control or direction over performance of such services, both under the contract and in fact; and (3) as to such services, is customarily engaged in an independently established trade, occupation, profession, or business.[6]

Employers should also be aware that the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Labor Law Compliance has entered into a partnership with the U.S. Department of Labor, Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts to reduce instances of misclassification of employees as independent contractors.[7]

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

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

[5] 43 PA. STAT. ANN. §§ 933.1 *et seq.*

[6] 43 PA. STAT. ANN. § 933.3(a); *see also* Pennsylvania Dep't of Labor & Indus., Office of Unemployment Comp., *Employee or Independent Contractor*, *available at* http://www.uc.pa.gov/employers-uc-services-uc-tax/covered/Pages/Employee-or-Independent-Contractor.aspx.

[7] U.S. Dep't of Labor, Wage & Hour Div., & Commw. of Pa., Dep't of Labor & Indus., Bureau of Labor Law Compliance, *Memorandum of Cooperation* (Aug. 4, 2016), *available at* https://www.dol.gov/whd/workers/MOU/pa.pdf.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practice Laws	Pennsylvania Human Relations Commission	There are no relevant statutes or court decisions containing tests for independent contractor status under Pennsylvania's fair employment practice laws. The Pennsylvania Human Relations Act, however, defines *independent contractor* as "any person who is subject to the provisions governing any of the professions and occupations regulated by" state licensing laws or the federal Fair Housing Act.[8]
Income Taxes	Pennsylvania Department of Revenue	There are no relevant statutes or court decisions concerning independent contractor status under Pennsylvania's income tax laws.
Unemployment Insurance	Pennsylvania Department of Labor & Industry, Office of Unemployment Compensation	Statutory test. To be regarded as an independent contractor, the individual must be: (1) free from control and direction both under contract and in fact; and (2) customarily engaged in an independently established trade, occupation, profession, or business. Unless both factors are present, the individual is presumed to be an employee.[9]
Wage & Hour Laws	Pennsylvania Department of Labor	Fair Labor Standards Act (FLSA) economic realities test.[10]

[8] 43 PA. STAT. ANN. § 954(x). Only those independent contractors specifically listed in the statute are covered by the Pennsylvania Human Relations Act. *Velocity Express v. Pa. Human Relations Comm'n*, 853 A.2d 1182, 1186 (Pa. Commw. Ct. 2004).

[9] 43 PA. STAT. ANN. § 753(l)(2)(B); *see also Exam One v. Unemployment Comp. Bd. of Review*, 2013 WL 4772988, at *5 (Pa. Commw. Ct. Sept. 6, 2013) ("It is well-settled that although a relationship may appear on its face to be an independent contractor relationship—*i.e.*, parties signed an independent contractor agreement—this factor alone is not dispositive on the issue of whether an employer exercises control over a claimant."); *see also* Pennsylvania Dep't of Labor & Indus., Office of Unemployment Comp., *Employee or Independent Contractor*, *available at* http://www.uc.pa.gov/employers-uc-services-uc-tax/covered/Pages/Employee-or-Independent-Contractor.aspx.

[10] *Commonwealth of Pa. v. Stuber*, 822 A.2d 870, 872-74 (Pa. Commw. Ct. 2003), *affirmed per curiam*, 859 A.2d 1253 (Pa. 2004). The test examines the following: "1) the degree of control exercised by the employer over the workers; 2) the worker's opportunity for profit or loss depending upon managerial skill; 3) the alleged worker's investment in equipment or material required for the tasks or the employment of helpers; 4) whether the service rendered requires special skill; 5) the degree of permanence of the working relationship; and 6) the extent to which the work is an integral part of the employer's business." 822 A.2d at 874 (citing *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 754 (9th Cir. 1979); *Martin v. Selker Bros., Inc.*, 949 F.2d 1286 (3d Cir. 1991)). Courts will examine the totality of the circumstances, not one single factor. *Stuber*, 822 A.2d at 874.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
	& Industry, Labor Management Relations	
Workers' Compensation	Pennsylvania Department of Labor & Industry, Bureau of Workers' Compensation	Common-law balancing test. This test considers the following factors: 1. control of manner of work to be done; 2. responsibility for result only; 3. terms of agreement between the parties; 4. the nature of the work or occupation; 5. skill required for performance; 6. whether one employee is engaged in a distinct occupation or business; 7. which party supplies the tools; 8. whether payment is by time or by the job; 9. whether the work is part of the regular business of the employer; and 10. the right to terminate the employment at any time.[11] It is the claimant's burden to establish an employer/employee relationship to receive benefits.[12]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. Pennsylvania does not have an approved state plan under the federal Occupational Safety and Health Act.

[11] The general independent contractor test used by Pennsylvania courts in multiple contexts was created by the Pennsylvania Supreme Court in *Hammermill Paper Co. v. Rust Engineering Co.*, 243 A.2d 389 (Pa. 1968). The ten-factor test laid out by the court is used for workers' compensation purposes. *Universal Am-Can, Ltd. v. Workers' Comp. Appeal Bd.*, 762 A.2d 328, 332-33 (Pa. 2000) (endorsing the *Hammermill Paper* common-law test for the workers' compensation context). Under this test, each case is fact-specific and not all factors need be present to establish an independent contractor relationship. While no one factor is controlling, the right to control the manner of the work is the most persuasive indication of the presence or absence of an independent contractor relationship. *Universal Am-Can, Ltd.*, 762 A.2d at 330, 333.

[12] *Universal Am-Can, Ltd.*, 762 A.2d at 330 (citing *Johnson v. WCAB (Dubois Courier Express)*, 631 A.2d 693, 695 (Pa. Commw. Ct. 1993)).

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.[13]

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.[14] 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.[15]

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

[13] 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.

[14] *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).

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

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

1.2(b)(i) *Private Employers*

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

State-Assisted Projects. Nonetheless, an employer that receives or applies to receive grants or loans issued by an executive agency of Pennsylvania cannot knowingly employ or permit the labor services of undocumented aliens on any project in Pennsylvania.[16]

1.2(b)(ii) *State Contractors*

Under the Public Works Employment Verification Act ("Public Works Act"), public works state contractors and subcontractors must use E-Verify to confirm the employment eligibility of all new hires.[17] *Public work* is generally defined as "construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars ($25,000)."[18] When conducting verifications, contractors and subcontractors cannot discriminate on the basis of race, ethnicity, color, or national origin.[19]

As a precondition of being awarded a contract for a public work, prior to the execution of the contract, a public works contractor or subcontractor must provide the public entity with a verification form demonstrating compliance with the Public Works Act.[20]

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

State-Assisted Projects. Employers receiving grants or loans from Pennsylvania will be required to pay or repay such assistance if: (1) the entity that received the grant or loan is sentenced under federal law for an offense involving the knowing use of unlawful alien labor on a project; or (2) a contractor on the project is sentenced under federal law for such an offense and the employer that "received the grant or loan knew or had reason to know that the contractor was using unlawful alien labor.[21]

State Contractors. State contractors and subcontractors that violate the Public Works Acts will receive a warning letter posted on the state website for a first violation, and for subsequent violations, may face debarment from state public works contracts for different periods of time depending on the number of prior violations. Moreover, for willful violations, the Secretary of General Services of the Commonwealth may commence a court action against the contractor or subcontractor. If the court finds that the

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[16] 43 PA. STAT. ANN. §§ 166.2, 166.3. *Project* is defined as "an activity which uses labor services, financed in whole or in part by grants or loans issued by an executive agency of the Commonwealth." 43 PA. STAT. ANN. § 166.2.

[17] 71 PA. STAT. ANN. §§ 656.2 *et seq*.

[18] 71 PA. STAT. ANN. § 656.2.

[19] 71 PA. STAT. ANN. § 656.2(b).

[20] 71 PA. STAT. ANN. §§ 656.3, 656.4. The Public Works Employment Verification form is available online https://www.dgs.pa.gov/Design-and-Construction/Bidding/Documents/Public Works Employment Verification Form.pdf. The Pennsylvania Department of General Services provides further information about the Public Works Act on its website, available at https://www.dgs.pa.gov/Design-and-Construction/Pages/default.aspx.

[21] 43 PA. STAT. ANN. § 166.5.

contractor or subcontractor engaged in a willful violation, the court will order that the contractor or subcontractor be debarred from public work for a period of three years.[22] Civil penalties may be imposed for contractors and subcontractors that fail to provide the verification form or make false statements or misrepresentations on the form.[23]

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

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

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

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

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

Although Pennsylvania places no statutory restrictions on a private employer's inquiry into an applicant's or employee's arrest records, there are certain legal and practical limitations on the use of such information. First, arrest records that are part of an applicant's criminal history record may not be used

[22] 71 PA. STAT. ANN. § 656.5.

[23] 71 PA. STAT. ANN. § 656.5(e).

[24] 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.

in making hiring decisions.[25] Second, certain criminal proceedings—including arrests greater than three years old, arrests that did not result in conviction, and arrests for which no proceedings are pending seeking a conviction—will not be reported in a criminal history record check and thus cannot be accessed or used for employment purposes.

Similar restrictions exist with respect to expunged and "limited access" records. Except where disclosure is required by law, an individual may not be required to disclose information about the individual's criminal history record that has been expunged or deemed limited access pursuant to sections 9121, 9122.1, or 9122.2. An individual required or requested to disclose such information in violation of this provision may respond as if the offense did not occur.[26]

An expunged record or a record deemed limited access may not be considered a conviction that would prohibit the employment that would prohibit the employment of an individual any law of the state or under federal laws that prohibit employment based on state convictions to the extent permitted by federal law.[27]

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

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

Philadelphia's Fair Criminal Records Screening Standards Ordinance (Ban the Box). The City of Philadelphia has enacted a ban-the-box ordinance.[28] Under the Fair Criminal Records Screening Standards Ordinance ("Fair Chance Ordinance"), it is unlawful discriminatory practice for a Philadelphia employer to:

- ask about criminal convictions during the job application process through the first interview, or for an employer that does not perform interviews, to request information regarding an applicant's criminal convictions during the hiring process;[29]
- include any questions about criminal convictions or willingness to submit to a background check on an employment application, even if the application instructs certain applicants that they need not answer the question;
- inquire about or take any adverse action on the basis of an arrest or criminal accusation that did not result in a conviction; or

[25] 18 PA. CONS. STAT. ANN. §§ 9121(b), 9125; *see also Cisco v. United Parcel Servs., Inc.*, 476 A.2d 1340, 1343-44 (Pa. Super. Ct. 1984) (noting that it is against public policy for an employer to consider any experience which a job applicant has "with criminal justice system which falls short of conviction").

[26] 18 PA. CONS. STAT. ANN. § 9122.5.

[27] 18 PA. CONS. STAT. ANN. § 9122.5.

[28] PHILA., PA., CODE §§ 9-3501 *et seq*.

[29] If an applicant voluntarily discloses criminal conviction history during the application process, the employer may discuss the conviction at that time. Additionally, during that process an employer may notify prospective applicants of its intent to conduct a criminal background check after any conditional offer. Any such notice must be "concise, accurate, made in good faith," and must clarify that "consideration of the background check will be tailored to the requirements of the job." PHILA., PA., CODE § 9-3504(1).

- maintain a policy of automatically excluding any applicant with a criminal conviction from a job or class of jobs.[30]

Under the Fair Chance Ordinance, the application process begins when the applicant inquires about the available position and concludes "when an employer has extended a conditional offer of employment to the applicant."[31] A *conditional offer of employment* is defined as an offer to hire:

> which may be withdrawn only if the employer subsequently determines that the applicant (1) has a conviction record which, based on an individualized assessment . . . would reasonably lead an employer to conclude that the applicant would pose an unacceptable risk in the position applied for; or (ii) does not meet other legal or physical requirements of the job.[32]

If an employer rejects an applicant based in whole or in part on criminal history, the employer must notify the applicant in writing and explain the decision and must provide a copy of the criminal history report. The employer must then give the applicant 10 business days to submit evidence of any inaccuracy or explanation of the criminal record information.[33]

The prohibitions of the Fair Chance Ordinance do not apply if the inquiries or adverse actions are specifically authorized by any other applicable law or regulation.[34]

The Fair Chance Ordinance also covers current employees, and the prohibitions apply during the employment process. *Employment process* means the process by which an employer assesses the suitability of an applicant for prospective employment or consideration of any aspect of an employee's re-employment or continued employment, including promotion, raise or termination.[35] However, an employer is not prohibited from making an inquiry, or requiring an employee to respond to an inquiry, about a pending criminal charge, when the employer possesses reasonably reliable information to indicate a pending criminal charge has been lodged against the employee that relates to the particular duties of their job. Employers may require employees to report a pending criminal charge, provided the employer does so pursuant to a written policy detailing what offenses are reportable.[36] *Pending criminal charge* means an existing accusation that a person has committed a crime, lodged through an indictment, information, complaint or other formal charge, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal or withdrawal.[37] An employer cannot take an adverse action against an employee based on a pending criminal charge unless the offense bears such relationship to the employee's duties, and the employer may reasonably conclude that the employee's continued employment would present an unacceptable risk to the operation of the business or to co-workers or

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[30] PHILA., PA., CODE §§ 9-3503 to 9-3505.

[31] PHILA., PA., CODE § 9-3504.

[32] PHILA., PA., CODE § 9-3502(3).

[33] PHILA., PA., CODE § 9-3504a.

[34] PHILA., PA., CODE § 9-3505. Moreover, an employer may consider an applicant's conviction record only if the conviction in question occurred less than seven years from the date of the employer's inquiry. When calculating the seven-year period, no period of incarceration is included. PHILA., PA., CODE § 9-3504(3).

[35] PHILA., PA., CODE § 9-3502.

[36] PHILA., PA., CODE § 9-3503.

[37] PHILA., PA., CODE § 9-3502.

customers, and that exclusion of the employee is compelled by business necessity. Additionally, employers may not consider convictions that resulted in exoneration.[38]

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

Under the Pennsylvania Criminal History Record Information Act (CHRIA), employers may inquire about—and use—criminal history records in hiring decisions provided that:

- felony and misdemeanor convictions may be considered only to the extent they relate to the applicant's suitability for the position sought; and
- the employer must notify the applicant in writing if a decision not to hire them is made based partly or wholly on criminal history record information.[39]

For purposes of the CHRIA, *criminal history information* is defined to include: "[i]nformation collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments . . . or other formal criminal charges and any dispositions arising therefrom."[40]

1.3(a)(v) *Local Guidelines on Employer's Use of Conviction Records*

As mentioned earlier, the City of Philadelphia's Fair Chance Ordinance also covers convictions. For more information, see **1.3(a)(ii)**.

Erie County Ban-the-Box Ordinance. The Erie County Human Relations Ordinance makes it an unlawful discriminatory employment practice for an employer of four or more employees to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application for employment. *Criminal history* means any criminal conviction or sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence or a sentence of probation. The inclusion of such an inquiry on an application is unlawful and applicants will be told they need not answer the inquiry. The application process begins when the applicant inquires about the employment being sought and ends when the employer has extended a conditional offer of employment. If an applicant voluntarily discloses information regarding his or her criminal conviction during the application process, the employer may discuss the disclosed criminal conviction at that time.[41]

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[38] PHILA., PA., CODE § 9-3503.

[39] 18 PA. CONS. STAT. ANN. § 9125. Employers should be aware that the law provides no guidance with respect to convictions for *summary offenses*, which are noncriminal dispositions below a misdemeanor. Although some courts have found that the statute's silence with regard to arrest information forbids an employer from ever considering arrests (even if job-related) in making hiring decisions, no court has addressed whether an employer's consideration of arrests or convictions for summary offenses is also prohibited at the preemployment stage. Arguably, summary offense arrests and convictions are off-limits in deciding whether to hire an applicant and likewise off-limits as a basis for adverse job actions with regard to current employees. *See Commonwealth v. D.M.*, 695 A.2d 770, 773 n.2 (Pa. 1997) (stating that "§ 9125 forbids any employer from denying employment on the basis of an arrest not resulting in conviction"); *Cisco v. United Parcel Servs., Inc.*, 476 A.2d 1340, 1343-44 (Pa. Super. Ct. 1984).

[40] 18 PA. CONS. STAT. ANN. § 9102. The CHRIA provides some exceptions to this definition, including investigative or treatment information, such as medical or psychological data.

[41] ERIE COUNTY, PA. HUMAN RELATIONS ORDINANCE, art. I, II, III, IV(I).

An employer must give notice to prospective applicants of the intent to conduct a criminal background check after any conditional offer is made. The notice must be concise, accurate, made in good faith, and state that any consideration of the background check will be tailored to the requirements of the job.[42]

An employer cannot maintain a policy of automatically excluding any applicant with a criminal conviction from a job or class of jobs. Further, a prospective employer cannot reject an applicant based on his or her criminal record, unless the criminal record includes a conviction for an offense that bears a relationship to the employment sought such that the employer may reasonably conclude that the applicant would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant is compelled by business necessity. The employer must make a determination regarding the risk only after reviewing the applicant's specific record and the particular job being sought, and conducting an individualized assessment of the risk presented. The assessment must include:

- the nature of the offense;
- the time that has passed since the offense;
- the applicant's employment history before and after the offense and any period of incarceration;
- the particular duties of the job being sought;
- any character or employment references provided by the applicant; and
- any evidence of the applicant's rehabilitation since the conviction.[43]

An employer may consider a prospective employee's conviction record only to the extent that the conviction occurred fewer than 10 years from the date of application.

If an employer rejects an applicant for a job opening based in whole or in part on criminal record information, the employer must notify the applicant in writing of the decision and its basis, and must provide the applicant with a copy of the criminal history report. The employer must allow the applicant 10 business days to provide evidence of the inaccuracy of the information or to provide an explanation.[44]

Lehigh County Human Relations Ordinance. Effective June 1, 2024, employers in Lehigh County may not require a job applicant to disclose prior criminal convictions until after an initial interview.[45] In addition, employers may only consider conviction records that relate to an applicant's suitability for employment. Employers must provide the applicant written notification if employment is denied based in whole or in part on the applicant's criminal history.[46]

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

Employers are prohibited from accessing expunged or pardoned criminal conviction records, including juvenile records.[47] Employers cannot ask or require applicants to disclose information about their criminal

[42] ERIE COUNTY, PA. HUMAN RELATIONS ORDINANCE, art. IV(I).

[43] ERIE COUNTY, PA. HUMAN RELATIONS ORDINANCE, art. IV(I).

[44] ERIE COUNTY, PA. HUMAN RELATIONS ORDINANCE, art. IV(I).

[45] LEHIGH COUNTY, PA., ORDINANCE NO 2024-03, § 302.1(M).

[46] LEHIGH COUNTY, PA., ORDINANCE NO 2024-03, § 302.1(N).

[47] 18 PA. CONS. STAT. ANN. §§ 9105, 9122(c), 9123, 9125.

history that has been expunged or is the subject of a court order for limited access (*i.e.*, a sealed record).[48] **Effective February 12, 2024**, use of expunged or sealed records is prohibited for employment purposes.[49] Also **effective February 12, 2024**, where an employee or applicant voluntarily discloses their criminal history, the employer is immune from liability for its use or consideration of expunged or sealed criminal record information if such use is related to the employer's otherwise lawful use of criminal record information.[50]

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

An employer that violates the state provisions regarding arrest or conviction records can be ordered to stop violations, denied access to criminal record information, and assessed civil penalties.[51] In addition, an individual who prevails on a CHRIA claim may recover actual damages, as well as attorneys' fees and costs. If the plaintiff demonstrates that the violation of the CHRIA was willful, exemplary and punitive damages may be awarded.[52] The CHRIA also authorizes the attorney General "or any other individual or agency" to seek injunctive relief to compel compliance.[53]

1.3(a)(viii) *Local Enforcement, Remedies & Penalties*

Philadelphia's Fair Criminal Records Screening Standards Ordinance (Ban the Box). Employers that violate the Fair Chance Ordinance are subject to penalties along with potential awards for injunctive relief, compensatory damages, and attorneys' fees. Individuals have a private right of action, and the Philadelphia Commission on Human Relations enforces the law.[54]

Erie County Ban-the-Box Ordinance. An individual alleging a violation of the ordinance may file a verified complaint in writing with the Erie County Human Relations Enforcement Commission within 180 days of the alleged violation. A final order from the Commission resolving the complaint is appealable in state court.[55]

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[56] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[57] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or

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[48] 18 PA. CONS. STAT. ANN. §§ 9121(b)(2)(ii), 9122.1.

[49] 18 PA. CONS. STAT. ANN. § 9122.5(a.1).

[50] 18 PA. CONS. STAT. ANN. § 9122.6(b).

[51] 18 PA. CONS. STAT. ANN. § 9181.

[52] The statute does not define a *willful* violation.

[53] 18 PA. CONS. STAT. ANN. § 9183.

[54] PHILA., PA., CODE §§ 9-3506, 9-3508.

[55] ERIE COUNTY, PA. HUMAN RELATIONS ORDINANCE, arts. VI, VII.

[56] 15 U.S.C. §§ 1681 *et seq*.

[57] 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).

termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[58]

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

Pennsylvania does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history. However, Philadelphia restricts employers from using credit information in employment decisions.

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

Philadelphia's Fair Practices Ordinance: Protections Against Unlawful Discrimination. The Philadelphia Fair Practices Ordinance (Ordinance) renders it illegal for Philadelphia employers with one or more employees to procure or use an applicant's or employee's credit history for employment purposes, except under limited excepted circumstances. The Ordinance defines *credit information* as "any written, oral, or other communication of information regarding a person's: debt; credit worthiness, standing, capacity, score or history; payment history; charged-off debts; bank account balances or other information; or bankruptcies, judgments, liens, or items under collection."[59]

The Ordinance contains several exceptions to this general prohibition including for financial institutions, law enforcement agencies, or to any employer that is required by state or federal law to obtain credit information.[60] In addition to exempting the aforementioned employers from the Ordinance's prohibition

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

[59] PHILA., PA., CODE § 9-1102.

[60] PHILA., PA., CODE § 9-1130.

on using credit information for employment purposes, the Ordinance carves out five different types of jobs from the blanket prohibition, and creates special rules when credit information is used:

1. jobs requiring the employee to be bonded under city, state, or federal law;
2. jobs that are supervisory or managerial in nature and involve setting the direction or policies of a business or a division, unit or similar part of a business;
3. jobs involving significant financial responsibility to the employer, including the authority to make payments, transfer money, collect debts, or enter into contracts, but excluding jobs that involve handling retail transactions;
4. jobs requiring access to financial information pertaining to customers, other employees, or the employer, other than information customarily provided in a retail transaction; and,
5. jobs requiring access to confidential or proprietary information that derives substantial value from secrecy.[61]

Employers that take an adverse action against an individual who is applying for, or working in, any of the five job categories listed above based in whole or in part on the individual's credit information must notify the individual in writing of the reason the employer considered the individual's credit information, and the specific credit information on which the employer relied. The employer must also provide the individual an opportunity to explain the circumstances surrounding the information at issue before taking adverse action.[62]

1.3(b)(iv) *Local Enforcement, Remedies & Penalties*

Philadelphia's Fair Practices Ordinance: Protections Against Unlawful Discrimination. An aggrieved person may file a complaint with the Philadelphia Commission on Human Relations, or after timely exhausting administrative remedies, may file a private right of action. Remedies available include compensatory damages, attorney's fees, and punitive damages.[63] As well, employers that violate the ordinance may be fined not more than $2000 for each violation. Employers that violate, on more than one occasion, any order of the Philadelphia Commission on Human Relations may be found guilty of a separate offense of repeat violation, and for each repeat violation, is subject to a fine of not more than $2000 dollars, imprisonment for not more than 90 days, or both.[64]

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

[61] PHILA., PA., CODE § 9-1130.

[62] PHILA., PA., CODE § 9-1130.

[63] PHILA., PA., CODE § 9-1105, 9-1111, 9-1112, 9-1119, and 9-1122.

[64] PHILA., PA., CODE § 9-1121.

rights law (\, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).

- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

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

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

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

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[65] 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.

[65] 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.

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

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

In Pennsylvania, employers or prospective employers may not require employees or other individuals to take a polygraph test or any form of mechanical or electrical lie detector test as a condition of employment or continued employment.[66] These provisions do not apply, however, to employees who work in public law enforcement or who dispense or have access to narcotics or dangerous drugs.[67]

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

Violations of Pennsylvania's polygraph restrictions constitute a second-degree misdemeanor under state law.[68]

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

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

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[69] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[70] 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*

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

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[66] 18 PA. CONS. STAT. ANN. § 7321(a).

[67] 18 PA. CONS. STAT. ANN. § 7321(b).

[68] 18 PA. CONS. STAT. ANN. § 7321.

[69] 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.

[70] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

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

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

Employers cannot require an employee or job applicant to pay the cost of medical examinations or furnishing any medical records required as a condition of employment, if the applicant or employee works for the employer for one workweek. This is not applicable where medical examinations are required by law as a condition of employment.[71]

1.3(f)(ii) *Local Salary History Inquiry Restrictions*

While at the state level, Pennsylvania law does not contain restrictions on salary history inquiries, Philadelphia enacted a provision that is currently stayed pending a court challenge to its constitutionality. Philadelphia's provision would make it an unlawful employment practice for an employer, employment agency, or employer's agent to:

- include a question on a paper or electronic job application asking a prospective employee to provide their wage history at any previous position;
- inquire about an applicant's wage history;
- require disclosure of wage history, or condition employment or consideration for an interview for employment on disclosure of wage history;
- retaliate against an applicant for failing to comply with any wage history inquiry; or
- rely on an applicant's wage history from the applicant's current or former employer in determining the wages for the applicant at any stage in the employment process, including the negotiation or drafting of any employment contract, unless the applicant knowingly and willingly disclosed their wage history to the employer.[72]

Employer means an employer doing business in the city of Philadelphia with one or more employees and that engages in the process of interviewing an applicant with the intention of considering the applicant for a position located within the city.[73] *Inquire* means to ask a job applicant in writing or otherwise. The prohibition does not apply to actions taken by an employer pursuant to any federal, state, or local law that specifically authorizes the disclosure or verification of wage history for employment purposes.[74] *Knowingly and willingly* means the applicant has disclosed their wage history voluntarily, not in response to a question from an interviewer, and knows or has been informed that the employer may use the disclosure to determine the compensation to offer.[75]

The salary history restrictions also apply in the context of an individual seeking a new position with their current employer. The current employer, in considering the individual for a new position, cannot inquire into the individual's wage history from any previous employer.[76]

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[71] 43 PA. STAT. ANN. § 1002.

[72] PHILA., PA., CODE § 9-1131; PHILA. COMM'N ON HUMAN RELATIONS REGULATION No. 7.4(a).

[73] PHILA. COMM'N ON HUMAN RELATIONS REGULATION No. 7.1.

[74] PHILA., PA., CODE § 9-1131.

[75] PHILA. COMM'N ON HUMAN RELATIONS REGULATION No. 7.3.

[76] PHILA. COMM'N ON HUMAN RELATIONS REGULATION No. 7.2(a).

However, an employer may ask a prospective employee questions relevant to setting future compensation, such as the prospective employee's salary expectations, skill level, and experience relative to the position for which the individual is being considered.[77]

If the ordinance is upheld, an employee alleging a violation of this provision under the Philadelphia Fair Practices Ordinance must first exhaust their administrative remedies by filing a complaint with the Philadelphia Commission on Human Relations within 300 days of the alleged violation. The employee may then file a civil action within two years of the alleged violation.[78]

Lehigh County. The county prohibits employers from asking applicants what their salary is or was from any current or previous employment.[79]

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[80] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[81] 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.[82]

[77] PHILA. COMM'N ON HUMAN RELATIONS REGULATION No. 7.4(b).

[78] PHILA., PA., CODE §§ 9-1112, 9-1122.

[79] LEHIGH CNTY. CODE § 302.1.

[80] 26 U.S.C. § 36B.

[81] 42 U.S.C. § 18071.

[82] 29 U.S.C. § 218b.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	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.[83]
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.[84] 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.[85]
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.[86] 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.[87] 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.

[83] 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.

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

[85] 29 C.F.R. § 2590.606-1.

[86] 29 C.F.R. § 825.300(a).

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

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[88]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[89] 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.[90]
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.[91]
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

[88] 29 C.F.R. § 825.300(a).

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

[90] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[91] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[92]

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.[93]
Tax Documents	No notice requirement located.
Wage & Hour Documents	The Pennsylvania Wage Payment and Collection Law provides that employers must notify employees at the time of hire of: 1. the time and place of payment; 2. the rate of pay; and 3. the amount of any fringe benefits or wage supplements to be paid to the employee, a third party or a fund for the benefit of the employee.[94] Any change to these payment terms must be communicated to the employee in advance of the effective date of such change. In other words, wages cannot be changed retroactively but only on a going-forward basis with advance notice.[95] Employers can meet this notification requirement by conspicuously posting such information in the place of business. Notice is not required, however, if the required information is set forth in a collective bargaining agreement and copies are made available to employees.[96]

[92] 29 C.F.R. § 531.59.

[93] *But see* **3.9(c)(ii)** for information on the written notice that must be provided to all new employees regarding Philadelphia's ordinance on the right to be free from discrimination in relation to pregnancy, childbirth, and medical conditions and the right to reasonable accommodation.

[94] 43 PA. STAT. ANN. §§ 260.1 *et seq*.

[95] 43 PA. STAT. ANN. § 260.4.

[96] 43 PA. STAT. ANN. § 260.4.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	Employers are also responsible for keeping a true and accurate record of hours worked and the wages paid to each employee. Such records must be preserved for three years from the date of last entry.[97]
Wage & Hour Documents: Board, Lodging, and Other Facilities	Deductions and allowances for board, lodging, and other facilities must be disclosed to the employee and agreed to by the employee at the time of hiring.[98]
Wage & Hour Documents: Tipped Employees	To claim a tip credit, the employer must have informed the employee of the tip credit provisions.[99]
Workers' Compensation	Pennsylvania requires a very specific, detailed notice concerning workers' compensation to be delivered at the time of hire, as well as immediately after any work-related illness or injury. The details are too lengthy to detail here. While a summary follows, employers should consult the administrative code to review all of the requirements.[100] By way of example, the notice must describe purpose of the workers' compensation system, the employer's obligation to provide coverage or benefits, the employee's duty to report immediately any injury or work-related illness to the employer, and the contact information for the Bureau of Workers' Compensation. The notice must be printed on paper no smaller than 8.5 x 11 inches and in font no smaller than 11 point. In addition, if a list of designated health care providers is established, an employer must provide a second (and equally detailed) notice at the time of hire, as well as immediately after any work-related illness or injury. This notice addresses the employee's rights and duties, including, for example, that the employee may seek treatment from one or more of the designated health care providers for 90 days. The notice should also explain that the employer must pay for all reasonable medical supplies and treatment related to the injury as long as treatment is obtained from a designated provider during the 90-day period. The written notice must be acknowledged by the employee, in writing. If the employer fails to provide notice and obtain a written acknowledgement, the employee does not have to perform various otherwise required acts, and the employer remains liable for all

[97] 43 PA. STAT. ANN. § 333.108; 34 PA. CODE § 231.31.

[98] 34 PA. CODE § 231.22.

[99] 43 PA. STAT. ANN. § 333.103(d).

[100] 34 PA. CODE § 121.3b.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	treatment rendered to the employee. Again, the details are too numerous to include here, and employers should consult the full text of the administrative code to review all of the state's requirements.[101]

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

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[103]

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

[101] 34 PA. CODE § 127.755; *see also* 77 PA. STAT. ANN. § 531.

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

[103] 42 U.S.C. § 653a.

notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

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

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

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

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[104] 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 Pennsylvania's new hire reporting law.[105]

Who Must Be Reported. Pennsylvania employers must report employees newly hired or rehired to work following termination or after being laid off, furloughed, separated, or granted an unpaid leave for more than 30 days.

Report Timeframe. Employers must make the report not later than 20 days after the hiring date. If submitted electronically or magnetically, the employer may make two monthly transmissions, not less than 12 nor more than 16 days apart.

Information Required. Employers must report the employee's name, home address, Social Security number, and date of hire. To accompany this information, the employer must also supply its name, address, federal tax identification number, and the name and telephone number of an employer contact.

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

[105] 23 PA. CONS. STAT. ANN. §§ 4391, 4392.

Form & Submission of Report. The report must be in the form of a W-4 (with the employee's date of hire and the name and telephone number of the employer contact attached), New Hire Form, or online form. The report may be submitted by first-class mail, fax, email, diskette, magnetic tape, or other file transfer protocol.

Location to Send Information.

Commonwealth of Pennsylvania, New Hire Reporting Program
P.O. Box 69400
Harrisburg, PA 17106-9400
(888) 724-4737
(717) 657-4473 (fax)
https://www.pacareerlink.pa.gov/jponline/Common/LandingPage/ReportNewHires

Multistate Employers. An employer with employees in two or more states that transmits reports magnetically or electronically may designate "one of its offices located in a state in which the employer has employees" to be responsible for submitting the new hire information to a state directory. An employer that chooses to do so must inform both the Pennsylvania new hire program and HHS in writing as to the designation. If the employer elects to designate Pennsylvania for its new hire reporting, it must comply with the requirements indicated above.[106]

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

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

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

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[107] As such, the DTSA provides trade secret owners a uniform federal law

[106] 23 PA. CONS. STAT. ANN. § 4392(c).

[107] 18 U.S.C. §§ 1832 *et seq.*

under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

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

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

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

Pennsylvania does not have a statute governing the enforceability of covenants not to compete. However, Pennsylvania courts have found that restrictive covenants are enforceable under Pennsylvania law, with some limitations.

To be valid and enforceable under Pennsylvania common law, a restrictive covenant between an employer and employee must be:

1. be ancillary to an employment relationship between the employer and employee;
2. supported by adequate consideration;
3. reasonably limited in both time and territory; and
4. designed to protect the legitimate interests of the employer.[108]

The term *ancillary*, as used by the courts, means that the restrictive covenant is a part of the underlying transaction to which it is most related in time and subject matter, either a sale of business or the employment contract.[109] Under general common-law principles, a contract to restrict competition made in some other context is void as against public policy.

Pennsylvania courts will refuse to enforce covenants not to compete that are unlimited in both time and territory.[110] Open-ended restrictions impose "an unconscionable burden" on one's ability to pursue their chosen occupation.[111] Courts will generally uphold nonsolicitation agreements, whereby employees promise not to contact customers of former employees, provided the customer restriction is reasonable.[112]

Enforceability Following Employee Discharge. In Pennsylvania, the decision to terminate an employee subject to a noncompete may be a factor when considering enforceability of the agreement.[113]

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[108] *Socko v. Mid-Atlantic Sys. of CPA, Inc.*, 126 A.3d 1266, 1274 (Pa. 2015); *Hess v. Gebhard & Co.*, 808 A.2d 912, 917 (Pa. 2002); *Piercing Pagoda, Inc. v. Hoffner*, 351 A.2d 207, 210 (Pa. 1976).

[109] *Maaco Franchising, Inc. v. Augustin*, 2010 WL 1644278 (E.D. Penn. Apr. 20, 2010).

[110] *See, e.g.*, *Reading Aviation Serv., Inc. v. Bertolet*, 311 A.2d 628 (Pa. 1973).

[111] 311 A.2d at 630.

[112] *Worldwide Auditing Servs., Inc. v. Richter*, 587 A.2d 772 (Pa. Super. Ct. 1991); *see also Quaker Chem. Corp. v. Varga*, 509 F. Supp. 2d 469 (E.D. Pa. 2007) (finding customer limit without geographic limit reasonable considering scarcity of competitors, global nature of business, and employee's extensive knowledge of confidential trade secrets).

[113] *Shepherd v. Pittsburgh Glass Works, L.L.C.*, 25 A.3d 1233, 1246 (Pa. Super Ct. 2011); *Insulation Corp. of Am. v. Brobston*, 667 A.2d 729 (Pa. Super. Ct. 1995).

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

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

Under Pennsylvania common law, a company's initial employment of an individual constitutes consideration for an employee's acceptance of the terms of the noncompete entered into at the inception of employment.[114] Continued employment alone, however, is not sufficient consideration for a restrictive covenant because it does not offer "new" consideration to support the additional benefit to the employer.[115] In general, examples of "new" consideration include a promotion, change from part-time to full-time employment, or a change to compensation or benefits package.[116] However, "new" consideration to support a restrictive covenant is not shown where: (1) the contract recites the salary that the employee is already receiving; (2) a profit sharing plan offered is available to all employees; or (3) a bonus provided is not guaranteed but is only in such amount as management might determine.[117]

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

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

In Pennsylvania, the court may "blue pencil" restrictive covenants that impose broader than necessary post-employment prohibitions by enforcing only those portions reasonably necessary to protect the employer.[118]

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[114] *Pulse Techs., Inc. v. Notaro*, 67 A.3d 778, 781 (Pa. 2013).

[115] *Socko v. Mid-Atlantic Sys. of CPA, Inc.*, 126 A.3d 1266, 1274 (Pa. 2015) ("a restraint on trade will be enforceable only if new and valuable consideration, beyond mere continued employment, is provided…").

[116] 126 A.3d 1266; *see also Maintenance Specialties Inc. v. Gottus*, 314 A.2d 279, 281 (Pa. 1974) ("a restrictive covenant is enforceable if supported by new consideration, either in the form of an initial employment contract or a change in the conditions of employment").

[117] *In re Verdi*, 244 B.R. 314, 324 (Bankr. E.D. Pa. 2000).

[118] *Sidco Paper Co. v. Aaron*, 351 A.2d 250, 254 (Pa. 1976) ("where the covenant imposes restrictions broader than necessary to protect the employer, we have repeatedly held that a court of equity may grant enforcement limited to those portions of the restrictions which are reasonably necessary for the protection of the employer"); *Barb-Lee Mobile Frame Co. v. Hoot*, 206 A.2d 59 (Pa. 1965) (affirming decision to modify geographic restriction from three states to one state because the portion of the contract which was void was severable from the valid provisions);

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

Definition of a Trade Secret. In 2004, Pennsylvania enacted the Uniform Trade Secrets Act (PUTSA). While Pennsylvania already had a statute making theft of a trade secret a crime, the PUTSA provided the basis for a civil tort and remedy.[119] The PUTSA defines a *trade secret* as:

> Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique, or process, that:
>
> 1. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
> 2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[120]

Although the "crucial indicia" for determining whether information constitutes a "trade secret" are competitive value to the owner and substantial secrecy, additional factors a court may consider include: (1) the extent to which the information is known outside of the owner's business; (2) the extent to which it is known by employees and others involved in the owner's business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the owner and to its competitors; (5) the amount of effort or money expended by the owner in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.[121]

Misappropriation of a Trade Secret. Once information rises to the level of being a trade secret, courts will examine whether the employee has misappropriated, or threatens to misappropriate, the information.[122] Misappropriation under the PUTSA can occur in one of two manners: (1) acquisition of a trade secret "by a person who knows or has reason to know that the trade secret was acquired by improper means;" or (2) unauthorized use or disclosure of a trade secret.[123] As for the latter scenario, the PUTSA defines misappropriation to include disclosure or use of another's trade secret, without express or implied permission, by a person who:

1. used improper means to acquire the knowledge;
2. knew or had reason to know that the knowledge passed on to them was obtained improperly, under various circumstances;[124] or

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see also Diodato v. Wells Fargo Ins. Servs., USA, Inc., 44 F. Supp. 3d 541, 569 (M.D. Penn. 2014) (courts may "blue pencil" restrictive covenants by enforcing only the portions reasonably necessary to protect the employer).

[119] 12 PA. CONS. STAT. ANN. §§ 5301 to 5308.

[120] 12 PA. CONS. STAT. ANN. § 5302.

[121] 12 PA. CONS. STAT. ANN. § 5302; *Maaco Franchising, Inc. v. Augustin*, 2010 WL 1644278 (E.D. Penn. Apr. 20, 2010).

[122] *See, e.g.*, *Bimbo Bakeries USA, Inc. v. Botticella*, 613 F.3d 102, 110 (3d Cir. 2010) (citing 12 PA. CONS. STAT. ANN. § 5303(a)).

[123] 12 PA. CONS. STAT. ANN. § 5302; *see Youtie v. Macy's Retail Holding, Inc.*, 653 F. Supp. 2d 612, 624-25 (E.D. Pa. 2009).

[124] 12 PA. CONS. STAT. ANN. § 5302 (describing three ways in which trade secrets could be passed on improperly so as to constitute misappropriation).

3. "before a material change of his [or her] 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."[125]

An employer must bring an action for misappropriation within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered.[126]

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

Pennsylvania does not have any statutory guidelines addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

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

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

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[127]
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.[128]
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.[129]

[125] 12 PA. CONS. STAT. ANN. § 5302.

[126] 12 PA. CONS. STAT. ANN. § 5307; *see also Harry Miller Corp. v. Mancuso Chems. Ltd.*, 469 F. Supp. 2d 303, 317 (E.D. Pa. 2007) (holding that each time a misappropriation of trade secrets occurs, the statute of limitations starts again).

[127] 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.

[128] 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.

[129] 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.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
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.[130]
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.[131]
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.[132]
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.[133]
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.[134]
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

[130] 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.

[131] 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.

[132] 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.

[133] 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.

[134] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	numerous grounds.[135] 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.[136]
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.[137]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[138]
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.[139]
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

[135] 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.

[136] 41 C.F.R. §§ 60-300.44, 60-741.44.

[137] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[138] 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.

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

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[140]
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.[141]
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.[142]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[143] **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).[144]

[140] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[141] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[142] 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.

[143] 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.

[144] 29 C.F.R. § 13.5.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
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.[145]
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.[146]

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**
Child Labor: Abstract	Employers that employ minors under the age of 18 must post an abstract of Pennsylvania's child labor law (Form LLC-5) in a conspicuous place.[147]
Child Labor: Hours of Work for Minors Under Eighteen	Employers that employ minors under the age of 18 must post a schedule of hours for minors (Form LLC-17) in a conspicuous place, along with the abstract mentioned above.[148]
Fair Employment Practices	Employers with six or more employees must post a notice concerning fair employment practices, as furnished by the Human Relations

[145] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[146] 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.

[147] 43 PA. STAT. ANN. § 40.8(c). This poster is available in English at http://www.dli.pa.gov/Documents/Mandatory%20Postings/llc-5.pdf and in Spanish at http://www.dli.pa.gov/Documents/Mandatory%20Postings/llc-5_(esp).pdf.

[148] 43 PA. STAT. ANN. § 40.8(c). This poster is available in English at and in Spanish at https://www.dli.pa.gov/Documents/Mandatory%20Postings/llc-17.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	Commission. The notice must be posted conspicuously in easily-accessible and well-lighted places customarily frequented by employees and applicants for employment, and at or near each location where the work is performed.[149]
Fair Employment Practices: Equal Pay	All employers must post an abstract of Pennsylvania's Equal Pay Law (Form LLC-8) in a conspicuous place.[150]
Human Trafficking Resource Center Hotline	This posting requirement applies to certain types of businesses, including personal service establishments, drinking establishments (that have been found to be a nuisance), adult entertainment enterprises, hotels or motels (that have been found to be a nuisance), airports, trains, bus stations, welcome centers and rest areas, and full-service truck stops. These establishments must post at least one sign regarding the National Human Trafficking Resource Center Hotline in a conspicuous manner clearly visible to the public and employees of the establishment. The sign must be posted in English, Spanish, and any other language mandated by the Voting Rights Act of 1965 in the county where the sign will be posted.[151]
Philadelphia Paid Sick Leave Documents	Covered employers (generally, those with 10 or more employees) must notify their employees concerning their right to sick time, the amount of sick time, and the terms of its use. Notice must also inform employees that retaliation is prohibited and that employees may file a complaint, or sue, if an employer denies sick time or retaliates. Employers may satisfy this requirement by either: (1) providing notice to each employee; or (2) displaying a poster in a conspicuous and accessible place. Notice must be in both English and in any language spoken by at least 5% of the workforce. The Philadelphia Managing Director's Office has prepared a model poster available for employer use.[152] Notice also must be included in any handbooks distributed to employees.

[149] 43 PA. STAT. ANN. §§ 954(b), 955(j); 16 PA. CODE § 43.1. This poster is available at https://www.phrc.pa.gov/AboutUs/Documents/Fair%20Employment%20Handout_20230412.pdf.

[150] 43 PA. STAT. ANN. § 336.7; 34 PA. CODE § 9.63. This poster is available in English and Spanish at http://www.dli.pa.gov/Documents/Mandatory%20Postings/llc-8.pdf.

[151] 43 PA. STAT. ANN. §§ 1492, 1493(a). This poster is available in English at http://www.dli.pa.gov/Documents/Polaris_HTPoster.pdf.pdf and in Spanish at http://www.dli.pa.gov/Documents/Polaris_HTPoster_Spanish.pdf.pdf.

[152] PHILA., PA., CODE § 9-4701. This poster is in several languages available at http://www.phila.gov/MDO/Documents/Paid%20Sick%20Leave%20Posters%20-%20All%20Languages.pdf. Additional guidance is also available at https://www.phila.gov/documents/paid-sick-leave-information/.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Philadelphia Fair Employment Practices Ordinance	Employers doing business in the City of Philadelphia must post a workplace poster covering its antidiscrimination ordinance.[153]
Philadelphia Fair Practices Ordinance: Pregnancy Accommodation	Notice on the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, as well as the right to reasonable accommodation, must be posted conspicuously at an employer's place of business in an area accessible to employees.[154]
Unemployment Compensation	All employers must complete and post a notice concerning benefit rights, claims for benefits, and related matters. The notice (Form UC-700) must be posted where readily accessible to employees.[155]
Wages, Hours & Payroll: Minimum Wage Law Poster and Fact Sheet	All employers must post a summary of the minimum wage act (Form LLC-1) in a conspicuous place.[156]
Workers' Compensation	All employers must complete and post a notice concerning their compliance with workers' compensation requirements and informing employees of the employer's insurance and/or administrator for claims. The notice (Form LIBC-500) must be posted where readily accessible to employees.[157]
Workplace Safety: Hazardous Materials Posting (Pennsylvania Right to Know Law)	This posting requirement applies to all nonmanufacturing employers that are not subject to the federal Occupational Safety and Health Act's Hazard Communication Standard. Such employers must post the mandated notice (Form LIBC-262) where notices are usually posted. Among other things, the notice informs workers of any hazardous substances at the workplace.[158]
Workplace Safety: No Smoking Signs	In Pennsylvania, smoking is prohibited all public places (including workplaces) unless specifically exempted. All employers must

[153] PHILA., PA., CODE § 9-1103(1)(i).

[154] PHILA., PA., CODE § 9-1128(4).

[155] 34 PA. CODE § 61.4(a). This poster is available in English at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700.pdf and in Spanish at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700(esp).pdf.

[156] 34 PA. CODE § 231.37. This poster is available at http://www.dli.pa.gov/Documents/Mandatory%20Postings/llc-1.pdf.

[157] 34 PA. CODE ANN. § 9.88. This poster is available at http://www.dli.pa.gov/Businesses/Compensation/WC/claims/wcais/Documents/wcais%20forms/LIBC-500%20print.pdf.

[158] 34 PA. CODE §§ 301.3(b), 311.2(a). This poster is available in English at http://www.dli.pa.gov/Businesses/Compensation/WC/safety/rtk/Documents/LIBC-262.pdf and in Spanish at http://www.dli.pa.gov/Businesses/Compensation/WC/safety/rtk/Documents/LIBC-262(ESP).pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	prominently post and properly maintain "No Smoking" signs where smoking is regulated.[159]

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.[160]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[161]	At least 1 year from the date of the personnel action to which any records relate.

[159] 35 PA. STAT. ANN. § 637.4. This poster is available at https://www.health.pa.gov/topics/programs/CIAA/Pages/Toolkit.aspx. It is available in English and Spanish.

[160] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[161] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[162]	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.[163]	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.[164]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[165]	Most recent form must be retained for 1 year.

[162] 29 C.F.R. § 1627.3(b).

[163] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[164] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[165] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[166]	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.[167]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[168]	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;	At least 2 years.

[166] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[167] 29 U.S.C. § 1027.

[168] 29 C.F.R. § 1620.32(a).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[169]	
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; • 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	3 years from the last day of entry.

[169] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	each workweek).[170] 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.[171]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the	3 years from the last day of entry.

[170] 29 C.F.R. §§ 516.2, 516.5.

[171] 29 C.F.R. § 516.28.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employee's total remuneration for employment including fringe benefits and prerequisites.[172]	
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.[173]	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.[174]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave;	At least 3 years.

[172] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[173] 29 C.F.R. § 516.5.

[174] 29 C.F.R. § 516.6.

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

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[175]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this;	At least 4 years after the date the tax is due or paid, whichever is later.

[175] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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).[176]	
Immigration	Employers must retain all completed Form I-9s.[177]	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.[178]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected;	4 years after the return is due or the tax is paid, whichever is later.

[176] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[177] 8 C.F.R. § 274a.2.

[178] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[179]	
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[180]	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 employer's trade or business, and the amount of the cash remuneration paid for those services.[181]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical	At least 30 years.

[179] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[180] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[181] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[182]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program;	Duration of employment plus 30 years.

[182] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[183]	
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.[184]	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.[185]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[186]	Immediately preceding AAP year.

[183] 29 C.F.R. § 1910.1020(d).

[184] 29 C.F.R. § 1910.1020(d).

[185] 29 C.F.R. §§ 1904.33, 1904.44.

[186] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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; ▪ 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	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.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where possible, the gender, race, and ethnicity of each applicant or internet applicant.[187]	
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.[188]	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. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[189]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made;	During the course of the covered contract as well as after the end of the contract.

[187] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[188] 41 C.F.R. §§ 60-1.12, 60-741.80.

[189] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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 relieve a contractor from its reinstatement obligation.[190]	
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.	At least 3 years after the work.

[190] 29 C.F.R. § 13.25.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[191]	
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 • a copy of the contract.[192]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and	At least 3 years from the last date of entry.

[191] 29 C.F.R. § 5.5.

[192] 29 C.F.R. § 4.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a certificate of age for employees under 19 years of age.[193]	

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	*Employers participating as sponsors in apprenticeship programs must keep and maintain records, including:* • a summary of the qualifications of each applicant; • the basis for evaluation and for selection or rejection of each applicant; • records pertaining to interviews of operation of the apprenticeship program, *e.g.*, job assignment, promotion, demotion, termination, rate of pay, or other forms of compensation, and conditions of work; • affirmative action plan statements (including all data and analysis); and • evidence that its qualification standards have been validated consistent with program requirements. The above records must be maintained in such a manner as to permit the identification of minority and female participants.[194]	5 years.
Fair Employment Practices: Equal Pay Act	*All employers must maintain personnel or employment records including:* • name and address of each employee; • wages and wage rates; • job classifications; and • other terms and conditions of employment.[195]	1 year, unless there is an action pending in which the records are relevant.
Philadelphia Paid Sick Leave	*Covered employers (generally, those with 10 or more employees) must keep and maintain records showing:* • hours worked by employees;	2 years.

[193] 41 C.F.R. § 50-201.501.

[194] 34 PA. CODE §§ 81.51 to 81.54.

[195] 43 PA. STAT. ANN. § 336.6; 34 PA. CODE § 9.62.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• sick time taken by employees; and • payments made to employees for sick time. If an employer fails to keep these records or make them available to the appropriate agency upon request, it is presumed that the employer violated the law.	
Public Works Contracts	*Every contractor and subcontractor on public works must keep accurate records of the following:* • name, address, and Social Security number of each worker; • craft or classification within craft, and any other classification, *e.g.*, apprentice; • number of hours worked per day, specified by actual calendar date; • if the employee worked in different crafts for different rates, the number of hours each day worked in the different crafts; • actual hourly rate of wage paid, including employee benefits, to each worker; • deductions from each worker; • time cards; and • original signed indentures for each apprentice along with approvals of the Pennsylvania Apprenticeship and Training Council.[196]	2 years from date of payment.
Unemployment Compensation	*Whether or not liable for contributions, each employer must keep clear, accurate, and complete employment and payroll records for all workers, including those that the employer considers to be "independent contractors." These records must include:* • full name and Social Security number; • wage rate (hourly, daily or piece rate, weekly, monthly, or annual salary); • total remuneration paid for each pay period by type of payment (cash and cash value of payments in kind); • traveling or other business expenses actually incurred and accounted for, and the dates such expenses were incurred and reimbursed by the employer; • place of employment; • all scheduled hours and hours worked;	4 years after contributions relating to the records have been paid—except for daily attendance records, which need be retained for only 2 years.

[196] 43 PA. STAT. ANN. § 165-6; 34 PA. CODE §§ 9.103, 9.109.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• daily attendance record showing the dates actually worked, and time lost due to reasons other than lack of work; • date of and reason for separation, if applicable; • number of credit weeks; and • all employment and payroll records and supporting evidence, as well as all other business records such as tax returns, cash books, journals, ledgers, and corporate minutes.[197]	
Wages, Hours & Payroll	*Every employer must keep true, accurate, and legible records, for all employees. These records must include:* • full name and—if included on payroll records— any identifying employee number or symbol; • home address including zip code; • regularly hourly rate of pay; • occupation; • time and day that the workweek begins; • number of hours worked daily and weekly; • total daily or weekly straight time wages (*i.e.*, total wages due for hours worked during the workweek, including all wages due during any overtime worked but exclusive of overtime excess compensation); • total overtime excess compensation for the workweek (*i.e.*, the excess amount over and above all straight time earnings also earned during overtime worked); • total additions to or deductions from wages paid each pay period; • allowances, if any, claimed as part of the minimum wage; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • special certificates for students and learners; and • upon demand, a sworn statement of an authorized employer representative that a true and correct record has been kept of the hours their employees have worked and wages that have been paid each employee.	3 years from the date of last entry.

[197] 34 PA. CODE § 63.64; *see also* 43 PA. STAT. ANN. § 766.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	When an employer maintains records at a central record-keeping office rather than the place of employment, the records must be made available for inspection at the worksite within seven calendar days following verbal or written notice from the state Secretary of Labor or their authorized representative.[198]	
Workers' Compensation: Injury Reports	*All employers must keep a record of each injury reported by employees or of which the employer otherwise has knowledge. These records must include:* • description of the injury; • statement of any time during which the injured employee was unable to work due to the injury; and • description of the manner in which the injury occurred.[199]	None specified.
Workers' Compensation: Self-Insured Employers—Program Requirements	*Individual self-insured employers must maintain records of their accident and illness prevention program services and requirements.[200] These records must include:* • safety policy statement; • designated accident and illness prevention program coordinator; • assignment of responsibilities for developing and evaluating the program; • program goals and objectives; • methods for identifying and evaluating hazards and developing corrective actions for mitigation; • industrial hygiene surveys required by the nature of the employer's workplace and worksite environments, *e.g.*, air quality testing; • industrial health services required by the nature of the workplace environment, *e.g.*, health screenings, substance abuse awareness, and prevention training programs;	3 most current and complete fiscal years. Records concerning the "comparison methods" chosen by individual self-insured employers must be kept for the most current and complete fiscal year as well as the 2 preceding consecutive fiscal years.[203]

[198] 34 PA. CODE § 231.31; 43 PA. STAT. ANN. § 333.108.

[199] 77 PA. STAT. ANN. § 995.

[200] 34 PA. CODE §§ 129.402(a), 129.407.

[203] Those records describing the comparison methods, as required by 34 PA. CODE § 129.402(a)(15), must include, at a minimum: (1) the annual calculated rates for the methods chosen; (2) a copy of the calculations used to

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• accident and illness prevention orientation and training; • regularly reviewed and updated emergency action plans; • employee accident and illness prevention suggestion and communications programs; • mechanisms for employee involvement, which may include establishment of a safety committee ; • established safety rules and methods for enforcement; • methods for accident investigation, reporting, and record keeping; • prompt availability of first aid, CPR, and other emergency treatments; • methods for determining and evaluating program effectiveness ("comparison methods");[201] and • protocols or standard operating procedures, when applicable to the workplace and worksite environments for specific topics, such as electrical and machine safeguarding.[202]	
Workers' Compensation: Self-Insured Employers—Prevention Program Services	*In addition to the documentation showing compliance with program requirements, individual self-insured employers must also maintain records of services delivered or provided. These records must include:* • number and dates of surveys conducted; • proposed corrective actions and their disposition; • training programs conducted; • consultations held; • analyses of accident causes; • industrial hygiene services provided; • industrial health services provided; • qualified service providers utilized to provide program services whether contracted or employed; and	Maintain records for the most current complete fiscal year and the 2 preceding consecutive fiscal years.

determine the annual rates; and (3) a copy of the sources containing the complete data used in calculating the annual rates. 34 PA. CODE § 129.402(b).

[201] Specific examples can be found at 34 PA. CODE § 129.402(a)(15).

[202] The full list of the types of protocols that might be required, depending on the worksite environment, can be found at 34 PA. CODE § 129.402(a)(16) (including, for example, protocols for personal protective gear and fire prevention and control).

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records of evaluations conducted to determine program effectiveness.[204]	
Workplace Safety: Hazardous Communications	Pennsylvania employers must maintain all records of employee exposure to specific chemical substances, to the extent required by the Fed-OSH Act under 29 C.F.R. § 1910.20(g). Alternatively, an employer will be deemed in compliance if it satisfies similar requirements set by the Mine Safety Health Administration (*e.g.*, relating to respirable dust samples, reporting, and posting).[205]	None specified. *See* Federal requirements.
Workplace Safety: Hazardous Substance Survey	Employers must complete and maintain a Hazardous Substance Survey Form for each workplace.[206]	Most current version must be kept on file.
Workplace Safety: Environmental Hazard Survey	Employers must complete and maintain an Environmental Hazard Survey Form. The form must be kept on file at the workplace to which the form applies and at the employer's principal place of business within Pennsylvania.[207]	Most current version must be kept on file.
Workplace Safety: Material Data Safety Sheets	Employers must maintain pertinent Material Data Safety Sheets for each hazardous substance or hazardous mixture in the workplace. If the information sheet is not included in a shipment, the employer must obtain a copy from the manufacturer, importer, supplier, or distributor.[208]	None specified.

3.1(c) *Personnel Files*

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

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

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

Under Pennsylvania law, all employees have a right to inspect their own personnel file if the file includes employment history with the employer, such as salary information, job title, dates of changes, retirement record, attendance records, and performance evaluations.[209] Personnel files do not include: records related to the investigation of a possible criminal offense; reference letters; medical records; documents

[204] 34 PA. CODE § 129.407.

[205] 34 PA. CODE § 315.2.

[206] 34 PA. CODE § 305.2; *see also* 34 PA. CODE § 303.1.

[207] 34 PA. CODE § 305.3; *see also* 34 PA. CODE § 303.2.

[208] 34 PA. CODE § 307.10a.

[209] 43 PA. STAT. ANN. § 1321.

prepared for use in litigation or grievance procedures; materials which are used by the employer to plan for future operations; or information available to the employee under the Fair Credit Reporting Act.[210]

Requests for Access to Personnel Files. An employee, including an employee who has been laid off with reemployment rights or on leave of absence, may request to view their personnel file used to determine their qualifications for employment, promotion, additional compensation, termination, or disciplinary action.

An employer may require that the request be made in writing. Such a form is to be used to identify the requesting individual or designated agent, and to prevent disclosing information to ineligible individuals. The employee may be required to indicate the purpose of the inspection or what sections the employee wishes to inspect of their personnel file.[211]

An employer must make the file available to the employee or designated agent during regular business hours of the office where the records are usually and ordinarily maintained, and must provide sufficient time to inspect the files. The volume of the content of the file must be taken into consideration in determining the sufficient amount of time.[212] In the absence of reasonable cause, an employer may limit inspection to once every calendar year.[213]

An employer may require that inspection take place during the employee's free time and/or in the presence of an official designated by the employer. An employer may prohibit the employee or agent from removing anything from the file; however, notes may be taken.[214]

Disputes Over Personnel Files. An employee will have the opportunity to place a counter statement in their personnel file for any alleged errors.[215]

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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[210] 43 PA. STAT. ANN. § 1321.

[211] 43 PA. STAT. ANN. § 1322.

[212] 43 PA. STAT. ANN. § 1322.

[213] 43 PA. STAT. ANN. § 1323.

[214] 43 PA. STAT. ANN. § 1323.

[215] 43 PA. STAT. ANN. § 1324.

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

Pennsylvania does not regulate employment-related drug or alcohol testing by statute. In certain instances, however, a private employee may have a claim for wrongful discharge in violation of public policy if the employer's drug test is deemed to constitute a tortious invasion of the privacy of an employee.[216]

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[217]

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

Pennsylvania's medical marijuana program, which enables citizens with specified serious medical conditions to access medical marijuana.[218]

Antidiscrimination / Antiretaliation Provisions. Under the law, employers cannot discharge, threaten, refuse to hire, or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location, or privileges solely on the basis of the employee's status as a certified medical marijuana user.[219]

A state appellate court affirmed a trial court judge's holding that an implied private right of action exists under the medical marijuana law, and that plaintiff could proceed with a separate cause of action for wrongful discharge in violation of public policy based on a medical marijuana violation.[220]

Later, a federal district court judge granted an employer summary judgment concerning an employee's Pennsylvania Medical Marijuana Act ("PMMA") discrimination claims.[221] In light of the plain reading of the statute, the limited available case law interpreting the statute, and the comparison of the PMMA to statutes of other states, the court predicted that the Pennsylvania Supreme Court would interpret the PMMA to protect only one's status as a medical marijuana cardholder. Per the judge, the PMMA can be reasonably interpreted as prohibiting adverse action that is taken exclusively, or solely, on the basis that the employee is a cardholder. The court predicted that the Pennsylvania Supreme Court would require a

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[216] *Borse v. Piece Goods Shop*, *Inc*., 963 F.2d 611 (3d Cir. 1992).

[217] 21 U.S.C. §§ 811-12, 841 *et seq*.

[218] *See, e.g.*, Pennsylvania Dep't of Health, *Pennsylvania Medical Marijuana Program*, *available at* https://www.pa.gov/guides/pennsylvania-medical-marijuana-program/ (providing updates, resources, and answers to frequently asked questions about the program).

[219] 35 PA. STAT. ANN. § 10231.2103(b)(1). *But see, e.g.*, *Palmiter v. Commonwealth Health Systems, Inc.*, 2022 WL 680122 (Pa. Super. Ct. Mar. 8, 2022) ("[T]he trial court sustained Employers' preliminary objections on the basis that the use of medical marijuana pursuant to the MMA is not a disability under the PHRA. [Employee] does not challenge that determination.").

[220] *Palmiter v. Commonwealth Health Systems*, 2019 WL 6248350 (Lackawanna County Court of Common Pleas Nov. 22, 2019) (denying defendant's demurrer to complaint), *affirmed*, 2021 Pa. Super. LEXIS 504 (Aug. 5, 2021) & 260 A.3d 967 (Aug. 10, 2021). *But see, e.g.*, *Hudnell v. Thomas Jefferson Univ. Hosps., Inc.*, 2020 WL 5749924 (E.D. Pa. Sep. 25, 2020) (although likewise ruling an implied private right of action exists under the medical marijuana law, holding plaintiff could not proceed with a separate cause of action for wrongful discharge in violation of public policy).

[221] *Reynolds v. Willert Mfg. Co., L.L.C.*, 2021 WL 4860759 (E.D. Pa. Oct. 19, 2021).

plaintiff to show that but for the individual's status as a cardholder, the individual would not have suffered an adverse employment action. In this case, the employee did not directly inform the owner or plant manager about the individual's registered medical marijuana patient status prior to termination. The court held that the plaintiff failed to establish an agency relationship between the company and the hospital where a drug test was conducted sufficient to impute the hospital's knowledge of plaintiff's status to the employer. Moreover, the plaintiff did not point to any facts that would evidence that the medical review officer told the company about the individual's status as a medical marijuana patient. Per the judge, the undisputed facts indicated that the company did not know of status at the time it made the initial decision to terminate the employee. Even if the court considered plaintiff's "ratification" theory (after drug test, plaintiff told plant manager about status on phone, which was relayed to HR manager), it held that the plaintiff did not provide any evidence that the company abandoned its prior reasons for termination and adopted cardholder status as the sole reason for termination.

Workplace Accommodation & Restrictions. Employers are not required to accommodate medical marijuana use on their property or places of employment.[222]

Additionally, a qualifying medical marijuana patient cannot:

- operate or be in physical control of the following while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabis per milliliter of blood: (1) chemicals requiring a permit from the federal or state government or agency; or (2) high-voltage electricity or any other public utility; or
- while under the influence of medical marijuana, perform any employment duties at heights or in confined spaces, including but not limited to mining.

Employers can prohibit patients from performing, while under the influence of medical marijuana:

- any task the employer deems life threatening to either the employee or co-employees; and
- any duty that could result in a public health or safety risk.

These prohibitions do not constitute an adverse employment decision even if it causes the employee financial harm.[223] The Pennsylvania law also does not limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence when the employee's conduct falls below the standard of care normally accepted for that position. The law does not require an employer to commit any act that would put it or any person acting on its behalf in violation of federal law.[224]

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[222] 35 PA. STAT. ANN. § 10231.2103(b)(2). *See also Harrisburg Area Cmty. Coll. v. Pa. Human Rels. Comm'n*, 245 A.3d 283 (Pa. Commw. Ct. 2020) (Pennsylvania Human Rights Act would not require employers to accommodate disabled employee's medical marijuana use because marijuana is illegal under the federal Controlled Substances Act).

[223] 35 PA. STAT. ANN. § 10231.510.

[224] 35 PA. STAT. ANN. § 10231.2103(b)(2). *See also Harrisburg Area Cmty. Coll. v. Pa. Human Rels. Comm'n*, 245 A.3d 283 (Pa. Commw. Ct. 2020) (Pennsylvania Human Rights Act would not require employers to accommodate disabled employee's medical marijuana use because marijuana is illegal under the federal Controlled Substances Act).

3.2(c)(iii) *Local Guidelines on Marijuana*

Drug Testing. Although the state medical marijuana law contains no relevant provisions, a City of Philadelphia ordinance provides that, except as otherwise provided by law or subject to the ordinance's exceptions, an employer, labor organization, employment agency or agent thereof cannot require a prospective employee to submit to testing for the presence of marijuana as a condition of employment.[225]

The prohibition does not apply to persons applying to work in the following jobs or professions:

- police officer or other law enforcement positions;
- any position requiring a commercial driver's license;
- any position requiring supervision or care of children, medical patients, disabled or other vulnerable individuals; or
- any position in which the employee could significantly impact the health or safety of other employees or members of the public (as determined by the enforcement agency in forthcoming regulations).[226]

Additionally, it does not apply to drug testing required pursuant to:

- any federal or state statute, regulation, or order that requires drug testing of prospective employees for safety or security purposes;
- any contract, or any grant of financial assistance, involving the federal government and an employer that requires drug testing of prospective employees as a condition of receiving the contract or grant; or
- a valid collective bargaining agreement that specifically addresses pre-employment drug testing of applicants.[227]

In the City of Pittsburgh, an employer of five or more employees, an employment agency, or a labor organization cannot discriminate in hiring or employment against any employee or job applicant because of the individual's lawful status as a medical marijuana patient, including requiring pre-employment testing for marijuana or testing during employment as a condition of employment.[228]

The prohibition does not apply to persons working in the following jobs or professions:

- Any position which is subject to drug testing due to regulations of the United States Department of Transportation or the Pennsylvania Department of Transportation;
- Any position that requires the employee to carry a firearm; or
- Any applicant whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants.

In addition, the limitation on testing does not apply to:

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[225] PHILA., PA. CODE § 9-5501(1).

[226] PHILA., PA. CODE § 9-5502(2).

[227] PHILA., PA. CODE § 9-5502(3).

[228] PITTSBURGH, PA, CODE OF ORDINANCES §§ 651.02(c), 659.02(l).

- Testing for illegal use of controlled substances.
- For-cause drug testing performed when supervisors have reasonable cause to suspect an employee of being under the influence of a drug while at work.
- Drug testing performed after a workplace accident.

The ordinance allows an employer to take disciplinary action if the employee is under the influence of medical marijuana in the workplace or is working while under the influence of medical marijuana, where the employee's conduct falls below the standard of care normally accepted for the position. The ordinance also allows the employer to prohibit the patient from performing tasks while under the influence of medical marijuana that may be life-threatening to the employee or other employees or that may pose a risk to public health or safety. [229]

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.[230]

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.[231]

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[229] PITTSBURGH, PA, CODE OF ORDINANCES § 659.02(I).

[230] 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.

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

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

Pennsylvania employers must notify residents following a data breach of a security system.[232] A *breach of the security system* is the "unauthorized access and acquisition of computerized data that materially compromises the security or confidentiality of personal information maintained by the entity as part of a database of personal information regarding multiple individuals and that causes or the entity reasonably believes has caused or will cause loss or injury" to any Pennsylvania resident.[233]

Coverage & Exceptions. Covered employers include any entity doing business in Pennsylvania that maintains, stores, or manages computerized data that includes personal information. Exceptions include:

- A covered entity that maintains and complies with its own notification procedure as part of an information security policy for the treatment of personal information is compliant with the statute, provided it affords the same or greater protection to the affected individuals as the statute.
- Any entity that complies with the notification requirements or security breach procedures of that entity's primary or functional federal regulator.
- A financial institution that is subject to and compliant with the requirements imposed by the federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice.[234]

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

- written notice to the last known home address of the affected individual;
- telephonic notice, if:
  - the affected individual can be reasonably expected to receive it;
  - the notice is given in a clear and conspicuous manner, describes the incident in general terms, and verifies personal information but does not require the customer to provide personal information; and
  - the individual is provided with a telephone number to call or internet website to visit for further information or assistance.
- electronic notice, if a prior business relationship exists and the covered entity has a valid email address for the individual; or
- substitute notice, if:
  - the covered entity demonstrates that—
    - the cost of providing notice would exceed $100,000;
    - the affected class of persons to be notified exceeds 175,000; or
    - the covered entity does not have sufficient contact information.[235]

[232] 73 PA. STAT. ANN. §§ 2301 *et seq*.

[233] 73 PA. STAT. ANN. § 2302.

[234] 73 PA. STAT. ANN. §§ 2303, 2307.

[235] 73 PA. STAT. ANN. § 2302.

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for the affected resident;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.[236]

If the breach involves personal information including a user name or email address in combination with a password or security question and answer that would permit access to an online account, the notice must direct the affected person to change the password or security questions and answers.[237]

Effective September 26, 2024, if the breach compromises the individual's first and last name (or first initial and last name) along with the individual's Social Security number, bank account information, or driver's license or state ID number, the notice must advise affected persons of the availability of no-cost credit reporting and monitoring services for 12 months.

Timing of Notice. Notice must be made without unreasonable delay.[238] However, notification may be delayed if:

- A law enforcement agency determines and advises the covered entity in writing (with reference to the statute) that the notification will impede a civil or criminal investigation or compromise homeland security.[239]
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity of the data system.

Additional Provisions. If more than 1,000 individuals (**Effective September 26, 2024**, 500 individuals) at a single time will be notified of a security breach, the covered entity must also notify without unreasonable delay all nationwide consumer reporting agencies of the timing distribution, and the number of the notices.[240] **Effective September 26, 2024**, if more than 500 Pennsylvania residents are affected by the security breach, the covered entity must concurrently notify the state attorney general. The notice to the attorney general must include the name and location of the covered entity, the date of the breach, a summary of the breach incident, and an estimated total number of: (1) individuals affected by the breach; and (2) individuals in Pennsylvania affected by the breach.[241]

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

[236] 73 PA. STAT. ANN. § 2302.

[237] 73 PA. STAT. § 2303.

[238] 73 PA. STAT. ANN. § 2303.

[239] 73 PA. STAT. ANN. § 2304.

[240] 73 PA. STAT. ANN. § 2305, as amended by PA. SB 824 (2024) (effective Sep. 26, 2024).

[241] 73 PA. STAT. § 2303, as amended by PA. SB 824 (2024) (effective Sep. 26, 2024).

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.[242] 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.[243]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[244]

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.[245]

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

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

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

The minimum wage applicable to private employers in Pennsylvania is currently $7.25 per hour for nonexempt employees, which is the federal wage rate.[247] If the minimum wage set forth in the FLSA rises, the Pennsylvania minimum wage will be increased to match the FLSA minimum wage.[248]

In complying with the minimum wage requirement for hourly employees, employers may credit toward meeting the requirement any commissions earned by the employee.[249] Additionally, Pennsylvania law

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[242] 29 U.S.C. § 218(a).

[243] 29 U.S.C. § 206.

[244] 29 U.S.C. §§ 203, 206.

[245] 29 U.S.C. § 3(m)(2)(B).

[246] 29 U.S.C. § 207.

[247] 43 PA. STAT. ANN. § 333.104.

[248] 43 PA. STAT. ANN. § 333.104(a.1).

[249] 34 PA. CODE § 231.23.

allows other credits against minimum wage, including the reasonable cost of meals, lodging, or other facilities customarily furnished by employers,[250] as well as a tip credit as discussed in **3.3(b)(ii)**. The amount of those credits must be based on reasonable cost, to be determined by the Secretary of Labor and Industry of the Commonwealth, except where allowing such credits is excluded under a *bona fide* collective bargaining agreement.[251]

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 $4.42 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.83 per hour. Note that if an employee does not make $4.42 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.[252]

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

There are numerous categories of employees who are exempt from Pennsylvania's minimum wage and overtime laws. Employers that are uncertain as to whether their employees will be exempt under the law should consult with legal counsel. If an employee is not covered under the Pennsylvania Minimum Wage Act of 1968 ("Minimum Wage Act"), the employee may still be entitled to protection under the federal FLSA, or vice versa. The following categories of employees are exempt from the Pennsylvania minimum wage:

- farm laborers;
- domestic workers in the private home of the employer;
- newspaper deliverers to consumers;
- employees of weekly, semiweekly, or daily publications with local circulations under 4,000;
- those in *bona fide* executive, administrative, or professional capacities, including academic administrative personnel and elementary and secondary school teachers, as well as outside sales personnel;
- certain retail and service establishment personnel;
- voluntary workers for educational, charitable, religious, or nonprofit organizations;
- certain seasonal workers;
- employees of public amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers, under certain conditions;
- golf caddies;
- telephone company switchboard operators where the company has no more than 750 stations; and

[250] 43 PA. STAT. ANN. § 333.103(d); 34 PA. CODE § 231.22.

[251] 43 PA. STAT. ANN. § 333.103(d).

[252] 43 PA. STAT. ANN. §§ 333.103, 333.104; 34 PA. CODE § 231.101.

- employees not subject to civil service laws who are elected office holders and their personal staff, advisers, and appointed policymakers.[253]

In addition, under limited circumstances, employers are allowed to pay below minimum wage. For example, upon approval by the Bureau of Labor Law Compliance, employers are allowed to pay 85% of the minimum wage to learners (persons training for an occupation) and students. In such cases, the Bureau will issue a certificate authorizing employment at less than the minimum wage. A learner may be employed for a maximum of eight weeks and work no more than 40 hours per week. A *bona fide* high school or college student may work up to 20 hours per week or up to 40 hours during school vacation periods.[254]

An employer may also pay less than minimum wage to certain employees with disabilities, provided the employer has a license from the Bureau that specifies a wage rate based on the employee's productive capacity. Alternatively, the employer may obtain a federal certificate under section 14(c) of the FLSA. A license allowing for payment of subminimum wage to the employee with a disability is issued only in cases where a joint application for such a license is submitted by the employer and the employee.[255]

3.3(c) *State Guidelines on Overtime Obligations*

There are several laws relating to maximum hours and overtime in Pennsylvania. Overtime in general is covered under section 4(c) of the Minimum Wage Act.[256]

Similar to the federal overtime requirements, Pennsylvania employers must pay all covered employees not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek.[257] *Workweek* means a period of seven consecutive days starting on any day selected by the employer.[258] Overtime must be compensated on a workweek basis regardless of whether the employee is paid on an hourly, salary, piece rate, or other basis. Overtime hours in a workweek may not be offset by compensatory time in any prior or subsequent workweek.[259] Special rules apply to employees of health care employers that are covered by the federal FLSA.[260]

Overtime pay will be required even if the employer does not require the employee to work the overtime hours (*i.e.*, if the employee works late or takes work home on their own volition) and even if the overtime is incurred without the employer's authorization or contrary to the employer's policy. If the overtime is worked, it must be paid.

3.3(d) *State Guidelines on Overtime Exemptions*

Pennsylvania's overtime provisions do not apply to the employees exempt from the state minimum wage requirements (see **3.3(b)(iii)**) and the following additional employees:

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[253] 43 PA. STAT. ANN. § 333.105(a).

[254] 43 PA. STAT. ANN. § 333.104(b); 34 PA. CODE §§ 231.51 to 231.62.

[255] 43 PA. STAT. ANN. § 333.104(d); 34 PA. CODE §§ 231.71 to 231.76.

[256] 43 PA. STAT. ANN. § 333.104(c).

[257] 43 PA. STAT. ANN. § 333.104(c); 34 PA. CODE § 231.41.

[258] 34 PA. CODE § 231.42.

[259] 34 PA. CODE § 231.42.

[260] 43 PA. STAT. ANN. § 333.104.

- seafarers;
- salespersons, partspersons, and mechanics primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircrafts for retail dealers;
- taxicab drivers;
- announcers, news editors, or chief engineers for certain radio/TV stations;
- employees processing maple sap into nonrefined sugar or syrup;
- movie theater employees; and
- employees of motor carriers with respect to whom the federal Secretary of Transportation has power to establish qualifications and maximum hours of service.[261]

The most significant exemptions are those for *bona fide* executive, administrative, professional, and outside sales employees. These terms are defined by regulation and are discussed below.[262]

3.3(d)(i) *Executive Exemption*

Pennsylvania law exempts from overtime provisions employees employed in a bona fide executive capacity. Employees of a retail or service establishment are not excluded from the definition of an employee employed in a bona fide executive capacity because of the number of hours in a workweek which they devote to activities not directly or closely related to the performance of executive activities, if less than 40% of hours worked in the workweek are devoted to such activities.[263]

As of September 7, 2021, regulations concerning the executive exemption were repealed, so it is possible that the exemption's interpretation will be driven by federal FLSA standards that existed in 1968.[264] For example, at least one federal district court held: "[T]he Court agrees with Defendant's argument that, 'in the absence of a rule promulgated by the Pennsylvania Department of Labor & Industry, the 1963 FLSA regulation provides the appropriate standard for assessing exempt status under the PMWA's statutory executive exemption.'"[265]

3.3(d)(ii) *Administrative Exemption*

Pennsylvania law exempts from overtime provisions employees employed in a bona fide administrative capacity. Employees of a retail or service establishment are not excluded from the definition of an employee employed in a bona fide administrative capacity because of the number of hours in a workweek

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[261] 43 PA. STAT. ANN. § 333.105(b). *But see Packard v. Pittsburgh Transp. Co.*, 418 F.3d 246 (3d Cir. 2005) (holding that exemption is not applicable to bus drivers who are not involved with any aspect of interstate transportation).

[262] 34 PA. CODE § 231.81.

[263] 43 PA. STAT. ANN. § 333.105(a)(5).

[264] *See* Robert Pritchard, Pennsylvania Repeals Rule Increasing Salary Threshold for White Collar Exemption and Restores State Law Exemptions to 1968 FLSA Standards, Littler Insight (July 12, 2021), *available at* https://www.littler.com/publication-press/publication/pennsylvania-repeals-rule-increasing-salary-threshold-white-collar.

[265] *Summers v. TH Minit Markets, LLC*, 2024 U.S. Dist. LEXIS 152335 (E.D. Pa. Aug. 23, 2024) (Granting defendant's motion for summary judgment).

which they devote to activities not directly or closely related to the performance of administrative activities, if less than 40% of hours worked in the workweek are devoted to such activities.[266]

As of September 7, 2021, regulations concerning the administrative exemption were repealed, so it is possible that the exemption's interpretation will be driven by federal FLSA standards that existed in 1968.[267] For example, at least one federal district court held: "[T]he Court agrees with Defendant's argument that, 'in the absence of a rule promulgated by the Pennsylvania Department of Labor & Industry, the 1963 FLSA regulation provides the appropriate standard for assessing exempt status under the PMWA's statutory executive exemption.'"[268]

3.3(d)(iii) *Professional Exemption*

Pennsylvania law exempts from overtime provisions employees employed in a bona fide professional capacity, including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools.[269]

As of September 7, 2021, regulations concerning the professional exemption were repealed, so it is possible that the exemption's interpretation will be driven by federal FLSA standards that existed in 1968.[270] For example, at least one federal district court held: "[T]he Court agrees with Defendant's argument that, 'in the absence of a rule promulgated by the Pennsylvania Department of Labor & Industry, the 1963 FLSA regulation provides the appropriate standard for assessing exempt status under the PMWA's statutory executive exemption.'"[271]

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

In addition to the above exemptions, the state overtime provisions do not apply to an employee of a retail or service establishment if:

- the employee's regular rate of pay of the employee exceeds 1.5 times the state minimum wage; and
- more than half of the employee's compensation for a representative period, not less than one month, represents commissions on goods or services.

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[266] 43 PA. STAT. ANN. § 333.105(a)(5).

[267] *See* Robert Pritchard, Pennsylvania Repeals Rule Increasing Salary Threshold for White Collar Exemption and Restores State Law Exemptions to 1968 FLSA Standards, Littler Insight (July 12, 2021), *available at* https://www.littler.com/publication-press/publication/pennsylvania-repeals-rule-increasing-salary-threshold-white-collar.

[268] *Summers v. TH Minit Markets, LLC*, 2024 U.S. Dist. LEXIS 152335 (E.D. Pa. Aug. 23, 2024) (Granting defendant's motion for summary judgment).

[269] 43 PA. STAT. ANN. § 333.105(a)(5).

[270] *See* Robert Pritchard, Pennsylvania Repeals Rule Increasing Salary Threshold for White Collar Exemption and Restores State Law Exemptions to 1968 FLSA Standards, Littler Insight (July 12, 2021), *available at* https://www.littler.com/publication-press/publication/pennsylvania-repeals-rule-increasing-salary-threshold-white-collar.

[271] *Summers v. TH Minit Markets, LLC*, 2024 U.S. Dist. LEXIS 152335 (E.D. Pa. Aug. 23, 2024) (Granting defendant's motion for summary judgment).

When figuring the percentage of compensation representing commissions, all earnings resulting from the application of a *bona fide* commission rate are deemed commissions on goods or services without regard to whether the commissions exceed the draw or guarantee.[272]

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

Overtime provisions also do not apply to an individual employed as an *outside salesman*, which is defined as "an employee who is employed for the purpose of and who is customarily and regularly engaged more than 80% of work time away from the employer's place or places of business" in performing the following duties:

- making sales, including any sale, exchange, contract to sell, or other disposition or selling, and delivering articles or goods; or
- obtaining orders or contracts for the use of facilities for which consideration will be paid by the client or customer.

Additionally, to qualify for this exemption:

> the employee may not spend more than 20% of the hours worked in any week in work of a nature not directly related to and in conjunction with the making of sales; provided however, that work performed incidental and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, [is] not regarded as nonexempt work.[273]

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.[274] 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.[275]

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[272] 34 PA. CODE § 231.43.

[273] 34 PA. CODE § 231.85; *see also* 43 PA. STAT. ANN. § 333.105.

[274] 29 C.F.R. § 785.19.

[275] 29 C.F.R. § 785.18.

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

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

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

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[276] 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.[277] 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.[278] Exemptions apply for smaller employers and air carriers.[279]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[280] Lactation is considered a related medical condition.[281] 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.[282] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

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

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

The state labor department has advised that although "employers are not required to give breaks for employees 18 and over," if an employer does allow meal periods, they are not required to be paid if the employee does not work during the meal period and it lasts more than 20 minutes.[283] Moreover, wage

[276] 29 U.S.C. § 218d.

[277] 29 U.S.C. § 218d(b)(2).

[278] 29 U.S.C. § 218d(a).

[279] 29 U.S.C. § 218d(c), (d).

[280] 42 U.S.C. § 2000gg–1.

[281] 29 C.F.R. § 1636.3.

[282] 29 C.F.R. § 1636.3.

[283] Pennsylvania Dep't of Labor & Industry, *General Wage and Hour Questions*, at Question 10, *available at* http://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx.

and hour regulations provide that "time allowed for meals shall be excluded [from "hours worked"] unless the employee is required or permitted to work during that time."[284]

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

In Pennsylvania, minors under age 18 cannot work more than five hours continuously without at least a 30-minute meal period. Moreover, a period of less than 30 minutes does not interrupt a continuous period of work.[285]

Employers must keep at the workplace, among other records, minors' schedule of hours, which includes, among other items, time allowed for meals.[286]

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

The state labor department may impose an administrative penalty up to $5,000 per violation of the meal period requirements for minors. However, an administrative penalty cannot be imposed if an employer was sentenced for an offense arising out of the same conduct which would give rise to the administrative penalty.[287] Such a sentence carries a fine of $500 for the first violation, and subsequent offenses may result in a fine of $1,500 per violation, imprisonment for not more than 10 days, or both.[288]

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

Under Pennsylvania law, an individual has the right to breast feed in any place where the individual and their child are otherwise authorized to be present.[289] Although the law does not specifically mention employers, it can be construed to include places of employment.[290]

3.5 Working Hours & Compensable Activities

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

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[291] 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."[292]

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[284] 34 PA. CODE § 231.1.

[285] 43 PA. STAT. ANN. § 40.3.

[286] 43 PA. STAT. ANN. § 40.8.

[287] 43 PA. STAT. ANN. § 40.11; 34 PA. CODE § 11.24.

[288] 43 PA. STAT. ANN. § 40.11.

[289] 35 PA. STAT. ANN. § 636.3.

[290] *See* 35 PA. STAT. ANN. § 636.3.

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

[292] *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").

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*

Under Pennsylvania law, the definition of *hours worked*, for purposes of determining overtime, includes:

- time during which an employee is required by the employer to be on the premises of the employer, to be on duty, or to be at the prescribed work place; and
- time during which an employee is employed or permitted to work.[293]

As mentioned in **3.4(b)(i)**, time provided for meals is excluded unless the employee is required or permitted to work during that time (*e.g.*, the meal break will be counted as hours worked if the employee answers the phone or checks email during the meal period). In addition, time spent on the employer's premises for the convenience of the employee, during which the employee is not doing any work, is excluded from hours worked.[294]

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Pennsylvania law addresses the compensability of travel time and on-call time. Time spent in traveling as part of the duties of the employee during normal working hours is compensable, as is travel time where an employee is required to report to the employer's premises to clock in or out, or load or unload, before going to another site.[295] Normal travel between work and home is not compensable. With respect to on-call time, an employee's freedom to pursue their own interests while on call will determine whether such time must be paid. For example, if an employer requires employees to carry a beeper while on call, but otherwise allows employees to pursue their own interests, the time spent on call is not compensable, except for time spent actually responding to a call. However, if an employer requires employees to remain on its premises while on call, and does not allow employees to pursue their own interests (*e.g.*, reading, visiting with others, listening to the radio), the time spent on call must be paid.[296] Pennsylvania does not

[293] 34 PA. CODE § 231.1(b); *see also Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 967 (Pa. Super. Ct. 2009) ("hours worked" includes time workers spend donning, doffing and sanitizing their protective gear); *Gonzalez v. Bustleton Servs, Inc.*, 2010 WL 1813487 (E.D. Pa. Mar. 5, 2010) ("hours worked" includes time landscapers spend loading and unloading their trucks at the beginning and end of each workday).

[294] 34 PA. CODE § 231.1(b).

[295] 34 PA. CODE § 231.1; Pennsylvania Dep't of Labor & Industry, *General Wage and Hour Questions*, at Question 20, *available at* http://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx.

[296] Pennsylvania Dep't of Labor & Industry, *General Wage and Hour Questions*, at Question 9, *available at* http://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx.

allow a de minimis exception to the Pennsylvania Minimum Wage Act's working hours requirements. Employees must be paid for all hours worked.[297]

3.5(b)(i) *Local Predictive Scheduling Laws*

Philadelphia's predictive scheduling law applies to employers in the retail, hospitality, and food services industries with 250 or more employees and 30 or more locations worldwide. The law requires covered employers to:

- provide employees with a good faith estimate of work schedule upon hiring and permit employees to make work schedule requests;
- provide an advance notice of work schedule which must be posted no later than 10 days before the first day of any new schedule as well as provide notice of proposed schedule changes;
- compensate employees for certain schedule changes in addition to their regular rate of pay;
- provide employees the right to rest between shifts; and
- offer work to existing employees before hiring new employees from an external applicant pool, subcontractors, or temporary services or staffing agencies.[298]

Retaliation Prohibited. The law prohibits employers from interfering with, restraining, or denying the exercise of or the attempt to exercise, any right protected under the law. A complainant may file a complaint with an enforcement agency to be designated by the mayor, or bring a civil action against the employer for violating the law.[299]

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.[300] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[301] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

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[297] *In re: Amazon.com, Inc.*, 255 A.3d 191 (Pa. 2021).

[298] PHILA., PA. CODE §§ 9-4601 *et seq.*

[299] PHILA., PA. CODE §§ 9-4606, 9-4611.

[300] 29 C.F.R. §§ 570.36, 570.50.

[301] 29 C.F.R. § 570.6.

3.6(b) *State Guidelines on Child Labor*

The Pennsylvania Child Labor Act defines a *minor* as any person less than 18 years of age.[302] The law imposes restrictions on both the hours of employment and the occupations minors may hold.

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

General Restrictions. The Child Labor Act provides that minors cannot work in any occupation or establishment designated as hazardous or otherwise prohibited under the FLSA and its regulations, or so designated by the state labor department.

Table 9 details the types of jobs that Pennsylvania law prohibits, and permits, minor to perform.

Table 9. Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 18	*The following occupations are prohibited for minors under age 18:* • as a pilot, fireman, or engineer on a boat or vessel; • on a railroad or railway, as a track repairman, gate tender, switch tender, brakeman, fireman, engineer, motorman, or conductor; • in the manufacture of paint, color, or white lead, poisonous dyes, or compositions using dangerous lead or acids; • on outside electrical wiring (exceptions exist, *e.g.*, apprentices, student learners); • as operators or managers of passenger or freight elevators, or other hoisting or lifting machinery; • at acetylene or electrical welding (exceptions exist, *e.g.*, apprentices, student learners); • on wire-stitching machines (exceptions exist, *e.g.*, apprentices, student learners); • at testing electric meters as part of the process of manufacturing or repair meters (exceptions exist, *e.g.*, apprentices, student learners); • on machines or processes in connection with roll tables, roll cars, and greasers in rolling mills (exceptions exist, *e.g.*, apprentices, student learners); • at installing and removing electric light and power meters, or doing inside wiring (exceptions exist, *e.g.*, apprentices, student learners); • in tanning establishments, if employment specifically concerns the tanning process; includes such work as performed in a beam house, filling vats with hides, hipping hides, and cleaning vats; • as section hands on railroads and railways; • in establishments where the following are manufactured, handled, or stored: black power of any variety, dry gun cotton, nitroglycerin, chlorates, fulminates, picric acid, fireworks, and other substances subject to expansion through shock, friction, spark, or heat; includes smokeless powder, wet gun cotton, and wet nitro-starch;

[302] 43 PA. STAT. ANN. § 40.2.

Table 9. Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• as motion picture projectionists; • on power-driven woodworking machinery (exceptions exist, *e.g.*, apprentices, student learners); • at operating mixing machines (exceptions exist, *e.g.*, apprentices, student learners); • on punch presses (exceptions exist, *e.g.*, apprentices, student learners); • operating emery wheels (exceptions exist, *e.g.*, apprentices, student learners); • adjacent to metal industry furnaces; • in brick-making industry on horizontal or vertical pug mills; • on power-operated metal plate-bending machines (exceptions exist, *e.g.*, apprentices, student learners); • handling bull ladles contain molten metal; • on power-driven food chopping, meat-grinding, slicing, or processing machines (exceptions exist, *e.g.*, apprentices, student learners); • spray-coating objects with any substances contain lead, benzol, or ground siliceous materials (exceptions exist, *e.g.*, apprentices, student learners); • in occupations necessitating a minor's presence in underground work, open pit, or surface part of a coal mining plant that contributes to extraction, grading, cleaning, or other handling of coal (exceptions exist, *e.g.*, performing duties only in office, or in repair or maintenance shops, located in surface part of coal mining plant); • in occupations involving exposure to radioactive substances and ionizing radiation (exceptions exist, *e.g.*, vocational school laboratory student aides and graduates); • in roofing operations (exceptions exist, *e.g.*, apprentices, student learners); • in wrecking and demolition; • in various meat packing industry occupations; and • in various excavating operation occupations.[303] *Minors aged 17 can work:* • in general firefighter activities if supervised and controlled by certain personnel if they successfully completed various courses; and • operating a single vehicle that does not weigh more than 30,000 pounds registered gross weight, or a vehicle towing a trailer which does not weigh more than 10,000 pounds gross weight.[304]

[303] 43 PA. STAT. ANN. §§ 40.4, 40.12; 34 PA. CODE §§ 11.31 to 11.35, 11.37, 11.38, 11.40, 11.41, 11.43, 11.46, 11.47, 11.49, 11.51, 11.53 to 11.59, 11.62 to 11.66.

[304] 34 PA. CODE §§ 11.67, 11.74.

Table 9. Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Ages 16-17	*In addition to the restrictions for minors under age 18, no minor age 16 or 17 may be employed:* • in certain quarrying occupations: drilling, short firing, or assisting in loading or tamping holes; face cleaning; attaching blocks to chains for cable hoisting; operating or assisting in operating steam, air, or electric shovels; and • in heating and passing rivets occupations at a distance more than 10 feet above ground unless certain scaffolding is provided.[305] *Minors ages 16 and 17 can work:* • in nonprohibited quarrying occupations (see above); • in establishments where explosives are handled or stored, if they are at least 360 feet from the point of handling or storage, and the maximum quantity of explosives at this distance is 200 pounds (increased quantities of explosives increase the required minimum distance); • in heating and passing rivets occupations at a distance more than 10 feet above ground if certain scaffolding is provided; • performing limited, specified activities at the scene of a fire; • as apprentices in pattern making shops; • on blue print machines; • in the following occupations in iron and steel plants: testers (if they don't take samples); messengers; door operators; shippers; weightmasters; water carriers; soaking pit cover operators; shear gaugers; transfer tables; and • as assistants to chemists in laboratories of blast furnaces (if they don't engage in taking samples).[306]
Under Age 16	*In addition to the restrictions above, minors under age 16 cannot work:* • in youth peddling (selling goods or services to customers at locations other than employer's establishment, *e.g.*, residential homes, street corners), which includes preparatory activities (*e.g.*, loading vehicles), promotional activities (*e.g.*, wearing signs in a place other than in front of the employer's establishment); • on coal dredges; • in the occupation of heating and passing rivets; • in an establishment where a strike or lockout is in progress; • at outside window washing involving working from window sills; and • in all work requiring the use of ladders, scaffolds, or their substitutes.[307]

[305] 34 PA. CODE §§ 11.42, 11.52.

[306] 34 PA. CODE §§ 11.42, 11.43, 11.52, 11.67 to 11.71.

[307] 43 PA. STAT. ANN. § 40.4; 34 PA. CODE §§ 11.50, 11.52, 11.60, and 11.61.

Table 9. Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	Minors ages 14 and 15 can work in occupations not specifically prescribed as hazardous, if an establishment provides and maintains a part-time industrial school for educating such minors and minors are at all times under the special supervision and instruction of a competent foreman and all machinery is properly guarded.[308] *In addition, minors under age 16 can work:* • on sections of the highway that are not open to the public for vehicular travel; and • riding on automobiles while engaged in delivering merchandise (but cannot assist in operating vehicle).[309]
Under Age 14	*Minors under age 14 can work:* • as caddies, if at least 12 years old and the minor does not carry more than one golf bag at a time and employment is for no more than 18 holes of golf in a day; and • in newspaper delivery, if at least 11 years old and all other conditions are satisfied.[310]

Restrictions on Selling or Serving Alcohol. In Pennsylvania, minors under age 18 cannot work at establishments where alcoholic beverages are produced, sold, or dispensed, subject to limited exceptions. Minors under age 18 working for hotels, restaurants, club liquor licensees, or retail dispenses cannot serve alcoholic beverages. However, hotels, restaurants, club liquor licensees, or retail dispensers can allow students receiving instruction in a performing art to perform an exhibition if they are not paid and are properly supervised.[311]

Minors age 16 or older can be employed in areas where alcoholic beverages are not served.[312] They can also be employed in hotels, clubs, or restaurants where alcoholic beverages are sold if their job consists of serving food, cleaning tables, and related duties, if the establishment has a valid state-issued permit for Sunday sales, if the minor's job duties do not include dispensing or serving beverages, and if the establishment submits to the issuing officer a copy of its Sunday sales permit.[313]

Generally, minors under age 16 cannot render services in premised licensed under state liquor licensing laws. However, minors under age 16 can be employed at continuing care retirement communities, ski resorts, bowling alleys, golf courses, amusement parks, or similar recreational establishments where

[308] 34 PA. CODE § 11.72.

[309] 34 PA. CODE §§ 11.41a, 11.74.

[310] 43 PA. STAT. ANN. §§ 40.4, 40.14.

[311] 43 PA. STAT. ANN. § 40.4(a)(1)(i).

[312] 43 PA. STAT. ANN. § 40.4(a)(1)(iii).

[313] 43 PA. STAT. ANN. § 40.4(a)(1)(iv).

alcoholic beverages are sold if they do not handle or serve beverages and are not employed in an area where beverages are stored or served.[314]

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

Minors 16 years old or older generally cannot work:

- more than eight hours per day;
- more than 28 hours per week;
- before 6:00 A.M.; or
- after 12 midnight when school is in session (or after 1:00 A.M. during a vacation period).

During a school vacation period, minors 16 years old or older generally may not work for more than 10 hours a day or more than 48 hours a week. Note, however, that hours worked over 44 hours must be voluntarily agreed to by the minor, and the minor can reject requests to work more than 44 hours without retaliation. These rules do not apply to a minor who is a high school graduate or who is exempt from compulsory school attendance.[315]

Minors aged 14 or 15 years old may not work more than:

- three hours on a school day;
- eight hours on a day when there is no school;
- 18 hours during a regular school week; or
- 40 hours per week during a week when school is not in session.

Generally, minors 14 or 15 years old may not work before 7:00 A.M. or after 7:00 P.M. during the school season or before 7:00 A.M. or after 9:00 P.M. during a school vacation period.[316] Certain exceptions apply to minors age 14 or older employed on a farm or enrolled in school-work program, and to minors engaged in newspaper and periodical delivery. Minors age 11 and older can be employed in the delivery and street sale of newspapers between 5:00 A.M. and 8:00 P.M. (9:00 P.M. during school vacation periods).

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

Pennsylvania's child labor laws do not apply to employment of a minor in domestic service in the private home of a parent or guardian, to baby-sitting, and to performance of minor chores in or about a private home. *Minor chores* include lawn care, snow shoveling and residential chores performed by minors on a casual or infrequent basis.[317] In addition, agricultural employment exempt from coverage of the federal child labor provisions are also exempt from coverage under the state child labor laws.[318]

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[314] 43 PA. STAT. ANN. § 40.4(a)(1)(ii).

[315] 43 PA. STAT. ANN. § 40.3(f).

[316] 43 PA. STAT. ANN. § 40.3(d).

[317] 43 PA. STAT. ANN. § 40.13.

[318] 43 PA. STAT. ANN. § 40.13.

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

Minors cannot be employed or permitted to work in, or in connection with, any establishment or occupation unless they have a work permit. Additionally, minors under age 16 must obtain a written statement from their parent or legal guardian acknowledging understanding of the minors' duties and hours of employment and granting permission to work. Before a minor may be employed, an employer must verify the work permit, and, for minors under age 16, receive the verified statement.

Within five days after employment commences, an employer must provide written notification to the permit issuing officer and detail a minor's duties and hours of employment. An employer must include the minor's age and permit number. Within five days of a minor's final date of employment, an employer must notify the permit issuing officer that the minor is no longer employed.

An employer must keep a copy of the work permit and original verified permission statement, along with a copy of the letter sent to the permit issuing officer, for at least three years from the date of last entry.[319]

The work permit requirements do not apply to minors aged 17 who are employed in the distribution, sale, exposing, or offering for sale of newspapers, or to minors who can demonstrate they are working independently of the newspaper publisher in their work.[320]

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

The Pennsylvania Department of Labor and Industry enforces the state's child labor laws. Violators of the Child Labor Law may be subject to criminal fines of up to $500 per offense. Subsequent offenses may result in a fine of $1,500 per violation, imprisonment for not more than 10 days, or both. The Pennsylvania Department of Labor and Industry may, in the alternative, impose administrative penalties of up to $5,000 per violation. These penalties may be imposed not only for violating the provisions of the Child Labor Law, but also for compelling or for permitting any minor to violate any of the provisions thereunder.[321]

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).[322]

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

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[319] 43 PA. STAT. ANN. § 40.8; 34 PA. CODE § 231.31.

[320] 43 PA. STAT. ANN. §§ 40.8, 40.14; *see also* 43 PA. STAT. ANN. § 40.9 (describing permit details).

[321] 43 PA. STAT. ANN. § 40.11.

[322] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[323]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[324]

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.[325] 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.[326]

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.[327] As part of the

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

[324] 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.

[325] 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/.

[326] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[327] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf;

disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[328]

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.[329]

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.[330]

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

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

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

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

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

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

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

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

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

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

328 12 C.F.R. § 1005.18.

329 *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.

330 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

below the highest applicable minimum wage rate or cuts into overtime premium pay.[331] 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.[332] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[333] tools and equipment,[334] and business transportation and travel.[335] 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.[336]

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;[337]
- 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);[338]
- 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);[339]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or

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[331] *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).

[332] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[333] 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.

[334] 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).

[335] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[336] 29 C.F.R. § 778.217.

[337] 29 C.F.R. § 531.38.

[338] 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*.

[339] 29 C.F.R. § 531.40.

  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[340]

- 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;[341] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[342]

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.[343]

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.[344] 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.[345]

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

[340] 29 C.F.R. § 531.40.

[341] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[342] 29 C.F.R. § 825.213.

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

[344] 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.

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

in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[346]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[347]

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.[348]

3.7(b) *State Guidelines on Wage Payment*

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

Authorized Instruments. Wages may be paid by cash or check, or—with the employee's consent—via direct deposit or payroll debit card.[349]

Direct Deposit. Mandatory direct deposit is not permitted in Pennsylvania. However, if an employee provides written consent, direct deposit is permitted. The written agreement must include the terms and conditions under which transfers will be made, and the terms and conditions concerning how employees may revoke their authorization to payment via direct deposit. Additionally, an employee must be provided a written record of all direct deposit transfers.[350]

Payroll Debit Card. The state's wage payment provisions permit payment via payroll debit card under carefully restricted conditions.[351]

An employer may make wage payments by credit to an account in a financial institution, including a payroll card account, that is authorized to accept deposits or payments. The employer must first secure an employee's authorization to receive wages via payroll card. Authorization may be obtained in writing or electronically. The written agreement must set forth all terms and conditions under which transfers are to be made and the method(s) by which the wage earner may withdraw the request and terminate the agreement. An authorization for the payment of wages, salaries, or other compensation by means of a payroll card account made prior to May 5, 2017 will remain valid until the employee requests a change of payment method.

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[346] 29 C.F.R. § 531.36.

[347] 29 C.F.R. § 531.37.

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

[349] 43 PA. STAT. ANN. §§ 260.2a, 260.3.

[350] 7 PA. STAT. ANN. §§ 6121, 6122.

[351] 7 PA. STAT. ANN. § 6121.1.

Prior to obtaining an employee's authorization, the employer must provide the employee with clear and conspicuous notice. The notice may be provided in writing or electronically and must set forth:

- all of the employee's wage payment options;
- the terms and conditions of the payroll card account option, including the fees that may be deducted from the employee's payroll card account by the card issuer;
- a notice that third parties may assess fees in addition to the fees assessed by the card issuer; and
- the methods available to the employee for accessing wages without fees.

The employee may revoke the authorization at any time. If the employee requests a change in the method of receiving wages from a payroll card account to direct deposit or negotiable check, the employer must make the change as soon as possible but no later than the first payday after 14 days from receipt of the employee's request.

In addition to obtaining an employee's authorization, there are several prerequisites to using payroll debit cards with which the employer and the bank issuing the payroll debit card must comply, including:

- the employer may not mandate the use of payroll debit cards;
- the employer must comply with stringent notice requirements;
- the employee must receive one free withdrawal of all wages earned per pay period; and
- the employee must be able to check the balance on the card at no cost electronically or by telephone.

The law further provides that funds in a payroll card account cannot expire. However, a payroll card may have an expiration date if the employer provides the employee with a replacement card without cost prior to the expiration date.

The law prohibits an employer from using a payroll card account that charges fees to the employee for any of the following:

- the application, initiation, or privilege of participating in the payroll card program;
- the issuance of the initial payroll card;
- the issuance of one replacement card per calendar year upon the employee's request; and
- the transfer of wages, salary, commissions, or other compensation from the employer to the payroll card account.

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

Generally. Employees must be paid all wages (other than fringe benefits and wage supplements) on regular paydays designated in advance by an employer. Overtime wages may be considered wages earned and payable in the next pay period.

Unless an employee is paid an annual salary, or an employment contract stipulates otherwise, employees must be paid at least semi-monthly. The first payment must be made between the first and 15th day of the month, and the second payment must be made between the 15th and the last day of the month.[352]

Semi-Monthly. An employer may pay its employees on a semi-monthly basis.[353]

Monthly. Employees paid an annual salary, and those with employment contracts dictating when wages are paid, may be paid monthly.[354]

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

If an employee resigns or is discharged, wages earned must be paid no later than the next regular payday when wages are otherwise due and payable.[355]

If work is suspended because of an industrial dispute, earned and unpaid wages and compensation at the time of the suspension must be paid no later than the next regular payday when wages are otherwise due and payable. However, if payroll cannot be prepared because of the industrial dispute, or for another reason beyond the employer's control, it has not violated the wage payment requirement.[356]

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

The Pennsylvania Wage Payment and Collection Law (WPCL) provides that employers must notify employees at the time of hiring of:

1. the time and place of payment;
2. the rate of pay; and
3. the amount of any fringe benefits or wage supplements to be paid to the employee, a third party, or a fund for the benefit of the employee.[357]

Any change to these payment terms must be communicated to the employee in advance of the effective date of such change. In other words, wages cannot be changed retroactively but only on a going-forward basis upon advance notice, as set forth in **3.7(b)(vi)**.

Employers can meet this notification requirement by conspicuously posting such information in the place of business. Notice is not required, however, if the necessary information is set forth in a collective bargaining agreement and copies are made available to employees.[358]

In addition to the general wage notification requirement, an employer must furnish a wage statement to each employee along with every payment of wages, listing:

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[352] 43 PA. STAT. ANN. §§ 251, 260.3.

[353] 43 PA. STAT. ANN. §§ 251, 260.3.

[354] 43 PA. STAT. ANN. § 251.

[355] 43 PA. STAT. ANN. § 260.5.

[356] 43 PA. STAT. ANN. § 260.5.

[357] 43 PA. STAT. ANN. §§ 260.1 *et seq*.

[358] 43 PA. STAT. ANN. § 260.4.

- hours worked;
- rate of pay;
- gross wages;
- allowances, if any, claimed as part of the minimum wage;
- deductions from pay; and
- net wages.[359]

Employers are also responsible for keeping a true and accurate record of hours worked and the wages paid to each employee. Such records must be preserved for three years from the date of last entry.[360]

3.7(b)(v) *Wage Transparency*

Pennsylvania 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*

Employers must give employees notice about a change to the time and place of payment before a change occurs.[361]

Employers must give employees notice about changes to pay rate, fringe benefits, and wage supplements before a change occurs. Notice can be provided by conspicuously posting changes at the place of business. If items are set forth in a collective bargaining agreement, making copies available to employees meets this notice requirement.[362]

Per the state labor department, notice must be given "the payday before the time the change takes effect."[363] Thus, if the employee's normal payday is on the 15th of the month, the employer may give written notice of a change in pay rate any day before the 15th. All work performed after the 15th would then be paid at the new rate.

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

Pennsylvania law includes a general indemnification obligation for employers. An employer that agrees to pay or provide fringe benefits or wage supplements must so provide, as required, within 10 days after such payments are required to be made directly to the employee, or, in situations where no required time for payment is specified, within 60 days of an employee filing a proper claim.[364] The term "fringe benefits or wage supplements" includes "reimbursement for expenses."[365]

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[359] 34 PA. CODE § 231.36.

[360] 43 PA. STAT. ANN. § 333.108; 34 PA. CODE § 231.31.

[361] 43 PA. STAT. ANN. § 260.4.

[362] 43 PA. STAT. ANN. § 260.4.

[363] Pennsylvania Dep't of Labor & Industry, *General Wage and Hour Questions*, at Question 11, *available at* http://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx.

[364] 43 PA. STAT. ANN. § 260.3.

[365] 43 PA. STAT. ANN. § 260.2.

However, an employer may not make a deduction for expenses or charges required or authorized in connection with an employee performing work duties if the deduction causes an employee's pay to drop below the minimum wage.[366]

Other than the general indemnification obligation, Pennsylvania law does not address specific work expenses such as uniforms, tools, or equipment.

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

Requirements for Deductions. The WPCL permits certain deductions from an employee's wages but only as specifically authorized by regulation "for the convenience of the employee."[367] Note that most of the permissible deductions require the employee's written authorization.

Permissible Deductions. The following deductions are authorized:

- contributions to and recovery of overpayments under employee welfare and pension plans subject to ERISA;
- contributions authorized in writing by employees or under a collective bargaining agreement to employee welfare and pension plans not subject to ERISA (*e.g.*, group health, life, and disability plans);
- deductions authorized in writing for the recovery of overpayments to employee welfare and pension plans not subject to ERISA;
- deductions authorized in writing by employees or under a collective bargaining agreement for payments into company-operated thrift plans or employee stock option/purchase plans;
- deductions authorized in writing by employees for payment into employee personal savings accounts (*e.g.*, credit union, savings account, or to purchase U.S. government bonds);
- charitable contributions authorized in writing by the employee;
- contributions authorized in writing by the employee for local-area development activities;
- deductions provided by law (including but not limited to, Social Security taxes, federal, state and local taxes, and deductions based on court orders);
- union dues, assessments and initiation fees, and such other union charges as are authorized by law;
- deductions for repayment to the employer of *bona fide* loans provided the employee authorizes such deductions in writing either at the time the loan is given them or subsequent to such loan;
- deductions for purchases or replacements by the employee from the employer of goods, wares, merchandise, services, facilities, rent, or similar items, provided such deductions are authorized by the employee in writing or are authorized in a collective bargaining agreement;
- deductions for purchases by the employee for their convenience of goods, merchandise, services, facilities, rent, or similar items from third parties not owned, affiliated, or controlled

[366] 34 PA. CODE § 9.2.

[367] 43 PA. STAT. ANN. § 260.3(a).

directly or indirectly by the employer if the employee authorizes such deductions in writing; and

- such other deductions authorized in writing by employees as in the discretion of the state labor department is proper and in conformity with the intent and purpose of the WPCL.[368]

Deductions not specifically listed above are not permitted absent express authorization from the state labor department. In no case may authorized deductions take an employee's pay below the minimum wage.[369]

The Pennsylvania Department of Labor and Industry (DLI) has issued opinion letters regarding deductions for vacation pay and the overpayment of wages. Regarding vacation pay, "although none of the permissible categories of deductions addresses recoupment of vacation pay advances, it might be possible to structure the advance in the form of a loan within the scope of 34 Pa. Code § 9.1(10). [H]owever, the employee must first authorize the deduction in writing, and the employee's wages may not be reduced below the standard hourly minimum wage. It is further recommended that the employer notify the employee of the withholdings consistent with 43 P.S. § 260.6."[370]

Regarding overpayments, when overpayments occur over a period of time, the employer may be found to have increased the employee's wages by its own practice. Thus, efforts to recoup the overpayment through payroll deduction would violate the Wage Payment and Collection Law.[371] When, instead, there is a one-time overpayment or the employer investigates and resolves the matter within a reasonable amount of time after the overpayments occurred, the DLI has viewed the overpayment as an advance and the deduction as an adjustment of the overpayment. In this scenario, the employer bears the burden of demonstrating the actual occurrence of the overpayment, including the amounts and dates involved. Otherwise, the adjustment will be considered an illegal deduction. The DLI's preferred method for dealing with this scenario is for the employer to obtain written authorization for the deductions from the employee. If the employer unilaterally makes deductions from wages, it risks civil and criminal penalties if it is incorrect.[372]

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

Pennsylvania permits wage garnishment only in the following, limited circumstances:

- obligations relating to a final divorce distribution;
- court-ordered spousal or child support;
- Pennsylvania Higher Education Assistance Agency student loans;

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[368] 34 PA. CODE § 9.1.

[369] 34 PA. CODE § 9.2.

[370] Pennsylvania Department of Labor & Industry, Opinion Letter on Wage Payment and Collection Law - Wage Deductions (Dec. 7, 2005).

[371] Pennsylvania Department of Labor & Industry, Opinion Letter on Pennsylvania Wage Payment and Collection Law/Deduction of Overpayment of Hourly Rate (Sept. 24, 2003).

[372] Pennsylvania Department of Labor & Industry, Opinion Letter on Wage Payment and Collection Law - Wage Deductions (Dec. 7, 2005).

- court-ordered back rent on a residential lease up to 10% of net wages;
- board of four weeks or less; and
- restitution for criminal matters.[373]

With regard to garnishment for support, Pennsylvania law permits up to 65% of an employee's disposable earnings to be attached to recover spousal or child support that is presently due or in arrears. Pensions (not including 401(k) accounts) normally cannot be garnished, nor can workers' compensation, unemployment compensation, or veteran's benefits.[374]

Support withholding has priority over all other attachments of the employee's same income. Mandatory attachment is required if support payments are one month or more in arrears, or if an employee or obligee requests attachment, unless a court finds good cause not to withhold, or a written agreement between an employee and oblige provides an alternative arrangement. An employer must treat out-of-state child-support garnishments in the same way as it treats in-state orders.

An employer may not retaliate against an employee because the employee is subject to a garnishment order.[375]

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

Pennsylvania Minimum Wage Act. The Pennsylvania Department of Labor and Industry has authority to investigate employers to determine compliance with the Minimum Wage Act.[376] There are penalties for failure to pay the required minimum and/or overtime wages, consisting of a fine between $75 and $300, imprisonment for between 10 and 60 days, or both. A separate offense is deemed to occur for each employee who is paid less than the required rate and for each week in which the employee is paid less than the required rate.[377] In addition, any employer or agent of the employer that discharges or discriminates against an employee for cooperating with the Department during an investigation under the law may be subject to fines between $500 and $1,000, with a penalty of imprisonment for 10 to 90 days for failure to pay the fine.[378]

Employees may also bring a civil action to recover for minimum and/or overtime wages due and may recover the full amount of such wages due less any amount actually paid to the employee by the employer, plus costs and reasonable attorneys' fees. Any agreement between the employer and the employee to work for less than the minimum wage will be no defense to the action.[379]

Wage Payment and Collection Law (WPCL). The Department of Labor and Industry is also charged with enforcement of the WPCL, which includes the power to conduct investigations, inspect employer records, commence civil proceedings, and prosecute criminal violations.[380] An employee or group of employees,

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[373] 42 PA. CONS. STAT. ANN. § 8127.

[374] 42 PA. CONS. STAT. ANN. § 8124.

[375] 23 PA. CONS. STAT. ANN. § 4348; 15 U.S.C. § 1673(b)(2).

[376] 43 PA. STAT. ANN. § 333.107.

[377] 43 PA. STAT. ANN. § 333.112.

[378] 43 PA. STAT. ANN. § 333.112.

[379] 43 PA. STAT. ANN. § 333.113.

[380] 43 PA. STAT. ANN. §§ 260.8, 260.9a(c).

or a labor union on their behalf, may file a complaint with the Department, and, if the employer fails to pay the claim or make a "satisfactory explanation" for its failure to do so within 10 days of receiving notice of the complaint, the employer is liable for a penalty of 10% of that portion of the claim found to be properly due.[381]

A good-faith dispute as to the amount of wages due, or the good-faith assertion of a right of setoff or counterclaim, may be deemed a satisfactory explanation for nonpayment.[382] In case of a dispute over wages, the employer must give written notice to the employee or their counsel of the amount of wages that the employer concedes to be due and shall pay that amount, without condition,[383] within the timeframes set forth above.[384] An employee does not release their claim to further payment by accepting less than the disputed wage amount.[385] An employee may not waive the requirements of the WPCL by private agreement.[386]

In any civil action brought by the Department, the employer may be required to post bond with the court in the amount of the wages in dispute, and failure to post the required bond within 30 days will result in a default judgment against the employer.[387]

Violation of the WPCL is a summary offense, punishable by a fine of up to $300 and/or imprisonment for up to 90 days. Nonpayment of wages to each individual employee constitutes a separate offense. Corporate officers may be criminally liable under the statute.[388]

An employee or group of employees, or a labor union on their behalf, are also authorized to bring a civil action to recover unpaid wages under the WPCL, and class actions are specifically permitted.[389] The statute of limitations under the WPCL is three years.[390] Individual agents or officers of an employer may be individually liable for failure to pay wages under the statute.[391]

If wages remain unpaid 30 days after the regularly scheduled payday, or if shortages in the wage payments exceed 5% of the gross wages due on any two paydays in the same calendar quarter, and where no good-faith contest accounting for the nonpayment exists (including the good-faith assertion of a right of setoff or counterclaim), the employee is entitled to claim liquidated damages equal to the greater of 25% of the total amount of wages due or $500.[392] In a civil action by an employee or by the Department to recover

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[381] 43 PA. STAT. ANN. § 260.9a(c).

[382] 43 PA. STAT. ANN. § 260.9a(c).

[383] This restriction means, for example, that the employer cannot condition the payment of wages conceded to be due on the return of company property.

[384] 43 PA. STAT. ANN. § 260.6.

[385] 43 PA. STAT. ANN. § 260.6.

[386] 43 PA. STAT. ANN. § 260.7.

[387] 43 PA. STAT. ANN. § 260.9a(d).

[388] 43 PA. STAT. ANN. § 260.11a.

[389] 43 PA. STAT. ANN. § 260.9a(a)-(b).

[390] 43 PA. STAT. ANN. § 260.9a(g).

[391] 43 PA. STAT. ANN. § 260.2a (defining *employer* as "every person, firm, partnership, association, corporation . . . *and any agent or officer* of any [of them] employing any person in this Commonwealth").

[392] 43 PA. STAT. ANN. § 260.10.

unpaid wages, the court must award reasonable attorneys' fees in addition to any judgment awarded to the plaintiff.[393]

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).[394] 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.[395] 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.[396]

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

Pennsylvania does not have any specific laws requiring the payment of fringe benefits to employees, but the Wage Payment and Collection Law (WPCL) defines wages broadly, to include fringe benefits. Fringe benefits or wage supplements include vacation, holiday, or other guaranteed pay.[397] 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. Accordingly, 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.

At the time of hiring, an employer must notify employees of, among other items, the amount of any fringe benefits or wage supplements to be paid to the employee, a third party, or a fund for the employee's benefit. Alternatively, employers may provide notice by posting the aforementioned facts and keeping them posted conspicuously at the employer's place of business. In cases where wages, amounts of any fringe benefits, or wage supplements are set forth in a *bona fide* collective bargaining agreement and copies of that agreement are available to employees, the notice requirement is satisfied. Additionally, employers must notify employees about any change prior to the change occurring.[398]

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393 43 PA. STAT. ANN. § 260.9a(f).

394 29 U.S.C. § 1002.

395 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.

396 490 U.S. 107, 119 (1989).

397 43 PA. STAT. ANN. § 260.2a.

398 43 PA. STAT. ANN. § 260.4. *See also, e.g.*, *Harley v. Healthspark Found.*, 265 A.3d 675 (Pa. Super. 2021), *review denied*, 277 A.3d 1105 (Pa. 2022) (current year benefit earned on January 1, not prior year benefit available to use

Accordingly, because vacation pay and similar paid time off is a matter of employer policy, subject to the requirement that the employee must have been notified of the policy, an employer may set the terms of the policy and include the requirements for vesting[399] and caps on accrual and carry-over.[400]

Note that in Pennsylvania, if a policy does not contain a forfeiture provision, it is likely that payout of accrued but unused paid time is not required when employment ends. In *Baron v. Quad Three Group, Inc.*, a Pennsylvania court rejected an employee's claim that a failure to pay was a breach of contract because the policy language, as contained in the handbook, expressly disavowed any intent to create a contract.[401] The court also found that the employer's oral promise during an exit interview that the former employee would receive pay for accrued but unused vacation did not create a unilateral contract because the employee did not continue employment based on the assurance. Similarly, in *Harding v. Duquesne Light Co.*, the former employee was not entitled to payout because the "written policy specifies four situations in which an employee is entitled to payment for unused but accrued vacation time, including resignation upon reasonable notice, retirement, death and disability. The written policy is silent, however, on whether an employee who is fired is entitled to a vacation allowance."[402] The employer also provided evidence that its practice of not providing payout upon discharge was consistent with its policy, and the former employee testified no one at the business advised him of entitlement to payout upon discharge.

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*

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

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

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

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

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on January 1 of Subsequent Year) and *Kahler v. Alpha Packaging*, 2015 WL 13778389 (Pa. Ct. Common Pleas, Apr. 24, 2015) (Vacation Based on Hours Worked in Year & Awarded in Subsequent Year).

399 *See Moffitt v. United States Shipping Bd. Emergency Fleet Corp.*, 80 Pa. Super. 81 (Pa. Super. Ct. 1922).

400 *See Hamilton v. Air Jamaica, Ltd.*, 750 F. Supp. 1259, 1272 (E.D. Pa. 1990) (cap on carry-over enforced); *Doe v. Kohn, Nast & Graf*, 862 F. Supp. 1310 (E.D. Pa. 1994).

401 2013 WL 3822134 (Pa. Super. Ct. Jan. 22, 2013).

402 882 F. Supp. 422, 428 (W.D. Pa. 1995); *see also Sparacino v. AAA Mid-Atlantic, Inc.*, 1996 WL 560364 (E.D. Pa. 1996) (finding, under policy language, that an employee who left involuntarily was not entitled to payout of accrued vacation, even though employees who resigned would be).

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.[403] 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).[404] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[405] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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

Couples may register as domestic partners in Philadelphia and in Pittsburgh. Pennsylvania state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee 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;[406]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[407]
- to take medical leave when the employee is unable to work because of a serious health condition;[408]

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[403] 29 U.S.C. § 1144.

[404] 29 U.S.C. § 1161.

[405] 29 U.S.C. § 1167(3).

[406] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[407] 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).

[408] 29 C.F.R. §§ 825.112, 825.113.

- 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.[409] 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.[410] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

Pennsylvania 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.[411] 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 and Local Guidelines on Paid Sick Leave*

Although Pennsylvania does not have a mandatory statewide paid sick and safe time law, local laws exist in Allegheny County, Philadelphia,[412] and Pittsburgh. The Philadelphia ordinance took effect on May 13, 2015, the Pittsburgh ordinance took effect on March 15, 2020, and the Allegheny County took effect on December 15, 2021.[413] Additionally, as of September 9, 2020, Philadelphia amended its law to add a specific compensation requirement for employers that provide healthcare services that use pool and healthcare employees.

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[409] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[410] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[411] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[412] PHILA., PA. CODE §§ 9-4101 *et seq*. & PHILA., PA. REGULATIONS §§ 1 *et seq*.; PITTSBURGH, PA. CODE §§ 626.01 *et seq*.

[413] On December 10, 2021, the Allegheny County Department of Administrative Services announced the ordinance would take effect on December 15, 2021. Although section 2413 (Effective Date) of the law provides, in relevant part, "The [law] shall take effect on the 90th calendar day following the posting of the notice information for employers by the Agency," the Department informally told Littler: "For purposes of the ordinance, notice is being considered as the announcement of the passage of the ordinance which ratified the Health Department's rules and regulations." Employers should consult knowledgeable counsel concerning whether and how the Department's announced start date affects their compliance efforts.

Covered Employers. Both the Philadelphia and Pittsburgh ordinances apply to all private employers, though different standards apply based on how many employees a business has. In Philadelphia, employers that employ for at least 40 weeks in a calendar year 10 or more employees who work in Philadelphia for 40 or more hours per year must provide paid sick time; other employers must provide unpaid sick time. In Pittsburgh, the amount and/or type of sick time will vary depending on whether an employer has 15 or more, or 14 or fewer, employees. In Allegheny County, however, the ordinance applies to employers with 26 or more employees.

Covered Employees. The laws cover all employees, unless an exception exists. Moreover, in Pittsburgh, an employee must work at least 35 hours in a year in the city to be covered; a similar 35-hour requirement applies in Allegheny County for employees who normally work for an employer outside the county. All three ordinances do not apply to independent contractors or seasonal employees: individuals hired for a temporary period of not more than 16 weeks during a year. Moreover, in Allegheny County and Pittsburgh, such individuals must receive written notice at the time of hiring that employment is limited to the beginning and end dates of the employer's seasonal period. Additional exceptions exist in Philadelphia:

- adjunct professor;
- employee hired for a term of less than six months;
- intern: A student who is enrolled in an educational institution and who is performing work for that institution, provided that such student is not considered an intern for the law's purposes when working for any employer other than the educational institution in which the student is enrolled; and
- pool employee: Any health care professional, other than an employee of a temporary placement agency, who works only when the individual indicates availability for work and who has no obligation to work when availability is not indicated.

Concerning unionized workforces, Philadelphia's law does not apply to employees covered by a bona fide collective bargaining agreement that is in effect or has expired. In Pittsburgh and Allegheny County, generally speaking, unionized workers are covered. However, the laws' requirements do not apply to members of a construction union covered by a collective bargaining unit.[414] The labor union must represent for collective bargaining purposes employees working in construction, reconstruction, demolition, alteration, custom fabrication or repair work who are enrolled or have graduated from a registered apprenticeship program that meets at least two of the following requirements:

- has active, employed, registered apprentices;
- has graduated apprentices to journey worker status during a majority of the years that the program has been in operation; or
- has graduated apprentices to journey worker status during 3 of the immediately preceding 5 years, provides each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade and meets the program performance standards of enrollment and graduation under 29 C.F.R. § 29.63.1.

[414] In Pittsburgh, this was always part of the ordinance. In Allegheny County, however, the ordinance took effect, then, on April 15, 2022, this amendment took effect.

Covered Family Members. Under all three laws, family members include children, grandchildren, grandparents, parents, siblings, and spouses. In Philadelphia, the law also covers life partners, whereas in Allegheny County and Pittsburgh, the laws cover domestic partners. Additionally, in Allegheny County and Pittsburgh, a family member includes any individual for whom an employee has received permission from the employer to care for at the time of the request.

Accrual Rate & Caps, Carry-Over. Under all three laws, accrual begins when employment commences. In Philadelphia, employees must accrue one sick time hour for every 40 hours worked in Philadelphia, whereas they must accrue one sick time hour for every 35 hours worked in Allegheny County and Pittsburgh. Moreover, in Allegheny County and Pittsburgh, leave accrues in whole-hour units, not fractionally.

In Philadelphia, employers can cap annual accrual at 40 hours. A 40-hour annual accrual cap is also permitted in Allegheny County, and in Pittsburgh for employers with 15 or more employees; in Pittsburgh, for those with 14 or fewer employees, a 24-hour cap is permitted. Moreover, for small employers in Pittsburgh, leave is unpaid during the first year the law is in effect, and paid in each subsequent year. Note, however, that FAQ in Allegheny County and Pittsburgh suggests the enforcement agencies interpret the cap to be both an annual and overall accrual cap.[415]

At the end of each year, accrued, unused sick time must carry over to the following year. Moreover, in Pittsburgh, the rules clarify that the carry-over amount is limited to the applicable accrual cap, and in Allegheny County leave must carry over if the total amount of leave available does not exceed 40 hours. However, in all three cities, if an employer frontloads the maximum amount of annual leave to employees at the beginning of each year, carry-over is not required.

Covered Uses. Under all three ordinances, employees can use leave for themselves or a covered relation for the following "sick" time purposes: (1) mental or physical illness, injury, or health condition; (2) medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; and/or (3) preventive medical care. Additionally, in Philadelphia, due to domestic abuse, sexual assault, or stalking, employees can use leave for themselves or a covered relation for the following "safe" time purposes: (1) medical attention needed to recover from physical or psychological injury or disability; (2) services from a victim services organization; (3) psychological or other counseling; (4) relocation; and/or (5) legal services or remedies, including preparing for or participating in a civil or criminal legal proceeding. In Allegheny County and Pittsburgh, employees can use leave for the following "other" purposes: (1) closure of employee's place of business by order of a public official due to a public health emergency; (2) closure of child's school or place of care by order of a public official due to a public health emergency; (3) care for a family member when health authorities or health care provider determine individual's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease, whether or not the individual actually contracted the communicable disease.

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[415] Mayor's Office of Equal Protection, Paid Sick Days Act FAQ (rev. Oct. 9., 2023), *available at* https://apps.pittsburghpa.gov/redtail/images/22778_Paid_Sick_Leave_FAQ_10-09-23.pdf. Allegheny County Department of Administrative Services, Paid Sick Leave FAQs, *available at* https://www.alleghenycounty.us/Services/Health-Department/Special-Initiatives/Paid-Sick-Leave-Act/Paid-Sick-Leave-FAQs#:~:text=When%20will%20hours%20of%20work,of%20Paid%20Sick%20Time%20accrual%3F&text=Accrual%20of%20Paid%20Sick%20Time,the%20commencement%20of%20their%20employment.

Using Leave. Under all three laws, employees are entitled to use accrued sick time beginning on the 90th calendar day following employment commencing. They also say that employees may use accrued sick time in hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time, whichever amount is smaller. For employers in Allegheny County and Philadelphia, and employers with 15 or more employees in Pittsburgh, a 40-hour annual use cap can be implemented; for employers with 14 or fewer employees in Pittsburgh, a 24-hour cap is permitted.

For foreseeable absences, in Philadelphia, employees must provide notice in advance of use, which, under the rules, is a promptly as possible after learning of the need to take leave. Conversely, in Allegheny County and Pittsburgh, employers may require reasonable advance notice not to exceed seven days before leave will begin; however, if employees cannot meet the seven-day requirement, they must make a good faith effort to provide notice as soon as possible.

For unforeseeable absences, in Philadelphia, employees must provide notice before their scheduled start time or, if the need to use leave arises immediately before or after employees report to work, as soon as practicable. In Allegheny County and Pittsburgh, employees must make a good faith effort to notify their employer as soon as possible.

All three laws allow employers to request reasonable documentation to demonstrate that leave was used for a covered purpose after an employee is absent a certain amount of time: more than two consecutive days in Philadelphia, and three or more full consecutive days in Allegheny County and Pittsburgh (in Pittsburgh, the ordinance coupled with FAQs read as three or more consecutive scheduled workdays). Additionally, under all three laws, regardless of an absences' length, if an absence is also covered by the federal Family and Medical Leave Act (FMLA), employers can seek medical certification in accordance with the FMLA.

Paying for Leave Used. Under all three laws, for leave used, employees must be paid the same hourly rate and with the same benefits – including health care benefits – as they normally earn (in Allegheny County and Pittsburgh, would have earned), which cannot be less than the state minimum wage. If compensated based on a set salary, leave must be paid at the same rate the employee normally earns from work. Moreover, Allegheny County and Pittsburgh provide a calculation: divide the gross annual salary by 52 to determine the weekly salary, then divide the weekly salary by the number of hours in the employee's normal work week (even if the employee actually works more or fewer hours in a particular work week). In Philadelphia, if compensated on a commissions-only basis, employees must be paid at least the state minimum wage rate, whereas, if they earn a base wage plus commission, leave must be paid at the hourly or daily rate of their base wage, which cannot be lower than the minimum wage. In Allegheny County and Pittsburgh, commission paid employees must be paid a rate not less than the state minimum wage, but are not entitled to compensation for lost commissions. In all three jurisdictions, tipped employees must be paid the full minimum wage, and in Allegheny County and Pittsburgh such employees are not entitled to compensation for lost tips. In Allegheny County and Pittsburgh, if paid partially or wholly on a piece rate basis, divide total earnings by total hours worked in the most recent work week in which the employee performed identical or substantially similar work to the work the employee would have performed. For employees with fluctuating pay in Allegheny County and Pittsburgh, if an employer can identify the hourly rate of pay the employee would have earned, leave must be paid at that scheduled hourly rate, but, if an employer cannot identify the hourly rate of pay the employee would have earned, leave must be paid based on the average hourly rate of pay in the current and preceding 30 days, whichever yields the higher hourly rate.

End of Employment. The three laws do not require employers to cash-out accrued, but unused leave when employment ends. However, under all three laws, if employees are rehired within six months of separation, previously accrued, unused leave must be reinstated and available to use. But, in Allegheny County and Pittsburgh, the laws expressly state reinstatement is not required if leave was cashed out when employment ended.

Notice, Posting & Recordkeeping. Under all three laws, employees must be given written notice that they are entitled to sick time, the amount of sick time, and the terms of its use guaranteed under the law, and that retaliation against employees who request or use sick time is prohibited and each employee has the right to file a complaint with the enforcement agency if sick time as required by the law is denied by the employer or the employee is retaliated against for requesting or taking sick time. In Philadelphia, employers can comply with the notice requirement by either supplying each employee a notice that contains the required information or conspicuously displaying a poster that contains the required information in an accessible place in each establishment where such employees are employed. In Allegheny County and Pittsburgh, the FAQ says employers can use the city-created poster to comply with the notice requirement.[416] Additionally, in Philadelphia, the information in the required notice must also be included in any employee handbooks.

In Allegheny County and Pittsburgh, employers must display an 8.5 by 11 inches sign at each worksite, in a conspicuous and accessible location where any employees work, in English, Spanish, and any other primary languages of the employees at the particular workplace, that provides notice of employee rights to sick time under the law, available limits, and terms of use. It must provide notice that retaliation against employees who request or use sick time is prohibited and that an employee has the right to file a complaint if sick time is denied or if the employee is retaliated against for requesting or using sick time.

Additionally, in Allegheny County and Pittsburgh, an employer's designated year must be communicated to all employees. Also, in these two jurisdictions, rules recommend that employers choose – and, in Pittsburgh, maintain – a reasonable system for providing notification of accrued sick time, including listing updated amounts of sick time available on pay stubs or in an online system where employees can – regularly, in Pittsburgh – access the information.

In Pittsburgh, the rules require employers to adopt a policy or policies that comply with the ordinance.

Under all three laws, for at least two years, employers must keep records documenting hours worked and sick time used. Additionally, in Philadelphia, records must document payments made for sick time used.

Prohibitions. Under all three laws, employers cannot require, as a condition of providing sick time, that employees search for or find a replacement work to cover hours they are using sick time.

Additionally, they contain anti-interference, -discrimination, and/or –retaliation provisions (including a 90-day rebuttable presumption of retaliation), as well as provisions prohibiting counting protected sick

[416] Mayor's Office of Equity, Paid Sick Days Act FAQ (rev. Oct. 9, 2023), *available at* https://apps.pittsburghpa.gov/redtail/images/22778_Paid_Sick_Leave_FAQ_10-09-23.pdf. Allegheny County Department of Administrative Services, Paid Sick Leave FAQs, *available at* https://www.alleghenycounty.us/Services/Health-Department/Special-Initiatives/Paid-Sick-Leave-Act/Paid-Sick-Leave-FAQs#:~:text=When%20will%20hours%20of%20work,of%20Paid%20Sick%20Time%20accrual%3F&text=Accrual%20of%20Paid%20Sick%20Time,the%20commencement%20of%20their%20employment.

time as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. The laws say that protections apply to individuals who mistakenly, but in good faith, allege violations of the law.

Penalties, Damages & Enforcement. In Allegheny County, employers who willfully violate the law are subject to a fine or penalty in an amount not to exceed $100 for each separate offense, though the enforcement agency cannot levy any fines or penalties within one calendar year of the law's effective date. Currently, the law does not describe damages that might be available.

In Allegheny County, Philadelphia, and Pittsburgh, employers that willfully violate the notice requirement are subject to a fine that cannot exceed $100 for each separate offense. Moreover, in Pittsburgh, every day a failure to notify occurs constitutes a single instance of a violation.

In Philadelphia, a Class II offense is committed when employers do not pay employee for sick time taken, requested sick time is unlawfully denied and not taken, and/or employees are retaliated against in any way other than being discharged (which is a Class III offense). In Pittsburgh, generally penalties and fines can be imposed for violations, and willful violations are subject to a fine not to exceed $100 for each separate offense.

The laws in Philadelphia and Pittsburgh allow employees to be awarded lost wages and benefits, and to be reinstated. Additionally, in Philadelphia, permitted recovery includes the full amount of unpaid sick time, other damages suffered, up to $2,000 in liquidated damages, reasonable attorney's fees, and other appropriate legal, equitable, or injunctive relief.

In Philadelphia, employees can file a private lawsuit within two years from an alleged violation, whereas in Pittsburgh no private right of action is available. Note, however, that in Philadelphia an individual or class action lawsuit cannot be filed until after an employee receives notification of a final decision or 180 days has elapsed since an administrative complaint was filed and no final decision was rendered. In all three cities, employees can file administrative charges with the enforcement agency: within one year (Philadelphia) or six months (Allegheny County and Pittsburgh) of the date the person knew or should have known of a violation.

Philadelphia Pool & Healthcare Employees: On September 9, 2020, Mayor Kenney signed into law File Number 200306, which took effect immediately and permanently amends the pre-existing, generally applicable citywide paid sick leave ordinance, the Promoting Health Families & Workplaces Ordinance (PHFWO), by adding new Philadelphia, Pennsylvania Code section 9-4117: Compensating Pool Employees and Healthcare Employees During a Declared Pandemic or Epidemic Event.

The statute applies to any employer that provides healthcare services, utilizes the services of pool employees or healthcare employees in Philadelphia either full-time or part-time at a healthcare organization, and employs 10 or more employees for at least 40 hours in a calendar year. The law defines a *pool employees* as any health care professional, other than an employee of a temporary placement agency, who works only when the individual indicates availability for work and who has no obligation to work when not indicating availability. Additionally, it defines a *health care employee* as any person who has full- or part-time employment within a healthcare organization, including but not limited to hospitals, nursing homes, and home healthcare providers. Finally, under the law, a *health care professional* is any person licensed under federal or Pennsylvania law to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel. Notably, although generally the

PHFWO contains a collective bargaining exception for employers with unionized workforces, it does not apply for purposes of section 9-4117.

The law requires that pool and healthcare employees are compensated for lost wages and medical expenses if they contract a communicable disease during a pandemic or epidemic affecting the City of Philadelphia declared to exist by the World Health Organization, the Centers for Disease Control and Prevention, or other recognized public interest health organization. To receive these benefits, the employee must have worked for / been in the service of the employer at least 40 hours in the 3 months before the disease.

Employers must reimburse an employee for all lost wages related to the disease (isolation, treatment and recovery) when the employee is unable to work. The law requires reimbursement for the number of days the employee is unable to work, payable at the employee's normal rate, in an amount equal to the number of work days the employee would have worked if the disease had not been contracted, which must be equal to the average number of days worked per week during the 3 months before contracting the disease. Additionally, the employer must either reimburse the employee for all medical expenses related to treatment for the communicable disease or provide such care as needed at its facility at no cost to the employee.

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.[417] 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.[418] FMLA

[417] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[418] 29 C.F.R. § 825.202.

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

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[419] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

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

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

Under the Pennsylvania Human Relations Act, disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, or recovery are, for job related purposes, temporary disabilities and must be treated as such.[420]

Written and unwritten employment policies and practices regarding job benefits and job security, including the terms of a leave of absence and payment under any health or temporary disability insurance or sick leave plan, must be applied to disabilities due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.[421] Additionally, employers' policies and practices regarding permanent disabilities must apply when an employee suffers permanent disability as a result of pregnancy or childbirth. Policies that require a pregnant employee to take leave at a specified time during the pregnancy or to remain away from work after she has recovered from disability are unlawful.[422]

Philadelphia has an ordinance requiring reasonable accommodation for pregnancy, childbirth, or related medical conditions that is discussed in **3.11(c)(ii)**.

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[419] 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.

[420] 16 PA. CODE § 41.101.

[421] 16 PA. CODE § 41.103(a).

[422] 16 PA. CODE § 41.103(b)-(c).

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 their 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*

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

3.9(e) *School Activities Leave*

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

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

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

Pennsylvania 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*

Pennsylvania's Living Donor Protection Act requires employers to provide leave for organ donation. The law applies to employers and employees who are covered by the federal Family and Medical Leave Act (FMLA). Under the law, employers must provide leave to employees for preparation and recovery for donation surgery in the same way that leave would be provided under the FMLA when the employee could not work for one of the FMLA-qualifying reasons. An employer must also provide leave when the donation is being made by the employee's spouse, child, or parent. Employers may require written documentation regarding the leave.[423]

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*

Pennsylvania law does not address time off to vote for private-sector employees.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

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

[423] 35 PA. STAT. ANN. § 6130.5.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Pennsylvania 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.[424] Employers are under no federal statutory obligation to pay employees while serving on a jury.

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

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[425] 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. Employers may not discharge or suspend an employee, or deprive an employee of seniority positions or benefits, in retaliation for the employee's honoring a summons to serve as a juror or attend court for prospective jury service.[426] This provision does not apply to employers in the retail or service industry employing fewer than 15 persons. Nor does it apply to employers in the manufacturing industry employing fewer than 40 persons. Any individual who falls within one of these exceptions may request that the court excuse them from jury service.

An employer is not required to compensate employees for employment time lost while serving on a jury.

Leave to Attend Court. As with jury duty, an employer also may not discharge or threaten an employee or affect the employee's seniority position or benefits because the employee attends court or because the employee was the victim of, or witness to, a crime. Employers need not compensate employees for employment time lost because of their court attendance.[427]

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

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

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

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[424] 28 U.S.C. § 1875.

[425] *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).

[426] 42 PA. CONS. STAT. ANN. § 4563.

[427] 18 PA. CONS. STAT. ANN. § 4957.

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

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

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

Cities and municipalities in Pennsylvania may require employers to provide leave. For example, employers in Philadelphia must comply with an ordinance requiring unpaid leave to an eligible employee who is the victim, or the family member or household member of a victim, of domestic or sexual violence. Philadelphia employers with 50 or more employees must provide eight weeks of leave during any 12-month period. Employers with less than 50 employees must provide only four weeks of leave. Employees who are also eligible for FMLA leave may not exceed 12 weeks of total leave. Leave may be taken intermittently or on a reduced work schedule basis.[428]

3.9(k) *Military-Related Leave*

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

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

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

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[429]

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").

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[428] PHILA., PA., CODE § 9-3201.

[429] 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)).

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.[430] 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.[431] Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Military Service Leave. Whenever an employee enlists for or is drafted into active military service, the employee must automatically be granted a military leave of absence.[432]

When an employee returns from military duty, the employee must be restored to the employee's former job or a like job, if not disqualified by a disability sustained during service. If the employee has a disability, they are entitled to a position, with like seniority and pay, which the employee can perform, unless it is unreasonable for the employer to put the employee in such a position.[433]

In addition, public employers must provide a minimum of 15 days per year of paid military leave. Permanent state employees who are members of the armed forces reserves or Pennsylvania National Guard are entitled to a maximum of 15 paid days of leave for training or other military duty.[434]

3.9(l) *Other Leaves*

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

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

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

Volunteer Emergency Responders. Employers may not terminate or discipline an employee who is a "volunteer fireman, fire police or volunteer member of an ambulance service or rescue squad," provided that the employee has responded in the line of duty to a call prior to the time they were due to report for work.[435] Employers are entitled, however, to require that the employee obtain a statement from the chief

[430] 29 C.F.R. § 825.126(a).

[431] 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).

[432] 51 PA. CONS. STAT. ANN. § 7302.

[433] 51 PA. CONS. STAT. ANN. §§ 7302, 7309.

[434] 51 PA. CONS. STAT. ANN. § 4102.

[435] 35 PA. CONS. STAT. ANN. § 7423.

executive officer of the volunteer fire company, ambulance service or rescue squad, or its affiliated organization, stating the employee responded to a call at a particular time and date.[436]

Employers also may not discriminate against employees who have been injured in the line of duty while volunteering in the above-referenced capacities.[437] For purposes of this law, the term *discriminate* has been defined as discharge or discipline in a manner inconsistent with the employer's treatment of other similarly-situated employees who are injured in the course of their employment or related activities.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

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

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[438] Employers are also required to comply with all applicable occupational safety and health standards.[439] 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.[440] 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*

Pennsylvania does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees.

Notwithstanding, the Pennsylvania Worker and Community Right to Know Act creates a system for communicating information about hazardous materials used, produced, or stored at worksites within the Commonwealth.[441] The Department of Labor and Industry, through the Bureau of PENNSAFE, acts as the data collector between employers and the community.

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[436] 35 PA. CONS. STAT. ANN. § 7425; *Giuffra v. International Paper Co.*, 931 F. Supp. 372 (E.D. Pa. 1996).

[437] 35 PA. CONS. STAT. ANN. § 7424.

[438] 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.

[439] 29 U.S.C. § 654(a)(2).

[440] 29 U.S.C. § 667(c)(2).

[441] 35 PA. STAT. ANN. §§ 7301 *et seq*.

Under this law, all employers have some compliance responsibilities. The law defines an employer as any individual, partnership, corporation, or association doing business in the Commonwealth.[442] Public-sector employers and any other non-OSHA covered employers must comply with the employee access to chemical information, notice requirements, and training provisions applicable to their workplace environment. All employers must comply with the community provisions, which provide hazardous chemical information to the public and emergency response agencies.[443]

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*

Pennsylvania prohibits the use of an "interactive mobile device" while driving. An *interactive mobile device* means a handheld wireless telephone, personal digital assistant, smart phone, portable or mobile computer or similar device which can be used for voice communication, texting, emailing, browsing the internet, instant messaging, playing games, taking or transmitting images, recording or broadcasting videos, creating or sharing social media or otherwise sending or receiving electronic data. It does not include:

- a device being used exclusively as a global positioning or navigation system;
- a device that is being used in a hands-free manner or with a hands-free accessory or system, including one that is physically or electronically integrated into the vehicle;
- a device that is affixed to a mass transit vehicle, bus or school bus;
- a mobile or handheld radio being used by a person with an amateur radio station license issued by the federal communications commission;
- a device being used exclusively for emergency notification purposes;
- a device being used exclusively by an emergency service responder while operating an emergency vehicle and engaged in the performance of duties; or
- a device being used exclusively by a commercial driver who within the scope of the individual's employment uses a permitted device.

Drivers are prohibited from operating a motor vehicle while using an interactive mobile device to send, read, or write a text-based communication while the vehicle is in motion. A person does not send, read, or write a text-based communication when the person reads, selects, or enters a telephone number or name in an interactive mobile device for the purpose of activating or deactivating a voice communication or a telephone call. *Text-based communication* means a text message, instant message, electronic mail, or other written communication composed or received on an interactive wireless communications device.

The law allows the use of a device in a hands-free manner or with a hands-free accessory or system, including one that is physically or electronically integrated into the vehicle. .[444] The prohibition applies to

[442] 35 PA. STAT. ANN. § 7302.

[443] 35 PA. STAT. ANN. § 7305.

[444] 75 PA. CONS. STAT. ANN. §§ 102, 3316.

employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the restriction.

3.10(c) *Firearms in the Workplace*

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

Federal law does not address firearms in the workplace.

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

Pennsylvania does not have a statute specifically addressing the possession or storage of firearms in the workplace or in company parking lots.

3.10(d) *Smoking in the Workplace*

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

Federal law does not address smoking in the workplace.

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

The Pennsylvania Clean Indoor Air Act (CIAA) prohibits smoking in all public places, with limited exceptions. *Public place* is defined as any enclosed area, including workplaces. The term *workplace* is defined as an indoor area serving as a place of employment, occupation, business, trade, craft, professional, or volunteer activity.[445]

Posting Requirements. The CIAA requires that employers, as owners, operators, or managers of workplaces, prominently post and maintain "Smoking" and "No Smoking" signs or the international "No Smoking" symbol in all areas regulated by the statute. Employers are also required to post a "Smoking Permitted" sign at the entrance of every public place where smoking is allowed.[446] A compliance kit for businesses is available from the Pennsylvania Department of Health's website.[447]

Antiretaliation Provisions. The CIAA specifically states that an employer cannot discharge an employee, refuse to hire an applicant for employment, or otherwise retaliate against an individual because that individual exercises the right to a smoke-free environment. Although the CIAA does not specify the remedy available to an individual claiming retaliation under the law, an employee discharged for exercising such rights may have a claim for wrongful discharge in violation of public policy, which may allow recovery of monetary damages.[448]

3.10(e) *Suitable Seating for Employees*

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

Federal law does not address suitable seating requirements for employees.

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[445] 35 PA. STAT. ANN. §§ 637.2, 637.3.

[446] 35 PA. STAT. ANN. § 637.4.

[447] *See* Pennsylvania Dep't of Health, *Resources in the Clean Indoor Air Act: Smoke-Free Compliance Toolkit*, *available at* https://www.health.pa.gov/topics/programs/CIAA/Pages/Toolkit.aspx.

[448] 35 PA. STAT. ANN. § 637.7.

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

In Pennsylvania, every person employing or permitting females to work in any establishment must provide suitable seats for their use conveniently accessible while they are working, and must maintain and keep them there, and must permit the reasonable use thereof by female employees. At least one seat must be provided for every five females employed or permitted to work.[449]

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*

Pennsylvania law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

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

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

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[450] (2) the Americans with Disabilities Act (ADA);[451] (3) the Age Discrimination in Employment Act (ADEA);[452] (4) the Equal Pay Act;[453] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[454] (6) the Civil Rights Acts of 1866 and 1871;[455] 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;

[449] 43 PA. STAT. ANN. § 108.

[450] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[451] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[452] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[453] 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.

[454] 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)).

[455] 42 U.S.C. §§ 1981, 1983.

- 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);[456]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[457] 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.[458]

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

Several state statutes prohibit Pennsylvania employers from discriminating against employees and applicants, the most important of which is the Pennsylvania Human Relations Act (PHRA). The PHRA prohibits discrimination against employees on the basis of the following characteristics:

- race;
- color;
- religious creed;
- ancestry;
- age (40+);
- sex (including pregnancy, childbirth, and related medical conditions);[459]
- national origin;
- disability (including physical or mental impairment and use of a service animal);[460]
- status as a GED holder (as opposed to a high school diploma);
- HIV/AIDS status;[461] and

[456] 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.

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

[458] 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.

[459] See 3.9(c)(ii) for additional information on the PHRA requirements related to pregnancy, miscarriage, abortion, childbirth, or recovery therefrom.

[460] 43 PA. STAT. ANN. § 955.

[461] 4 PA. CODE § 7.432.

- military status – protections are also extended to military membership or duty, including out of state military members, membership in the National Guard, U.S. Reserves, or because members are called to active duty.[462]

The antidiscrimination protections of the PHRA cover virtually every employer, private or public, with four or more employees. There are exceptions for religious, fraternal, charitable, or sectarian corporations or associations (unless supported by government appropriations), *except* with respect to claims related to race, color, age, sex, nation origin, or disability discrimination.[463]

Effective August 16, 2023, the Pennsylvania Human Rights Commission has adopted amendments to the Pennsylvania Human Relations Act with regards to certain protected class definitions as follows:

- Religious creed includes all aspects of religious observance, practice or belief. Discrimination based on religious creed includes the failure to provide reasonable accommodation for a religious observance or practice, subject to an undue hardship defense.
- The term *sex* includes all of the following:
  - Pregnancy;
  - sex assigned at birth;
  - gender, including a person's gender identity or expression;
  - affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality; and
  - differences of sex development, variations of sex characteristics, or other intersex characteristics.
- The term *race* includes all of the following:
  - ancestry, national origin, or ethnic characteristics, including but not limited to persons of Mexican, Puerto Rican, Central or South American or other Spanish origin or culture; and
  - persons of any other national origin or ancestry as specified by a complainant or complaint.[464]

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

The Pennsylvania Human Relations Commission ("Commission") has broad investigatory and enforcement powers, as well as the ability to create regulations deemed necessary to carry out the purposes of the PHRA.[465]

Response/Answer to Request for Agency Action. An employee can initiate a Commission investigation by filing a discrimination complaint within 180 days of the alleged act of discrimination.[466] Importantly,

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[462] 51 PA. CONS. STAT. ANN. § 7309.

[463] 43 PA. STAT. ANN. § 954(b).

[464] 16 PA. CODE §§ 41.205 – 41.207.

[465] 43 PA. STAT. ANN. § 957(d).

[466] 43 PA. STAT. ANN. § 959(h); *see Leitch v. MVM, Inc.*, 2004 WL 1638132, at **9-10 (E.D. Pa. July 21, 2004) (dismissing PHRA claims because plaintiff did not file a Commission complaint within 180 days of date of termination). Employees have been allowed to proceed on untimely PHRA claims, however, where they can

where the discrimination complaint fails to name in a timely manner a specific defendant, the employee may be barred from later amending the complaint to assert claims against that defendant unless that defendant may be deemed to have notice of the complaint despite the error, such as where a named defendant and the originally absent defendant are closely related.[467]

Investigation. Either the Commission or the attorney general can request an investigation.[468] If the Commission determines that prompt judicial action is required to prevent immediate and irreparable harm, it may seek a preliminary injunction in the Commonwealth Court or the Court of Common Pleas.[469] Ordinarily, however, the Commission will conduct a preliminary investigation to determine if there is probable cause to believe that the allegation is true. A preliminary investigation typically starts with a letter to the employer requesting documents and asking that the employer set forth in writing its position regarding the allegations in the complaint. The Commission will assign a specific investigator to the case, who will follow up with the employer regarding the information. After the employer supplies the requested information, the investigator typically will hold a "fact-finding conference" at the Commission's local office. At the fact-finding conference, the employer and employee are expected to bring all key witnesses and documents. Although witnesses are not placed under oath, the investigator will make notes regarding the testimony. The parties ordinarily do not ask each other questions directly but filter questions through the investigator. At the conclusion of the fact-finding conference, the investigator may ask either party for additional information or documents, and the Commission will then make a decision as to whether there is probable cause to believe that the employee's allegation is true.

Hearings. If the Commission fails to find probable cause, the employee can request a preliminary hearing within 10 days.[470] The Commission must, if requested, conduct a preliminary hearing, but such hearings are informal, brief, and limited to reviewing the determination of the preliminary investigation by a very lenient standard. If the Commission agrees that the complaint lacks merit, it will issue an order to that effect, giving rise to a potential private claim by the employee.[471] If the Commission finds probable cause, the parties are required to attempt conciliation. If these efforts fail, the Commission holds a public hearing on the merits of the complaint. The Commission, the employee, and the employer, can subpoena witnesses, take testimony under oath, and require the production of relevant documents.[472] The hearing examiner then issues findings of fact and a proposed order that must be approved by the Commission to take effect.[473] In any event, the PHRA has exclusive jurisdiction over all potential claims arising out of a potential violation of the PHRA for one year after the date of the alleged act of discrimination, unless it

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establish an equitable basis for excusing the untimeliness. *See, e.g.*, *Lewis v. Sheridan Broad. Network Inc*., 2005 WL 2977799, at **3-4 (W.D. Pa. Nov. 7, 2005).

[467] *Drexelbrook Assocs. v. Pennsylvania Human Relations Comm'n*, 51 A.3d 899, 904 (Pa. Commw. Ct. 2012).

[468] 43 PA. STAT. ANN. § 957(f).

[469] 43 PA. STAT. ANN. § 959.2.

[470] 43 PA. STAT. ANN. § 959(c).

[471] Although rare, the employee can also choose to appeal the Commission's decision to the Commonwealth Court. However, the employee must be sure to observe all procedural requirements to do so. *See Cobbs v. SEPTA*, 985 A.2d 249, 254 (Pa. Super. Ct. 2009) (dismissing employee's complaint filed in Court of Common Pleas because complaint sought reversal of the Commission's decision, and therefore the Commonwealth Court had exclusive jurisdiction).

[472] 16 PA. CODE § 42.42(b).

[473] 43 PA. STAT. ANN. § 959(f)-(g).

concludes its proceedings prior to that time.[474] During that period, an individual's only available remedy for a violation of the PHRA is to seek review by the Commission, using the procedures outlined above.[475] If, on the other hand, the individual actually or constructively withdraws the discrimination complaint with the Commission prior to the Commission's voluntary termination or the one-year period, the individual has not effectively exhausted administrative remedies and cannot proceed with a PHRA claim in court.[476]

Exclusivity of Remedy. The Commission has the authority to issue cease-and-desist orders, or it can order that the claimant be hired, reinstated, promoted, restored as a member in a labor organization, or be reasonably accommodated (in the case of an employee with a disability). In addition, the Commission may award back pay and even compensatory damages.[477] Pennsylvania courts will not allow common-law causes of action for any type of employment discrimination that is covered under the PHRA. That is, a plaintiff may not opt out of PHRA's remedial scheme and elect instead to bring a civil action, for example, for discriminatory termination. They must exhaust administrative remedies through the PHRA before any resort to the courts is allowed. If the Commission fails or refuses to order the relief sought, the PHRA allows the employee to bring a private civil action against the employer for PHRA violations.[478] To bring such a claim, the employee must file the lawsuit within two years of the final order by the Commission.[479]

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

GED Certificate. The PHRA contains protections for the possession of a general education development (GED) certificate instead of a high school diploma.[480]

HIV/AIDS Status. In accordance with the PHRA and federal law, individuals with HIV infection or AIDS, or those perceived to have those conditions, cannot be discriminated against with regard to state services or with regard to appointment, transfer, promotion, or other employment action.[481]

Military Status. Pennsylvania law strictly prohibits the termination of, or discrimination against, an employee because of the employee's membership in any reserve component of the military.[482] These protections extend to military duty, including out-of-state military members, membership in the National Guard, U.S. Reserves, or because members are called to active duty.

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[474] 43 PA. STAT. ANN. § 962(c); *Traxler v. Mifflin Cnty. Sch. Dist.*, 2008 WL 717852, at **4-5 (M.D. Pa. Mar. 17, 2008) (dismissing PHRA claim because plaintiff failed to wait until the Commission had terminated processing of administrative complaint or one year before filing suit, and noting that under the PHRA, "every separate charge must be exhausted, regardless of whether a subsequent charge is fairly within the scope of a previous one").

[475] *See Padgett v. YMCA of Phila. & Vicinity*, 1998 WL 826985 (E.D. Pa. Nov. 25, 1998).

[476] *See Rhoades v. YWCA of Greater Pittsburgh*, 2010 WL 4668469, at **4-5(W.D. Pa. Nov. 9, 2010) (court held that plaintiff's letter to the Commission informing investigator that she wished to proceed with only her EEOC charge, followed by plaintiff's failure to respond to Commission's letter requesting that she execute "Request for Withdrawal of Charge of Discrimination" constituted withdrawal of the Commission discrimination complaint and consequently plaintiff failed to exhaust administrative remedies).

[477] 43 PA. STAT. ANN. § 959(f)(1).

[478] *See Nix v. Nationwide Ins. Co.*, 2005 WL 783345, at **2-3 (E.D. Pa. Apr. 6, 2005); *see also Engle v. Milton Hershey Sch.*, 2007 WL 1365916, at *7 (M.D. Pa. Jan. 19, 2007).

[479] 43 PA. STAT. ANN. § 962(c)(2).

[480] 43 PA. STAT. ANN. § 955(k).

[481] 4 PA. CODE § 7.432.

[482] 51 PA. CONS. STAT. ANN. § 7309.

Participation in Abortion or Sterilization. The PHRA also includes protections for opinions regarding (and willingness or refusal) to perform or participate in abortion or sterilization.[483]

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

In addition to the federal and state laws, employers with operations in Allegheny County, Allentown, Erie County, Pittsburgh, and Philadelphia are subject to local fair employment practices ordinances.

- **Allegheny County.** Employers that employ four or more employees, including employers contracting with independent contractors, must extend antidiscrimination protections on the basis of: race; color; religion; national origin, ancestry or place of birth; sex; gender identity or expression; sexual orientation; disability; marital status; familial status; age (40 years of age or older, and includes any other person protected by further amendment to the federal ADEA); use of a guide or support animal because of blindness, deafness, or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association; and hairstyle.[484] An individual alleging a violation of the ordinance may file a complaint with the Human Relations Commission of the County of Allegheny within 180 days after the alleged act of discrimination.[485]
- **Allentown.** Protected classifications include: race; color; religion; national origin; ancestry or place of birth; sex; gender identity; sexual orientation; disability; marital status; age (40 years or older and any other person protected by further amendment to the federal ADEA); source of income; and use of a guide or support animal because of blindness, deafness, or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association. The antidiscrimination protections apply to employers that employ four or more employees, including employers contracting with independent contractors.[486] An individual alleging a violation of the ordinance may file a complaint with the Human Relations Commission of the City of Allentown within 180 days after the alleged act of discrimination.[487]
- **Erie County.** Employers that employ four or more employees within Erie County, including employers contracting with independent contractors, are subject to the following antidiscrimination protections: race; color; familial status; religious creed; national origin; ancestry; age (40 years or older); sex; sexual orientation (meaning male or female heterosexuality, homosexuality, bisexuality, or any other gender identity); national origin; disability; and use of a guide or support animal because of blindness, deafness, or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association; and criminal history. Also, covered employers are prohibited from discriminating against an employee or prospective employee because the employee only has a diploma based on passing a general educational

[483] 43 PA. STAT. ANN. § 955.2.

[484] ALLEGHENY CNTY., PA., CODE §§ 215-31 (exclusions from coverage include religious, fraternal, charitable, or sectarian organizations), 215-32 (exceptions, including *bona fide* occupational qualifications).

[485] ALLEGHENY CNTY., PA., CODE §§ 215-37, 215-38 (covering private enforcement).

[486] ALLENTOWN, PA., ADMIN. CODE §§ 181.02 (exclusions from coverage include any religious, fraternal, charitable, or sectarian organization not supported in whole or in part by any city appropriations), 181.03 (exceptions, including *bona fide* occupational qualifications).

[487] ALLENTOWN, PA., ADMIN. CODE § 181.08.

development test as compared to a high school diploma.[488] An individual alleging a violation of the ordinance may file a complaint with the Erie County Human Relations Commission within 180 days after the alleged act of discrimination has occurred or terminated.[489]

- **Lehigh County.** Employers that employ one or more employees must extend antidiscrimination protections on the basis of: race, ethnicity, color, religion, creed, national origin or citizenship status, ancestry, sex (including pregnancy childbirth, and related medical conditions), gender identity, gender expression, sexual orientation, genetic information, marital status, familial status, GED rather than high school diploma, physical or mental disability, relationship or association with a disabled person, source of income, age, height, weight, veteran status, use of guide or support animals and/or mechanical aids, and domestic or sexual violence victim status.[490] Any person claiming to be aggrieved by an alleged violation may make, sign, and file a verified complaint, within 180 days of the most recent alleged acts of discrimination. Complaints may be filed in person at the Lehigh County Office of Human Resources or on-line at the Commission's website.[491]
- **Pittsburgh.** Employers that employ five or more employees must extend antidiscrimination protections on the basis of: race; color; religion; age (over 40 and any other person protected by further amendment to the federal ADEA); ancestry; national origin; place of birth; sex; pregnancy, childbirth, or a related medical condition, including the partners of pregnant workers; sexual orientation; gender identity or expression; a nonjob-related handicap or disability; hairstyle and protective and cultural hair textures and hairstyles; status as a victim of domestic violence; and status as a medical marijuana patient.[492] An individual alleging a violation of the ordinance may file a complaint with the Pittsburgh Human Relations Commission within one year of the occurrence of the discriminatory act.[493]

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[488] ERIE CNTY. HUMAN RELATIONS COMM'N ORDINANCE, No. 59, Arts. IV (exclusions from coverage include religious, fraternal, charitable, sectarian institutions or organizations, except those institutions or organizations supported in whole or in part by governmental appropriations), VIII (exceptions, including *bona fide* occupational qualifications, fraternal corporation or association, certain security regulations, and religious institutions), and XII (religious observance discrimination).

[489] ERIE CNTY. HUMAN RELATIONS COMM'N ORDINANCE, No. 59, Art. VI.

[490] LEHIGH CNTY. ADMIN. CODE § 201.16 and 201.39.

[491] LEHIGH CNTY. ADMIN. CODE §§ 402.1-402.3.

[492] PITTSBURGH, PA., CITY CODE §§ 651.04 (exclusions from coverage include any religious, fraternal, charitable, or sectarian organization which is not supported in whole or part by any governmental appropriations), 659.02 (exceptions, including *bona fide* occupational qualifications and national security). In conjunction with the ordinance, the Commission on Human Relations (Commission) issued guidance further explaining obligations for employers. The guidance clarifies that treating an employee any less favorably than others because that employee is pregnant or perceived to be pregnant, or because that employee has experienced childbirth or a related medical condition, is discrimination. Written or unwritten policies that single out pregnant employees or applicants, or policies that have a disparate impact on pregnant employees, are also forms of discrimination. Pregnancy-based harassment is unlawful under the revised ordinance as well. Moreover, in defining pregnancy to include both the state of being pregnant and the state of being the partner of a pregnant person, the term "partner" applies broadly to mean a person of any gender with whom a pregnant person or person with a related medical condition has a relationship of mutual emotional or physical support, and does not require a marital or domestic relationship. The Guidance also sets forth reasonable accommodations, medical certification, and interactive process requirements for employers with respect to pregnancy and related.

[493] PITTSBURGH, PA., CITY CODE § 655.02.

- **Philadelphia.** Protected classifications include: age (40 years or older); ancestry; color; disability; domestic or sexual violence victim status by acts enumerated in the Pennsylvania Code; ethnicity; familial status; gender identity; genetic information; marital status; national origin; race (including characteristics commonly associated with race, including hairstyle); religion; sex and sexual harassment (including pregnancy, childbirth, or related medical conditions; sex stereotyping; and change in sex);sexual orientation; and reproductive health autonomy. Employers doing business in the City of Philadelphia through employees, or that employ one or more employees exclusive of parents, spouse, life partner, or children, must extend these protections.[494] An employer must post a workplace poster covering these protections.[495] An individual alleging a violation of the ordinance may file a complaint with the Philadelphia Commission on Human Relations within 300 days after the occurrence of the alleged unlawful practice.[496]

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."[497] 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.[498]

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

The Pennsylvania Equal Pay Law requires equal pay irrespective of gender.[499] Specifically, the law prohibits employers from discriminating within any establishment between employees on the basis of sex by paying wages to employees in the establishment 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. The prohibition does

[494] PHILA., PA., CODE §§ 9-1102, 9-1103, and 9-1104 (exemptions, including religious corporations and institutions and *bona fide* occupational qualifications).

[495] PHILA., PA., CODE § 9-1103(1)(i).

[496] PHILA., PA., CODE § 9-1112.

[497] 29 U.S.C. § 206(d)(1).

[498] 42 U.S.C. § 2000e-5.

[499] 43 PA. STAT. ANN. § 336.3.

not apply where payment is made pursuant to: (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 other factor other than sex. An employer paying a wage differential in violation of the statute cannot reduce the wage rate of any employee in order to comply with the statute.

An employee alleging a violation of the Equal Pay Law may file a civil action within two years of the alleged violation. The law imposes civil liability on employers found willfully and knowingly to have violated the law in the amount of unpaid wages and an equal amount as liquidated damages.[500]

3.11(c) *Pregnancy Accommodation*

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

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

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

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[501]

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;

[500] 43 PA. STAT. ANN. § 336.5(a).

[501] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

- 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).[502]

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.[503] 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.[504] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[505]

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.[506]

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[502] 29 C.F.R. § 1636.3.

[503] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[504] 29 C.F.R. § 1636.3.

[505] 29 C.F.R. § 1636.4.

[506] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

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.[507]

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

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

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

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

Reasonable Accommodation of Pregnancy: Philadelphia. Philadelphia's Fair Practices Ordinance requires that employers of one or more employees provide reasonable accommodation for pregnancy, childbirth, or related medical conditions upon the employee's request.[508] *Reasonable accommodation* is an accommodation that an employer can make in the workplace that will allow the employee to perform the essential functions of the job. Accommodations may include: restroom breaks; periodic rest for those who stand for long periods; assistance with manual labor; leave for a period of disability arising from childbirth; reassignment to a vacant position; and job restructuring.[509] An employer is not required to provide an accommodation if doing so would impose an undue hardship.

Employers must provide written notice to all new employees of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions, as well as the right to reasonable accommodation. Notice must also be posted conspicuously at an employer's place of business in an area accessible to employees.[510]

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

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[507] 29 C.F.R. § 1636.3.

[508] PHILA., PA., CODE §§ 9-1102(1)(h), 9-1128.

[509] PHILA., PA., CODE § 9-1128(1)(a).

[510] PHILA., PA., CODE § 9-1128(4). Employers must also comply with the general Fair Practices Ordinance poster requirement. *See* PHILA., PA., CODE § 9-1103(1)(i).

employers.[511] Multiple decisions of the U.S. Supreme Court[512] 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.[513] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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

There are no antiharassment training and education requirements mandated for private employers in Pennsylvania. However, the Pennsylvania Human Relations Commission Guidelines on Sexual Harassment explains that "prevention is the best tool for the elimination of sexual harassment."[514] According to the Commission, employers "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 . . . and developing methods to sensitize all concerned."[515]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

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

[512] *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).

[513] 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.

[514] Pa. Human Relations Comm'n, *Guidelines on Sexual Harassment* (Jan. 30, 1981), at (f), *available at* https://www.phrc.pa.gov/LegalResources/Policy-and-Law/Non%20Discrimination/Sexual%20Harassment%20Guidelines.pdf.

[515] Pennsylvania Human Relations Comm'n, *Guidelines on Sexual Harassment* (Jan. 30, 1981), at (f), *available at* https://www.phrc.pa.gov/LegalResources/Policy-and-Law/Non%20Discrimination/Sexual%20Harassment%20Guidelines.pdf.

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

There is no general whistleblower law addressing protections for private-sector whistleblowers in Pennsylvania. However, the state's whistleblower law covering public entities also applies to entities that receive money from a public body to perform work or provide services "relative to the performance of work for or the provision of services to a public body."[516] The law prohibits employers from discharging, threatening, discriminating against, or retaliating against employees because the employee or person acting on behalf of the employee has made a report in good faith or is about to report an instance of wrongdoing or waste by a public body, or has been requested to participate in an investigation, hearing, or inquiry on the matter.[517]

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)[518] and the Railway Labor Act (RLA)[519] 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*

Pennsylvania has not passed any right-to-work laws or other notable laws pertaining to private-sector unions or union activities.

[516] 43 PA. STAT. ANN. § 1422.

[517] 43 PA. STAT. ANN. § 1423.

[518] 29 U.S.C. §§ 151 to 169.

[519] 45 U.S.C. §§ 151 *et seq*.

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).[520] 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.[521] 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 and Local Mini-WARN Act*

Pennsylvania does not have a mini-WARN law requiring advance notice to employees of a plant closing, however, the city of Philadelphia does have a local plant closing ordinance.[522]

4.1(c) *State Mass Layoff Notification Requirements*

An employer that lays off or separates 50 or more individuals within any seven-day period must disclose to the Department of Labor and Industry of the Commonwealth the information it requires for processing the individuals' applications and claims for unemployment compensation. The employer must file the mass layoff report no later than five business days prior to the layoff or separation, unless the Department extends the due date for good cause.[523]

An employer that violates this notification requirement may be subjected to a fine ranging from $500 to $1,500, or imprisonment up to 30 days, or both.[524]

4.2 Documentation to Provide When Employment Ends

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

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

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[520] 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.

[521] 20 C.F.R. §§ 639.4, 639.6.

[522] PHILA., PA. CODE §§ 9-1501 *et seq*.

[523] 43 PA. STAT. ANN. § 753; 34 PA. CODE § 63.60.

[524] 43 PA. STAT. ANN. § 873.

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.[525] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[526]

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.	**Mini-COBRA.** The small employer (with 2-19 employees) of a covered employee under a group policy must notify the administrator or its designee, the covered employee, and the insurer of a qualifying event within 30 days of the qualifying event. Notice to the covered employee must include notice of their rights, including the right to continuation coverage.[527] **Other Benefits.** An employee whose coverage under an employer's group accident and sickness insurance policy has been terminated for

[525] 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.

[526] 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.

[527] 40 PA. STAT. ANN. § 764j. A model notice is available online from the Pennsylvania Department of Insurance at https://www.insurance.pa.gov/Coverage/Documents/Health/PA%20Mini%20COBRA%20Model%20Notice%20Final%2003-27-2015.pdf.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	any reason is entitled to convert to individual coverage. The employer shall provide the employee written notice of the conversion privilege within 15 days of termination.[528]
Unemployment Compensation	Employers must provide an unemployment compensation benefit notification to employees, regardless of whether the employer is or is not liable for the payment of contributions under the unemployment compensation law. The notice must provide information about the availability of unemployment compensation to the employer's employees at the time of separation from employment. The notice must include the following: information about the availability of unemployment compensation benefits to workers who are unemployed and who meet the requirements of the unemployment compensation law; information about the ability of an employee to file an unemployment compensation claim in the first week that employment stops or work hours are reduced; information about the availability of assistance or information about an unemployment compensation claim on the Pennsylvania Department of Labor and Industry website or by calling a toll-free number that the employee must provide; and, notice that the employee will need certain information in order to file a claim, including: the employee's full legal name; the employee's social security number; and, if not a citizen or resident of the United States, authorization to work in the United States. The Unemployment Compensation (Form UC-700) is available online in English and Spanish and satisfies this requirement. Employers must fill in the required information in the poster.[529] **Additionally.** Employers generally must post in places readily accessible to employees, printed notices or posters informing employees of their potential rights to unemployment benefits and providing general instructions as to what the employee must do and where the employee must go to obtain those benefits.[530] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify the employee forthwith as to the jurisdiction under whose unemployment

[528] 40 PA. STAT. ANN. § 756.2.

[529] 43 PA. STAT. ANN. § 766.1.This poster, which serves at the notice, is available in English at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700.pdf and in Spanish at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700(esp).pdf.

[530] 43 PA. STAT. ANN. §§ 766.1, 805; 34 PA. CODE § 61.4. This poster is available in English at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700.pdf and in Spanish at http://www.dli.pa.gov/Documents/Mandatory%20Postings/uc-700(esp).pdf.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	compensation law services have been 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 the above notice requirement for multistate workers, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[531]

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*

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

[531] 34 PA. CODE § 63.74.