Labor And Employment Laws In The State Of Mississippi

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I. INTRODUCTION

This booklet addresses Mississippi 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 In Mississippi

In Mississippi, 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 adverse employment action violates a specific statute or common-law exception to the employment-at-will doctrine, or if there exists a contractual agreement to work for a definite time.

Mississippi has also recognized a very narrow exception to the employment-at-will doctrine that makes it unlawful to take adverse employment action against an employee if the reason for the adverse action is based on something that is against public policy. For example, in Mississippi you cannot ask an employee to commit an illegal act and then discharge the employee when he or she refuses to perform the illegal act. Mississippi has other common-law doctrines that impact the workplace and those common-law doctrines are noted where appropriate in this reference book.

Employers would be wise not to rely heavily on the employment-at-will doctrine when making employment decisions. Important as it is, increasing federal 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 that jurors have little sympathy for employment-at-will rights if your actions were not otherwise fair.

Although Mississippi does not have many state laws that govern the employment relationship, Mississippi employers who employ the requisite number of employees still must comply with all applicable federal laws that govern the employment relationship.

B. Employment Of Minors, MISS. CODE ANN. §§ 71-1-17 through 71-1-31;

Mississippi law prohibits a person under the age of 14 from working in any mill, cannery (excluding fruit or vegetable canneries), workshop, factory or manufacturing establishment within the state. A person, firm or corporation may not employ a child over the age of 14 but under the age of 16 in the same industries unless that child has complied with or is complying with the compulsory school-attendance law. Further, no child over 14 but under the age of 16 is permitted to work in any mill, cannery, workshop, factory or manufacturing establishment for more than
eight hours in one day or more than 44 hours in any one week. That child may not work between the hours of 7:00 p.m. and 6:00 a.m.

The sheriff of the county in which the mill, cannery, workshop, factory or manufacturing establishment is located shall visit the establishment at least once per month to ensure that the law is enforced. The county health officer is charged with visiting, without providing notice of intent to do so, the establishments at least twice each year, or more often if requested by the sheriff. The county health officer must report any unsanitary conditions, any child afflicted with infectious, contagious or communicable diseases, or whose physical condition renders such child or children incapacitated to perform the work required. If the sheriff receives a negative report, the child shall be promptly removed until the premises are put in a sanitary condition.

If you are interested in employing a child under the age of 16 as permitted above, the child employee shall be required to present an affidavit of a parent or guardian, or person standing in parental relation to such child, and the certificate of the superintendent or principal of the school of the district where the child resides or where the child last attended school. The certificate should state the place and date of birth of the child, the last school attendance of the child, the grade of study pursued, the name of the school, and the name of the teacher in charge.

Anyone who violates the above-described regulations, who fails or refuses to give correct information to the sheriff or county health officer, or who fails or refuses to obey a lawful order of the sheriff or health officer, shall be guilty of a misdemeanor upon conviction.

Mississippi law does not regulate the employment of minors over the age of 16 any differently than it regulates the employment of an adult.

C. Employment Of Aliens, Miss. Code Ann. § 71-11-3

Employers in the State of Mississippi must only hire employees who are legal citizens of the United States of America or who are legal aliens. A legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or who was permanently residing in the United States under color of law at the time of employment.

To ensure that Mississippi employers only employ legal citizens of the United States or legal aliens, all employers are required to register with and utilize the E-verify system to verify the federal employment authorization status of all newly hired employees to whom the employer will issue an IRS W-2 form for services. An employer who uses a third-party labor provider to provide employees does not have to e-verify each employee that is placed by a third-party labor provider but we recommend that you do so in order to help ensure that employees are not working illegally.

D. Unemployment Compensation, Miss. Code Ann. § 71-5-1, et seq.

The “Mississippi Employment Security Law” provides for unemployment compensation. The purpose of the law is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide, through the accumulation of reserves, for the payment of compensation to individuals with respect to their unemployment.
Virtually all employers are subject to unemployment-insurance taxes. Specifically, coverage extends to any employer that employed at least one person for some part of a day in each of 20 different calendar weeks during the current or previous calendar year or paid wages of $1,500 or more in any calendar quarter; an employer subject to the Federal Unemployment Tax Act, among other things. Covered employers must make contributions to the Mississippi Unemployment Insurance Trust, from which eligible persons draw benefits.

To qualify for unemployment benefits, claimants must:

- file a claim for unemployment-insurance benefits;
- file weekly certifications for each week they are totally or partially unemployed;
- participate in reemployment services as defined by the Mississippi Department of Employment Security;
- be eligible for unemployment insurance benefits and unemployed for a waiting period of one week during each benefit year;
- be eligible to work, and be available for work.

Claimants are disqualified if they:

- left work without good cause;
- were discharged due to misconduct connected with their work1;
- make a false statement or representation of facts, or willfully fail to disclose a material fact for the purpose of obtaining or increasing benefits;
- fail without good cause to either apply for available suitable work when directed by the Mississippi Department of Employment Security or fail to accept an offer of suitable work;
- are determined by the Mississippi Department of Employment Security to be unemployed due to a stoppage of work that exists because of a labor dispute at the place where they were last employed (under certain circumstances);
- received or are attempting to receive unemployment insurance benefits from another state;
- are receiving or have received a pension or retirement payment that a base-period employer has maintained or contributed to on behalf of the individual; or
- are receiving or have received payment in the form of a backpay award or other compensation allocable to any week, whether by settlement or otherwise.

Student workers, students working for work study, student nurses, interns, part-time employees for nonprofits, casual laborers, and certain paid-on-commission employees are not covered.

1“Misconduct” is considered behavior that shows a willful and wanton disregard for the employer’s interest; deliberate violation of standards of behavior the employer has a right to expect or which shows a disregard for the standards. On the other hand, mere inefficiency, carelessness and negligence, without harmful intent, do not constitute misconduct. Whether or not carelessness and negligence constitute misconduct depends on the degree and/or recurrence. An individual shall not be found guilty of misconduct for the violation of a rule unless the employee knew or should have known of the rule, the rule was lawful and reasonably related to the job environment and performance and the rule was fairly and consistently enforced. The disqualification for misconduct is the same as voluntarily leaving without good cause.
To use drug test results as evidence, employers must maintain a written drug testing policy, and the guidelines outlined in this section of this booklet dealing with drug testing must be followed.

While an employer is not charged directly for the unemployment compensation benefits it pays to its employees, the employer must contribute to the Mississippi Unemployment Insurance Trust 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 Mississippi Unemployment Insurance Trust, 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 possibly appealing the finding to present the facts concerning the termination of the employment.

E. Mississippi Workers’ Compensation Act, Miss. Code Ann. § 71-3-1, et seq.

The Mississippi Workers’ Compensation Act, which the Workers’ Compensation Commission administers, protects employees who are injured or killed by accident arising out of and in the course of employment, or who are disabled by an occupational disease. Injured employees who are eligible to receive workers’ compensation, are paid a specified weekly amount and compensation for all necessary medical bills.

An “employer” includes every person, firm and private corporation, including any public-service corporation but excluding all nonprofit charitable, fraternal, cultural, or religious corporations, that have five or more employees. State agencies, institutes, departments or subdivisions – including counties, municipalities and school districts – may elect to come within the provision of the Act. Employers are required to keep a record of any injury to an employee.

The Act’s scheme is a no-fault system of compensation. That means that an employee who suffers an injury or contracts a disease that is compensable under the Act does not need to prove fault on the part of the employer in order to recover. Pre-existing physical handicaps or diseases, which are shown by medical findings to be a material contributing factor in the results following injury, may reduce the amount an injured employee is paid.

Workers’ compensation is an exclusive remedy, however. This means that employees whose injuries are covered by the Act cannot sue their employers in tort (unless the injuries were the result of an intentional act). While an employee cannot sue an employer in tort, the employee’s right to sue a third party 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.

Civil and criminal penalties exist for failure to secure payment of compensation. An employer may be found guilty of a misdemeanor and punished by a fine of not more than $1,000 or imprisonment for no more than one year, or by both. If the employer is a corporation, the president, secretary, and treasurer may be subject to the same punishment. The same is true where an employer is uninsured and knowingly acts to avoid payment of compensation. Further,
employees may sue their employer if the employer fails to secure payment of compensation as required by the Act, and the Commission may assess a civil penalty not to exceed $10,000.00.

Of course, an employer is permitted to deny a bad-faith claim, controvert a claim, and defend a claim. Defenses to a workers’ compensation claim may include the following:

- the injury occurred while the employee was outside the scope and course of employment;
- the illegal use of drugs, or the use of a valid prescription medication is taken contrary to the prescriber’s instructions or contrary to label warnings, where the drug use is the proximate cause of the injury;
- willful intention to injure oneself or another;
- intoxication, where intoxication is the proximate cause of the injury;
- lack of notice; and
- statute of limitations.

In the event that an employee sustains an injury at work or asserts a work-related injury, the employer shall have the right to administer drug and alcohol testing, or require that the employee submit to drug and alcohol testing. If the employee refuses, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication contrary to the prescriber’s instructions and/or contrary to label warnings, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of a drug or intoxication.

Such an employee is not entitled to workers’ compensation benefits. Additionally, 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.

Unlike many states, Mississippi has not enacted laws to protect an employee that files a workers’ compensation claim from retaliation. Because Mississippi is an employment-at-will state, an employer typically can terminate an employee for any reason or for no reason. The Mississippi Supreme Court has so far declined to create an exception to the employment-at-will doctrine.

F. Medical And Other Examinations

Mississippi does not have a state law on this topic. An employer may require an employee to undergo drug testing, however, as discussed elsewhere in this booklet. Other federal laws, such as the Americans with Disabilities Act or the Genetic Information Non-Discrimination Act, will apply to Mississippi employers with the requisite number of employees.

G. Drug Testing, MISS. CODE ANN. § 71-7-1, et seq.; § 71-3-121, § 71-3-211

In Mississippi, public and private employers may drug and alcohol test their employees pursuant to the referenced Mississippi statutes. What makes this statute unusual for private employers is that it is voluntary and a private employer must “opt in” to the statutory scheme. If an employer voluntarily elects to conduct drug or alcohol testing pursuant to these statutes, it must have in place a written policy that it provides to the employees at least 30 days before
implementing a drug and alcohol testing program. That policy must contain the following information:

- a general statement on the employer’s policy on drug use, which shall identify both the grounds on which an employee may be required to submit to a drug and alcohol test, and the action the employer may take against the employee on the basis of a positive confirmed drug and alcohol test result or other violation of the policy;
- a statement advising the employee of the existence of Title 71, Chapter 7 of the Mississippi Code (i.e., the Chapter on Drug and Alcohol Testing of Employees);
- a general statement concerning confidentiality;
- procedures for how employees can confidentially report the use of prescription or nonprescription medications prior to being tested;
- circumstances under which drug and alcohol testing may occur, and a description of the positions, if any, that will be subject to testing on a reasonable suspicion, neutral selection or other basis;
- the consequences of refusing to submit to a drug and alcohol test;
- information on opportunities for assessment and rehabilitation if any employee has a positive confirmed test result and the employer determines that discipline or discharge is not necessary or appropriate;
- a statement that an employee who receives a positive confirmed drug and alcohol test result may contest the accuracy of that result or explain it;
- a list of all drugs for which the employer might test; and
- a statement regarding any applicable collective bargaining agreement or contract.

The employer must post the notice of the policy in a conspicuous location and make the policy available for inspection during regular business hours.

As explained in the Workers’ Compensation and Unemployment Benefits sections, an employee’s intoxication can result in the denial of benefits under the applicable statutes.

While the information an employer obtains is generally considered confidential, the employer may use that information in an administrative or disciplinary proceeding, or civil litigation where the tested employee’s drug use is relevant.

Employers who elect not to “opt-in” to the Mississippi Drug Testing statutes may still drug test employees but we recommend that you do so via a written policy. We further recommend that all drug testing policies should be reviewed by your legal counsel before implementation.

H. Liability For Disclosure Of Employee Information

Mississippi currently does not have a state law protecting employers who provide a truthful job reference for a former employee. Former employees have sued their former employers for defamation if the former employee believes a job reference is untruthful. For this reason, most employers in Mississippi provide basic “name, rank, and serial number” references for former employees.
I. Labor Organizations, Miss. Code Ann. § 71-1-47

Mississippi law provides that a person’s right to work shall not be denied on account of membership or non-membership in any labor union or labor organization. Thus, you cannot force an applicant or employee to become a member in a union or labor organization as a condition of employment, to remain a member of any union or labor organization as a condition of employment, to abstain or refrain from membership in any union or labor organization as a condition of employment, or to pay any dues, fees or other charges to any kind of union or labor organization.

An applicant or employee who is denied employment or deprived of continuation of employment in violation of this statute, is entitled to recover from the employer and from any other person or entity acting in concert with the employer, actual damages that may have been sustained as a result.

J. Other Restrictions Against Labor Organizations

In the 2014 Mississippi legislative session, three Senate Bills were passed that purport to restrict labor organizations in certain activities. These laws became effective on July 1, 2014:

**Senate Bill 2471** is entitled the “Prohibition Against Employer Intimidation Act.” Generally, this law is designed to make it unlawful for a labor organization to engage in intimidation or other coercive tactics, or conspire with someone else to engage in those tactics, for the purpose of obtaining something of value from a company such as a neutrality agreement, a card check agreement, collective bargaining recognition or other objective of an organized initiative.

**Senate Bill 2653** does not have a specific title but it makes it unlawful for any labor union or agent of a union to singly or in concert with others, to engage in mass picketing or mass demonstrations in such a way as to obstruct or unreasonably interfere with free ingress or egress of any person to and from any place of business or a private residence.

**Senate Bill 2797** is entitled the “Mississippi Employment Fairness Act.” This law purports to regulate the use of labor neutrality agreements in the state of Mississippi. This law gives the State the exclusive authority to require an employer to accept or otherwise agree to any provisions of a labor neutrality agreement, consistent with the National Labor Relations Act.

Another law, passed in the 2013 legislative session, bears mentioning. Miss. Code. Ann. Section 71-1-49 makes it unlawful for an alien, a member of the Communist Party, or anyone who has been convicted of or served any part of a prison term resulting from his conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or conspiracy to commit such crimes, to serve as an officer, director, trustee, member of any executive board, business agent, manager, organizer or other employee (other than an employee performing exclusively clerical or custodial duties) of any labor organization.

We anticipate that these laws will in the future be subject to court challenge either on the grounds that they are unconstitutional as applied to labor organizations or the laws are preempted by prevailing federal law.
K. Smoke-Free Air

Mississippi has not enacted any general statewide ban on smoking in any non-government-owned spaces.² It is unlawful, however, to smoke inside a government building or in a public facility when persons under 18 years of age are engaged in organized athletic events. [29-5-160, et seq. 41-114-1]. It is also unlawful to smoke in childcare facilities, public schools, at school-sponsored events, and college and university classrooms and grounds. [29-5-161] Mississippi does not regulate smoking in private workplaces, including restaurants, although there may be municipal laws that restrict smoking in these facilities. Smoking is permitted, however, in non-instructional areas of state colleges and designated rooms in veterans’ housing.

L. Weapons In The Workplace, MISS. CODE ANN. § 45-9-55

Employers are permitted to 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. An employer may prohibit an employee from transporting or storing a firearm in a parking lot, parking garage or other parking area to which access is restricted or limited through the use of a gate, security station or other means. An employer may prohibit transportation or storage of a weapon in a vehicle that the employer owns or leases to the employee for use in the course of his or her business.

This section does not apply to vehicles owned or leased by an employer and used by the employee in the course of business.

The statute further provides that an employer shall not be liable in a civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession or use of a firearm covered by the section.

Mississippi is an “open carry” weapon state. Employers and business entities, however, may forbid patrons or other non-employed individuals from bringing weapons onto the employer’s premises by posting appropriate signage at the entrance to a building.

M. Cellular Telephones, MISS. CODE ANN. § 63-1-73; § 63-15-4

Mississippi prohibits the use of a wireless communication device by a person authorized to drive under intermediate license or temporary learning or driving permit while the vehicle is in motion or by a person operating a passenger bus with minor passengers on board.

Effective July 1, 2015, Mississippi will prohibit the writing, sending, or reading of text messages, email, or social media sites while driving.

² Mississippi does have a “Mississippi Clean Indoor Air Act,” that prohibits smoking in most government buildings.
III. WAGES

A. Payment Twice Monthly In Certain Occupations, MISS. CODE ANN. § 71-1-35; § 71-1-53; § 37-9-39

In Mississippi, an employer engaged in manufacturing must pay its employees as often as once every two weeks or twice during each calendar month, or on the second and fourth Saturday of each month. The same is true for public service corporations. Individuals employed in a bona fide executive, administrative or professional capacity are not included. Violation of this requirement may result in a misdemeanor, punishable by a fine of not less than $25.00 and not more than $250.00. Each day’s violation constitutes a separate offense [71-1-53]

Salaries or wages paid to any employee of any school shall be paid on a basis determined by the local school board, except in December where salaries or wages must be paid by the last working day. Salaries and wages must be paid, at a minimum, on a monthly basis.

B. Employee Classifications For Overtime and Overtime

Mississippi does not have a state law on employee classifications in the private sector. Mississippi employers must follow the Fair Labor Standards Act regulations to determine whether an employee is considered “exempt” or “non-exempt” for overtime purposes.

Mississippi follows the Fair Labor Standards Act for purposes of determining overtime compensation. Non-exempt employees are entitled to overtime compensation at the rate of 1.5 times their regular hourly rate of pay if they perform over 40 hours of work in any individual workweek.

C. Payment Of Wages upon Termination

Mississippi law does not impose a deadline by which point an employer must provide a former employee with his or her final paycheck. The payment of wages is governed by the Fair Labor Standards Act, which requires an employer to promptly pay an employee upon termination for services rendered.

D. Contracts Forfeiting Wages

Mississippi does not have a state law that prohibits contracts or agreements whereby an employee forfeits wages upon separation. Withholding or forfeiting earned wages, however, may result in a violation of the Fair Labor Standards Act, or may give rise to a breach of contract claim by the departing employee. Employers should proceed with caution when it withholds or forfeits wages of a departing employee.

E. Fines

Mississippi does not have a state law prohibiting assessing fines against employees. The federal Fair Labor Standards Act may prevent an employer from assessing a fine if the fine assessed against the employee impacts the minimum wage for that particular workweek.
IV. RESTRAINTS ON COMPETITION

A. Noncompetition Agreements

Generally, agreements that restrain anyone from exercising a lawful profession, trade or business will be null and void. Nonetheless, 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, these agreements must be geographically limited to a specified region where the employer carries on a similar business and must be reasonably limited in time duration. Mississippi courts will utilize a “rule of reasonableness” to determine if a noncompete agreement is valid rather than a specific state statute.

Mississippi courts disfavor these agreements, but will enforce them under narrow circumstances and where the agreement is reasonable. The employer will bear the burden to show that the agreement is reasonable – especially with regard to the geographic scope and time period restriction. Where an employee is terminated without cause or where an employee is constructively discharged, Courts will be reluctant if not wholly opposed to enforcement of the agreement.

B. Uniform Trade Secrets Act, MISS. CODE ANN. § 75-26-1, et seq.

Mississippi law protects against the improper misappropriation of a trade secret of an employer.

“Misappropriation” means the 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; the disclosure or use of a trade secret of another without express or implied consent.

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique or process that 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 is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

V. DISCRIMINATION AND RETALIATION

A. Prohibited Discrimination and Retaliation Against Employees

1. Age Discrimination

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination, such as the Age Discrimination in Employment Act, apply to Mississippi employers with the requisite number of employees.
2. **Disability Discrimination**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination, such as the Americans with Disabilities Act, apply to Mississippi employers with the requisite number of employees.

3. **Race, Color, Religion, Sex, And National Origin**

Mississippi does not have a specific statute for these categories. All federal laws prohibiting unlawful discrimination, such as Title VII of the Civil Rights Act of 1964, apply to Mississippi employers with the requisite number of employees.

4. **Sexual Orientation**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination, such as Title VII of the Civil Rights Act of 1964, apply to Mississippi employers with the requisite number of employees.

5. **Pregnancy Discrimination**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination, such as the Pregnancy Discrimination Act, apply to Mississippi employers with the requisite number of employees.

6. **Genetic Information And Privacy**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination, such as the Genetic Information Non-Discrimination Act, apply to Mississippi employers with the requisite number of employees.

7. **State Enforcement Agency**

Mississippi does not have a State Department of Labor nor does it have a state investigative and enforcement agency for workplace issues. Mississippi employees who feel they have been discriminated or retaliated against typically first file a charge of discrimination with the Equal Employment Opportunity Commission.

B. **Prohibited Discrimination Against Employees For Their Status or Activities**

1. **Garnishments And Wage Deductions**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful garnishments or unlawful wage deductions, such as Title III of the Consumer Credit Protection Act and the Fair Labor Standards Act, apply to Mississippi employers with the requisite number of employees.
2. **Political Activities And Voting Leave, MISS. CODE ANN. § 23-15-871**

   It is unlawful for an employer to direct or coerce, directly or indirectly, any employee to vote or not to vote for any particular person or group of persons in any election, or to discharge or to threaten to discharge any employee, or to increase or decrease the salary or wages of any employee, or otherwise promote or demote him, because of his vote or failure to vote for any particular candidate or group of candidates.

   Additionally, it is unlawful for any employer, or employee having the authority to employ or discharge other employees, to make any statement public or private, or to give out or circulate any report or statement, calculated to intimidate or coerce or otherwise influence any employee as to his vote, and when any such statement has obtained circulation, it is your duty to publicly repudiate it.

   An employee cannot be requested, directed or permitted to canvass for or against any candidate or render any other services for or against any candidate or group of candidates, during any of the hours within which the salary of the employee as an employee is being paid or agreed to be paid.

   An employee is not allowed to use any vacation or leave of absence at the expense of the employer to render any service or services for or against any candidate or group of candidates, or to take any active part in any election campaign whatsoever. Nor shall any employee at the expense, in whole or in part, of any employer take any part whatever in any election campaign, except the necessary time to cast his vote.


   All qualified persons are obligated to serve as a juror when called, unless the service is excused by the Court.

   It is unlawful for any employer or any other person to persuade or attempt to persuade any juror to avoid jury service; to intimidate or to threaten any juror in that respect; or to remove or otherwise subject an employee to adverse employment action as a result of jury service if the employee notifies his or her employer that he or she has been summoned to serve as a juror within a reasonable period of time after receipt of a summons.

   It is also unlawful for an employer to require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury.

   Any violation of these laws shall be deemed an interference with the administration of justice and a contempt of court and punishable as such.

   A court shall automatically postpone and reschedule the service of a summoned juror employed by an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period.
4. **Smoking And Use Of Tobacco Products, Miss. Code Ann. § 71-7-33**

An employer may not make it a condition of employment for a prospective or current employee to abstain from smoking or using tobacco products during non-working hours, as long as the employee complies with laws or policies that regulate workplace smoking during working hours.

5. **Whistleblower Protection**

Mississippi does not have a specific whistleblower protection statute. All federal laws that prohibit discrimination or retaliation against a whistleblower would apply, such as the False Claims Act. Additionally, Mississippi courts have recognized a common law cause of action that protects employees for reporting the illegal acts of their employer or fellow employees.

6. **Environmental Violations**

Mississippi does not have a specific statute. All federal laws prohibiting unlawful discrimination or retaliation for reporting environmental violations, such as provisions under the Occupational Safety and Health Administration, apply to Mississippi employers.


Employers may not deprive a former U.S. armed forces member or current reserve member of employment or discriminate in any condition of employment based on military service. State law provides reemployment rights to employees who take military leave and complete their duty or training as long as they are still qualified. Both protections apply only if the employee is discharged or released under conditions other than dishonorable. The leave does not have to be paid.

Public officials and employees receive up to 15 days of military leave for training purposes a year.

8. **Breastfeeding, Miss. Code Ann. § 71-5-55**

No employer shall prohibit an employee from expressing breast milk during any meal period or other break provided by the employer.

Note that all employers, regardless of size, are covered by this prohibition. The statute does not set for a specific remedy provision.


State law provides emergency services/disaster leave for public employees working for local or state governments in designated disaster areas. Public employees may be granted discretionary administrative leave with pay for a time not to exceed 20 days in a 12 month period. While on leave, such employees are not considered to be employees for purposes of workers’ compensation claims for injuries or illnesses incurred.
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 than defend one.

For more information, contact any attorney in the Gulfport, Mississippi Office of Fisher & Phillips, LLP, at 228.822.1440 or visit our website at www.laborlawyers.com.