Your workforce experts.
South Dakota
Labor Laws 2014
James Marsh, SDDLR
I’m not giving official legal advice in this presentation – “But Marsh said ... “ won’t help you when the legal papers start flying. Talk to your attorney if you need recommendations for action.
State “Fair Labor Standards” Laws

- Minimum Wage
- Child Labor
- Public Employment Laws
Minimum wage is $7.25.

- Figured by the pay period, or the month if there isn’t one.
- USDOL goes by the work week.
Exemptions:

- Developmentally disabled, with a permit
- Opportunity wage
  - Under 20
  - One time for 90 calendar days
  - $4.25
Independent Contractors

The “hiccup test” –

• If you were to fire this person, would they experience an economic “hiccup,” or would they go on like nothing happened?
• Check if you’re not sure - USDOL has made misclassifying employers a priority.
Hours Worked

- No pay deduction for break unless at least 20 continuous minutes.

- Fractions of an hour:
  - Figure time in 15-minute increments, Rounded to employee’s favor at 7 ½.
  - E.g., 7 ½ minutes early, paid for 15; 6 minutes, paid 0. 8 minutes late, paid 0; 7 ½ minutes, paid 15.
Travel

- Driver? Work
- Passenger? Only work during normal working hours.
- Commuting not paid, but going from primary office to job site and back is.
Volunteers

- No such thing as a “part volunteer,” but
- If the duties in the primary job and the volunteer work are not similar, the hours don’t have to be added together.
Deductions

• Assuming a deduction takes an employee below $7.25,
  ‣ Advances of less than thirty days ok
  ‣ Voluntaries ok
Deductions for discipline not ok;
Damage to employer’s property not ok.
Employee left with at least $7.25? Private legal matter.
Manner of payment

- Pay monthly, or on regular agreed pay days
- Terminations - Payment of wages due on next regular pay day when employees quit/fired, unless Employee still has employer's property.
- Doesn’t apply to anything other than wages (vacation time, benefits, etc.)
Record-keeping – 4 years:

(1) Each employee's name and social security number;
(2) The point at which services were performed by the employee;
(3) The number of hours employed in each week and the wages paid for the week;
(4) The date each employee was hired, rehired, or returned to work after a temporary layoff;
(5) Time lost, if any, by each employee due to unavailability for work;
(6) The date each employee was separated from employment and the reason for the separation;
More records to keep 4 years:

- (7) The total wages paid to each employee during each calendar quarter, showing the following:
  - (a) Money wages;
  - (b) The cash value of other remuneration, including gratuities and tips; and
  - (c) Deductions from wages for expenses incurred by each employee.
- (8) Reports of work-related injury/incidents.
Child Labor

- 16+ can do whatever they want, whenever they want.
- Under 16s are limited in when they can work, how long they can work, and what they can do.
Limitations on hours -

- 3 hrs/day on school days, 18 hrs in school weeks, 8 hrs and 40 hours non school days and weeks.

- Can't work before 7 am, past 7 pm on day preceding school day, 9 pm in the summer.
“Hazardous” work

- No job that is dangerous to “life, health, or morals.”
  - Whatever a jury would think is dangerous.
  - The Department gets guidance from the feds “Hazardous Work Orders.”

www.dol.gov/dol/topic/youthlabor/hazardousjobs.htm
Overtime (US FLSA)

- Enforced by USDOL, not us. This is just general info.
- If you have specific questions, ask them; they prefer to be contacted at their regional office in Denver:
  866-487-9243
Overtime for over 40 hours a workweek, at least time and a half.

- Only required for actual working hours – holidays, for example, don’t count.
- Averaging of hours over two or more weeks is not permitted.
- Not a daily rate, but a weekly one.
- Workweek need not coincide with the calendar week, but may begin on any day and at any hour of the day
Exemptions –

- PEACHs
- Miscellaneous
PEACHs; their primary duty must be:

- Professional,
- Executive,
- Administrative,
- Computer people, and
- Highly compensated.

For particulars, www.dol.gov/whd/regs/compliance/fairpay/fact_exemption.htm
All PEACHs must:

- Make at least $455 a week,
  - $910 biweekly; $985.83 semimonthly; $1,971.66 monthly.
  - Computer professionals alternative $27.63/hr
- Free and clear is cash, check, etc.
- Paid on a “salary basis.”
  - Partial days not paid by PTO biggest problem.
Miscellaneous Exemptions:

www.dol.gov/elaws/esa/flsa/screen75.asp
Public Employment Laws – Selected Issues

- ULPs
- Grievances
Unfair Labor Practices (ULPs) – leveling the collective bargaining playing field

- A public employer can’t: interfere with employees exercising their rights,
- “Dominate, interfere or assist in” union formation,
- Engage in employment discrimination against union members,
- Retaliate against employees who file employment-related complaints,
- Fail to negotiate in good faith, or
- Refuse to comply with the public employment laws.
ULP Examples

- Not giving (or having) a rationale for a bargaining position.
- Telling an employee not to join a union, or he won’t get any more raises.
- Firing an employee for filing a grievance.
- Favoring a particular union organizing.
A ULP is not:

- Disciplining an employee within the boundaries permitted by policy or a contract, if based on performance.
- Denying a vacation request.
- Refusing to change a bargaining position, as long as the other side’s position is fairly considered.
ULPs are taken directly to DLR, no later than 60 days after they occur.

- A hearing is held before a DLR Administrative Law Judge, who makes final decisions about the ULP and the remedy to be applied, such as:
  - Cease and desist,
  - Sending the negotiators to bargaining,
  - Monetary damages.
- The ruling can be appealed to Circuit Court.
Grievances Involve:

- Employee agreements,
- Employee contracts,
- Ordinances,
- Policies, or
- Rules.
A complaint can be filed when such things are

- Violated,
- Misinterpreted, or
- Inequitably applied.

Our courts have recently said a common-law breach of contract action is not available for such complaints.
Grievances are to be filed locally, then with DLR in 30 days if local authority has not resolved them.
Questions? Contact us!

South Dakota Department of Labor and Regulation
Division of Labor and Management
700 Governors Drive
Pierre, SD 57501
Ph 605-773-3681
FAX 605-773-4211
dlr.sd.gov
Email -

james.marsh@state.sd.us for human rights claims,
ray.falk@state.sd.us for wage claims,
dail.mollard@state.sd.us for wage claims,
bonnie.ackerman@state.sd.us for workers compensation
And check out these sites for news and other great employer information from DLR:

- Facebook
- Twitter
- YouTube
- LinkedIn
- Pinterest

Thanks!