

HIRING REMOTE EMPLOYEES IN LOUISIANA? THE 4 MAIN LAWS YOU NEED TO KNOW

Insights
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With the rise in remote work, employers are finding themselves subject to a new set of laws based on each employee's residence – and those finding themselves with workers in Louisiana are no exception. Our state has long held onto its civilian legal tradition that distinguishes it from the 49 other states' common law backgrounds. While modernity has weakened some of the differences as Louisiana lawmakers have adopted several uniform acts governing items from trade secrets to electronic signatures, our state remains home to some unusual employment laws. And it remains fierce in applying those laws to employees located here, voiding choice-of-law and -forum provisions in employment contracts that apply non-Louisiana law or require non-Louisiana forums for disputes. What follows is a quick guide to the four most important Louisiana laws regulating employment that either are not present or differ from analogous federal employment laws.

1. Wage and Hour Laws

Unlike many states, Louisiana has no equivalent to the Fair Labor Standards Act. It also has no law setting a minimum wage higher than the federal level and prohibits local governments from establishing such provisions. But it does have several laws related to wage payment employers need to follow.

Wage Notification and Payday Law

Louisiana has a wage notification and payday law. The law requires an employer at the time of hire of an

Related People



Michelle I. Anderson

Partner

504.529.3839



Edward F. Harold

Regional Managing Partner

504.592.3801

employee to notify the employee what wages they will be paid, the method in which they will be paid, and the frequency of payment along with any subsequent changes thereto. With regard to the frequency of payment, it requires employers employing 10 or more employees engaged in manufacturing, boring for oil, or in mining operations must pay employees no less than twice each calendar month. Any employer (except manufacturing of any kind or those engaged in boring for oil and in mining operations) that fails to designate paydays must pay nonexempt employees on the first and 16th days of the month or as near as is practicable to those days. One federal court has noted, however, that the law does not create a private right of action for enforcement. Instead, violators are subject to fines of between \$25 and \$250.

Earned Wage Protections

Louisiana has several laws prohibiting employers from taking any portion of an employee's earned wages. First, it is unlawful for an employer to fine an employee. Any rule whereby an employee is required to pay a financial penalty for violation of a work rule is void. Second, employers are not allowed to charge an employee for the cost of a pre-employment drug test, medical examination, or fingerprinting. An employer can seek reimbursement for those costs if an employee quits within 90 days of his date of hire. We recommend an employer who wants to take advantage of this provision have a written agreement with the employee allowing it to be withheld from the final paycheck. Third, Louisiana prohibits any agreement whereby an employee is required to forfeit any of their earned wages.

Payout at Termination

Louisiana's payment on termination statute requires an employer to pay an employee who resigns on the next regular pay date for the pay cycle in which the employee resigned or in 15 days, whichever comes first. Payment may be made by mail or in the manner it was customarily made during the employment relationship. If the employer initiates the employee's separation, then the employer must pay the final wages on the next regular pay date regardless of whether the employee ordinarily would have received their wages for that pay cycle on that date, or within 15 days, whichever is sooner. Failure to pay timely

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can result in an employer receiving a penalty of 90 days of the employee's wages payable to the employee as well as the employee's attorney's fees.

The law further expressly requires an employer pay for unused vacation (or paid time off that can be used for vacation) upon discharge. It is nevertheless okay to have a paid-time-off policy in which an employee while employed loses the time off if not used by a certain date.

It is not acceptable for employers to say that employees' accrued vacation is forfeited upon termination. This must be paid under the same terms as final wages discussed above, and is subject to the same potential for penalty wages and attorney's fees, if not timely paid.

Bonuses

Finally, while Louisiana has no statutes directly regulating employee bonuses, the confluence of Louisiana's wage payment and non-forfeiture provisions has resulted in significant litigation over whether bonuses are owed at the time of discharge. It behooves any employer with a bonus program to have it reviewed for potential litigation triggers. Poorly written bonus plans have resulted in employers paying significant bonus amounts to employees whom the employer did not intend to provide a bonus.

2. Restrictive Covenants

Louisiana's statute governing restrictive covenants differs significantly from the standard common law principles employed in many jurisdictions. Employees may only be restricted from competing for a period of two years from date of separation and only in places where the employer carries on its business. Further, the agreement must identify by name the parishes or counties in which it operates.

While courts are allowed to strike non-compliant provisions, they are not allowed to reform the language of a restrictive covenant. Small deviations from the statutory requirements usually result in the covenants being unenforceable. The statute does not distinguish between non-competition agreements and customer non-solicitation agreements and both forms must meet all the limitations.

Courts have ruled that Louisiana's restrictive covenants law do not apply to agreements not to solicit employees. As such, non-solicitation-of-employee agreements do not need to comply with the law's strictures.

3. Equal Employment Opportunity Laws

For the most part, Louisiana's employment discrimination laws hew closely to the requirements of federal laws. Thus, complying with Title VII, the ADA, and the ADEA generally results in compliance with the analogous Louisiana provisions. There are a few exceptions to keep in mind.

Pregnancy Discrimination and Accommodation

In 2021, the Louisiana Legislature amended Louisiana's pregnancy discrimination laws to require that employers accommodate the pregnancy related restrictions of employees. This provision applies only to employers with 25 employees located in Louisiana, so it should not apply to a company with fewer remote workers located here. But if an employer is covered, the accommodation requirements appear broad and may require more than what would be considered a reasonable accommodation under the ADA.

Hairstyle Discrimination

In 2022, Louisiana passed its version of the CROWN Act prohibiting discrimination on account of natural, protective, or cultural hairstyles. The act defines these styles as afros, dreadlocks, twists, locs, braids, cornrow braids, Bantu knots, curls, and hair styled to protect hair texture.

Miscellaneous Provisions

Louisiana also prohibits discrimination in employment because an individual has sickle cell trait. While such discrimination might also be prohibited based on GINA, or possibly the ADA, it is explicit in Louisiana. The state also prohibits discrimination based on status as a tobacco user or non-user or of a veteran who takes time away from work to attend medical appointments necessary to meet the requirements to receive veterans' benefits

4. Employee Leave Laws

Louisiana has no state equivalent to the Family and Medical Leave Act (FMLA). But it does have some statutes requiring employers provide paid or unpaid leave in specific situations.

Jury Duty Leave

Louisiana requires employers to allow employees time off to serve on jury duty. One day of such service must be without loss of wages, sick, emergency, or personal leave. If an employee's service extends beyond one day, then the employee may be required to use earned paid time off during service.

Bone Marrow Donation

The state requires employers with 20 or more employees to provide a paid leave of up to 40 hours for an employee to serve as a bone marrow donor. The employer has the right to require the employee provide proof from a physician of the procedure.

Pregnancy Leave

Louisiana's pregnancy discrimination statute requires employers with 25 or more employees in Louisiana to provide six weeks of unpaid leave to an employee for a normal pregnancy and childbirth. If an employee is disabled on account of childbirth, pregnancy, or a related medical condition, covered employers must provide up to four months of unpaid leave to those employees. There is no length of service or hours of work requirement for an employee to be entitled to this leave. This is a pregnancy-related disability leave, and does not cover time off for bonding with a newborn child. This leave can run concurrently with time taken under the federal FMLA.

Emergency Response Leave

Louisiana has an Emergency Response Leave. Employees who serve as 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 firefighters, auxiliary law enforcement officers and members, or the Civil Air Patrol) are entitled to unpaid leave when absent or late 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. An employee who becomes disabled while serving as a first responder may seek a reasonable accommodation in accordance with state law.

School Activities Leave

Louisiana provides for school and parental activities leave of up to 16 hours in a 12-month period. However, this statute states that employers "may grant" the leave and it is not a mandatory benefit.

Conclusion

Louisiana's legendary culture, music, and food make it a wonderful place to reside. The opportunity to work remotely from Louisiana has been a boon to those of us raised and immersed in the culture. Understanding Louisiana's unique employment laws and avoiding the pitfalls when hiring a remote worker here requires some planning. But that planning will allow employers to match their expectations to the experience.

We will monitor developments related to these laws and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information sent directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or [any attorney in our New Orleans office](#).