

Your workforce experts.



South Dakota Labor Laws 2014 James Marsh, SDDLR

The Grain of Salt -

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:

- **P**rofessional,
- **E**xecutive,
- **A**dministrative,
- **C**omputer people, and
- **H**ighly 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.”
 - <http://www.dol.gov/elaws/esa/flsa/overtime/cr2.htm>.
 - 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

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!

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Thanks!