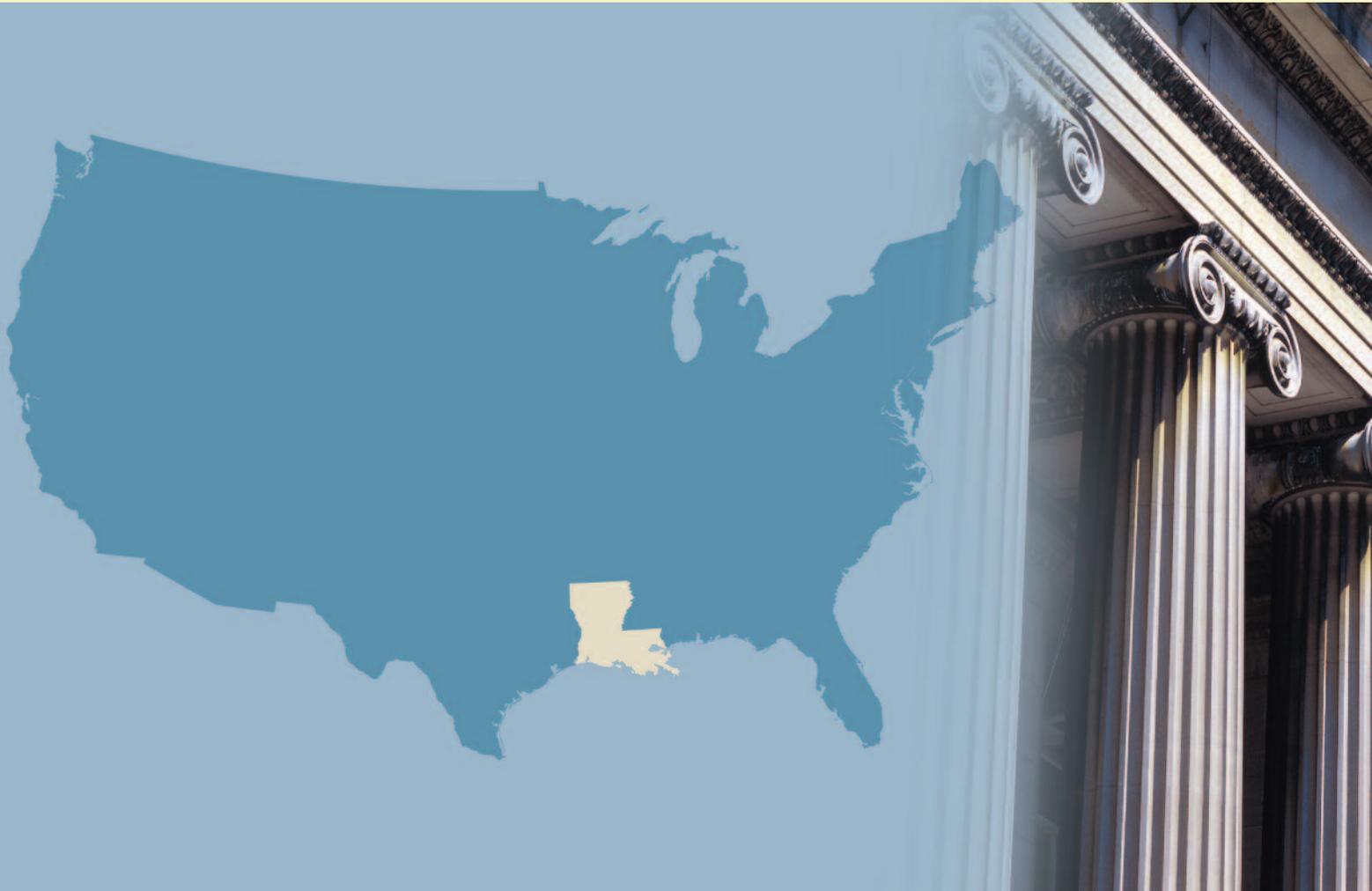


Labor and Employment Laws in the State of Louisiana



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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.

LABOR AND EMPLOYMENT LAWS IN THE STATE OF LOUISIANA

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. 2747¹

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.* and La. Admin. Code tit. 40, § VII.103 -303

1. Employment Of Minors Under 14

The general rule is that no minor under the age of 14 shall be employed. Minors under the age of 14 may be employed, if all of the following conditions are met:

- the minor is at least 12 years of age;

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

- the minor's parent or legal guardian is an owner or partner in the business in which the minor is to be employed;
- the minor works only under the direct supervision of the parent or legal guardian who owns or is a partner in the business;
- all of the protections afforded to minors 14 and 15 years of age shall be afforded to minors 12 and 13 years of age; and
- the minor obtains an employment certificate pursuant to La. R.S. 23:184.

2. Employment Of Minors Under 16

Minors age 14 to 15 may be employed only after school hours and during nonschool days, but only under highly regulated circumstances as shown by the chart below.

a. The La. Admin. Code provides a non-exhaustive list of the types of employment in which minors ages 14 and 15 may be employed:

- office and clerical work (including operation of office machines);
- cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;
- price marking and tagging by hand or machine, assembling orders, packing and shelving;
- bagging and carrying out customers' orders;
- errand and delivery work by foot, bicycle, and public transportation;
- cleanup work, including use of vacuum cleaners and floor waxers; and maintenance of grounds, but not including use of power-driven mowers or cutters;
- kitchen work and other work involved in preparing and serving food and beverages, including operation of machines and devices used in performance of such work, such as, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders;
- work in connection with cars and trucks if confined to the following: dispensing gasoline and oil, courtesy service on premises of gasoline service stations; car cleaning, washing, and polishing;
- cleaning vegetables and fruits; and wrapping, sealing, weighing, labeling, pricing, and stocking goods when performed in areas physically separated from areas where meat is prepared for sale;
- selling, offering for sale, soliciting for or displaying articles, goods, merchandise, commercial service, posters, circulars, newspapers, or magazines;
- delivery of, and collection for newspapers and periodicals;
- work as a golf caddy.

b. Minors ages 14 and 15 may not be employed in the following industries:

- any manufacturing occupation;
- any mining occupation;
- processing occupations or commercial laundering and dry-cleaning;

- occupations which require performance of any duties in workrooms or workplaces where goods are manufactured, mined, or otherwise processed, except to the extent expressly permitted by law;
- operating or tending hoisting or lifting apparatus or the inflation of any tire mounted on a rim equipped with a removable retaining ring;
- occupations connected with; transportation of persons or property by rail, highway, air, water, pipeline, or other means; communications and public utilities, except office and clerical work; construction, including repair work;
- any of the following occupations:
 - work performed in or about boiler or engine rooms;
 - work in connection with repair of machines or mechanical equipment;
 - all work that involves use of ladders and scaffolds or their substitutes;
 - cooking and baking;
 - occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, choppers and cutters, and bakery type mixers;
 - work in freezers and meat coolers;
 - all work in preparation of meat for sale, except wrapping, sealing, labeling, weighing, pricing, and stocking when such work is not performed in processing areas;
 - loading and unloading goods on and off trucks, railroad cars, and conveyors; or
 - all occupations in warehouses, except office and clerical work;
- any occupation about or in connection with power-driven machinery; or
- any other occupation found and declared to be hazardous by the Assistant Secretary of Labor after a public hearing.

c. Special rules apply to those under age 16 working in the performance industry:

When a minor is employed in theatrical performances, they may not be present in the theater, nor shall appear in any performance during the below listed periods of time:

- more than six hours in any day;
- more than 24 hours in any week;
- between the hours of 11 p.m. and 6 a.m.;

When a minor is employed in commercial motion picture, film or video productions, or modeling, they may not be present in the studio or on the set, nor shall they appear in any performance during the below listed periods of time:

- before 7 a.m. for studio production, 6 a.m. for location productions, and shall end no later than time specified below:
 - for minors under six years of age, 7 p.m.;
 - for minors six years of age to 15 years of age, 8 p.m. on any day prior to a

day during which school is in session or 10 p.m. on any day prior to a day during which school is not in session, as defined by the local superintendent for the school district in which the minor resides;

- Minors under six years of age shall not work more than six hours per day; minors six years of age to 15 years of age shall not work more than eight hours per day;
- Minors shall receive a 12-hour rest break at the end of each work day, before the commencement of the next day of work;
- Minors shall not be employed more than six consecutive days in any one week, nor more than 36 hours per week for minors under six years of age, nor more than 48 hours per week for minors six years of age to 15 years of age;
- Applications for waivers for any exception to the above provisions must be made to the secretary of the Department of Labor or his/her designee;
- the Secretary of Labor or his/her designee may grant a waiver only under the following circumstances:
 - written notification through a listing of specific dates and times that the minor shall be employed and/or present for either studio production or location production;
 - written acknowledgement that the minor’s parent(s), tutor, or custodian have been fully informed of the circumstances and have granted advance consent.

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	Eight hours a day – 40 hours a week
Maximum Hours During School	Three hours a day – 18 hours a week
Maximum Consecutive Days	Six days
Permissible Hours	Between 7 a.m. and 7 p.m. on a day before school is in session; 7 a.m. and 9 p.m. on any day before a day when school is not in session. “Hours during school” is defined by the local superintendent for the school district in which the minor resides.
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 16 years of age or younger;
- minors 17 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 30 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, forestry, horticulture, dairy, or animal caring activities. Fines for violating these statutes range from \$500 to \$2,000 and may be assessed per the number of aliens employed, hired, recruited or referred based upon the number of prior violations. (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 and La. R.S. 9:3501

You may lend money to your employees but never at an annual interest rate greater than 8%. Fines for violation of this statute range from \$25 to \$100, and/or up to three months imprisonment.

Any contract for the payment of interest in excess of that authorized by La. R.S. 23:691 will result in the forfeiture of the entire interest contracted.

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 calendar year or employed at least one person, full-time or part-time, during 20 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.” Generally, one instance of misconduct is not enough to deny benefits unless it is egregious. The Louisiana Workforce Commission tends to look at multiple instances of misconduct where the employee was put on notice that such behavior would result in termination. 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 be 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 90 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 employees whose injuries are covered by the Act cannot sue their employers in tort (unless an employee’s injuries were the result of an intentional act). However, employees’ right to sue third parties for their injuries 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, unless the employee’s intoxication stems from activities which were in pursuit of the employer’s interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee’s working hours;
- 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 attorneys' 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 never reports for work, quits or is fired for cause within 90 days from beginning work and was paid more than \$1.00 per hour over minimum wage and is not a part-time (customarily works less than 40 hours per week) or seasonal employee. 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, employees who test positive have the right of access to records relating to their drug tests.

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 element of a defamation claim is 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. There is an exception, however, when 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.

Employers are not subject to claims for negligent hiring of or failure to adequately supervise an employee or independent contractor due to damages or injuries caused by that individual solely because that individual has been previously convicted of a criminal offense.

This exception does not apply in the following situations:

- When the act that lead to the damage or injury arose out of the course and scope of the individual’s employment and the act is substantially related to the nature of the crime for which the individual was convicted, and the employer knew or should have known of the conviction.
- When the individual has been convicted of a “crime of violence” or “sex offense” as enumerated under Louisiana law, and the employer knew or should have known of the conviction.

An employer may still be held liable for negligent hiring or inadequate supervision for other situations not covered by this specific law.

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 not less than \$50 and/or imprisonment for up to 30 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. Any person who violates this section is subject to a fine of up to \$1,000 and/or imprisonment for up to 90 days.

L. Louisiana Smoke-Free Air Act, La. R.S. 40:1300.251 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 some places of employment, for example 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 or furnishing information concerning a violation to an enforcement authority.

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 vehicles owned or leased by a public or private employer and used by employees in the course of their 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 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, unless they work within the industries discussed in the next paragraph. These obligations do not apply to employees who are exempt from the wage and overtime provisions of the Fair Labor Standards Act.

Employers with 10 or more employees who engage in manufacturing, boring for oil, and mining operations and every public service corporation must pay their employees no less than twice monthly during the calendar month, which must be as close to two weeks apart as practicable. Each payment must include all amounts due for labor or services performed during any such payroll period and shall be payable no later than the payday at the conclusion of the next payroll period. Provided that, except in cases of public service corporations, this requirement does not apply to clerical or salespersons.

Individuals employed in a bona fide executive, administrative, supervisory, or professional capacity are not “employees” within the meaning of this statute.

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 10 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 or voluntarily quits, amounts due under the terms of employment must be paid by the next regular pay day or within 15 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. But 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.

Employers who offer paid time off, but do not refer to it as “vacation” may still be responsible for paying out accrued, but unused leave upon termination if the PTO or PDO policy permits employees to use this leave for personal needs, including taking vacation.

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 90 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 attorneys' fees.

When a court determines that an employer's dispute over the amount of wages due was in good faith, but the employer is subsequently found by the court to owe the amount in dispute, the employer will be liable only for the amount of wages in dispute, plus judicial interest incurred from the date that the lawsuit is filed. An employer will not be held liable for the penalty wages, unless the court determines that the employer's refusal to pay the amount of wages owed was not in good faith. Employers may still be liable for attorneys' fees even if the court determines that the refusal to pay was in good faith.

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 applicants or employees to sign a contract providing that the costs of pre-employment medical examinations or drug tests may be withheld from their wages if they resign within 90 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% 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 employees who asked their employers' customers (while still employed) whether they would maintain their business relationship with them if they 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 attorneys' 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. 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 an 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, childbirth, or related medical condition of any female employee
- veterans taking leave for certain required medical appointments
- 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, attorneys' 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, sickle cell trait, and veterans taking leave for certain required medical appointments apply only to employers who employ 20 or more employees within this state for each working day in each of 20 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 25 employees within this state for each working day in each of 20 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 40 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 employees or applicants to enjoy protection under this statute, they 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 impairment or are regarded as having such 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 or she is a disabled person, they must establish that they are otherwise qualified for the job. A person is otherwise qualified if he or she can, with or without 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. Veterans, La. R.S. 23:331

Covered employers cannot discharge, threaten to discharge, discipline, or threaten to discipline any veteran for taking time away from work to attend medical appointments necessary to meet requirements to receive veterans benefits.

If requested by the employer, veterans shall verify their attendance at the medical appointment by presenting a bill, receipt, or excuse from the medical provider.

A veteran is defined as: “any honorably discharged veteran of the armed forces of the United States including reserve components of the armed forces, the Army National Guard and the Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.”

5. 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.

Covered employers also may not intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex for equal work on jobs in which the employees' performance requires equal skill, effort, and responsibility under similar working conditions. The employer may not reduce the wages of any other employee in an effort to comply with this law.

6. 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.

7. 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.

8. 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.

9. 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, an employee shall identify, in writing, as soon as practicable, their 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.

Persons shall notify their employers in writing as soon as practicable of any healthcare service that violates their conscience. Persons shall notify any patient, before providing any consultation or service to the patient, of the existence of a healthcare service that they will decline to provide because the healthcare service violates their 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.

10. 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 180 days after the alleged unlawful practice. The Commission must investigate the charge and, within 30 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 10 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 10 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 20 or more employees may make, adopt, or enforce any rule, regulation, or policy forbidding or preventing any of its 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 employees because of their 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 30 to 90 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 90 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. This law applies to all employers in the state.

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. Employees are protected only if they 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, attorneys' 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 whistleblower'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 attorneys' 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 10 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 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, attorneys' fees, and payment of an amount equal to lost wages or benefits as liquidated damages.

10. Breastfeeding, La. R.S. 51:2247.1

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 noncompliance. 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.

14. Emergency Response Leave La. R.S. 23:1017.1 *et. seq.*

Employees who are volunteers engaged in activities involving the Governor's Office of Homeland Security and Emergency Preparedness, and first responders (including but not limited to medical personnel, emergency and medical technicians, volunteer firemen, auxiliary law enforcement officers and members of the Civil Air Patrol) are entitled to time off from work when

absent or late for work due to responding to a state of emergency prior to or during the time the employee is to report to work consistent with state and federal law.

An employee who is absent from work as a result of being a first responder to a designated state of emergency is still subject to the terms and conditions of the company's policies regarding leaves of absence and must report back to work no more than 72 hours after they have been released from first responder duty. Employees must be reinstated to their previous or a comparable position to the extent it is not impossible, unreasonable and will not impose an undue hardship on the company.

Employees who are disabled while serving as a first responder may seek a reasonable accommodation in accordance with state law.

This law applies to all employers in the state.

15. Personal Online Account Privacy Protection Act La. R.S. 51:1951 *et seq.*

An employer *cannot* do any of the following:

- Request or require an employee or applicant for employment to disclose any username, password, or other authentication information that allows access to the employee's or applicant's personal online account.
- Discharge, discipline, fail to hire, or otherwise penalize or threaten to penalize an employee or applicant for employment for failure to disclose any information protected by this Act.

An employer *may* do any of the following:

- Request or require an employee or applicant for employment to disclose any username, password, or other authentication information to the employer to gain access to or operate any of the following:
 - An electronic communications device paid for or supplied in whole or in part by the employer.
 - An account or service provided by the employer, obtained by virtue of the employee's or applicant's relationship with the employer, or used for the employer's business purposes.
- Discipline or discharge an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal online account without the employer's authorization.
- Conduct an investigation or require an employee or applicant to cooperate in an investigation in any of the following circumstances:
 - If there is specific information about activity on the employee's personal online account, for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related

- employee misconduct.
- If the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's or applicant's personal online account.
- Conduct an investigation or require an employee or applicant to cooperate in an investigation as specified in the Act, including requiring the employee or applicant to share the content that has been reported in order to make a factual determination, without obtaining the username and password to the employee's or applicant's personal online account.
- Restrict or prohibit an employee's or applicant's access to certain websites while using an electronic communications device paid for or supplied in whole or in part by the employer or while using an employer's network or resources, in accordance with state and federal law.

If through the use of an electronic device or program that monitors an employer's network or the use of an employer-provided device, an employer inadvertently receives an employee's or applicant's username, password, or other authentication information, the employer shall not be liable for having the information, but cannot use the information to access the employee's or applicant's personal online account.

Employers may also comply with a duty to screen employees or applicants prior to hiring or monitor or retain employee communications that are established pursuant to state or federal law, rules or regulations, case law, or rules of self-regulatory organizations.

You may also view, access, or utilize information about an employee or applicant that can be obtained without the individual's username, password, or other authorization information, or that is available in the public domain.

In addition, you may require an employee to provide a personal email address in order to facilitate communication with the employee in the event the employer's email system fails.

Finally, this law does not prohibit or restrict an employee or applicant for employment from self-disclosing any username, password, or other authentication information to the employer that allows access to the employee's or applicant's personal online account.

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.

For more information contact any attorney in the New Orleans office of Fisher & Phillips LLP at 504.522.3303 or visit our website at www.laborlawyers.com.