Labor and Employment Laws in the State of Florida

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This booklet is intended to provide an overview of the most important parts of Florida 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 discusses the various Florida state statutes affecting the employment relationship. Federal laws and regulations, such as the Family and Medical Leave Act and the National Labor Relations Act are not discussed here except occasionally to point out differences where federal and state laws overlap. In most cases such federal laws are dealt with in separate publications of Fisher & Phillips LLP. To obtain them or for further information contact any office of the Firm. Where there is overlap between Florida law and federal law whichever statute or regulation provides the greater employee protection or is the more restrictive to employers normally will govern. Any questions in this regard should be directed to your attorney.

Similarly laws affecting public employers are not dealt with. Rather, we have limited our discussion to providing an overview of those Florida state laws affecting private employers. Citations to provisions of the Florida statutes are provided in each instance.

II. LAWS AFFECTING THE HIRING OF EMPLOYEES

A. The Hiring Process

1. Generally

Employers want to hire qualified employees who will remain with the company for significant period of time. Proper hiring procedures help screen for those quality employees. A comprehensive application, effective interviewing the applicant, background screening, and drug testing are all components of a thorough hiring process and each is discussed here. Additionally, using a standardized and effective hiring process also provides some legal protection from a claim for negligent hiring should the employee commit an intentional tort against a third party.

It is a criminal offense under §448.045, Fla., Stat. for any two or more persons at a place of employment to agree or conspire to prevent any person from obtaining work in any firm or corporation or to cause the discharge of any person. It is also unlawful for any person to threaten any injury to life, property or business of any person for the purpose of 1) procuring the discharge of any worker in any firm or corporation or 2) preventing any person from obtaining work in any firm or corporation.

Florida is an at-will state which means that absent a contract for a specific term, the employment relationship may be terminated by either the employee or the employer for any reason or for no reason as long as it is not for an illegal reason.

2. Criminal History, Chapter 435, Fla. Stat.

For most employers, there is no legal requirement to undertake a background screen on prospective employees; however, it is advisable in order to hire quality employees. Background screenings can be obtained from businesses that perform such services for employers, known

under federal law as consumer reporting agencies, or local background checks can be obtained from local law enforcement agencies. If you contract with a third party to perform the background check, the provisions of the federal Fair Credit Reporting Act must be followed. All information obtained during a background screening must be kept confidential.

a. Level One Screening

Florida law requires that certain employees must be screened. Those employed as law enforcement officers or hired to work with children or the elderly, for example, are required by law to undergo background screening as a condition of employment and continued employment. While all information obtained from the screening is confidential, personnel records may be shared among like employers upon request. These employees (unless the employee is designated by law as being in a position of "trust and responsibility," explained below) must undergo a Level 1 screening, which includes an employment history and a state wide criminal correspondence check through the Florida Department of Law Enforcement. If the individual has committed an act that constitutes domestic violence or been convicted of any of the following crimes, he or she would generally be ineligible for employment in one of these positions required to be screened. Chapter 435, Section 435.03, Fla. Stat.

- sexual misconduct with certain developmentally disabled or forensic clients or with certain mental health patients and reporting of such sexual misconduct;
- adult abuse, neglect, or exploitation of aged persons or disabled adults;
- lewd or lascivious offenses committed upon an aged or disabled adult;
- murder or manslaughter;
- vehicular homicide;
- killing of an unborn child by injuring the mother;
- assault or battery of a minor or aggravated assault or battery;
- kidnapping or false imprisonment;
- prohibited acts of persons in familial or custodial authority;
- sexual battery, prostitution, lewd and lascivious behavior, or indecent exposure;
- arson, theft, robbery, and related crimes, if the offense was a felony;
- fraudulent sale of controlled substances, if a felony;
- incest;
- child abuse, neglect of a child, contributing to the delinquency or dependency of a child, and crimes relating to negligent treatment of children, or relating to sexual performance of a child;

- obscene literature;
- drug abuse, if a felony.

b. Level Two Screening

A person seeking a position designated by law as a position of "trust and responsibility" must undergo a Level 2 screening. Such positions include those in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records. Chapter 110, Section 110.1127, Fla. Stat.

A level 2 screening must include an employment history check, fingerprinting, a state criminal history check through the Florida Department of Law Enforcement, and a federal criminal history check through the Federal Bureau of Investigation. A local criminal history check is also encouraged but not required. There must also be no confirmed reports of abuse, neglect, or exploitation of children, or of domestic violence. The following crimes are screened for in addition to the above listed crimes for an employee in a position designated by law as a position of trust or responsibility: Chapter 435, Section 435.04, Fla. Stat.

- battery on a detention or commitment facility staff;
- taking, enticing, or removing a child beyond state limits with criminal intent pending a custody hearing;
- carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person;
- exhibiting firearms or weapons within 1,000 feet of a school, or possessing an electric weapon or device, destructive device, or other weapon on school property;
- resisting arrest with violence;
- depriving a law enforcement, correctional, or correctional probation officer means of protection or communication;
- aiding in an escape, or harboring, concealing, or aiding an escaped prisoner;
- encouraging or recruiting another to join a criminal gang;
- inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm;
- sexual misconduct in juvenile justice programs;
- introduction of contraband into a correctional or detention facility.

3. AIDS Testing, Chapter 760, Section 760.50, Fla.Stat.

You may not require an applicant to take an HIV related test as a condition of hiring, promotion, or continued employment unless the absence of AIDS or HIV infection is a bona fide occupational qualification for the job in question, such as where there is a significant risk of transmitting the infection to another in the course of normal work activities. Similarly, you may not refuse to hire any individual, fire or otherwise discriminate against or segregate the individual from others due to knowledge or belief that the individual has taken an HIV test or that the actual or perceived results of the test indicate the presence of HIV unless the absence of HIV is a bona fide occupational qualification for the job in question.

4. Drug Screening, Chapter 440, Sections 440.101, et seq.; Chapter 112, Section 112.0455, Fla. Stat.

Both public and private employers may test their employees for drugs and alcohol to ensure that the workplace is drug and alcohol free. Employers implementing a drug-free workplace program should make sure it includes notice, education, and testing procedures for both drugs and alcohol. In such cases, the employer may require employees to submit to such a test as a condition of employment.

Employers may require that drug and alcohol tests be administered to individuals on the following bases:

- pre-employment or job applicant testing;
- reasonable suspicion;
- routine fitness-for-duty;
- as a follow-up to rehabilitation for up to two years after such a program; and
- (private employers only) random testing.

Nothing in the law requires employers to request that an applicant submit to a drug and alcohol test. If you intend to start a drug testing program, you must give 60 days notice prior to the beginning of actual drug testing.

Within five working days of receiving test results positive for drugs or alcohol, you must provide the individual with written notice of the positive result, the consequences, and the person's options. The employee or applicant must be given a copy of the results upon request. Within five working days of receiving the results, the individual may submit information explaining or contesting the results. You may then allow for a retest or provide a written response to the individual stating why the individual's explanation was unsatisfactory along with a copy of the drug test results. All such documentation must be maintained for a period of one year.

Discharge or discipline of an employee, or refusal to hire based on a positive drug test or refusal to be tested, is considered discharge or nonhire "for cause." However, you may not

discharge, discipline, or discriminate against an employee who voluntarily seeks treatment of a drug related problem. If the company pays for the program, you may choose the rehabilitation program. All information and records of drug or alcohol tests administered are confidential. Finally, employers are required to pay employees for time spent taking drug tests (not retests after a positive result) as time worked for purposes of compensation and benefits.

5. Sickle Cell Testing and Discrimination, Chapter 448, Sections 448.075, et seq., Fla. Stat.

You may not require screening or testing for the sickle-cell trait as a condition of employment, nor discriminate by refusing employment to or discharging any person from employment solely because such person has the sickle-cell trait.

6. Medical and Other Testing, Chapter 760, Section 760.40, Fla. Stat.

For employment purposes, a DNA analysis of an individual may only be performed with the informed consent of the person to be tested. The results of such DNA analysis are the exclusive property of the person tested, are confidential, and may not be disclosed without his or her consent.

7. Negligent Hiring, Chapter 768, Section 768.096, Fla. Stat.

The importance of conducting pre-employment screening is not only to hire qualified employees but to protect against a claim of negligent hiring by a third party who may be injured by your employee. This is especially true if the injury takes place while the employee is on the job but is caused by conduct that is outside the scope of the employee's job. If, before hiring the employee, you conducted a background investigation and the investigation did not reveal any information reasonably demonstrating the unsuitability of the prospective employee for the particular work to be performed, or for employment in general, you will be presumed not to have been negligent in hiring the employee in a civil action for death or injury of a third person, or property damage caused by the employee's intentional tort.

A background investigation under this section must include one of the following:

- obtaining a criminal background investigation on the prospective employee from the Florida Department of Law Enforcement;

- making a reasonable effort to contact references and former employers of the prospective employee concerning the suitability of the prospective employee for employment;

- requiring the prospective employee to complete a job application form that includes questions concerning whether he or she has ever been convicted of a crime, including details concerning the type of crime, the date of conviction and the penalty imposed, and whether the prospective employee has ever been a defendant in a civil action for an intentional tort, including the nature of the intentional tort and the disposition of the action;

- obtaining, with written authorization from the prospective employee, a check of the driver's license record of the prospective employee if such a check is relevant to the work the employee will be performing and if the record can reasonably be obtained; or

- interviewing the prospective employee.

Failure to conduct an investigation does not raise a presumption that the employer failed to use reasonable care; however, the employer does not get the benefit of the presumption of reasonable care that comes from conducting a background investigation.

B. Child Labor, Chapter 450, Fla. Stat.

1. Employment Of Minors Under 18, Chapter 450, Section 450.061, Fla. Stat.

You may not hire minors under the age of 18 in any place of employment or at any occupation hazardous or injurious to the life, safety, or health of the employee. These places and occupations are determined by the state's Department of Labor and Employment Security and specifically include the following work:

- in or around explosive or radioactive materials;

- on scaffolding, roof, superstructure, residential, or nonresidential building construction or a ladder above six feet tall;

- in or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed;

- mining;

- operating power-driven woodworking machines, hoisting apparatus, or metal forming, punching, or shearing machines;

- slaughtering, meat packing, processing, or rendering;

- operating power-driven bakery machinery or power-driven paper products and printing machines;

- manufacturing brick, tile, and similar products;

- wrecking or demolition;

- with excavation operations or in logging or sawmilling;

- with electric apparatus or wiring;

- fire fighting; or

- operating or assisting in any way with any tractor over 20 PTO horsepower, trencher or earth moving equipment, fork lift, harvesting, planting, or plowing machinery, or moving machinery.

You may not hire minors under the age of 18 to work in any place where alcoholic beverages are sold at retail, although there are various exceptions to this prohibition such as entertainers, minors employed in hotels as long as it is in an area away from the area selling alcohol, restaurants, as long as the minor does not prepare, serve, or sell the alcoholic beverage, and various businesses licensed to sell alcohol for consumption off the premises. Chapter 562, Section 562.13, Fla. Stat.

2. Employment of Minors Under 16, Chapter 450, Section 450.061, Fla. Stat.

A person that is age 15 or under may not be hired to perform the following work under any circumstance:

- in connection with power-driven machinery except power mowers with cutting blades 40 inches or less;
- manufacturing that makes or processes a product with the use of industrial machines;
- manufacturing, transporting, or using explosive or highly flammable substances;
- in sawmills or logging operations;
- on scaffolding;
- heavy work in the building trades;
- operating a motor vehicle, except a motor scooter which the person is licensed to operate and farm tractors for farm work under adult supervision and under certain other circumstances;
- oiling, cleaning, or wiping machinery or shafting or applying belts to pulleys;
- repairing elevators or other hoisting apparatus;
- in freezers or meat coolers and in preparation of meats for sale, except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in another area;
- preparing compositions in which dangerous leads or acids are used;
- operating power-driven laundry or dry cleaning machinery, or any similar power-driven machinery;
- spray painting;
- alligator wrestling work in connection with snake pits, or similar hazardous activities;

- door-to-door selling of magazine subscriptions, candy, cookies, flowers, or other merchandise or commodities, except merchandise of nonprofit organizations such as the Girl or Boy Scouts; or

- using meat and vegetable slicing machines.

3. Employment of Minors Under 14, Chapter 450, Section 450.021, Fla. Stat.

A person who is age 13 or under may not be hired under any circumstance for any gainful occupation. No person 10 years of age or younger is permitted to engage in the sale and distribution of newspapers. Minors of any age, however, may be employed as a page in the Florida legislature, in the entertainment industry, or in domestic help in their own homes or on the family farm.

NOTE: Certain persons under the age of 17 are not considered minors under the statute, and therefore are not limited in type or amount of work. Persons under 17 years of age may be exempted on the basis of service in the U.S. Armed Forces, a court ruling, marriage, or graduation from an accredited high school or possession of a high school equivalency diploma. However, some statutes in this area specifically state that a minor's "nonage" may not be cured as described above. Therefore, it is important to review the specific facts and consult with an attorney should such issues arise.

4. Hours of Work for Minors, Chapter 450, Section 450.081, Fla. Stat.

Minors under the age of 16 may not be employed before 7 a.m. or after 7 p.m. when school is scheduled for the following day, or for more than 15 hours per week when school is in session. They cannot work for more than 3 hours on any school day, unless they are enrolled in a career education program or if there is no session of school the following day. During holidays and summer vacations, they may not work before 7 a.m., after 9 p.m., for more than 8 hours per day, or for more than 40 hours per week.

Minors 16 and 17 years of age may not be employed before 6:30 a.m. or after 11:00 p.m. or for more than 8 hours per day when school is scheduled on the next day. When school is in session, they may not work more than thirty hours per week. Also, they cannot work during school hours on any school day, unless they are enrolled in a career education program.

Minors under the age of 18 may not work for more than six consecutive days in any one week. Minors under the age of 17 are also required to have a meal period of at least 30 minutes after working up to four hours continuously.

The limitation on hours of work, however, do not apply to the following:

- minors 16 and 17 years of age who have graduated from high school or received a high school equivalency diploma;

- minors who are within the compulsory school attendance age (i.e., those under 16

years of age) who hold a valid certificate of exemption issued by the school superintendent;

- minors enrolled in a public school who qualify on a hardship basis such as economic necessity or family emergency; or

- children in domestic service in private homes, children employed by their parents, or pages in the Florida Legislature.

5. Records and Notice, Chapter 450, Section 450.045, Fla. Stat.

You are required to obtain and keep on record proof of the child's age. This requirement can be satisfied by: 1) a photocopy of the child's birth certificate; 2) a photocopy of the child's driver's license; 3) an age certificate issued by the district school board of the district in which the child is employed, certifying the child's age; or 4) a photocopy of a passport or visa which lists the child's date of birth. If you hire a minor you are also required to post in a conspicuous place a poster notifying minors of the Child Labor Law.

C. Employment of Aliens, Chapter 448, Section 448.09, Fla. Stat.

It is unlawful to knowingly hire, recruit, or refer an alien who is not duly authorized to work under the immigration laws of the United States.

D. Reporting New Hires, Chapter 409, Section 409.2576, Fla. Stat.

Employers of 250 or more employees must report to the State Directory of New Hires information on all newly hired and rehired employee. The report should be made on a W-4 form the new employee is required to fill out for federal income tax purposes and should be submitted within 20 days of hire. All new hires should be reported unless the employee is hired by a federal or state agency performing intelligence or counterintelligence functions and the head of the agency determines that reporting such employees would endanger the employee or compromise an on going investigation or intelligence mission.

Although parts of this law seem to limit its application to employers of 250 employees or more, other sections seem to imply that it applies to all employers. Employers wishing to take the safest and most conservative course may wish to follow its requirements even if they employ fewer than 250 employees.

III. LAWS AFFECTING THE EMPLOYMENT RELATIONSHIP

A. Wages And Hours

1. Minimum Wage

The Florida Minimum Wage Amendment and Florida Minimum Wage Act establish the state-wide minimum wage. Florida's minimum wage applies to all employees covered by the Federal Fair Labor Standards Act. An increase of the Federal Minimum Wage to $7.25 per hour took effect on July 24, 2009. Florida employers need to make sure that their employees earn at least that figure.

Florida's Minimum Wage Act, passed in 2005, establishes creation of a safe harbor period for an employer to remedy a violation of the minimum wage without the risk of being sued. Specifically, the legislation requires employees to first notify employers in writing before initiating a civil action to enforce their right to receive the state minimum wage. In the notice, the employee must identify the minimum wage to which they claim entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid wages through the date of the notice. At that point, the employer has fifteen calendar days to pay the total amount of unpaid wages or otherwise resolve the claim to the satisfaction of the employee. Only if the employer does not pay or otherwise resolve the claim may the employee file a lawsuit in state court. Further, if the employee does file a lawsuit, the amount claimed in the lawsuit must be consistent with the initial notice to the employer.

The Act also requires Florida employers to post a notice of the Florida minimum wage in a conspicuous and accessible place in each establishment where employees are employed. Florida Statute Section 448.109 sets forth the language that must appear on the poster, as well as specifications for the poster's size and format. A compliant poster is available for downloading in English and Spanish from the Agency for Workforce Innovation's webpage at: http://www.floridajobs.org/resources/fl_min_wage.html. This Florida poster is in addition to, and not a substitute for the federal minimum wage poster.

2. Overtime

The only statute governing overtime states that ten hours of labor is regarded as a legal day's work, and when any person employed to perform manual labor of any kind by the day, week, month or year performs 10 hours of labor, he or she must be considered to have performed a legal day's work, unless a written contract has been signed by the employee and employer requiring a lesser or greater amount of labor to be performed daily. If there is no written contract, the employee is entitled to extra pay for all the work done in excess of ten hours of daily labor. Chapter 448, Section 448.01, Fla. Stat. One federal court has declared this statute impermissibly vague under the facts of that case.

3. Holidays, Chapter 110, Section 110.117, Chapter 683, Section 683.01, Fla. Stat.

Florida state law provides employees of state branches and agencies with the following list of paid holidays that must be observed every year:

- New Year's Day
- Martin Luther King, Jr.'s Birthday -- the third Monday in January
- Memorial Day -- the last Monday in May
- Independence Day
- Labor Day -- the first Monday in September
- Veterans' Day
- Thanksgiving Day -- the fourth Thursday in November
- The Friday after Thanksgiving
- Christmas Day

If a Florida holiday falls on a Sunday, the holiday is observed on the following Monday. If the holiday falls on a Saturday, it is observed on the preceding Friday.

Although these are not paid holidays for state employees, Florida statutory law also sets forth the following "official" holidays: Robert E. Lee's Birthday (January 19), Lincoln's Birthday (February 12), Susan B. Anthony's Birthday (February 15), George Washington's Birthday (the third Monday in February), Good Friday, Pascua Florida Day (April 2), Shrove Tuesday (in certain places), Confederate Memorial Day (April 26), Jefferson Davis's Birthday (June 3), Flag Day (June 14), Columbus Day (the second Monday in October), and General Election Day. These holidays are presumed to be a part of the term "legal holiday" when used in contracts to be performed in Florida.

4. Direct Deposit Or Other Method Of Payment, Chapter 532, Sections 532.01 et seq., Fla. Stat.

Any order, check, draft, note, or other acknowledgment of indebtedness issued to an employee in payment of wages or salary due or to become due must be negotiable and payable on demand, without discount. The employer must have sufficient funds to cover such payment at the time of issuance, and for a reasonable time after issuance, which must be at least 30 days. If there are not sufficient funds for payment, then the employer must have sufficient credit, arrangement, or understanding with the employee for the payment.

You may also pay wages or salary to an employee by having it deposited directly to the employee's account in a financial institution by electronic or other medium if such direct deposit

has been authorized in writing by the employee. You cannot terminate the employment of any employee solely for refusing to authorize such direct deposit of wages or salary.

Finally, an employer which issues coupons, punch-outs, tickets, tokens, or other devices in lieu of cash as payment for labor, whether redeemable either wholly or partially in goods or merchandise, will on demand of the employee or legal holder:

- be liable for the full face value in U.S. money, on or after the 30th day succeeding the day of issuance
- be liable for payment in U.S. money regardless of any contrary provision or stipulation contained in the coupon, punch-out, etc.

5. Payment Upon Death Of Employee, Chapter 222, Sections 222.15, 222.16, Fla. Stat.

In case of the death of an employee, an employer may pay any wages or travel expenses that may be due to the employee at the time of his or her death, to the employee's wife or husband, and if there is no spouse, then to the child or children, provided they are over the age of eighteen years. If there is no child or children, payment may be made to the employee's father or mother.

It is also lawful for the Division of Unemployment Compensation of the Department of Labor and Employment Security to pay any unemployment compensation payments that may be due to such employee at the time of death in the same manner.

These wages, travel expenses, or unemployment compensation payments should not be considered as assets of the estate and subject to administration, provided that the travel expenses do not exceed the sum of $300.

6. Garnishment Or Assignment Of Wages, Chapter 61, Fla. Stat.

A court can order a deduction of any amount of an employee's salary or wages to be subject to garnishment or attachment to enforce and satisfy the orders and judgments of the court for alimony, child support, money judgment, or other orders subject to the limits contained in the federal Consumer Credit Protection Act and accompanying regulations.

B. Insurance Benefits, Chapter 627, Section 627.651 et seq., Fla. Stat.

1. Group Health Insurance

If an employer provides a group health insurance policy not governed by the Employee Retirement Income Security Act of 1974, there are certain provisions that must be included. Among these are:

Diabetes – the policy must provide coverage for all medically appropriate equipment, supplies, and services for the treatment of diabetes.

Ambulatory Surgical Center – the policy must provide for any service provided in an ambulatory service center if such service would be covered as an inpatient service.

Home Health Care – the policy must provide minimum benefits coverage if it is reimbursable under Medicare. Also, if the policy provides coverage on an expense incurred basis, home health care by a licensed home health care agency must be provided if prescribed by a licensed physician.

Children's Preventative Care – the policy must provide child health supervision without any deductible provisions for children from birth to age 16. Dependant children who are incapable of self-sustaining employment due to mental retardation or physical handicap are not subject to a limiting age for coverage.

Osteoporosis – the policy must provide for the diagnosis and treatment of osteoporosis for high risk individuals.

Mammography – the policy must provide a base line mammogram for women between the ages of 35 and 40, a mammogram every two years or more frequently if based on a doctor's recommendation for women between the ages of 40 and 50, and an annual mammogram for women age 50 and older.

Alcoholism – the policy must cover $2000 of impatient and outpatient services over the insured's lifetime, as well as 44 outpatient visits at $35 a visit.

Mental Health – the policy must provide at least 30 days per year of inpatient hospital care, $1000 per year in outpatient services by a licensed mental health professional, and the equivalent of 30 inpatient days per year for partial hospitalization or a combination of inpatient care and partial hospitalization.

Acupuncture and Massage – the policy must provide payment for these services by licensed acupuncturists and massage therapists, if such coverage is provided.

2. Group Life Insurance, Chapter 627, Section 627.552, Fla. Stat.

Employers may also offer group life insurance. When no part of the premium for the group life insurance policy is taken from insured employees' funds, it is required that all employees must be insured unless the employee rejects coverage in writing or where evidence of individual insurability is not satisfactory to the insurer.

C. Workplace Safety And Health

1. OSHA

The relevant workplace safety provisions of Chapter 442, Fla. Stat. have been repealed, so employers in Florida should comply with the Federal Occupational Safety and Health Act.

2. No Smoking, Chapter 386, Sections 386.201, et. seq., Fla. Stat.

The Florida Clean Indoor Air Act essentially bans smoking in all enclosed indoor workplaces. There are several exceptions to this prohibition, including: private residences, retail tobacco shops, designated smoking guest rooms in public lodging establishments, medical or scientific research, smoking-cessation programs, and customs smoking rooms in airports. Additionally, smoking is permitted in "stand-alone bars." In order to qualify for this exception, the bar can derive no more than 10% of its gross revenue from the sale of food consumed on the premises. Additionally, the premises may not "be located within, and may not share any common entryway or any common indoor area with any other indoor workplace, including any business for which the sale of food or any other product or service is more than in incidental source of gross revenue."

Employers of enclosed indoor workplaces are required to implement policies regarding the smoking prohibitions. The legislature recommends that these policies include what action should be taken when a violation occurs, and a policy which prohibits an employee from smoking in the enclosed indoor workplace. Additionally, businesses that qualify for the stand-alone bar exception are required to post signs at all entrances stating that smoking is permitted.

The Act also states that the proprietor or other person in charge of the enclosed indoor workplace will be issued a notice to comply with the Act if there is notification of observed violations. If the person fails to comply within thirty days of the notice, they will be assessed a fine of $250 - $750 for the first violation, and between $500 - $2,000 for each subsequent violation. If the person still refuses to comply with the Act, the Department of Health, the Division of Hotels and Restaurants, and the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation can attempt to require compliance by filing a complaint in the Circuit Court of the county in which the business is located. Additionally, individuals who violate the Act may be fined up to $100 for the first violation and up to $500 for each subsequent violation.

Additionally, individuals under 18 years of age are prohibited from smoking in, on, or within 1,000 feet of a public or private elementary, middle, or secondary school between 6 A.M. and midnight. Exceptions are made for individuals occupying a moving vehicle or within a private residence. Individuals who are cited for violating this section of the Act may be assessed a penalty up to $25, or 50 hours of community service, or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.

3. Obligation to Provide Seats, Chapter 448, Section 448.05, Fla. Stat.

Employers of clerks, salespersons, assistants in mercantile or other business pursuits who require employees to stand or walk during active duty must furnish at their own cost or expense suitable chairs, stools, or sliding seats attached to counters or walls for use by employees when not engaged in active work and not required to be on their feet in proper performance of their duties. These employers must permit employees to make reasonable use of seats during business hours when use will not interfere with humane or reasonable requirements of employment.

D. Restraints on Working

1. Right to Work, Section 6, Art.1, Florida Constitution.

Workers have the right to join a union or not join a union, and cannot be forced to join a union to work. Public employees may also join a union but they are prohibited from going out on strike.

2. Wrongful Combinations Against Workers, Chapter 448, Section 448.045.—

It is unlawful for two or more persons to agree, conspire, combine or confederate together for the purpose of preventing any person from procuring work in any firm or corporation, or to cause the discharge of any person from work in such firm or corporation. Further, no person shall verbally or in writing, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any worker in any firm or corporation or preventing any person from procuring work in such firm or corporation. Violation of this section is considered a misdemeanor of the first degree.

E. Restraints On Competition

1. Non-competition And Non-solicitation Agreements, Chapter 542, Sections 542.335, et seq., Fla. Stat.

An agreement restricting an employee's ability to compete with a current or former employer is legal so long as the contract is reasonable in time, area, and line of business. Such restrictive contracts, or non-competition or non-solicitation agreements, must be in writing. Additionally, there must be a legitimate business interest to justify the contract such as protection of 1) trade secrets, 2) valuable, confidential business or professional information, 3) substantial relationships with specific prospective or existing customers or clients, 4) customer or client goodwill, or 5) extraordinary or specialized training.

The contract must be reasonably necessary to protect one of these business interests.

If a court were to find the contract unreasonable in time, area, or line of business, the court may modify the contract and enforce it to the extent reasonable. To protect against a current or former employee directly competing with the employer in its line of business, a period of 6 months or less is presumed reasonable and a period of more than 2 years is presumed unreasonable. Courts have typically upheld restrictions of 2 years or less as reasonable.

2. Uniform Trade Secrets Act, Chapter 688, Sections 688.001, et seq., Fla. Stat.

The misappropriation of an employer's trade secrets is prohibited. A person who misappropriates trade secrets may be enjoined from using the trade secret and may be 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; or disclosure or use of a trade secret of another without express or implied consent under certain circumstances.

A "trade secret" is defined as "information, including a formula, pattern, compilation, program, device, method, technique, or process that a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

F. Discrimination Prohibited–the Florida Civil Rights Act of 1992, Chapter 760, Fla. Stat.

1. Overview

It is unlawful to discharge or fail to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status. Some counties have local ordinances that outlaw discrimination based on sexual preference. These are referred to as "protected categories."

It is also unlawful to limit, segregate, or classify employees or applicants for employment in any way which would deprive any individual of employment opportunities, or adversely affect their status as an employee, because of membership in a protected category.

These actions are unlawful not only for employers but also for any employment agency, labor organization, or in the admission into a training program or the granting of a required license or certification. It is also unlawful for an employer to print or cause to be printed, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, or discrimination, based on a protected category. The statute also requires that all classes of individuals are entitled to equal pay.

It is not unlawful to take or fail to take action on the basis of religion, sex, national origin, age, handicap, or marital status (but not race or color) in certain instances in which such status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment or the business necessity of the place of employment. Religious organizations may give preference to individuals who profess their beliefs when those individuals perform work carrying out the organization's mission .

All employers must post and keep posted in conspicuous places upon their premises a notice that is provided by the Florida Commission on Human Relations setting forth all of the information necessary to prevent unlawful employment practices.

2. Age Discrimination, Chapter 760, Section 760.10

Although age discrimination is prohibited with no specific age range of coverage, it is not against the law to take action on the basis of age pursuant to a law or regulation governing an employment or training program designed to benefit persons of a particular age group. Florida law explicitly prohibits the discharge of employees due to age. Additionally, an employer may not force an employee to retire or reduce the wage rate of any employee absent good cause or solely because of his or her age.

3. Handicap Discrimination, Chapter 760, Section 760.10

It is unlawful to discriminate against an employee or applicant on the basis of the individual's handicap so long as the individual is able to perform the specific job requirements with or without a reasonable accommodation. Although a range of protected conditions is not defined under statutory law, handicap causes of action under the Florida Civil Rights Act are construed in conformity with the Americans with Disabilities Act. The Americans with Disabilities Act defines "disability" as: a) a physical or mental impairment that substantially limits one or more major life activities of such individual; b) a record of such an impairment; or c) being regarded as having such an impairment.

Florida law also adopts the Americans With Disabilities Act guidelines, with some exceptions, on accessibility to facilities by individuals with disabilities.

4. Marital Status Discrimination, Chapter 760, Section 760.10

It is unlawful to discriminate against an individual on the basis of his or her status as a married person in regards to the terms and conditions of employment. The Florida Supreme Court has held that marital status discrimination does not protect the employee's relationship to a specific person. Additionally, it is not unlawful to take or fail to take action pursuant to anti-nepotism policies. It is important to keep in mind, however, whether such policies have a disparate impact on married or unmarried individuals.

5. Sex Discrimination, Chapter 760, Fla. Stat; Chapter 448, Section 448.07, Fla. Stat.

While the Florida Civil Rights Act does not make it unlawful to discriminate based on pregnancy, Title VII of the Civil Rights Act of 1964, as amended, does, and, accordingly, employers may not discriminate on the basis of pregnancy.

It is also unlawful, under Florida law, for an employer to discriminate between employees on the basis of sex by paying wages to employees at a rate less than the rate at which wages are paid to employees of the opposite sex for equal work on jobs that require equal skill, effort, and responsibility, and which are performed under similar working conditions, unless the different payment is made pursuant to:

- a seniority system;
- a merit system;

- a system which measures earnings by quantity or quality of production; or
- a differential based on any reasonable factor other than sex when exercised in good faith.

It is illegal for any person to attempt or cause an employer to discriminate against any employee in violation of this section.

G. Protected Employee Activities

1. Jury duty, Chapter 40, Section 40.271, Fla. Stat.

You cannot dismiss from employment any employee because he or she has been summoned to serve on any grand or petit jury in the state, or because of the nature or length of service upon such jury.

2. Testifying in Court, Chapter 92, Section 92.57, Fla. Stat.

You may not dismiss from employment a person who testifies in a judicial proceeding in response to a subpoena either because of the nature of the person's testimony or because of absences from employment resulting from compliance with the subpoena.

3. Military Service, Chapter 250, Section 250.481, Fla. Stat.

Any person who seeks or holds an employment position shall not be denied employment or retention in employment, or any promotion or advantage of employment, because of any obligation as a member of a reserve component of the Armed Forces.

Any officer or employee of the state, of any county or school district of the state, or of any municipality or political subdivision of the state who is a member of the Florida National Guard is entitled to leave of absence from his or her respective duties, without loss of pay, time, or efficiency rating, on all days during which the officer or employee is engaged in active state duty for a named event, declared disaster, or operation. However, a leave of absence without loss of pay granted under this section may not exceed 30 days for each emergency or disaster, as established by executive order.

4. Patronage, Chapter 448, Section 448.03, Fla. Stat.

You cannot discharge or threaten to discharge any employee for doing business or for not doing business as a customer or patron with any particular merchant, person, or class of persons.

5. Athletes On U.S. Teams in World Competition, Chapter 110, Section 110.18, Fla. Stat.

State employees who are members of U.S. teams to world, Pan American, or Olympic competitions must be granted administrative leave without loss of pay or rights for the length of training and competition or 30 calendar days per year, which ever is less.

6. Whistleblowers, Chapter 448, Sections 448.101, et seq., Fla. Stat.

A private employer may not discharge, suspend, or demote an employee because the employee has disclosed, or threatened to disclose, to any appropriate governmental agency (under oath and in writing) an activity, policy or practice of the employer that is in violation of a law, rule, or regulation. The employee must first bring this to the attention of a supervisor or afford the employer with a reasonable opportunity to correct the problem in order for this subsection to apply.

Employees are also protected if they have provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer; or if they have objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule or regulation.

7. Voting, Chapter 104, Section 104.081, Fla. Stat.

It is unlawful for an employer to discharge or threaten to discharge any employee in his or her service for voting or not voting in any federal, state, or local election or for voting for or against any candidate or measure appearing on the ballot.

8. Workers' Compensation Retaliation, Chapter 440, Section 440.205, Fla. Stat.

Under the retaliation provision in the Workers' Compensation statute, "no employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law."

9. "Guns at Work," Chapter 790, Section 790.251. Fla. Stat.

No public or private employer may prohibit any employee from possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot. The law also restricts an employer's right to conduct weapons searches of employee vehicles, and prohibits employers from conditioning offers of employment on whether applicants possess concealed weapons permits.

IV. CONCLUSION

In addition to those Florida statutes presented in this booklet, there are many more federal statutory provisions that govern these and other aspects of the employment relationship. It is important to understand the relationship between federal and state laws and regulations. The information presented in this booklet gives a general overview of Florida law affecting employers. Any questions about the information contained in this booklet or application of these laws to specific fact situations should be directed to an attorney.

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