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STATE

Littler on

# Rhode Island 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 Rhode Island 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. PRE-HIRE

## 1.1 Classifying Workers: Employees v. Independent Contractors

### 1.1(a) *Federal Guidelines on Classifying Workers*

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

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

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

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

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

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

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs his or her 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 Rhode Island, 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).

To reduce instances of misclassification of employees as independent contractors, Rhode Island has entered into a partnership with the U.S. Department of Labor, Wage and Hour Division, the Occupational Safety and Health Administration, and the Employee Benefits Security Administration to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts.[5]

In June 2014, Rhode Island created the Joint Task Force on the Underground Economy and Employee Misclassification. The Task Force emphasizes that the "right to control the details of the services being performed" is the main criterion no matter which of the various tests is used.[6]

**Enforcement, Remedies & Penalties.** Under Rhode Island's wage payment laws, misclassification of a worker as an independent contractor is unlawful, and subjects an employer to civil penalties and other remedies available for violations of the wage payment laws.[7] An employer is liable for a civil penalty between $1,500 and $3,000 for each misclassified employee for a first offense, and up to $5,000 for each misclassified employee for any subsequent offense, which is to be shared equally between the state

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

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

[5] More information about the U.S. Department of Labor Misclassification Initiative is available on the Wage and Hour Division website, *Misclassification of Employees as Independent Contractors*, *available at* https://www.dol.gov/whd/workers/misclassification/. The Rhode Island Memorandum of Understanding signed May 7, 2015 is available at https://www.dol.gov/whd/workers/MOU/ri.pdf.

[6] State of R.I. Dep't of Revenue, Div. of Taxation, Joint Task Force on the Underground Econ. and Emp. Misclassification, *What Rhode Island Businesses Should Know about Worker Misclassification*, *available at* https://dlt.ri.gov/sites/g/files/xkgbur571/files/documents/pdf/miss/WorkerMisclass0814.pdf; *see also* State of R.I. Dep't of Revenue, Div. of Taxation, *Frequently Asked Questions*, *available at* http://www.uitax.ri.gov/faq.htm (addressing the distinction between employee and independent contractor).

[7] R.I. GEN. LAWS § 28-14-19.1.

 

agency and the aggrieved party. This penalty is in addition to any other relief to which the agency or an aggrieved party may be entitled.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Purpose of Determining Employee Status** | **State Agency** | **Test to Apply** |
| **Fair Employment Practices Laws** | Rhode Island Commission for Human Rights | There are no relevant statutory definitions or cases identifying a test for independent contractor status. |
| **Income Taxes** | Rhode Island Department of Revenue, Division of Taxation | Internal Revenue Service (IRS) twenty-factor test.[8] |
| **Unemployment Insurance** | Rhode Island Department of Labor and Training, Unemployment Insurance | IRS twenty-factor test, expressly adopted in statute.[9] |
| **Wage & Hour Laws** | Rhode Island Department of Labor and Training Workforce Regulation and Safety, Labor Standards Unit | Common-law "right to control" test.<br><br>The following factors, while not exclusive, are important when examining the relationship:<br>• the employment contract provisions;<br>• the method of payment;<br>• the option as to time in doing the work; and<br>• the giving of instructions by the employer.[10] |

[8] State of R.I. Dep't of Revenue, Div. of Taxation – Employer Tax Section, *Frequently Asked Questions About Employment Taxes*, *available at* http://www.uitax.ri.gov/faq.htm (stating that the factors considered in determining independent contractor status for employment tax purposes are the same as those factors used by the IRS). The independent contractor test is also addressed by the Rhode Island Department of Labor and Training in its *Employer Handbook*. *See* R.I. Dep't of Labor and Training, *Employer Handbook*, at *4, *available at* https://dlt.ri.gov/documents/pdf/wrs/emphand.pdf (noting that by request, the Division of Taxation, Employer Tax Section, will issue a ruling on status based upon a written review of facts).

[9] R.I GEN. LAWS § 28-42-7; *see also Mount Pleasant Cab. Co. v. Rhode Island Unemp't Comp. Bd.*, 53 A.2d 485, 489 (R.I. 1947) ("[T]he statutory definition in an unemployment compensation act ordinarily replaces the common-law principles as to master and servant, or independent contractor.") (citations omitted).

[10] The test to determine whether an employer-employee or independent contractor relationship exists focuses on the employer's "right or power to exercise control over the method and means of performing the work and not merely the exercise of actual control." *Divorce Res. Ctr. v. Rhode Island Dep't of Labor & Training*, 2011 WL 1337982, at **3, 5 (R.I. Super. Ct. Apr. 4, 2011); *see also Henry v. Mondillo*, 142 A. 230 (R.I. 1928) (listing the relevant factors to be considered nonexclusively and noting that the employer's right to control is primary); *Levi v. Gulliver's Tavern, Inc.*, 2016 WL 552469, at *1 (D.R.I. Feb. 10, 2016) (applying the control test in a wage hour case, and noting "[w]hile a fact dependent inquiry, the existence of an employer-employee relationship turns on the

 

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| **Workers' Compensation** | Rhode Island Department of Labor and Training, Workers' Compensation | Common-law "right to control" test.<br><br>The following factors, while not exclusive, are important when examining the relationship. Generally, independent contractors:<br>• set their own hours;<br>• use their own tools;<br>• work when and for whom they choose; and<br>• are responsible for paying their own state and federal withholdings.[11]<br><br>Moreover by law, an individual will not be considered an independent contractor unless the individual files a notice of designation as an independent contractor. This filing creates a presumption of independent contractor status with the workers' compensation division, but does not preclude a finding of independent contractor status by the court when the notice is not filed.[12] |
| **Workplace Safety** | Not applicable | There are no relevant statutory definitions or cases identifying a test for independent contractor status. Rhode Island does not have an |

employer's right or power to exercise control over the method and means of performing the work") (quotations omitted).

[11] R.I. Dep't of Labor and Training, Workers' Comp., *Independent Contractor Frequently Asked Questions*, at question 3, *available at* http://www.dlt.ri.gov/wc/ICmain.htm#icfaqs. The determination of whether an employer-employee or independent contractor relationship exists "depends substantially on whether the employer had power of control or superintendence over the employee." *Croce v. Whiting Milk Co.*, 228 A.2d 574, 576 (R.I. 1967) (quotation omitted); *Pasetti v. Brusa*, 98 A.2d 833, 834 (R.I. 1953) ("[T]he test [for] whether a person is an independent contractor is based on the employer's right or power to exercise control over the method and means of performing the work and not merely the exercise of actual control.") (citing *Henry*, 142 A. at 232). The test focuses on whether the employer possesses the right to exercise power, not whether it actually did so. *See, e.g.*, *Croce*, 228 A.2d at 576; *Pasetti*, 98 A.2d at 834. Moreover, in examining relationships, courts will examine other factors which "might well have probative force on the issue." *Croce*, 228 A.2d at 577.

[12] R.I. GEN. LAWS §§ 28-29-2(11), 28-29-17.1. More information about how to file the notice of designation form (DWC-11-IC) is available online. *See* R.I. Dep't of Labor and Training, Workers' Comp., *Frequently Asked Questions - Independent Contractor Questions*, *available at* https://dlt.ri.gov/workers-compensation/frequently-asked-questions.

| Table 1. State Tests for Classifying Workers | | |
|---|---|---|
| | | approved state plan under the federal Occupational Safety and Health Act. |

## 1.2 Employment Eligibility & Verification Requirements

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

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

Rhode Island does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Rhode Island should follow federal law requirements regarding employment eligibility and verification.[16]

## 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").[17] 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*

Under Rhode Island's State Fair Employment Practices Act, it is an unfair discriminatory practice for an employer to inquire about, either orally or in writing, whether an applicant has ever been arrested, charged with, or convicted of any crime.[18] Moreover, on an employment application, an employer may not include a question about whether an applicant has ever been arrested, charged with, or convicted of

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[16] A statute providing for mandatory use of E-Verify by public employers and contractors was repealed by executive order in 2011. R.I. Exec. Order No. 11-02 (2011).

[17] 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.

[18] R.I. GEN. LAWS § 28-5-7(7).

any crime.[19] *Employer* includes any person who employs four or more individuals.[20] This provision does not apply to applications for law enforcement agency positions or positions related to law enforcement.[21]

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

As discussed in **1.3(a)(ii)**, employers are prohibited from including on an employment application, or otherwise inquiring, whether an applicant has ever been arrested, charged with, or convicted of any crime.

**Exceptions.** An employer may include a question or ask applicants about criminal convictions if a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a person's conviction of one or more specified types of criminal offenses. However, any such inquiry must be narrowly tailored to address only potentially disqualifying offenses.[22] An employer may also ask about certain offenses if a standard fidelity bond or equivalent bond is required for the position and conviction of the offense would disqualify the applicant from obtaining such a bond. Again, the inquiry must be narrowly tailored to the specific prohibitive offenses.[23] Finally, an employer "may ask an applicant for information about his or her *convictions* at the first interview or thereafter, in accordance with all applicable state and federal laws."[24]

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

In an application for employment, a person whose conviction record has been expunged may state that they have never been convicted of the crime. However, a person applying for a position with a law enforcement agency, for admission to the bar of any court, for a teaching or coaching certificate, or to be the operator or employee of an early childhood education facility must disclose the fact of a conviction.[25]

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

Aggrieved individuals may file an administrative charge with the Rhode Island Commission for Human Rights (RICHR) or a civil action alleging a violation of the Fair Employment Practices Act. The RICHR and Rhode Island courts have the authority to award an aggrieved applicant with a range of remedies including back pay, compensatory damages, punitive damages, and attorneys' fees and costs.[26]

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[19] R.I. GEN. LAWS § 28-5-7(7).

[20] R.I. GEN. LAWS § 28-5-6(8)(i).

[21] R.I. GEN. LAWS § 28-5-7(7).

[22] R.I. GEN. LAWS §§ 28-5-7(7), 28-6.14-1.

[23] R.I. GEN. LAWS §§ 28-5-7(7), 28-6.14-1.

[24] R.I. GEN. LAWS § 28-5-7(7)(iii).

[25] R.I. GEN. LAWS § 12-1.3-4(b).

[26] R.I. GEN. LAWS § 28-5-24.

### 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[27] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[28] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

**Discrimination Concerns.** While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[29]

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

Rhode Island has a mini-FCRA law. Under this law, an employer cannot request a credit report in connection with a job application *unless* the person is first informed that a credit report may be requested in connection with the application.[30] *Credit report* means any written, oral, or other communication of any information by a credit bureau bearing on an individual's credit worthiness, credit standing, or credit

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[27] 15 U.S.C. §§ 1681 *et seq*.

[28] 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).

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

[30] R.I. GEN. LAWS § 6-13.1-21(a).

 

capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.[31]

**Adverse Action.** Whenever employment is denied either wholly or partly because of information in a credit report, an employer must advise the applicant of this fact and supply the name and address of the credit bureau making the report.[32]

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

An employer that violates the provisions regarding credit reports commits a deceptive trade practice.[33]

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

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

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

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

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

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

Rhode Island restricts an employer's ability to access an applicant's or employee's social media accounts. *Social media account* means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online service or accounts, or website profiles or locations.[34]

**Prohibited Requests.** An employer cannot:

- require, coerce, or request an employee or applicant to disclose a password or other means for accessing a personal social media account;

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[31] R.I. GEN. LAWS § 6-13.1-20(2)(i)(B).

[32] R.I. GEN. LAWS § 6-13.1-21.

[33] R.I. GEN. LAWS § 6-13.1-25.

[34] R.I. GEN. LAWS § 28-56-1(1).

- require, coerce, or request an employee or applicant to access a personal social media account in the presence of the employer or its representative;
- require or coerce an employee or applicant to divulge any personal social media account information; or
- compel an employee or applicant to add anyone, including the employer or its agent, to the individual's personal social media account's contact list, or require, request, or cause an employee or applicant to alter settings that affect a third party's ability to view account contents.[35]

Prohibited Employment Actions. An employer also cannot:

- threaten to or actually discharge, discipline, or otherwise penalize an employee for his or her refusal to disclose or provide access to protected social media information, for refusing to add the employer to the employee's contacts list, or refusing to alter account settings; or
- fail or refuse to hire an applicant because the applicant refused to disclose or provide access to protected social media information, refused to add the employer to the employee's contacts list, or refused to alter social media account settings.[36]

**Exceptions.** The statute's prohibitions do not apply to information about an applicant or employee that is publicly available.[37] Moreover, the social media law does not prohibit or restrict an employer from complying with a duty to screen employees or applicants or to monitor or retain employee communications that is established by state or federal law or by a self-regulatory organization under the Securities and Exchange Act, to the extent necessary to supervise communications of regulated financial institutions insurance or securities licensees for banking insurance or securities related business purposes.[38]

Unless otherwise prohibited by law, an employer can require or coerce an employee or applicant to divulge any personal social media account information when that information is reasonably believed to be relevant to an investigation of allegations of employee misconduct or of workplace-related violation of applicable laws and regulations. In the event of any such investigation, the personal social media account information may be accessed and used only as necessary for purposes of the investigation or related proceeding.[39]

The statutory definition of social media account excludes an account opened at an employer's behest, or provided by an employer, or intended to be used primarily on the employer's behalf.[40] Thus, the provisions above do not apply to these accounts.

[35] R.I. GEN. LAWS §§ 28-56-2, 28-56-3.

[36] R.I. GEN. LAWS § 28-56-4.

[37] R.I. GEN. LAWS § 28-56-5(a).

[38] R.I. GEN. LAWS § 28-56-5(b).

[39] R.I. GEN. LAWS § 28-56-2(3).

[40] R.I. GEN. LAWS § 28-56-1(1).

 

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

An individual who files a civil action for violation of the social media law can, if successful, be awarded declaratory relief, damages, reasonable attorneys' fees and costs, and injunctive relief.[41]

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[42] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

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

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

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

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

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

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

Rhode Island employers and their agents are prohibited from requesting, requiring, or subjecting any applicant or employee, either orally or in writing, to a lie detector test as a condition of employment or continued employment.[43] Moreover, an employer cannot use a lie detector test that was administered outside of the state for employment purposes within the state.[44] *Lie detector test* means any test utilizing a polygraph or any other device, mechanism, instrument, or written examination which is operated or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable

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[41] R.I. GEN. LAWS § 28-56-6.

[42] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[43] R.I. GEN. LAWS § 28-6.1-1(a).

[44] R.I. GEN. LAWS § 28-6.1-1.

 

the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.[45]

However, an employer may use a written examination, *e.g.* a paper and pencil honesty test, as long as the results are not relied upon as the primary basis for an employment decision.[46]

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

Any employer that subjects an employee or applicant for employment to a lie detector test in violation of the provisions above is guilty of a misdemeanor punishable by a fine.[47] In a civil action, a court can award punitive damages, actual damages, and reasonable attorneys' fees and costs to the prevailing employee or prospective employee.[48]

### 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.[49] 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.[50] 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*

Rhode Island strictly restricts a private employer's ability to drug test applicants. Testing may be required of an applicant's blood, urine, or other bodily fluid or tissue only if the job applicant has been given an offer of employment conditioned on the applicant's receiving a negative test result.[51] The applicant must

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[45] R.I. GEN. LAWS § 28-6.1-4.

[46] R.I. GEN. LAWS § 28-6.1-1(b).

[47] R.I. GEN. LAWS § 28-6.1-2.

[48] R.I. GEN. LAWS § 28-6.1-3.

[49] 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.

[50] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[51] R.I. GEN. LAWS § 28-6.5-2.

 

provide the sample in a private place, outside the presence of any other person, and any positive test must be confirmed by a federally certified laboratory.[52]

For information on drug and alcohol testing of current employees, see **3.2(b)(ii)**.

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

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

Employers and agents cannot charge fees for the filing of employment applications.[53] Additionally, employers cannot ask or require applicants to provide copies of their state or federal income tax returns, federal Form W-2 statements, or related tax documents as a condition of consideration for employment.[54]

Employees must not be charged for expenses associated with pre-hire physical examinations required by employers, whether or not the prospective employee is hired.[55]

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

Rhode Island's pay equity statute prohibits an employer from:

- seeking an applicant's wage history;
- relying on an applicant's wage history when deciding whether to consider the applicant for employment;
- relying on an applicant's wage history in determining the wages the applicant is to be paid by the employer upon hire; or
- requiring that an applicant's prior wages satisfy minimum or maximum criteria as a condition of being considered for employment.[56]

*Wage history* means the wages paid to an applicant for employment by the applicant's current employer and/or previous employer or employers, but does not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports.[57]

After the employer makes an initial offer of employment that includes an offer of compensation to an applicant, the employer may:

- rely on wage history to support a wage higher than the wage offered by the employer, if the applicant voluntarily provides their wage history without prompting from the employer;
- seek to confirm the applicant's wage history to support a wage higher than the wage offered, when relying on wage history the applicant voluntarily provides; and

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[52] R.I. GEN. LAWS § 28-6.5-2.

[53] R.I. GEN. LAWS §§ 28-6.3-1, 28-6.3-2.

[54] R.I. GEN. LAWS § 28-6.9-1.

[55] R.I. GEN. LAWS § 28-6.2-1.

[56] R.I. GEN. LAWS § 28-6-22.

[57] R.I. GEN. LAWS § 28-6-17.

- rely on wage history in these circumstances to the extent that the higher wage does not create an unlawful pay differential based on a protected characteristic.[58]

An employer will not be penalized for having knowledge of an employee's wage history at that employer if the employee currently works for the employer.[59]

The statute does not preclude an employer from verifying information voluntarily provided by a job applicant regarding an applicant's unvested equity or deferred compensation that the applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer, or any voluntary disclosure of nonwage related information. Further, an employer may request a background check that does not affirmatively seek wage history, except that if the background check discloses the applicant's wage history, the employer cannot rely on the wage history for purposes of determining wages, benefits, or other compensation for an applicant during the hiring process, including the negotiation for a contract for employment.[60]

# 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:<br>• 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;<br>• 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[61] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[62] if the employee purchases a qualified health plan through the exchange; and<br>• 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 |

[58] R.I. GEN. LAWS § 28-6-22.

[59] R.I. GEN. LAWS § 28-6-22.

[60] R.I. GEN. LAWS § 28-6-22.

[61] 26 U.S.C. § 36B.

[62] 42 U.S.C. § 18071.

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | all or a portion of such contribution may be excludable from income for federal income tax purposes.[63]<br><br>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.[64] |
| **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.[65]<br><br>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.[66] |
| **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.[67] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the |

[63] 29 U.S.C. § 218b.

[64] 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.

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

[66] 29 C.F.R. § 2590.606-1.

[67] 29 C.F.R. § 825.300(a).

| Table 2. Federal Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| | information provided includes, at a minimum, all of the information contained in that poster.[68]<br><br>Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[69] |
| **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.[70] 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.[71] |
| **Uniformed Services Employment and Reemployment Rights** | 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.[72] |

[68] 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.

[69] 29 C.F.R. § 825.300(a).

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

[71] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[72] 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** |
| **Act (USERRA) Documents** | |
| **Wage & Hour Documents** | To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[73] |

### 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: Paid Sick and Safe Leave** | Employers that impose a waiting period of up to 90 days for paid sick and safe leave use by new employees must notify new employees in writing of this requirement upon hire.[74] |
| **Benefits & Leave Documents: Temporary Caregiver Insurance** | Employers must give notice of an employee's disability insurance rights and benefits due to the employee's own sickness, injury, pregnancy, or the employee's need to provide care for any sick or injured family member or new child. Employers must give notice to each new employee and to each employee taking leave from work due to pregnancy or the need to provide care for any sick or injured family member or new child.[75] |
| **Fair Employment Practices Documents: Pregnancy, Childbirth & Related Conditions** | Employers with four or more employees must provide a written notice to new employees, at the commencement of their employment, informing them of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodations for conditions related to pregnancy, childbirth, or related conditions.[76] |

[73] 29 C.F.R. § 531.59.

[74] 260 R.I. CODE R. § 30-05-5.5.3(A)(1).

[75] R.I. GEN. LAWS §§ 28-41-15, 28-41-38.

[76] R.I. GEN. LAWS §§ 28-5-6(8)(i), 28-5-7.4(a)(4).

| Table 3. State Documents to Provide at Hire | |
|---|---|
| **Category** | **Notes** |
| **Fair Employment Practices Documents: Sexual Harassment Policy** | At the time of employment, employers with more than 50 employees must provide new employees a written copy of the employer's policy against sexual harassment. The policy must include:<br>• a statement that sexual harassment in the workplace is unlawful;<br>• a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation;<br>• a description and examples of sexual harassment;<br>• a statement of the range of consequences for employees found to have committed sexual harassment;<br>• a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person(s) to whom complaints should be made; and<br>• the identity of the appropriate state and federal employment discrimination enforcement agencies, as well as directions as to how to contact these agencies.[77] |
| **Fair Employment Practices Documents: Providence** | Employers that employ seven or more individuals within the City of Providence, or any person acting as an agent of an employer either directly or indirectly, must provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions to new employees. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.[78] |
| **Tax Documents** | Employers must provide employees with the state withholding certificate, Form RI W-4, Employee's Withholding Allowance Certificate. The state W-4 must be used to calculate state withholding and must be completed by new employees.[79] |
| **Wage & Hour Documents** | No notice requirement located. |

[77] R.I. GEN. LAWS §§ 28-51-1(a), 28-51-2(2).

[78] PROVIDENCE, R.I., CODE OF ORDINANCES § 16-57(d).

[79] This new guidance regarding use of the state withholding form is indicated on the RI W-4 itself, available at http://www.tax.ri.gov/forms/2020/Withholding/RI%20W-4%202020.pdf; *see also* R.I. GEN. LAWS § 44-30-71.

 

## 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.[80] 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).[81]

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

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

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

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

[81] 42 U.S.C. § 653a.

 

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

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

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

**Table 4. Multistate Employer New Hire Information**

| Contact By Mail or Fax | Contact Online |
|---|---|
| Department of Health and Human Services<br>Administration for Children and Families<br>Office of Child Support Enforcement<br>Multi-State Employer Registration<br>Box 509<br>Randallstown, MD 21133<br>Fax: (410) 277-9325 | Register online by submitting a multistate employer notification form over the internet.[82]<br><br>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 Rhode Island's new hire reporting law.[83]

**Who Must Be Reported.** Rhode Island employers must report all newly-hired employees to a state agency. They must also report any rehired employees who have been separated for 60 days or more. For purposes of calculating the duration of an employee's separation, termination of employment does not include temporary separations from employment, such as an unpaid leave of absence or a temporary layoff.[84]

Employees do not need to report the hiring or rehiring of independent contractors. That being said, employers must be sure they have properly classified workers as independent contractors rather than as employees.

Any employer that fails to report new hire information may be held liable for a civil penalty of $20 for each violation.[85] If it is demonstrated that the employer conspired with the employee to avoid reporting, a $500 civil penalty may be assessed by the Rhode Island Department of Labor and Training.[86]

**Report Timeframe.** Employers must complete this reporting requirement within 14 days of an employee's hire or reinstatement. If the report is submitted electronically or magnetically, an employer may submit

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

[83] R.I. GEN. LAWS §§ 15-24-2 *et seq*.

[84] R.I. GEN. LAWS §§ 15-24-2, 15-24-3, and 15-24-5.

[85] R.I. GEN. LAWS § 15-24-7.

[86] R.I. GEN. LAWS § 15-24-7.

the report twice per month (if needed), as long as the reports are transmitted no less than 12 days, but not more 15 days, apart.[87]

**Information Required.** According to the statute, the new hire report must include the employee's name, address, Social Security number, hire date, and the date that the employee first performed services for pay. It must also indicate the employer's name, address, and federal tax identification number, as well as information regarding whether the employer has employee dependent health care coverage available and the approximate date on which the employee may qualify for that coverage. The note must also include the address to which income withholding orders and garnishment should be sent.[88]

**Form & Submission of Report.** In making this report, the employer may submit the employee W-4 form, a paper list, or other approved document. The report may be submitted over the internet or by file transfer protocol, diskette, magnetic tape or cartridge, first-class mail, or fax.[89]

**Location to Send Information.**

Rhode Island New Hire Reporting Directory
P.O. Box 335
Holbrook, MA 02343
(888) 870-6461(ext. 200)
(888) 430-6907 (fax)
https://ri-newhire.com/

## 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

[87] R.I. GEN. LAWS § 15-24-5.

[88] R.I. GEN. LAWS § 15-24-5.

[89] R.I. GEN. LAWS § 15-24-5.

 

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

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

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

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

Rhode Island generally recognizes that legitimate purposes can be served by contracts in restraint of trade.[91] As these provisions are not favored, however, they remain subject to judicial scrutiny and will be enforced as written only if the contract is reasonable and does not extend beyond what is apparently necessary for the protection of those in whose favor it runs.[92] The reasonableness of a restrictive covenant is ultimately a question of law to be determined by the court.[93] A restrictive covenant is unreasonable if it places greater restrictions on a person than is required to protect the interest or imposes undue hardship on the person restrained.[94] Whether the covenant is reasonable depends on the restrictions in light of the employer's protectable interest.[95]

The party seeking to enforce a noncompetition provision must first show that the provision is ancillary to an otherwise valid transaction or relationship, such as an employment contract or a contract for the purchase and sale of a business.[96] The provision must further be supported by adequate consideration.[97] Finally, the party seeking to enforce the agreement must demonstrate the existence of a legitimate interest that the provision is designed to protect.[98]

Rhode Island noncompete law protects a range of legitimate interests. For example, confidential information, such as customer lists or proprietary computer software, is protectable.[99] Protection against

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[90] 18 U.S.C. §§ 1832 *et seq.*

[91] *Durapin, Inc. v. American Prods., Inc.*, 559 A.2d 1051, 1053 (R.I. 1989). Rhode Island invalidates noncompetes and patient nonsolicitation provisions for Rhode Island physicians. R.I. GEN. LAWS § 5-37-33.

[92] 559 A.2d at 1053; *see also Koppers Prods. Co. v. Readio*, 197 A. 441, 444-45 (R.I. 1938).

[93] *Durapin*, 559 A.2d at 1053.

[94] *Dial Media, Inc. v. Schiff*, 612 F. Supp. 1483, 1488 (D.R.I. 1985).

[95] *See Koppers Prods. Co.*, 197 A. 441.

[96] *Dial Media, Inc.*, 612 F. Supp. at 1488 (citing RESTATEMENT (SECOND) CONTRACTS § 187 (1981)).

[97] 612 F. Supp. at 1488 (citing *Wood v. May*, 438 P.2d 587, 589-90 (Wash. 1968)).

[98] *Dial Media, Inc.*, 612 F. Supp. at 1488; *see also BlueZ4 Corp. v. Macari*, 2017 WL 2620125 (R.I. Super. Ct. June 13, 2017).

[99] *Cranston Print Works Co. v. Pothier*, 848 A.2d 213, 220-21 (R.I. 2004); *McFarland v. Brier*, 769 A.2d 605, 608-09 (R.I. 2001); *see also Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 17 (1st Cir. 2009) (protecting proprietary information regarding products, pricing strategies, new developments, and customers was a legitimate interest).

misappropriation of a company's goodwill is also a legitimate interest.[100] Covenants are also enforced where the company trains the employee in unique or novel services in exchange for which the employee agrees not to use those skills in competition with the employer.[101] However, merely attempting to prevent a rival from competing or to restrain trade is not a legitimate interest.[102]

Beginning on January 15, 2020, the Rhode Island Noncompetition Agreement Act came into force. Under the law, a noncompetition agreement is not enforceable against the following types of workers:

- employees that are nonexempt under the federal Fair Labor Standards Act;
- undergraduate or graduate students participating in an internship or other short-term employment relationship while enrolled in an educational institution, whether paid or unpaid;
- employees aged 18 or younger; and
- low wage employees.

The law applies to all employers and employees. A *low-wage* employee is an employee whose average annual earnings are not more than 250% of the federal poverty level for individuals. For purposes of the law, independent contractors are not employees.

The law clarifies that it does not invalidate the remainder of any contract or agreement that contains unenforceable noncompetition provisions. Likewise, a restrictive covenant may be considered enforceable in certain circumstances. Under the new law, an employer may enter into an agreement with an employee not to share any trade secret information regarding the employer or employment, including after the employment relationship ends.

A *noncompetition agreement* is an agreement between an employer and employee, or otherwise arising out of an employment relationship, under which the employee or expected employee agrees that they will not engage in certain specified activities that are competitive with the employer after the relationship has ended. This includes forfeiture agreements. The definition does not include:

- covenants not to solicit or hire employees of the employer;
- covenants not to solicit or transact business with customers, clients, or vendors of the employer;
- noncompetition agreements made in the sale or division of a business entity or its assets, when the party restricted by the agreement is a significant owner of or member or partner in the business entity who will receive significant consideration or benefit from the sale;
- noncompetition agreements originating outside of an employment relationship;
- forfeiture agreements;
- nondisclosure or confidentiality agreements;

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[100] *Dial Media*, *Inc. v. Schiff*, 612 F. Supp. 1483, 1489 (D.R.I. 1985); *see also R.J. Carbone Co. v. Regan*, 582 F. Supp. 2d 220, 225 (D.R.I. 2008) (enforcing agreement against salesman based on potential appropriation of company goodwill).

[101] *Dial Media, Inc.*, 612 F. Supp. at 1489; *see also R.J. Carbone Co.*, 582 F. Supp. 2d at 225.

[102] *Max Garelick*, *Inc. v. Leonardo*, 250 A.2d 354, 357-58 (R.I. 1969).

 

- invention assignment agreements;
- noncompetition agreements made in separation from employment if the employee is granted seven business days to rescind acceptance; or
- agreements not to reapply for employment to the same employer after termination.[103]

**Enforceability Following Employee Discharge.** There is no case law or statutory provision guiding whether a noncompete remains enforceable following an employee's termination.

### 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.

To be enforceable in Rhode Island, a covenant not to compete must be supported by adequate consideration.[104] The signing of a covenant not to compete at the outset of employment, and as a condition of employment, will typically be deemed to be adequate consideration.[105]

It is unclear, however, whether continued employment alone is sufficient consideration to support a noncompetition agreement.[106] The Rhode Island Supreme Court has not decided that question. Nor has it decided whether changes in the terms and conditions of employment constitute consideration sufficient to support a covenant not to compete executed after the inception of employment.[107] For example, the Rhode Island Supreme Court has not addressed whether a promotion or raise would be adequate consideration to support a restrictive covenant presented to an existing employee.

### 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

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[103] R.I. GEN. LAWS §§ 28-58-2; 28-53-3.

[104] *Durapin, Inc. v. American Prods., Inc.*, 559 A.2d 1051, 1053 (R.I. 1989).

[105] 559 A.2d at 1053.

[106] In a 2008 decision, a Rhode Island superior court stated that continued employment was adequate consideration, but the defendants signed the noncompete at issue at hire and upon agreement to a specified salary. *See Aim High Acad., Inc. v. Jessen*, 2008 WL 5325586 (R.I. Super. Ct. Dec. 10, 2008); *see also R.J. Carbone Co.*, 582 F. Supp. 2d 220 (continued employment provides adequate consideration).

[107] *See Dial Media, Inc. v. Schiff*, 612 F. Supp. 1483 (D.R.I. 1985). *But see Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 15-16 (1st Cir. 2009) (applying Massachusetts law to determine whether a "material change" in job duties would invalidate a noncompetition agreement, without deciding whether that rule applied in Rhode Island).

 

attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Courts in Rhode Island will modify (or "blue pencil") an overly-broad restrictive covenant to make it reasonable and therefore enforceable.[108] Specifically, a court will attempt to modify an unreasonable covenant and enforce it to the extent that it is reasonably necessary to protect the promisee's legitimate interests, if that can be done without imposing undue hardship on the promisor (typically, the employee).

Nonetheless, Rhode Island courts may decline to blue pencil an agreement if it would adversely affect the public interest or if the circumstances indicate bad faith, or deliberate overreaching, on the part of the promisee (typically, the employer).

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

Employer trade secrets can be protected under Rhode Island law in two ways. First, trade secrets may be protected by restrictive covenants, as with the noncompetes discussed above.[109]

Second, Rhode Island has adopted a version of the federal Uniform Trade Secrets Act.[110] The statute provides a cause of action for a misappropriation of a trade secret. Broadly, *misappropriation* is the acquisition of a trade secret by improper means or disclosure of a trade secret without express or implied consent.[111] A *trade secret* is information that derives its value from being not generally known (or readily ascertainable by proper means), and is the subject of reasonable efforts to maintain its secrecy.[112] Examples of trade secrets include technical knowledge about the engineering of company products,[113] customer lists and information,[114] and computer databases.[115]

A claimant, such as an employer, does not need to prove that the defendant-employee benefited in any way from the misappropriation.[116] The claimant may seek an injunction issued against the party that

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[108] *Durapin, Inc.*, 559 A.2d at 1058; *see also F. Saia Rests., L.L.C. v. Pat's Italian Food to Go, Inc.*, 2012 WL 2133511, at *7 (R.I. Super. Ct. June 5, 2012) (Rhode Island courts may "blue pencil" noncompetition agreements); *R.J. Carbone Co. v. Regan*, 582 F. Supp. 2d 220, 226 (D.R.I. 2008) (courts may modify or "blue pencil" noncompetes to make them reasonable and enforceable).

[109] *See McFarland v. Brier*, 769 A.2d 605, 609 (R.I. 2001).

[110] R.I. GEN. LAWS §§ 6-41-1 *et seq.*

[111] R.I. GEN. LAWS § 6-41-1(2); *see also Bay Area Mobile Med., L.L.C. v. Colagiovanni*, 2010 WL 5091262 (R.I. Super. Ct. Dec. 8, 2010) (circumstantial evidence of the misappropriation sufficient to overcome summary judgment).

[112] R.I. GEN. LAWS § 6-41-1(4); *see also APG, Inc. v. MCI Telecomms. Corp.*, 436 F.3d 294, 306 (1st Cir. 2006) (fact that drug store chain wanted to purchase phone cards was ascertainable from legitimate business channels, and therefore not a trade secret).

[113] *Dryvit Sys., Inc. v. Healy*, 1989 WL 1110572, at **2-5 (R.I. Super. Ct. Apr. 26, 1989).

[114] *Paramount Office Supply v. MacIsaac, Inc.*, 524 A.2d 1099 (R.I. 1987).

[115] *Nestle Food Co. v. Miller*, 836 F. Supp. 69 (D.R.I. 1993).

[116] *See Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 18 (1st Cir. 2009).

 

misappropriated or has threatened to misappropriate a trade secret.[117] The claimant may also seek monetary damages and other remedies for the misappropriation.[118]

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

Rhode Island has no statute 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.[119] |
| **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.[120] |
| **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.[121] |

[117] R.I. GEN. LAWS § 6-41-2.

[118] R.I. GEN. LAWS §§ 6-41-3, 6-41-4; *see also Astro-Med, Inc.*, 591 F.3d 1 (affirming verdict for $1,159,823 for violation of trade secret statute; award included actual damages, exemplary damages, and fees).

[119] 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.

[120] 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.

[121] 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.[122] |
| **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.[123] |
| **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.[124] |
| **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.[125] |
| **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.[126] |
| 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 |

[122] 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.

[123] 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.

[124] 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.

[125] 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.

[126] 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.[127] 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.[128] |
| **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.[129] |
| **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.[130] |
| **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.[131] |
| **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 |

[127] 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.

[128] 41 C.F.R. §§ 60-300.44, 60-741.44.

[129] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[130] 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.

[131] 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.[132] |
| **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.[133] |
| **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.[134] |
| **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.[135]<br><br>**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.<br><br>**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).[136] |

[132] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[133] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[134] 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.

[135] 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.

[136] 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.[137] |
| **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.[138] |

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

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

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Benefits & Leave: Continuation of Health Care Coverage Notice (Mini-COBRA)** | Employers that provide employees with a group hospital, surgical, or medical insurance plan must post a conspicuous notice to the employees of their continuation options upon termination of employment or other qualifying event.[139] |
| **Benefits & Leave: Rhode Island Parental and Family Medical Leave** | Employers with 50 or more employees must post this notice, summarizing the state's parental and family leave law, in conspicuous places where notices to employees and employment applicants are customarily posted.[140] |

[137] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[138] 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.

[139] R.I. GEN. LAWS § 27-19.1-1(f). Employers must create their own form to satisfy this posting requirement, based on the specifics of any applicable insurance law or plan.

[140] R.I. GEN. LAWS § 28-48-10. This poster is available at https://dlt.ri.gov/documents/requiredposters/familyleave.pdf. The necessary information is also included as part of the Department of Labor and Training's "combination poster," which includes required information about numerous laws and is available in English, Spanish, and Portuguese. *See* R.I. Dep't of Labor and Training, Labor

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| **Child Labor Law** | Employers with five or more employees, or an employer that employs anyone under 16 years old, must post notice in each work room where minors are employed. The notice summarizes the occupation and hour restrictions applicable to minors.[141] |
| **Fair Employment Practices: Discrimination Is Illegal** | All employers with four or more employees must post this notice in a conspicuous place, informing employees of their right to be free from harassment and discrimination and who to contact in order to file a complaint.[142] |
| **Fair Employment Practices: Pregnancy, Childbirth, and Related Conditions** | All employers with four or more employees must post this notice in a conspicuous place accessible to employees, informing them of their right to be free from discrimination based on pregnancy, childbirth, and related conditions and who to contact to request a reasonable accommodation.[143] |
| **Fair Employment Practices: Pay Equity Poster** | Employers must post a notice, to be prepared or approved by the Director of Labor and Training , setting forth excerpts of the "Wage Discrimination Based on Sex" laws and other relevant information which the Director deems necessary to explain the law to the employees.[144] |
| **Fair Employment Practices: Providence** | Employers that employ seven or more individuals within the City of Providence, or any person acting as an agent of an employer either directly or indirectly, must post a workplace poster covering protections under the local fair employment ordinance.[145] |
| **Public Works Contracts: Notice of Prevailing Wage** | All employers (contractors or subcontractors) that work on state- or municipal-financed construction projects must post this notice in |

Market Information, *Notice to All Employees – Information Employers Must Post* (rev. Apr. 2008), *available at* https://www.dol.gov/agencies/ofccp/posters [hereinafter *Combination Poster*].

[141] R. I. GEN. LAWS §§ 28-3-8, 28-3-19. This poster is available at https://dlt.ri.gov/documents/requiredposters/ChildLaborPoster.pdf. It is also included in the *Combination Poster*, *available at* https://dlt.ri.gov/documents/requiredposters/combopost.pdf.

[142] R.I. GEN. LAWS § 28-5-37. This poster is available at https://dlt.ri.gov/documents/requiredposters/DiscriminationPoster.pdf.

[143] R.I. GEN. LAWS § 28-5-7.4(a)(4). This poster is available at https://dlt.ri.gov/documents/requiredposters/PregDiscrimNoticeJuly2015.pdf.

[144] R.I. GEN. LAWS § 28-6-18. This poster is available at https://dlt.ri.gov/employers/required-workplace-posters.

[145] PROVIDENCE, R.I., CODE OF ORDINANCES § 16-84. An employer may prepare this notice, which is subject to approval by the Providence Human Relations Commission. It must set forth excerpts of the ordinance and other relevant information that explains the protections under the ordinance. PROVIDENCE, R.I., CODE OF ORDINANCES § 16-84.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | conspicuous places on the project, informing employees of their rights and how to file a complaint.[146] |
| **Unemployment Compensation** | All employers must provide this notice, which summarizes unemployment and temporary disability benefits, as well as services available to employees if they need help finding a new job.[147] |
| **Wages, Hours & Payroll: Minimum Wage Poster & Applicable Wage Orders** | All employers must post this notice, concerning minimum wage rates and related issues, in a conspicuous place where employees work.[148] |
| **Wages, Hours & Payroll: Wage Payment Change Notification** | All employers must provide written notice (either to employees personally or by posted notice), informing employees of any change in the scheduled payday, at least three days in advance.[149] |
| **Whistleblowers Protection Act** | Employers should post notices and use other appropriate means to inform employees about their rights under the whistleblower statute. Notice must be posted in all languages known to be spoken by employees.[150] |
| **Workers' Compensation** | All employers must post this notice in a conspicuous place, summarizing employee rights under the law and informing them of the employer's workers' compensation insurance company.[151] |
| **Workplace Safety: Hazardous Substances** | All employers must post this notice in a conspicuous place where it is available to employees. The notice informs employees that they have a |

[146] R.I. GEN. LAWS § 37-13-11. This poster is available in English at https://dlt.ri.gov/documents/requiredposters/prevwage.pdf and in Spanish at https://dlt.ri.gov/documents/requiredposters/prevwagesp.pdf.

[147] R.I. GEN. LAWS § 28-44-38(a); 260 R.I. CODE R. § 40-05-1.6. This poster is available at https://dlt.ri.gov/documents/requiredposters/uitdiposter.pdf. It is also included in the *Combination Poster, available at* https://dlt.ri.gov/documents/requiredposters/combopost.pdf.

[148] R.I. GEN. LAWS § 28-12-11. This poster is available in English at https://dlt.ri.gov/documents/requiredposters/minwage.pdf and in Spanish at https://dlt.ri.gov/documents/requiredposters/minwagesp.pdf. It is also included in the *Combination Poster*, *available at* https://dlt.ri.gov/documents/requiredposters/combopost.pdf.

[149] R.I. GEN. LAWS § 28-14-2.

[150] R.I. GEN. LAWS § 28-50-8. Employers must create their own form to satisfy this posting requirement.

[151] R.I. Gen. Laws § 28-29-13(a). This poster is available in English at https://dlt.ri.gov/documents/requiredposters/wcenglish.pdf and Spanish at https://dlt.ri.gov/documents/requiredposters/wcspanish.pdf. It is also included in the *Combination Poster, available at* https://dlt.ri.gov/documents/requiredposters/combopost.pdf.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | right to know what hazardous substances are present in the workplace.[152] |
| **Workplace Safety: No Smoking Signs** | Generally speaking, smoking is prohibited in enclosed facilities within places of employment. Employers must communicate this policy to all employees and to prospective employees upon their application for employment.[153]<br><br>Moreover, no smoking signs must be clearly and conspicuously posted at the entrance of every place of employment where smoking is prohibited. The signs must include the statement: "It is Illegal to Smoke in this Establishment. To report a violation call Rhode Island Department of Health: 410-222-3293."[154] |
| **Workplace Safety: Use of Latex Gloves Notification** | Regulated employers utilizing latex gloves must post notice, in conspicuous areas, to employees and the public about the dangers and what to do in the event of an allergic reaction. No particular form has been specified, but the notice must be posted in English, Spanish, and other languages served by the employer. It should use letters that are at least 3/8 of an inch high.[155] |
| **Veterans' Benefits and Services Poster** | **Effective January 1, 2025,** employers with more than 50 full-time equivalent employees must display a poster that contains basic information on various benefits and services available to military veterans. Employers must display the poster in a conspicuous place accessible to employees in the workplace. The poster will contain, at minimum, information regarding the following services:<br>• contact and website information for the Office of Veterans Services and the Department of Labor's veterans' program;<br>• substance abuse and mental health treatment;<br>• educational, workforce, and training resources;<br>• tax benefits;<br>• Rhode Island state veteran drivers' licenses and non-driver identification cards;<br>• eligibility for unemployment insurance benefits under state and/or federal law;<br>• legal services; and |

[152] R.I. GEN. LAWS § 28-21-1. This poster is available at https://dlt.ri.gov/documents/requiredposters/righttoknow.pdf. It is also included in the *Combination Poster, available at* https://dlt.ri.gov/documents/requiredposters/combopost.pdf.

[153] R.I. GEN. LAWS §§ 23-20.10-4; 23-20.10-2(19).

[154] R.I. GEN. LAWS § 23-20.10-7. This poster is available at https://health.ri.gov/publications/bytopic.php?parm=Tobacco.

[155] R.I. GEN. LAWS § 23-73-2.

| Table 6. State Posting & Notice Requirements | |
|---|---|
| **Poster or Notice** | **Notes** |
| | • contact information for the United States Department of Veterans Affairs veterans crisis line.[156] |

### 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:*<br>• employee's name, address, and date of birth;<br>• occupation;<br>• rate of pay; and<br>• compensation earned each week.[157] | 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:*<br>• job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual;<br>• promotion, demotion, transfer, selection for training, recall, or discharge of any employee;<br>• job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;<br>• test papers completed by applicants which disclose the results of any employment test considered by the employer;<br>• results of any physical examination considered by the employer in connection with a personnel action; and<br>• any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[158] | At least 1 year from the date of the personnel action to which any records relate. |

[156] R.I. GEN. LAWS § 28-60-1.

[157] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[158] 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:*<br>• employee benefit plans, such as pension and insurance plans; and<br>• copies of any seniority systems and merit systems in writing.[159] | 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:*<br>• requests for reasonable accommodation;<br>• application forms submitted by applicants;<br>• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination;<br>• rates of pay or other terms of compensation; and<br>• selection for training or apprenticeship.[160] | 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:*<br>• 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<br>• retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[161] | 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** | An employer must keep and maintain its Employer Information Report (EEO-1).[162] | Most recent form must be |

[159] 29 C.F.R. § 1627.3(b).

[160] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[161] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[162] 29 C.F.R. § 1602.7.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Disabilities Act (ADA): Other** | | retained for 1 year. |
| **Employee Polygraph Protection Act (EPPA)** | *Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:*<br>• 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;<br>• the notice to the examiner identifying the person to be examined;<br>• copies of opinions, reports, or other records given to the employer by the examiner;<br>• 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<br>• 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.[163] | 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.[164] | 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).[165] | 3 years. |

[163] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[164] 29 U.S.C. § 1027.

[165] 29 C.F.R. § 1620.32(a).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Equal Pay Act: Other** | *Covered employers must maintain any additional records made in the regular course of business relating to:*<br>• payment of wages;<br>• wage rates;<br>• job evaluations;<br>• job descriptions;<br>• merit and seniority systems;<br>• collective bargaining agreements; and<br>• other matters which describe any pay differentials between the sexes.[166] | At least 2 years. |
| **Fair Labor Standards Act (FLSA): Payroll Records** | *Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth, if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins;<br>• regular hourly rate of pay for any workweek in which overtime compensation is due;<br>• basis on which wages are paid (pay interval);<br>• amount and nature of each payment excluded from the employee's regular rate;<br>• hours worked each workday and total hours worked each workweek;<br>• total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;<br>• total premium pay for overtime hours;<br>• total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments;<br>• total wages paid each pay period;<br>• date of payment and the pay period covered by the payment;<br>• records of retroactive payment of wages, including the amount of such payment to each employee, the period | 3 years from the last day of entry. |

[166] 29 C.F.R. § 1620.32(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | covered by the payment, and the date of the payment; and<br>• for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[167] 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:*<br>• a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;<br>• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070);<br>• 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);<br>• 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<br>• hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[168] | |
| **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:*<br>• full name and any identifying symbol used in place of name on time or payroll records;<br>• home address with zip code;<br>• date of birth if under 19;<br>• sex and occupation in which employed;<br>• time of day and day of week on which the employee's workweek begins; | 3 years from the last day of entry. |

[167] 29 C.F.R. §§ 516.2, 516.5.

[168] 29 C.F.R. § 516.28.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • total wages paid each pay period;<br>• date of payment and the pay period covered by the payment; and<br>• basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[169] | |
| **Fair Labor Standards Act (FLSA): Agreements & Other Records** | *In addition to payroll information, employers must preserve agreements and other records, including:*<br>• collective bargaining agreements and any amendments or additions;<br>• individual employment contracts or, if not in writing, written memorandum summarizing the terms;<br>• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);<br>• certain plans and trusts under FLSA section 7(e);<br>• certificates and notices listed or named in the FLSA; and<br>• sales and purchase records.[170] | 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:*<br>• basic time and earning cards or sheets;<br>• wage rate tables;<br>• order, shipping, and billing records; and<br>• records of additions to or deductions from wages.[171] | 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:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours per pay period;<br>• additions to or deductions from wages and total compensation paid;<br>• dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, | At least 3 years. |

[169] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[170] 29 C.F.R. § 516.5.

[171] 29 C.F.R. § 516.6.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | and leave so designated may not include leave required under state law or an employer plan not covered by FMLA);<br>• if FMLA leave is taken in increments of less than one full day, the hours of the leave;<br>• copies of employee notices of leave furnished to the employer under the FMLA, if in writing;<br>• copies of all general and specific notices given to employees in accordance with the FMLA;<br>• any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;<br>• premium payments of employee benefits; and<br>• 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.<br><br>*Covered employers with no eligible employees must only maintain the following records:*<br>• basic payroll and identifying employee data, including name, address, and occupation;<br>• rate or basis of pay and terms of compensation;<br>• daily and weekly hours worked per pay period;<br>• additions to or deductions from wages; and<br>• total compensation paid.<br><br>*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.*<br><br>*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:*<br>• FMLA eligibility is presumed for any employee employed at least 12 months; and | |

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • 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.<br><br>*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.[172] | |
| **Federal Insurance Contributions Act (FICA)** | *Employers must keep FICA records, including:*<br>• copies of any return, schedule, or other document relating to the tax;<br>• 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:<br>▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card;<br>▪ 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;<br>▪ amount of each such remuneration payment that constitutes wages subject to tax;<br>▪ 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 | At least 4 years after the date the tax is due or paid, whichever is later. |

[172] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | time such payment was made, the date collected; and<br>▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this;<br>• the details of each adjustment or settlement of taxes under FICA; and<br>• 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).[173] | |
| **Immigration** | Employers must retain all completed Form I-9s.[174] | 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:*<br>• 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.[175] | 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** | *Employers are required to maintain records reflecting all remuneration paid to each employee, including:*<br>• employee's name, address, and account number; | 4 years after the return is due or the tax is paid, |

[173] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[174] 8 C.F.R. § 274a.2.

[175] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Payment Records** | • total amount and date of each payment;<br>• the period of services covered by the payment;<br>• the amount of remuneration that constitutes wages subject to withholding;<br>• the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected;<br>• an explanation for any discrepancy between total remuneration and taxable income;<br>• the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and<br>• other supporting documents relating to each employee's individual tax status.[176] | whichever is later. |
| **Income Tax: W-4 Forms** | Employers must retain all completed Form W-4s.[177] | 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:*<br>• total amount of remuneration paid to employees during the calendar year for services performed;<br>• amount of such remuneration which constitutes wages subject to taxation;<br>• 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;<br>• information required to be shown on the tax return and the extent to which the employer is liable for the tax;<br>• an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and<br>• the dates in each calendar quarter on which each employee performed services not in the course of the | At least 4 years after the later of the date the tax is due or paid for the period covered by the return. |

[176] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[177] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | employer's trade or business, and the amount of the cash remuneration paid for those services.[178] | |
| **Workplace Safety / the Fed-OSH Act: Exposure Records** | *Employers must preserve and retain employee exposure records, including:*<br>• environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained;<br>• biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and<br>• 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.<br><br>*Exceptions to this requirement include:*<br>• 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;<br>• 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<br>• biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[179] | At least 30 years. |
| **Workplace Safety / the Fed-OSH Act: Medical Records** | *Employers must preserve and retain "employee medical records," including:*<br>• medical and employment questionnaires or histories;<br>• results of medical examinations and laboratory tests; | Duration of employment plus 30 years. |

[178] 26 C.F.R. § 31.6001-4.

[179] 29 C.F.R. § 1910.1020(d).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • medical opinions, diagnoses, progress notes, and recommendations;<br>• first aid records;<br>• descriptions of treatments and prescriptions; and<br>• employee medical complaints.<br><br>*"Employee medical record" does not include:*<br>• physical specimens;<br>• records of health insurance claims maintained separately from employer's medical program;<br>• records created solely in preparation for litigation that are privileged from discovery;<br>• records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and<br>• 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.[180] | |
| **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.[181] | At least 30 years. |
| **Workplace Safety: Injuries and Illnesses** | *Employers must preserve and retain records of employee injuries and illnesses, including:*<br>• OSHA 300 Log;<br>• the privacy case list (if one exists);<br>• the Annual Summary;<br>• OSHA 301 Incident Report; and<br>• old 200 and 101 Forms.[182] | 5 years following the end of the calendar year that the record covers. |

[180] 29 C.F.R. § 1910.1020(d).

[181] 29 C.F.R. § 1910.1020(d).

[182] 29 C.F.R. §§ 1904.33, 1904.44.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations. | | |
| **Affirmative Action Programs (AAP)** | *Contractors required to develop written affirmative action programs must maintain:*<br>• current AAP and documentation of good faith effort; and<br>• AAP for the immediately preceding AAP year and documentation of good faith effort.[183] | Immediately preceding AAP year. |
| **Equal Employment Opportunity: Personnel & Employment Records** | *Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:*<br>• 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;<br>• other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and<br>• 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;<br>▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; | 3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later."<br><br>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, |

[183] 41 C.F.R. § 60-1.12(b).

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor).<br><br>*Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:*<br>• gender, race, and ethnicity of each employee; and<br>• where possible, the gender, race, and ethnicity of each applicant or internet applicant.[184] | whichever occurs later. |
| **Equal Employment Opportunity: Complaints of Discrimination** | *Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:*<br>• 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<br>• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[185] | 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:*<br>• name, address, and Social Security number;<br>• occupation(s) or classification(s);<br>• rate or rates of wages paid;<br>• number of daily and weekly hours worked;<br>• any deductions made; and<br>• total wages paid.<br><br>These records must be available for inspection and transcription by authorized representatives of the Wage | 3 years. |

[184] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[185] 41 C.F.R. §§ 60-1.12, 60-741.80.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | 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.[186] | |
| **Paid Sick Leave Under Executive Order No. 13706** | *Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:*<br>• employee's name, address, and Social Security number;<br>• employee's occupation(s) or classification(s);<br>• rate(s) of wages paid (including all pay and benefits provided);<br>• number of daily and weekly hours worked;<br>• any deductions made;<br>• total wages paid (including all pay and benefits provided) each pay period;<br>• a copy of notifications to employees of the amount of accrued paid sick leave;<br>• 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;<br>• 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);<br>• a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests;<br>• 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;<br>• any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave;<br>• the relevant covered contract;<br>• the regular pay and benefits provided to an employee for each use of paid sick leave; and<br>• any financial payment made for unused paid sick leave upon a separation from employment intended to | During the course of the covered contract as well as after the end of the contract. |

[186] 29 C.F.R. § 23.260.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | relieve a contractor from its reinstatement obligation.[187] | |
| **Davis-Bacon Act** | *Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents);<br>• daily and weekly number of hours worked; and<br>• deductions made and actual wages paid.<br><br>*Contractors employing apprentices or trainees under approved programs must maintain written evidence of:*<br>• registration of the apprenticeship programs;<br>• certification of trainee programs;<br>• the registration of the apprentices and trainees;<br>• the ratios and wage rates prescribed in the program; and<br>• worker or employee employed in conjunction with the project.[188] | At least 3 years after the work. |
| **Service Contract Act** | *Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:*<br>• name, address, and Social Security number;<br>• work classification;<br>• rates of wage;<br>• fringe benefits;<br>• total daily and weekly compensation;<br>• the number of daily and weekly hours worked;<br>• any deductions, rebates, or refunds from daily or weekly compensation;<br>• list of wages and benefits for employees not included in the wage determination for the contract; | At least 3 years from the completion of the work records containing the information. |

[187] 29 C.F.R. § 13.25.

[188] 29 C.F.R. § 5.5.

| Table 7. Federal Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and<br>• a copy of the contract.[189] | |
| **Walsh-Healey Act** | *Walsh-Healey Act supply contractors must keep the following records:*<br>• wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week;<br>• the period in which each employee was engaged on a government contract and the contract number;<br>• name, address, sex, and occupation;<br>• date of birth of each employee under 19 years of age; and<br>• a certificate of age for employees under 19 years of age.[190] | At least 3 years from the last date of entry. |

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

Table 8 summarizes the state record-keeping requirements.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| **Income Tax** | All business corporation taxpayers must keep records, render statements, make returns, and comply with rules and regulations, not inconsistent with law.[191] | 3 years. |
| **Public Works Contracts** | *Each contractor awarded a contract with a price in excess of $1,000 for public works, and each subcontractor who performs work on the public works, must keep an accurate record showing:*<br>• name and occupation of each worker;<br>• actual wages paid to each worker; and | None specified. |

[189] 29 C.F.R. § 4.6.

[190] 41 C.F.R. § 50-201.501.

[191] R.I. GEN. LAWS § 44-11-9.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | • the payment of employee funds in connection with the contract or work.[192] | |
| **Temporary Disability Insurance** | *All employers shall make and keep records of the following information:*<br>• all persons employed by the employer;<br>• weekly hours worked by each employee;<br>• weekly wages paid to each employee; and<br>• reports covering individuals employed, on employment, wages, hours, unemployment, and related matters.[193] | None specified. Records must be open to inspection at any reasonable time. |
| **Unemployment Insurance** | *All employers must maintain:*<br>• true and accurate employment records, including the weekly hours worked and weekly wages paid;<br>• records containing any other information that the director may prescribe; and<br>• reports covering individuals employed, on employment, wages, hours, unemployment, and related matters as necessary to the effective administration of the unemployment laws.<br><br>*For each worker, this requirement includes:*<br>• name, address, and Social Security number;<br>• rate of pay and effective date of such rate;<br>• number of hours worked each day;<br>• last day of employment and reason for termination; and<br>• for each pay period—<br>▪ amount of cash wages for the specified period, including vacation pay, holiday pay, and bonuses;<br>▪ cash value of any wages paid in any medium other than cash;<br>▪ commissions, and special payments such as bonuses, tips, and dismissal wages, and the period for which they were made;<br>▪ payments for allowances or reimbursements for traveling and other business expenses attributable to business (such amounts must be recorded in the employer's books in a separate expense account maintained for each employee); and | 4 years from the date taxes are due or paid, whichever is later. |

[192] R.I. GEN. LAWS § 37-13-12.

[193] R.I. GEN. LAWS § 28-39-14.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | ▪ time lost because the worker was not available for work during normal customary work hours.<br><br>Employers taking tip credits must also retain certified agreements with employees that they received tips and gratuities in an amount exceeding the tip credit.[194] | |
| **Wages, Hours & Payroll: General** | *All employers must maintain records, for each and every employee, including:*<br>• name, address, and occupation;<br>• rate of pay;<br>• amount paid each pay period; and<br>• hours worked each day and each workweek (time in and out).<br><br>There are no exceptions to this requirement. Records must be kept in or about the premises where any employee is employed.[195] | Not less than 3 years. |
| **Workplace Safety: General** | *All employers must maintain records of:*<br>• work-related deaths;<br>• work-related injuries and illnesses (other than minor injuries requiring only first aid and that do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job); and<br>• employee exposures to potentially toxic materials or harmful agents that are required to be monitored or measured.[196] | None specified. |
| **Workplace Safety: Hazardous Communication** | *Employers that use, transport, store, or otherwise expose employees to toxic or hazardous substances must maintain and make available:*<br>• a list of hazardous substances to which employees may be exposed, which must be readily available to employees during all hours of operation;<br>• chemical identification lists, with common and trade name of substances present in the workplace in alphabetical order, cross-referenced to chemical names; for mixtures, the list must contain the chemical | Annual chemical identification lists must be kept for 30 years. No other period specified.<br><br>Employers also must ensure |

[194] R.I. GEN. LAWS § 28-42-38; 260 R.I. CODE R. § 40-05-1.5.

[195] R.I. GEN. LAWS §§ 28-12-12, 28-14-12.

[196] R.I. GEN. LAWS § 28-20-11.

| Table 8. State Record-Keeping Requirements | | |
|---|---|---|
| **Records** | **Notes** | **Retention Requirement** |
| | and/or trade names of any mixture that contains designated substances present in amounts greater than 1% of a volume of more than two gallons or 10 pounds within the workplace except in the case of carcinogens, mutagen, or teratogen which must be reported if they are present in amounts of one part per 10,000 by volume or greater;<br>• a material safety data sheet (MSDS) for each designated substance or mixture containing the designated substance that must conform to the federal regulations on preparing material safety data sheets, 29 C.F.R. 1910.1200(g);<br>• a written outline of the Right-to-Know training program, including how the employer will inform workers of chemical hazards, nature of protective measures adopted for workers' protection, nature of the Rhode Island Right-to-Know law, and how labeling, lists and the MSDS program works; and<br>• an annually updated chemical identification list and documentation of training provided.[197] | that records are available for examination during all hours of operation. |

### 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*

Rhode Island has enacted a statute governing employees' access to their personnel files. The statute defines *personnel file* as records used to determine an employee's qualifications for employment, promotion, additional compensation, termination, or other disciplinary action.[198]

By law, employees may inspect their personnel file or records up to three times per calendar year. An employer has seven working days to respond to an employee's written request to view their personnel file. Inspection of personnel file must take place at a reasonable time other than the employee's work hours. The inspection must be done in the presence of the employer or their designee. An employee is not permitted to make copies; however, the employee may request copies from the employer. The employer may charge a fee reasonably related to the cost of supplying the requested copies.[199]

[197] R.I. GEN. LAWS §§ 28-20-11, 28-21-1, 28-21-3, and 28-21-9.

[198] R.I. GEN. LAWS § 28-6.4-1(a)(1).

[199] R.I. GEN. LAWS § 28-6.4-1.

The employer is not required to provide access to: (1) records of an employee relating to the investigation of a possible criminal offense or records prepared for use in any civil, criminal, or grievance proceedings; (2) any letter of reference or recommendations; (3) managerial records kept or used only by the employer; (4) confidential reports from previous employers; or (5) managerial planning records.[200]

Note that Rhode Island also has provisions related to the confidentiality of medical records, which are not covered in this publication.[201]

## 3.2 Privacy Issues for Employees

### 3.2(a) *Background Screening of Current Employees*

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

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

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

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

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

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

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

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

Testing of current employees is more narrowly permitted in Rhode Island than testing of applicants. An employer may request an employee undergo testing as a condition of continued employment, only if eight criteria are satisfied, as set forth in the pertinent statute.[202] Generally speaking, employers may require that employees submit to such tests if:

1. "[t]he employer has reasonable grounds to believe based on specific aspects of the employee's job performance and specific contemporaneous documented observations, concerning the employee's appearance, behavior or speech that the employee may be under the influence of a controlled substance, which may be impairing his or her ability to perform his or her job;"203
2. the testing is completed in private;
3. an employee testing positive is not terminated but is referred to a substance abuse professional; additional testing still may be required by the employer, and the employee may be terminated if further testing reveals continued illegal use;
4. positive tests are confirmed by a federally certified laboratory;
5. the employer provides the opportunity for the employee to have the sample tested by an independent facility, at the employer's expense;

[200] R.I. GEN. LAWS § 28-6.4-1(a)(4).

[201] R.I. GEN. LAWS §§ 5-37.3-1 *et seq.*

[202] R.I. GEN. LAWS § 28-6.5-1.

[203] R.I. GEN. LAWS § 28-6.5-1(a)(1).

6. "[t]he employer provides the test to the employee with a reasonable opportunity to rebut or explain the results;"204
7. the employer has established a drug abuse prevention policy; and
8. the results of any test confidential remain confidential, except that the employer might disclose the results of a "positive" test to other employees with a job-related need to have that information, and might need to disclose to defend against any legal action brought by the employee.

An employer that violates the drug testing statute is guilty of a misdemeanor punishable by a fine of not more than $1,000 or not more than one year in jail, or both.[205]

### 3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[206]

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

Rhode Island has laws concerning medical and recreational marijuana.

Concerning antidiscrimination protections, Rhode Island employers cannot refuse to employ, or otherwise penalize, a person solely for their status as a cardholder eligible for medical marijuana.[207] A state superior court held an employer violated the medical marijuana law when it denied employment to an applicant because she informed the employer she would not pass the mandatory pre-hire drug test due to medical marijuana use.[208] Concerning the Rhode Island Civil Rights Act (RICRA), it held "[an applicant's] status as a medical marijuana cardholder signaled [she was disabled] – she could not have obtained such a card without a debilitating medical condition that would cause her to be disabled. . . . It is irrelevant that [an employer] did not know her precise disability;" for purposes of the RICRA, it is irrelevant whether a medical marijuana user's drug use is considered illegal under federal law.[209]

Under the medical marijuana law, an employer is not required to accommodate the medical use of marijuana in the workplace.[210] However, a state superior court judge held that "changing the unwritten practice [under a drug screening policy] not to automatically disqualify a cardholder who tests positive for marijuana would be deemed a reasonable accommodation" under the Rhode Island Civil Rights Act.[211]

Similarly, under the recreational marijuana law, employers are not required to accommodate cannabis use or possession, or being under the influence of cannabis, in any workplace or cannabis use in any other location while an employee is performing work, including remote work.[212] Employers may implement drug

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204 R.I. GEN. LAWS § 28-6.5-1(a)(6).

205 R.I. GEN. LAWS § 28-6.5-1(b). There are several exceptions to the law. *See* R.I. GEN. LAWS § 28-6-.5-1(e)–(f).

206 21 U.S.C. §§ 811-12, 841 *et seq*.

207 R.I. GEN. LAWS § 21-28.6-4.

208 *Callaghan v. Darlington Fabrics Corp.,* 2017 WL 2321181 (R.I. Super. Ct. May 23, 2017).

209 2017 WL 2321181.

210 R.I. GEN. LAWS §§ 21-28.6-7(b), 21-28.11-29(b)(2); 216 R.I. CODE R. § 20-10-3.11.

211 *Callaghan*, 2017 WL 2321181.

212 R.I. GEN. LAWS § 21-28.11-29(d).

use policies which prohibit cannabis use or possession in the workplace or prohibit performing work under the influence of cannabis, provided that unless such use is prohibited pursuant to the terms of a collective bargaining agreement, an employer cannot fire or take disciplinary action against an employee solely for an employee's private, lawful cannabis use outside the workplace and as long as the employee has not and is not working under the influence of cannabis except to the extent that:

- the employer is a federal contractor or otherwise subject to federal law or regulations such that failure to take such action would cause the employer to lose a monetary or licensing related benefit thereunder; or
- the employee is employed in a job, occupation or profession that is hazardous, dangerous or essential to public welfare and safety, which includes, but is not limited to: operation of an aircraft, watercraft, heavy equipment, heavy machinery, commercial vehicles, school buses or public transportation; use of explosives; public safety first responder jobs; and emergency and surgical medical personnel.
    - If the employee's job, occupation or profession involves work that is hazardous, dangerous or essential to public welfare and safety then the employer may adopt and implement policies which prohibit cannabis use or consumption within the 24-hour period prior to a scheduled work shift or assignment.[213]

The recreational marijuana law allows employers to refuse to hire, discharge, discipline, or otherwise take adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of cannabis.[214] Additionally, the law does not require any person, corporation, or any other entity that occupies, owns, or controls a property to allow the consumption, or transfer of marijuana on or in that property.[215]Both the medical and recreational marijuana laws do not permit the following conduct:

- undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;
    - In a case concerning the medical marijuana law, a state superior court judge held that "[i]f an employee came to work under the influence, and unable to perform his or her duties in a competent manner, the employer would thus not have to tolerate such behavior."[216]
- under the medical law, smoking marijuana where exposure to marijuana "significantly adversely affects the health, safety, or welfare of children," and, under the recreational law, smoking or vaporizing cannabis in any public place or other place where smoking or vaporizing tobacco is prohibited by federal, state, or local law; or
- operating, navigating, or being in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana.[217]

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[213] R.I. GEN. LAWS § 21-28.11-29(d), (d)(1)-(2).

[214] R.I. GEN. LAWS § 21-28.11-29(e).

[215] R.I. GEN. LAWS § 21-28.11-29(g).

[216] 2017 WL 2321181.

[217] R.I. GEN. LAWS § 21-28.6-7(a) (Medical Marijuana). R.I. GEN. LAWS §§ 21-28.11-22(e), 21-28.11-29(a)(1), (2)(iv), (3) (Recreational Marijuana). *See also* R.I. GEN. LAWS § 21-28.11-29(f)(1) (Recreational Marijuana).

 

Relatedly, a private health insurer, workers' compensation insurer, workers' compensation group self-insurer, or employer self-insured for workers' compensation, is not required to reimburse a person for costs associated with the medical use of marijuana.[218]

Finally, a state superior court held the medical marijuana law provides an implied private right of action, and that the federal Controlled Substances Act did not preempt the state medical marijuana law or the RICRA with respect to employment discrimination.[219]

### 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.[220]

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.[221]

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

As detailed in Rhode Island's data security breach statute, covered entities—which include any employer that collects and maintains personal information about a Rhode Island resident—must implement appropriate risk-based security protocols to protect personal information from unauthorized access and to maintain the integrity of the information.[222] Among other things, employers also should not retain

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[218] R.I. GEN. LAWS §§ 21-28.6-7(b) 21-28.11-29(b)(1); 216 R.I. CODE R. § 20-10.311.

[219] *Callaghan v. Darlington Fabrics Corp.*, 2017 WL 2321181 (R.I. Super. Ct. May 23, 2017).

[220] 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.

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

[222] R.I. GEN. LAWS §§ 11-49.3-1 *et seq*.

personal information any longer than necessary.[223] *Personal information* is defined to include information about a person's name coupled with their Social Security number, driver's license number, account number, or credit or debit card number, medical or health insurance information, or an email address along with any password.[224]

**Coverage & Exceptions.** A covered entity is any person or entity that collects, stores, processes, maintains, acquires, uses, owns, or licenses personal information about a Rhode Island resident.[225]

**Content & Form of Notice.** Typically, in the event of a breach that poses a risk of identity theft, the employer must notify the employee.[226] The statute prescribes several forms of notice, including written and electronic notice.[227] The notification must include the following details, if known:

1. a description of the incident, including how the breach happened and the number of affected individuals;
2. the type of information involved in the breach;
3. the date of the breach, or an estimate or date range within which the breach occurred;
4. the date the breach was discovered;
5. a description of any remediation services offered to the affected individuals, including toll-free numbers and websites to contact for (a) the credit reporting agencies; (b) remediation service providers; and (c) the attorney general; and
6. a description of the consumer's ability to file or obtain a police report; how a consumer requests a "security freeze" and the necessary information to be provided when requesting the freeze; and that fees may be required to be paid to the consumer reporting agencies.[228]

**Timing of Notice.** The notice of the breach to employees should occur as soon as possible, but, in any event, no later than 45 days after confirmation of the breach and after the employer's ability to gather the information necessary for the notice.[229] Notification can be delayed at the instruction of law enforcement, to further their investigative purposes.[230]

**Additional Provisions.** If more than 500 Rhode Island residents will be notified of a breach, the employer must also inform the major credit reporting agencies—and the state attorney general—about the notices to be distributed and the number of people affected.[231]

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[223] R.I. GEN. LAWS § 11-49.3-2.

[224] R.I. GEN. LAWS § 11-49.3-3(8).

[225] R.I. GEN. LAWS § 11-49.3-2.

[226] There are exceptions as to when notice is required. *See, e.g.*, R.I. GEN. LAWS §§ 11-49.3-4, 11-49.3-6.

[227] R.I. GEN. LAWS § 11-49.3-3(c).

[228] R.I. GEN. LAWS § 11-49.3-4(d).

[229] R.I. GEN. LAWS § 11-49.3-4(a)(2).

[230] R.I. GEN. LAWS § 11-49.3-4(b).

[231] R.I. GEN. LAWS § 11-49.3-4(a)(2).

 

## 3.3 Minimum Wage & Overtime

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

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

As a general rule, federal wage and hour laws do not preempt state laws.[232] 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.[233]

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.[234]

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.[235]

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

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

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

The minimum wage in Rhode Island is $14.00 per hour for nonexempt employees.[237] On January 1, 2025, the minimum will increase to $15.00.

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[232] 29 U.S.C. § 218(a).

[233] 29 U.S.C. § 206.

[234] 29 U.S.C. §§ 203, 206.

[235] 29 U.S.C. § 3(m)(2)(B).

[236] 29 U.S.C. § 207.

[237] R.I. GEN. LAWS § 28-12-3.

Employers with workers aged 14- or 15-years old should note that the minimum wage rate for these workers is 75% of the regular state minimum wage identified above. If, however, a minor works in excess of 24 hours in any week, the minor must be paid for all hours worked in that week at the hourly rate paid to all other employees.[238]

### 3.3(b)(ii) *Tipped Employees*

As under federal law, tipped employees may be paid differently because tips may be considered part of their wages. The minimum cash wage an employer directly pays a tipped employee cannot be less than $3.89 per hour. If direct wages and tips do not equal at least the minimum wage, an employer must pay the employee the difference.[239] If an employee receives tips in addition to a compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and for tip credit purposes.[240]

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

The definition of *employee* under the Rhode Island minimum wage law does not include:

- any individual employed in domestic service or in or about a private home;
- any individual employed by the United States;
- any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not, in fact, exist, or where the services are rendered on a voluntary basis;
- newspaper deliverers on home delivery, shoe shiners in shoe shine establishments, caddies on golf courses, pin persons in bowling alleys, ushers in theatres;
- traveling salespersons or outside salespersons;
- service performed by an individual in the employ of their son, daughter, or spouse and service performed by individuals under age 21 in the employ of their parents;
- any individual employed between May 1 and October 1 in a resort establishment that regularly serves meals to the general public and that is open for business not more than six months per year; and
- any individual employed by an organized camp that does not operate for more than seven months in any calendar year, though this exemption does not apply to individuals employed by the camp on an annual, full-time basis.[241]

Upon approval and licensure from the Rhode Island Director of Labor and Training, an employer may pay learners and apprentices subminimum wage for the first 90 days they are employed.[242]

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[238] R.I. GEN. LAWS § 28-12-3.1.

[239] R.I. GEN. LAWS §§ 28-12-3, 28-12-5.

[240] R.I. GEN. LAWS § 28-14.1-3.

[241] R.I. GEN. LAWS § 28-12-2.

[242] R.I. GEN. LAWS § 28-12-10.

### 3.3(c) *State Guidelines on Overtime Obligations*

Similar to the federal overtime requirements, Rhode Island generally requires an employer to pay a nonexempt employee at a rate of one-and-a-half times the regular rate at which they are employed for all hours worked in excess of 40 hours per week.[243]

Rhode Island law has some additional complications on overtime. Licensed retail employers must pay employees one-and-a-half times their regular rate for all hours worked on Sundays or holidays. However, Sunday and holiday hours paid at this rate are not included when calculating overtime pay. Employers should note additional requirements exist for Sunday and holiday work as discussed in **3.8(b)(ii)**.[244]

Further, employers of "delivery drivers" or "sales merchandisers" in Rhode Island may not use the fluctuating workweek method, as defined by Code of Federal Regulations title 29, section 778.114, for calculating an employee's overtime rate for hours worked in excess of 40 hours per week.[245]

### 3.3(d) *State Guidelines on Overtime Exemptions*

In addition to excluding from its overtime and minimum wage obligations a number of specific professions,[246] Rhode Island also exempts *bona fide* executives, administrators, and professional employees (like the FLSA), and incorporates the FLSA's definitions of *bona fide* executive employee, administrative employee, and professional employee.[247] Rhode Island law contains no express exemption for retail or service establishment commissioned sales employees.[248] Notably, Rhode Island requires an exempt employee be paid a minimum salary of only $200 per week, which differs from the FLSA.[249]

### 3.3(d)(i) *Executive Exemption*

An executive employee must: (1) have as a primary duty management of the enterprise or a department or subdivision; (2) regularly supervise two full-time employees; and (3) have the ability to hire, fire or make recommendations about hiring, firing or changes in an employee's status.[250]

### 3.3(d)(ii) *Administrative Exemption*

To qualify for the administrative exemption, an employee must: (1) have as a primary duty the performance of office or nonmanual work directly related to the management or general business operations of the employer; and (2) exercise independent judgment and discretion with respect to matters of significance.[251]

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[243] R.I. GEN. LAWS § 28-12-4.1(a).

[244] R.I. GEN. LAWS § 28-12-4.1.

[245] R.I. GEN. LAWS § 28-12-4.1(a). The statute does not define *delivery drivers* or *sales merchandisers*.

[246] *See* R.I. GEN. LAWS § 28-12-4.3.

[247] 29 C.F.R. §§ 541.100, 541.200, and 541.300; R.I. GEN. LAWS § 28-12-4.3(a)(4).

[248] *See* R.I. GEN. LAWS § 28-12-4.3.

[249] R.I. GEN. LAWS § 28-12-4.3(4).

[250] 29 C.F.R. § 541.100.

[251] 29 C.F.R. § 541.200.

#### 3.3(d)(iii) *Professional Exemption*

A professional employee is one who has a primary duty that requires advanced knowledge in a field of science or learning, or that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.[252]

## 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.[253] 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.[254]

#### 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.[255] 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.[256] 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,

[252] 29 C.F.R. § 541.300.

[253] 29 C.F.R. § 785.19.

[254] 29 C.F.R. § 785.18.

[255] 29 U.S.C. § 218d.

[256] 29 U.S.C. § 218d(b)(2).

which may be used by an employee to express breast milk.[257] Exemptions apply for smaller employers and air carriers.[258]

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.[259] Lactation is considered a related medical condition.[260] 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.[261] 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*

**Meal Periods.** Under Rhode Island law, all employees are entitled to a 20-minute mealtime within a six-hour work shift, and a 30-minute mealtime within an eight-hour work shift. An employer is not required to compensate employees for mealtimes.[262]

Although the statute does not define *employee*, the meal period requirements are interpreted to apply to both exempt and nonexempt employees.[263] The requirements also apply equally to minor employees.

There are two exceptions to the meal period requirements, however. First, they do not apply to employers that employ less than three employees on a shift at the worksite.[264] Second, the meal period requirements do not apply to employers of licensed health care facilities.[265]

Rhode Island law does not address whether meal period waivers are permissible. Presumably, employees entitled to a meal break may not waive their right to take it.

**Rest Periods.** There are no generally applicable rest period requirements for employees in Rhode Island.

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

The general meal period requirement is also applicable to minor employees.[266] There are no meal and rest break provisions specific to minors in Rhode Island.

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257 29 U.S.C. § 218d(a).

258 29 U.S.C. § 218d(c), (d).

259 42 U.S.C. § 2000gg–1.

260 29 C.F.R. § 1636.3.

261 29 C.F.R. § 1636.3.

262 R.I. GEN. LAWS § 28-3-14.

263 R.I. GEN. LAWS § 28-3-14.

264 R.I. GEN. LAWS § 28-3-14.

265 R.I. GEN. LAWS § 28-3-14.

266 R.I. GEN. LAWS § 28-3-14.

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

Except as otherwise specifically provided, any person or corporation that violates any of the requirements of Rhode Island General Laws sections 28-3-1 through 28-3-20 (which include the meal period provisions) will be fined $500 for each offense.[267] The statute does not provide a private right of action to enforce the meal period provisions.[268]

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

In Rhode Island, an individual may breast feed their child in any place open to the public.[269]

With respect to the workplace, employers must make a reasonable effort to provide a private, secure, and sanitary room or other location close to the employee's work area—other than a toilet stall—where an employee can express milk or breast feed their child. Employers may provide reasonable unpaid breaks each day to an employee who needs to breast feed or express milk for their infant child. The break time must, if possible, run concurrently with any break time already provided.[270]

Further, as discussed in **3.11(c)(ii)**, it is an unlawful employment practice for an employer in Rhode Island to refuse to accommodate an employee's or applicant's condition related to pregnancy, childbirth, or a related medical condition. Related conditions under the pertinent statute specifically include lactation, or the need to express breast milk for a nursing child.[271] Reasonable accommodations may also include more frequent or longer breaks, or additional or modified seating.

## 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.[272] 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."[273]

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

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[267] R.I. GEN. LAWS § 28-3-14.

[268] *See* R.I. GEN. LAWS § 28-3-18.

[269] R.I. GEN. LAWS § 23-13.5-1.

[270] R.I. GEN. LAWS § 23-13.2-1. This requirement may not apply if the employer can demonstrate the accommodation would pose an undue hardship on its program, enterprise, or business.

[271] R.I. GEN. LAWS § 28-5-7.4. The employee may decline an offered accommodation.

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

[273] *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").

 

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*

Though Rhode Island law does not provide an express definition of *hours worked*, the state has enacted provisions addressing what type of work-related activities are compensable. Not all time associated with work is necessarily paid, and 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.

**Reporting Time.** An employer that requests or permits an employee to report to work, and does not provide at least three hours of work for that shift, must pay the employee for at least three hours of work at the employee's regular rate. This requirement applies even when employees report to work and are offered no work to perform. Shifts scheduled for less than three hours are permissible when they entered into voluntarily and agreed upon by both the employer and employee. In that case, employees must receive the amount they would have earned for any shifts consisting of less than three hours. However, this requirement does not apply if an employee is prevented from working a normal shift by reason of events beyond the employer's control, or by acts of God. Likewise, it does not apply to students enrolled full-time at colleges or universities located in Rhode Island, who are also an employee of the college or university they attend, subject to certain exceptions.[274]

A separate Rhode Island law pertains to certain hours worked by retail employees. Employees of retail establishments working on a Sunday or a state holiday must be guaranteed a minimum of four hours per shift and must be paid one-and-a-half times their regular rate. This requirement does not apply, however, to individuals employed in a *bona fide* executive, administrative, or professional capacity (as those terms are defined by the FLSA) who are paid a salary of at least $200 per week.[275]

**On-Call Time.** Rhode Island does not have a provision addressing on-call pay. That is, the relevant statute does not require employers to pay workers who are scheduled for on-time work but not asked to report for duty. Employers covered by the FLSA should consult the federal provisions for such on-call shifts.

**Travel Time.** If an employer requires an employee to report to work at any of the employer's places of business and then travel to another location to commence the employee's normal shift, the time spent traveling is considered work time and must be paid.[276]

## 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

[274] R.I. GEN. LAWS § 28-12-3.2.

[275] R.I. GEN. LAWS § 5-23-2.

[276] 260 R.I. CODE R. § 30-05-2.4.

approved school-supervised and school-administered work experience and career exploration programs.[277] 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.[278] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

### 3.6(b) *State Guidelines on Child Labor*

Rhode Island supplements the federal regulations with limits on the hours and types of jobs minors may perform. The general purpose of these statutes is to ensure that minors are not employed in an occupation or manner detrimental to their health, safety, or well-being.

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

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

**Table 9. State Restrictions on Type of Employment by Age**

| Age Range | Restrictions |
|---|---|
| **Under Age 18** | Minors under age 18 may not work in any commercial adult entertainment establishment.[279] |
| **Under Age 16** | *Minors under the age of 16 may not be employed in any factory, mechanical, or manufacturing establishment. Accordingly, they cannot work in, as, or with:*<br>• circular or band saws, wood shapers, jointers, planers;<br>• sand paper or wood polishing machinery;<br>• picker machines or machines used in picking wool, fur, hair, or an upholstered material;<br>• paper lace machines;<br>• burnishing machines in tanneries or leather factories;<br>• job or cylinder printing presses;<br>• wood turning or boring machines;<br>• stamping machines used in metal or tinware manufacturing, or in nut and washer factories;<br>• machines used in making corrugated rolls;<br>• steam boilers;<br>• laundering or dry cleaning machinery;<br>• wire or iron straightening machinery;<br>• rolling mill machinery;<br>• power punches, shears, or rolls in rubber manufacturing drop presses; |

[277] 29 C.F.R. §§ 570.36, 570.50.

[278] 29 C.F.R. § 570.6.

[279] R.I. GEN. LAWS § 28-3-9.1.

| Table 9. State Restrictions on Type of Employment by Age | |
|---|---|
| **Age Range** | **Restrictions** |
| | • preparing compositions using dangerous or poisonous acids;<br>• manufacture or package paints, colors, or red or white lead;<br>• dip, dye, or package matches;<br>• steam boilers, dough brakes, or cracker machinery of any description;<br>• washing, grinding or mixing machinery;<br>• any capacity in adjusting or assisting in adjusting any belt to any machinery or in oiling or cleaning machinery in motion;<br>• manufacturing, packing or storing powder, dynamite, nitroglycerine compounds, fuses, or other explosives;<br>• stripping, assorting, manufacturing, or packing tobacco;<br>• tunnels;<br>• pool or billiard rooms;<br>• railroads;<br>• places where dangerous belting or gearing is not provided with proper safeguards;<br>• places or occupations deemed by the state department of labor to be injurious, dangerous, or hazardous;<br>• on docks;<br>• warehouses and storages;<br>• dispensing gasoline or other types of fuel;<br>• checking or changing oil or other fluids;<br>• as parking lot attendants; and<br>• car washes.[280] |
| **Under Age 14** | Minors under the age of 14 cannot be employed at all.[281] |

**Restrictions on Selling or Serving Alcohol.** Minors under age 18 cannot act as a bartender for the purposes of mixing, preparing, serving, or selling from a bar used for the purpose of dispensing beverages, in any licensed establishment operating under a state license.[282]

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

Employees between the ages of 16 and 18 who regularly attend a public or approved private school may not be employed prior to 6:00 A.M. or after 11:30 P.M., on any day preceding a regularly scheduled school day.[283] They may work until 1:30 A.M. on nonregularly scheduled school days.[284]

Such children may not work more than 48 hours in any one workweek or in excess of nine hours in any one calendar day, except when 48 hours are worked in five days, in which case the hours worked must

[280] R.I. GEN. LAWS §§ 28-3-9, 28-3-10.

[281] R.I. GEN. LAWS § 28-3-1.

[282] R.I. GEN. LAWS § 3-8-2.

[283] R.I. GEN. LAWS § 28-3-11(b).

[284] R.I. GEN. LAWS § 28-3-11(b).

not exceed 9-3/5 hours in any calendar day.[285] There must be an interval of not less than eight hours between the ending period of work on one calendar day and the beginning of work on the subsequent consecutive calendar day.[286]

Children between the ages of 16 and 18 are not restricted in their hours of work during school vacations.[287]

On the other hand, children at least 14 years old, and younger than 16 years old, may be employed only between the hours of 6:00 A.M. and 7:00 P.M., or until 9:00 P.M. during school vacations. Such children are also restricted from working more than 40 hours in any one workweek, or in excess of eight hours in any one workday. Exceptions are made for minors employed pursuant to a work experience and learner exploration program.[288] Finally, as a reminder, and as noted in **3.3(b)(i)**, a special wage rate applies to these 14- and 15-year old employees.

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

Rhode Island's child labor provisions do not apply to children employed in household service or in agricultural pursuits. Further, the provisions do not apply to child performers.[289]

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

To work, a special limited permit is required for minors over age 14 and under age 16. Employers must keep work permits for workers under the age of 16 at the employee's place of employment.[290] Copies of such work permits and certificates of age must be kept on file by the employer and produced to the Rhode Island Department of Labor and Training upon demand.[291] In addition, within five days of termination of a minor's employment, an employer must return the permit to the school committee that issued it.[292]

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

Any person or corporation that employs a child under 16 years of age without a required permit, makes a false statement in regard to any part required by the certificate or suffers or permits any child to be employed in violation of these provisions, will be fined $500 for each offense and, if the child is injured or killed in the course of the employment, then the fine may be increased to $5,000.[293] Any employer that willfully employs a minor in violation of state law shall be fined $100.[294]

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[285] R.I. GEN. LAWS § 28-3-11(a).

[286] R.I. GEN. LAWS § 28-3-11(a).

[287] R.I. GEN. LAWS § 28-3-11(c).

[288] R.I. GEN. LAWS §§ 28-3-1, 28-3-11.

[289] R.I. GEN. LAWS § 28-3-8.

[290] R.I. GEN. LAWS § 28-3-6.

[291] R.I. GEN. LAWS § 28-3-6.

[292] R.I. GEN. LAWS §§ 28-3-3, 28-3-4, and 28-3-6.

[293] R.I. GEN. LAWS § 28-3-20.

[294] R.I. GEN. LAWS § 28-3-15.

## 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).[295]

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

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[296]

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.[297]

**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.[298] 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.[299]

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

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[295] 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").

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

[297] 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.

[298] 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/.

[299] 12 C.F.R. § 1005.2(b)(3)(i)(A).

 

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.[300] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[301]

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.[302]

### 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.[303]

### 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.

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[300] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[301] 12 C.F.R. § 1005.18.

[302] *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.

[303] 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.

 

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

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

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

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

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

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[304] 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.[305] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[306] tools and equipment,[307] and business transportation and travel.[308] 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.[309]

### 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;[310]

[304] *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).

[305] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[306] 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.

[307] 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).

[308] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[309] 29 C.F.R. § 778.217.

[310] 29 C.F.R. § 531.38.

- 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);[311]
- 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);[312]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[313]
- 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;[314] 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.[315]

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.[316]

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[311] 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*.

[312] 29 C.F.R. § 531.40.

[313] 29 C.F.R. § 531.40.

[314] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[315] 29 C.F.R. § 825.213.

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

 

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.[317] 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.[318]

**Deductions During Non-Overtime v. Overtime Workweeks.** Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[319]

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.[320]

**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.[321]

## 3.7(b) *State Guidelines on Wage Payment*

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

*Wages* are defined as all amounts at which the labor or service rendered is compensated, whether the amount is fixed or determined on a time, task, piece, commission basis, or other method of calculating the amount.[322]

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[317] 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.

[318] 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.

[319] 29 C.F.R. § 531.36.

[320] 29 C.F.R. § 531.37.

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

[322] R.I. GEN. LAWS § 28-14-1(4); *see also* R.I. GEN. LAWS § 28-12-2(8) (defining the term *wage* as "compensation due to an employee by reason of his or her employment").

**Authorized Instruments.** Wages may be paid by cash, check, or—with the employee's consent—direct deposit. Paychecks must be convertible into cash on demand at full face value.[323]

**Direct Deposit.** Mandatory direct deposit is not permitted in Rhode Island. However, upon an employee's written or electronic request, and the employer's consent, wages may be paid via direct deposit into an employee's checking or savings account in a financial institution designated by the employee.[324]

**Payroll Debit Card.** Many employers are interested in exploring wage payment by payroll debit card. In Rhode Island, this option is available, upon written or electronic request by the employee, if the following four conditions are also met:

- The employee must be able to make at least one withdrawal from the payroll card account in each pay period without charge for any amount up to and including the full amount of the employee's net wages for the pay period.
- If the employee's wages are paid more frequently than weekly, the employee must be able to make at least one withdrawal from the payroll card account each week without charge for any amount up to and including the full amount of the employee's net wages for that week.
- Employees who receive wages by credit to a payroll card account must be provided with a means of checking their payroll card account balances, either through an automated telephone system, or online, through the use of the internet, without cost, irrespective of the number of inquiries made.
- Employee consent is required for payment via a payroll card.[325]

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

The frequency of an employee's payment depends on several factors, including whether the employee is salaried, whether the employer is in the private sector, and whether the employer has petitioned for a particular payment schedule with the Rhode Island Department of Labor and Training (DLT). The relevant rules are summarized below.

To begin, employers are required to establish a regular payday. Each scheduled payday must fall within nine days of the end of the payroll period in which wages were earned, unless prevented by "inevitable casualty."[326] If the ninth day falls on a holiday, payment may be on the next business day. If an employee is absent at the time of payment, the employee is entitled to payment upon demand. A written agreement to pay a bonus, in addition to the payment of wages, is not subject to these requirements.

Generally, employees must be paid weekly. There are several exceptions to this requirement, however. First, the general rule mandating weekly payment does not apply to salaried employees. Specifically, if employee compensation is fixed at a biweekly, semi-monthly, monthly, or yearly rate (*i.e.*, if they are salaried), then an employee does not need to be paid weekly. Salaried employees may be paid on a semi-monthly, or a monthly, basis. The general rule concerning weekly paydays also does not apply to public

[323] R.I. GEN. LAWS §§ 28-14-2, 28-14-10.1.

[324] R.I. GEN. LAWS § 28-14-10.1.

[325] R.I. GEN. LAWS § 28-14-10.1.

[326] R.I. GEN. LAWS § 28-14-2.

 

employees (*i.e.*, state or political subdivisions), or to employees of religious, literary, or charitable corporations.

Finally, Rhode Island has established a process through which employers may petition the DLT for permission to pay employees less frequently than weekly.[327] Employers whose average payroll exceeds 200% of the "state minimum wage," as defined in Rhode Island General Laws section 28-12-3, may pay wages less frequently than weekly provided that: (1) the employer makes payment of wages regularly on a predesignated date not less than twice per month; and (2) the employer provides proof of a surety bond or "other sufficient demonstration of security"[328] in the amount of the highest biweekly payroll exposure in the preceding year for the employees subject to the petition.[329] If the employees are subject to collective bargaining, the employer must provide written consent of the collective bargaining representative for all involved employees.[330]

Employers whose payroll is less than 200% of the state minimum wage can also petition to pay their employees less frequently than weekly, but they face a slightly more onerous approval process. These employers must provide the DLT with the following information:

- the method of how wages will be paid;
- the requested frequency of payment;
- the employer's designated payday(s);
- the employees' job classifications;
- the salary range of the employees involved; and
- the employer's federal identification number.[331]

The certification can last indefinitely if all requirements are met, as set forth the in the applicable DLT regulations. To that end, every four years from the original date of approval, each employer must sign and submit an Affidavit of Continued Compliance.

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

Typically, upon separation, an employee must be paid on the next regular payday. That rule holds true whether the employee voluntarily resigns or is discharged. In addition, if work is suspended due to an industrial dispute, wages must be paid by the next regular payday without abatement or reduction.[332]

If, however, an employee is separated from payroll because the employer is liquidating, merging, or disposing of its business, all wages must be paid within 24 hours of the time of separation.[333]

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[327] R.I. GEN. LAWS § 28-14-2.2(b).

[328] The DLT regulations interpret "other sufficient demonstration of security" to mean a letter of credit from a financial institution. 260 R.I. CODE R. § 30-05-2.5.2.

[329] R.I. GEN. LAWS § 28-14-2.2(b).

[330] R.I. GEN. LAWS § 28-14-2.2(b).

[331] R.I. GEN. LAWS § 28-14-2.2(c).

[332] R.I. GEN. LAWS § 28-14-4.

[333] R.I. GEN. LAWS §§ 28-14-4, 28-14-5.

 

As addressed in more detail in **3.8(a)(ii)**, accrued vacation pay becomes wages upon separation (for any employee with at least one year of service) and must be paid out accordingly in the final paycheck. In addition, there is no separate provision concerning allowable deductions to a final paycheck. As a result, the general rules on deductions apply upon separation (see **3.7(b)(viii)**).

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

Rhode Island law requires each employer to provide all employees with a wage statement on every regular payday. For nonsalaried employees, this statement must indicate the hours worked by that employee during the applicable pay period.[334] In addition, all employees (salary and hourly) must receive a record of all deductions made from the gross earnings during the pay period together with an explanation of the basis or reason for the deductions.[335] For employers engaged in the commercial construction industry, an employee must also receive a record of their regular hourly rate of pay.[336]

### 3.7(b)(v) *Wage Transparency*

Rhode Island employers cannot:

- prohibit an employee from inquiring about, discussing, or disclosing the employee's own wages or the wages of another employee, or retaliate against an employee who engages in such activities;
- require an employee to enter into a waiver or other agreement that purports to deny an employee the right to disclose or discuss their wages; or
- prohibit an employee from aiding or encouraging any other employee to exercise these rights.[337]

The statute does not require an employee to disclose their wages, nor does it limit the rights of an employee provided by any other provision of law or collective bargaining agreement.[338]

The statute also requires employers to disclose wage ranges for job positions. Upon an applicant's request, an employer must provide the wage range for the position for which the applicant is applying. The employer should provide a wage range for the position for which the applicant is applying prior to discussing compensation.[339] *Wage range*, as applied to an applicant for employment, means the wage range that the employer anticipates relying on in setting wages for the position and may include reference to any applicable pay scale, previously determined range of wages for the position, the actual range of wages for those currently holding equivalent positions, or the budgeted amount for the position, as applicable.[340]

With respect to current employees, an employer is required provide an employee the wage range for the employee's position both at the time of hire and when the employee moves into a new position, and

[334] R.I. GEN. LAWS § 28-14-2.1(1).

[335] R.I. GEN. LAWS § 28-14-2.1(2).

[336] R.I. GEN. LAWS § 28-14-2.1(3).

[337] R.I. GEN. LAWS § 28-6-18.

[338] R.I. GEN. LAWS § 28-6-18.

[339] R.I. GEN. LAWS § 28-6-22.

[340] R.I. GEN. LAWS § 28-6-17.

during the course of employment, the employer must provide the wage range for the employee's position if the employee requests it.[341] *Wage range*, as applied to a current employee, may include reference to any applicable pay scale, previously determined range of wages for the position, or the range of wages for incumbents in equivalent positions, as applicable.[342]

The statute prohibits retaliation in relation to its wage transparency provisions. An employer cannot refuse to interview, hire, promote, or employ an applicant or employee, and cannot retaliate against that individual because they did not provide a wage history or because they requested the wage range for a position.[343]

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

In the event of a payday change, employers must give each employee notice (either in writing or by posted notice that may readily be seen by all employees) of the change, at least three paydays before the change occurs.[344] As for a change in the rate of pay, however, there is no legally-required notice. As a practical matter, it is recommended that employers give employees advance written notice before a pay rate change occurs.

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

Rhode Island law does not directly address whether business expenses must be paid by the employer, rather than the employee. Thus, for example, there is no general obligation to indemnify an employee for business expenses. Rhode Island law similarly contains no express provisions addressing how tool and/or equipment expenses incurred during employment are treated in the wage payment, minimum wage, and/or overtime contexts.

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

**Permissible Deductions.** Rhode Island law permits employers to make deductions from wages if authorized by law, court order, collective bargaining agreement, or per an employee's written request. Except for deductions authorized by federal or state law, or court order, an employee's written or electronic approval must first be obtained.[345]

Upon obtaining written consent from the employee, an employer may deduct the following items from an employee's wages:

- trade union or craft dues or other obligations imposed by a collective bargaining contract;
- subscriptions to a nonprofit hospital service corporation or nonprofit medical and/or surgical service corporation;
- contributions to or for the use of a religious, charitable, scientific, literary, or educational corporation, trust, community chest fund, or foundation;

[341] R.I. GEN. LAWS § 28-6-22.

[342] R.I. GEN. LAWS § 28-6-17.

[343] R.I. GEN. LAWS § 28-6-22.

[344] R.I. GEN. LAWS § 28-14-2.

[345] R.I. GEN. LAWS § 28-14-3.2.

- payments for the purpose of purchasing obligations of the United States or stock of a corporation pursuant to an employee stock purchase plan;
- contributions to a pension plan in which the employee is a participant not required by a collective bargaining agreement entered into between the authorized collective bargaining representative of an employee and their employer;
- contributions to or for insurance or under an insurance plan for accident, health, or life coverage not required by a collective bargaining agreement entered into between the authorized collective bargaining representative of an employee and their employer;
- amounts to be credited to a share, deposit, or loan account in any credit union;
- contributions, subscriptions, or payments of a similar nature not connected with past or present indebtedness; or
- payments for participation in a van pool transportation system where employee participation in the program is not a condition of employment.[346]

Rhode Island also allows for the deduction of legal fees, pension, welfare, vacation, annuity plans, and insurance plan for accident, health, disability or life coverage, if agreed to as part of a collective bargaining agreement.[347] In addition, the DLT has advised that "[a]n employer may make a deduction for loans or advances against future earnings if evidenced by a statement in writing, signed by the employee, with the amount to be deducted each pay period. The statement may read 'balance due upon separation.'"[348]

Beyond the types of deductions identified in the statute, employee consent is required before an employer can make any additional deductions.

**Prohibited Deductions.** Employers may never deduct for spoilage or breakage, shortages or losses, or fines or penalties for tardiness, misconduct, or quitting by an employee without proper notice.[349] According to the DLT, an employer cannot deduct for items such as shortages, damages, rent, or uniforms.[350]

**Enforcement, Remedies & Penalties.** Any employer that fails intentionally or after written notification to transfer deducted funds to the proper entity within 30 days following the last day of the month in which the deduction is made, will be liable for an additional penalty in the amount of $50 for each day beyond the 30-day period during which it failed to transfer the funds.[351] This additional penalty is payable to the employee from whose wages the funds were deducted.

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[346] R.I. GEN. LAWS § 28-14-10(b).

[347] R.I. GEN. LAWS § 28-14-10(a).

[348] R.I. Dep't of Labor and Training, *Frequently Asked Questions about Labor Standards*, at Question 14, *available at* https://dlt.ri.gov/wrs/laborstandards/faq.php; *see also* R.I. GEN. LAWS § 28-14-24.

[349] R.I. GEN. LAWS § 28-14-3.2.

[350] R.I. Dep't of Labor and Training, *Frequently Asked Questions about Labor Standards*, at Question 14; *see also* R.I. GEN. LAWS § 28-14-24 (in an employee-filed action for unpaid wages, an employer cannot deduct as a set-off or counterclaim for: damages caused to employer property due to employee negligence; rent owed to the employer; or money owed to the employer).

[351] R.I. GEN. LAWS § 28-14-3.1.

 

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

**Orders of Support.** If an employee's wages are subject to garnishment pursuant to a child or spousal support order, the following types of earnings may be attached: wages; commissions; bonuses; and periodic payments pursuant to a pension or retirement program or insurance policy.[352] An employer must commence withholding income under the support order within one week of service of the order.[353] The maximum amount of an employee's disposable earnings that may be deducted per the order of support depends on whether the employee currently supports a dependent other than the creditor and whether any amounts owed are in arrears.[354]

An employer must comply with out-of-state orders regarding:

- the duration and amount of payment for child support, arrearages, and interest on arrearages;
- the person or agency designated to receive payments and the address to forward such payments;
- medical support, whether cash payments or a requirement that employee provide health insurance coverage for a child under the employer's policy; and
- payments, fees, and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney.[355]

The employer must comply with the law of the state of the employee's principal place of employment regarding maximum withholding, the time frame for commencing garnishment, and when to make payments.[356]

An employer is prohibited from dismissing, demoting, disciplining, or in any way penalizing an employee because the employee is the subject of a proceeding to collect support.[357]

**Debt Collection.** A writ of garnishment to collect a debt must state the judgment amount, and the employer is required to withhold sums not exempt by law from the debtor-employee's wages until the amount of withholding equals the amount of the judgment.[358] The following amounts are exempt from creditor garnishment withholding:

- the entire salary or wages of an employee who has received relief from a state, federal, or municipal government are exempt from creditor garnishment withholding for one year; and
- the salary or wages of the employee's dependents.[359]

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[352] R.I. GEN. LAWS § 15-5-24(m).

[353] R.I. GEN. LAWS § 15-5-24(d).

[354] R.I. GEN. LAWS § 15-5-24(b).

[355] R.I. GEN. LAWS § 15-23.1-502.

[356] R.I. GEN. LAWS § 15-23.1-502.

[357] R.I. GEN. LAWS § 15-5-26.

[358] R.I. GEN. LAWS § 10-5-8.

[359] R.I. GEN. LAWS § 9-26-4(8).

An employer may deduct an administrative fee of $5.00 from the employee's wages for each garnishment order served on the employer.[360]

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

**Wage Disputes.** Employees in Rhode Island have two avenues available to them in the event of a dispute over wages. First, they may file a claim for wages with the DLT within three years from the time of services rendered to the employer.[361] The DLT must schedule hearings on wage complaints within 30 days of service of a formal complaint.[362] The hearing is to be "expeditiously conducted" and thereafter the hearing officer "shall" make a determination and enter an order within 30 days of the close of the hearing.[363] The DLT's order must either: (1) dismiss the complaint; or (2) direct the payment of wages and/or benefits due.[364] The DLT may order the payment of reasonable attorneys' fees and costs to the complaining party, and it "shall" order payment of interest at the rate of 12% per annum.[365]

In addition to unpaid wages, fees, and costs, the DLT may also impose a civil penalty up to twice the amount of unpaid wages, exclusive of interest.[366] Any such penalty will be shared between the claimant-employee and the DLT. The DLT has discretion in determining the civil penalty.[367] In assessing the penalty, the Department may consider: (1) the size of the employer; (2) the employer's good faith; (3) the gravity of the violation; (4) previous violations; and (5) whether the violation was an innocent mistake or willful in nature.[368] The DLT also is authorized to bring an action to recover wages, with or without the consent of the affected employee(s).[369]

Additionally, if an employer is found via a final determination to have violated the wage payment law, it must be assessed an administrative penalty equal to 15% to 25% of the amount of back wages ordered to be paid for a first violation within a three-year period. For subsequent violations within a three-year period, the assessment must equal 25% to 50% of the amount of back wages ordered to be paid. In determining the amount of any penalty imposed under this section, the DLT must also consider the good faith of the employer, the gravity of the violation, the history of previous violations, and whether or not the violation was an innocent mistake or willful violation.[370] A separate statutory section also notes that an employer that violates any of the wage payment provisions commits a misdemeanor, punishable by a fine of at least $400 for each separate offense, imprisonment up to one year, or both.[371] Each day a failure occurs is a separate and distinct violation. Further, an employer that fails to pay wages and fines within 30 days of a final decision may have its business license revoked by the state. **Effective January 1, 2024**, an employer commits a felony, which is punishable by up to three years imprisonment or a fine of up to

[360] R.I. GEN. LAWS § 10-5-8.

[361] R.I. GEN. LAWS § 28-14-20.

[362] R.I. GEN. LAWS § 28-14-19(c).

[363] R.I. GEN. LAWS § 28-14-19(c).

[364] R.I. GEN. LAWS § 28-14-19(c).

[365] R.I. GEN. LAWS § 28-14-19(c).

[366] R.I. GEN. LAWS § 28-14-19(d).

[367] R.I. GEN. LAWS § 28-14-19(d).

[368] R.I. GEN. LAWS § 28-14-19(d).

[369] R.I. GEN. LAWS § 28-14-19(c).

[370] R.I. GEN. LAWS § 28-14-17.1.

[371] R.I. GEN. LAWS § 28-14-17.

 

$5,000, if that employer that fails to pay employees on a regular pay day and the amount owed is over $1,500, fails to pay any employee wages owed at the time of termination of employment and the amount is over $1,500; or fails to pay wages owed to a deceased employee to the appropriate person within 30 days of death, and the amounts owed are greater than $1,500.

Second, employees may also file a civil action to recover unpaid wages and benefits, compensatory damages and liquidated damages up to twice the amount of unpaid wages and/or benefits owed.[372] An employee is also entitled to an award of equitable relief, including reinstatement, fringe benefits, reinstated seniority, and an award of attorneys' fees and costs.[373] In determining the amount of "penalty," the court may consider: (1) the size of the business; (2) the employer's good faith; (3) previous violations of the statute; and (4) whether the violation was an innocent mistake or willful in nature.[374] Employees may bring actions individually or on behalf of other employees similarly situated.[375]

A civil lawsuit may be brought instead of—but not in addition to—a complaint with the DLT, as long as it is filed before the DLT issues a notice of administrative hearing.[376] In any event, any lawsuit must be brought by the employee within three years of the alleged violation.[377]

**Antiretaliation Provisions.** Employers should also be aware that Rhode Island law prohibits employers from discharging, threatening, or otherwise discriminating or retaliating against any person who asserts, supports, reports, or participates in an investigation or determination of claims for unpaid wages.[378] The remedies are directly tied to those available under the Whistleblowers' Protection Act, chapter 28-50 of the Rhode Island General Laws.[379] Employees may not raise retaliation claims before the DLT, but must bring a private action to pursue such claims. A lawsuit for retaliation under the wage payment statutes must be brought within one year after the cause of action accrued.[380]

## 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).[381] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare

[372] R.I. GEN. LAWS § 28-14-19.2(a).

[373] R.I. GEN. LAWS § 28-14-19.2(a).

[374] R.I. GEN. LAWS § 28-14-19.2(a).

[375] R.I. GEN. LAWS § 28-14-19.2(b).

[376] R.I. GEN. LAWS § 28-14-19.2(e).

[377] R.I. GEN. LAWS § 28-14-19.2(g).

[378] R.I. GEN. LAWS § 28-14-19.3.

[379] R.I. GEN. LAWS § 28-14-19.3.

[380] R.I. GEN. LAWS § 28-14-19.3.

[381] 29 U.S.C. § 1002.

benefit plan.[382] 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.[383]

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

By statute, in Rhode Island, vacation pay accrued by an employee pursuant to company policy or other agreement is included in wages if the employee has completed at least one year of service.[384] Upon separation, such accrued vacation pay becomes wages and must be paid out with the final paycheck.[385]

**Caps on Accrual.** That being said, employers most likely can cap the amount of vacation to be paid out to employees upon separation. For example, a policy limiting the maximum pay out of accrued vacation would be acceptable, so long as the proper amount earned under that policy is paid to the employee as required by the statute.[386]

**Use-it-or-Lose-it Policies.** Similarly, employers likely can also adopt a "use-it-or-lose-it" policy for vacation.[387] For example, a policy could require employees to use their accrued vacation time in the same calendar year, or forfeit it. In sum, the employer can decide how the vacation policy operates—so long as the employer pays out any vacation accrued under that policy upon separation, for any employee with at least a year of service.

**Forfeiture of Accrued Vacation When Employment Ends.** Consistent with the above principles, a Rhode Island employer cannot require an employee (with at least one year of service) to forfeit accrued vacation upon separation.

### 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.

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[382] 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.

[383] 490 U.S. 107, 119(1989).

[384] R.I. GEN. LAWS § 28-14-4(b). It does not matter if the employee separates voluntarily or not.

[385] R.I. GEN. LAWS § 28-14-4(b).

[386] *See Dicenso v. Newport Sch. Comm.*, 2013 WL 6050401 (R.I. Super. Ct. Nov. 8, 2013) (explaining that, because vacation rights are created by contract, an employer could set limits on amounts accrued and paid out, but an employer could not circumvent the statute's mandate that all employees with one year of service receive accrued vacation upon separation).

[387] *See, e.g.*, *City of Cent. Falls v. Central Falls Fire Fighters, Local 1485*, 2002 WL 31324121 (R.I. Super. Ct. Oct. 3, 2002).

 

### 3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

In Rhode Island, all work on Sundays or holidays must be voluntary. Employers can neither force employees to work on these days, nor penalize them for refusing to do so. Numerous exceptions apply, including, for example, supervisory employees, hotel or motel employees, and employees providing health care or maintenance.[388] Additionally, the requirement does *not* apply to manufacturers that operate for seven continuous days per week, certain limousine or taxi cab companies, and certain rental car companies.[389]

Rhode Island requires premium pay for most employees who work on Sundays and holidays. With some exceptions, the general rule is that all employees who work on Sundays and holidays must be paid at least one-and-a-half times their normal rate of pay.[390]

Special rules also apply to retail employees. Employees of retail establishments working on a Sunday or a state holiday must be guaranteed a minimum of four hours per shift and, as above, must be paid one-and-a-half times their regular rate. This requirement does *not* apply, however, to individuals employed in a *bona fide* executive, administrative, or professional capacity (as those terms are defined by the FLSA) who are paid a salary of at least $200 per week.[391]

The above requirements (regarding premium pay and four-hour shift minimums) do not apply to pharmacies or bakeries.[392]

The premium pay requirement for retail employers applies on the following holidays:

- New Year's Day;
- Victory Day (the second Monday in August);
- Veterans Day;
- Memorial Day;
- Juneteenth National Freedom Day;
- Labor Day;
- Thanksgiving Day;
- Independence Day;
- Columbus Day; and

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[388] R.I. GEN. LAWS §§ 25-3-1, 25-3-3.

[389] R.I. GEN. LAWS §§ 25-3-1, 25-3-3.

[390] R.I. GEN. LAWS § 25-3-3(a). One exception applies for manufacturers that operate three shifts, or begin their work week on a Sunday; those employers may begin the shift or start the work week at 11:00 P.M. on Sunday and not be required to pay their employees time and a half for the one-hour period between 11:00 P.M. Sunday and 12 midnight. R.I. GEN. LAWS § 25-3-3(c).

[391] R.I. GEN. LAWS § 5-23-2.

[392] R.I. GEN. LAWS §§ 5-23-2(e), 28-12-4.1, and 28-12-4.3.

- Christmas Day.[393]

If any of these holidays fall on a Sunday, the following day is observed as the legal holiday and should be treated as such by employers.

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

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

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

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[394] 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).[395] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[396] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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

Rhode Island's civil union law was repealed in 2013, and parties to a civil union were subsequently eligible to apply for a marriage license.[397] The state does not have a law recognizing domestic partnership.

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[393] R.I. GEN. LAWS § 25-1-1, 5-23-1; *see also* R.I. Dep't of Labor and Training, *Rhode Island Legal Holidays, available at* https://dlt.ri.gov/wrs/laborstandards/#:~:text=The%20following%20are%20legal%20holidays,Day%20%2D%20Last%20Monday%20in%20May&text=Victory%20Day%20%2D%202nd%20Monday%20in,Day%20%2D%201st%20Monday%20in%20September.

[394] 29 U.S.C. § 1144.

[395] 29 U.S.C. § 1161.

[396] 29 U.S.C. § 1167(3).

[397] R.I. GEN. LAWS § 15-3.1-12.

 

Rhode Island's fair employment practices statute provides if an insurer or employer extends insurance-related benefits to persons other than or in addition to the named employee, the statute does not require those benefits to be offered to unmarried partners of named employees.[398]

## 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;[399]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[400]
- to take medical leave when the employee is unable to work because of a serious health condition;[401]
- 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.[402] 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.[403] 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*

**Rhode Island Parental and Family Medical Leave Act (RIPFMLA)**

**Coverage & Eligibility.** The Rhode Island Parental and Family Medical Leave Act (RIPFMLA) applies to employers with 50 or more employees.[404] Employees are eligible for the RIPFMLA's protections if they:

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[398] R.I. GEN. LAWS § 28-5-7(1)(ii).

[399] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[400] 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).

[401] 29 C.F.R. §§ 825.112, 825.113.

[402] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[403] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[404] R.I. GEN. LAWS § 28-48-1(3); 260 R.I. CODE R. § 30-05-7.3(a).

(1) are full-time; (2) work an average of 30 or more hours per week; and (3) have worked for the same employer for 12 consecutive months.[405]

**Purpose & Length of Leave.** The RIPFMLA covers a birth, the placement of a child 16 years or younger for adoption, and the serious illness of a family member.[406] *Family member* is defined more broadly than the FMLA and includes "a parent, spouse, child, mother-in-law, father-in-law, or the employee himself or herself."[407] *Serious illness* is defined as "a disabling physical or mental illness, injury, impairment, or condition that involves inpatient care in a hospital, a nursing home, or a hospice, or outpatient care requiring continuing treatment or supervision by a health care provider."[408]

Eligible employees are entitled to 13 consecutive work weeks of leave in any two calendar years.[409] There is no provision authorizing an employee to take intermittent leave. It thus appears that the leave must be taken at one time.

**Employer Obligations.** As with the FMLA, employer duties under the RIPFLMA focus primarily on maintaining the status quo for the employee while the employee is out on protected leave. Upon an employee's return, the employer is required to reinstate the individual to their prior position, or to offer a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment.[410]

While the employee is on leave, the employer must maintain any existing health benefits, as if the employee had remained continuously employed. Prior to the leave, the employee must pay to the employer a sum equal to the employer's portion of the premium required to maintain the employee's health benefits during the period of leave. The employer must return the payment within 10 days following the employee's return.[411]

The taking of leave may not result in the loss of any benefit accrued before the taking of the leave. The RIPFMLA does not entitle an employee to any benefits other than those that would have applied to the employee had the employee not taken a leave.[412]

If an employer voluntarily provides paid parental leave or family leave for fewer than 13 weeks, the additional weeks of leave added to attain the total of 13 weeks may be unpaid.[413] Note, however, that since July 1, 2018, Rhode Island employers must allow employees to begin to accrue paid sick leave (see **3.9(b)(ii)**). If an employer permits an employee to use sick leave under the employer's policies in

[405] R.I. GEN. LAWS §§ 28-48-1(2), 28-48-2(a); 260 R.I. CODE R. § 30-05-7.3(b).

[406] R.I. GEN. LAWS §§ 28-48-1(4), (6), and 28-48-2(a); 260 R.I. CODE R. § 30-05-7.3(c).

[407] R.I. GEN. LAWS § 28-48-1(5).

[408] R.I. GEN. LAWS § 28-48-1(7).

[409] R.I. GEN. LAWS § 28-48-2(a); 260 R.I. CODE R. § 30-05-7.4(a).

[410] R.I. GEN. LAWS § 28-48-3(a); 260 R.I. CODE R. § 30-05-7.5(a).

[411] R.I. GEN. LAWS § 28-48-3(b), (c); 260 R.I. CODE R. § 30-05-7.5(b).

[412] R.I. GEN. LAWS § 28-48-4(a), (b); 260 R.I. CODE R. § 30-05-7.5(c).

[413] R.I. GEN. LAWS § 28-48-2(b).

 

connection with the birth of a child, the employer must do the same for employees adopting a child under the age of 16.[414]

Employers should be aware that employees are entitled to use the most advantageous combination of leave available to them under both state and federal law. A Rhode Island employee may take up to 25 weeks of job-protected leave within a two-year period by taking, for example, 13 weeks of leave pursuant to state law in one year, and then 12 weeks of leave pursuant to federal law in the following year.

Employers must post notice of the law in a conspicuous place where notices for employees and applicants are customarily posted.[415]

Finally, it is unlawful for an employer to interfere with an employee's rights, to discriminate, or to retaliate against an employee for exercising their right to take leave.[416]

**Employee Rights & Obligations.** Employee duties under the RIPFMLA focus on notice and potential certification requirements. Employees planning to take RIPFMLA leave must give their employers at least 30 days' notice of the intended dates upon which leave will start and will end—unless prevented by medical emergency from giving such notice.[417] This notice must be in writing and must verify the truthfulness of the factual representations made by the employee. The notice must include information that reasonably identifies the employee and their employment relationship to the employer, as well as a detailed description of the circumstances entitling the employee to leave.[418]

An employer may require an employee to provide a written medical certification. The certification must come from a physician caring for the person who is the underlying reason for the employee's leave and must specify the probable duration of the leave.[419]

**Temporary Caregiver Insurance Program**

Rhode Island has enacted a Temporary Caregiver Insurance Program (TCIP), which amended its Temporary Disability Insurance (TDI) program. The purpose of the TCIP is to provide employees with an additional leave benefit, as well as wage replacement benefits. These protections apply to all Rhode Island employees, regardless of the size of the employer or the employee's tenure. Workers are eligible if they take time off work to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent, or to bond with a new child.

Employees must notify employers, in writing, of their intent to take leave under the TCIP at least 30 days before commencement of the leave. Failure to provide notice may delay or reduce benefits unless the need for leave was unforeseeable.[420]

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414 R.I. GEN. LAWS § 28-48-11.

415 R.I. GEN. LAWS § 28-48-10.

416 R.I. GEN. LAWS §§ 28-48-5, 30-33-5.

417 R.I. GEN. LAWS § 28-48-2(a); 260 R.I. CODE R. § 30-05-7.4(b).

418 260 R.I. CODE R. § 30-05-7.6.

419 R.I. GEN. LAWS § 28-48-2(c); 260 R.I. CODE R. § 30-05-7.4(d).

420 R.I. GEN. LAWS § 28-41-35(b).

 

Employees must also submit an appropriate certification that supports the request to the Rhode Island Department of Labor and Training (DLT). To be eligible to receive benefits for taking leave to care for a seriously ill family member, the certification must include:

- a diagnosis and diagnostic code prescribed in the international classification of diseases, or where no diagnosis has yet been obtained, a detailed statement of symptoms;
- the date if known, on which the condition commenced;
- the probable duration of the condition;
- an estimate of the amount of time that the licensed qualified health care provider believes the employee needs to care for the family member;
- a statement that the serious health condition warrants the participation of the employee to provide care for their family member; and
- a certificate filed to establish medical eligibility of the serious health condition of the employee's family member shall be made by the family member's treating licensed qualified heath care provider.

To be eligible to receive benefits for taking leave to bond with a new child, an employee must provide a birth certificate, certificate of adoption, or other competent evidence showing the employee or the employee's domestic partner is the parent of the child, within 12 months of the child's adoption, birth, or placement for adoption or foster care with the employee.[421]

If qualified, the employee is entitled to TCIP benefits, which include income under TDI, reinstatement, and continuation of health benefits. Indeed, qualifying employees are entitled to up to six weeks of wage replacement benefits per year. On January 1, 2025 this is increased to seven weeks, and on January 1, 2026, this is increased to eight weeks per benefit year.[422] Existing health benefits must continue to be provided during TCIP leave, although employees remain responsible for any employee shared costs associated with those benefits. And, as with the FMLA and the RIPFMLA, an employee receiving TCIP benefits is entitled to be restored to the position they held prior to taking leave, or to an equivalent position.[423]

Leave with TCIP benefits may run concurrently with qualifying leave under the FMLA or the RIPFMLA.[424]

### 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.[425] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after

[421] R.I. GEN. LAWS § 28-41-36.

[422] R.I. GEN. LAWS §§ 28-41-34 *et seq*.; 28-41-35 as amended by H.B. 7171 (R.I. 2024).

[423] R.I. GEN. LAWS § 28-41-35(f).

[424] R.I. GEN. LAWS § 28-41-35(i).

[425] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

 

January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

### 3.9(b)(ii) *State Guidelines on Paid Sick Leave*

In addition to the state's paid sick leave law, the Healthy and Safe Families and Workplaces Act, eligible employees may be entitled to wage replacement under the Rhode Island TCIP, discussed in **3.9(a)(ii)**. That program is funded entirely through employee payroll deductions.

**Coverage & Eligibility.** Employers with 18 or more employees in Rhode Island must allow employees to accrue and use paid sick and safe leave, and employers with fewer than 18 employees in Rhode Island must provide unpaid leave.[426]

The law generally covers employees whose primary place of employment is Rhode Island. An employee is not required to spend 50% or more of time working in Rhode Island; just more time working in Rhode Island than any other state.[427] As a result, covered employees can accrue and use leave wherever they perform work, even outside Rhode Island.[428] The law does not apply to: (1) individuals not considered employees under the Rhode Island Minimum Wage Act (see **3.3(b)(iii)**); (2) independent contractors; (3) subcontractors; (4) federal work-study participants; (5) individuals who do not qualify as an "employee" under the federal Fair Labor Standards Act (FLSA); and (6) licensed nurses employed by a health care facility on a per diem basis.[429]

Rhode Island's new paid sick leave law allows employees to use leave for themselves or to care for or assist a family member, which includes traditional family members—child, grandchild, grandparent, parent(-in-law), sibling, spouse—as well as *care recipients* (individuals for whom an employee is responsible for providing or arranging health- or safety-related care) and members of the employee's household, *i.e.*, a person that resides at the same physical address as the employee or a person that is claimed as a dependent by the employee for federal income tax purposes.[430]

**Accrual, Caps, and Carry-Over.** If an employer has a paid leave policy (PTO, vacation, etc.) that provides the amount of annual paid leave hours the law requires, or offers unlimited paid leave, it is exempt from the law's accrual and carryover requirements.[431] Otherwise, employees begin to accrue leave when employment begins or July 1, 2018—whichever is later—at a rate of one leave hour for every 35 hours worked.[432] FLSA-exempt executive, administrative, professional, and outside sales employees accrue leave based on a 40-hour workweek or their normal workweek (if fewer hours are worked).[433] Employees accrue leave for all hours worked and paid, including, *e.g.*, paid holidays and paid personal, sick, and vacation time.[434] Unless employers choose a higher annual limit, they must allow employees to annually

[426] R.I. GEN. LAWS § 28-57-5(a).

[427] 260 R.I. CODE R. § 30-05-5.5.2.

[428] 260 R.I. CODE R. § 30-05-5.5.2(C).

[429] R.I. GEN. LAWS §§ 28-57-3(7), 28-57-4(f).

[430] R.I. GEN. LAWS § 28-57-3(1), (3), (5), (9), (12), and (15); 260 R.I. CODE R. § 30-05-5.3(A)(4).

[431] R.I. GEN. LAWS § 28-57-4(b).

[432] R.I. GEN. LAWS § 28-57-5(a).

[433] R.I. GEN. LAWS § 28-57-5(b).

[434] 260 R.I. CODE R. § 30-05-5.5.3(C).

 

accrue up to 24 hours in 2018, 32 hours in 2019, and 40 hours in subsequent years.[435] Generally, accrued but unused leave must be carried over to the following year.[436]

Alternatively, employers can provide monthly lump sums of leave, the amount of which varies based on how many average hours an employee works per week; as does the number of monthly distributions an employer must make.[437] Additionally, the law allows employers to provide, at the beginning of a year, all of the leave an employee is expected to accrue in a year.[438] If employers front load the required annual amount of leave at the beginning of each year, they are not required to track accrual or allow carryover of leave from year to year.[439]

**Permitted Uses, Notice & Documentation.** Unless an employer sets a higher limit, employees cannot annually use more than 24 hours in 2018, 32 hours in 2019, and 40 hours in subsequent years.[440] The law allows employers to set a 90-day waiting period before newly-hired employees can use leave, if written notice of the waiting period is provided at the time of hiring .[441] It also restricts use to the 151st day of employment for *seasonal employees* (those hired into a position for which the customary annual employment is six months or less) and to the 181st day of employment for *temporary employees* (those working for, or obtaining employment per an agreement with, any employment agency, placement service, or training school or center).[442]

The law allows leave to be used for the following sick time, safe time, and other purposes:

- Mental or physical illness, injury, or health condition of an employee or covered relation.
- Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of an employee or covered relation.
- Preventive medical care for an employee or covered relation.
- Leave related to domestic violence, sexual assault, or stalking impacting an employee or covered relation.
- Closure of the employee's place of business, or a child's school or place of care, by order of a public official due to a public health emergency.
- Health authorities or a health care provider determines the employee or covered relation's presence in the community may jeopardize others' health because of the individual's exposure to a communicable disease, whether or not the employee or covered relation has actually contracted the communicable disease.[443]

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[435] R.I. GEN. LAWS § 28-57-5(a).

[436] R.I. GEN. LAWS § 28-57-5(e).

[437] R.I. GEN. LAWS § 28-57-14(b).

[438] R.I. GEN. LAWS § 28-57-5(c).

[439] R.I. GEN. LAWS § 28-57-4(b).

[440] R.I. GEN. LAWS § 28-57-5(a), (e).

[441] R.I. GEN. LAWS § 28-57-5(d); 260 R.I. CODE R. § 30-05-5.5.3(A)(1).

[442] R.I. GEN. LAWS § 28-57-5(j)-(k).

[443] R.I. GEN. LAWS § 28-57-6(a)(1)-(4).

 

Employees decide how much leave they need to use, unless this conflicts with state or federal law.[444] However, an employer may set a minimum increment for leave use that cannot exceed four hours per day, and must be reasonable under the circumstances.[445]

Leave must be provided upon an employee's request, which can be made orally, in writing, electronically, or by any other means acceptable to an employer.[446] When possible, a request must include the absence's expected duration.[447] If leave is foreseeable, *i.e.*, planned at least 24 hours in advance of when it is required, an employee must provide advance notice within a reasonable timeframe, and must make a reasonable effort to schedule use in a manner that does not unduly disrupt the employer's operations.[448] If an employer wants to require notice for unforeseeable absences, it must institute and provide to employees a written policy with procedures for providing notice.[449] If employees are not provided a copy of the policy, leave cannot be denied because of noncompliance with the policy.[450] Per the enforcement agency, for unforeseeable absences like emergencies "notice must be provided as soon as it is reasonable and in accordance with the employer's policies."[451]

If an employer gave employees advance written notice of the requirement, it may require reasonable documentation that leave of more than three consecutive work days was for a covered purpose.[452] Additionally, written documentation may be required if leave is used during an employee's final two weeks of employment.[453] Documentation signed by a health care professional indicating that leave is necessary is considered "reasonable documentation" for sick time, and the law provides employees various options for documenting safe time, *e.g.*, an employee's written statement, a police report, a court document, or a signed statement from a victim and witness advocate.[454] An employer cannot require documentation to explain the nature of an illness or the details of domestic violence, sexual assault, or stalking unless required by another law.[455] Additionally, an employer's requirements cannot unreasonably burden an employee, exceed other laws' privacy or verification requirements, or require an employee to incur unreasonable expenses.[456] If an employer possesses health information or information pertaining to domestic violence, sexual assault, sexual contact, or stalking, it must be kept confidential and cannot be disclosed except to the affected employee or with the employee's permission, unless required by law.[457]

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444 R.I. GEN. LAWS § 28-57-6(e).

445 R.I. GEN. LAWS § 28-57-6(e).

446 R.I. GEN. LAWS § 28-57-6(b).

447 R.I. GEN. LAWS § 28-57-6(b).

448 R.I. GEN. LAWS § 28-57-6(c); 260 R.I. CODE R. § 30-05-5.6.2(A)(1)-(2).

449 R.I. GEN. LAWS § 28-57-6(d).

450 R.I. GEN. LAWS § 28-57-6(d).

451 Rhode Island Department of Labor & Training, *Healthy and Safe Families and Workplaces Act FAQ*, *available at* https://dlt.ri.gov/wrs/laborstandards/.

452 R.I. GEN. LAWS § 28-57-6(f).

453 R.I. GEN. LAWS § 28-57-6(f)(1).

454 R.I. GEN. LAWS § 28-57-6(f)(2)-(3).

455 R.I. GEN. LAWS § 28-57-6(f).

456 R.I. GEN. LAWS § 28-57-6(g).

457 R.I. GEN. LAWS § 28-57-11.

**Cash Value & Cash-Out.** Leave must be paid at the same hourly rate and with the same benefits—including health care benefits—an employee normally earns during hours worked, but in no case less than that the state minimum wage.[458] Whichever payment method employers elect to determine the same hourly rate must be used consistently throughout a benefit year.[459] For employees compensated on an hourly basis, the same hourly rate means the employee's regular hourly rate.[460] For employees paid a salary, the same hourly rate means the employee's total earnings in the previous pay period divided by their total hours worked during that pay period; FLSA-exempt executive, administrative, professional, and outside employees accrue leave based on a 40-hour workweek or their normal workweek, if it involves fewer hours.[461] For employees paid on commission the same hourly rate means the greater of the base wage or the state minimum wage.[462] For employees paid on a piece work or fee-for-service basis, the same hourly rate means a reasonable calculation of the wages or fees the employee would have received for the piece work, service or part thereof, if the employee had worked.[463] For employees who receive different rates of pay for hourly work from the same employer, the same hourly rate means either: (1) the rate in effect when leave is used; or (2) the weighted average of all rates of pay over the previous pay period, month, quarter or other established period of time an employer customarily uses to calculate the weighted average for similar purposes.[464] Employees who ordinarily receive the "tipped minimum wage" must be paid the full state minimum wage when leave is used.[465] Employers can exclude the following when calculating the leave pay rate: (1) Sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production; (2) Sums excluded under 29 U.S.C. § 207(e); and (3) Overtime, holiday pay or other premium rates – however, when an employee's regular hourly rate is a *differential rate*, meaning a different wage paid for the same work performed under differing conditions, the "differential rate" is not a premium and must be included.[466]

Cash-out of accrued but unused leave is not required when employment ends.[467] If an employee is rehired within 135 days of separation by the same employer, previously accrued but unused leave must be reinstated, and the employee can use it and accrue additional leave when employment recommences.[468]

**Prohibitions.** Employers cannot take adverse action against employees that exercise their paid sick and safe time rights. Prohibited adverse action includes denial of any right guaranteed under the law, and any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report the citizenship or immigration status of the employee or their family member to a federal, state or local agency, or any other action that would cause harm to the employee in any way.[469]

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458 R.I. GEN. LAWS § 28-57-3(11).

459 260 R.I. CODE R. § 30-05-5.3(A)(7)(c).

460 260 R.I. CODE R. § 30-05-5.3(A)(7)(a).

461 260 R.I. CODE R. § 30-05-5.3(A)(7)(d).

462 260 R.I. CODE R. § 30-05-5.3(A)(7)(f).

463 260 R.I. CODE R. § 30-05-5.3(A)(7)(e).

464 260 R.I. CODE R. § 30-05-5.3(A)(7)(b).

465 260 R.I. CODE R. § 30-05-5.3(A)(7)(g).

466 260 R.I. CODE R. § 30-05-5.3(A)(7)(h).

467 R.I. GEN. LAWS § 28-57-5(f).

468 R.I. GEN. LAWS § 28-57-5(g).

469 260 R.I. CODE R. § 30-05-5.3(A), (A)(1).

**Notice & Enforcement.** Employers that impose a waiting period for leave use must notify new employees in writing of this requirement upon hire.[470] Additionally, the state labor department's "all in one" poster must be displayed.[471]

As discussed in **3.7(b)(x)**, under the Minimum Wage Act, aggrieved individuals are entitled to relief per the wage payment law, which allows a current or former employee, or an organization representing such employee, to file a lawsuit against an employer within three years of the alleged violation and, if successful, be awarded unpaid wages and/or benefits, compensatory damages, liquidated damages up to twice the amount of unpaid wages and/or benefits, equitable relief—including reinstatement of employment, fringe benefits, and seniority rights—reasonable attorneys' fees and costs, and other appropriate relief or authorized penalties.[472] Additionally, the Minimum Wage Act allows complaints to be filed with the state labor department within the same timeframe.[473]

## 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.[474] 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 women 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.[475] FMLA

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[470] 260 R.I. CODE R. § 30-05-5.5.3(A)(1).

[471] R.I. GEN. LAWS § 28-57-10(a). *See also* Rhode Island Department of Labor & Training, *Healthy and Safe Families and Workplaces Act FAQ*, *available at* https://dlt.ri.gov/wrs/laborstandards/.

[472] R.I. GEN. LAWS §§ 28-12-19, 28-14-19.2.

[473] R.I. GEN. LAWS § 28-14-20.

[474] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[475] 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.[476] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

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

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

Eligible employees may be entitled to leave under the FMLA and the RIPFMLA upon the birth of a child. Employees also receive paid time off under the TCIP to bond with a newborn child. In addition, a pregnancy-related disability is likely considered a serious health condition under the RIPFMLA (as it is under the FMLA), triggering leave entitlements for pregnant employees prior to childbirth. For information on the RIPFMLA and the TCIP, see **3.9(a)(ii)**. For information on Rhode Island's pregnancy accommodation law, see **3.11(c)(ii)**.

## 3.9(d) *Adoptive Parents Leave*

### 3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

### 3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Under the RIPFMLA, an eligible employee may take time off to care for a newly-adopted child, aged 16 years or younger, as part of the employee's leave entitlement. In addition, if an employer permits an employee to use sick leave under the employer's policies in connection with the birth of a child, the employer must do the same for employees adopting a child under the age of 16.[477] Employees are also entitled to receive paid time off under the TCIP to bond with a child newly placed for adoption or foster care. For information on the RIPFMLA and the TCIP, see **3.9(a)(ii)**.

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[476] 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.

[477] R.I. GEN. LAWS § 28-48-11.

### 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*

The RIPFMLA also allows for "school involvement leave."[478] This provision entitles any employee (who has been employed for at least 12 months) up to 10 hours of leave during any 12-month period to attend school conferences, or other school-related activities, for a child of whom the employee is the parent, foster parent, or guardian.[479] The employee must provide 24 hours prior notice and make a reasonable effort to schedule the leave so as not to unduly disrupt operations.[480] School involvement leave is without pay, although employees may elect to use accrued vacation or paid time off for any part of the leave.[481] For information on the RIPFMLA, see **3.9(a)(ii)**.

### 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*

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

### 3.9(g) *Voting Time*

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

There is no federal law concerning time off to vote.

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

Rhode Island 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.

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

**Part-Time Elected Officials.** An employer with an employee who is a part-time elected official of an elected body must provide the employee with a flexible work schedule to accommodate the employee's attendance at the necessary sessions, wherever practical within the reasonable operation of the employer's business.[482] An employer does not violate this requirement if the employer cannot reasonably

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[478] R.I. GEN. LAWS § 28-48-12.

[479] R.I. GEN. LAWS § 28-48-12(a).

[480] R.I. GEN. LAWS § 28-48-12(b).

[481] R.I. GEN. LAWS § 28-48-12(b).

[482] R.I. GEN. LAWS § 28-11.1-2.

provide alternate work hours for the employee, or if the service of the elected official would necessitate the hiring of additional or replacement employees.[483]

Employers are prohibited from: (1) firing or threatening to fire the employee based upon their activities or decisions as a part-time elected official; (2) attempting to influence the employee to introduce legislation or vote on any legislation through job discrimination, compensation, or adverse job action; or (3) discriminating against an employee in any area of their employment because of legislative activities, votes, or business.[484]

Violations may be referred to the DLT and, if not resolved, must be referred to the attorney general for prosecution. Any person, firm, or corporation convicted of a violation of this law is subject to a fine up to $1,000 or up to one year in jail, or both.[485]

### 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.[486] 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.[487] 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 must provide unpaid leave for an employee to serve on a jury. An employer in Rhode Island must not cause an employee to lose their position, wage increase, promotion, or any other benefit of employment because the employee has been called to serve on a jury. Simply put, employees cannot be penalized in any way for performing this public service.[488]

While an employer must permit an employee to complete jury service, the employer is not required to compensate the employee for time spent on jury service—unless required to do so by contract or collective bargaining agreement.

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[483] R.I. GEN. LAWS § 28-11.1-2.

[484] R.I. GEN. LAWS § 28-11.1-3(a)(1)-(3).

[485] R.I. GEN. LAWS § 28-11.1-3(b).

[486] 28 U.S.C. § 1875.

[487] *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).

[488] R.I. GEN. LAWS § 9-9-28.

**Leave to Comply with a Subpoena.** An employee may take time off work to respond to a subpoena to give evidence or testify before any court within or without the state of Rhode Island or before any judicial, quasi-judicial, or other administrative body or entity with the authority to issue subpoenas.[489] To take leave, the employee must promptly provide notice to the employer that they have been served and is required to attend court or other duly constituted hearing. Time off to comply with a subpoena is unpaid.

Employers are prohibited from discharging, threatening, or otherwise taking adverse action regarding an employee's compensation, terms, conditions, location, or privileges of employment as a result of the employee's absence from work to comply with a subpoena.[490]

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

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

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

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

**Victims of Crime in General.** Rhode Island employers with 50 or more employees must grant employees who are victims of crime time off to attend court proceedings related to the crime.[491] Employers may not terminate an employee for exercising this right.[492] Such leave need not be paid, but employees may choose to use, or employers may require employees to use, any accrued vacation, sick, personal, or other paid leave.[493] Employees must present their supervisor with appropriate documentation of the need for this leave.[494] An employer can reserve the right to limit leave taken under this policy if the time off creates an undue hardship to its business.[495]

**Additional Protection for Victims of Domestic Violence, Sexual Assault, or Stalking.** Although Rhode Island law does not provide a leave entitlement specifically directed at victims of domestic violence, sexual assault, or stalking, Rhode Island has enacted a state law that bars employers from firing, refusing to hire, or otherwise discriminating against a person solely because they sought or obtained, or refused to obtain, a domestic violence restraining order.[496]

### 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

[489] R.I. GEN. LAWS § 9-1-54.

[490] R.I. GEN. LAWS § 9-1-54.

[491] R.I. GEN. LAWS § 12-28-13(a).

[492] R.I. GEN. LAWS § 12-28-13(b).

[493] R.I. GEN. LAWS § 12-28-13(d).

[494] R.I. GEN. LAWS § 12-28-13(f).

[495] R.I. GEN. LAWS § 12-28-13(g).

[496] R.I. GEN. LAWS § 12-28-10.

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.[497]

**FMLA.** Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[498] 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.[499] 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.

[497] 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)).

[498] 29 C.F.R. § 825.126(a).

[499] 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).

 

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

Rhode Island law provides various benefits to employees who serve in the military or are close to those in military service. These benefits, including leave and reinstatement entitlements, frequently track USERRA protections. The highlights of the Rhode Island provisions are discussed below.

**Military Service Leave: National Guard & Reserves.** Any person who is a duly qualified member of the National Guard of Rhode Island may take a leave of absence from employment in order to perform any military service they may be called upon to perform by proper authority. Further, all National Guard members on state active duty are entitled to the rights, protections, privileges, and immunities offered under USERRA. These rights are also given to National Guard members of states other than Rhode Island who work for a Rhode Island employer.[500] Rhode Island does not have any provisions concerning notice or certification of the need for such leave.

Leave for those in the National Guard and Reserves is treated as a leave of absence without pay. During leave, the employee is entitled to preserve all rights to receive "normal vacation, sick leave, bonuses, advancement, and any other advantage of his [or her] employment normally to be anticipated."[501]

Any such employee who leaves a position (other than a temporary position) with a Rhode Island employer to perform any military service is entitled to reinstatement in that position or a similar position with the same status, pay, and seniority, provided the employee presents evidence of satisfactory completion of service and is still qualified to perform the duties of the job.[502]

Additionally, employers are prohibited from discharging or otherwise discriminating against individuals because they are members of the state military forces or the U.S. reserves. The law also forbids an employer from hindering or preventing an employee from performing military duty when ordered to do so.[503]

**Military Service Leave: U.S. Armed Forces.** Although no specific state law dictates, employers cannot interfere if employees are called to active duty in the U.S. armed forces. Employees' right to take leave for military service is implied, due to the reinstatement rights granted such employees. Rhode Island does not have any provision concerning notice or certification of an employee's need for leave to serve in the armed forces.

Employees who leave employment to serve in the U.S. armed forces are entitled to reinstatement upon their honorable discharge. To qualify, an employee must request reinstatement within 40 days of being honorably discharged. If still qualified to perform the duties of their former position, the employee must be reinstated to that position or to a position of like seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. If necessary, employers are allowed to release another employee to make reinstatement of the veteran possible.[504]

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[500] R.I. GEN. LAWS § 30-11-3.

[501] R.I. GEN. LAWS §§ 30-11-3, 30-11-4, 30-11-7, and 30-11-8.

[502] R.I. GEN. LAWS §§ 30-11-3, 30-11-4, 30-11-7, and 30-11-8.

[503] R.I. GEN. LAWS §§ 30-11-2, 30-11-6, and 30-11-9.

[504] R.I. GEN. LAWS § 30-21-1.

In addition to the seniority rights they had when they left, returning employees are entitled to additional seniority rights equal to the time they served in the armed forces.[505]

**Family Military Leave.** The Rhode Island Family Military Leave Act requires companies to offer unpaid leave to the families of servicemembers.[506] An eligible employee who is the spouse or parent of a person called to serve in the state or federal military for more than 30 days may take time off work, without pay. An employer that employs between 15 and 50 employees must provide up to 15 days of leave to an employee for family military leave during the time that deployment orders are in effect. An employer that employs more than 50 employees must provide up to 30 days of leave while deployment orders are in effect.

An employee is eligible for family military leave if the employee has been employed by the same employer for at least 12 months, and has worked at least 1,250 hours in the 12-month period immediately preceding the leave. An employee may not take family military leave unless the employee has exhausted all accrued vacation and other leave (except sick leave and disability leave).[507]

To take such leave, an employee must provide at least 14 days' notice if the leave will consist of five or more consecutive days. If the leave is for less than five consecutive days, the employee is only required to give advance notice as practicable. The employer can require verification of the employee's eligibility for leave from the proper military authority.[508]

During family military leave, the employer must make it possible for the employee to continue their benefits, at the employee's expense, for the duration of the leave. The employer and employee may negotiate to maintain benefits at the employer's expense for the duration of the leave. Taking leave may not result in the loss of benefits accrued prior to the leave.[509]

Under family military leave, the employee must be restored to the same position when the employee returns, or to an equivalent position. Reinstatement may be denied due to conditions unrelated to the employee's exercise of rights under the leave provision.[510]

Finally, an employer may not interfere with an employee's family military leave rights, or discriminate or retaliate against an employee who exercises those rights, attempts to exercise those rights, or opposes any unlawful practice concerning those rights.[511]

**Other Military-Related Protections: Spousal Unemployment.** While not restricted to just military service, Rhode Island recognizes that "[v]oluntarily leaving work with an employer to accompany, join, or follow his or her spouse to a place, due to a change in location of the spouse's employment, from which it is

[505] R.I. GEN. LAWS § 30-21-1.

[506] R.I. GEN. LAWS §§ 30-33-1 *et seq.*

[507] R.I. GEN. LAWS §§ 30-33-2, 30-33-3.

[508] R.I. GEN. LAWS § 30-33-3.

[509] R.I. GEN. LAWS § 30-33-4.

[510] R.I. GEN. LAWS § 30-33-4.

[511] R.I. GEN. LAWS § 30-33-5.

impractical for such individual to commute" constitutes leaving work for good cause for purposes of eligibility for unemployment benefits.[512]

### 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.** Rhode Island mandates leave for employees who serve as volunteer emergency responders.[513] Upon prompt notice by an employee of the need for leave, an employer cannot discharge or take any other disciplinary action against the employee on the basis of the employee's failure to report for work, where the employee's absence is due to responding to an emergency in their capacity as a volunteer member of a fire department or ambulance department. The employer is not required, however, to compensate the employee for the period of normal working hours missed due to the employee's absence.

For purposes of this statute, *volunteer member* means a volunteer, call, reserve, or permanent-intermittent firefighter or emergency medical technician. The definition does not include any person who received compensation for over 975 hours of services rendered in such capacity over the preceding six months. *Responding to an emergency* means responding to, working at the scene of, or returning from a fire, rescue, emergency medical service call, hazardous materials incident, or a natural or man-made disaster—where the emergency itself occurs during a period other than the normal working hours of the employee.[514]

If the employer so requests, an employee is required to submit a statement signed by the chief of the appropriate fire department or ambulance department certifying the date and time the employee responded to and returned from the emergency. In addition, the employee is required to inform the employer or the employee's immediate supervisor of all reasons for any failure to report to work as required.[515]

## 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.[516] Employers are also required to comply with all applicable occupational safety and health

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[512] R.I. GEN. LAWS § 28-44-17.

[513] R.I. GEN. LAWS § 28-6.13-3.

[514] R.I. GEN. LAWS § 28-6.13-2.

[515] R.I. GEN. LAWS § 28-6.13-3.

[516] 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.

standards.[517] 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.[518] 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*

Rhode Island does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act.

## 3.10(b) *Cell Phone & Texting While Driving Prohibitions*

### 3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

### 3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Rhode Island has enacted laws concerning the use of mobile phones while driving. These laws apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, these statutes.

First, no *person*—which is defined to include corporations and business organizations "of any kind"—may use a wireless handset (*i.e.*, cell phone) "to compose, read or send text messages" while driving on any public street or highway in Rhode Island.[519] This law applies to all drivers, except those who fall under stricter laws, as indicated below. Individuals may use a hands-free device.[520] They may also use a wireless handset to contact law enforcement in the event of an emergency, or to activate, view, or deactivate a navigational device.[521] Additionally, no driver may engage in a phone call while driving without using a hands-free device.[522]

Second, commercial drivers face a more restrictive rule. They may not use hand-held cell phones for any purpose while driving on a highway in Rhode Island. And no motor carrier may allow, or require, its drivers to do so.[523]

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[517] 29 U.S.C. § 654(a)(2).

[518] 29 U.S.C. § 667(c)(2).

[519] R.I. GEN. LAWS § 31-22-30(a)(4), (8), and (b).

[520] R.I. GEN. LAWS § 31-22-30(d).

[521] R.I. GEN. LAWS § 31-22-30.

[522] R.I. GEN. LAWS § 31-22-31.

[523] R.I. GEN. LAWS § 31-10.3-38.

Third, specific rules also apply to minors and school bus drivers. Generally speaking, neither of these groups may use cell phones for any reason while operating vehicles.[524]

### 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*

Rhode Island 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*

With a few exceptions, Rhode Island prohibits smoking in places of employment, including company-owned vehicles used by more than one person.[525] *Smoking* includes the use of electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery system products or other similar products that rely on vaporization or aerosolization.[526] State law also provides that smoking or vaporizing of cannabis is not permitted in any public place that prohibits smoking or vaporizing of tobacco products.[527] An employer may provide an outside smoking area for employees, but it must be physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace.[528]

**Posting Requirements.** Employers must communicate this policy to all employees and to prospective employees upon their application for employment.[529] No smoking signs must be clearly and conspicuously posted at the entrance of every place of employment where smoking is prohibited. The signs must include the statement: "It is Illegal to Smoke in the Establishment. To report a violation call _____."[530] The prepared poster instructs employees to call the Rhode Island Department of Health at 401-222-3293.[531]

**Antiretaliation Provisions.** No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant, or customer because that person exercises any rights under the smoking prohibition or reports or attempts to prosecute a violation of smoking prohibitions.[532]

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[524] R.I. GEN. LAWS §§ 31-22-11.8, 31-22- 11.

[525] R.I. GEN. LAWS §§ 23-20.10-2(8), 23-20.10-4.

[526] R.I. GEN. LAWS §§ 23-20.10-2.

[527] R.I. GEN. LAWS § 21-28.11-29.

[528] R.I. GEN. LAWS § 23-20.10-5.

[529] R.I. GEN. LAWS § 23-20.10-4.

[530] R.I. GEN. LAWS § 23-20.10-7.

[531] The notice is available at https://health.ri.gov/publications/bytopic.php?parm=Tobacco.

[532] R.I. GEN. LAWS § 23-20.10-8.

### 3.10(e) *Suitable Seating for Employees*

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

Federal law does not address suitable seating requirements for employees.

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

Rhode Island law does not address suitable seating requirements for employees.

### 3.10(f) *Workplace Violence Protection Orders*

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

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

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

Rhode Island provides employers with statutory procedures to seek injunctive relief in the event that violence, or threats of violence, arise in the workplace. An employer may (in addition to, or instead of, filing criminal charges) seek a temporary restraining order, a preliminary injunction, and an injunction, pursuant to Rule 65 of the Superior Court Rules of Civil Procedure, prohibiting further unlawful acts by that individual at the worksite.[533] This right is triggered if an employer, or an employer's employee or invitee, has:

- suffered unlawful violence by an individual;
- received a threat of violence by an individual which can reasonably be construed as a threat which may be carried out at the worksite; or
- been stalked or harassed at the worksite.[534]

This law should not, however, be interpreted to prevent lawful picketing or lawful demonstration, including any protected activity related to a labor dispute.[535] Employers and their agents who act pursuant to this statute in good faith are immune from civil liability.[536]

In an action brought under this statute, employers will need to submit proof—by affidavit, if the hearing is *ex parte*, and by clear and convincing evidence for all other types of hearings—of the irreparable harm or damage caused by the offending individual to the employer (or its employee or invitee).[537]

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[533] R.I. GEN. LAWS § 28-52-2(a).

[534] R.I. GEN. LAWS § 28-52-2(a).

[535] R.I. GEN. LAWS § 28-52-2(g).

[536] R.I. GEN. LAWS § 28-52-2(e).

[537] R.I. GEN. LAWS § 28-52-2(b).

If the court grants injunctive relief, it may order the defendant not to visit or interfere at the employer's operations or worksite. By way of further example, it may order the defendant to cease harassment, stalking, abuse, or telephoning of the employer, or of its employees or invitees, at the worksite.[538]

The Rhode Island civil procedure rules set out further requirements for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction.[539] There are rules, for example, governing security deposits, notice to the adverse party, the scope of any injunction order, and how an order may be dissolved at the request of the defendant.

## 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");[540] (2) the Americans with Disabilities Act (ADA);[541] (3) the Age Discrimination in Employment Act (ADEA);[542] (4) the Equal Pay Act;[543] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[544] (6) the Civil Rights Acts of 1866 and 1871;[545] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[546]

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[538] R.I. GEN. LAWS § 28-52-2(b)(1)–(6).

[539] R.I. R. CIV. P. 65. Preliminary injunctions, for example, cannot be issued without notice to the other party. Temporary restraining orders may last for only 10 days. And a security deposit may be required from the employer for either type of relief, to cover any costs or damages incurred by the defendant if the injunction has been wrongfully entered. *See* R.I. R. CIV. P. 65(a)–(c).

[540] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[541] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[542] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[543] 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.

[544] 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)).

[545] 42 U.S.C. §§ 1981, 1983.

[546] 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.

- 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.[547] 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.[548]

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

Rhode Island's Fair Employment Practices Act (FEPA) protects employees from discrimination on numerous grounds, including some not covered by the federal antidiscrimination statutes. Specifically, FEPA protects individuals on the basis of their:

- race;
- color;
- religion;
- sex (including pregnancy, childbirth, and related medical conditions, as well as lactation or need to express breast milk);
- country of ancestral origin;
- disability;
- age (40+);
- sexual orientation; and
- gender identity or expression.[549]

The FEPA protections apply to all employers with at least four employees. Coverage does not include "a religious corporation, association, educational institution, or society with respect to the employment of individuals of its religion to perform work connected with the carrying on of its activities."[550] Religious organizations, moreover, have no duties relating to discrimination on the basis of sexual orientation.[551]

As noted in **3.11(c)(ii)**, the FEPA also requires that employers reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition, unless doing so would cause the employer undue hardship.[552]

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

[548] 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.

[549] R.I. GEN. LAWS §§ 28-5-6, 28-5-7, and 28-5-7.4.

[550] R.I. GEN. LAWS § 28-5-6(8)(ii).

[551] R.I. GEN. LAWS § 28-5-6(15).

[552] R.I. GEN. LAWS. § 28-5-7.4.

 

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

The state fair employment practices laws are enforced by the Rhode Island Commission for Human Rights (RICHR). Employees who feel they have been discriminated against have one year from the date of the alleged harm to file a charge with the RICHR, who will then conduct an investigation and attempt conciliation with the parties.[553] The RICHR may issue a complaint against the employer, if it finds probable cause to do so.

Under various circumstances—including upon request of the complainant—the RICHR may issue a notice of right to sue in state court. Upon the issuance of this notice, the complainant has 90 days to file a lawsuit.

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

Outside of FEPA, Rhode Island law provides discrimination protection for the following:

- homelessness;
- genetic information;[554]
- HIV/AIDS status; and
- militia or reservist status.[555]

**Off Duty Conduct Discrimination.** Rhode Island law protects employees from discrimination based on legal conduct outside of working hours. Specifically, an employer may not discriminate against an employee based on the employee's use of tobacco or cannabis. No Rhode Island employer may require, as a condition of employment, that any employee or prospective employee refrain from smoking or using tobacco products outside work. Nor may employers discriminate against an individual because the person smokes or uses tobacco products outside the course of employment.[556] This prohibition does not apply to nonprofit organizations that discourage, as one of their primary purposes or objectives, the use of tobacco products by the general public.[557]

With respect to cannabis, unless off-duty use is prohibited under a collective bargaining agreement, an employer cannot fire or take disciplinary action against an employee solely for the employee's private lawful use of cannabis outside the workplace if the employee has not and is not working under the influence of cannabis. However, this provision does not apply to an employer that is a federal contractor or otherwise subject to federal law, such that the employer's failure to take adverse action against an employee for cannabis use would cause the employer to lose a monetary or licensing-related benefit. In addition, if an employee is employed in a job, occupation, or profession that is hazardous, dangerous, or essential to public safety and welfare, the employer may adopt and implement a policy prohibiting the use or consumption of cannabis within the 24-hour period prior to a scheduled work shift or assignment. These jobs, occupations, and professions include but are not limited to: operation of aircraft, watercraft,

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[553] R.I. GEN. LAWS § 28-5-17.

[554] Notably, Rhode Island employers may not request or require an applicant or an employee to undergo any genetic testing, may not deny employment based on an applicant's refusal to submit to genetic or related testing, and may not alter the terms and conditions of employment based on an employee's refusal to undergo such testing or to reveal the results of any testing. R.I. GEN. LAWS § 28-6.7-1.

[555] R.I. GEN. LAWS §§ 34-37.1-3; 28-6.7-1; 23-6.3-11, 30-11-2, and 30-11-6.

[556] R.I. GEN. LAWS § 23-20.10-14(a).

[557] R.I. GEN. LAWS § 23-20.10-14(a).

heavy equipment, heavy machinery, commercial vehicles, school buses or public transportation; use of explosives; public safety first responder jobs; and emergency and surgery medical personnel.[558]

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

In addition to the federal and state laws, employers with operations in Providence are subject to a local fair employment practices ordinance. The protected classifications include: race; color; sex; pregnancy, childbirth, and related medical conditions; sexual orientation; gender identity or expression; religion; marital status; disability; age; and country of ancestral origin. The antidiscrimination protections apply to employers that employ seven or more individuals within the City of Providence, or any person acting as an agent of an employer either directly or indirectly.[559] An employer must post a workplace poster covering these protections. Additionally, an employer must provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions to new employees. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.[560] An individual alleging a violation of the ordinance may file a complaint with the Providence Human Relations Commission within 180 days after the alleged act of discrimination.[561]

### 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."[562] 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.[563]

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[558] R.I. GEN. LAWS § 21-28.11-29.

[559] PROVIDENCE, R.I., CODE OF ORDINANCES §§ 16-54 (certain religious corporations, associations, educational institutions, societies with respect to the employment of individuals of their religion to perform work connected with the carrying on of its religious activities are exempt from coverage by the ordinance), 16-57 (exceptions, including *bona fide* occupational qualification), and 16-60 (other exemptions).

[560] PROVIDENCE, R.I., CODE OF ORDINANCES §§ 16-57(b) (written notice), 16-84 (workplace poster).

[561] PROVIDENCE, R.I., CODE OF ORDINANCES §§ 16-61, 16-64, and 16-66.

[562] 29 U.S.C. § 206(d)(1).

[563] 42 U.S.C. § 2000e-5.

 

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

Rhode Island's pay equity protections expand beyond prohibiting sex-based pay discrimination, and include enforcement procedures and a safe harbor for employers that conduct an audit of their pay practices.[564]

The pay equity statute prohibits an employer from paying any of its employees at a wage rate less than the rate paid to employees of another race, or color, or religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin for comparable work.[565] *Comparable work* means work that requires substantially similar skill, effort, and responsibility and that is performed under similar working conditions. Determining whether jobs are comparable will require an analysis of the jobs as a whole. Minor differences in skill, effort, or responsibility will not prevent two jobs from being considered comparable.[566]

The statute nonetheless permits a wage differential if the employer demonstrates:

- the employer's pay systems are fair and are not being used as a pretext for an unlawful wage differential;
- the differential is based upon one or more of the following factors:
  - a seniority system; provided, however, that time spent on leave due to a pregnancy-related condition or parental, family, and medical leave cannot reduce seniority;
  - a merit system;
  - a system that measures earnings by quantity or quality of production;
  - geographic location, when the locations correspond with different costs of living, provided that no location within the state will be considered to have a sufficiently different cost of living. This clause will apply at the employer's discretion and for the limited purpose of determining wage differentials for employees;
  - a reasonable shift differential, which is not based upon or derived from a differential in compensation based on a protected characteristic;
  - education, training, or experience to the extent such factors are job-related and consistent with a business necessity;
  - work-related travel, if the travel is regular and a business necessity; or
  - a bona fide factor other than a protected characteristic that is not based upon or derived from a differential in compensation based on a protected characteristic, and that is job-related with respect to the position in question and consistent with business necessity. This factor will not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the wage differential and that the employer has refused to adopt the alternative practice. A cost prohibitive alternative business practice is not considered an alternative business practice;

[564] R.I. GEN. LAWS § 28-6-18; 260 R.I. CODE R. 30-05-8.8.

[565] R.I. GEN. LAWS § 28-6-18.

[566] R.I. GEN. LAWS § 28-6-17.

 

- the factor or factors relied upon reasonably explain the differential; and
- each factor is relied upon reasonably.[567]

An individual's wage history cannot, by itself, justify an otherwise unlawful wage differential. An employer that discriminates in violation of the statute cannot reduce the wage rate of any employee in order to comply with the statute.[568]

An employee's agreement to work for less than the wage to which the employee is entitled is not a defense to an action alleging a violation of the statute. However, in the event an employer provides health insurance or retirement benefits as a benefit to employees, a difference in these benefits due to an employee's decision, in writing, to decline a benefit will not be considered a violation, as long as the employer provides equal access to the benefits.[569]

Any provision in any contract entered into after January 1, 2023 establishing a variation in rates of pay based on a protected characteristic will be null and void, except that the statute does not limit the rights of an employee provided by any other provision of law or collective bargaining agreement.[570]

An applicant or employee alleging that an employer's pay practices violate the pay equity statute may file an administrative complaint with the Director of Labor and Training or may file a civil action, though an civil action cannot be filed if the individual also filed an administrative complaint and the Director has issued a notice of hearing. Any claim must be filed within two years of when the individual knew of, or should have known of, the occurrence of a discriminatory practice, except that an individual may file a complaint demonstrating facts that establish a willful and wanton violation within three years of when the claimant knew of, or should have known of, the occurrence of a discriminatory practice.[571] *Occurrence of discriminatory practice* means whenever a discriminatory compensation decision or other practice is adopted; whenever an individual becomes subject to a discriminatory compensation decision or other practice; or whenever an individual is affected by the application of a discriminatory compensation decision or other practice.[572] Each time wages, benefits, or other compensation are paid, resulting in whole or in part from such a decision or other practice, is considered a separate violation. Prior to filing a complaint, the individual must provide the employer with written notice of the individual's intent to commence an action at least 45 days prior to the commencement of the action, and the written notice must include a statement indicating the individual's belief that an unlawful wage differential exists and that it applies to the individual.[573]

An employer found to be in violation of the statute may be fined: (1) up to $1,000 for a first violation; (2) up to $2,500 for a violation where the employer has one previous violation within five years; and (3) up to $5,000 for a violation where the employer has had two or more violations within seven years. In addition, an employer that fails to post the required notice of rights under the statute will be fined not

[567] R.I. GEN. LAWS § 28-6-18.

[568] R.I. GEN. LAWS § 28-6-18.

[569] R.I. GEN. LAWS § 28-6-18.

[570] R.I. GEN. LAWS § 28-6-19.

[571] R.I. GEN. LAWS § 28-6-19.

[572] R.I. GEN. LAWS § 28-6-17.

[573] R.I. GEN. LAWS § 28-6-19.

 

less than $100 nor more than $500. No civil penalties will be assessed from January 1, 2023 to December 31, 2024.[574]

The pay equity statute incorporates a safe harbor provision for employers that conduct an audit of their pay practices. In an action against an employer alleging an unlawful wage differential, an employer has an affirmative defense to all liability if the employer is able to demonstrate that it conducted a good faith self-evaluation of its pay practices within the previous two years and prior to the commencement of the action, and can demonstrate that any unlawful wage differentials revealed by its self-evaluation have been eliminated. An employer's self-evaluation may be of the employer's own design or on standard template or form published by the Rhode Island Department of Labor and Training, as long as the scope and detail of the self-evaluation reflects the exercise of due diligence by the employer to identify, prevent, and mitigate violations of the statute in light of the employer's size.[575]

In determining whether a self-evaluation reflects the exercise of due diligence, the factors to be considered include, but are not limited to:

- whether the evaluation includes all relevant jobs and employees within those relevant jobs;
- whether the employer's analysis makes a reasonable effort to identify similar jobs and employees using a consistent, fact-based approach;
- whether the employer has tested explanatory factors for an unbiased and relevant relationship to pay;
- whether the evaluation takes into account all reasonably relevant and available information; and
- whether the evaluation is reasonably sophisticated in its analysis of potentially comparable work, employee compensation, and the application of the permissible reasons for wage differentials.[576]

If an employer fails to retain the records necessary to show the manner in which it evaluated and applied these factors, this failure may give rise to an inference that the employer did not exercise due diligence in conducting its self-evaluation. Evidence that a self-evaluation has been conducted or that remedial steps have been undertaken is not sufficient evidence, standing alone, to find a violation that occurred prior to the date of the completion of the self-evaluation. Thus, an employer that has not completed a self-evaluation will not be subject to any negative or adverse inference as a result of not having completed a self-evaluation.[577]

In determining whether an employer has eliminated an unlawful wage differential revealed by its self-evaluation, the court will determine whether the employer has adjusted salaries or wages in order that employees performing comparable work are paid equally and whether any salary or wage adjustments have been completed prior to commencement of the action. An employer will have 90 days from the date

[574] R.I. GEN. LAWS §§ 28-6-18, 28-6-21.

[575] R.I. GEN. LAWS § 28-6-18.

[576] R.I. GEN. LAWS § 28-6-18.

[577] R.I. GEN. LAWS § 28-6-18.

 

of completion of its self-evaluation to adjust wages beginning from the day in the pay period the self-evaluation was completed.[578]

This affirmative defense will be available to employers beginning on January 1, 2023 and ending June 30, 2026.

### 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.[579]

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

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;

[578] R.I. GEN. LAWS § 28-6-18.

[579] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

 

- 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).[580]

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.[581] 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.[582] 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."[583]

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.[584]

[580] 29 C.F.R. § 1636.3.

[581] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[582] 29 C.F.R. § 1636.3.

[583] 29 C.F.R. § 1636.4.

[584] 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.[585]

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

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

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

Rhode Island requires employers to grant reasonable accommodations for pregnancy. Specifically, under the state's fair employment practices statutes, an employer must reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition. Examples of reasonable accommodations include:

- more frequent or longer breaks;
- time off to recover from childbirth;
- access to equipment;
- job restructuring;
- light duty;
- seating;
- temporary transfer to a less strenuous or hazardous position;
- assistance with manual labor;
- private nonbathroom space for lactation purposes; or
- modified work schedules.[586]

A reasonable accommodation does not require that an employer create additional employment that the employer would not otherwise have created or would create for other classes of employees, such as those who are injured or disabled not due to pregnancy.[587]

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[585] 29 C.F.R. § 1636.3.

[586] R.I. GEN. LAWS. § 28-5-7.4(b)(1).

[587] R.I. GEN. LAWS. § 28-5-7.4(c).

An employer does not have to provide an accommodation, however, if the employer shows that doing so would cause undue hardship. *Undue hardship* is defined as a significant difficulty or expense to the employer.[588] The fact that the employer provides, or would be required to provide, a similar accommodation to other classes of employees who need it, such as those who are injured on the job or those with disabilities, creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.[589]

An employer cannot:

- make an employee take leave if there is another reasonable accommodation that can be provided;
- require an individual with a need related to pregnancy, childbirth, or a related medical condition to accept an accommodation which such individual chooses not to accept it;
- deny employment opportunities based on the refusal to reasonably accommodate an employee; or
- refuse to provide accommodation if the employer provides or would provide similar accommodations to other classes of employees such as those who are injured or disabled not due to pregnancy.[590]

There are additional notice and posting requirements.

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

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

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[591] Multiple decisions of the U.S. Supreme Court[592] 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.[593] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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[588] R.I. GEN. LAWS. § 28-5-7.4(a)(1).

[589] R.I. GEN. LAWS. § 28-5-7.4(b)(3).

[590] R.I. GEN. LAWS. § 28-5-7.4(a).

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

[592] *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).

[593] 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.

 

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

Pursuant to its Sexual Harassment, Education and Training in the Workplace statute, Rhode Island requires employers to "promote a workplace free of sexual harassment."[594] To that end, employers with 50 or more employees must adopt a sexual harassment policy. That policy must include the following provisions:

- a statement that sexual harassment in the workplace is unlawful;
- a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;
- a description and examples of sexual harassment;
- a statement of the range of consequences for employees found to have committed sexual harassment;
- a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the people to whom complaints should be made; and
- the identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact these agencies.[595]

Employers must provide current employees with a written copy of the policy, and must give new employees a copy at the commencement of employment.[596]

In addition, Rhode Island encourages employers to conduct an education and training program for all employees. The Sexual Harassment, Education and Training in the Workplace statute recommends that such training be provided for new employees within one year of commencement of employment, and that employers provide additional training for supervisors.[597] The training should address the specific responsibilities of supervisory and managerial employees and the methods that these employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

## 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

[594] R.I. GEN. LAWS § 28-51-2(a).

[595] R.I. GEN. LAWS § 28-51-2(b).

[596] R.I. GEN. LAWS § 28-51-2.

[597] *See* R.I. GEN. LAWS §§ 28-51-2(c), 28-51-3.

activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

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

Rhode Island has enacted a statute to protect employees and applicants who engage in whistleblowing activity. The Rhode Island Whistleblowers' Protection Act makes it unlawful for employers to "discharge, threaten, or otherwise discriminate against an employee" because the employee has reported or is about to report, in good faith, a violation of any law.[598] The statute further protects employees who are requested by a public body to participate in an investigation or hearing. Employees also may not be discriminated against for refusing to violate, or refusing to assist in a violation, of any law or regulation. Employers cannot report or threaten to report an employee's immigration status to Immigration and Customs Enforcement or any other immigration agency or law enforcement agency, including the state and local police, in retaliation for reporting a violation of law.[599]

### 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)[600] and the Railway Labor Act (RLA)[601] 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*

Rhode Island has not passed any right-to-work laws or other particularly notable laws pertaining to private-sector unions or union activities.

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[598] R.I. GEN. LAWS § 28-50-3.

[599] R.I. GEN. LAWS § 28-50-3.

[600] 29 U.S.C. §§ 151 to 169.

[601] 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).[602] 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.[603] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

### 4.1(b) *State Mini-WARN Act*

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

### 4.1(c) *State Mass Layoff Notification Requirements*

Rhode Island does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

## 4.2 Documentation to Provide When Employment Ends

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

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

**Table 10. Federal Documents to Provide at End of Employment**

| Category | Notes |
|---|---|
| **Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)** | Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[604] The notice must be provided not later than the earlier of:<br>• 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 |

[602] 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.

[603] 20 C.F.R. §§ 639.4, 639.6.

[604] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

| Table 10. Federal Documents to Provide at End of Employment | |
|---|---|
| **Category** | **Notes** |
| | • 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.[605] |

### 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.** | As for health insurance continuation, employers that provide their employees a group hospital, surgical, or medical insurance plan must post a conspicuous notice to the employees of their options for extended coverage.[606] Consistent with the posting requirement, it is recommended that employers inform separating employees of their options for continuation coverage. |
| **Unemployment Notice** | **Generally.** The Rhode Island Department of Labor and Training requires all employers to provide notice to separating employees of the availability of unemployment compensation at the time of the employee's separation from employment.[607]<br><br>**Multistate Workers.** Upon an employee's separation, a multistate employer must inform the employee of the jurisdiction under whose unemployment compensation law services have been covered. If the employee is not located in the chosen jurisdiction at the time of termination, the employer must notify the employee as to the procedure for filing interstate benefit claims.[608] |

[605] 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.

[606] R.I. GEN. LAWS § 27-19.1-1(f).

[607] The Employer-Notice-Requirement-Memo with sample notice language is available here: https://dlt.ri.gov/sites/g/files/xkgbur571/files/emergencyui/Employer-Notice-Requirement-Memo.pdf and can be found on the Unemployment Insurance | RI Department of Labor & Training website here: https://dlt.ri.gov/individuals/unemployment-insurance..

[608] 260 R.I. CODE R. § 40-05-1.3(A)(4).

## 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*

Employers are prohibited from making, maintaining, or circulating a "blacklist" to prevent an employee from obtaining or continuing in employment because the employee exercised their rights to organize, unionize or bargain collectively.[609]

Rhode Island provides protections for employers that provide job references for current or former employees. An employer that, upon the request of a prospective employer or a current/former employee, provides fair and unbiased information about the employee or the former employee's job performance is presumed to be acting in good faith and is immune from civil liability for the disclosure and the consequences of the disclosure.[610] The presumption of good faith is rebuttable upon a showing by a preponderance of the evidence that the information disclosed was knowingly false, deliberately misleading, disclosed for malicious purposes, or violative of the current or former employee's civil rights under the employment discrimination laws in effect at the time of disclosure.[611]

[609] R.I. GEN. LAWS § 28-7-13(2).

[610] R.I. GEN. LAWS § 28-6.4-1(c); *see also Kevorkian v. Glass*, 913 A.2d 1043 (R.I. 2007) (affirming the lower court's decision to grant summary judgment in favor of the employer's director because the director had a qualified privilege under Rhode Island's job reference immunity statute to make the allegedly defamatory statement that the former employee had "unacceptable work practice habits" when supplying a job reference because the statement was presumed to be in good faith and the former employee did not prove specific facts showing malice).

[611] R.I. GEN. LAWS § 28-6.4-1(c).