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STATE

Littler on

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

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

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

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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]

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

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

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

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

1.1(b) *State Guidelines on Classifying Workers*

In Utah, 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).

In 2011, the Utah Legislature formed the Utah Worker Classification Enforcement Council in an effort to increase enforcement of independent contractor misclassification and to ensure that employees are properly classified. The council is responsible for investigating the nature and extent of misclassification in Utah, assessing the success of enforcement efforts, improving information sharing among agencies, and recommending pertinent legislative changes.[5]

In 2021the state Attorney General's Office – Utah Trafficking in Persons Task Force also signed a Partnership Agreement with the U.S. Department of Labor, Wage and Hour Division with the mutual goals of "providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, and sharing resources and enhancing enforcement by conducting joint investigations and sharing information consistent with applicable law."[6] The Partnership Agreement is in force until December 7, 2026.

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

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

[5] For a description of the council's duties and powers, see UTAH CODE ANN. § 34-47-202, as well as the state labor commission's webpage about the council, located at https://laborcommission.utah.gov/worker-classification-coordinated-enforcement-council/.

[6] U.S. Dep't of Labor, Wage and Hour Div. & Utah Attorneys General Office – Utah Trafficking in Persons Task Force, *Partnership Agreement* (Dec. 7, 2021), *available at* https://www.dol.gov/sites/dolgov/files/WHD/MOU/ut-1a.pdf.

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practices Laws	Utah Labor Commission, Antidiscrimination & Labor Division	There are no relevant statutes or court decisions concerning independent contractor status.
Income Taxes	Utah State Tax Commission	Internal Revenue Service (IRS) 20-factor test.[7]
Unemployment Insurance	Department of Workforce Services	Statutory test. To be regarded as an independent contractor, the individual must be: (1) free from control and direction both under contract and in fact; and (2) customarily engaged in an independently established trade, occupation, profession, or business. Unless both factors are present, the individual is presumed to be an employee.[8]
Wage & Hour Laws	Utah Labor Commission	Fair Labor Standards Act (FLSA) economic realities test.[9]
Workers' Compensation	Utah Labor Commission	Statutory test. The statute defines *independent contractor* as one who, while engaged to perform work for another, is: "(A) independent of the employer in all that pertains to the execution of the work; (B) not subject to routine rule or control of the employer; (C) engaged only in the performance of a definite job or piece of work; and (D) subordinate to the employer only in effecting a result in accordance with the employer's design."[10]

[7] Utah Tax Comm'n, Appeal No. 92-1880, 1993 Utah Tax LEXIS 357 (Aug. 11, 1993).

[8] UTAH CODE ANN. § 35A-4-204(3); UTAH ADMIN. CODE r. 994-204-301 to 994-204-303 (setting forth numerous additional factors that may be considered); *see also Petro-Hunt, L.L.C. v. Dep't of Workforce Servs.*, 197 P.3d 107, 115-16 (Utah Ct. App. 2008) (noting that the unemployment statute sets out a conjunctive test; both elements must be satisfied).

[9] Under the state minimum wage provisions, terms will be interpreted consistently with the FLSA's minimum wage provisions. UTAH CODE ANN. § 34-40-102(1).

[10] UTAH CODE ANN. §§ 34A-2-103(2), 34A-2-104.

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		Utah courts have focused on the right to control.[11]
Workplace Safety	Utah Division of Occupational Safety and Health (UOSH)	While Utah has a state approved plan under the federal Occupational Safety and Health Act, there are no relevant statutes or court decisions concerning independent contractor status in this context.

1.2 Employment Eligibility & Verification Requirements

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

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

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[12]

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

[11] *See Utah Home Fire Ins. Co. v. Manning*, 985 P.2d 243, 246 (Utah 2000). An individual will be considered an employee if the "employer had the right to control the worker's manner or method of executing or carrying out the work," regardless of how the parties classify the relationship. 985 P.2d at 246. The right to control, not the actual degree of control exercised, is determinative. Facts to be considered include: (1) any covenants or agreements existing between the parties concerning the right of direction and control; (2) right to hire and fire; (3) method of payment; and (4) which party furnishes equipment. 985 P.2d at 247.

[12] 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.

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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.[13] 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.[14]

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

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

Under the Utah Immigration Accountability and Enforcement Act, it is generally unlawful for an employer to discharge an employee who is a U.S. citizen or permanent resident alien working in Utah and replace the employee with (or have the employee's duties assumed by) an employee who is an unauthorized alien hired on or after July 1, 2009.[15]

1.2(b)(i) *Private Employers*

Private employers with 150 or more employees may not hire a new employee unless the employer is registered with and uses a status verification system to verify the federal legal working status of any new employee.[16] *Status verification system* (SVS) includes E-Verify, the Social Security Administration's Social Security Number Verification Service, or an independent third-party system that is equally or more reliable than the other programs.[17]

If a private employer complies with the verification provisions, and the information obtained in accordance with the SVS indicates that the employee's federal legal status allows the employer to hire the employee, the employer may not be held civilly liable under state law in a cause of action for unlawful hiring of an unauthorized alien. Moreover, if the information obtained via the SVS indicates that the individual is an alien ineligible to work, the employer may not be held liable for refusal to hire the individual.[18]

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[13] *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).

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

[15] UTAH CODE ANN. § 63G-12-302(4)(a). In 2011, Utah amended the Act to create its own state-level guest worker program. *See* Utah Immigration Accountability and Enforcement Amendments, H.B. 116 (Utah 2011). The bill was controversial and required a federal waiver to implement it. The program remained unfunded and is not currently effective. In 2014, the governor signed legislation delaying the guest worker proposal until July 1, 2017. Utah S.B. 203 (Utah 2014). As of the date of publication, there were no signs that the initiative remained anything other than stalled.

[16] UTAH CODE ANN. § 13-47-201, as amended by H.B. 252 (Utah 2022). This provision does not apply to a private employer of a foreign national, if the foreign national holds an H-2A or H-2B visa. UTAH CODE ANN. § 13-47-201.

[17] UTAH CODE ANN. § 13-47-102(4).

[18] UTAH CODE ANN. § 13-47-202.

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1.2(b)(ii) *State Contractors*

Public employers may not enter into a contract for the physical performance of services in Utah with any contractor unless the contractor registers with and participates in an SVS. For purposes of this requirement, *contractor* refers to “a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.”[19] A contractor is responsible for verifying the eligibility of its own new employees only. A contractor or subcontractor who works for another contractor must certify to the main contractor by affidavit that it has verified the employment status of each new employee through the SVS. This requirement does not apply, however, to contracts executed before July 1, 2009 or involving certain financial or investment banking services.[20]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

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

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

There is no applicable federal law restricting employer inquiries into an applicant’s criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 (“Title VII”).[21] While there is uncertainty about the level of deference courts will afford the EEOC’s guidance, employers should consider the EEOC’s guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of “best practices” for implementing arrest or conviction screening policies in its guidance. In general, the EEOC’s positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC’s perspective, an employer cannot rely on arrest records alone to deny employment, an 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 1.2(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.

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[19] UTAH CODE ANN. § 63G-12-302(1)(b).

[20] UTAH CODE ANN. § 63G-12-302.

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

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

Although no Utah law imposes a complete prohibition on an employer's use of arrest records when making employment decisions, employers in Utah should use caution when doing so. Given the long-standing case law under Title VII and the federal and state administrative guidance, a Utah court may be more likely to bar, under appropriate factual circumstances, the use of arrest records in employment decisions.

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

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

Utah has no statute completely barring the use of conviction records in employment decisions. Regardless, qualifying employers may access an applicant's criminal history or arrest records only after obtaining a signed waiver from the applicant.[22] A *qualifying entity* is limited to a business, organization, or governmental entity that employs or utilizes volunteers who deal with: (1) national security interests; (2) the care or control of children; (3) fiduciary trust over money; (4) health care to children or vulnerable adults; or (5) the provision of other specified services to vulnerable adults.[23] An applicant for employment with a qualifying entity must be given the opportunity to review and respond to the information received.[24]

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

In Utah, unless otherwise provided by law, a person whose arrest or conviction records have been expunged may respond to any inquiry as though the arrest or conviction did not occur.[25] On the whole, employers also cannot obtain expunged criminal history information.[26] An applicant seeking employment from a private employer may answer a question related to an expunged criminal record, including expunged juvenile records, as though the action underlying the expunged criminal record never occurred.[27]

Juvenile Records. An individual whose juvenile court records have been expunged may properly reply to any inquiry on the matter as though there never was an adjudication or nonjudicial adjustment, including a petition, an arrest, an investigation, and a detention.[28] State Guidelines on Employer's Request for Applicants' Personal Information

The Utah Employment Selection Procedures Act restricts an employer (with 15 or more in-state employees in 20 calendar weeks or more in the current or preceding calendar year) from requesting an

[22] UTAH CODE ANN. § 53-10-108(2)(g), (4)(a). The waiver must indicate: (1) that a criminal history background check will be conducted; (2) who will see the information; and (3) how the information will be used. UTAH CODE ANN. § 53-10-108(4)(b).

[23] UTAH CODE ANN. § 53-10-102(19).

[24] UTAH CODE ANN. § 53-10-108(4)(e).

[25] UTAH CODE ANN. § 77-40a-401(5).

[26] UTAH CODE ANN. § 77-40a-401.

[27] UTAH CODE ANN. § 34-52-301.

[28] UTAH CODE ANN. §§ 80-6-1002, 80-6-1006.1.

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applicant's Social Security number, date of birth, or driver's license number before the applicant is offered a job.[29]

Exceptions. There are certain exceptions from this restriction, including if the information is applicable to the position for which the applicant is applying. With the applicant's consent, the employer can also request an applicant's Social Security number, date of birth, or driver's license number before making an employment offer, during its normal selection process, as needed to: (1) obtain a criminal background check; (2) obtain a credit history; (3) obtain a driving record; (4) conduct an internal review of its records to determine if the applicant was previously employed or applied for employment with the employer; or (5) to provide such information to a government entity for purposes of determining eligibility or participating in a government benefit or program.[30]

An employer must maintain a specific policy regarding the retention, disposition, access, and confidentiality of this information. An employer must also allow an applicant, upon request, to review the policy before being required to provide information as part of the initial selection process. Except to the extent otherwise required by law, an employer may not retain the information for more than two years after the applicant provides the information to the employer, if the employer does not hire the applicant within that time period.[31]

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

Criminal Record Information. Employers that knowingly or intentionally access, use, disclose, or disseminate criminal history information in violation of the criminal background check provisions or that willfully remove, destroy, alter, or disclose criminal history information without proper authorization are guilty of a misdemeanor and may be subject to civil liability.[32]

Personal Information. Employers that violate the provisions of the Employment Selection Procedures Act may be ordered to cease and desist or fined, regardless of the number of applicants affected by the violation.[33]

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[34] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[35] 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,

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[29] UTAH CODE ANN. § 34-46-201(1).

[30] UTAH CODE ANN. § 34-46-201(2).

[31] UTAH CODE ANN. § 34-46-203.

[32] UTAH CODE ANN. § 53-10-108(4)(c)-(d), (12)(a).

[33] UTAH CODE ANN. § 34-46-301.

[34] 15 U.S.C. §§ 1681 *et seq*.

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

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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]."[36]

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

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

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

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

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

- Preemployment action taken against an applicant, or postemployment 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.

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

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- 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*

Utah's Internet Employment Privacy Act (IEPA)[37] generally prohibits employers from gaining access to applicants' or employees' *personal internet accounts*, which is broadly defined as "an online account that is used by an employee or applicant exclusively for personal communications unrelated to any business purpose of the employer."[38] Specifically, an employer may not request a username and/or password to gain access to a personal internet account.[39] Nor can an employer take adverse action against, fail to hire, or otherwise penalize an employee or applicant for failing to disclose this information.[40]

Exceptions. The IEPA does not prohibit an employer from "viewing, accessing or using" information from personal internet accounts if that information can be obtained without the username and password, such as when the information is publicly accessible.[41]

The law allows an employer to conduct investigations to ensure company policies have been followed. For example, an employer may investigate complaints of online harassment or possible misappropriation of confidential information.[42]

Additionally, employers are allowed to access internet accounts if the account, service, or electronic communications device is provided by the employer and paid for, in whole or in part, by the employer to be used for business purposes.[43] Employers may put policies in place restricting, monitoring, and blocking employee access when using employer-provided devices.[44] The IEPA also specifies that employers have no duty to search or monitor employee or applicant personal internet activity at any time.[45]

Finally, employers may comply with any federal requirements to screen or monitor applicants or employees without facing liability under the IEPA.[46]

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

Under the IEPA, an aggrieved individual can file a civil lawsuit against a noncompliant employer. If the individual prevails, the court can award damages up to $500.[47]

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[37] UTAH CODE ANN. §§ 34-48-101 *et seq*.

[38] UTAH CODE ANN. § 34-48-102(4)(a).

[39] UTAH CODE ANN. § 34-48-201(1).

[40] UTAH CODE ANN. §§ 34-48-102(1), 34-48-201(2).

[41] UTAH CODE ANN. § 34-48-202(4).

[42] UTAH CODE ANN. § 34-48-202(1)(c).

[43] UTAH CODE ANN. § 34-48-202(1)(a).

[44] UTAH CODE ANN. § 34-48-202(d), (e).

[45] UTAH CODE ANN. § 34-48-203.

[46] UTAH CODE ANN. § 34-48-202(3).

[47] UTAH CODE ANN. § 34-48-301.

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

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[48] 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*

Utah law prohibits examiners from asking any questions concerning the subject's sexual attitudes, political beliefs, union sympathies, or religious beliefs during a pre-employment pre-test interview or actual examination unless there is a demonstrable overriding reason.[49]

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.[50] The Drug-

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[48] 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.

[49] UTAH ADMIN. CODE r. § 156-64-502(2)(k). Although not specifically related to this code section, "pre-employment examination" is defined as a deception detection screening examination administered as part of a pre-employment background investigation. UTAH ADMIN CODE § 156-64-102.

[50] 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

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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.[51] 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*

Employers voluntarily choosing to test job applicants for drug or alcohol use should follow the regulations in Utah's Drug and Alcohol Testing Act (more information on this Act is available at **3.2(b)(ii)**).[52] As part of the Act's requirements, a written policy should be distributed to all employees and made available for review by all prospective employees.[53] Therefore, it may be a best practice to provide a notice. If a job applicant has a confirmed positive test result—referred to as a failed test—or refuses to submit to testing, an employer may deny the applicant employment.[54]

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

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

Employers cannot charge any applicant a medical fee for a physical examination required for employment and cannot deduct the cost of required medical examinations from employee wages. Employers may not, as a condition of pre-employment, employment, or continued employment, require any applicant or employee to submit to or obtain a physical examination, unless the employer pays all costs associated with the physical examination.[55]

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.

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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.

[51] 41 U.S.C. §§ 8101 *et seq.*; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[52] UTAH CODE ANN. §§ 34-38-1 to 34-38-15.

[53] UTAH CODE ANN. § 34-38-7.

[54] UTAH CODE ANN. § 34-38-8(2).

[55] UTAH CODE ANN. § 34-33-1.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[56] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[57] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[58] 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.[59]
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.[60] 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

[56] 26 U.S.C. § 36B.

[57] 42 U.S.C. § 18071.

[58] 29 U.S.C. § 218b.

[59] 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.

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

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	administrators must send separate COBRA rights notices to each address.[61]
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.[62] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[63] 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.[64]
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.[65] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

[61] 29 C.F.R. § 2590.606-1.

[62] 29 C.F.R. § 825.300(a).

[63] 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.

[64] 29 C.F.R. § 825.300(a).

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

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
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.[66]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[67]
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.[68]

2.1(b) *State Guidelines on Hire Documentation*

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

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Drug Testing Documents	Employers voluntarily choosing to test job applicants for drug or alcohol use should adhere to a written policy available for review by all prospective employees.[69] Therefore, it may be a best practice to provide a notice.
Fair Employment Practices Documents	An employer in Utah must include in an employee handbook, or conspicuously post at its place of business, written notice concerning

[66] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[67] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[68] 29 C.F.R. § 531.59.

[69] UTAH CODE ANN. § 34-38-7.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
	an employee's rights to reasonable accommodations for pregnancy, childbirth, breast feeding, or related conditions.[70]
Tax Documents	No notice requirement located. Utah does not have a Form W-4 requirement.
Wage & Hour Documents: General	At the time of hiring, Utah employers must notify employees of: • day and place of payment; and • rate of pay. Alternatively, employers have the option of giving notice by posting these facts and keeping them posted conspicuously at or near the place of work, where the posted notice can be seen by each employee as the employee comes or goes to their place of work.[71]
Wage & Hour Documents: Tipped Employees	At the time of hire, employers taking a tip credit must so inform the affected employee.[72]

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.[73] 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;

[70] UTAH CODE ANN. § 34A-5-106.

[71] UTAH CODE ANN. § 34-28-4.

[72] UTAH ADMIN. CODE r. 610-1-4.

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

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5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[74]

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

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

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

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

[74] 42 U.S.C. § 653a.

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

Table 4. Multistate Employer New Hire Info	
By Mail or Fax	**Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[75] 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 Utah's new hire reporting law.[76]

Who Must Be Reported. Utah employers must report employees newly hired or rehired to work. A rehire must be reported when the following three conditions are satisfied: (1) the individual returns to employment following an unpaid absence of at least 60 days; (2) the employer/employee relationship was severed; and (3) a new Form W-4 is submitted to the employer.

Report Timeframe. Employers must make the report not later than 20 days after hiring or rehire date or, if approved, on a semi-monthly basis of not less than 12 nor more than 16 days apart.

Information Required. Employers must report the employee's name, address, Social Security number, date of hire, and date of first compensable services. To accompany this information, the employer should also supply its name, address, and federal tax identification number.

Form & Submission of Report. The report must be in the form of a W-4, New Hire Registry Reporting Form 6, computer printout, or other printed information that provides all the mandatory data elements. Reports may be submitted by mail, fax, magnetic media, on-line data entry, electronic file transfer, or telephone (to report up to three new hires at one time).

Location to Send Information.

Utah New Hire Registry
140 E 300 S
P.O. Box 45247
Salt Lake City, UT 84145-0247
(801) 526-4361
(800) 222-2857
(801) 526-4391 (fax)
https://jobs.utah.gov/ui/Employer/Login.aspx

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

[76] UTAH CODE ANN. §§ 35A-7-102, 35A-7-104.

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Multistate Employers. The new hire or rehire reporting requirements do not apply to employers that: (1) have employees in two or more states; (2) send information required by the Utah statute to a state other than Utah; and (3) comply with the multistate employer reporting requirement of section 453A of the Social Security Act.[77]

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

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

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[78] 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*

In Utah, the Post Employment Restrictions Act prohibits an employer and an employee from entering into a postemployment restrictive covenant for a period of more than one year from the termination of employment, with two exceptions:

- where the noncompete provision is included in a severance agreement; and

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[77] UTAH CODE ANN. § 35A-7-104.

[78] 18 U.S.C. §§ 1832 *et seq.*

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- where the noncompete provision is related to the sale of a business, if the individual subject to the restrictive covenant receives value related to the sale of the business.[79]

The statute affects all agreements entered into on or after May 10, 2016.[80] The statute does not affect nonsolicitation, nondisclosure, or confidentiality agreements.

Noncompetes must also adhere to common-law requirements. Specifically, the necessary elements for a valid covenant not to compete are:

- the covenant must be supported by consideration (see **2.3(b)(ii)**);
- no bad faith may be shown in the negotiation of the contract;
- the covenant must be necessary to protect the good will of the business; and
- the covenant must be reasonable in its restrictions in terms of time and geographic area.[81]

In evaluating the goodwill component, the Utah Supreme Court has held that a "covenant not to compete is necessary for the protection of the good will of the business when it is shown that although the employee learns no trade secrets, he may likely draw away customers from his former employer, if he were permitted to compete nearby."[82]

In addition to the above requirements, the Utah Supreme Court has imposed a further limitation on the use of such covenants. In *Robbins v. Finlay*, the court held that an employer must also show that the services rendered by the employee are special, unique, or extraordinary before a noncompete covenant will be upheld.[83] Thus, employers must be cautious not to apply restrictive covenants on all employees, such as those engaged in a "common calling," but only those whose services are extraordinary.[84]

Enforceability Following Employee Discharge. In Utah, noncompete agreements likely remain enforceable following employee discharge.[85]

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

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[79] UTAH CODE ANN. §§ 34-51-201, 34-51-202.

[80] UTAH CODE ANN. § 34-51-201.

[81] *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 425-26 (Utah 1983); *Robbins v. Finlay*, 645 P.2d 623 (Utah 1982); *see also TruGreen Cos., L.L.C. v. Mower Brothers*, 199 P.3d 929 (Utah 2008).

[82] *System Concepts*, *Inc.*, 669 P.2d at 426; *see also Kasco Servs. Corp. v. Benson*, 831 P.2d 86 (Utah 1992).

[83] 645 P.2d at 627-28.

[84] *Kasco Servs. Corp.*, 831 P.2d at 96 (Stewart, J. dissenting) ("The right to earn a living by engaging in a common calling is a fundamental right which the law must jealously protect.").

[85] *Allen v. Rose Park Pharmacy*, 237 P.2d 823 (Utah 1951) (noncompete enforced despite employee's termination, although court does not discuss; dissent notes this adds to unfairness of outcome).

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employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Utah, a noncompete signed at inception of employment carries sufficient consideration.[86] In addition, continued at-will employment as well as a change in terms of employment (accompanied by continued employment) constitute consideration for a noncompete agreement.[87]

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

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

Courts interpreting contracts governed by Utah law have not determined whether such agreements may be modified or blue penciled.[88]

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

Utah has adopted the Uniform Trade Secrets Act (UTSA).[89] The UTSA serves to protect trade secrets from employee misappropriation. To establish a claim for misappropriation of trade secrets, a plaintiff generally must show: "(1) the existence of a trade secret, (2) communication of the trade secret to [the defendant] under an express duty not to disclose or use it, and (3) [defendants'] use of the secret that injures [plaintiff]."[90] Utah defines a *trade secret* as:

> Information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[91]

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[86] 237 P.2d at 825-26.

[87] *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 429 (Utah 1983) (in addition to promise of continued employment, defendant received a raise and promotion).

[88] *But see Bad Ass Coffee Co. of Haw., Inc. v. JH Nterprises, L.L.C.*, 636 F. Supp. 2d 1237, 1246-47 (D. Utah 2009) (Utah courts avoid reading covenants not to compete in a manner that would render them unreasonable, while a Florida statute, in comparison, allow modification of an overbroad covenant).

[89] UTAH CODE ANN. §§ 13-24-1 *et seq*.

[90] *Utah Med. Prods., Inc. v. Clinical Innovations Assocs., Inc.*, 79 F. Supp. 2d 1290, 1311 (D. Utah 1999) (quoting *Water & Energy Sys. Tech., Inc.*, 974 P.2d 821, 822 (Utah 1999)); *see also USA Power, L.L.C. v. PacifiCorp*, 235 P.3d 749, 761 (Utah 2010) (holding that a plaintiff may use circumstantial evidence to demonstrate a misappropriation of trade secrets when showing access to information that is similar to the trade secret at issue).

[91] UTAH CODE ANN. § 13-24-2(4).

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"The threshold issue in every [trade secret] case is whether, in fact, there is a trade secret to be misappropriated."[92] The burden to prove the existence of a secret is on the plaintiff and there is no presumption in their favor.[93] What constitutes a trade secret is a question of fact.[94]

In *Microbiological Research Corp. v. Muna*, a medical diagnostic kit company brought a claim of misappropriation against its former president, a doctor, and the developer of the diagnostic kits.[95] While he was employed with the plaintiff, the defendant played a substantial role in creating and marketing the diagnostic kits. The plaintiff terminated the defendant's employment and he began plans to manufacture a line of products similar to those of the plaintiff. On the plaintiff's claim for misappropriation of trade secrets, the Utah Supreme Court recognized that a balance must exist in the area of trade secret law between the encouragement of competition and an individual's right to exploit their own skill and knowledge, on the one hand, and the reasonable protection of established businesses against unfair trade practices, on the other.[96] The court stated that upon termination, "an employee has the prerogative to use his general knowledge, experience, memory and skill, however gained, provided he does not use, disclose, or impinge upon any of the secret processes or business secrets of his former employer."[97] The court then held that the plaintiff had failed to establish any claimed trade secret. Because the information claimed to be a trade secret was known throughout the industry, it would be unfair to enjoin the defendant from using his experience, for to do so would have blocked him from "using his knowledge, skill, and experience in an independent business."[98]

Examples of types of information that may constitute a trade secret include: (1) customer lists;[99] (2) modified formulas, where a unique combination of ingredients is used in both the original and modified formulas;[100] and (3) a compilation of information, even if the underlying information (in its uncompiled form) is within the public domain.[101] In evaluating whether information is a trade secret, the Utah Supreme Court has instructed trial courts to consider six nonexclusive factors discussed in the Restatement of Torts, which include:

1. the extent to which the disputed information is known outside the business;

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[92] *Utah Med. Prods., Inc. v. Clinical Innovations Assocs., Inc.*, 79 F. Supp. 2d 1290, 1311 (D. Utah 1999) (quoting *Microbiological Research Corp. v. Muna*, 625 P.2d 690, 696 (Utah 1981)), *aff'd*, 2000 WL 1838586 (Fed. Cir. Dec. 13, 2000); *see also In2 Networks, Inc. v. Honeywell Int'l*, 2011 WL 4842557, at **3-4 (D. Utah Oct. 11, 2011) (dismissing complaint for failure to specifically identify a trade secret).

[93] *Utah Med. Prods.*, 79 F. Supp. 2d at 1311, *aff'd*, 2000 WL 1838586; *Microbiological Research Corp.*, 625 P.2d at 696.

[94] *Envirotech Corp. v. Callahan*, 872 P.2d 487, 494 (Utah Ct. App. 1994).

[95] 625 P.2d 690.

[96] 625 P.2d at 697.

[97] 625 P.2d at 697.

[98] 625 P.2d at 699; *see also Water & Energy Sys. Tech, Inc. v. Keil*, 974 P.2d 821, 822 (Utah 1999); *Cordell v. Berger*, 2001 WL 1516742, at **2-3 (D. Utah Nov. 27, 2001).

[99] *Agel Enters. L.L.C. v. Schroeder*, 2008 WL 4753727 (D. Utah Oct. 28, 2008); *Mountain Am. Credit Union v. Godfrey*, 2006 WL 2129465 (D. Utah July 28, 2006).

[100] *Systemic Formulas v. Kim*, 2010 WL 3522083 (D. Utah Sept. 3, 2010). *But see Water & Energy Sys. Tech, Inc.*, 974 P.2d at 822-23.

[101] *USA Power, L.L.C. v. PacifiCorp*, 235 P.3d 749 (Utah 2010).

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2. the extent to which information is known by employees and other individuals involved in the business;
3. the measures taken by the business to guard its information;
4. the value of information to the business as well as its competitors;
5. the amount of money or effort expended by the business in developing the information; and
6. "the ease or difficulty with which the information could be properly acquired or duplicated by others."[102]

In *CDC Restoration & Construction, L.C. v. Tradesmen Contractors, L.L.C.*, the Utah Court of Appeals embraced a broad interpretation (and the majority view) in holding that the UTSA may preempt "claims based on the unauthorized use of information, irrespective of whether that information meets the statutory definition of a trade secret."[103]

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

Utah's Employment Inventions Act addresses an employee's right to inventions.[104] The law states that an employment agreement between an employee and their employer is not enforceable against the employee where the agreement requires the employee to assign or license, or to offer to assign or license, to the employer any right to, or intellectual property in, an invention that is created entirely by the employee entirely on their own time and not an employment invention.[105] However, such an agreement may be enforceable if the employee's employment or continuation of employment is not conditioned on the employee's acceptance of such agreement and the employee receives something of value under the agreement beyond their compensation for employment.[106]

The rule is different if the invention arises from workplace endeavors. An agreement requiring an employee to assign or license, or offer to do so, to their employer any or all rights and intellectual property in *an employment invention* is enforceable.[107] Initial or continued employment of the employee is sufficient consideration to support the enforceability of such an agreement.[108] Further, an employer may make signing an agreement to assign or license employment inventions a condition of employment or condition of continued employment.[109]

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[102] 235 P.3d at 760; *see also Brigham Young Univ. v. Simmons*, 861 F. Supp. 2d 1320, 1323-27 (D. Utah 2012) (denying defendant's motion for summary judgment and finding plaintiff presented evidence of his vision by sharing information and materials with defendant that no other research group had access to, including the unique combination of plaintiff's medical materials, research data and expert advice).

[103] 274 P.3d 317, 330 (Utah Ct. App. 2012).

[104] UTAH CODE ANN. §§ 34-39-1 *et seq*.

[105] UTAH CODE ANN. § 34-39-3(1).

[106] UTAH CODE ANN. § 34-39-3(4).

[107] UTAH CODE ANN. § 34-39-3(2).

[108] UTAH CODE ANN. § 34-39-3(4).

[109] UTAH CODE ANN. § 34-39-3(6).

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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.[110]
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.[111]
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.[112]
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.[113]
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

[110] 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.

[111] 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.

[112] 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.

[113] 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.

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Table 5. Federal Posting & Notice Requirements	
	common to migrant or seasonal agricultural workers who are not fluent or literate in English.[114]
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.[115]
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.[116]
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.[117]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[118] 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.[119]

[114] 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.

[115] 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.

[116] 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.

[117] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[118] 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.

[119] 41 C.F.R. §§ 60-300.44, 60-741.44.

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Table 5. Federal Posting & Notice Requirements	
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.[120]
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.[121]
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.[122]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[123]
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.[124]

[120] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[121] 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.

[122] 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.

[123] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[124] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

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Table 5. Federal Posting & Notice Requirements	
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.[125]
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.[126]
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.[127]
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.[128]

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**

[125] 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.

[126] 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.

[127] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[128] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

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Table 6. State Posting & Notice Requirements	
Fair Employment Practices: Pregnancy & Breast Feeding Accommodations	Employers must either post notice or provide notice in the employee handbook of employees' rights to reasonable accommodations for pregnancy, childbirth, breast feeding, or related conditions.[129]
Unemployment Compensation	Employers must permanently post notices at suitable points (on bulletin boards, near time clocks, etc.) in each work place and establishment, concerning benefit rights, claims for benefits, and related matters.[130]
Workers' Compensation	Employers must inform employees about their compliance with workers' compensation requirements. Such notice must be posted and kept continuously in a public and conspicuous place in the office, shop, or place of business of the employer.[131]
Workplace Safety	Employers must post a notice in a conspicuous place where notices are customarily posted and take steps to ensure that the notice is not altered, defaced, or covered by other material. The notice must inform employees of the statute's protections and obligations, as well as who to contact for assistance and information. If employees are physically dispersed, notice must be posted at location where employees report each day; if no single establishment, notice must be posted at location from which employees commence their activities.[132]
Workplace Safety: No Smoking Signs	Employers must post a notice that is easily readable and placed near all entrances. The words "No Smoking" must be at least 1.5 inches high. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter. In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.[133]

[129] UTAH CODE ANN. § 34A-5-106. This poster is available in English and Spanish at https://laborcommission.utah.gov/divisions/uosh/uosh-resources/.

[130] UTAH CODE ANN. § 35A-4-406. This poster is available in English and Spanish at https://laborcommission.utah.gov/divisions/uosh/uosh-resources/.

[131] UTAH CODE ANN. § 34A-2-204. This poster is available in English and Spanish at https://laborcommission.utah.gov/divisions/uosh/uosh-resources/.

[132] UTAH CODE § 34A-6-201; UTAH ADMIN. CODE r. 614-1-7(B). This poster is available in English and Spanish at https://laborcommission.utah.gov/divisions/uosh/uosh-resources/.

[133] UTAH CODE ANN. §§ 26B-7-501, 503; UTAH ADMIN. CODE r. 392-510-11. Employers must create their own form to satisfy this posting requirement.

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3.1(b) *Record-Keeping Requirements*

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

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[134]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[135]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[136]	For the full period the plan or system is in effect, and for at least 1 year

[134] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[135] 29 C.F.R. § 1627.3(b).

[136] 29 C.F.R. § 1627.3(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[137]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[138]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[139]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney;	At least 3 years following the date on which the polygraph examination was conducted.

[137] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[138] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[139] 29 C.F.R. § 1602.7.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[140]	
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.[141]	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).[142]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and	At least 2 years.

[140] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[141] 29 U.S.C. § 1027.

[142] 29 C.F.R. § 1620.32(a).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• other matters which describe any pay differentials between the sexes.[143]	
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[144] The record should also indicate for each week whether the employee adhered to the	3 years from the last day of entry.

[143] 29 C.F.R. § 1620.32(b).

[144] 29 C.F.R. §§ 516.2, 516.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[145]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the	3 years from the last day of entry.

[145] 29 C.F.R. § 516.28.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employee's total remuneration for employment including fringe benefits and prerequisites.[146]	
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[147]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[148]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave;	At least 3 years.

[146] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[147] 29 C.F.R. § 516.5.

[148] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record.	

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Medical records also must be retained. Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[149]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this;	At least 4 years after the date the tax is due or paid, whichever is later.

[149] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[150]	
Immigration	Employers must retain all completed Form I-9s.[151]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[152]	Required to be maintained for “so long as the contents [of the records] may become material in the administration of any internal revenue law;” this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee’s name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected;	4 years after the return is due or the tax is paid, whichever is later.

[150] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[151] 8 C.F.R. § 274a.2.

[152] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[153]	
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[154]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[155]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical	At least 30 years.

[153] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[154] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[155] 26 C.F.R. § 31.6001-4.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[156]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program;	Duration of employment plus 30 years.

[156] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[157]	
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.[158]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[159]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[160]	Immediately preceding AAP year.

[157] 29 C.F.R. § 1910.1020(d).

[158] 29 C.F.R. § 1910.1020(d).

[159] 29 C.F.R. §§ 1904.33, 1904.44.

[160] 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where possible, the gender, race, and ethnicity of each applicant or internet applicant.[161]	
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[162]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[163]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made;	During the course of the covered contract as well as after the end of the contract.

[161] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[162] 41 C.F.R. §§ 60-1.12, 60-741.80.

[163] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[164]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid.	At least 3 years after the work.

[164] 29 C.F.R. § 13.25.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Contractors employing apprentices or trainees under approved programs must maintain written evidence of: • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[165]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[166]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and	At least 3 years from the last date of entry.

[165] 29 C.F.R. § 5.5.

[166] 29 C.F.R. § 4.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a certificate of age for employees under 19 years of age.[167]	

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**
Employment Selection Procedures Act: Applicant Information	*The following details must be kept about all applicants:* • Social Security number; • date of birth; and • driver's license number.[168]	2 years from the day the applicant provided the information to the employer, if the employer does not hire the applicant within that two-year period.
Fair Employment Practices: Complaints of Discrimination	*Where a complaint of discrimination has been filed, all personnel records relevant to the complaint and charging party must be retained, including:* • personnel or employment records relating to the charging party and to all other employees holding positions similar to that held or sought to be held by the charging party; and • application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the charging party applied but was rejected.[169]	Where a complaint of discrimination has been filed, until final disposition of that charge.
Fair Employment Practices:	*All personnel or employment records made or kept by the employer must be retained, including:* • applications;	6 months from the date of the making of the record or the

[167] 41 C.F.R. § 50-201.501.

[168] UTAH CODE ANN. § 34-46-203(2).

[169] UTAH ADMIN. CODE r. 606-6-2.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Personnel Records	• other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rate of pay, or other terms of compensation; and • records regarding selection for training or apprenticeship.[170]	personnel action involved, whichever is later. In case of involuntary termination, 6 months from date of termination.
Public Works Contracts	*Employers (contractors, subcontractors, agencies, etc.) doing public works must keep records of the:* • names of each worker; • occupation of each worker; and • actual wages paid to each worker.[171]	None specified.
Unemployment Compensation	*Records must be maintained for each pay period, for each worker, including:* • name and Social Security number; • place of employment; however, if work is performed in several locations, assignment of place of employment is made in the following order: (1) a worker's base of operations; (2) the place from which the worker's services are directed or controlled, and (3) the worker's place of residence; • date hired; • date and reason for separation; • ending date of each pay period; • total amount of wages paid in each pay period, showing separately money wages and noncash wages; and • daily timecards or time records, kept in the regular course of business. *The Department of Workforce Services is authorized to examine any and all necessary records, including:* • payroll records; • disbursement records; • accounting records;	At least 3 calendar years after the calendar year in which the services were rendered.

[170] UTAH ADMIN. CODE r. 606-6-2.

[171] UTAH CODE ANN. § 34-30-9.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• tax returns; • magnetic and electronic media; • personnel records; • minutes of meetings; • loan documentation; • articles of organization; • operating agreements; and • any other records which might be necessary to determine claimant eligibility and employer liability.[172]	
Wages, Hours & Payroll: Employees Paid on Hourly or Daily Basis	*With respect to employees paid on an hourly or daily basis, records must retained and include:* • time worked each pay period; and • wages paid each pay period.[173]	At least 1 year after entry of the record.
Wages, Hours & Payroll: Minimum Wage Act	*With respect to employees covered by the Minimum Wage Act, records must be retained and include:* • name, address, and date of birth; • hours worked; and • wages paid.[174]	3 years.
Workers' Compensation	*Employers must keep the following required records as prescribed by the Commission:* • records of work-related fatalities; • records of work-related injuries resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job; and • records of occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.[175]	None specified.
Workplace Safety: Analyses Using Exposure or Medical Records	Employers must maintain records of any analyses that used employee exposure or medical records.[176]	30 years.

[172] UTAH CODE ANN. § 35A-4-312; UTAH ADMIN. CODE r. 994-312-101, 994-312-102.

[173] UTAH CODE ANN. § 34-28-10.

[174] UTAH CODE ANN. § 34-40-201.

[175] UTAH CODE ANN. §§ 34A-2-407, 34A-3-108.

[176] UTAH ADMIN. CODE r. 614-1-12.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Exposure Records	*Utah has incorporated numerous Fed-OSHA standards (29 C.F.R. §§ 1910.21 to 1910.999; 1910.1000 through the end of part 1920 as of July 1, 2009 edition; 29 C.F.R. parts 1904, 1908).* *Under Utah law, employee exposure records include:* • records of the employee's past or present exposure to harmful physical agents; • exposure records of other employees with past or present job duties or working conditions similar to those of the employee; • records containing exposure information concerning the workplace; and • exposure records to workplaces or working conditions to which the employee is being assigned or transferred. *Specific employee exposure records subject to different retention requirements:* • Background data to environmental monitoring and measuring (*e.g.*, laboratory reports and worksheets) may be maintained for 1 year if the sampling results, collection methodology, a description of the analytical and mathematical methods used, and a summary of the background data, are retained for at least 30 years. • There is no specified time for retaining Material Safety Data Sheets (MSDSs), but the chemical name of the substance, where it was used and when it was used must be retained for 30 years.[177]	30 years (unless a specific Fed-OSHA standard provides a different retention period).
Workplace Safety: Injuries and Illnesses	Utah has incorporated the Fed-OSHA record-keeping requirements (29 C.F.R. pt. 1904).[178]	For the federal requirements, see Table 7.
Workplace Safety: Medical Records	Employers must preserve employee medical records. This requirement does not include, however, health insurance claims records maintained separately from the employer's medical program; such separate records need not be retained for any specified period.[179]	Duration of employment plus 30 years.

[177] UTAH ADMIN. CODE r. 614-1-4, 614-1-5, and 614-1-12.

[178] UTAH CODE ANN. § 34A-6-301; UTAH ADMIN. CODE r. 614-1-4, 614-1-5, 614-1-8, and 614-3-6.

[179] UTAH CODE ANN. § 34A-6-301; UTAH ADMIN. CODE r. 614-1-8, 614-1-12.

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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*

Utah law does not address access to personnel files for private-sector employees.[180] There may be provisions, however, related to document destruction of personal information and medical records, which are not covered in this publication.[181]

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, including Utah's law restricting employer access to employees' social media accounts, see **1.3(a)** to **1.3(c)(i)**.

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*

As noted in **1.3(e)(ii)**, Utah has a statute regulating the use of drug and alcohol testing in the private sector.[182] In enacting the law and balancing the interests of employers, employees and the welfare of the general public, the Utah legislature found that fair and equitable testing for drugs and alcohol in the workplace is in the best interests of all parties.[183] The Utah Drug and Alcohol Testing Act authorizes employers to conduct testing for the following purposes:

1. to investigate a possible individual employee's impairment;
2. to investigate accidents in the workplace or incidents of workplace theft;
3. to maintain safety for employees and the general public; or
4. to maintain productivity, quality of services or products, or security of property or information.[184]

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[180] *But see* UTAH CODE ANN. § 67-18-1 (granting public employees a right to examine and copy their own personnel files).

[181] *See, e.g.*, UTAH CODE ANN. §§ 13-44-102(3), 13-44-201(2).

[182] UTAH CODE ANN. §§ 34-38-1 to 34-38-15.

[183] UTAH CODE ANN. § 34-38-1.

[184] UTAH CODE ANN. § 34-38-7(2).

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If an employer requires its employees to submit to drug tests, the employer and other management personnel must also submit to testing on a periodic basis.[185] A written policy should be distributed to all employees and made available for review by all prospective employees.[186] The policy should cover permissible purposes and requirements for collection and testing, and describe the employer's use of the test results.

It is lawful for the employer to test employees and prospective employees for the presence drugs or alcohol as a condition of hiring or continued employment.[187] The Drug and Alcohol Testing Act specifically states that if an employee has a confirmed positive test result—referred to as a failed test—or refuses to submit to testing, an employer may suspend, terminate, or discipline the employee or may require the employee to enter a rehabilitation program.[188] A job applicant can be denied employment under the same circumstances. Employees and applicants whose drug or alcohol test results are confirmed positive in accordance with the provisions of the statute are not, for that reason alone, defined as persons with a disability under the Utah Antidiscrimination Act.[189]

Any drug or alcohol testing must occur during or immediately after the regular work period for current employees and must be considered "work time" for purposes of compensation and benefits. An employer must pay all costs of drug or alcohol testing required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.[190]

All information relating to the drug testing is strictly confidential and may not be disclosed or used as evidence, except in proceedings related to discipline or an employee's defamation claim based on the drug test.[191]

The benefit to the employer of complying with the Drug and Alcohol Testing Act is that no cause of action based on an adverse employment decision may be brought against an employer that has established an alcohol or drug testing program in accordance with the statute, unless the employer's action was based on an "inaccurate" test result.[192] Compliance with the statute creates a rebuttable presumption that the test result is valid. An employer is not liable for monetary damages if its reliance on the inaccurate test result was reasonable and in good faith.

In addition, the Drug and Alcohol Testing Act protects employers from claims for defamation, libel, slander, or damage to reputation unless:

1. the test results are disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;
2. the disclosure is based on inaccurate test results;

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[185] UTAH CODE ANN. § 34-38-3.

[186] UTAH CODE ANN. § 34-38-7.

[187] UTAH CODE ANN. §§ 34-38-2, 34-38-3.

[188] UTAH CODE ANN. § 34-38-8(2).

[189] UTAH CODE ANN. § 34-38-14.

[190] UTAH CODE ANN. § 34-38-5.

[191] UTAH CODE ANN. § 34-38-13.

[192] UTAH CODE ANN. § 34-38-10.

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3. the inaccurate disclosure occurs with malice; and
4. all independent elements of the common-law tort action are satisfied.[193]

The right to privacy versus the right to enact drug testing practices has not been tested in the Utah courts. The legislative findings, which found on balance that drug testing supported the general welfare, would suggest that Utah courts would not find a privacy infringement.

3.2(c) *Marijuana Laws*

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

Under federal law, it is illegal to possess or use marijuana.[194]

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

Under the Medical Cannabis Act, for various conditions, an individual may be considered to have a qualifying illness that allows medical marijuana use. Under the law, a private employer is not required to accommodate the use of medical cannabis, and the law does not affect a private employer's ability to have policies restricting the use of medical cannabis by applicants or employees.[195] Additionally, the law says that an insurer, third-party administrator, or employer is not required to pay or reimburse for cannabis, a cannabis product, or a medical cannabis device.[196]

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.[197]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;

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[193] UTAH CODE ANN. § 34-38-11.

[194] 21 U.S.C. §§ 811-12, 841 *et seq*.

[195] UTAH CODE ANN. § 26B-4-207(3).

[196] UTAH CODE ANN. §§ 26B-4-208, 34A-2-418(2).

[197] 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.

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- 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.[198]

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

Under the Utah Protection of Personal Information Act, when a covered entity becomes aware of a data breach, it must conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused for identity theft or fraud purposes. If the investigation reveals that the misuse of personal information for identity theft or fraud purposes has occurred, or is likely to occur, then notice is required to affected Utah residents.[199]

Covered Entities & Information. Any person who conducts business in Utah and owns or licenses computerized data that includes personal information concerning a Utah resident is covered by the state data security statute. *Personal information* includes an individual's first name or first initial and last name in combination with any one or more of the following:

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

Record includes materials maintained in any form, including paper and electronic.

Exceptions to the Utah law include: (1) data that is encrypted or protected by another method that renders the data unreadable or unusable; and (2) information that is lawfully available publicly from federal, state, or local government records.

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

- written notice by first-class mail to the most recent address the covered entity has for the resident;
- electronic notice, if the covered entity's primary method of communication with the resident is by electronic means, or if it is consistent with the federal e-sign act;
- telephonic notice including through the use of automatic dialing technology not prohibited by other law; or
- publishing notice of the breach in a newspaper of general circulation.

Exceptions. A covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is compliant with this statute. The policy must afford the same or greater protection to the affected individuals as the statute. In addition,

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

[199] UTAH CODE ANN. §§ 13-44-102 *et seq*.

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any person who complies with the notification requirements or security breach procedures of their primary or functional federal regulator is also considered compliant with the statute.[200]

Timing of Notice. Notice must be given in the most expedient time possible without unreasonable delay. Notification may be delayed if:

- A law enforcement agency determines that notification may impede a criminal investigation and requests a delay.
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity of the data system.[201]

If more than 500 Utah residents must be notified because of the breach, notice must be provided to the Attorney General and the Utah Cyber Center.[202] If notification is required to more than 1,000 Utah residents, the covered entity must also notify all nationwide consumer reporting agencies.[203]

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.[204] 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.[205]

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

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[200] UTAH CODE ANN. § 13-44-202(5).

[201] UTAH CODE ANN. § 13-44-202(2).

[202] UTAH CODE ANN. § 13-44-202(1)(c).

[203] UTAH CODE ANN. § 13-44-202(1)(d).

[204] 29 U.S.C. § 218(a).

[205] 29 U.S.C. § 206.

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of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[206]

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.[207]

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.[208] 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*

If an employee is covered under the FLSA, the Utah minimum wage provisions do not apply.[209] The minimum wage in Utah is currently $7.25 per hour for most nonexempt employees. The minimum wage cannot exceed the rate established by the federal FLSA.[210]

3.3(b)(ii) *Tipped Employees*

Tipped employees are entitled to be paid at least the minimum wage set forth in the Utah Minimum Wage Act.[211] In computing a tipped employee's wages, an employer must pay the tipped employee at least $2.13 per hour and may compute the remainder of the tipped employee's wages using the tips or gratuities the employee actually received during that payroll period.[212] If an employee's tips combined with the employer's cash wage obligation of $2.13 per hour do not equal the minimum hourly wage requirement, the employer must increase its cash wage obligation to make up the difference.[213] A tipped employee must retain all tips and gratuities except to the extent that the employee participates in a *bona fide* tip pooling or sharing agreement with other tipped employees.[214]

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[206] 29 U.S.C. §§ 203, 206.

[207] 29 U.S.C. § 3(m)(2)(B).

[208] 29 U.S.C. § 207.

[209] UTAH CODE ANN. § 34-40-104(1). The Utah Minimum Wage Act has a number of other exceptions, including: (1) outside salespeople; (2) an employee who is a member of the employer's immediate family; (3) companionship services for persons who are unable to care for themselves; (4) casual and domestic employees; (5) seasonal employees of certain nonprofit, religious, or recreation programs; (6) individuals employed by the United States; (7) prisoners employed through the penal system; (8) certain employees employed in agriculture; (9) registered apprentices or students employed by the educational institution in which they are enrolled; or (10) certain seasonal hourly employees employed by a seasonal amusement establishment with permanent structures and facilities.

[210] UTAH CODE ANN. §§ 34-40-103, 34-40-104; UTAH ADMIN. CODE r. 610-1-3.

[211] UTAH CODE ANN. § 34-40-104(4)(a).

[212] UTAH CODE ANN. § 34-40-104(4)(b); UTAH ADMIN. CODE r. 610-1-4(B).

[213] UTAH ADMIN. CODE r. 610-1-4(B).

[214] UTAH CODE ANN. § 34-40-104(4)(c).

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

Numerous categories of employees are exempted from the Utah Minimum Wage Act, including, but not limited to:

- any employee who is entitled to a minimum wage as provided in the federal FLSA;
- outside salespeople;
- an employee who is a member of the employer's immediate family;
- workers providing companionship services for persons who are unable to care for themselves;
- casual and domestic employees;
- seasonal employees of certain nonprofit, religious, or recreation programs; and
- individuals employed by the United States.[215]

3.3(c) *State Guidelines on Overtime Obligations*

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

3.4 Meal & Rest Period Requirements

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

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

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[216] 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.[217]

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.

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[215] UTAH CODE ANN. § 34-40-104(1).

[216] 29 C.F.R. § 785.19.

[217] 29 C.F.R. § 785.18.

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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.[218] 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.[219] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[220] Exemptions apply for smaller employers and air carriers.[221]

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.[222] Lactation is considered a related medical condition.[223] 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.[224] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

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

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

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

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

Utah's laws regarding meal and rest breaks pertain only to the employment of minors. Minors must be given an opportunity for a meal period of not less than 30 minutes, no later than five hours after the beginning of the workday. If the minor cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid.[225]

Minors must be provided at least 10 minutes for a rest period every four hours worked, or fraction thereof, and cannot be required to work over three consecutive hours without a ten-minute rest period.[226]

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[218] 29 U.S.C. § 218d.

[219] 29 U.S.C. § 218d(b)(2).

[220] 29 U.S.C. § 218d(a).

[221] 29 U.S.C. § 218d(c), (d).

[222] 42 U.S.C. § 2000gg–1.

[223] 29 C.F.R. § 1636.3.

[224] 29 C.F.R. § 1636.3.

[225] UTAH ADMIN. CODE r. 610-2-3, 610-2-4.

[226] UTAH ADMIN. CODE r. 610-2-3, 610-2-4.

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

Under the Utah Breastfeeding Protection Act, an individual has the right to breastfeed in any area of a public place or a place of public accommodation.[227] In addition, the Utah Antidiscrimination Act requires an employer to provide reasonable accommodation to an employee related to breastfeeding if the employee so requests and unless doing so would represent an undue hardship to the employer's business operations. However, the employer is not required to permit the employee to bring their child to the workplace as an accommodation.[228]

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.[229] 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."[230]

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

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

Utah has no general provisions on the hours of work for employees. Utah also does not have special provisions addressing such topics as on-call pay, split-shift premiums, and travel time. The Utah Labor Commission has taken the position that on-call status "is not normally considered work time" but noted that the FLSA addresses required on-call work.[231]

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[227] UTAH CODE ANN. §§ 13-7A-101 - 13-7A-103.

[228] UTAH CODE ANN. §§ 34A-5-102, 34A-5-106.

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

[230] *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").

[231] Utah Labor Comm'n, Antidiscrimination & Labor Div., *Frequently Asked Questions*, *available at* https://laborcommission.utah.gov/divisions/utah-antidiscrimination-and-labor-uald/wage-claim/.

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3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[232] 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.[233] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

The Utah statute on employment of minors, Utah Code Annotated section 34-23-101 *et seq*., places restrictions on the types of jobs and hours that minors may work. The general purpose of the statute is "to encourage the growth and development of minors through providing opportunities for work and for related work learning experience while at the same time adopting reasonable safeguards for their health, safety, and education."[234] A *minor* is defined as any person under the age of 18.[235]

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

General Restrictions. Utah restricts the employment of persons under the age of 18 by age and by the type of job. Minors cannot be employed or permitted to work in any hazardous occupation—except where authorized in writing by the Utah Antidiscrimination and Labor Division and where "the minor is under careful supervision in connection with or following completion of an apprentice program, vocational training, or rehabilitation program as approved by the division."[236] *Hazardous occupation* is any occupation defined as hazardous by the U.S. Department of Labor under the FLSA.[237] Table 9 summarizes the permissible types of employment by age.

Table 9. Permissible Type of Employment by Age

Age Range	Permissible Occupations
Age 16 & Older	*Minors aged 16 or older may work:* • in all occupations not labeled hazardous; and

[232] 29 C.F.R. §§ 570.36, 570.50.

[233] 29 C.F.R. § 570.6.

[234] UTAH CODE ANN. § 34-23-101.

[235] UTAH CODE ANN. § 34-23-103(5).

[236] UTAH CODE ANN. § 34-23-201.

[237] UTAH CODE ANN. §§ 34-23-103, 34-23-201.

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Table 9. Permissible Type of Employment by Age	
Age Range	**Permissible Occupations**
	• in occupations involving the use of motor vehicles, as long as the minor is licensed to operate the vehicle for employment purposes.[238]
Age 14 & Older	Minors aged 14 or older may work in a variety of nonhazardous occupations including: • retail food services; • automobile service stations, except for operation of motor vehicles and the use of hoists; • janitorial and custodial service; • lawn care; • the use of approved types of vacuum cleaners, floor polishers, lawn mowers, and sidewalk snow removal equipment; and • other similar work as approved by the division. Minors 14 or older may also work in nonhazardous areas in manufacturing, warehousing and storage, construction, and other such areas not determined to be harmful by the division.[239]
Ages 12 or older	Minors 12 or older may work in occupations such as: • delivery of newspapers to consumers; • baby-sitting; and • any other occupation not determined harmful by the division.[240]
Ages 10 to 13	Minors 10 years of age or older may work in occupations such as: • delivery of newspapers to consumers; • caddying; and • any other occupation not determined harmful by the division.[241]
No specific age limitations or restrictions	With consent of the minor's parent, guardian, or custodian, no specific age limitations or restrictions are imposed and the restrictions in Utah Code §34-23-202 do not apply for: • home chores and other work done for parent or guardian; • any casual work not determined harmful by the division; • an agricultural occupation that is not a hazardous agricultural occupation; • acting or performing in motion pictures, theatre, performing arts, radio broadcast, television production; or

[238] UTAH CODE ANN. § 34-23-203.

[239] UTAH CODE ANN. § 34-23-204.

[240] UTAH CODE ANN. § 34-23-205.

[241] UTAH CODE ANN. § 34-23-206.

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Table 9. Permissible Type of Employment by Age	
Age Range	**Permissible Occupations**
	• work for which a specific, written authorization has been made by the division.[242]

Restrictions on Selling or Serving Alcohol. In Utah, an individual under age 21 cannot sell, offer to sell, furnish, or dispense alcoholic beverages. However, if an employer has a retail license (*e.g.*, a restaurant), a minor aged 16 or older can enter a sale at a cash register or other sales recording device. Additionally, a full-service, limited-service, or beer-only restaurant can employ a minor who is at least 16 years old to bus tables, including containers that contain alcohol.[243] Also, a minor can momentarily pass through a dispending area to access another part of the premises where the minor may be. Additionally, the minor can perform maintenance and cleaning services at this type of a bar structure while the business is closed.[244]

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

Minors under 16 are not permitted to work:

- a minor under 16 years old may not be employed or permitted to work during school hours except as authorized by the proper school authorities;
- more than three hours in one school day;
- more than 18 hours in one school week;
- more than eight hours in one calendar day;
- more than 40 hours in one calendar week;
- before 7:00 A.M. or after 7:00 P.M.; and
- minors 16 or under may work until but not after 9:00 P.M. beginning June 1 and ending on Labor Day.

Federal law in this area is more restrictive, however. Under federal law, minors under 16 may not work more than three hours on a school day and may not work past 7:00 P.M. from Labor Day to June 1st and past 9:00 P.M. from June 1st to Labor Day. If federal law applies, the employer must comply with the stricter requirement.[245]

Note that the amendments also incorporate by reference the additional restrictions regarding the hours of work and conditions allowed for minors in the federal Fair Labor Standards Act and accompanying regulations.[246]

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[242] UTAH CODE ANN. § 34-23-207.

[243] UTAH CODE ANN. § 32B-5-308.

[244] UTAH CODE ANN. §§ 32B-6-205.2, 32B-6-305.2, and 32B-6-905.1.

[245] *See* Utah Labor Comm'n, Antidiscrimination & Labor Div., *Employment of Minors*, *available at* https://laborcommission.utah.gov/divisions/utah-antidiscrimination-and-labor-uald/wage-claim/.

[246] UTAH CODE ANN. § 34-23-202.

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

Employees over 16 years old are exempt from the youth employment laws if they:

- have received a high school diploma;
- have received a school release certificate;
- are legally married; or
- are the head of a household.[247]

Further, with consent of the minor's parent, guardian, or custodian, no specific age limitations or restrictions are imposed for:

- work done for the parent or guardian;
- casual work not determined harmful by the division;
- agricultural work, including the operation of power-driven farm machinery in the production of agricultural products; or
- work for which a specific, written authorization has been made by the division.[248]

Casual work is employment on an incidental, occasional, or nonregular basis that is not considered full-time or routine.

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

Utah does not have a waiver or work permit requirement, although employers may obtain age certificates from schools and school districts.[249]

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

The Antidiscrimination and Labor Division enforces the child labor laws. Employers and individuals that violate Utah's youth employment laws are subject to penalties and to conviction of a misdemeanor.[250]

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).[251]

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[247] UTAH CODE ANN. § 34-23-208.

[248] UTAH CODE ANN. §§ 34-23-103, 34-23-207.

[249] UTAH CODE ANN. § 34-23-209.

[250] UTAH CODE ANN. §§ 34-23-401, 34-23-402.

[251] 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").

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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.[252]

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.[253]

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.[254] 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.[255]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a

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

[253] 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.

[254] 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/.

[255] 12 C.F.R. § 1005.2(b)(3)(i)(A).

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statement regarding state-required information or other fee discounts or waivers.[256] 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.[257]

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.[258]

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.[259]

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

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

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

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

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

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

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

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[256] 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.

[257] 12 C.F.R. § 1005.18.

[258] *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.

[259] 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.

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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.[260] 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.[261] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[262] tools and equipment,[263] and business transportation and travel.[264] 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.[265]

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;[266]
- 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);[267]
- 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);[268]
- 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;

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[260] *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).

[261] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[262] 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.

[263] 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).

[264] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[265] 29 C.F.R. § 778.217.

[266] 29 C.F.R. § 531.38.

[267] 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*.

[268] 29 C.F.R. § 531.40.

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  - 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;[269]
- 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;[270] 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.[271]

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.[272]

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.[273] 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.[274]

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

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[269] 29 C.F.R. § 531.40.

[270] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[271] 29 C.F.R. § 825.213.

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

[273] 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.

[274] 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.

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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.[275]

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.[276]

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.[277]

3.7(b) *State Guidelines on Wage Payment*

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

In Utah, *wages* are defined as all amounts due to an employee "for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount."[278]

Authorized Instruments. Wages must be paid in U.S. currency (cash), check, draft, or electronic transfer to a depository institution designated by the employee.[279]

Direct Deposit. An employee may refuse to have their wages deposited by direct deposit by filing a written request with the employer.[280] However, an employee may not refuse direct deposit if, for the calendar year preceding the pay period, the employer's federal employment tax deposits were at least $250,000 and at least two-thirds of the employees have voluntarily accepted direct deposit.[281] An employer may not designate a particular depository institution for the exclusive payment or deposit of wages.[282]

Payroll Debit Card. Employers may use payroll debit cards (also referred to as "pay cards") to pay wages if the following conditions are met:

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[275] 29 C.F.R. § 531.36.

[276] 29 C.F.R. § 531.37.

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

[278] UTAH CODE ANN. § 34-28-2(1)(i).

[279] UTAH CODE ANN. § 34-28-3(1)(e).

[280] UTAH CODE ANN. § 34-28-3(3)(a).

[281] UTAH CODE ANN. § 34-28-3(3)(b).

[282] UTAH CODE ANN. § 34-28-3(3)(c).

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- With "one use," the employee can withdraw the full amount of earned wages without incurring a fee. *One use* means a single transaction.
- The full amount of wages for a pay period is available for the employee via the pay card on the applicable payday.
- On each payday, the employer provides the employee a wage statement, which can be provided in writing or electronically, provided that the employee can easily and immediately access the information and print a paper copy of the same, at no cost.[283]

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

Semi-Monthly. An employer must pay employees at least semi-monthly on days designated in advance as the regular paydays. The regular payday may be no more than 10 days after the close of the pay period. If a payday falls on a weekend or legal holiday, an employer must pay earned wages on the day preceding the weekend or holiday.

Monthly. If an employer hires employees on a yearly salary basis, it may compensate employees on a monthly basis by paying them on or before the seventh day of the month following the month for which services were rendered.[284]

The wage payment statutes do not apply where an agreement between the employer and employee provide for different terms of payment.[285] Nonetheless, unless approved by the division, agreements between employers and employees cannot contravene or set aside the wage payment provisions.[286] Accordingly, before entering into agreements to pay wages less frequently than semi-monthly to an employee who is not hired on a yearly salary basis, an employer should consult with knowledgeable employment law counsel.

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

In Utah, when an employer terminates an employee, the employer must pay unpaid wages within 24 hours of termination. If, on the other hand, an employee without a written contract for a specified period resigns voluntarily, their wages are due on the next regular payday.[287]

If work ceases as a result of an industrial dispute, wages become due and payable on the next regular payday.[288]

For a sales agent employed wholly or partly on a commission basis who has custody of its principal's accounts, money, or goods, the law does not apply to the commission-based portion of earnings if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.[289]

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[283] UTAH ADMIN. CODE r. 610-3-22.

[284] UTAH CODE ANN. § 34-28-3(1).

[285] UTAH CODE ANN. § 34-28-1.

[286] UTAH CODE ANN. § 34-28-7.

[287] UTAH CODE ANN. § 34-28-5(1), (2).

[288] UTAH CODE ANN. § 34-28-5(3).

[289] UTAH CODE ANN. § 34-28-5(4).

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

Time of Hire. At the time of hire, an employer must notify its employees of the date and place of wage payment, as well as the rate of pay. This notice may be given by posting the information conspicuously at or near the place of work.[290]

Wage Statements. If an employer makes any lawful deduction from an employee's wages, it must, on each regular payday, provide the employee with an itemized statement showing the total amount of each deduction. The statement must be made on a statement or a detachable check stub.[291]

Electronic Delivery. Generally, the law requires an employer to furnish a wage statement, but does not specify what form the statement must take. For employees paid via pay card, a wage statement can be furnished electronically, provided that the employee can easily and immediately access the information and print a paper copy of the same, without cost.[292]

3.7(b)(v) *Wage Transparency*

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

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

In Utah, an employer must notify employees of any changes with respect to pay rates, the date of payment, or the place of payment in advance of any such changes.[293]

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

Utah's wage and hour statutes do not include provisions on expense reimbursement.

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

Requirements for Deductions. A Utah employer cannot deduct from employee wages except in the following scenarios:

- The employer is required to do so by state or federal law.
- The employer is required to do so by court order.
- The deduction is expressly authorized by the employee in writing.
- The employer presents sufficient evidence to convince a hearing officer that an offset is warranted.
- The employee elects to withhold or divert wages as a specified contribution of the employee under a contract or plan that is established by the employer pursuant to sections 401(k), 403(b), 408, 408A, or 457 of the Internal Revenue Code.[294]

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[290] UTAH CODE ANN. § 34-28-4(1).

[291] UTAH CODE ANN. § 34-28-3(4)-(5); UTAH ADMIN. CODE r. 610-3-20.

[292] UTAH CODE ANN. § 34-28-3; UTAH ADMIN. CODE r. 610-3-20, 610-3-22.

[293] UTAH CODE ANN. § 34-28-4(1).

[294] UTAH CODE ANN. §§ 34-28-3(6), 34-28-4(1).

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Permissible Deductions. Rule 610-3-18 of the Utah Administrative Code outlines specific requirements for lawful deductions from wages of cash shortages, loans, goods, tools, equipment, and other items as noted below. Lawful deductions include:

- Sums deducted from wages pursuant to the Internal Revenue Code or other federal tax provision.
- Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act.
- Sums deducted from wages pursuant to any Utah city, county, or state tax.
- Sums deducted from wages as dues, contributions, or other fees to a labor, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:
  - employee has granted written authorization for the deductions; and
  - deductions will end upon the written revocation of the authorization.
- Sums deducted from wages as payments, contributions, or deposits to a credit union, banking, savings, or other financial institution, provided that the:
  - employee has granted written authorization for the deductions; and
  - deductions will end upon the written revocation of the authorization.
- Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:
  - employee has actual or constructive possession of the goods or services purchased; and
  - employee's purchase is evidenced by the employee's written acknowledgment.
- Sums deducted from wages for damages suffered due to the employee's negligence, as follows:
  - A potential deduction must meet the following preconditions:
    - the negligence and damages arise out of the course of the employee's employment;
    - the employer has not received payments or any form of restitution for the same loss from an insurer or similar entity covering the injuries or losses;
    - the offset is reasonably related to the amount of the damage; and
    - the damage exceeds the wear and tear reasonably expected in the normal course of business.
  - The methods of determining an employee's negligence and amount of damage are:
    - by a judicial proceeding;
    - by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or
    - by any other provision legally allowed or required pursuant to the general deductions statute.

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- Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment, as discussed in **3.7(b)(ix)**.
- Sums deducted from wages as repayment to the employer for advances or loans made to the employee, provided that the:
  - advance or loan to the employee occurred while the employee was employed; and
  - employee's receipt of the advance or loan is evidenced by written acknowledgment.
- Sums deducted from wages as a result of loss or damage occurring from the employee's criminal conduct against the employer's property, provided that the:
  - employee has been found guilty in a judicial proceeding of the specified crime committed against the employer's property;
  - crime occurred during, or out of, the employment relationship; and
    - property of the employer cannot or has not been reunited with the employer; or
    - the employee willfully, and through their own admission, did in fact destroy company property. The hearing officer may order an offset against earned wages in their discretion.
- Sums deducted from wages resulting from cash shortages, provided that the:
  - employee acknowledged in writing at the beginning employment that the employee would be responsible for shortages;
  - employee, at the beginning of each work period, is checked in on the register or with the cash amount by the employer in the employee's presence and gives written acknowledgment of that verification;
  - employee, at the end of the work period, is checked out on the register or with the cash amount by the employer in the employee's presence and gives written acknowledgment of that verification; and
  - employee is the sole and absolute user, with sole access, to the register or cash amount for the duration of the work period.
- Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for job, provided that the:
  - employee's purchase and receipt of the items is acknowledged in writing;
  - employee has actual or constructive possession of the goods or items; and
  - employer would repurchase the items, at the employee's option, upon the termination of employment at a fair and reasonable price.
- Sums deducted from wages as payment for goods, tools, equipment, or other items given and assigned to the employee by the employer, provided that the:
  - item was assigned during the employee's employment;
  - employee acknowledged their receipt of the item, in writing; and
  - item was not returned to the employer upon termination.

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Prohibited Deductions. As a general rule, and unless mentioned above, it is unlawful for an employer to require an employee to rebate, refund, or return any part of an employee's wages.[295]

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

In Utah, an employer may not discharge, refuse to hire, or discipline an employee because the employee's earnings have been subject to garnishment in connection with any one judgment.[296]

Employers must comply with a notice of wage assignment by deducting the required amounts from an employee's wages. The maximum portion of disposable earnings for any pay period that may be subject to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

- 25% of the employee's disposable earnings for that pay period;
- the amount by which the employee's disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage in effect at the time the earnings are payable; or
- 15% of the employee's disposable earnings for that pay period, if the judgment relates to an education loan.[297]

An employee may also be subject to income withholding due to an order of child support.[298]

Tax Liability. If a taxpayer is liable for unpaid taxes, the State Tax Commission may issue an administrative garnishment order against the taxpayer's personal property, including wages, that are in the possession or control of a person other than the taxpayer. The garnishment order has the same effect as if the order were a writ of garnishment issued by a court with jurisdiction. The Commission may also satisfy any costs or fees incurred by the Commission through the administrative garnishment order. Employers must comply with the Commission's orders to avoid liability.

The maximum portion of a taxpayer's disposable earnings subject to garnishment is the lesser of 25% of the taxpayer's disposable earnings or the amount by which the taxpayer's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by 30 times the federal minimum wage.[299]

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

When there is a dispute over wages, an employer must give written notice to the employee of the amount of wages that it concedes to be due and pay that amount. Acceptance by the employee of the payment does not constitute a release as to the balance of their claim.[300]

With a few exceptions, for a wage claim that is less than or equal to $10,000, an employee must file a wage claim within one year of the date the wages were earned with the Utah Labor Commission, which

[295] UTAH CODE ANN. § 34-28-3(6).

[296] UTAH CODE ANN. §§ 26B-9-310, 70C-7-104.

[297] UTAH CODE ANN. § 70C-7-103.

[298] UTAH CODE ANN. §§ 26B-9-301 *et seq.*

[299] UTAH CODE ANN. §§ 59-1-1102, 59-1-1420.

[300] UTAH CODE ANN. § 34-28-6.

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will then investigate and resolve the employee's complaint.[301] Employees are entitled to commence a civil action to recover unpaid wages and penalties if the amount of unpaid wages sought is over $10,000.[302]

An employer may be assessed a daily penalty of 5% of the unpaid wages owing to the employee for up to 20 days.[303] The law also provides for criminal penalties. An employer that refuses to pay wages that are due and payable is guilty of a misdemeanor, which is a class B misdemeanor.[304]

Employers that fail to pay the final wages due to a terminated employee within 24 hours, as explained in **3.7(b)(iii)**, will be subject to a penalty if the employee makes a written demand for payment. Specifically, the wages due the employee shall continue from the date of demand until payment, but may not exceed 60 days, at the same rate that the employee received when separated. The employee is entitled to recover the penalty in a civil action, which must be commenced within 60 days from the date of separation.[305]

Antiretaliation Provisions. Employers are prohibited from retaliating against an employee because the employee files or plans to file a wage complaint, or testifies or plans to testify in a proceeding related to a wage claim.[306]

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).[307] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[308] 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.[309]

301 UTAH CODE ANN. § 34-28-9(1).

302 UTAH CODE ANN. § 34-28-9.5.

303 UTAH CODE ANN. § 34-28-9(2)(a).

304 UTAH CODE ANN. § 34-28-12.

305 UTAH. CODE ANN. § 34-28-5(1)(c).

306 UTAH CODE ANN. § 34-28-19(1).

307 29 U.S.C. § 1002.

308 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.

309 490 U.S. 107, 119 (1989).

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

Utah's statutes and regulations do not directly address vacation pay and similar paid time off. Thus, there is no requirement under Utah law that an employer offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. Once an employer establishes a policy and promises vacation pay and other types of additional compensation, however, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. Therefore, employers should draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. The employer must also apply the vacation policy in a nondiscriminatory manner.[310]

In Utah, vacation pay is considered a matter of contract or employment policy. But when vacation is earned pursuant to such a policy or contract, it constitutes wages.[311] Employers may place conditions on the right to vacation pay, for example, conditioning the earning of vacation days on reaching a certain number of days of employment. Because vacation pay is a matter of contract, "use-it-or-lose-it" policies, policies that cap accrual, and forfeiture of accrued vacation time upon termination of employment are likely permissible so long as employees are provided notice of the policy.[312]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

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

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

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

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

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

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on

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[310] Utah Labor Comm'n, Antidiscrimination & Labor Div., *Frequently Asked Questions*, *available at* https://laborcommission.utah.gov/divisions/utah-antidiscrimination-and-labor-uald/wage-claim/.

[311] UTAH ADMIN. CODE r. 610-3-4; Office of the Att'y Gen. of the State of Utah, *Opinion No. HH70-065* (Aug. 19, 1970), 1970 Utah AG LEXIS 33, at **3-4 (advising that "vacation pay is to be considered wages"). Aside from a 2011 change substituting "the" amounts due for "all" amounts due, the definition of "wages" has not substantively changed since the attorney general's opinion was issued.

[312] Office of the Att'y Gen. of the State of Utah, *Opinion No. HH70-065* (Aug. 19, 1970), 1970 Utah AG LEXIS 33.

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requiring coverage for domestic partners or parties to a civil union.[313] 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).[314] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[315] 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*

Couples may register as domestic partners in Salt Lake City, Salt Lake County, and the City of Moab through these localities' Mutual Commitment Registry. However, Utah state law does not address whether an employee's domestic partner is required to be considered an eligible beneficiary or dependent for purposes of employee benefit plans.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

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

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

- for the birth or placement of a child for adoption or foster care;[316]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[317]
- to take medical leave when the employee is unable to work because of a serious health condition;[318]
- 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

[313] 29 U.S.C. § 1144.

[314] 29 U.S.C. § 1161.

[315] 29 U.S.C. § 1167(3).

[316] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[317] 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).

[318] 29 C.F.R. §§ 825.112, 825.113.

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- 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.[319] 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.[320] 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*

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

3.9(b) *Paid Sick Leave*

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

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[321] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

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

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

3.9(c) *Pregnancy Leave*

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

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

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[322] 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.

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[319] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[320] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[321] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[322] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

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An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[323] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[324] 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*

Utah law does not mandate pregnancy leave for private-sector employees. However, as described in 3.11(c)(ii), Utah requires employers of 15or more employees to make reasonable accommodations for an employee related to pregnancy, childbirth, breast feeding, or related conditions. The statute does not define or provide examples of "reasonable accommodations." Thus, while a leave of absence is not expressly granted under the statute, it may nonetheless be considered a reasonable accommodation depending on the circumstances.

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.

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[323] 29 C.F.R. § 825.202.

[324] 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.

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

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

3.9(e) *School Activities Leave*

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

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

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

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

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

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

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

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

Utah 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*

In Utah, employees (except those who have more than three hours off during the time polls are open) are entitled to take two hours off work to vote. An employee must apply for leave before election day. An employer may specify the hours during which the employee is to be absent. If an employee requests that time off occur at the beginning or end of the shift, however, an employer must grant the request. The employer may not deduct from an employee's usual salary or wages because of the absence.[325]

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*

Utah law does not address leave for private-sector employees to participate in political activities, although there are leave of absence requirements for career service employees.[326] Specifically, career service employees may participate in political activity voluntarily as follows: (1) if the career service employee is elected to any partisan or full-time nonpartisan political office, that employee must be granted a leave of absence without pay for times when monetary compensation is received for service in political office; (2) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch

[325] UTAH CODE ANN. § 20A-3-103.

[326] UTAH CODE ANN. § 67-19-19.

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during hours of employment for political purposes; and (3) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the executive director must adopt rules providing for the discipline or punishment of a state officer or employee who violates these requirements.

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.[327] 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.[328] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

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

Leave to Serve on a Jury. An employer must not deprive an employee of employment or threaten, otherwise coerce, or take any adverse employment action against an employee because the employee receives a jury duty summons, responds to the summons, attends court for prospective jury service, or serves as a juror.

An employer is not required to compensate an employee for time spent on jury service. Employers may not require or request that employees use annual leave, vacation leave, or sick leave for time spent responding to a jury duty summons, participating in the jury selection process, or serving on a jury. However, employers are not required to provide annual leave, vacation, or sick leave to an employee who is not otherwise entitled to such benefits.[329]

Leave to Comply with a Subpoena. Relatedly, an employer must not deprive an employee of employment, threaten, or otherwise coerce the employee regarding employment, because the employee attends a deposition or hearing in response to a subpoena.[330]

Protections for Witness in Child Abuse Proceedings. When a minor is required to appear in court (for any reason), a parent, guardian, or other person with legal custody of the minor must appear with the minor unless excused by the judge. When an employee requests permission to leave the workplace to attend court for this purpose, an employer must grant permission to leave work, with or without pay, if the

[327] 28 U.S.C. § 1875.

[328] *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).

[329] UTAH CODE ANN. § 78B-1-116.

[330] UTAH CODE ANN. § 78B-1-132.

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employee requests permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.[331]

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

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

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

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

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

3.9(k) *Military-Related Leave*

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

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

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

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[332]

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

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[331] UTAH CODE ANN. § 78A-6-111.

[332] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

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1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[333] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.[334] Notably, leave is only available for covered relatives of military members called to active *federal* service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Leave for Military Reservists, National Guard and Utah State Defense Force. Members of a reserve component of the armed forces of the United States that enters active duty, active duty for training, inactive duty training, or state active duty must be granted a leave of absence from employment not to exceed five years.[335] If the governor orders members of the Utah National Guard or State Defense Force to state military service, those members have the same rights and protections afforded federal military service under federal law for the duration of the state service for a period not to exceed five years.[336]

A member of the reserves or state National Guard or Defense Force must be permitted to return to their prior employment at the end of the leave upon satisfactory release from state or federal orders, or from hospitalization that occurred as a result of military orders. Those members also must be afforded the same rights and protections provided by federal law for activation to federal military service as it pertains to seniority, status, pay, and vacation the member would have had as an employee had they not been absent for military purposes.[337]

Employers who willfully deprive an employee who is absent as a member of the reserves or state National Guard or Defense Force of any of these benefits, or who discriminates in hiring for any employment position based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor.[338]

Other Military-Related Protections: Spousal Unemployment. A military spouse is eligible for spousal unemployment benefits under Utah law if the individual leaves work voluntarily to accompany or follow their spouse to a new location. To qualify, four factors must be satisfied:

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[333] 29 C.F.R. § 825.126(a).

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

[335] UTAH CODE ANN. § 71A-8-105(1).

[336] UTAH CODE ANN. § 71A-8-105(2).

[337] UTAH CODE ANN. § 71A-8-105(4).

[338] UTAH CODE ANN. § 71A-8-105(5).

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- the claimant's spouse must be a U.S. armed forces member who has been relocated to a full-time assignment that will last at least 180 days while on active duty, or while on active guard or reserve duty;
- it must be impractical for the claimant to commute to work from the new location;
- the claimant must have voluntarily left work no earlier than 15 days prior to the spouse's active-duty scheduled start date; and
- the claimant must otherwise meet and follow the unemployment benefits eligibility and reporting requirements, which includes registering to work with the unemployment division or, if the claimant leaves the state, with the division's out-of-state equivalent.[339]

If an individual could have continued working up to 15 days prior to the spouse's active duty assignment start date, but voluntarily quit before then, the individual is ineligible for benefits for the limited period between the quit date and the date that would have been 15 days prior to the duty start date. A failure to continue working up to 15 days prior to the assignment start date is considered a failure to accept all available work.[340]

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*

Utah employers of one or more employees may not:

- terminate the employment of an employee solely for being an emergency services volunteer; and
- terminate the employment of an employee who is an emergency services volunteer for being absent from or late to work because the employee is responding to an emergency as an emergency services volunteer.[341]

Emergency means a condition in any part of the state of Utah that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, or safety in the event of a disaster, or to avoid or reduce the threat of a disaster. *Emergency services volunteer* means a volunteer firefighter, emergency medical service personnel, or an individual mobilized as part of a posse comitatus.[342]

If an employee who is an emergency services volunteer responds to an emergency, the employee must make a reasonable effort to notify the employer of any absence from or tardiness to work due to responding to the emergency. The employer may request that the employee provide the employer with a written statement that:

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[339] UTAH CODE ANN. § 35A-4-405(1)(e).

[340] UTAH ADMIN. CODE r. 994-405-104.

[341] UTAH CODE ANN. §§ 34-55-102, 34-55-201.

[342] UTAH CODE ANN. § 34-55-102.

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- is from the supervisor or acting supervisor of the employee when the employee is in the course of performing duties as an emergency services volunteer;
- states that the employee responded to an emergency; and
- states the time and date of the employee's service as an emergency services volunteer.[343]

This leave is not required to be paid. An employer may reduce the regular pay of an employee who is an emergency services volunteer for time the employee misses work because the employee is responding to an emergency as an emergency services volunteer.[344]

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

Utah, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[348] Thus, Utah is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. Under the Utah Occupational Safety and Health Act ("Utah OSH Act"), employers must furnish

[343] UTAH CODE ANN. § 34-55-201.

[344] UTAH CODE ANN. § 34-55-201.

[345] 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.

[346] 29 U.S.C. § 654(a)(2).

[347] 29 U.S.C. § 667(c)(2).

[348] 29 U.S.C. § 667.

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each of their employees with a place of employment that is free from recognized hazards that are causing or are likely to cause death or physical harm to employees.[349]

An employer may not discharge any employee for making a complaint or testifying in an action based on the Utah OSH Act or exercising any right granted by the Act on behalf of the employee or others.[350] Any employee who believes that the employer discharged or otherwise discriminated against the employee may, within 30 days after the violation occurs, file a complaint with the Utah Occupational Safety and Health Division (UOSH).[351] The UOSH will initiate an investigation upon receipt of the complaint, and if its investigators report a violation and the employer requests a hearing, the UOSH will subsequently hold an evidentiary hearing. If the UOSH determines that a violation has occurred, it may order: (1) that the violation be restrained; and (2) all appropriate relief, including reinstatement of the employee to the employee's former position with back pay.[352]

Employers are also subject to inspection to ensure that the workplace is hazard-free. Upon presenting appropriate credentials to an employer, the UOSH is authorized to:

1. without delay, enter any workplace where work is performed at reasonable times;
2. inspect and investigate (during regular working hours and at other reasonable times) in a reasonable manner any workplace, worker injury, occupational disease, or complaint and all pertinent operations, processes, equipment, and conditions in the workplace; and
3. question privately any employer, owner, agent, or employee.[353]

If an employer refuses to allow an inspection, the UOSH may seek a warrant pursuant to the Utah Rules of Criminal Procedure.[354]

The Utah OSH Act also requires employers to investigate all work-related injuries and occupational diseases, and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees. Within eight hours of an occurrence, employers must notify the UOSH "of any: (A) work-related fatality; (B) disabling, serious, or significant injury; or (C) occupational disease incident."[355] Employers must file a report with the Division of Industrial Accidents after the employer's first knowledge or employee's notification of any work-related fatality or work-related injury or occupational disease resulting in: (1) medical treatment; (2) loss of consciousness; (3) loss of work; (4) restriction of work; or (5) transfer to another job.[356] The employer is also required to maintain a record of such work-related fatalities or work-related injuries.

[349] UTAH CODE ANN. §§ 34A-6-201 *et seq*.

[350] UTAH CODE ANN. § 34A-6-203(1).

[351] UTAH CODE ANN. § 34A-6-203(2)(a).

[352] UTAH CODE ANN. § 34A-6-203(2)(d).

[353] UTAH CODE ANN. § 34A-6-301(1)(a).

[354] UTAH CODE ANN. § 34A-6-301(1)(b).

[355] UTAH CODE ANN. § 34A-6-301(3)(b)(ii).

[356] UTAH CODE ANN. § 34A-6-301(3)(iii).

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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*

Utah has banned drivers within the state from operating a motor vehicle on a highway while using a wireless communication device to:

- write, send, or read a written communication, including a text message, instant message, or email;
- dial a phone number;
- access the internet;
- view or record video or photographs; or
- enter data into a handheld wireless communication device.[357]

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

The restriction does not include making or receiving a telephone call, or using the device for navigation services, during a medical emergency or in the reporting of criminal activity.[358] There is also an exception for hands-free or voice-operated technology, or a system that is physically or electronically integrated into the motor vehicle.[359]

3.10(c) *Firearms in the Workplace*

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

Federal law does not address firearms in the workplace.

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

Firearms in the Workplace. Utah's firearm law states that it is not intended to restrict or expand private property rights. Presumably, the "private property rights" referenced include the basic right of a private property owner to exclude from the premises individuals carrying handguns.[360]

Firearms in Company Parking Lots. Under Utah's Protection of Activities in Private Vehicles Act, individuals (including property owners, landlords, tenants, employers, or business entities) may not prohibit any individual from transporting or storing a firearm in a motor vehicle in any parking lot where the individual is otherwise legally permitted.[361] The individual must be legally permitted to transport,

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[357] UTAH CODE ANN. § 41-6a-1716(2).

[358] UTAH CODE ANN. § 41-6a-1716(3).

[359] UTAH CODE ANN. § 41-6a-1716(3).

[360] UTAH CODE ANN. § 53-5a-102(7).

[361] UTAH CODE ANN. §§ 34-45-101 *et seq*.

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possess, purchase, receive, transfer, or store the firearm. Firearms must be locked securely in the vehicle, or locked in a container attached to the vehicle and must not be in plain view.[362]

That being said, an employer may place limitations on an individual's storage of a firearm in a motor vehicle on its property as follows: (1) an employer may provide alternative parking for individuals who desire to store firearms in their vehicles at no additional cost; or (2) an employer may provide a secured monitored location where individuals may store firearms prior to taking the vehicle into the parking area.[363]

Employers that comply with the requirements of the firearm law are not liable for any occurrence resulting from or connected with the use of a firearm unless the use of the firearm involves a criminal act by the person who owns or controls the parking area.[364] Individuals who are harmed by a violation of the law may bring a civil action for damages, injunctive relief, punitive damages, attorneys' fees, and costs.[365]

Certain employers are exempt from the law's provisions, including schools, government entities, and religious organizations.[366]

3.10(d) *Smoking in the Workplace*

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

Federal law does not address smoking in the workplace.

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

Smoking is prohibited in enclosed indoor areas within places of employment and 25 feet from any window, ventilation intake, or entrance to a workplace. Smoking is also prohibited in company vehicles when occupied by nonsmokers.[367]

Smoking includes the use of *e-cigarettes*, which are defined, in part, as any electronic oral device that provides a vapor of nicotine or other substance, which simulates smoking through its use or through inhalation of the device, and includes an oral device that is composed of a heating element, battery, or electronic circuit.[368]

There are limited exceptions to Utah's smoking ban. Smoking is allowed in the following locations:

- areas not commonly open to the public, located at owner-operated businesses having no employees other than the owner-operator;
- guest rooms in hotels, motels, bed and breakfast lodging facilities, and other lodging facilities, although smoking is prohibited in common areas such as dining rooms and lobbies; and

[362] UTAH CODE ANN. § 34-45-103(1).

[363] UTAH CODE ANN. § 34-45-103(2).

[364] UTAH CODE ANN. § 34-45-104.

[365] UTAH CODE ANN. § 34-45-105.

[366] UTAH CODE ANN. § 34-45-107.

[367] UTAH CODE ANN. §§ 26B-7-501 *et seq.*; UTAH ADMIN. CODE r. 392-510-2.

[368] UTAH CODE ANN. § 26B-7-501.

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- separate enclosed smoking areas located in the passenger terminals of an international airport, if such areas vent directly to the outdoors and are certified to prevent the drift of any smoke to nonsmoking area of the terminal.[369]

Posting Requirements. "No smoking" signs must be posted at entrances to workplaces. The lettering must be at least 1.5 inches high, or if the international no smoking symbol is used it must be at least four inches in diameter. Employers must also establish a policy to prohibit employees from smoking within 25 feet of any entrance, window, or ventilation intake of a workplace.

Ashtrays may be placed near an entrance only if they have a durable and readable sign to indicate that the ashtray is provided for convenience and to enforce the 25-foot rule.[370]

Antiretaliation Provisions. Employers may not discriminate or take any adverse action against an applicant or employee due to the person seeking enforcement of the law or otherwise protesting others smoking.[371]

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*

Utah 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*

Utah provides procedures to allow employers to obtain workplace violence protective orders against individuals who have engaged in or threatened potential workplace violence. For purposes of such a protective order, *workplace violence* is defined as knowingly causing or threatening to cause bodily injury to, or significant damage to the property of an employer or employee performing their duties as an employee, and the action or threat would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed if carried out.[372] An employer, or an authorized agent, may seek a protective order if the employer reasonably believes workplace violence has occurred against the employer or an employee.[373] If an employer knows that a specific individual is the target of workplace violence, the

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[369] UTAH CODE ANN. § 26B-7-503.

[370] UTAH ADMIN. CODE r. 392-510-9.

[371] UTAH ADMIN. CODE r. 392-510-13.

[372] UTAH CODE ANN. § 78B-7-1101(5).

[373] UTAH CODE ANN. § 78B-7-1102(1)

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employer must make a good faith effort to notify the individual that the employer is seeking a workplace violence protective order.[374]

The court may enjoin the respondent from committing workplace violence, enjoin the respondent from threatening the employer or an employee, or order that the respondent is excluded and must stay away from the employer's workplace.[375] Except as provided, a protective order may not restrict the respondent's communications.[376] If the court orders the respondent to stay away from the petitioner's workplace, the order must be narrowly tailored to the location where the respondent caused or threatened bodily injury to, or significant property damage of, the employer or an employee.[377] An employer is immune from civil liability for failing to seek or seeking a workplace violence order, as long as the employer acts in good faith in seeking the order.[378] Any action or statement by an employer under this section is not deemed an admission of any fact but may be used for impeachment.[379]

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");[380] (2) the Americans with Disabilities Act (ADA);[381] (3) the Age Discrimination in Employment Act (ADEA);[382] (4) the Equal Pay Act;[383] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[384] (6) the Civil Rights Acts of 1866 and 1871;[385] 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;

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[374] UTAH CODE ANN. § 78B-7-1102(2).

[375] UTAH CODE ANN. § 78B-7-1103(2)(a).

[376] UTAH CODE ANN. § 78B-7-1103(2)(b).

[377] UTAH CODE ANN. § 78B-7-1103(2)(c).

[378] UTAH CODE ANN. § 78B-7-1108(1).

[379] UTAH CODE ANN. § 78B-7-1108(2).

[380] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[381] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[382] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[383] 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.

[384] 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)).

[385] 42 U.S.C. §§ 1981, 1983.

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- 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);[386]
- 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.[387] 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.[388]

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

The Utah Antidiscrimination Act largely provides, in one comprehensive statute, protection from all of the same types of discrimination addressed by the federal statutes.[389] Specifically, the Utah statute prohibits discrimination on the basis of the following:

- race;
- color;
- sex;[390]
- pregnancy, childbirth, or pregnancy-related conditions;
- age, if the individual is 40 years of age or older;
- religion;
- national origin;
- disability;
- sexual orientation; and
- gender identity.[391]

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[386] 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**.

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

[388] 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.

[389] *See, e.g.*, *Wong v. Brigham Young Univ.*, 2010 WL 4025116, at **4-5 (D. Utah Oct. 13, 2010) (finding that because the elements for discrimination under Title VII and the Utah act are similar, the court will apply the analysis used in Title VII cases).

[390] The Utah Constitution also prohibits discrimination based on sex. UTAH CONST. art. IV, § 1; *see also Kopp v. Salt Lake City*, 506 P.2d 809, 810 (Utah 1973) ("This clear and comprehensive statement in our foundational law correlates with the purpose that there shall be no discrimination based on sex.").

[391] UTAH CODE ANN. § 34A-5-106.

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For reasons explained in 3.11(a)(iii), however, the state antidiscrimination law is rarely used.

The antidiscrimination protections in the Utah Antidiscrimination Act apply to all employers in Utah with 15 or more employees.[392] The coverage does not extend to religious organizations, corporations, or associations. Moreover, a religious school, college, university, or other educational institution may hire and employ workers of a particular religion if the curriculum is directed toward a particular religion.

Additionally, coverage does not extend to any business or enterprise on or near a Native American reservation that gives preferential treatment to Native Americans living on or near the reservation.[393]

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

The Utah Antidiscrimination Act is enforced by the Utah Labor Commission's Antidiscrimination and Labor Division ("Division").[394] A person who claims to have been the subject of unfair or discriminatory practices may file a *request for agency action* on a form designated by the Division within 180 days after the alleged discrimination or prohibited employment practice occurred.[395]

The Division is limited, however, to ordering the reinstatement of a discriminatorily discharged individual and ordering the payment of back pay and benefits, and attorneys' fees and costs.[396] Therefore, to receive the full panoply of damages available under the federal statutes (*e.g.*, compensatory damages) an individual may not rely solely on the Utah Antidiscrimination Act. Although there is a provision in the act providing for judicial enforcement, aggrieved individuals seeking monetary damages typically have the Division transfer their charge of discrimination to the federal EEOC to have a "right to sue" letter issued.[397] The Utah law is primarily used to provide for voluntary mediation between an aggrieved employee and the employer.

Response/Answer to Request for Agency Action. Within 10 working days of the filing of the request for agency action, the Division must mail a copy of the request to the charging party and the respondent/employer. The employer must answer the allegations of discrimination or prohibited employment practice described in the request for agency action in writing, within 30 days from the date that the request was sent.[398]

Settlement & Evidentiary Hearings. Prior to any adjudicative hearing, an investigator is assigned to attempt a settlement between the parties by conference, conciliation, or persuasion. If no settlement is reached, the investigator conducts a prompt impartial investigation of all allegations made in the request for agency action. The investigation may include "on-site visits, interviews, fact finding conferences," discovery into records, or other actions.[399]

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[392] UTAH CODE ANN. § 34A-5-102.

[393] UTAH CODE ANN. §§ 34A-5-102, 34A-5-106(3)(b).

[394] The relevant statutes use the terms "Division" and "Commission" interchangeably; for purposes of this publication, "Division" is used for simplicity.

[395] UTAH CODE ANN. § 34A-5-107(1); UTAH ADMIN. CODE r. 606-1-3.

[396] UTAH CODE ANN. § 34A-5-107(9)(b)(i)-(iv).

[397] UTAH CODE ANN. §§ 34A-5-107, 34A-5-108.

[398] UTAH ADMIN. CODE r. 606-1-3.

[399] UTAH ADMIN. CODE r. 606-1-3(D).

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Following the investigation, the investigator will determine whether there is sufficient or insufficient evidence to support the allegations set out in the request for agency action. The investigator will formally report these findings to the director or the director's designee. The director or designee may then issue a determination and order based on the investigator's report.[400]

Either party may file a written request to the Division of Adjudication for an evidentiary hearing to review *de novo* the determination and order within 30 days of the date of issuance. If no timely request for a hearing is received, the determination and order becomes the final order of the Division. An aggrieved party may withdraw the request for agency action prior to the issuance of a final order.[401]

If the matter goes to a hearing, the presiding officer will reach one of two conclusions:

- The respondent has not engaged in a discriminatory or prohibited employment practice, in which case the presiding officer will issue an order dismissing the request for agency action. The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorneys' fees and costs.[402]
- The respondent has engaged in a discriminatory or prohibited employment practice, in which case the presiding officer will issue an order requiring the respondent to: (1) cease any discriminatory or prohibited employment practice; and (2) provide relief to the complaining party, including reinstatement, back pay and benefits, and attorneys' fees and costs. If the discriminatory practice involves compensation, the presiding officer may award an additional amount equal to the amount of back pay available to the complaining party, unless a respondent had reasonable grounds to believe that the act or omission was not discrimination in matters of compensation or the act or omission was in good faith.

Conciliation between the parties is urged and facilitated at all stages of the adjudicative process.[403]

Either party to an evidentiary hearing may file with the Division of Adjudication a written request for review before the Labor Commissioner or Appeals Board. If there is no timely request for review, the order issued by the presiding officer becomes the final order of the Division. The order is subject to judicial review.[404]

Confidentiality. The Utah Labor Commission and its staff (including the Division) may not divulge any information gained from any investigation, settlement negotiation, or proceeding except in limited situations.[405]

Exclusivity of Remedy. The procedures contained in the Utah Antidiscrimination Act are the exclusive remedy under state law for employment discrimination based upon the protected categories listed above. All other state common-law claims for discrimination, retaliation, or harassment by an employer on the

[400] UTAH CODE ANN. § 34A-5-107; UTAH ADMIN. CODE r. 606-1-3.

[401] UTAH CODE ANN. § 34A-5-107(3)-(4).

[402] UTAH CODE ANN. § 34A-5-107(8).

[403] UTAH CODE ANN. § 34A-5-107(11).

[404] UTAH CODE ANN. § 34A-5-107(12).

[405] UTAH CODE ANN. § 34A-5-107(15).

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basis of a protected category are preempted by the act.[406] Reviewing the purpose of the Utah Antidiscrimination Act, the Utah Supreme Court held that the statute clearly intends to preempt all common-law employment discrimination causes of action against both large and small employers.[407]

Additionally, the commencement of an action under federal law for relief based upon any conduct prohibited by the Utah Antidiscrimination Act bars the commencement or continuation of any adjudicative proceeding before the Division in connection with the same claims.[408] That is, a Title VII lawsuit relating to an action against an employer will halt further proceedings before the Division.

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

Affirmative Action Provision. The Utah Antidiscrimination Act clarifies that employers are not required to implement affirmative action programs, even where disparities exist between the percentage of employees in a given class and the corresponding percentage in the community.[409]

Genetic Information. Employers must also comply with Utah's Genetic Testing and Procedure Privacy Act.[410] The Genetic Testing and Procedure Privacy Act generally prohibits any employer from considering genetic information or an employee's refusal to submit to genetic testing or a genetic procedure when making employment-related decisions. Employers may not request or require an individual or their relative to undergo a genetic procedure, nor to inquire into or consider whether an individual or their relative has taken or refused to take a genetic test. The law also prohibits an employer from asking an employee to authorize the release of genetic information in connection with any employment action.[411] An employer may obtain an order compelling the disclosures of genetic information if: (1) the employee puts their health at issue in an administrative or judicial proceeding; or (2) the employee's health might pose a real and unjustifiable safety risk and that risk has a bearing on an employment-related decision.[412] To obtain such an order, the employer also must demonstrate a compelling need for the genetic information and that no alternative means for obtaining the information is available.[413] An individual may seek damages in a private action for violations of the Genetic Testing and Procedure Privacy Act, and the Utah Attorney General may seek an injunction and civil penalties.[414]

Lawful Expression / Activity. In Utah, an employer may not take any adverse employment action (*i.e.*, discharge, demotion, refusal to hire), retaliate against, harass, or otherwise discriminate against any individual in matters of compensation or other conditions of employment due to their lawful expression or expressive activity outside of the workplace. Protected expression may relate to the employee's "religious, political, or personal convictions, including convictions about marriage, family, or sexuality, unless the expression or expressive activity is in direct conflict with the essential business-related interests

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[406] *Gottling v. P.R. Inc.*, 61 P.3d 989, 997 (Utah 2002).

[407] 61 P.3d at 994, 997 (rejecting the argument that the legislature did not intend to preempt all other state law claims and offer small employers a "license to discriminate").

[408] UTAH CODE ANN. § 34A-5-107(17).

[409] UTAH CODE ANN. § 34A-5-106(3)(c).

[410] UTAH CODE ANN. §§ 26-45-102 *et seq*.

[411] UTAH CODE ANN. § 13-60-204(1).

[412] UTAH CODE ANN. § 13-60-204(2)(a).

[413] UTAH CODE ANN. § 13-60-204.

[414] UTAH CODE ANN. §§ 26-45-105 (private right of action), 26-45-106 (action brought by the Utah Attorney General).

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of the employer."[415] The statute generally applies to employers of 15 or more employees. Nonetheless, the statute's limitations do not apply to religious organizations, a religious educational institution, or the Boy Scouts of America.[416]

Vaccination or Immunity Passport. An employer may not discriminate against an individual on the basis of such individual's vaccination status or immunity passport, in the terms, conditions and privileges of employment. Some exceptions apply.[417]

Religiously Objectionable Expression. Employers are prohibited from compelling an employee to engage in religiously objectionable expression that would offend an employee's religious beliefs. The definition of "religiously objectionable expression" includes dress and grooming requirements, speech, scheduling, prayer, and abstention, including abstentions related to healthcare. In addition, employers are prohibited from discharging, demoting, terminating, or refusing to hire any person, retaliating, harassing or discriminating against any person for their lawful expression or expressive activity outside the workplace regarding the employee's religious, political or personal convictions, including convictions about marriage, family, or sexuality unless the expression or activity is in direct conflict with an employer's essential business-related interests.[418]

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."[419] 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.[420]

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415 UTAH CODE ANN. § 34A-5-112(2).

416 UTAH CODE ANN. §§ 34A-5-102, 34A-5-106, and 34A-5-112.

417 UTAH CODE ANN. § 34A-5-113.

418 UTAH CODE ANN. § 34A-5-113; 34A-5-112.

419 29 U.S.C. § 206(d)(1).

420 42 U.S.C. § 2000e-5.

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

The Utah Antidiscrimination Act, applicable to employers with 15 or more employees, includes a prohibition against discrimination on the basis of a protected classification in matters of compensation if employees are paid different wages for jobs that require substantially equal experience, responsibility, and skill.[421] In a sex discrimination case, the Utah Supreme Court explained that the test of discrimination cannot be based solely on whether a plaintiff was paid differently than coworkers of the opposite sex who were performing the same work. The court held that other factors, such as classification, seniority, and degree of responsibility, must also be considered and may rebut a *prima facie* showing of discrimination in pay.[422]

The Act does not prohibit: (1) an increase in pay as a result of longevity with the employer, if the salary increase is uniformly applied and available to all employees on a substantially proportional basis; or (2) an agreement between an employer and employee for a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.[423]

The Act does not afford a private right of action. An employee alleging a violation may file an administrative complaint with the Antidiscrimination and Labor Division within 180 days of the alleged violation.[424]

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;

[421] UTAH CODE ANN. §§ 34A-5-106(1)(a)(iii)(A), 34A-5-102, and 34A-5-106.

[422] *Kopp v. Salt Lake City*, 506 P.2d 809, 810-11 (Utah 1973).

[423] UTAH CODE ANN. § 34A-5-106.

[424] UTAH CODE ANN. § 34A-5-107.

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- 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.[425]

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

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[426]

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.[427] 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.[428] 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."[429]

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

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[425] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[426] 29 C.F.R. § 1636.3.

[427] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[428] 29 C.F.R. § 1636.3.

[429] 29 C.F.R. § 1636.4.

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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.[430]

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.[431]

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*

In Utah, an employer may not:

- refuse to provide reasonable accommodations for an employee related to pregnancy, childbirth, breast feeding, or related conditions if the employee requests a reasonable accommodation and providing the accommodation would not impose an undue hardship on the employer's operations;
- require an employee to terminate employment if another reasonable accommodation can be provided for the employee's pregnancy, childbirth, breast feeding, or related conditions, unless the employer demonstrates that the accommodation would impose an undue hardship; or

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[430] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[431] 29 C.F.R. § 1636.3.

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- deny employment opportunities to an employee, if the denial is based on the need of the employer to make reasonable accommodations related to the pregnancy, childbirth, breast feeding, or related conditions of an employee, unless the employer demonstrates that the accommodation would impose an undue hardship.[432]

The statute does not define or provide examples of "reasonable accommodations." However, the statute does provide that an employer is not required to permit an employee to have her child at the workplace for purposes of accommodating pregnancy, childbirth, breast feeding, or related conditions.[433]

An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation. Certification must include:

1. the date the reasonable accommodation becomes medically advisable;
2. the probable duration of the reasonable accommodation; and
3. an explanatory statement as to the medical advisability of the reasonable accommodation.[434]

An employer may not require an employee to obtain a certification from the employee's health care provider for more frequent restroom, food, or water breaks.[435]

An employer must notify employees of their right to reasonable accommodations for pregnancy, childbirth, breast feeding, or related conditions by including a written notification in an employee handbook or by posting the notification in a conspicuous place in the employer's place of business.[436]

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.[437] Multiple decisions of the U.S. Supreme Court[438] 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.[439] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's

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[432] UTAH CODE ANN. § 34A-5-106(1)(g).

[433] UTAH CODE ANN. § 34A-5-106(7)(d).

[434] UTAH CODE ANN. § 34A-5-106(7)(a), (b).

[435] UTAH CODE ANN. § 34A-5-106(7)(c).

[436] UTAH CODE ANN. § 34A-5-106(7)(e).

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

[438] *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).

[439] 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.

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"good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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

There are no antiharassment training and education requirements mandated for private employers in Utah. Special provisions apply to public employers, however.[440]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

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

Utah does not have a general whistleblower law addressing protections for private-sector whistleblowers, although there are whistleblower protections for public employees who communicate in good faith: (1) the waste or misuse of public funds, property, or manpower; (2) a violation or suspected violation of a law, rule, or regulation; or (3) as it relates to a state government employer, gross mismanagement, abuse of authority or unethical conduct.[441]

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)[442] and the Railway Labor Act (RLA)[443] 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

[440] *See* UTAH ADMIN. CODE r. 477-15-7; *see also* Utah Dep't of Human Res. Mgmt., *Workplace Harassment Prevention Training for Supervisors*, *available at* https://gateway.utah.gov/statewide-required-training/workplace-harassment-prevention.

[441] UTAH CODE ANN. § 67-21-3.

[442] 29 U.S.C. §§ 151 to 169.

[443] 45 U.S.C. §§ 151 *et seq*.

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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*

Right-to-Work Law. Utah is a right-to-work state.[444] According to Utah public policy, the right of individuals to work, whether in private or public employment, "may not be denied or abridged on account of membership or nonmembership in any labor union, labor organization or any other type of association."[445] The right to live encompasses the right to work, free from restraints or coercion.[446]

Consistent with this public policy, it is unlawful to compel, or to attempt to force, any person to join or not to join a labor union, labor organization, or any other type of association.[447] In other words, an employer may neither require a person to become or remain a member of a labor union as a condition of employment, nor require a person to abstain from joining a union.[448] The law similarly provides that an employer cannot require an employee to pay dues or fees of any kind to a labor union or organization as a condition of employment or continuation of employment.[449] The right-to-work law, therefore, prohibits the concept of an "agency shop" in which the employees would be required to pay to the union a proportional share of the cost of collective bargaining, even if not required to join the union or association.

The Utah statute also bans any express or implied agreement or practice denying the right to work.[450] Agreements designed to cause an employer, labor organization, or other association to violate the right-to-work law are illegal.[451] Conduct intended to compel violations of the law (such as strikes, lockouts, layoffs, picketing, or boycotts) is prohibited, although "peaceful and orderly solicitation and persuasion" by unions is permitted.[452] The state right-to-work law provides various remedies for infractions. Injunctive relief may be entered against all violators or persons threatening violation of the law.[453] A person unlawfully denied employment (or continued employment) may recover damages.[454] A violation of the

[444] UTAH CODE ANN. §§ 34-34-1 *et seq*.

[445] UTAH CODE ANN. § 34-34-2.

[446] UTAH CODE ANN. § 34-34-2.

[447] UTAH CODE ANN. § 34-34-7.

[448] UTAH CODE ANN. §§ 34-34-8, 34-34-9.

[449] UTAH CODE ANN. § 34-34-10.

[450] UTAH CODE ANN. § 34-34-4.

[451] UTAH CODE ANN. § 34-34-5.

[452] UTAH CODE ANN. § 34-34-6. Relatedly, state courts do not have jurisdiction to enjoin peaceful picketing by a labor union, as such disputes are preempted by the federal National Labor Relations Act. *John Price Assocs., Inc. v. Utah State Conference*, 615 P.2d 1210 (Utah 1980).

[453] UTAH CODE ANN. §§ 34-34-11, 34-34-12.

[454] UTAH CODE ANN. § 34-34-13.

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right-to-work law also constitutes a misdemeanor. Moreover, each day that the unlawful conduct continues will be deemed a separate, punishable offense.[455]

Labor Disputes. Utah enacted a complementary statute addressing labor disputes in the same year it passed the right-to-work law. The Utah labor code explains that it is not unlawful for employees to self-organize or participate in unions for the purpose of reducing hours of labor, increasing wages, improving worker conditions, or otherwise carrying out the legitimate purposes of such organizations.[456]

The Utah statute also regulates labor disputes and specifically delineates when injunctive relief may be granted.[457] For example, the statute provides that no injunction may issue that would prohibit an individual from refusing to perform work, from joining a union, or from peaceable assembly. The statute also precludes an injunction that would restrict either the granting or withholding of unemployment or strike benefits.[458] The statute further details when a court has authority to order injunctive relief, the necessary findings of facts required to grant such relief and the procedure that must be followed.[459]

The law also provides that no officer or member of any association or organization, or any such entity, participating or interested in a labor dispute may be held liable in any civil action or criminal prosecution for the unlawful acts of other individuals, unless it is shown that: (1) officers, members, or agents of the association actually engaged in illegal activity; and (2) the association or organization actually participated in, authorized, or ratified the acts with full knowledge.[460]

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).[461] 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.[462] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

[455] UTAH CODE ANN. § 34-34-17.

[456] UTAH CODE ANN. § 34-19-1.

[457] UTAH CODE ANN. §§ 34-19-2 to 34-19-10.

[458] UTAH CODE ANN. § 34-19-2; *see also John Price Assocs., Inc. v. Utah State Conference*, 615 P.2d 1210 (Utah 1980).

[459] UTAH CODE ANN. §§ 34-19-4 to 34-19-7.

[460] UTAH CODE ANN. § 34-19-3.

[461] 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.

[462] 20 C.F.R. §§ 639.4, 639.6.

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4.1(b) *State Mini-WARN Act*

Utah does not have a mini-WARN law requiring advance notice to employees of a plant closing. However, employers facing a layoff may qualify for pre-layoff assistance, including workshops, from the Utah Department of Workforce Services.[463] Guidance on handling trade-related layoffs and closures is also available.

4.1(c) *State Mass Layoff Notification Requirements*

Utah does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff. As noted in **4.1(b)**, employers facing a layoff may qualify for other assistance.

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.[464] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[465]

[463] Utah Dep't of Workforce Servs., *Pre-Layoff Services Overview*, *available at* https://jobs.utah.gov/employer/business/07_74.pdf.

[464] 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.

[465] 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.

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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.	Utah has a mini-COBRA statute that requires the employer to notify the following individuals in writing of the right to extend group coverage and the payment amounts required for extension of coverage, including the manner, place, and time in which the payments must be made: • a terminated insured; • an ex-spouse of an insured; or • a surviving spouse and the guardian of surviving dependents, if different from a surviving spouse. The notification must be sent by first-class mail within 30 days after the termination date of the group coverage to: • the terminated insured's home address as shown on the records of the employer; • the address of the surviving spouse, if different from the insured's address and if shown on the records of the employer; • the guardian of any dependents' address, if different from the insured's address, and if shown on the records of the employer; and • the address of the ex-spouse, if shown on the records of the employer.[466]
Unemployment Notice	**Generally.** Utah does not require that employees be provided notice about unemployment benefits when employment ends. Nonetheless, the employer generally must post in places readily accessible to individuals, and provide a copy of, printed statements concerning benefit rights, claims for benefits and other matters relating to unemployment.[467] Accordingly, it is recommended that an employer provide a copy of the unemployment notice when employment ends. **Multistate Workers.** Utah similarly does not require that employees be notified as to the jurisdiction under whose unemployment compensation law services have been covered.[468] It is recommended, however, that an employer provide notice of the jurisdiction where services will be covered for unemployment purposes. Additionally, employers should follow that state's general notice requirement, if applicable.

[466] UTAH CODE ANN. § 31A-22-722.

[467] UTAH CODE ANN. § 35A-4-406. The printed statement—*Unemployment Insurance Notice to Workers*—is available online. Utah Dep't of Workforce Servs., *UI Tax Publications, available at* https://jobs.utah.gov/ui/employer/Public/UIPublications.aspx.

[468] UTAH CODE ANN. § 35A-4-106 (Reciprocal Arrangements with Other Jurisdictions); *see also* UTAH ADMIN. CODE r. 994-204-201 (Localization of Services—Reciprocal Coverage).

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4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

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

4.3(b) *State Guidelines on References*

In 2013, the Utah legislature repealed a law, which had prohibited employers from blacklisting (or causing to be blacklisted) any discharged employee, for the purpose of preventing such employee from engaging in or securing similar or other employment.[469] No law currently exists in Utah governing references.

[469] UTAH CODE ANN. § 34-24-1 (repealed May 14, 2013).

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