

State of Alabama

LABOR & EMPLOYMENT LAWS

FREQUENTLY ASKED QUESTIONS

1. Is Alabama an employment at will state?

Yes. The general rule that employment without a definite term is terminable at will applies in Alabama. An employee may be terminated for a good reason, a bad reason, or no reason at all, so long as the termination is not otherwise prohibited by federal, state, or local law. The employment-at-will provision also applies in the public sector, however, public employees may be deemed to have a property interest in their jobs, thereby requiring the safeguards of due process to be applied before discharge.

2. What is required under Alabama law for an employment contract to be held valid?

Alabama courts have held that three elements are required to establish that an employment contract is not a contract at will: (1) there must be a clear and unequivocal offer of lifetime employment or employment for a definite duration; (2) the hiring agent must have authority to bind the employer to a permanent employment contract; and (3) the employee must provide substantial consideration for the contract independent of the services to be rendered.

3. Does Alabama have a state employment discrimination agency?

No.

4. Does Alabama have any of its own discrimination laws?

Yes. Alabama has one statute, the Alabama Age Discrimination Act of 1997. Ala. Code §§ 25-1-20 to -29. Like the federal Age Discrimination in Employment Act (ADEA), Alabama's law prohibits discrimination against employees age forty (40) and over.

5. Does Alabama have a law on when you have to pay a terminated employee?

No. Alabama has no law concerning the payment of wages to a terminated employee.

6. Does Alabama have a specific agency that hears and resolves workers' compensation claims?

No. Alabama does not have a workers' compensation agency. Claims are tried before judges without juries in Alabama circuit courts. The Alabama Workers' Compensation Act provides a schedule for injuries to most parts of the body and for vocational benefits to employees who have suffered an injury that affects their ability to find comparable future employment. Ala. Code §§ 25-5-1 et seq.

7. Are Alabama employees who file a workers' compensation claim protected from discharge?

Alabama's workers' compensation law prohibits an employer from discharging an employee for filing a workers' compensation claim. Ala. Code § 25-5-11.1. This statute applies both to constructive and actual discharges. The statute, however, does not apply when an employee is demoted for filing a claim but not discharged.

8. What is Alabama's position on covenants not to compete?

Alabama generally disfavors contracts restraining employment. By statute, all contracts that restrain persons from exercising a lawful profession, trade, or business of any kind are deemed void, subject to certain statutory exceptions. Ala. Code § 8-1-1. If the following elements are met, a non-compete agreement may be found valid: (1) the employer has a protectable interest; (2) the restriction of the covenant is reasonably related to that interest; (3) the restriction is reasonable in time and place; and (4) the restriction does not impose undue hardship on the employee.

9. How does Alabama handle non-compete agreements that are overly broad?

Alabama is a "blue pencil" state, which means that, even if the court determines that the restrictions in the agreement are overly broad, it can modify the restrictions to make them more reasonable and enforceable.

10. Does Alabama have a minimum wage?

No.

11. Does Alabama have any specific laws that govern overtime pay?

No.

12. Who do Alabama employers notify when they hire new employees?

Under the Alabama New Hire Act of 1997, all employers must report new or rehired employees to the Alabama Department of Industrial Relations within seven days of hiring. The information reported must include: (1) Name of new hire; (2) Address; (3) Social Security Number; (4) Date of hire; and (5) Name, address, and state and federal identification numbers of the employer. If employers fail to comply with this requirement, they may be fined up to \$25.00 per violation.

13. Does Alabama have a law that requires mediation?

Yes, there is a statute in Alabama that allows a party to a lawsuit to request submission to mandatory mediation.

14. Does Alabama have any laws regarding drug and alcohol testing of employees?

Under the Alabama Drug Free Workplace Act, Alabama employers are provided incentives for establishing drug-free workplaces. If an employer meets the program requirements, the employer will be provided a five percent premium discount under the workers' compensation insurance policy. Individuals failing a drug test and terminated thereafter may not be entitled to workers compensation or unemployment benefits.

15. Are Alabama employees entitled to compensation while they serve on jury duty?

Yes. Alabama law requires employers to pay a full-time employee's usual compensation while on jury duty. Ala. Code § 12-16-8.

16. What protections are available to Alabama employees who must serve jury duty?

An employer may not discharge an employee solely because of service on a jury, provided the employee reports for work on his or her next regularly scheduled hour after being dismissed from the jury. Employees discharged because of jury service may sue for actual and punitive damages. Ala. Code § 12-16-8.1.

17. Can an employee be either compelled to join or prohibited from joining a labor union?

Alabama is a "right-to-work" state in which an employee cannot be compelled as a term or condition of employment to join a union. Ala. Code § 25-7-32. Neither can an employee be required to refrain from joining a union. Ala. Code § 25-7-33. Alabama law provides for a direct suit against an employer for discharge resulting from the employee's failure to join or refrain from joining a union. Ala. Code § 25-7-35.

18. Does Alabama offer protection for "whistle-blowing" employees?

There is no statutory protection for employees of private employers that report wrongdoing of their employers to supervisors or governmental authorities. Ala. Code § 36-26A-2. Public employees, however, are protected. Ala. Code § 36-26A-3. A state employee who is discharged for "whistle-blowing" must bring a civil action within two years after occurrence of the violation and may recover back pay, front pay, and compensatory damages, or any combination thereof. Ala. Code §§ 36-26A-4 to -5.

19. Does Alabama law require an employee to have access to his or her personnel and medical files?

Alabama has no law requiring that employees be given access to either their personnel or medical files.

20. May an employer in Alabama be held liable for failing to discharge an employee?

Yes. Alabama recognizes negligent retention of employment as a cause of action. In certain situations, an employer can be sued for damages caused by that employer's failure to discharge an employee who is known to be unusually dangerous or incompetent.

21. Are employees in Alabama always entitled to unemployment compensation?

No. Unemployment benefits are not available to employees on strike, to employees who were terminated for dishonest or criminal conduct, to employees who were terminated for misconduct after a prior warning or to employees who voluntarily terminated their employment. Ala. Code § 25-4-78.

22. Does Alabama have a law providing for notice of a plant closure or mass layoff?

No. Alabama employers must only be concerned with the Federal Worker Adjustment and Retraining Notification Act.

23. Does Alabama have a law concerning employment references?

No. Many states have laws that protect employers from defamation lawsuits if they respond in good faith to a request for a reference concerning a former employee. Alabama law does not offer such protection.

24. Does Alabama law impose any requirements on releases obtained by employers from current or former employees?

Settlements of workers' compensation claims must be court-approved. Otherwise, releases between employer and employee will be enforceable if they are "knowing and voluntary."

25. Is a disclaimer in an employee handbook effective against a claim of breach of employment contract?

Yes. A conspicuous statement to the effect that an employee handbook is not a contract and that all employees are at-will should provide a successful defense under Alabama law to a claim that an employee handbook amounts to an employment contract.

26. Can an Alabama employer have a "use it or lose it" vacation policy?

Yes. Vacation pay is not considered part of wages under Alabama law. Employers may have a policy whereby vacation is forfeited if not used.

The Alabama Rules of Professional Conduct require the following statement: *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

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