

EMPLOYMENT: NORTH AMERICA

USA - District of Columbia



Employment: North America

Quick reference guide enabling side-by-side comparison of key considerations, emerging issues and reform proposal for each state; the employment relationship; hiring; wage and hour laws; discrimination, harassment and family leave; privacy in the workplace; trade secrets and restrictive covenants; labour relations; and discipline and termination procedures.

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Table of contents

STATE SNAPSHOT

Key considerations
Emerging issues
Proposals for reform

EMPLOYMENT RELATIONSHIP

State-specific laws
Misclassification
Contracts

HIRING

Advertising
Background checks

WAGE AND HOUR

Pay
Hours and overtime
Record keeping

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

PRIVACY IN THE WORKPLACE

Privacy and monitoring
Bring your own device
Off-duty
Gun rights

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property
Restrictive covenants
Non-compete

LABOR RELATIONS

Right to work

Unions and layoffs

DISCIPLINE AND TERMINATION

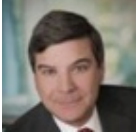
State procedures

At-will or notice

Final paychecks

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USA - District of Columbia



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STATE SNAPSHOT

Key considerations

Which issues would you most highlight to someone new to your state?

American law provides workers with a variety of legal protections from a variety of sources. D.C. law affords greater protections to workers than federal law alone, and recent additions to D.C.'s legal landscape suggest a continued push in that direction. For instance, the DC Human Rights Act (DCHRA) protects more groups than federal civil rights law and was recently updated to be even more expansive, D.C.'s new \$15.00 minimum wage is well above the federal minimum, and, as of the summer of 2020, D.C. is beginning to offer generous paid family leave.

Law stated - 01 July 2022

What do you consider unique to those doing business in your state?

D.C. stands out for its legal protections for workers. In its 2018 report, Oxfam America listed D.C. first on its list of Best States to Work, citing D.C.'s high minimum wage, significant worker protections, and ability of workers to organize. (https://s3.amazonaws.com/oxfam-us/www/static/media/files/Best_States_to_Work_Index.pdf)

Law stated - 01 July 2022

Is there any general advice you would give in the labor/employment area?

Employers should familiarize themselves with the significant worker protections afforded by D.C. law. They should also keep in mind that laws can vary significantly in the region around D.C. For instance, employment laws in Virginia, just across the Potomac River, are quite different from those in D.C.

Law stated - 01 July 2022

Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

Recent D.C. legislation indicates a continued move in favor of employees' rights. For instance, as of July 2020, D.C. will begin offering paid family leave under the Universal Paid Leave Act, which provides employees with up to eight weeks of paid leave to care for a new child, six weeks of paid leave to care for a sick family member, and two weeks of paid leave for a personal illness.

Additionally, beginning July 1, 2020, the minimum wage will increase to \$15.00 an hour, reflecting a series of increases pursuant to D.C. Code § 32-1003.

Law stated - 01 July 2022

Proposals for reform

Are there any noteworthy proposals for reform in your state?

Marijuana: In 2019, D.C. council members heard two bills related to marijuana testing of employees. While possession

and recreational use are legal in D.C., this has not affected drug tests in the employment context. Under the Prohibition of Marijuana Testing Act of 2019, marijuana testing would be eliminated as a condition of employment. Under the Medical Marijuana Program Patient Protection Amendment act of 2019, the DC government would be prohibited from discriminating from applicants and employees in the D.C. medical marijuana program.

Minimum Wage: Beginning July 1, 2020, the minimum wage will increase to \$15.00 an hour. After the July 2020 increase, the minimum wage will be adjusted each year based on cost-of-living changes.

Non-Compete Agreements: In 2019, council members introduced a bill (the Ban on Non-Compete Agreements Amendment Act of 2019) that would prohibit the use of non-compete provisions in employment contracts and workplace policies.

Law stated - 01 July 2022

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

Title 32 of the D.C. Code covers Labor and includes the laws on wage payment, minimum wage, and overtime. The DC Human Rights Act (DCHRA), D.C. Code §§ 2-1401.01 to 2-1411.06, also governs the employment relationship.

Law stated - 01 July 2022

Who do these cover, including categories of workers?

D.C.'s wage payment, minimum wage, and overtime apply to all D.C. employers. Some employees are exempt from minimum wage and overtime, including executive, administrative, and professional employees.

The DCHRA also applies to all D.C. employers and prohibits discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

Law stated - 01 July 2022

Misclassification

Are there state-specific rules regarding employee/contractor misclassification?

D.C. does not have a set statutory definition of an independent contractor. Instead, common law tests are applied, with the outcome depending on the facts of the situation. Courts have emphasized the following four factors in determining whether an individual is an employee or independent contractor: "(1) the selection and engagement of the individual hired, (2) the payment of wages, (3) the power of the one who hires over the other whom he has hired, and (4) whether the service performed by the person hired is a part of the regular business of the one who hired." No single factor is determinative, and "the decisive test is whether the employer has the right to control and direct the [individual] in the performance of his work and the manner in which the work is to be done." Courts look to the actual relationship between the parties as well as the language of any agreements between them. *Hickey v. Bomers*, 28 A.3d 1119, 1123 (D.C. 2011).

In the construction industry, D.C.'s Workplace Fraud Act requires employers to classify workers as employees, rather than independent contractors, in most circumstances. To classify a worker as an independent contractor, the employer must demonstrate that the worker is either "exempt" or meets the statutory exemption. A worker is "exempt" if they perform services in a personal capacity, free from direction and control over the means and manner of providing the services; furnish the necessary tools and equipment; and operate a business considered inseparable from the individual for tax purposes. D.C. Code § 32-1331.01. The statute also allows an employer to classify a worker as an independent contractor if the worker is free from the employer's direction and control over the performance of services, is customarily engaged in an independently established trade or occupation, and that their work is outside of the usual course of business of the employer. D.C. Code § 32-1331.04.

Law stated - 01 July 2022

Contracts

Must an employment contract be in writing?

Not necessarily, though D.C. courts will not enforce employment contracts that violate the statute of frauds (i.e., oral employment contracts that cannot be performed in one year).

Law stated - 01 July 2022

Are any terms implied into employment contracts?

D.C. implies a duty of good faith and fair dealing into all contracts, meaning "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." A claim for breach of this duty cannot be sustained by an at-will employee because there is no contract to provide the basis for the duty. *Paul v. Howard Univ.*, 754 A.2d 297, 310 (D.C. 2000).

Law stated - 01 July 2022

Are mandatory arbitration agreements enforceable?

In the employment context, yes, though both parties must have "the distinct intention to be bound." Therefore, mere continuation of one's job after the employer issues an arbitration policy is not sufficient to indicate mutual assent, even where the employer requests signature of the agreement and states continued employment will evidence an intent to be bound. *Jin v. Parsons Corp.*, 366 F. Supp. 3d 104, 107 (D.D.C. 2019)

Law stated - 01 July 2022

How can employers make changes to existing employment agreements?

An employer may prospectively modify the terms of at-will employment, and an employee's continued service amounts to acceptance of the modification. See *Kauffman v. Int'l Bhd. of Teamsters*, 950 A.2d 44, 47 (D.C. 2008). In other employment circumstances, the parties may agree to contractual terms that set if or how the agreement may be modified.

Law stated - 01 July 2022

HIRING

Advertising

What are the requirements relating to advertising open positions?

An employer may not publish an employment advertisement that indicates a preference or limitation based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, genetic information, disability, political affiliation, status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking, or credit information of any individual.

Law stated - 01 July 2022

Background checks

(a) Criminal records and arrests

Employers may not inquire about or require disclosure of an arrest or criminal accusation against an applicant that is not pending or did not result in conviction. An employer may not inquire about or require disclosure of a criminal conviction until after making a conditional offer of employment. Even then, the employer may only withdraw the conditional offer for a legitimate business reason. D.C. Code § 32-1342.

Background checks are mandatory in certain fields. For instance, certain health care facilities and childcare providers as well as the Department of Corrections must conduct criminal background checks of applicants or employees. D.C. Code Ann. §§ 4-1501.04, 24-211.41, 44-552.

Law stated - 01 July 2022

(b) Medical history

Employers may make pre-employment inquiries into the medical history of applicants if based on a business necessity. D.C. Mun. Regs. tit. 4, § 514. Inquiries necessary for compliance with affirmative action requirements, that are remedial action to correct the effects of past discrimination, or that are voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for a protected group are also legal. D.C. Mun. Regs. tit. 4, § 503. Employers may not require or request a genetic test as a condition of employment. D.C. Code § 2-1402.11; D.C. Mun. Regs. tit. 4, § 509.

Law stated - 01 July 2022

(c) Drug screening

An employer may only test a prospective employee for marijuana use after a conditional offer of employment has been extended, unless otherwise required by law. D.C. Code § 32-931.

Law stated - 01 July 2022

(d) Credit checks

Employers may not discriminate against applicants based on their credit history by requiring or requesting the submission of credit information or using or referring to credit information. D.C. Code § 2-1402.11.

Law stated - 01 July 2022

(e) Immigration status

No applicable law.

Law stated - 01 July 2022

(f) Social media

No applicable law.

Law stated - 01 July 2022

(g) Other

The background check protections found in D.C. law are in addition to the federal protections found in laws like the Fair Credit Reporting Act ("FCRA").

Law stated - 01 July 2022

WAGE AND HOUR

Pay

What are the main sources of wage and hour laws in your state?

Labor laws are found in Title 32 of the D.C. Code, which includes laws governing: leave, minimum wage, payment and collection of wages, wage transparency, and workers' compensation. The DCHRA, which includes an equal pay provision, is found in Title 2, Chapter 14 of the Code.

Law stated - 01 July 2022

What is the minimum hourly wage?

As of July 1, 2019, the minimum hourly wage required to be paid to an employee by an employer is \$14.00. On July 1, 2020, the minimum hourly wage will increase to \$15.00.

Law stated - 01 July 2022

What are the rules applicable to final pay and deductions from wages?

An employee who is discharged or who resigns or quits must be paid by the next working day following the termination,

unless a collective bargaining agreement states otherwise, the employee handled the employer's money (in which case the employer has four days from the termination date to pay the employee's wages), or there was no written employment contract for other 30 days (in which case the employer must pay wages on the next regular payday or within seven days of the termination date). See D.C. Code § 32-1303.

If an employee makes at least the minimum wage, an employer may make deductions for housing costs and up to two meals a day. An employer may not deduct from wages if doing so would bring the employee's pay below the minimum wage.

Law stated - 01 July 2022

Hours and overtime

What are the requirements for meal and rest breaks?

D.C. does not require meal or rest breaks.

Law stated - 01 July 2022

What are the maximum hour rules?

No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than one-and-a-half times the regular rate at which the employee is employed.

Law stated - 01 July 2022

How should overtime be calculated?

Overtime wages must be at least one-and-a-half times the employee's regular rate.

Law stated - 01 July 2022

What exemptions are there from overtime?

D.C.'s overtime provisions do not apply to employees:

- employed in a bona fide executive, administrative, or professional capacity;
- employed in the capacity of outside salesman;
- engaged in the delivery of newspapers to consumer's homes;
- who are seamen;
- who are railroad employees;
- who are salesmen, partsmen, or mechanics primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a non-manufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers;
- employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees;
- employed as a private household worker who lives on the premises of the employer; and
- employed as a companion for the aged or infirm.

Record keeping

What payroll and payment records must be maintained?

Employers must keep records of the “precise time worked” each day and workweek by non-exempt employees. For at least three years, an employer must keep wage records that include an employee’s information, the rate and amount paid each pay period to each employee, the precise times worked each day and workweek by each employee, as well as the basis on which wages are paid, total gross and net wages paid each pay period with any deductions listed, and the date of payment and pay period covered by the payment. D.C. Code § 32-1008(a); D.C. Mun. Regs. tit. 7, § 911.1.

Wage statements must be itemized and indicate the wage payment date; the gross wages paid, with regular and overtime earnings separated; net wages paid; itemized deductions and additions to wages; the pay rate; the hours worked during the pay period; the employee’s tip declaration form; and, if applicable, commission and non-commission earnings.

Law stated - 01 July 2022

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

What is the state law in relation to:

Protected categories

(a) Age?

Individuals 18 years and older are protected by the D.C. Human Rights Act (“DCHRA”). See D.C. Code. § 2-1401.02.

Law stated - 01 July 2022

(b) Race?

Race is a protected category under the DCHRA. § 2-1401.01.

Law stated - 01 July 2022

(c) Disability?

The DCHRA protects individuals with a disability, defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such impairment or being regarded as having such impairment.

Law stated - 01 July 2022

(d) Gender?

Gender identity and expression—meaning gender-related identity, appearance, expression, or behaviour of an individual, regardless of their assigned sex at birth—are protected categories under the HCRA.

Law stated - 01 July 2022

(e) Sexual orientation?

Male or female homosexuality, heterosexuality and bisexuality, by preference or practice, are protected under the DCHRA.

Law stated - 01 July 2022

(f) Religion?

Religion is a protected category under the DCHRA.

Law stated - 01 July 2022

(g) Medical?

Employers may not discriminate on the basis of genetic information or disability.

Law stated - 01 July 2022

(h) Other?

The scope of the DCHRA is broad and prohibits discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

Law stated - 01 July 2022

Harassment

What is the state law in relation to harassment?

Harassment is prohibited on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

Quid pro quo and hostile work environment sexual harassment are prohibited under the DCHRA. D.C. has adopted the federal regulations regarding sex discrimination, including the prohibition of same-sex sexual harassment as well as potential vicarious liability for employers for non-employee sexual harassment.

A 2017 Mayor's Order clarified the city's intolerance for sexual harassment in the workplace. See <https://mayor.dc.gov/sexualharassment>.

Law stated - 01 July 2022

Family and medical leave

What is the state law in relation to family and medical leave?

Employers with at least 20 employees for at least 20 calendar workweeks are covered by the District of Columbia Family and Medical Leave Act (DCFMLA). Employees are entitled to 16 weeks of family leave during any 24-month period for the birth or adoption of a child or to care for a family member with a serious health condition. Employees who become unable to perform their job due to a serious health condition are entitled to up to 16 weeks of medical leave during any 24-month period.

As of July 2020, D.C. will begin offering paid family leave under the Universal Paid Leave Act, which provides employees with up to eight weeks of paid leave to care for a new child, six weeks of paid leave to care for a sick family member, and two weeks of paid leave for a personal illness.

Law stated - 01 July 2022

PRIVACY IN THE WORKPLACE

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

Employers may not "intercept" wire or oral communications, including Internet communications, of employees. D.C. Code § 23-542. However, D.C. is a single-party consent jurisdiction: one party to a conversation may record it or give consent for its recording, unless there is criminal intent or intent to commit any other injurious act.

Employers also may not administer or use the results of lie detector tests in connection with employment. D.C. Code § 32-902.

Law stated - 01 July 2022

Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

No.

Law stated - 01 July 2022

Bring your own device

What is the latest position in relation to bring your own device?

Bring Your Own Device (BYOD) policies are common in D.C., but there is no law regulating their use.

Law stated - 01 July 2022

Off-duty

To what extent can employers regulate off-duty conduct?

Employers may regulate employees' tobacco use by setting restrictions that are bona fide occupational qualifications

as well as setting workplace smoking restrictions. D.C. Code § 7-1703.03.

Employers should be careful about attempting to regulate or discipline off-duty conduct that may relate to an employee's status in a protected group under the DCHRA. See *McCaskill v. Gallaudet Univ.*, 36 F. Supp. 3d 145, 149 (D.D.C. 2014) (finding employee-school officer failed to state claims for religious, racial, and political affiliation discrimination in case where employee was placed on administrative leave after signing a petition to ban same-sex marriage).

Law stated - 01 July 2022

Gun rights

Are there state rules protecting gun rights in the employment context?

No.

Law stated - 01 July 2022

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property

Who owns IP rights created by employees during the course of their employment?

Generally, the author of the work is the owner of its rights. However, where work is "work made for hire," the employer owns the rights to the work. To demonstrate that work is "work made for hire," the employer must demonstrate the work was the kind the employee was employed to perform, it occurred substantially within the authorized time and space limits, and it was actuated, at least in part, by a purpose to serve the employer. *Roeslin v. D.C.*, 921 F. Supp. 793, 798 (D.D.C. 1995)

Law stated - 01 July 2022

Restrictive covenants

What types of restrictive covenants are recognized and enforceable?

Contracts may not unreasonably restrain trade. D.C. Code § 28-4502. Nevertheless, D.C. enforces reasonable non-compete, non-solicitation, and non-disclosure agreements.

In evaluating restrictive covenants, D.C. courts find a restraint unreasonable if the restraint is greater than necessary to protect the promisee's legitimate interest or if the promisee's need is outweighed by a hardship to the promisor and the likely injury to the public. Courts use the "rule of reason" to determine enforceability, requiring a fact intensive inquiry that depends on the totality of the circumstances. See *Deutsch v. Barsky*, 795 A.2d 669, 677 (D.C. 2002).

Law stated - 01 July 2022

Non-compete

Are there any special rules on non-competes for particular classes of employee?

Yes. Under the D.C. Rules of Professional Conduct, lawyers may not participate in offering or making restrictive covenants involving another lawyer. DC R RPC Rule 5.6

Law stated - 01 July 2022

LABOR RELATIONS

Right to work

Is the state a “right to work” state?

No, D.C. does not have a “right to work” law.

Law stated - 01 July 2022

Unions and layoffs

Is the state (or a particular area) known to be heavily unionized?

No. According to the Bureau of Labor, approximately 9 per cent of D.C. employees are members of unions. This is close to the national rate of 10.3 per cent.

Law stated - 01 July 2022

What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

D.C. does not have its own variant of the federal Worker Adjustment and Retraining Notification Act (WARN Act).

Law stated - 01 July 2022

DISCIPLINE AND TERMINATION

State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

No.

Law stated - 01 July 2022

At-will or notice

At-will status and/or notice period?

D.C. is an at-will jurisdiction. Therefore, generally speaking, neither an employer nor employee must provide notice for ending the employment relationship at any time for any reason.

Law stated - 01 July 2022

What restrictions apply to the above?

Employers may not terminate employees for:

- discriminatory or retaliatory reasons under the DCHRA, D.C. Code §§ 2-1402.11, 2-1402.61;
- claiming or attempting to claim workers' compensation, D.C. Code § 32-1542;
- having their wages garnished to pay a judgment, D.C. Code § 16-584;
- receiving or responding to a summons, serving as a juror, or attending court for prospective jury service, D.C. Code § 11-1913;
- taking family and medical or sick leave, D.C. Code §§ 32-507, 32-531.08; and
- refusing to violate the law at the employer's direction, *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C.1991).

Law stated - 01 July 2022

Final paychecks

Are there state-specific rules on when final paychecks are due after termination?

Yes. If an employee is terminated, the employer must pay the employee's wages not later than the next working day following the termination. Where the employee terminated was responsible for handling the employer's money, the employer has four days from the termination date to pay the former employee's wages.

Law stated - 01 July 2022

Jurisdictions

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