

HR State Law Customizing Guide

The HR policy manual has been written for **private employers** and to comply with **federal law**. There may be (and in many cases are) different requirements for government employers. The manual also contains common policies adopted by employers that may go beyond those required by federal law (such as break and leave policies). **NO STATE LAW ISSUES HAVE BEEN ADDRESSED.**

Employment law differs considerably from state to state. **Therefore, all policies should be reviewed by legal counsel prior to their implementation to ensure that they meet all federal, state, and local requirements.** The amount of state law customization required depends upon the law in a particular jurisdiction. In some states, such as California, Wisconsin, and Oregon, considerable customizing is necessary. In others, such as Utah, Idaho and Texas minimal additions will be required.

The following customizing guide seeks to highlight some of the common areas where state law must be considered and integrated into the manual and employee handbook. **The guide is not exhaustive but may be used as a starting point for HR managers.**

2000 GENERAL MANAGEMENT PRACTICES

2010 AMERICANS WITH DISABILITIES ACT (ADA)

Some states have reduced the number of employees (below the federally required 15) that trigger prohibitions against discrimination on the basis of disability. A few also prohibit discrimination against disabled employees who use or are accompanied by guide dogs.

Some states have passed laws legalizing marijuana use, which may include use for medical purposes. The laws of the state in which you are operating should be carefully examined for guidance to determine if this requires an employer to accommodate the use of medical marijuana in the workplace.

2030 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Some states have expanded the number of “protected classes” beyond those required by federal laws. Examples include: prohibitions against discrimination based on marital status, arrest records, sexual orientation, appearance, family responsibility, unemployment, and genetic characteristics. In some instances, the number of employees that trigger such protections have also been reduced (as with the ADA above). Provisions involving pregnancy and breastfeeding have also been adopted by a few states.

Other “expansions” of EEO coverage involve age bias (e.g., protecting anyone 18 or over), discrimination against victims of domestic violence, and discrimination against employees who engage in off-duty lawful activities (commonly known as Smoker’s Rights laws).

3000 EMPLOYMENT STATUS & HUMAN RESOURCE RECORDS

3030 HUMAN RESOURCE FILES

The states differ as to whether employees must have access to their human resource files. Some are silent on the matter, while others require access. Those that require access generally also have established guidelines as to how, when and under what circumstances an employee may review his/her records. Some limit the types of records that may be reviewed, excluding highly sensitive information such as references or records relating to criminal investigations. Employees have the right to rebut the information in some jurisdictions.

Additionally, some states restrict employers’ collection or use of employees’ social security numbers. Many state legislatures have passed legislation geared at protecting confidential information in the workplace as a safeguard to protect employees from identify theft.

4000 HIRING ISSUES

4010 EMPLOYMENT OF MINORS

Many states exceed the requirements established in the federal Fair Labor Standards Act and have established stricter rules regarding the employment of minors. Common differences include: imposing more limited hours of work requirements and additional restrictions regarding the types of work performed. Significant administration requirements (e.g., work permits, posters) may also be required.

4020 HIRING PROCEDURES

Applicant background checks can involve extremely sensitive issues, therefore care should be taken that they are in compliance with all legal requirements. Some states have adopted credit or investigative check requirements that exceed those required by federal law (i.e., Fair Credit Reporting Act and Consumer Credit Reform Act). Requirements regarding criminal background investigations have also been imposed. Other hiring related legislation in some states involves employer payments for bonds or photographs that may be required for employment.

4040 IMMIGRATION LAW COMPLIANCE

Some states have enacted law with additional employer restrictions or obligations on immigration/employee eligibility verification that goes beyond federal law.

5000 EMPLOYMENT PRACTICES

5050 MEDICAL EXAMINATIONS AND DRUG TESTING

Some states have enacted legislation requiring employers to pay for the cost of pre-employment physicals, restricted HIV testing, and/or established confidentiality and disclosure requirements. Considerable state legislation also exists regarding workplace drug testing and legalization of marijuana. This is a complex and sensitive area. Employers should work with their attorneys to ensure their compliance with all legal requirements.

5110 TERMINATION PROCEDURES

States have very different requirements as to when wages must be paid upon termination. Some differentiate between voluntary and involuntary termination. Penalties for late payments are often severe so employers should ensure their paychecks are timely.

6000 EMPLOYEE RESPONSIBILITIES

6010 APPEARANCE AND GROOMING

While employers have considerable discretion in establishing company dress code policies as long as they are not discriminatory, some states have legislation that restricts employers' dress code policies (e.g., prohibiting employees from wearing pants based on their sex). Other issues include payment for employee uniforms and cleaning of uniforms.

6030 COMMUNICATION AND INFORMATION SYSTEMS

While this area of the law continues to evolve, some states have enacted legislation regarding employer monitoring of employee communications (e.g., e-mail, voice-mail, computer records) in the workplace. Legislation regarding protection of employee information (e.g., Social Security numbers is also becoming common).

6060 DRUGS AND ALCOHOL

The use of marijuana remains illegal under the Federal Controlled Substances Act despite continued attempts to pass national medical marijuana legislation. Although federal law prohibits marijuana use, states are not required to enforce federal law and are not precluded from passing their own laws to the contrary. The laws of the state in which you are operating should be carefully examined for guidance.

6070 EMPLOYEE CONDUCT AND WORK RULES

Workplace violence continues to be of concern to most employers. Many organizations have adopted policies banning guns and other weapons on company property. However, state law differs widely regarding employees' weapons rights. You may want to contact your attorney for additional guidance.

6100 SAFETY

In addition to the federal Occupational Safety and Health Act (OSHA), some employers must comply with "state OSHA's" that may overlap or go beyond federal requirements.

6110 SMOKING AND OTHER TOBACCO USE

Most states have adopted extensive legislation regarding smoking in public places and in the workplace.

6115 SOCIAL MEDIA

Regulation of employer access to social media was signed into law for three states in 2012 and we can most likely expect to see other states consider legislation following suit.

7000 COMPENSATION & BENEFITS

7016 DOMESTIC PARTNERSHIP BENEFITS 7020 INSURANCE AND RETIREMENT BENEFITS

Under the Defense of Marriage Act (DOMA), recognition of same-sex couples (whether united in a civil union or marriage) is barred under federal law. However, benefits that are not covered by federal law, whether conferred specifically by state law, may be subject to a patchwork of state laws providing benefits to same-sex (or other unmarried) partners. These could be benefits under certain insurance plans or solely by internal policy, such as funeral leave or tuition assistance.

Some states have initiated their own Health Benefit Mandates. As healthcare reform mandates are implemented, there may be more legislation introduced on the state level to supplement the federal healthcare mandates.

7030 OVERTIME

Some states have adopted overtime requirements that exceed those required under the federal Fair Labor Standards Act (which generally requires overtime payments to nonexempt employees who work more than 40 hours in a workweek). A few states have different requirements in selected industries only.

7040 REST AND LUNCH BREAKS

Most states have enacted legislation regulating rest and lunch breaks in the workplace. A few have not addressed the issue.

7050 PAYROLL PROCEDURES

State law imposes requirements as to frequency of wage payment and direct deposit authorization. There are also strict requirements/prohibitions regarding deductions from an employee's paycheck. Employers should exercise caution before deducting or offsetting against an employee's wages. Additionally, a few states have legislation involving "reporting pay," requiring an employer, in some instances, to pay employees who report to work as scheduled only to find that no work is available.

8000 TIME OFF

8010 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Some states have enacted their own family and medical leave laws, providing additional employee rights beyond that required under the FMLA. Some have expanded eligibility requirements (e.g., requiring such leave at organizations of fewer than 50 employees) or increased the types and nature of leave available (e.g., expanding pregnancy leave). A few states require leave for school or daycare activities.

8030 HOLIDAYS

Private employers are generally free to formulate their own nondiscriminatory policies relating to holidays, holiday pay, and eligibility for holidays.

8000 TIME OFF (continued)

8040 JURY, WITNESS AND VOTING LEAVE

As with federal law, states prohibit employers from discriminating against employees for taking time off for jury duty. A few also require that the leave be paid. Some states also impose voting leave requirements and in some circumstances require that the leave be paid.

8050 MILITARY LEAVE

Most states do not impose private sector military leave requirements that exceed federal legislation. However, military leave laws are complex and employers may want to seek help in addressing this issue. Some states now require leave for family members to spend time with relatives on military leave.

8068 SCHOOL/VOLUNTEER LEAVE

Some states have enacted legislation requiring employers to grant time off for employees to attend school-related activities, or participate in volunteer programs. Employers should research their state's legal requirements with reference to this area.

8070 SICK LEAVE

States generally do not address sick leave issues, allowing employers to implement their own sick leave programs as long as such programs are nondiscriminatory. However, a few impose some restrictions on employers who provide such leave (e.g., requiring employers to permit an employee to use sick leave for a sick child or spouse). Additionally, some employers may be required by state law to accrue paid sick leave days or have laws regarding maternity leave that go beyond the federal law.

8080 VACATIONS

Employers in most states are generally free to formulate their own nondiscriminatory policies relating to vacations, vacation pay, and eligibility for paid vacations. However, some states require payment for unused, accrued vacation at termination.

9000 EXPENSES AND REIMBURSEMENT

9030 CAR EXPENSES

The U.S. Department of Labor and the U.S. Department of Transportation have partnered with OSHA in its distracted-driving initiative, making it clear that lawmakers and government agencies are focused on ending distracted driving. Many states have already enacted bans on texting while driving, and enacted other restrictions regarding use of cell phones while driving.

9040 EDUCATION AND TRAINING

A handful of states have laws requiring employers to train employees to identify and prevent harassment. These states typically have specific requirements about what to include in training materials, how soon after hire or promotion employees must be trained, and how frequently employees must receive "refresher" training.