

# Labor And Employment Laws In The State Of Louisiana

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*This booklet is intended to provide an overview of the most important parts of Louisiana state employment laws. It is not intended to be legal advice for any specific situation or set of facts. Whenever you are dealing with any employment related situation it is always a good idea to seek the advice of competent legal counsel.*

## **I. INTRODUCTION**

This booklet addresses Louisiana laws regulating the complex and crucially important relationship between you and your employees. In today's society, the law plays a part in defining virtually every aspect of that relationship. From the time people are permitted to enter the workforce under laws governing child labor, until the time they leave protected under the age discrimination laws, the law has something to say about almost every aspect of the employment relationship. Although this booklet does not address all of the possible considerations you may face as an employer, it should help you in spotting problems and avoiding adverse legal consequences by providing an overview of the more important aspects of these laws.

## **II. RIGHTS AND OBLIGATIONS OF EMPLOYERS**

### **A. Employment At Will, La. C.C. Art. 2747<sup>1</sup>**

In Louisiana, the basic rule is that every employment relationship is terminable at the will of either party. This means either an employer or employee may terminate the employment relationship for a good reason, a bad reason, or no reason at all. Exceptions to this default rule are when the employment action taken violates a specific statute, the constitutional rights of the employee, or a contractual agreement to work for a definite period of time. If there is an employment contract for a definite period of time, an employer must have "cause" to discharge the employee before the expiration of the term specified in the contract. Cause is not defined by statute, but it has been found in various court cases to include such things as excessive absenteeism or tardiness, insubordination, lack of productivity, and violation of company policy.

Employers would be wise not to rely heavily on this doctrine when making employment decisions. Important as it is, the increasing regulations in the area of employment law are quickly transforming employment at will into the exception rather than the rule. Moreover, if you must justify your decision to a jury, you may discover the jurors have little sympathy for employment at will rights if your actions were not otherwise fair.

### **B. Employment Of Minors, La. R.S. 23:151 *et seq.***

#### **1. Employment Of Minors Under 14**

The general rule is that no minor under the age of 14 shall be employed.

#### **2. Employment Of Minors Under 16**

Minors age 14 to 15 may be employed, but only under highly regulated circumstances as shown by the chart below.

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<sup>1</sup> Throughout this booklet, references are made to the specific statutes being discussed. "La. C.C." refers to the Louisiana Civil Code, and "La. R.S." refers to the Louisiana Revised Statutes.

### 3. Minors Age 16 And 17

Minors age 16 may not work between the hours of 11:00 p.m. and 5:00 a.m. on any day before a day school is in session.

Minors age 17 may not work between the hours of midnight and 5:00 a.m. on any day before a day when school is in session. These restrictions do not apply to minors who have graduated from high school.

The chart below summarizes these restrictions:

#### Minors Age 14 And 15

Maximum Hours	8 hours a day – 40 hours a week
Maximum Hours During School	3 hours a day – 18 hours a week
Maximum Consecutive Days	6 days
Permissible Hours	Between 7 a.m. and 7 p.m. on a day before school in session; 7 a.m. and 9 p.m. on any day before a day when school is not in session

#### Minors Age 16

Maximum Hours	No limitation
Maximum Hours During School	No limitation
Maximum Consecutive Days	No limitation
Permissible Hours	Between 5 a.m. and 11 p.m. on any day before a day when school is in session; no limitation on any day before a day when school is not in session. The limitation only applies to minors who have not graduated from high school. The law does not override any local curfew.

#### Minors age 17

Maximum Hours	No limitation
Maximum Hours During School	No limitation
Maximum Consecutive Days	No limitation
Permissible Hours	Between 5 a.m. and midnight on any day before a day when school is in session; no limitation on any day before a day when school is not in session. The limitation only applies to minors who have not graduated from high school. The law does not override any local curfew.

#### 4. Employment Of All Minors Under 18

No minor may be employed to work:

- oiling, cleaning, or wiping machinery or shafting, or in applying belts to pulleys;
- in or about any mine or quarry;
- where stone cutting or polishing is done;
- in or about any plant manufacturing explosives or articles containing explosive components; or in the transportation of explosives;
- in or about iron or steel manufacturing plants, ore reduction works, smelters, foundries, forging shops, hot rolling mills, or in any other place in which the heat treatment of metals is done;
- operating machinery used in the cold rolling of heavy metals, or in the operation of power-driven woodworking machinery for punching, shearing, stamping, bending, or planing metals;
- in or about saw mills or cooperage stock mills;
- operating power-driven woodworking machines, or off-bearing from circular saws;
- in logging operations;
- as drivers of any motor vehicle on a public road if they are minors sixteen years of age or younger;
- minors seventeen years of age or older may be employed as drivers of a motor vehicle only if the driving constitutes no more than 1/3 of the minor's work time in any work day, and no more than 20% of the minor's work time in any work week;
- there are also certain restrictions imposed by federal law in the Teen Drive for Employment Act;
- operating passenger or freight elevators or hoisting machines;
- in spray painting or in occupations involving exposure to lead or its compounds, or to dangerous or poisonous dyes and chemicals; or
- in any establishment in which the sale of alcoholic beverages is a main business, unless the minor is a musician in a band performing on the premises under a written contract with the holder of the alcoholic beverage permit for a specified time period and under the direct supervision of a parent or guardian;
- if the sale of alcohol is not part of the establishment's main business, persons under 18 may be employed provided that the employment does not involve the sale, mixing,

dispensing, or serving of alcohol.

## **5. Breaks**

Minor employees may not work for any five-hour period without at least one interval of at least thirty minutes within such period for meals. This break period shall not be included as part of the working hours of the day.

## **6. Records**

Employers employing minors must keep an employment certificate or work permit for each minor on file which is accessible at or near the work location.

## **7. Exceptions**

The above rules do not apply to minors employed in agriculture or domestic services in private homes.

### **C. Employment Of Aliens, La. R.S. 23:991 *et seq.***

You may not employ, hire, recruit, or refer for employment within Louisiana any alien who is not entitled to lawfully reside or work in the United States except for certain persons engaged in agricultural, dairy, or animal caring activities. (Note: The requirements of this law must be coordinated with the federal immigration laws. These are explained in a separate booklet on Immigration Law also prepared by Fisher & Phillips LLP.)

### **D. Loans To Employees, La. R.S. 23:691**

You may lend money to your employees but never at an annual interest rate greater than 8 percent.

### **E. Unemployment Compensation, La. R.S. 23:1471, *et seq.***

The “Louisiana Employment Security Law” provides for unemployment compensation. All employers who paid \$1,500 in wages during any quarter in the current or preceding year or employed at least one person, full time or part time, during twenty calendar weeks are covered. Covered employers must make contributions to the Louisiana Unemployment Trust Fund, from which eligible persons’ benefits are drawn.

To qualify for unemployment benefits, a claimant must not be unemployed due to his or her “misconduct.” Misconduct is based on the specific facts of each case, but has been found to include:

- refusing to follow a supervisor’s direct orders;
- repeated tardiness;

- directing profane language at a supervisor;
- repeated absenteeism without notice or without good reason;
- leaving one's area of responsibility without first obtaining permission;
- deliberately violating an employer's reasonable rules of employment;
- refusing to submit to a drug test in accordance with company policy;
- working while under the influence of drugs or alcohol;
- sleeping on the job; and
- theft of company property.

Additionally, a claimant must be able to work, available to work, conducting an active search for work, and unemployed for a waiting period of one week. In addition to misconduct, other reasons for disqualification from receiving unemployment compensation benefits include, but are not limited to:

- leaving a job without "good cause";
- failing to apply for or accept suitable work;
- failing to report to work because of involvement in a labor dispute;
- receiving or seeking unemployment benefits in another state;
- receiving vacation pay, holiday pay, severance pay, bonuses, wages in lieu of notice, payments under Workers' Compensation, or payments under a retirement or pension plan;
- fraudulently seeking or receiving benefits to which the employee is not entitled;
- being discharged for using illegal drugs.

To use drug test results as evidence, employers must maintain a written drug testing policy, and the guidelines outlined in the section of this booklet dealing with drug testing must be followed.

While an employer is not charged directly for the unemployment compensation benefits paid to its employees, the employer must contribute to the Unemployment Trust Fund at a predetermined rate based on experience. In other words, an employer with a high number of employees who are awarded unemployment benefits will find its "experience rating," and consequently its contribution to the trust fund, increased the following year. It is therefore in your best interest to ensure that employees who were terminated for misconduct are denied unemployment compensation benefits. This includes contesting an initial determination of

benefits and appearing before an appeals referee to present the facts concerning the termination of employment.

Whoever knowingly makes a false statement to the unemployment agency in order to obtain or increase payments, or to avoid or reduce any contributions will be fined up to \$1,000 or imprisoned up to ninety days, or both. Further, officers and directors having the responsibility of remitting contributions can be held personally liable for the total amount of the contributions not collected together with any interest, penalties, and fees accruing thereon.

#### **F. Workers' Compensation Act, La. R.S. 23:1021, *et seq.***

Employees who are injured by accident arising out of and in the course of employment or who are disabled by an occupational disease as defined by the Act are eligible to receive workers' compensation. Workers' compensation includes payment of a specified weekly amount and all necessary medical bills. The Workers' Compensation scheme is a no-fault system of compensation; that means, an employee suffering an injury or disease compensable under the Act need not prove any fault on the part of the employer in order to recover.

Workers' compensation is an exclusive remedy, meaning an employee whose injury is covered by the Act cannot sue his employer in tort (unless the employee's injuries were the result of an intentional act). However, the employee's right to sue a third party for his injury is not affected. If a third party is liable for the employee's injury, the employer has a right of contribution from the third party for the amount paid in workers' compensation benefits.

Defenses to a workers' compensation claim include:

- willful intention to injure oneself or another;
- intoxication;
- deliberate failure to use adequate guards or protection against accidental injury; and
- the injured employee was the initial aggressor in an unprovoked physical altercation or the employee used excessive force in retaliation against the initial aggressor.

Employers are also not liable under the Act for injuries sustained by employees while engaged in horseplay or for injuries arising out of personal disputes unrelated to the injured person's employment. Unlike injuries excluded from recovery under the four affirmative defenses listed above, employees injured as a result of horseplay and personal disputes, and thus barred from recovering under the Act, may pursue tort actions against their employers.

Employees who test positive for drugs pursuant to a written drug testing program, which follows the guidelines set out elsewhere in this booklet, are not entitled to workers' compensation other than for the cost of the initial emergency room treatment. Additionally, if an employee refuses to submit to a medical examination after an injury while in the course and scope of employment, he or she is not entitled to workers' compensation benefits.

Employees are protected against retaliation for filing a workers' compensation claim. The workers' compensation law prohibits you from refusing to hire or discharging anyone because they have asserted a claim for workers' compensation benefits. Any person who has been denied employment or discharged from employment in violation of this law may be awarded one year's salary, reasonable attorney's fees and court costs.

#### **G. Records Of Exposure To Toxic Substances, La. R.S. 23:1016**

Employees exposed to toxic substances have a right to obtain information concerning the nature and effects of those substances. Current and former employees and their representatives have a right of access to the employer's records of employee exposures to potentially toxic materials or harmful physical agents and employee medical records.

#### **H. Medical And Other Examinations, La. R.S. 23:897**

You may not require an employee or applicant, as a condition of employment, to pay the cost of fingerprinting, a medical examination, a drug test, or the cost of furnishing any available records. However, you may recoup these costs if the employee quits or is fired for cause within ninety days from beginning work and was paid more than \$1.00 per hour over minimum wage. Employers violating this provision are subject to both criminal and civil penalties.

#### **I. Drug Testing, La. R.S. 49:1001 *et seq.***

In Louisiana, private employers may require applicants and employees to provide samples of hair, blood, saliva or urine to be used to test for marijuana, opiates, cocaine, amphetamines, and phencyclidine. Testing may also be done for other drugs, but it is not regulated by the statute.

Employers conducting drug testing may choose to conduct the test either in accordance with the guidelines promulgated by the federal Substance Abuse and Mental Health Services Administration or in accordance with guidelines found in Louisiana's workers' compensation and unemployment compensation laws.

As explained in the sections of this book on Workers' Compensation and Unemployment Compensation, an employee's intoxication can result in the denial of benefits under these statutes. Each of these statutes requires drug testing comply with a set of requirements in order for the results of the testing to be admitted into evidence in administrative proceedings arising under the laws. Both laws contain identical requirements. They include:

- drug testing must be conducted with regard to the privacy of the individual, but also in a manner designed to prevent substitution or interference with the sample;
- documenting the collection of the specimen including providing the employee the opportunity to provide information on items such as prescription drugs that may impact the test results;

- testing shall conform to scientifically accepted analytical methods and procedures; and
- positive results must undergo confirmatory testing.

All information received through a drug testing program is confidential and may not be used as evidence or disclosed in any proceedings, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested employee is relevant. Within seven working days and upon written request, any employee who tests positive has the right of access to records relating to his drug test.

The results of a drug test conducted in accordance with this law may not be the basis of a claim against an employer for defamation, libel, slander, or invasion of privacy unless:

- the results of the test were disclosed to an unauthorized person;
- the information disclosed was based on a false test result; or
- each of the elements of a defamation claim are present.

**J. Liability For Disclosure Of Employee Information, La. R.S. 23:291**

Any employer who, either at the request of a prospective employer or a current or former employee, provides accurate information about the employee’s job performance or reasons for separation is immune from civil liability and other consequences of the disclosure unless it can be shown that the information disclosed was knowingly false and deliberately misleading. A prospective employer who reasonably relies on such information is immune from civil liability for any action related to hiring the employee.

**K. Labor Organizations, La. R.S. 23:823 - 824; 23:981 *et seq.***

Louisiana is a “right to work” state in which all persons are protected in the exercise of their right to freely form, join, or assist labor organizations or to refrain from such activities. Thus, no person can be required, as a condition of employment, to become or remain a member of any labor organization, to refrain from becoming part of a labor organization, or to pay charges of any kind to a labor organization. Any person who violates this section is subject to a fine of up to \$1,000 and/or imprisonment for up to 90 days. Additionally, the injured employee is entitled to damages and injunctive relief.

R.S. 23:984 prohibits any governmental body from imposing any zoning, contractual, permitting or licensing condition on an employer or employee which limits their “full freedom to act” under the federal labor laws. This law is aimed at prohibiting so-called “Labor Peace Agreements” in which a governmental body, such as a city council, requires, for example, that an employer must agree that it will not oppose the unionization of its employees, or will agree to accept a standard union contract, in exchange for obtaining a building permit or zoning variance.

**L. Louisiana Smoke-Free Air Act, La. R.S. 40:1300.21 et seq.**

Under Louisiana's Smoke-Free Air Act, businesses with even one employee must ban smoking within any enclosed workplace. The Act defines enclosed workplaces broadly. Examples of enclosed workplaces where smoking is banned include

- work areas;
- employee lounges;
- restrooms;
- conference rooms;
- meeting rooms;
- classrooms;
- employee cafeterias;
- hallways; and
- vehicles.

Compliance requires removal of all ashtrays from any area where smoking is banned, and mandates the conspicuous placement of no smoking signs. Smoking is generally permitted outdoors at places of employment. However, businesses are permitted to ban smoking outdoors on their premises by posting no smoking signs to that effect.

The law provides exceptions for places of employment in particular industries including bars, gaming establishments and tobacco retailers.

The law provides a series of fines for violations ranging from \$100 to \$500. The law also prohibits discrimination and retaliation against individuals complaining about violations of the act.

**M. Weapons In The Workplace, La. R.S. 32.292.1**

Employers may restrict an employee's possession, use or sale of weapons, firearms or explosives on work premises, while operating company machinery, equipment or vehicles for work-related purposes, or while engaged in company business off premises.

An employee who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area.

This law does not prohibit an employer or business entity from adopting policies specifying that firearms stored in locked, privately-owned motor vehicles on property controlled by the Company be hidden from plain view or within a locked case or container within the vehicle.

No property owner, tenant, public or private employer, or business entity or their agent or employee may be liable in any civil action for damages resulting from or arising out of an occurrence involving a firearm transported or stored in a manner consistent with this statute.

This law does not apply to: 1) any property where the possession of firearms is prohibited under state or federal law; 2) any vehicle owned or leased by a public or private employer and used by an employee in the course of his employment, except for those employees who are required to transport or store a firearm in the official discharge of their duties; 3) any vehicle on property controlled by a public or private employer if access is restricted or limited through the use of a fence, gate, security station, signage, or other means of restricting or limiting general public access onto the parking area, **and** when one of the following conditions applies: (a) the employer provides facilities for the temporary storage of unloaded firearms; or (b) the employer provides an alternative parking area reasonably close to the main parking area in which employees and other persons may transport or store firearms in locked, privately-owned motor vehicles.

#### **N. Cellular Telephones, La. R.S. 32:300.5 and 32:300.6**

This law prohibits most drivers, including employees of private-sector employers who drive as part of their job duties, from using hand-held wireless communication devices to read, write, or send text messages, instant messages, or e-mail while driving. Wireless communication devices include cell phones, text-messengers, personal digital assistants, and stand-alone computers.

Drivers can use hand-held wireless communication devices, such as cell phones and text messengers, to report illegal activity, summon medical or other emergency help, prevent injury to a person or property, relay transit information to dispatchers where devices are affixed permanently to vehicles, and navigate while using global positioning system devices.

There is an exception for law enforcement officers, firefighters, and emergency vehicle operators are exempt from the provisions that pertain to text messaging while they perform their job duties.

While there is currently no penalty for employers of employees who violate the cell phone use provisions, those who violate this law can be fined up to \$175 for a first offense and up to \$500 for subsequent offenses. Fines can be doubled for violators of the cell phone use provisions who are involved in motor vehicle crashes.

### **III. WAGES**

#### **A. Payment Twice Monthly In Certain Occupations, La. R.S. 23:633**

All employers are obligated at the time of hire to inform employees the amount of their wages, the method of payment and the frequency of payment. If an employer fails to designate paydays, then the law requires it to pay employees on the 1st and 16th of each month. These obligations do not apply to employees who are exempt from the wage and overtime provisions of the Fair Labor Standards Act.

Additionally, employers with ten or more employees who engage in manufacturing, boring for oil, and mining operations and every public service corporation must pay their employees once every two weeks or twice monthly which must be as close to two weeks apart as practicable. Each payment must include all amounts due for labor or services performed up to not more than ten days previous to the time of payment, except that the time limit is extended to fifteen days for public service corporations.

The above requirements do not apply to clerical force and salespersons, except in cases of public service corporations. Also, individuals employed in a bona fide executive, administrative, supervisory, or professional capacity are not “employees” within the meaning of this provision.

All employers are obligated to post a notice, following text set out in the statute, explaining the requirements of this section to employees.

An employer who violates this provision may be fined up to \$250, or imprisoned for at least ten days, or both, for each offense and for each day’s violation.

#### **B. Payment Of Wages Upon Termination, La. R.S. 23:631, *et seq.***

When an employee is discharged, he or she must be paid the amount then due under the terms of employment within three days of the discharge, excluding legal holidays. If the employee voluntarily quits, amounts due under the terms of employment must be paid by the next regular pay day or within fifteen days, whichever is sooner. In addition to regular wages, “terms of employment” include earned commissions, bonuses, vested vacation pay and bargained for benefits under a collective bargaining agreement. This payment must be made at the place and in the manner in which it was customarily made during the employment or by mail.

The statute provides that, to be eligible for compensation for unused vacation time, an employee must have, in accordance with the employer’s vacation policy, both accrued the vacation and be eligible to take the vacation at the time of discharge or resignation. The Louisiana Supreme Court has held that under this statute, employees must be paid for all accrued unused vacation upon termination regardless of the reason for the employee’s termination. However, the law does not prohibit “use it or lose it” policies under which *current* employees lose vacation time by failing to take it within a pre-defined time period.

If there is a dispute as to the amount due to the employee, you must pay the undisputed portion of the amount as provided above. Employers who violate the above requirements are liable to the employee either for ninety days wages at the employee’s daily rate or the full wages from the time the employee’s demand for payment is made until the employer tenders payment, whichever is the lesser amount, and attorney’s fees.

Courts will generally find an equitable defense to a claim for penalty wages when there is a good faith dispute whether wages are actually owed or not, although even in such a case, employers may still be liable for attorney’s fees.

### **C. Contracts Forfeiting Wages, La. R.S. 23:634**

Employers may not require employees or applicants for employment to sign a contract requiring forfeiture of wages if the employee is discharged or resigns before the employment contract is completed. The employee is entitled to all wages actually earned up to the time of the discharge or resignation.

You may, however, require an applicant or employee to sign a contract providing that the costs of that individual's pre-employment medical examination or drug test may be withheld from his wages if he resigns within ninety days of beginning work. This applies only if the employee's pay is \$1.00 per hour more than the minimum wage.

### **D. Fines, La. R.S. 23:635; Employee Deposits, La. R.S. 23:891**

You may not assess any fines against your employees or deduct any amount from their wages. For purposes of this statute, a fine is a pecuniary penalty imposed for the violation of some law, rule, or regulation.

This prohibition does not apply in cases where the employees willfully or negligently damage the company's goods, works, or property. In a case where the fine is permissible, the fine may not exceed the actual damage done. Courts have also held that such things as requiring cashiers to reimburse their employers for bad checks and requiring taxi drivers to reimburse their employers for damage to the taxis were permissible when done pursuant to an established policy.

It is not a fine if you require an employee to give a deposit to insure the return of equipment. However, if you require a cash deposit as a guarantee for the faithful performance by the employee, you must pay the employee interest on the deposit of at least 4 percent per annum. (Note: Requiring the employee to make a deposit can violate the federal Fair Labor Standards Act if the deduction reduces the employee's wages below the minimum wage for the week in which the deduction is made.)

## **IV. RESTRAINTS ON COMPETITION**

### **A. Non-Competition Agreements, La. R.S. 23:921**

Generally, agreements that restrain anyone from exercising a lawful profession, trade, or business will be null and void; however, an employee may agree with his or her employer to refrain from carrying on or engaging in a business similar to that of the employer and/or soliciting customers of the employer. To be enforceable, such agreements must be geographically limited to specified parishes or municipalities in which the employer carries on a like business. Additionally, such an agreement must not prohibit competition for a time period exceeding two years from the termination of employment.

**B. Uniform Trade Secrets Act, La. R.S. 51:1431 *et seq.***

The misappropriation of an employer's trade secrets is prohibited. A person guilty of misappropriation may be enjoined from using the trade secret and is liable for damages. "Misappropriation" is defined as "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."

A "trade secret" is "information, including a formula, pattern, compilation, program, device, method, technique, or process, that, a) derives independent economic value from not being generally known and is not readily ascertainable by proper means, and, b) is subject to reasonable efforts . . . to maintain its secrecy."

**C. Unfair Trade Practices And Consumer Protection Law, La. R.S. 51:1401 *et seq.***

This law makes unfair methods of competition and unfair or deceptive acts in the conduct of a trade or business unlawful.

Unfair competition involves the balancing of the employee's right to individual freedom with the employer's right to honest and fair competition. This law seeks to prevent former employees from using confidential information gained in the course of employment to compete with their former employers. Unfair use of information such as customer lists may be prevented under this law. Also, Louisiana courts have held that an employee who asked his employer's customers (while still employed) whether they would maintain their business relationship with him if he were to start a competing business violated this act.

The Act establishes the Consumer Protection Division to aid in enforcing the Act. It is headed by a Director whom the Governor appoints. Relief for violations of the Act includes injunctions, damages, costs, and attorney's fees. If a party uses the unfair practice after being put on notice by the Attorney General or Director, the court will award triple damages. Furthermore, a party violating an injunction will be liable for a civil penalty of up to \$5,000.

**V. DISCRIMINATION AND RETALIATION**

Both socially and legally, employment discrimination is a complex and controversial issue that affects the rights of millions of employees. In recent years, the explosion of anti-discrimination legislation and litigation has changed the way that employers deal with employees. While this legislation has certainly benefited racial and ethnic minorities, women, disabled employees, and others, the sheer volume and complexity of these laws have made it challenging for even the most well-intentioned employer to comply.

Because of the potential for large legal liability, all employers should have at least a basic understanding of the major provisions of Louisiana's employment discrimination laws, in addition to the numerous federal laws on this subject. (Federal employment discrimination laws are the subject of separate publications by Fisher & Phillips LLP).

The first half of this section addresses laws governing statutorily defined characteristics that are usually immutable such as age, race, gender, and national origin. The second section covers laws governing discrimination based on an employee's status or activities.

**A. Prohibited Discrimination Against Employees On The Basis Of Immutable Characteristics, La. R.S. 23:301 *et seq.***

The Louisiana Employment Discrimination Law prohibits discrimination on the basis of:

- age
- disability
- sex
- race
- color
- national origin
- religion
- pregnancy
- sickle cell trait, and
- genetic testing.

Employees who believe that they were discriminated against on the basis of any of the above characteristics may file a claim in district court seeking compensatory damages, back pay, benefits, reinstatement front pay, attorney's fees, and costs.

**1. Louisiana Employment Discrimination Law, Coverage, La. R.S. 23:302**

The provisions prohibiting discrimination on the basis of age, disability, race, color, religion, sex, national origin, and sickle cell trait apply only to employers who employ twenty or more employees within this state for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. The prohibition of discrimination on the basis of pregnancy applies only to employers employing more than twenty-five employees within this state for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

**2. Age Discrimination, La. R.S. 23:312**

This provision prohibits covered employers from discriminating against persons over the age of forty because of their age.

### **3. Disability Discrimination, La. R.S. 23:323**

Covered employers may not discriminate against “otherwise qualified disabled persons” on the basis of their disability. For an employee to enjoy protection under this statute, he must meet two criteria.

First, the employee must be a “disabled person” within the meaning of the statute. A disabled person is defined as a person who has a mental or physical impairment which substantially limits a major life activity. Also, persons who have a record of such an impairment or are regarded as having such an impairment may be disabled persons within the meaning of the statute. Thus, a person need not have any actual impairment to be a disabled person.

Second, once a person establishes that he is a disabled person, he must establish that he is otherwise qualified for the job. A person is otherwise qualified if he can, with reasonable accommodation, perform the essential functions of the job.

Louisiana law not only prohibits discrimination against a protected person, it also places on businesses an affirmative obligation to reasonably accommodate employees with disabilities. The law does not require that an employer provide the best accommodation possible or the one suggested by the employee. The accommodation must merely be sufficient to meet the job-related needs of the individual being accommodated.

You need not provide any accommodation which would impose undue hardship on the company. When determining whether an accommodation would create an undue hardship, courts will consider such factors as the size of the facility, the expense of the suggested accommodation, the number of employees affected, the impact on the organization as a whole, and the potential disruption to the work of the company.

### **4. Race, Color, Religion, Sex, And National Origin, La. R.S. 23:332**

Covered employers may not discriminate on the basis of race, color, religion, sex, or national origin. The prohibition against religious discrimination is similar to other types of discrimination prohibition with one important difference - employers have a duty to accommodate the religious activities of employees; however, this duty of accommodation is not as onerous as the duty to accommodate disabled employees described above. For example, you are generally not obligated to change work schedules to accommodate an employee’s religious practices if it would violate collectively bargained seniority rules.

### **5. Pregnancy Discrimination, La. R.S. 23:342**

Unless based on a bona fide occupational qualification, it is unlawful for covered employers to discharge or otherwise discriminate against an employee because of pregnancy, childbirth, or a related medical condition. Pregnant employees must be provided the same sickness or disability leave made available to other temporarily disabled employees, as well as, the same employment benefits and privileges that are available to employees similarly affected in their ability or inability to work.

You are also required to grant a pregnant employee’s request for a transfer to a less strenuous or hazardous position for the duration of the pregnancy, provided that the transfer is

recommended by her physician and can be reasonably accommodated. You are not required, however, to create additional employment or discharge or transfer another employee in order to accommodate the pregnant employee.

**6. Sickle Cell Trait Discrimination, L.A. R.S. 23:352**

Covered employers may not discriminate against an employee or applicant for employment because such person has the sickle cell trait.

**7. Genetic Information And Privacy, La. R.S. 23:368**

This law strictly regulates the gathering, storage and disclosure of genetic information with respect to employees, and prohibits discrimination in compensation, terms, conditions, or privileges of employment. As a general rule, you may not “require, collect or purchase” protected genetic information or disclose such information to outsiders, with certain limited exceptions, such as compliance with a subpoena.

There is a broad exception, however, for requiring genetic information from an applicant who has been given a conditional offer of employment, or an employee, if the information is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, medical condition or disorder which could prevent the person from performing the essential functions of the position held. In such event, the information may be disclosed to medical personnel.

The law also allows genetic monitoring of biological effects of toxic substances in the workplace if the employee provides written authorization. You must also notify the employee of the results of any monitoring and make the results available. An additional exception is when the employee uses genetic or health care services provided by the employer, but even here, written authorization from the employee is required.

**8. Conscience in Health Care Protection, La. R.S. 40:1299.35.9 and 40:1300.291**

Employees may be protected for refusing to participate in specified health care services that are objectionable to an individual’s conscience, i.e. sincerely held religious beliefs or moral convictions. Specified healthcare services are limited to: abortion; dispensation of abortifacient drugs; human embryonic stem cell research; human embryo cloning; euthanasia; or physician-assisted suicide.

An employer or patient may inquire whether a person declines to participate in any healthcare service that violates his/her conscience. When a patient requests healthcare services, the employee shall identify, in writing, as soon as practicable, his/her declination to provide a specified health care service. This law does not relieve any healthcare provider from providing emergency care as required by state or federal law.

A person shall notify his/her employer in writing as soon as practicable of any healthcare service that violates his/her conscience. A person shall notify any patient before such

person provides any consultation or service to the patient of the existence of a healthcare service that he/she will decline to provide because the healthcare service violates his conscience.

All persons who have a sincerely held religious belief or moral conviction and seek employment at a healthcare facility shall notify the prospective employer of the existence of any sincerely held religious belief or moral conviction.

**9. Enforcement - Louisiana Commission On Human Rights, La. R.S. 51:2231 *et seq.***

The Louisiana Commission on Human Rights (LCHR) has the responsibility of enforcing state laws prohibiting discrimination on the basis of race, color, sex, age, disability, national origin, sickle cell trait, pregnancy, childbirth, and related medical conditions. Under a “Memorandum of Understanding” between the LCHR and the EEOC (Equal Employment Opportunity Commission), a charge filed with either agency will be considered to have also been filed with the other. The Commission is made up of nine members appointed by the governor. They are empowered to investigate discrimination charges filed under both state and federal employment discrimination laws.

An individual claiming to be the victim of discrimination may file a complaint with the LCHR within one hundred eighty days after the alleged unlawful practice. The Commission must investigate the charge and, within thirty days, determine whether there is “probable cause” to believe that the employer has violated the law. During the Commission’s investigation, it may compel witnesses to provide testimony, require the production of documents, and conduct on-site inspections. A person may also file a complaint with the LCHR and simultaneously pursue a claim in court.

If the Commission determines that discrimination occurred, it will attempt to resolve the complaint through a conciliation agreement. It is unlawful for a party to violate the conciliation agreement.

When the Commission finds that the employer has violated the law, it may require the employer to:

- hire, reinstate, or upgrade employees with or without back pay;
- admit or restore the employee to a guidance program, apprenticeship, on the job training program, or other occupational or retraining program;
- report as to the manner of compliance with the Commission’s order;
- post notices in conspicuous places on the employer’s premises; and
- make payment to the victim for the injury caused by unlawful practice including humiliation and embarrassment.

Additionally, the Commission may publish the names of the employers who violate the Act.

After an investigation, if the Commission determines that there is no probable cause, the complaint is dismissed. The person filing the complaint then has ten days to ask the Commission to reconsider the dismissal.

## **B. Prohibited Discrimination Against Employees For Their Status Or Activities**

### **1. Garnishments, La. R.S. 23:731**

You may not discharge or deny employment to a person because of a voluntary assignment of a single garnishment of earnings. An employee who is discharged because of a voluntary assignment or single garnishment of earnings has a right to reinstatement and back pay, but not to damages.

A person denied employment has a right to reasonable damages. Employers may discharge an employee if the employee's earnings are subjected to three or more garnishments for unrelated debts in a two-year period, but no garnishment resulting from an accident or illness causing absence of ten consecutive days or more of work may be considered for purposes of this provision.

### **2. Political Activities, La. R.S. 23:961**

No employer regularly employing twenty or more employees may make, adopt, or enforce any rule, regulation, or policy forbidding or preventing any of his employees from engaging or participating in politics or from becoming a candidate for political office. No employer may make or enforce any rule, regulation or policy which will control or direct the political affiliations or activities of its employees in the exercise of political rights, nor may an employer do so by threats of discharge. An individual who discriminates against an employee because of his political views or activities is subject to damages, a fine of up to \$1,000, and imprisonment of up to six months. A firm, corporation, or association is subject to a fine up to \$2,000.

### **3. Purchase Of Merchandise, La. R.S. 23:963**

No employer may require employees to deal with or purchase food, clothing, or merchandise from any person. Likewise, you may not discriminate against employees for failing to purchase food, clothing, or merchandise from a specific person or vendor. This provision does not apply to the sale or purchase of uniforms. Employers violating this provision face fines from \$50 to \$200 or imprisonment from thirty to ninety days, or both.

### **4. Testifying At A Labor Investigation, La. R.S. 23:964**

You may not discharge or discriminate in any other manner against an employee because that employee has testified or furnished any information in an investigation or proceeding relating to the enforcement of any of the labor laws of this state. Employers violating this statute face criminal and civil fines of up to \$500, imprisonment up to ninety days, or both.

## **5. Jury Duty, La. R.S. 23:965**

No employer may discharge an employee for absence from work caused by that employee being called to serve on a jury. Employers violating this statute must reinstate the discharged employee and pay a fine of up to \$1,000 dollars.

Additionally, employees called for jury duty must be granted a leave of absence from work, up to one day, for the period of time required for jury duty. This leave of absence must not result in a loss of wages, sick leave, or personal leave for the employee. Employers violating this provision must pay to the affected employee the wages unlawfully withheld without reduction in sick leave or personal leave time and face a fine of up to \$500.

## **6. Smoking Discrimination, La. R.S. 23:966**

As long as an employee complies with the applicable laws and workplace policies regulating smoking, no employer may discriminate against the employee because he or she is a smoker or a nonsmoker or to require, as a condition of employment, the employee to abstain from using tobacco products outside the course of employment. Any employer who violates this section will be fined up to \$250 for the first offense and up to \$500 for any subsequent offense.

## **7. Whistle Blower's Statute, La. R.S. 23:967**

You may not retaliate against an employee who: 1) discloses or threatens to disclose a workplace act or practice that is in violation of state law; 2) provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law; or 3) refuses to participate in an employment action that violates state law. The employee is protected only if he acted in good faith and first advised the employer of the legal violation. Employers who violate this law are subject to a civil action by the employee who may recover damages which include compensatory damages, back pay, benefits, reinstatement, attorney's fees, and court costs.

## **8. Environmental Violations, La. R.S. 30:2027**

No employer may retaliate against an employee who, in good faith, discloses or threatens to disclose a policy or practice of the employer that the employee reasonably believes is in violation of an environmental law, rule, or regulation. The same prohibition on retaliation applies to employees who provide information to or testify before a public body conducting an investigation or hearing relating to the violation of an environmental law, rule, or regulation.

Unlike the general whistle blower's statute discussed above, there is no requirement that affected employees first advise their employer of the alleged violation before they can enjoy protection under the statute. Employers who violate this statute are liable to affected employees for triple damages, legal costs, and attorney's fees.

## **9. Military Service Relief Act, La. R.S. 29:401 *et seq.***

A person who has applied for, is performing, or has performed military service may not be denied initial employment, promotion, or any other benefit on the basis of his or her military status.

Any person absent from employment because of military service is entitled to re-employment rights and benefits within ten days of applying for reinstatement provided that the employee gives notice, submits an application for re-employment, and has not been absent for more than five years. While serving in the uniformed services and away from their regular place of employment, employees will accrue leave, accrue seniority, have the right to participate in any insurance provided through the employer, and are entitled to up to four years of creditable service toward vesting in a retirement system, pension fund, or employee benefit plan.

An employee that has been restored his employment under this law may not be discharged without cause for one year.

You are not required to re-employ a person if circumstances have changed making such employment impossible or unreasonable, the employment would impose an undue hardship, or there was an expectation that the employee's position was to be temporary.

Employees who believe their rights under this Act have been violated may sue to enforce employer compliance with the Act, payment of lost wages or benefits because of noncompliance, attorney's fees, and payment of an amount equal to lost wages or benefits as liquidated damages.

#### **10. Breastfeeding, La. R.S. 53:2247.1**

This law protects the right of a mother to breastfeed her baby "in any place of public accommodation, resort, or amusement." While the law makes interference with this protected right a discriminatory practice, there is no penalty provided for. Presumably, the law would be enforced by injunction.

#### **11. Bone Marrow Leave, La. R.S. 40.1299.124**

This law applies to employers with 20 or more employees (who work an average of 20 or more hours per week) in at least one site.

All employees who work an average of 20 or more hours per week are eligible to receive up to 40 hours of paid leave to donate bone marrow.

Employers may request the employee submit written physician verification of the purpose and length of each leave.

#### **12. School Visitation Leave, La. R.S. 23.1015 et. seq.**

This law applies to all employers in the state. The school and day-care activities leave law permits employers to grant unpaid leave so employees can participate in school or day-care activities and conferences related to their children.

A school is defined as any accredited public or private educational institution serving children of compulsory attendance age. A child day-care center is defined as a licensed facility providing day care to seven or more children or a school authorized by the local school board to provide a child day-care program.

Employees with dependent children may take up to 16 hours of leave without pay during a 12-month period to attend their child's school conferences or activities that cannot reasonably be scheduled during nonworking hours.

Employees may substitute paid vacation or any other appropriate paid leave for any unpaid leave.

Employees must provide reasonable notice of their need for leave and must make a reasonable effort to schedule leave so as not to unduly disrupt the operations of the company.

### **13. Maternity Leave La. R.S. 23: 341-342**

Employers with more than 25 employees in 20 or more calendar weeks in the current or preceding calendar year are covered by this law.

Employers must provide female employees disabled by pregnancy, childbirth, or related medical conditions with the same benefits and privileges enjoyed by other temporarily disabled workers. Employers must also allow such employees to take up to four months' accrued vacation leave for any disability caused by pregnancy, childbirth, or related medical conditions. If paid leave is not available, the leave may be unpaid.

Employers may request the employee provide written notice of their pregnancy or related disability, including a doctor's certificate, the expected date the leave will begin and date of return to work.

Employees returning from maternity leave are to be placed in the same or comparable position, consistent with staffing and business requirements.

This leave may run concurrently with the Federal Family and Medical Leave Act and/or any other leave where permitted by state and federal law.

## **VI. CONCLUSION**

As this booklet demonstrates, it is important to understand the various regulations placed on employers. Relevant employment laws of this state as well as the federal government should be taken into consideration before taking any action that might affect employees. Employment law is constantly evolving, which places an important duty on employers to update laws and policies on a regular basis in order to avoid potential lawsuits. It is always better to prevent a lawsuit rather than defend one.

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