Littler | Employer Library

STATE

Littler on

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

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

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

DISCLAIMER

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

ACKNOWLEDGEMENTS

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

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

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

TABLE OF CONTENTS

1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) Federal Guidelines on Classifying Workers

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

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

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

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

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

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

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

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

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

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

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	WDWS, Labor Standards Office	Federal common-law agency test.[6] Under the Wyoming fair employment rules, *employee* "means any person

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

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

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

[6] Generally, Wyoming courts look to federal case law for guidance when adjudicating state fair employment cases. *See, e.g.*, *Rollins v. Wyoming Tribune-Eagle*, 152 P.3d 367, 370 (Wyo. 2007); *Hoflund v. Airport Golf Club*, 105 P.3d 1079, 1085 (Wyo. 2005). However, there are no Wyoming state cases or administrative decisions specifically addressing the issue of independent contractors under the state's fair employment practices laws. The federal common-law agency test as set forth in *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992), determines independent contractor versus employee status in cases under Title VII of the Civil Rights Act of 1964 ("Title VII"). Under *Darden,* in determining whether a hired party is an employee under the common law of agency, courts consider "the hiring party's right to control the manner and means by which the product is accomplished." 503 U.S. at 323. Relevant factors include:

> the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."[7] The Labor Standards Office "may give substantial weight to the current guidelines of the Equal Employment Opportunity Commission."[8]
Income Taxes	Not applicable	Wyoming has no state income tax.
Unemployment Insurance	WDWS, Unemployment Insurance	Three-part statutory test. An individual who performs service for wages is an employee under the Wyoming Employment Security Law unless it is shown that the individual: 1. is free from control or direction over the details of the performance of services by contract and fact; 2. represents their services to the public as a self-employed individual or an independent contractor; and 3. may substitute another individual[9] to perform their services.[10]

to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

503 U.S. at 323-24.

[7] 053-0024-003 WYO. CODE R. § 2(g).

[8] 053-0024-003 WYO. CODE R. § 4(e).

[9] With respect to this element, the Wyoming Supreme Court observed, relying on decisions from other jurisdictions, "that the *independent contractor* must have the ability to select his or her substitute." *Circle C Res., Inc. v. Kobielusz*, 320 P.3d 213, 220(Wyo. 2014).

[10] WYO. STAT. ANN. § 27-3-104(b). Wyoming courts follow the three-prong statutory test set out in the unemployment law. *DC Prod. Serv. v. Wyoming Dep't of Emp't*, 54 P.3d 768, 772 (Wyo. 2002). The burden of proof lies with the contracting business. *Wyoming Dep't of Emp't v. Jolley, Castillo, Drennon, Ltd.*, 229 P.3d 955, 959 (Wyo. 2010).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Wage & Hour Laws	WDWS, Labor Standards Office	"Right to control" test.[11] Additional common-law factors discussed below in the workers' compensation section are also applied in wage and hour classification cases.[12] *Employee* is defined in the wage payment law as "any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee."[13]
Workers' Compensation	WDWS, Workers' Compensation	Statutory three-part test, with additional consideration of common-law factors. The statutory definition of *employee* excludes independent contractors.[14] The workers' compensation law defines *independent contractor* as an individual who performs services for another individual or entity and who is: 1. free from control and direction over the details of the performance of services by contract and fact; 2. represents their services to the public as a self-employed individual or an independent contractor; and 3. may substitute another person to perform their services.[15]

[11] According to the Wyoming Supreme Court, an independent contractor "is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work." *Diamond B Servs., Inc. v. Rohde*, 120 P.3d 1031, 1041 (Wyo. 2005) (quoting *Combined Ins. Co. of Am. v. Sinclair*, 584 P.2d 1034, 1043 (Wyo. 1978) and *Lichty v. Model Homes*, 211 P.2d 958 (Wyo. 1949)). In a footnote, the Wyoming Supreme Court in *Diamond B Services, Inc.* noted that Internal Revenue Service Ruling 87-41, 1987-1 "essentially encompasses the same principles as Wyoming common law." 120 P.3d at 1041 n.4. However, the court chose "to rely on a synthesis of Wyoming case law rather than the Revenue Ruling to distinguish between employees and independent contractors" because the statutory definition of employee in the wage payment law directed the application of common law. 120 P.3d at 1041 n.4. The "overriding consideration" is "the employer's right to control the means and manner of the work." 120 P.3d at 1041 (citing *Cline v. State, Dep't. of Family Servs.*, 927 P.2d 261, 263 (Wyo. 1996); *Stratman v. Admiral Beverage Corp*. 760 P.2d 974, 980 (Wyo. 1988); *Noonan v. Texaco, Inc.*, 713 P.2d 160, 164 (Wyo. 1986)). Moreover, "the absence of such a right of control is a *prerequisite* of an independent contractor relationship." *Diamond B Servs., Inc.*, 120 P.3d at 1041 (emphasis added) (quoting *Coates v. Anderson*, 84 P.3d 953, 957 (Wyo. 2004)).

[12] *See Diamond B Servs., Inc.*, 120 P.3d at 1041-42.

[13] WYO. STAT. ANN. § 27-4-501(a)(ii).

[14] WYO. STAT. ANN. § 27-14-102(a)(vii)(D).

[15] WYO. STAT. ANN. § 27-14-102(a)(xxiii).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		This statutory test is very similar to that set forth in the unemployment insurance law, discussed above. Additional common-law factors that courts may consider include: 1. whether an express contract exists between the parties; 2. the right to terminate the relationship without liability; 3. the method of payment (payment based on time or piece suggests an employer-employee relationship, whereas a lump sum payment suggests an independent contractor relationship); 4. furnishing of tools, equipment, and workers; 5. who has control over when the work is performed; 6. the scope of the work; 7. control over the premises where the work is to be performed; and 8. whether the individual performs work for others.[16]
Workplace Safety	WDWS, Wyoming Occupational Safety and Health Administration	Wyoming has an approved state plan under the federal Occupational Safety and Health Act ("Fed-OSH Act") and it adopts all federal standards, with only some minor exceptions.[17] Therefore, there are no statutory definitions or case law identifying a test for independent contractor status in this context.

[16] *See Circle C Res., Inc. v. Kobielusz*, 320 P.3d 213, 221 (Wyo. 2014); *Fox Park Timber Co. v. Baker*, 84 P.2d 736, 743 (Wyo. 1938); *see also Flint Eng'g & Constr. Co. v. Richardson*, 726 P.2d 511, 515 (Wyo. 1986); *Burnett v. Roberts*, 121 P.2d 896, 898-99 (Wyo. 1942). In *Circle C Resources, Inc.*, the Wyoming Supreme Court found that the workers' compensation law does not define "control," but the concept has been extensively considered at common law. 320 P.3d at 216. Common law "gives overriding consideration to the employer's right to control the means and manner of the work," and the court noted that this precedent is relevant in determining whether the definition of employee is met under the workers' compensation provisions because "the employer's right to control the means and manner of the work bears very close resemblance to the statutory requirement of freedom from 'control or direction over the details of the performance of services.'" 320 P.3d at 216 (citation omitted). The court further concluded that an independent contractor is subject only to an entity's interest in the "result of the work and not as to the methods or means used." *Circle C Res., Inc.*, 320 P.3d at 216 (citations omitted).

[17] *See* WYO. STAT. ANN. §§ 27-11-101 *et seq*. Wyoming has unique standards covering oil and gas well drilling and servicing, as well as anchor tester requirements not covered under Fed-OSH Act standards. However, these are industry-specific and outside the scope of this publication.

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.[18]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[19] 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.[20]

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

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

---

[18] 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.

[19] *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).

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

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 **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

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

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

Wyoming places no statutory restrictions on a private employer's use of arrest records. In addition, Wyoming 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

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

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

A person who has received an order of expungement of their arrest record may respond to any inquiry as though the arrest, or charge or charges did not occur, unless otherwise provided by law.[22] Moreover, a

[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.

[22] WYO. STAT. ANN. § 7-13-1401(f).

person whose juvenile record has been expunged may reply to inquiries by denying the existence of the record.[23]

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[24] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[25] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

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

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

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[26]

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

Wyoming 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.

---

[23] WYO. STAT. ANN. § 14-6-241(a).

[24] 15 U.S.C. §§ 1681 *et seq*.

[25] 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).

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

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

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

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

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

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

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

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

1.3(d) Polygraph / Lie Detector Testing Restrictions

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

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[27] 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

[27] 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.

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

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

1.3(e) Drug & Alcohol Testing on Applicants

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

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[28] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[29] 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

Wyoming law contains no express provisions regulating preemployment drug or alcohol screening by private employers.

However, a Wyoming employer may voluntarily choose to promote a drug-free workplace in order to receive a discount on workers' compensation premiums.[30] Participating employers must have at least one employee to participate in the program. In addition, employers must establish and maintain certificates of good standing with Wyoming Workers' Compensation, Unemployment Insurance, and the Secretary of

---

[28] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[29] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[30] WYO. STAT. ANN. § 27-14-201(o); 025-220-002 WYO. CODE R. § 9.

State.[31] An employer with a drug-free workplace must have a written policy that includes all of the following:

- a statement that all employees covered under workers' compensation will be included in the substance abuse testing program;
- a statement of required types of substance abuse testing;
- a statement of actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result;
- a statement of consequences of an employee's or job applicant's refusal to submit to a drug test;
- a general confidentiality statement;
- a statement advising an employee who receives a positive confirmed test result that the employee may contest or explain the result to the employer within five working days after written notification of the test result;
- a statement informing an employee or job applicant of the federal Drug-Free Workplace Act, if applicable;
- a statement affording 60 days' notice prior to implementing the substance abuse testing program;
- a statement that substance abuse testing is required to be on vacancy announcements for which testing is required;
- a statement that notification of substance abuse testing is posted in an appropriate and conspicuous location on employer's premises; and
- a statement informing employees and job applicants that copies of the policy are available in the employer's personnel office or other suitable location.[32]

Furthermore, the employer must post a list of community resources that provide substance abuse treatment and prevention services in a conspicuous place where employees can regularly view it.[33]

Participating employers must conduct preemployment testing, but are not required to conduct alcohol testing of job applicants in order to meet the drug-free workplace requirements. Other requirements for the program include: availability of resources for employee assistance, employee education, and supervisor training.[34]

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

[31] 025-220-002 WYO. CODE R. § 9.

[32] 025-220-002 WYO. CODE R. § 9.

[33] 025-220-002 WYO. CODE R. § 9.

[34] 025-220-002 WYO. CODE R. § 9.

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) Federal Guidelines on Hire Documentation

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

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[35] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[36] 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.[37] 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.[38]
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.[39]

[35] 26 U.S.C. § 36B.

[36] 42 U.S.C. § 18071.

[37] 29 U.S.C. § 218b.

[38] 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.

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

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[40]
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.[41] 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.[42] 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.[43]
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

[40] 29 C.F.R. § 2590.606-1.

[41] 29 C.F.R. § 825.300(a).

[42] 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.

[43] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[44] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[45]
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.[46]
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.[47]

2.1(b) State Guidelines on Hire Documentation

Wyoming law does not require any specific documents to be provided to new employees at the time of hire. Employers should refer to federal law.

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

[45] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[46] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[47] 29 C.F.R. § 531.59.

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

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[49]

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;

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

[49] 42 U.S.C. § 653a.

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

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

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

Table 3. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[50] 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 Wyoming's new hire reporting law.

Who Must Be Reported. Newly-hired employees, rehired employees separated from employment for at least 60 days, and employees returning after being laid off, furloughed, separated, granted an unpaid leave, or terminated must be reported.[51]

Report Timeframe. Employers must report within 20 days of an employee's hiring date. Employers that submit reports magnetically or electronically should report twice per month, not fewer than 12 days nor more than 16 days apart.[52]

Information Required. The report should include the employee's name, address, Social Security number, and the date the employee first performed services for pay, along with the employer's name, address and federal tax identification number.[53]

Form & Submission of Report. Employers may submit reports using a federal Form W-4, new hire reporting form, or a printed list, And may transmit reports by first-class mail, online, new hire data entry software, electronic transfer via modem, fax, or magnetically.[54]

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

[51] WYO. STAT. ANN. § 27-1-115(d)(iii).

[52] WYO. STAT. ANN. § 27-1-115(b).

[53] WYO. STAT. ANN. § 27-1-115(b).

[54] WYO. STAT. ANN. § 27-1-115(b).

Location to Send Information.

Wyoming New Hire Reporting Center
P.O. Box 1408
Cheyenne, WY 82003
(800) 970-9258
(307) 638-1675
(800) 921-9651(fax)
(307) 638-1686 (fax)
https://newhire-reporting.com/WY-Newhire/default.aspx

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

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

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

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

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[55] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

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

[55] 18 U.S.C. §§ 1832 *et seq.*

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

2.3(b)(i) State Restrictive Covenant Law

There is no general statute governing the enforceability of noncompete agreements in Wyoming. However, Wyoming courts will enforce noncompete agreements pursuant to limitations set forth in Wyoming case law.

To be valid and enforceable, a noncompete must be:

- in writing;
- part of a contract of employment;
- based on reasonable consideration;
- reasonable in durational and geographic limitations; and
- not against public policy.[56]

In addition to being fair and reasonable, the restrictions in the noncompete agreement must "have a fair relation to, and are really necessary for the protection of employer business."[57] When interpreting a noncompete agreement, Wyoming courts must hold the public interest as paramount, and courts may not enforce a restrictive covenant if it would be detrimental to the convenience of the public.[58]

Wyoming courts have enforced restrictive covenants that seek to restrict a former employee's access to the employer's customers, where it is found that the former employee would have special influence over those customers.[59]

Enforceability Following Employee Discharge. Wyoming courts will enforce a noncompete, even if the employer terminates the employment relationship, unless the employer acts in bad faith.[60]

2.3(b)(ii) Consideration for a Noncompete

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

---

[56] *CBM Geosolutions, Inc. v Gas Sensing Tech. Corp.*, 215 P.3d 1054, 1059 (Wyo. 2009).

[57] *Tench v. Weaver*, 374 P.2d 27, 29 (Wyo. 1962).

[58] *Ridley v. Krout*, 180 P.2d 124, 127 (Wyo. 1947).

[59] 180 P.2d at 130-31.

[60] *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531, 541-42 (Wyo. 1993) ("Simple justice requires that a termination by the employer of an at will employee be in good faith if a covenant not to compete is to be enforced."), *overruled on other grounds by Hassler v. Circle C Resources*, 2022 WL 575477 (Wyo. Feb. 25, 2022).

Under Wyoming law, a noncompete agreement entered into at the beginning of the employment relationship is considered to be supported by adequate consideration.[61] However, continued employment alone is insufficient.[62] For a noncompete agreement that is entered into after the inception of the employment relationship to be enforceable, it must be supported by consideration in the form of a change in the terms and conditions of employment.[63] Such consideration includes a promotion, pay raise, special training, employment benefits, or other advantages for the employee.

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

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

In Wyoming, courts may not revise terms which are unreasonable to make a noncompete agreement reasonable and enforceable.[64]

2.3(b)(iv) State Trade Secret Law

When an employee leaves a business, the employee will sometimes take valuable information from the business to use for competitive purposes. In addition to noncompetition agreements, Wyoming law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. In 2006, Wyoming adopted the Uniform Trade Secrets Act.[65]

Definition of a Trade Secret. Wyoming's statute 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 person 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.[66]

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

---

[61] 861 P.2d at 540.

[62] 861 P.2d at 541.

[63] 861 P.2d at 541.

[64] *Hassler v. Circle C Resources*, 505 P.3d 169, 178-79 (Wyo. 2022).

[65] WYO. STAT. ANN. § 40-24-101.

[66] WYO. STAT. ANN. § 40-24-101(a)(iv).

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of another person's trade secrets without the other's express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. before a material change of position, knew or had reason to know that the information was a trade secret and that knowledge of it had been acquired by accident or mistake;
    c. or at the time of the disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was: (1) derived from or through a person who had utilized improper means to acquire it; or (2) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.[67]

Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction will be terminated when the trade secret has ceased to exist.[68] A complainant may also be entitled to damages for the misappropriation. Damages can include both the actual loss and the unjust enrichment caused by the misappropriation that is not taken into account in computing actual loss.[69]

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

Wyoming does not have any statutory guidelines addressing ownership of employee inventions and ideas. However, Wyoming courts have recognized the general rule that if an employee's job duties include inventing, any invention created by the employee in the performance of their job belongs to the employer; but an employer does not own any invention of an employee not hired to invent.[70]

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 4 details the federal workplace posting and notice requirements.

[67] WYO. STAT. ANN. § 40-24-101(a)(ii).

[68] WYO. STAT. ANN. § 40-24-102.

[69] WYO. STAT. ANN. § 40-24-103.

[70] *Preston v. Marathon Oil Co.*, 277 P.3d 81, 84-85 (Wyo. 1993).

Table 4. 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.[71]
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.[72]
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.[73]
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.[74]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[75]
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.[76]

[71] 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.

[72] 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.

[73] 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.

[74] 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.

[75] 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.

[76] 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.

Table 4. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[77]
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.[78]
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.[79] 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.[80]
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.[81]
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

[77] 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.

[78] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[79] 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.

[80] 41 C.F.R. §§ 60-300.44, 60-741.44.

[81] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

Table 4. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	attaching a notice to the contract, or may post the notice at the worksite.[82]
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.[83]
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.[84]
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.[85]
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.[86]
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

[82] 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.

[83] 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.

[84] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[85] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[86] 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.

Table 4. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[87] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[88]
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.[89]
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.[90]

[87] 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.

[88] 29 C.F.R. § 13.5.

[89] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[90] 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.

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

Table 5 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 5. State Posting & Notice Requirements

Poster or Notice	Notes
Drug-Free Workplace Policy: Resource List	An employer that voluntarily implements a drug-free workplace policy, as discussed in **1.3(e)(ii)**, must post a list of community resources that provide substance abuse treatment and prevention services in a conspicuous place where employees can regularly view it.[91]
Unemployment Compensation	All employers must post notice informing employees that they are covered by their employers' unemployment insurance and how to file claims.[92]
Wages, Hours & Payroll: Minimum Wage	All employers must post notice informing employees of the current state minimum wage.[93]
Wages, Hours & Payroll: Wage Payment Law	All employers must post, in at least two conspicuous places where they can be seen by employees, a copy of the wage payment law, printed in plain type.[94]
Workers' Compensation	All employers (those that are engaged in extrahazardous occupations or elected to obtain coverage) must post notice informing employees about the scope of workers' compensation coverage, their obligation to report injuries, and how to submit an injury report as well as a claim for benefits.[95]
Workplace Safety	All employers must post conspicuous notice summarizing the obligations and protections of the Wyoming Occupational Health and Safety Act.[96]

[91] 025-220-002 WYO. CODE R. § 9.

[92] WYO. STAT. ANN. § 27-3-401. Wyoming provides one omnibus poster ("Wyoming Labor Law Poster") that covers most required workplace posting topics. This poster is available at https://dws.wyo.gov/dws-division/osha/resources/posters/.

[93] This notice is included in the Wyoming Labor Law Poster.

[94] WYO. STAT. ANN. § 27-4-101. Employers must create their own form to satisfy this posting requirement.

[95] WYO. STAT. ANN. § 27-14-507. This notice is included in the Wyoming Labor Law Poster.

[96] This notice is included in the Wyoming Labor Law Poster.

3.1(b) Record-Keeping Requirements

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

Table 6 summarizes the federal record-keeping requirements.

Table 6. 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.[97]	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.[98]	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.[99]	For the full period the plan or system is in effect, and for at least 1 year after its termination.

[97] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[98] 29 C.F.R. § 1627.3(b).

[99] 29 C.F.R. § 1627.3(b).

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[100]	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.[101]	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).[102]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner;	At least 3 years following the date on which the polygraph examination was conducted.

[100] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[101] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[102] 29 C.F.R. § 1602.7.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[103]	
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.[104]	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).[105]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[106]	At least 2 years.
Fair Labor Standards Act	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*	3 years from the last day of entry.

[103] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[104] 29 U.S.C. § 1027.

[105] 29 C.F.R. § 1620.32(a).

[106] 29 C.F.R. § 1620.32(b).

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Payroll Records	• 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).[107] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;	

[107] 29 C.F.R. §§ 516.2, 516.5.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[108]	
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 employee's total remuneration for employment including fringe benefits and prerequisites.[109]	3 years from the last day of entry.
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;	At least 3 years from the last effective date.

[108] 29 C.F.R. § 516.28.

[109] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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.[110]	
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.[111]	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; • 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	At least 3 years.

[110] 29 C.F.R. § 516.5.

[111] 29 C.F.R. § 516.6.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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. *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	

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[112]	
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; • 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).[113]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[114]	3 years after the date of hire or 1 year following

[112] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[113] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[114] 8 C.F.R. § 274a.2.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		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.[115]	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; • 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.[116]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[117]	As long as it is in effect and at

[115] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[116] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[117] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		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.[118]	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 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.	At least 30 years.

[118] 26 C.F.R. § 31.6001-4.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[119]	
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; • 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.[120]	Duration of employment plus 30 years.

[119] 29 C.F.R. § 1910.1020(d).

[120] 29 C.F.R. § 1910.1020(d).

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
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.[121]	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.[122]	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.[123]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and	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."

[121] 29 C.F.R. § 1910.1020(d).

[122] 29 C.F.R. §§ 1904.33, 1904.44.

[123] 41 C.F.R. § 60-1.12(b).

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• 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 • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[124]	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.
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	Until final disposition of the complaint, compliance review or action.

[124] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[125]	
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.[126]	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; • 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	During the course of the covered contract as well as after the end of the contract.

[125] 41 C.F.R. §§ 60-1.12, 60-741.80.

[126] 29 C.F.R. § 23.260.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	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.[127]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and	At least 3 years after the work.

[127] 29 C.F.R. § 13.25.

Table 6. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• worker or employee employed in conjunction with the project.[128]	
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.[129]	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 • a certificate of age for employees under 19 years of age.[130]	At least 3 years from the last date of entry.

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

Table 7 summarizes the state record-keeping requirements.

[128] 29 C.F.R. § 5.5.

[129] 29 C.F.R. § 4.6.

[130] 41 C.F.R. § 50-201.501.

Table 7. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Public Works Contracts	*Each contractor and subcontractor must keep records showing:* • names and occupations of all workmen employed by them in connection with the public work; and • actual wages paid to each worker.[131]	None specified.
Unemployment Insurance	*Each employing unit must keep and maintain a record for each worker, including:* • name and Social Security number; • place services are performed, or if no such place, base of operations; • date of hire, rehire, or return to work after temporary layoff; • date separated from work; • remuneration, and period for which payable, showing separately, money wages (excluding special payments), reasonable cash value of noncash remunerations (excluding special payments), portion of gratuities reportable, and special payments not due on payday; ▪ with respect to special payments, the following must be shown separately—money payments, reasonable cash value of other remuneration, nature of such payments, and period during which services were performed for which special payments were made; • amounts payable to employee as allowances or reimbursements for business expenses; • severance payments; and • retirement payments. *Additional records must be kept, including*: • beginning and ending dates of each pay period; • total amount of remuneration payable in any pay period; • each calendar week in which there were one or more workers in employment; • daily time records for all employees showing hours worked per day; and • applicable hourly, weekly, or monthly pay rates.[132]	Not less than four years after the calendar year in which the remuneration was payable.

[131] WYO. STAT. ANN. § 27-4-410.

[132] WYO. STAT. ANN. § 27-3-502(e); 025-050-011 WYO. CODE R. § 1.

Table 7. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Wages, Hours & Payroll	*Every employer must keep and maintain records, for each covered employee, including:* • name, address, and occupation; • rate of pay; • amount paid each pay period; and • hours worked each day and each work week.[133]	Not less than two years.

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

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

3.2 Privacy Issues for Employees

3.2(a) Background Screening of Current Employees

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

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

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

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

3.2(b) Drug & Alcohol Testing of Current Employees

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

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

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

Wyoming law contains no applicable employment law provisions regulating drug and alcohol testing of employees. As noted in 1.3(e)(ii), however, a Wyoming employer may voluntarily choose to promote a drug-free workplace in order to receive a discount on workers' compensation premiums.[134] For more information on the drug-free workplace program, see 1.3(e)(ii).

---

[133] WYO. STAT. ANN. § 27-4-203.

[134] WYO. STAT. ANN. § 27-14-201(o); 025-220-002 WYO. CODE R. § 9.

3.2(c) Marijuana Laws

3.2(c)(i) Federal Guidelines on Marijuana

Under federal law, it is illegal to possess or use marijuana.[135]

3.2(c)(ii) State Guidelines on Marijuana

Certain individuals that suffer from intractable epilepsy or seizure disorders can use hemp extract for medicinal purposes, but there are no private-employer-related provisions.[136]

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.[137]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[138]

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

Wyoming law requires that when a covered entity becomes aware of a security breach, it must conduct a good faith, reasonable, and prompt investigation to determine the likelihood that personal identifying information has been or will be misused. Notice is required if the entity determines that the misuse of personal identifying information about a Wyoming resident has occurred or is reasonably likely to

---

[135] 21 U.S.C. §§ 811-12, 841 *et seq*.

[136] *See* WYO. STAT. ANN. §§ 35-7-1801 *et seq*.

[137] 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.

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

occur.[139] A *security breach* means an unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal identifying information maintained by a person or business and causes or is reasonably believed to cause loss or injury to a Wyoming resident.[140]

Covered Entities & Information. Any person or entity that conducts business in Wyoming and owns or licenses computerized data that includes personal information is covered under the notification statute. However, any financial institution or federal credit union that is subject to and complies with title V of the Gramm-Leach-Bliley Act is exempt.[141]

Under the Wyoming statute, *personal identifying information* means 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;
- account number, credit card number, or debit card number in combination with any security code, access code, or password that would allow access to a financial account of the person;
- tribal identification card;
- federal or state government issued identification card;
- shared secrets or security tokens that are known to be used for data based authentication;
- username or email address, in combination with a password or security question and answer that would permit access to an online account;
- birth or marriage certificate;
- medical information, meaning a person's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
- health insurance information, meaning a person's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the person or information related to a person's application and claims history;
- unique biometric data, meaning data generated from measurements or analysis of human body characteristics for authentication purposes; or
- individual taxpayer identification number.[142]

Personal information does not include data that is redacted or information which is lawfully available publicly and contained in federal, state, or local government records or widely distributed media available to the public.[143]

---

[139] WYO. STAT. ANN. §§ 40-12-501 *et seq*.

[140] WYO. STAT. ANN. § 40-12-501(a)(i).

[141] WYO. STAT. ANN. § 40-12-502(a).

[142] WYO. STAT. ANN. §§ 40-12-501(a)(vii), 6-3-901(b).

[143] WYO. STAT. ANN. § 40-12-501(b).

Content & Form of Notice. The required notice must be clear and conspicuous and must include, at minimum:

- a toll-free number that the individual may use to contact the person collecting the data and from which the person may learn contact information for major credit reporting agencies;
- the types of personal identifying information that were or are reasonably believed to have been the subject of the breach;
- a general description of the breach incident;
- the approximate date of the breach of security, if that information is reasonably possible to determine at the time notice is provided;
- in general terms, the actions taken by the individual or commercial entity to protect the system containing the personal identifying information from further breaches;
- advice that directs the person to remain vigilant by reviewing account statements and monitoring credit reports; and
- whether notification was delayed as a result of a law enforcement investigation, if that information is reasonably possible to determine at the time the notice is provided.[144]

Notice may be provided in the following forms:

- written;
- email; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $10,000 for Wyoming-based covered entities, and $250,000 for all other covered entities operating but not based in Wyoming;
  - the affected class of persons to be notified exceeds 10,000 for Wyoming-based covered entities and 500,000 for all other covered entities operating but not based in Wyoming; or
  - an affected individual does not have sufficient contact information.[145]

Substitute notice must consist of all of the following:

- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media. The notice must include a toll-free number where an individual can learn whether that individual's personal data is included in the security breach.[146]

A covered entity or business associate that is subject to and complies with the Health Insurance Portability and Accountability Act (HIPAA) and its accompanying regulations is deemed to be in compliance with this

[144] WYO. STAT. ANN. § 40-12-502(e).

[145] WYO. STAT. ANN. § 40-12-502(d).

[146] WYO. STAT. ANN. § 40-12-501(d)(iv).

statute if the covered entity or business associate notifies affected Wyoming customers or entities in compliance with HIPAA requirements.[147]

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

- a law enforcement agency indicates that notification will impede a criminal investigation or jeopardize national security;
- a covered entity needs time to determine the scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.[148]

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.[149] 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.[150]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[151]

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.[152]

---

147 WYO. STAT. ANN. § 40-12-501(h).

148 WYO. STAT. ANN. § 40-12-502(a), (b).

149 29 U.S.C. § 218(a).

150 29 U.S.C. § 206.

151 29 U.S.C. §§ 203, 206.

152 29 U.S.C. § 3(m)(2)(B).

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

3.3(b) State Guidelines on Minimum Wage Obligations

3.3(b)(i) State Minimum Wage

The minimum wage in Wyoming is currently $5.15 per hour for most nonexempt employees.[154] However, employers covered by the federal FLSA should consult the federal provisions because the federal rate, which is currently $7.25 per hour, exceeds the state minimum wage. If covered by both state and federal law, employees must be paid the higher rate.

3.3(b)(ii) Tipped Employees

Tipped employees are paid differently. If an employee earns tips, an employer may take a maximum tip credit of up to $3.02 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 $5.15 in tips per hour, the employer must make up the difference between the wage actually made and the minimum wage, which is currently $5.15 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.

FLSA-covered employers should consult the federal provisions, as the federal minimum wage rate currently exceeds the Wyoming minimum wage rate. Employees covered under both state and federal law must receive the higher rate, which changes how tipped employees must be paid.[155]

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

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

- an individual employed in agriculture;
- an individual employed in domestic service in or about a private home;
- an individual employed in a *bona fide* executive, administrative, or professional capacity;
- an individual employed by the United States, or by the state or any political subdivision of the state;
- an individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services rendered to such organization are on a voluntary basis;
- an individual employed as an outside salesperson whose compensation is solely commission on sales; or

[153] 29 U.S.C. § 207.

[154] WYO. STAT. ANN. § 27-4-202.

[155] WYO. STAT. ANN. § 27-4-202.

- an individual whose employment is driving an ambulance or other vehicle from time to time as necessity requires but who is on call at any time.[156]

An employer may a subminimum wage of $4.25 per hour to employees under age 20 during the first 90 consecutive days of employment. However, an employer is prohibited from displacing employees, including partial displacements such as reduction in hours, wages, or employment benefits, for the purpose of hiring individuals at this subminimum wage.[157]

3.3(c) State Guidelines on Overtime Obligations

Wyoming law does not have a separate overtime provision. Therefore, the payment of overtime in Wyoming 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.[158] 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.[159]

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

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

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

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[160] 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

[156] WYO. STAT. ANN. § 27-4-201.

[157] WYO. STAT. ANN. § 27-4-202.

[158] 29 C.F.R. § 785.19.

[159] 29 C.F.R. § 785.18.

[160] 29 U.S.C. § 218d.

completely relieved from duty during the entirety of the break.[161] 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.[162] Exemptions apply for smaller employers and air carriers.[163]

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.[164] Lactation is considered a related medical condition.[165] 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.[166] 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 Wyoming.

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

There are no generally applicable meal or rest period requirements for minors in Wyoming.

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

An individual has a right to breast feed an infant child in any place where the individual may legally be.[167] Although the law does not specifically mention employers, it can be interpreted to include places of employment. Nonetheless, Wyoming encourages breast feeding and commends employers that make accommodations for breast-feeding mothers when feasible.[168]

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.[169] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call,

[161] 29 U.S.C. § 218d(b)(2).

[162] 29 U.S.C. § 218d(a).

[163] 29 U.S.C. § 218d(c), (d).

[164] 42 U.S.C. § 2000gg–1.

[165] 29 C.F.R. § 1636.3.

[166] 29 C.F.R. § 1636.3.

[167] WYO. STAT. ANN. § 6-4-201.

[168] WYO. STAT. ANN. § 6-4-201.

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

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."[170]

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

Wyoming law does not address what work activities are considered to be compensable activities, and state law does not address reporting time, on-call pay, travel time, split shifts, and other circumstances where the compensability of an employee's activities may be in question. Employers covered by the FLSA should consult the federal provisions.

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.[171] 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.[172] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) State Guidelines on Child Labor

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

General Restrictions. Wyoming restricts the employment of minors under age 16 by age and by the type of job (see Table 8). Note that Wyoming law contains prohibitions for children 14 and 15 years, but does

[170] *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").

[171] 29 C.F.R. §§ 570.36, 570.50.

[172] 29 C.F.R. § 570.6.

not prohibit any occupation for those 16 and 17 years of age. Employers should adhere to the more stringent federal standard in order to ensure full compliance.

Table 8. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 16	*Minors under age 16 cannot work:* • in the operation of or working on heavy construction equipment; • with or exposure to explosives or dangerous chemicals; • in occupations declared hazardous for minors under age 16 by the state labor department; • in any business or place, situation, exhibition, or vocation that is injurious to minors' morals, health, or safety; or • as an actor or performer in any concert hall where alcoholic liquors and malt beverages are sold or given away (subject to exceptions).[173] *On the other hand, minors under age 16 can work as (or in):* • dishwashers, busboys, or delivery persons in a place where alcoholic liquors and malt beverages are sold; • singers or musicians in any church, school, or academy; • teaching or learning the science or practice of music; • amateur entertainments or theater for charity; • not-for-profit boys' and girls' clubs.[174]
Under Age 14	In Wyoming, minors under age 14 cannot be employed, subject to limited exceptions.[175]

Restrictions on Selling or Serving Alcohol. In Wyoming, individuals must be at least age 18 to serve alcoholic or malt beverages in a restaurant that holds a license to serve alcoholic or malt beverages. Moreover, individuals must be at least age 21 to mix or dispense alcoholic beverages. Generally, individuals must be at least age 21 to work in dispensing rooms.[176]

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

In Wyoming, minors under age 16 cannot work:

- during school hours;
- more than eight hours in any 12-hour period;
- before 5:00 A.M.;
- after 10:00 P.M. on nights followed by a school day; and

[173] WYO. STAT. ANN. §§ 27-6-107, 27-6-112, and 27-6-114.

[174] WYO. STAT. ANN. § 27-6-114.

[175] WYO. STAT. ANN. §§ 27-6-107, 27-6-113.

[176] WYO. STAT. ANN. § 12-6-101; 011-000-020 WYO. CODE R. § 15.

- after midnight on days which are not followed by a school day.

Minors between ages 14 and 16 who are not enrolled in school may be employed for eight hours between 5:00 A.M. and 12:00 A.M. of any day.

3.6(b)(iii) State Child Labor Exceptions

Wyoming's child labor statutes do not apply to a child under 14 years of age employed in a nonhazardous occupation outside of school hours by the minor's parents, grandparents or legal guardian, or by a business owned by the minor's parents, grandparents, or legal guardian.

The time and hour restrictions do not apply to minors working in farm or domestic service.[177]

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

In Wyoming, a work permit is not required. However, employers must keep proof of age of any employee under age 16 on file where the minor is employed.[178]

Student Learners. Wyoming law allows for student learner agreements between employers and state school districts, community colleges, or technical schools.

A *student training agreement* is an agreement entered into between an employer and a student that specifies the terms and conditions included in the student learner agreement. If a student is under 18, a student training agreement must be signed by the student's parent or guardian, unless the student is an emancipated minor.

Employers must submit a copy of the agreement to the Department of Workforce Services, and notify the Department when a student learner agreement or student training agreement is terminated or extended, and if terminated, the date of termination. Employers may enter into student learner agreements with more than one Wyoming school district, community college, or technical school, provided that the employer enter into separate student learner agreements with each respective school.

Student learners who enter into student training agreements with an employer, who has a current student learner agreement with the student's school, are covered under the worker's compensation program. Each employer must pay the premium charged for each student learner and the Division must account for student learners in calculating benefits charged to an employer's experience rating account.[179]

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

Any person who employs a child in violation of the provisions of the law or permits a violation, is guilty of a misdemeanor, and upon conviction, will be fined not more than $750, imprisonment for not more than 100 days, or both.[180]

---

[177] WYO. STAT. ANN. §§ 27-6-107, 27-6-110, and 27-6-111.

[178] WYO. STAT. ANN. §§ 27-6-107, 27-6-108.

[179] WYO. STAT. ANN. § 27-14-110.

[180] WYO. STAT. ANN. § 26-7-113.

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).[181]

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.[182]

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.[183]

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.[184] 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.[185]

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

---

[181] 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").

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

[183] 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.

[184] 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/.

[185] 12 C.F.R. § 1005.2(b)(3)(i)(A).

must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[186] 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.[187]

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.[188]

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.[189]

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.

---

[186] 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.

[187] 12 C.F.R. § 1005.18.

[188] *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.

[189] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

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

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

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

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

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

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

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[190] 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.[191] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[192] tools and equipment,[193] and business transportation and travel.[194] 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.[195]

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;[196]

---

[190] *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).

[191] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[192] 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.

[193] 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).

[194] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[195] 29 C.F.R. § 778.217.

[196] 29 C.F.R. § 531.38.

- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[197]
- 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);[198]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[199]
- 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;[200] 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.[201]

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.[202]

---

[197] 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*.

[198] 29 C.F.R. § 531.40.

[199] 29 C.F.R. § 531.40.

[200] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[201] 29 C.F.R. § 825.213.

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

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[203] 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.[204]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[205]

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.[206]

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.[207]

3.7(b) State Guidelines on Wage Payment

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

Authorized Instruments. Wyoming does not have a provision governing the authorized instruments of payment for employee wages. However, it does have a law concerning direct deposit.[208]

---

[203] 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.

[204] 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.

[205] 29 C.F.R. § 531.36.

[206] 29 C.F.R. § 531.37.

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

[208] WYO. STAT. ANN. § 27-4-101.

Direct Deposit. Mandatory direct deposit is not permitted in Wyoming. If an employee voluntarily authorizes, employers may make direct deposits of wages into an account in any bank, savings and loan association, credit union, or other financial institution authorized to receive such a deposit.[209]

Payroll Debit Card. Wyoming law does not address the use of payroll debit cards as a method of wage payment.

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

Wyoming does not have a general provision regarding frequency of payment of wages. Because there is no general provision regarding frequency of payment of wages, an employer may pay its employees on a monthly or semi-monthly basis. However, employers engaged in the operation of a railroad, mine, refinery, and work incidental to prospecting for, or the production of, oil and gas, or other factory, mill, or workshop, must pay employees semi-monthly.[210]

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

Discharge or Resignation. Upon discharge or resignation, an employer must pay employees no later than the next regularly-scheduled payday or as provided in a collective bargaining agreement. This requirement does not apply to certain sales agents who are paid on a commission basis, and who have custody of accounts, money, or goods of the employer.[211]

Labor Dispute. If work is suspended as a result of a labor dispute, or whenever an employee is temporarily laid off, wages earned up to the time of suspension or layoff must be paid by the next regular payday.[212]

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

When wages are paid, employers must provide employees with an itemized statement in writing showing all deductions made. The itemized statement must be on a detachable part of the check, draft, or voucher, paying the employees' wages, or on a slip attached to the employees wage payment. This requirement does not apply to agricultural operations.[213]

3.7(b)(v) Wage Transparency

Wyoming 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

Wyoming law does not require an employer to provide advance notice of a change in payday or a change to employees' rate of pay, although any changes made cannot be retroactive.[214] Despite this, employers still may want to consider providing advance written notice before a change occurs.

---

[209] WYO. STAT. ANN. § 27-4-101.

[210] WYO. STAT. ANN. § 27-4-101.

[211] WYO. STAT. ANN. § 27-4-104.

[212] WYO. STAT. ANN. § 27-4-101.

[213] WYO. STAT. ANN. § 27-4-101.

[214] Wyoming Dep't of Workforce Servs., *Frequently Asked Questions*, *available at* https://dws.wyo.gov/dws-division/labor-standards/frequently-asked-questions/.

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

In Wyoming, there is no general obligation to indemnify an employee for business expenses. State law does not require an employer to reimburse an employee for expenses related to uniforms, tools, and equipment, and an employer is permitted to make wage deductions related to the items in **3.7(b)(viii)**.

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

Permissible Deductions. An employer may make wage deductions for items designated as a *lawful offset*, including:

- sums deducted pursuant to the Internal Revenue Code or any other federal tax provision;
- sums deducted pursuant to the Social Security Administration Act and the Federal Insurance Contribution Act;
- sums deducted as dues, contributions, or other fees to any labor organization or association;
- sums deducted as contributions for any employee's participation or eligibility in any health, welfare, insurance, retirement, or other benefit plan or program, provided:
  - the employee provides written authorization; and
  - deductions end upon the employee's written revocation of authorization.
- sums deducted as payments, repayments, contributions, deposits, to any credit union, banking, savings, loan, trust, or other financial institution, provided:
  - the employee provides written authorization; and
  - deductions end upon the employee's written revocation of authorization.
- sums deducted as payment for any purchase of goods or services from the employer, provided:
  - items are sold in the ordinary course of employer's business.
  - the employee has actual or constructive possession of items purchased; and
  - the employee's purchase is evidenced by their written acknowledgement.
- sums deducted for damages suffered by the employer due to the employee's negligence theft, or fraud, provided:
  - the employee's negligence, theft, or fraud, is determined by a judicial proceeding;
  - the amount of the damage suffered by the employer is determined by a judicial proceeding;
  - the negligence, theft, or fraud, and damages arose in the course of the employment; and
  - the employer has not received payments or any form of restitution from any insurer, assurer, surety, or guaranty to cover any of the damages. If it has, the amount of the offset cannot exceed the amount of any applicable deductible or $250, whichever is less.
- sums deducted pursuant to an attachment or garnishment;[215]

[215] *See* WYO. STAT. ANN. §§ 1-15-201 *et seq*., 1-15-401 *et seq*., and WYO. STAT. ANN. §§ 27-4-106 to 27-4-108.

- sums deducted as repayment to the employer of any cash advances, loans, or payments of expenses for optional benefits such as tuition assistance, relocation, and training, made to the employee by the employer, provided:
  - the advance, loan, etc. occurred during employment; and
  - the employee's receipt thereof is evidenced by their written acknowledgement.
- sums deducted for cash shortages, provided:
  - the employee gives written acknowledgement upon beginning employment that the employee will be responsible for any such shortages;
  - the employer and employee verify in writing the amount of cash that is in the register or cash box at the beginning of the employee's work period;
  - the employer and employee verify in writing the amount of cash that is in the register or cash box immediately at the end of the employee's work period; and
  - the employee will be the sole and absolute user and have sole access to the register or cash box from the time checked in until the time checked out.
- sums deducted for any purchase of tools, equipment, uniforms, or other items required for employment, provided:
  - the employee has actual or constructive possession of the items; and
  - the employee's purchase and receipt of item is evidenced by written acknowledgement.
- sums deducted as payment for tools, equipment, uniforms, or other items assigned to the employee by the employer, provided:
  - the item was assigned to the employee to be used within the scope of the employee's employment.
  - the employee gave written acknowledgement of receipt of the items; and
  - the items have not been returned to the employer upon termination.
- sums deducted as payment for any purchase an employee makes on an employer's credit card, provided:
  - the employee gave written acknowledgement that the individual would be responsible for personal purchases made on the card;
  - the purchased items were entirely for the benefit of the employee and in no way associated with the employer's business or the employee's job; and
  - the employer produces an itemized receipt of all purchases at issue and demonstrates the employee made such purchases during the period of employment.
- sums deducted from wages as repayment for any pre-employment drug test, fingerprinting, credit check, or background check, provided:
  - the test or check is required by law or is a bona fide requirement for the performance of the position to which the employee applied;
  - the employee is made aware in writing of the cost of such tests or checks prior to undergoing them;

- the employee provides written acknowledgement agreeing to reimburse the employer for the cost of such tests or checks; and
- the employee's responsibility to provide such reimbursement ends after a specific period of time that does not exceed one year of service.[216]

Further, an employer can deduct sums deducted as repayment to the employer of any loans made to the employee by the employer, provided:

- the loan occurred during employment; and
- the employee's receipt thereof is evidenced by their written acknowledgement.[217]

Prohibited Deductions. An employer cannot deduct for a dishonored check unless:

- the employer provided written instructions concerning procedures for accepting checks and employee failed to follow procedures; or
- the employer reasonably believed employee has been a party to a fraud or other wrongdoing in taking dishonored check.[218]

Further, any written or oral agreement or contract between any employer and an employee or representative that contravenes the lawful offset provisions is null and void.[219]

Disputed Deductions. In the case of a dispute over wage offsets, an employer must provide the employee, their attorney, or the state labor department written notice of the amount of wages which it concedes due and must pay this amount without condition within the time required by law. Acceptance by the employee of any partial payment of wages made under the disputed deductions provisions does not constitute a release or waiver concerning the disputed balance.[220]

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

Orders of Support. Upon receiving an income withholding order for child support, known as a Notice to Payor in Wyoming, an employer must begin withholding from the obligor-employee's income no later than the first pay period that occurs following service on the employer of the notice.[221] The employer must pay over the withheld amounts to the state child support enforcement agency within seven days of each pay period.[222] The amount deducted for child support withholding cannot exceed the limits set under the federal Consumer Credit Protection Act (CCPA).[223] The employer may also deduct an administrative

[216] 053-0024-001 WYO. CODE R. § 6; *see also Diamond B Servs. v. Rohde*, 120 P.3d 1031 (Wyo. 2005) ("wage offset rules requiring written authorization are reasonable and promulgation of the rules did not exceed the Department's statutory authority").

[217] 053-0024-001 WYO. CODE R. § 6.

[218] WYO. STAT. ANN. § 27-4-116.

[219] 053-0024-001 WYO. CODE R. § 6.

[220] 053-0024-001 WYO. CODE R. § 6.

[221] WYO. STAT. ANN. §§ 20-6-210, 20-6-212.

[222] WYO. STAT. ANN. § 20-6-212.

[223] WYO. STAT. ANN. § 20-6-210; 15 U.S.C. § 1673.

fee of $5 for each withholding.[224] An employer is prohibited from discharging, disciplining, or refusing to hire an individual because their income is subject to an order of support.[225]

Debt Collection. If an employer is served with a writ of garnishment against an employee's wages, the employer is required to file an answer to the writ within 10 days of service to verify whether the individual is in fact employed by and receiving earnings from the employer.[226] The garnishment order remains in effect until the judgment is satisfied or dismissed, the employee's employment terminates, or 90 days have passed following service of the writ.[227] The amount deducted for each pay period in satisfaction of the debt cannot exceed the limits set under the federal Consumer Credit Protection Act (CCPA).[228] An employer is prohibited from discharging an employee because their income is subject to garnishment.[229]

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

An employee alleging a violation of the state minimum wage law may bring a civil action for unpaid wages, reasonable attorneys' fees, and costs.[230] A civil action must be filed within eight years of the alleged violation.[231] The Wyoming minimum wage provisions do not specify any civil or criminal penalties for violations other than the damages and remedies available via a civil action.

The Wyoming Department of Workforce Services enforces the state's wage payment laws and has the authority to investigate and resolve an employee's administrative wage claim.[232] Alternatively, the employee may elect to file civil action, which must be filed within eight years of the alleged violation.[233] An employer violating the semi-monthly payment requirement or the final wages provision commits a misdemeanor. If convicted, violators may be fined up to $750 per offense, imprisoned for up to six months, or both.[234]

---

[224] WYO. STAT. ANN. § 20-6-212.

[225] WYO. STAT. ANN. § 20-6-218.

[226] WYO. STAT. ANN. § 1-15-407.

[227] WYO. STAT. ANN. § 1-15-502.

[228] WYO. STAT. ANN. §§ 1-15-511, 40-14-505; 15 U.S.C. § 1673.

[229] WYO. STAT. ANN. § 1-15-509.

[230] WYO. STAT. ANN. § 27-4-204.

[231] WYO. STAT. ANN. § 1-3-105. The Wyoming minimum wage law does not specify a statute of limitations for a civil action to recover unpaid minimum wages. A general statute of limitations provision provides an eight-year limitations period for an action "upon a liability created by statute other than a forfeiture or penalty." WYO. STAT. ANN. § 1-3-105(a)(ii)(B).

[232] WYO. STAT. ANN. §§ 27-4-502, 27-4-504; 053-0024-001 WYO. CODE R. §§ 5, 7-10.

[233] WYO. STAT. ANN. § 1-3-105. Wyoming's wage payment law does not specify a statute of limitations for a civil action alleging a violation of the wage payment provisions. As noted above, a general statute of limitations provision provides an eight-year limitations period for an action "upon a liability created by statute other than a forfeiture or penalty." WYO. STAT. ANN. § 1-3-105(a)(ii)(B).

[234] WYO. STAT. ANN. §§ 27-4-103, 27-4-105.

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).[235] 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.[236] 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.[237]

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

Employers in Wyoming are not required to provide paid vacation time to their employees. However, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively, and the employer must apply the vacation policy in a nondiscriminatory manner. 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.

In Wyoming, the definition of *wages* includes fringe benefits. *Fringe benefits* are defined as any payments to the employee or to a fund for the benefit of the employee which are due the employee under an agreement with the employer or under an employer's policy, including but not limited to vacation and holiday pay.[238] Whenever an employer has agreed with any employee or their agent to provide or make payments to a health or welfare fund, pension fund, vacation plan, apprenticeship program, or other such employment benefits, it is unlawful for the employer to willfully, or with intent to defraud, fail to make the payments required by the terms of any such agreement.[239] However, the term *wages* does not include the value of vacation leave accrued at the date of termination if the employer's written policies provide that accrued vacation is forfeited upon termination of employment and the written policies are acknowledged in writing by the employee.[240]

> [A] vacation with pay is in effect additional wages, or in the nature of deferred compensation, in lieu of wages earned each week the employee works, which is payable

[235] 29 U.S.C. § 1002.

[236] 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.

[237] 490 U.S. 107, 119 (1989).

[238] WYO. STAT. ANN. § 27-4-501; 053-0024-001 WYO. CODE R. §§ 3, 6.

[239] WYO. STAT. ANN. § 27-4-507.

[240] WYO. STAT. ANN. § 27-4-501; 053-0024-001 WYO. CODE R. § 3.

> at some later time. . . . [B]efore an employee is entitled to receive vacation pay, the following conditions must exist: 1. There must be an agreement or contract between employer and employee which provides for vacation pay. 2. The agreement must specify some definite time element as to the period of employment which must be completed by employee before a right to vacation pay is earned. 3. Vacation pay must have been earned as provided in the agreement. In the absence of one of these elements, an employee is not entitled to receive vacation pay.[241]

Because the parameters of vacation pay are determined by contract or employer policy in Wyoming, an employer's policy may cap or set other limits on accrual of vacation. For example, an employer's vacation policy may specify that an employee does not begin to accrue vacation time until the employee has been employed for a certain period of time. Likewise, such a policy could provide that no *pro rata* use or payment will be made if the employee's employment terminates prior to the specified time period.[242]

An employer may also adopt a "use-it-or-lose-it" policy pursuant to which unused vacation time is forfeited at the end of the year rather than being carried over or paid, if employees are provided full opportunity to use vacation days and employer has not refused a request to use vacation.[243]

Moreover, in Wyoming, a policy can require forfeiture of accrued vacation upon termination if the forfeiture provision is in writing and is acknowledged by an employee in writing. However, if a policy does not contain a forfeiture provision, payout is required.[244] Concerning sick and personal days, a policy can require forfeiture. The statutory provision regarding forfeiture upon termination took effect July 1, 2013. Although the statute allows the forfeiture of accrued vacation at termination if certain conditions are met, it requires an acknowledged written policy. Accordingly, the statute does not discuss oral or written policies that do not address forfeiture at termination and/or are not acknowledged by an employee. Therefore, if an employer creates a new written policy addressing forfeiture at termination, which is acknowledged in writing by an employee, a previous policy or agreement in existence before the above statute's amended language became effective may control whether vacation accrued and must be paid out at termination until the policy change and acknowledgement.[245]

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

Wyoming 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.

---

[241] Wyo. Op. Att'y Gen. No. 53 (July 1, 1963).

[242] Wyoming Dep't of Workforce Servs., *Frequently Asked Questions*, *available at* https://dws.wyo.gov/dws-division/labor-standards/frequently-asked-questions/; *see also Arizona v. Sheridan*, 408 P.2d 704 (Wyo. 1965).

[243] Wyoming Dep't of Workforce Servs., *Frequently Asked Questions*, at Question 2.

[244] WYO. STAT. ANN. § 27-4-501; Wyoming Dep't of Workforce Servs., *Frequently Asked Questions*, *available at* https://dws.wyo.gov/dws-division/labor-standards/frequently-asked-questions/.

[245] WYO. STAT. ANN. § 27-4-501.

3.8(c) Recognition of Domestic Partnerships & Civil Unions

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

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

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[246] 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).[247] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[248] 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

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

3.9 Leaves of Absence

3.9(a) Family & Medical Leave

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

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

- for the birth or placement of a child for adoption or foster care;[249]

[246] 29 U.S.C. § 1144.

[247] 29 U.S.C. § 1161.

[248] 29 U.S.C. § 1167(3).

[249] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[250]
- to take medical leave when the employee is unable to work because of a serious health condition;[251]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[252] 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.[253] 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

Wyoming 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.[254] 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

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

---

[250] 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).

[251] 29 C.F.R. §§ 825.112, 825.113.

[252] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[253] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

[254] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

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.[255] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

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

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[256] 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.[257] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in

---

[255] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[256] 29 C.F.R. § 825.202.

[257] 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.

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

Wyoming law does not specifically address pregnancy disability leave. It is an unfair employment practice, however, for an employer to discriminate in matters of employment (including the terms, conditions, and privileges of employment) against an otherwise qualified person because of pregnancy.[258]

3.9(d) Adoptive Parents Leave

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

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

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

Wyoming 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

Wyoming 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

Wyoming 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 Wyoming, employers must provide leave to an employee who is eligible to vote who does not have three or more consecutive nonworking hours to vote. The employee must be permitted time off up to

[258] WYO. STAT. ANN. § 27-9-105.

one hour, excluding meal periods, to vote. An employer may specify when the leave may be taken. The employee must be paid if the employee votes. There is no employee notice requirement.[259]

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

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

3.9(i) Leave to Participate in Judicial Proceedings

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

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[260] 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.[261] 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. In Wyoming, an employer must not discharge, threaten, intimidate, or coerce an employee because the employee served on a jury. Additionally, an individual reinstated after jury service must be considered to have been on furlough or leave of absence during the service. The individual must be reinstated without loss of seniority and must be entitled to participate in insurance and other employment benefits. An employer is not required to compensate an employee for time spent on jury service.[262]

Leave to Comply with a Subpoena. When a Wyoming employee has been subpoenaed to appear in a criminal case, an employer must allow the employee time off from work to do so. However, an employer is not required to compensate an employee for this leave.[263] An employee is eligible for time off if the employee:

---

[259] WYO. STAT. ANN. § 22-2-111.

[260] 28 U.S.C. § 1875.

[261] *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).

[262] WYO. STAT. ANN. § 1-11-401.

[263] WYO. STAT. ANN. § 1-40-209.

- has suffered direct or threatened physical, emotional, or financial harm as the result of the commission of a criminal act;
- is a family member of a victim who is a minor or an incompetent; or
- is a surviving family member of a homicide victim.[264]

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

Wyoming law does not address leave for private-sector employees who are victims of a crime, or specifically victims of domestic violence, sexual assault, or stalking. However, such employees may be entitled to leave to comply with a subpoena as discussed in **3.9(i)(ii)**.

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.[265]

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)

---

[264] WYO. STAT. ANN. § 1-40-202.

[265] 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)).

to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[266] 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.267 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

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

Military Leave. The Wyoming Military Service Relief Act provides that any employee who leaves employment in order to perform service in the uniformed services must be treated as being on a military leave of absence during the period of service in the uniformed services, provided that the employee applies for reemployment in accordance with the statute.[268] *Uniformed services* includes the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard), the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President of the United States in a time of war or emergency.[269] The Military Service Relief Act also applies to members of the Wyoming State Guard.[270] Additionally, *service in the uniformed services* includes full-time National Guard duty and active state service by members of the National Guard of any state who are activated pursuant to a call of a governor.[271] The cumulative length of the absence and of all previous absences from a position of employment with that employer by reason of service in the uniformed services must not exceed five years.[272]

Notice. An employee must give advance written or verbal notice of service and the need for military leave. Notice is not required if the employee is precluded by military necessity or, if under all of the relevant circumstances, giving notice is otherwise impossible or unreasonable.[273]

---

[266] 29 C.F.R. § 825.126(a).

[267] 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).

[268] WYO. STAT. ANN. § 19-11-107(a).

[269] WYO. STAT. ANN. §§ 8-1-102(a)(xxi), (xxii);§ 19-11-103(a)(xi).

[270] WYO. STAT. ANN. § 19-10-106.

[271] WYO. STAT. ANN. § 19-11-103(a)(ix).

[272] WYO. STAT. ANN. § 19-11-111(a)(ii).

[273] WYO. STAT. ANN. § 19-11-111(a)-(b).

Benefits. State law does not require an employer to pay an employee who leaves in order to serve in the uniformed services. However, if an employer elects to pay an employee during their leave, it must pay all of its employees that use leave to serve in the uniformed services on a uniform basis.[274] No employer may deduct, from the compensation paid to an employee in the uniformed services, any cost of replacing the employee during the employee's service.[275]

Any employee who leaves employment to serve in the uniformed services may, at their option, use any amount or combination of accrued annual leave, paid military leave, vacation, or compensatory leave credited to the employee.[276] State law requires that the employee must continue to accrue sick leave, annual leave, vacation leave, or military leave on the same basis as the employee would have accrued leave during the period of service.[277]

The employee has the right to maintain insurance coverage as long as the employee pays the sums equal to that which would have been deducted from their compensation for insurance coverage. The employee must notify the employer of their election to continue insurance or plan coverage at the time the employee enters service. If the employee reapplies for coverage after release, insurance coverage must be reinstated, including all the employee's family members and dependents previously covered, with the group insurance program or medical and health care coverage without any clause or restriction because of a preexisting condition.[278]

A person who is reemployed after service in the uniformed services is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority, rights, and benefits that such person would have attained if the person had remained continuously employed.[279]

Any employee who completes service in the uniformed services and applies for reemployment is entitled to receive credit for service for the period of time in the uniformed services toward vesting and computation of benefits in the employer's retirement system, pension fund, or employee benefit plan. No employee can receive more than a total of five years of uniformed services credit in the retirement system, pension fund, or employee benefit plan applicable to their employment.[280]

Reinstatement Rights & Documentation. An employee who is absent from a position of employment because of service in the uniformed services is entitled to reemployment within 10 days of application for reemployment if the employee has: (1) given advance written or verbal notice of service to the employer; (2) received an honorable discharge or a discharge under honorable conditions; and (3) given notice of their intent to return within the time frame set forth depending on length of service:

- For less than 31 days, the individual must give notice no later than the beginning of the first full regularly-scheduled work period on the first full calendar day following completion of

[274] WYO. STAT. ANN. § 19-11-106(a).

[275] WYO. STAT. ANN. § 19-11-107(d).

[276] WYO. STAT. ANN. § 19-11-107(b).

[277] WYO. STAT. ANN. § 19-11-107(c).

[278] WYO. STAT. ANN. § 19-11-109.

[279] WYO. STAT. ANN. § 19-11-111(p).

[280] WYO. STAT. ANN. § 19-11-114.

service and expiration of eight hours following travel home; or as soon as possible if reporting within that period is impossible or unreasonable through no fault of the employee.

- For more than 30 but less than 181 days, the individual must give notice by submitting an application for reemployment no later than 14 days after completion of service or the next first full calendar day if submitting an application within that time is impossible or unreasonable through no fault of the applicant.
- For more than 180 days, the individual must submit an application for reemployment no later than 90 days after completion of service.[281]

If the employee fails to timely report or apply, the employee is subject to the employer's conduct rules, established policy/general practices pertaining to explanations and discipline with respect to absence from scheduled work.

If the employee is hospitalized for service-related reasons, the employee is entitled to reinstatement for up to two years from the date of injury.

The employee must provide the employer, upon request, documentation to show timeliness of the application, that the service obligation was under five years, and discharge was honorable. An employee is still entitled to reemployment if documentation does not exist or is not readily available at the time of the employer's request. If, after reemployment, documentation becomes available that establishes that the employee did not meet one or more of the above requirements, the employee may be terminated. An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.[282]

An employer is not required to reinstate a person if:

- the employer's circumstances have changed so as to make reemployment impossible or unreasonable;
- reemployment would impose an undue hardship on the employer; or
- the job that the person left to serve in the uniformed services was for a brief, nonrecurrent period, and there was no reasonable expectation that the job would continue indefinitely or for a significant period.[283]

An employee who is reinstated after leave for uniformed service may not be discharged without cause for one year after reemployment.[284]

Other Military-Related Protections: Spousal Unemployment. Benefits will be available if the worker voluntarily left work because their spouse is a member of the U.S. armed forces whose relocation resulted from an assignment on active duty, active guard or reserve duty, or training or other duties performed by a member of the U.S. Army or Air Force National Guard. The relocation must be to a place where

[281] WYO. STAT. ANN. § 19-11-111.

[282] WYO. STAT. ANN. § 19-11-111.

[283] WYO. STAT. ANN. § 19-11-111(d).

[284] WYO. STAT. ANN. § 19-11-111(n).

commuting to the original place of employment would be impracticable. Any benefits awarded must not be charged to an employer's account.[285]

3.9(l) Other Leaves

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

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

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

There is no statutory requirement for other categories of leave for private-sector employees in Wyoming.

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.[286] Employers are also required to comply with all applicable occupational safety and health standards.[287] 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.[288] 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

Wyoming, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[289] Thus, Wyoming 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.[290] The state has largely adopted the Fed-OSH Act standards.[291] Wyoming's

---

[285] WYO. STAT. ANN. § 27-3-311(a)(i)(D).

[286] 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.

[287] 29 U.S.C. § 654(a)(2).

[288] 29 U.S.C. § 667(c)(2).

[289] 29 U.S.C. § 667.

[290] WYO. STAT. ANN. §§ 27-11-101 *et seq.*

[291] 025-122-002 WYO. CODE R. § 1; *see also* U.S. Dep't of Labor, Occupational Safety and Health Admin., *Wyoming State Plan*, *available at* https://www.osha.gov/dcsp/osp/stateprogs/wyoming.html.

Department of Workforce Services offers free employer consultations to identify workplace hazards without penalty upon request.[292]

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

In Wyoming, no person may operate a motor vehicle on a public street or highway while using a handheld electronic wireless communication device to write, send, or read a text-based communication. However, this ban does not apply to writing, reading, selecting, or entering a telephone number or name in an electronic wireless communication device to make or receive a telephone call. A further exception exists for the use of voice-operated or hands free technology.[293]

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

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

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

3.10(d) Smoking in the Workplace

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

Federal law does not address smoking in the workplace.

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

Wyoming does not have a law restricting smoking in the workplace.

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

Wyoming law does not address suitable seating requirements for employees.

---

[292] Wyoming Dep't of Workforce Servs., *Safety and Health Consultation*, *available at* http://wyomingworkforce.org/businesses/osha/consultation/.

[293] WYO. STAT. ANN. § 31-5-237.

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

Wyoming law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

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

3.11(a)(i) Federal FEP Protections

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[294] (2) the Americans with Disabilities Act (ADA);[295] (3) the Age Discrimination in Employment Act (ADEA);[296] (4) the Equal Pay Act;[297] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[298] (6) the Civil Rights Acts of 1866 and 1871;[299] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[300]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or

[294] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[295] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[296] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[297] 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.

[298] 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)).

[299] 42 U.S.C. §§ 1981, 1983.

[300] 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.

- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[301] 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.[302]

3.11(a)(ii) State FEP Protections

Wyoming law prohibits employment discrimination on the basis of:

- age (40+);
- sex;
- race;
- creed;
- color;
- national origin;
- ancestry;
- pregnancy;
- disability; and
- use of tobacco products outside the workplace.[303]

Wyoming employers with at least two or more employees are covered under the state's FEP statutes. However, the law does not apply to religious organizations or associations.[304]

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

Agency Enforcement. The Wyoming Department of Workforce Services, Labor Standards Division ("Division") enforces the state's fair employment practices laws.[305] Employees have six months from the date of the discriminatory act to file a complaint with the Division.[306] The Division will then notify the employer and give it an opportunity to respond. The Division will hold a settlement conference prior to beginning any investigation, if the parties agree to attend. If no settlement is reached, the Division will investigate the allegations in the complaint. If the Division finds no probable cause, it will dismiss the complaint. This finding may be appealed, however. If the Division finds probable cause, it will begin the conciliation process, during which the parties work toward a settlement. If no settlement is reached within

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

[302] 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.

[303] WYO. STAT. ANN. § 27-9-105.

[304] WYO. STAT. ANN. § 27-9-102.

[305] WYO. STAT. ANN. § 27-9-104.

[306] WYO. STAT. ANN. § 27-9-106.

45 days, however, the Division will refer the matter to an independent hearing officer at the parties' request.[307]

3.11(a)(iv) Additional Discrimination Protections

Military. The Military Service Relief Act prohibits employment practices that discriminate against a person who is a member of, applies to be a member of, performs, or has performed in a uniformed service. *Uniformed service* is defined as service in the U.S. armed forces, the National Guard of any state, Public Health Service, or any other category of persons designated by the president in a time of war or emergency. Employees shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.[308]

Tobacco Products. Wyoming employers may not require, as a condition of employment, that any employee or applicant:

- use or refrain from using tobacco products outside the course of their employment; or
- otherwise discriminate against any person in matters of compensation or the terms, conditions or privileges of employment, because the employee or applicant uses or does not use tobacco products outside the course of employment, unless it is a *bona fide* occupational qualification that a person not use tobacco products outside the workplace.

This provision does not, however, prevent an employer from offering, imposing, or having in effect a health, disability, or life insurance policy distinguishing between employees for type or price of coverage based on the use or nonuse of tobacco products if:

- the differential rates reflect an actual differential cost to the employer; and
- the employer provides written notice to employees setting forth the differential rates imposed by insurance carriers.[309]

The statute covers employers with at least two or more employees with the exception of religious organizations or associations.[310]

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."[311] The prohibition does not

[307] 053-0024-003 WYO. CODE R. § 4.

[308] WYO. STAT. ANN. §§ 19-11-103, 19-11-104(a).

[309] WYO. STAT. ANN. § 27-9-105.

[310] WYO. STAT. ANN. § 27-9-102.

[311] 29 U.S.C. § 206(d)(1).

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.[312]

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

Wyoming law prohibits employers from discriminating against employees in the same establishment on the basis of gender by paying wages to employees at a rate less than the rate at which the employer pays employees of the opposite gender for equal work on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions.[313] However, differences in pay are permitted where the difference is based on: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on any factor other than gender.

An employee alleging a violation may file a civil action within eight years of the alleged violation.[314]

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;

---

312 42 U.S.C. § 2000e-5.

313 WYO. STAT. ANN. § 27-4-302.

314 WYO. STAT. ANN. §§ 1-3-105, 27-4-303.

- 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.[315]

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).[316]

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.[317] 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.[318] 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."[319]

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

[315] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[316] 29 C.F.R. § 1636.3.

[317] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[318] 29 C.F.R. § 1636.3.

[319] 29 C.F.R. § 1636.4.

determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[320]

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.[321]

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

Wyoming law does not address pregnancy accommodations for private-sector employees.

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

[320] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[321] 29 C.F.R. § 1636.3.

employers.[322] Multiple decisions of the U.S. Supreme Court[323] 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.[324] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

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

There are no antiharassment training and education requirements mandated for private employers in Wyoming.

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

Wyoming law provides protection to whistleblowers in several instances. Health care facilities in the state may not harass, threaten discipline, or discriminate against an employee of a health care facility that reports to the state Department of Health a violation of any state or federal law, rule, or regulation.[325] Similarly, employers may not discharge or discriminate against employees that file notice of complaint or institute any proceeding under the state occupational safety and health statutes.[326] Additionally, employers may not discharge or discriminate against an employee because the employee complained to

---

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

[323] *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).

[324] 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.

[325] WYO. STAT. ANN. § 35-2-901.

[326] WYO. STAT. ANN. § 27-11-109.

the employer, director the Department of Workforce Services, or any other person, or instituted proceedings under the state's equal pay statutes.[327]

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)[328] and the Railway Labor Act (RLA)[329] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

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

3.12(b)(ii) Notable State Labor Laws

Wyoming is a right-to-work state. Under Wyoming law, no worker is required to become a member of, remain a member of, or refrain from membership in any union as a condition of employment. Workers are not required to have any connection with or be approved by or cleared through a union as a condition of employment. Likewise, no worker is required to pay or refrain from paying dues or fees of any kind to a union as a condition of employment.[330]

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

[327] WYO. STAT. ANN. § 27-4-304.

[328] 29 U.S.C. §§ 151 to 169.

[329] 45 U.S.C. §§ 151 *et seq*.

[330] WYO. STAT. ANN. §§ 27-7-108 *et seq*.

workforce they constitute).[331] 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.[332] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) State Mini-WARN Act

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

4.1(c) State Mass Layoff Notification Requirements

In the event of a mass separation, a Wyoming employer must file a notice with the unemployment insurance division. A *mass separation* is a separation (permanent, for an indefinite period of time, or for an expected duration of seven or more days), at or about the same time and for the same reason, of 20 or more workers employed in a single establishment. The notice must be filed as soon as the employer believes that a mass separation will take place, and not later than five calendar days after the separation. The notice must include:

- the layoff date; and
- the period and amount of termination, severance, sick, or earned vacation payments, where applicable, for each employee.[333]

4.2 Documentation to Provide When Employment Ends

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

Table 9 lists the documents that must be provided when employment ends under federal law.

Table 9. 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.[334] 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

[331] 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.

[332] 20 C.F.R. §§ 639.4, 639.6.

[333] 025-050-021 WYO. CODE R. § 1.

[334] 29 C.F.R. § 2590.606-1.

Table 9. Federal Documents to Provide at End of Employment	
	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.[335]

4.2(b) State Guidelines on Documentation at End of Employment

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

Table 10. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	Wyoming state law requires employers of fewer than 20 employees to provide post-termination continued coverage for up to 12 months. However, the law does not require such employers to provide notification of continued coverage to an employee upon termination.[336]
Unemployment Notice	**Generally.** At the time of an employee's separation from employment for any reason, employers must provide individual notice of the potential availability of unemployment compensation benefits to any employee who separates from employment. A record of the notice must also be maintained. The notice may be provided to the separating employee in person, by email, or by mailing a copy of the notice to the separating employee's last known address.[337] In addition, the employer generally must post notice informing employees they are covered by their employers' unemployment insurance and how to file claims.[338] **Multistate Worker.** Whenever an individual covered by an election is separated from employment, an employer must again notify the employee as to the jurisdiction under whose unemployment compensation law services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, an employer must notify the employee as to the procedure for filing

[335] I.R.S., *Retirement Topics – Notices*, *available at*: https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[336] WYO. STAT. ANN. § 26-19-113.

[337] 053.0018.37 WYO. CODE R. § 3

[338] WYO. STAT. ANN. § 27-3-401. This notice is included in the Wyoming Labor Law Poster, which is available at https://dws.wyo.gov/dws-division/osha/resources/posters/.

Table 10. State Documents to Provide at End of Employment	
Category	**Notes**
	interstate benefit claims.[339] In addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.

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 Wyoming, an employer may disclose information about a former employee's job performance to a prospective employer or current employer. The disclosure is presumed to be made in good faith. The employer is immune from civil liability for the disclosure or the consequences resulting from the disclosure, unless a lack of good faith is shown.[340]

[339] 025-050-013 WYO. CODE R. § 4.

[340] WYO. STAT. ANN. § 27-1-113.